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Chapter   17

Does Participatory Governance Hold its Promises?

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The constitutional principle of participatory democracy

With the ratification of the Reform Treaty, the European Union will be based on two complementary principles: the principle of representative democracy and the principle of participatory democracy. Even though the two respective sub-headings in the draft Constitutional Treaty (Article I, 46 and Article I, 47) have been omitted, the Intergovernmental Conference did not introduce any change in substance. Article 11 of the Reform Treaty pledges to give citizens and representative associations a voice "in all areas of Union action", and to "maintain an open, transparent and regular dialogue with representative associations and civil society", and it demands that the Commission "carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent". With Clause 4, it now also endows citizens with the right to *initiate* an action. However, first, that action is of one type only, i.e., "where citizens consider that a legal

act of the Union is required for the purpose of implementing the Treaties". Second, that action is valid only when "not less than one million citizens who are nationals of a significant number of Member States" engage in it. Third, and most importantly, that action is only an *invitation* to the Commission, one which the Commission is not obliged to accept.

Aside from citizens' limited right to initiate action, no new rights are conferred on anybody. The Treaty is only asking of the institutions that they, "by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views". This sounds like stating the obvious. It is current practise to provide fora for discussions and to engage in active and extensive consultations. For years, the Commission has been very active in developing instruments of communication and extended consultations. In order to assess the relevance of this Treaty provision and its potential impact on future developments, one need read it in the context of EU governance discourse and the governance policies of recent years and in light of what interested parties may make of it.

To start, we should spell out what is meant by "participatory democracy". The respective article was introduced without extensive deliberation and, moreover, the Constitutional Convention was not a body that engages in theoretical reasoning. Therefore, it seems more appropriate to ask what meaning is attributed to "participatory democracy" by those who strongly promote the concept. The EU Civil Society Contact Group (CSCG), a network of European NGO networks embracing a large array of non-governmental organisations active in the field of environment, social affairs, development, human rights, lifelong learning, public health, culture and gender, is "committed to the advancement of the principles of participatory democracy" (CSCG 2006). The representatives of the CSCG came forcefully out in favour of the inclusion of the article in the Constitutional Treaty calling it "a milestone in the development of participatory democracy and civil dialogue" (Beger 2004: 9). On the occasion

of the inter-governmental negotiations of the Reform Treaty the CSCG and many of the member organisations put great emphasis on their lobby activities on just that article (CSCG 2007): "The EU Civil Society Contact Group promotes the concept of participatory democracy and places a particular focus on the implementation of article 47 of the draft constitution. We believe that NGOs across Europe should form part of a regular, structured, and guaranteed dialogue with the EU Institutions."[1] All such statements reflect an understanding of participatory democracy that is synonymous with the participation of civil society organisations in civil dialogue. To quote the internet presentation of the Social Platform—a large and influential network of NGOs in Brussels—on the issue of participatory democracy and good governance: "The Social Platform is committed to promoting a structured civil dialogue between civil society and the EU Institutions. This involves establishing regular consultation of NGOs, in order to provide channels for citizens to influence EU policy – a concept which has become known as participatory democracy."[2] Nicolas Beger, at that time Coordinator of the Civil Society Contact Group, put it in a nutshell: "This participation is called civil dialogue—or as I prefer participatory democracy." (Beger 2004: 1) From this perspective, participatory democracy has two core components: (1) NGOs, which constitute organised civil society and (2) civil dialogue, which enables them to participate in public policy making. This vision reflects the discourse on improving EU governance that became prominent in the last decade.

In order to assess the value and the future potential of the institution of participatory democracy in the EU, Research Group 4 scrutinized the conditions for the success of the concept, the present state of affair and the democratic credentials of EU-civil society relations. When we want to know why the notion of civil society succeeded in becoming the "idée directrice" of EU governance discourse, it does not suffice to trace the history of the concept at the EU level. Only a broad and comparative analysis bringing out

the varied and changing images of civil society can explain the success. Civil society is a construction rooted in divergent world views and it is a contested political concept that is used and misused in times of legitimacy crises. The incantation of civil society by EU institutions was part of designing a new governance regime that would make the EU more efficient and more responsive to European citizens. Consequently, Research Group 4 was interested in exploring the change in policies and the ensuing patterns of EU–society relations. The focus was on the European Commission for several reasons: Firstly, participatory democracy is meant to complement the political process of representative democracy and, consequently, has mainly been propagated to establish more participatory elements in the process of governance. Secondly, in the political system of the EU, the Commission occupies a central position in governance due to its many roles in initiating, mediating and monitoring legislation. Thirdly, the Commission has been very active in recent years in structuring EU–society relations by developing an elaborate consultation regime. The new consultation regime quite evidently had an impact on the interaction with citizens and civil society organisations. But how can we assess the democratic value added? Normative theories of democracy provide us with distinct though divergent criteria. Accordingly, researchers in Research Group 4 debated the relevance of different approaches and what they can tell us about the appropriateness and effects of participatory engineering in the EU.

The following paragraphs will first summarize the main findings concerning civil society as pillar of participatory democracy; it will then portray the institutional shaping of EU–society relations; and finally, it will assess the democratic value of civil society involvement in EU governance.[3]

Civil society as pillar of participatory democracy

Civil society ranks highly in academic and political discussions on democracy. The positive image of civil society has many roots: In Europe's collective memory civil society takes a prominent place thanks to the peaceful transformation to democracy in Central and Eastern Europe. 'Civil society' was a "collective action frame" that empowered civic movements across Eastern Europe to mobilize public support and take advantage of changing political opportunities (Glenn 2008: 25). Civil society is appreciated world–wide as the opponent force to authoritarian rule and the hope for sustainable democratic change. Whenever the European Union becomes engaged in external democracy promotion, it makes great effort to strengthen civil society; a strong NGO sector is considered both an end in itself and a device to bring about political reform (Knodt and Jünemann 2008).

But also in well-established democracies, civil society receives a positive rating.[4] Civil society organisations are perceived as standing up for weak interests and acting both at home and abroad as advocates of general values and of rights based interests. Civil society conveys the image of grass–roots activism and the voice of the people in governance. It gains attractiveness when citizens are disenchanted with existing forms democracy. Underlying this is the idea that civil society safeguards democracy, and comes into action at times of perceived legitimacy crises. If parties and parliaments are perceived as deficient, civil society is called upon to take up the role of compensating those weaknesses. In this affirmative view, civil society is seen as an autochthonous oasis, with responsive citizens contributing to a vibrant social sphere. Civil society organizations are crystallizing points for political activation, they share the conviction that citizens should speak up and become engaged, but they differ with respect to the causes that call for activism and the appropriate forms of remedy. From this perspective, civil

society organisations are not synonymous with civil society; rather, the latter is constituted by 'citizens-on-call' (Amna 2006: 11).

Though this image of civil society is very present in public discourse, it presents only a partial view. It focuses on attributing to civil society the role of defending the political rights of citizens. An equally important role is for civil society to secure common welfare and good governance. At the nation state level it is incorporated in the image of the Scandinavian model, which combines a widespread associational life devoted to the idea of an egalitarian citizenship and close cooperation between an engaged civil society and a benevolent state. Self-management and the provision of social services by local organisations go together with energetic demands on the state to deliver collective goods. (Wollebæk and Selle 2008)

The discourse on good governance that is prominent at the European level also propagates the idea of a close involvement of civil society to improve policy output. Governance discourse, however, assigns civil society a more instrumental role. Civil society organisations, emerging from below, are perceived as representing a wider diversity of interests than the institutions of representative democracy, as being closer to stakeholder interests and, therefore, as being better equipped to contribute to efficient problem-solving. Good governance, accordingly, may be achieved by drawing on the resources of civil society.

Hence, the usually opaque concept can acquire some clearer contours if we ask what functional role is attributed to civil society. We would hardly ever find such differentiation in political discourse— and discourse on participatory democracy in the EU is no exception. It draws, mostly implicitly, on many divergent concepts and, consequently, promises to cure all kinds of ills: The involvement of civil society as propagated by EU institutions, above all by the Commission, is meant to foster input and also output legitimacy; and it also promises political rights and welfare. But for analytical reasons and also to improve policy it is essential to make a

distinction. If civil society is supposed to first and foremost act as guardian of the political rights of citizens against the encroachments of government, attention has to focus on conditions of social mobilisation, inclusiveness and publicity. If, on the other hand, civil society is appreciated as co-producer of public welfare, the capacity to deliver is of far greater importance. The organisations that present themselves as organised civil society have to develop a clear perception of their role and to get their priorities right. Furthermore, the choice of governance instruments also entails a choice between different participatory regimes and attributes distinct functional roles to civil society organisations. The EU is a laboratory for designing new instruments of participation and though the Commission is in the driver's seat, civil society organisations have a say in it. Without a clear role perception on both sides, concurrent expectations will not materialise.

Equally important is a realistic assessment of the constraints of the multi-level governance system of the EU and of the social fabric of Europe's societies that condition the life of civil society organisations at the EU level. It is widely acknowledged that the diversity of political cultures, languages and national allegiances in Europe are obstacles to the emergence of a transnational civil society. Less noted are the effects of changes in civil society at member state level. Even in Scandinavia, which used to be the model of associational democracy, the organisation of civil society has been moving from mass member associations, which served as transmission belts of collective interests to government, to a more pluralist associational life serving individual interests (Wollebæk and Selle 2008). Given that the Scandinavian model is itself in decline in the countries of origin, we can hardly expect its re-invigoration in the EU. Rather, the EU is faced with a pluralist system of highly professional organisations in which value and rights based civil society organisations compete with a wide range of social and economic interests groups.

The Institutional Shaping of EU–Society Relations[5]

Participatory discourse has clearly raised awareness for the need of input legitimacy. The huge number of interest groups and the pluralist composition of the intermediary political space surrounding EU-institutions were not considered satisfactory with respect to democratic input. Rather, the Commission became engaged in 'participatory engineering', setting up norms and standards of consultation, and designing new instruments and procedures of interaction with citizens and civil society organisations.

The engagement of EU institutions in participatory engineering is not a singular phenomenon. Interventions by those political institutions that provide citizens with more opportunities to participate effectively in policy-making have mushroomed in recent years (Zittel 2008). Comparative research yields insights into the variety of approaches, the different uses of instruments, and the divergent effects at different levels of government. EU institutions have experimented with new methods and technologies in citizens' consultations, profiting from professional advice and experience gathered at other levels of government. But since the instruments of participatory engineering have largely been developed for local democracy, a transposition to the EU level is not without risks. The distance between grass roots levels and the Commission, which is centrally positioned to engineer the participatory exercises, undermines the claim to 'giving people a say'.

This is not the only reason why the Commission's approach to directly addressing the European citizen has met with reservations. Above all, the White Paper on Communication (Commission 2006a) was criticised both by academics (Brüggemann 2005) and by NGOs (Social Platform 2006a) as an ill conceived attempt to "sell" Europe and as an exercise in propaganda instead of communication. Such could hardly contribute to political participation.

A more promising approach, even from the Commission's point of view, is to involve representative organisations in the policy-making process.

The Commission has always maintained intensive relations with non-governmental organisations, and, since the time of the Delors Commission, has striven to also target non-market actors. The White Paper on European Governance (Commission 2001) did not mark the beginning of the Commission's concern about the dwindling "permissive consensus", rather, it made this concern (shared also by the Council and the European Parliament) public.[6] Though the White Paper did not present a 'master plan' (being far too incoherent, ambivalent and sometimes outright contradictory)[7], it set the framework for the regime which is now governing EU-society relations. The involvement of civil society was a "Leitmotiv" and five principles were to underpin good governance: openness, transparency, participation, accountability, effectiveness and coherence. Each principle was said to be important for "establishing more democratic governance" (Commission 2001: 10).

The empirical question addressed by Research Group 4 was whether or not the new governance approach brought about change and, if so, whether the new regime brought us closer to participatory democracy's aspirations. The use of the term "regime"[8], borrowed from theories of International Relations, offers us an analytical advantage. We need benchmarks to mark change and to assess the relevance of that change. This is what the regime approach can offer: First of all, it makes us aware that relations are not just governed by rules and procedures but also by principles and norms which give those rules and procedures a distinct meaning. Principles channel expectations and constrain or fuel demands with respect to what ought to be done. Secondly, when we want to understand the dynamics of change and stability, not just one single component but rather the interdependence of the components is relevant. A regime is robust if the components are attuned to each other. Stability increases when rules and regulations are compatible and translate the established principles and norms in a coherent way. Changing one component may not just induce friction, but also trigger change. Thirdly,

a regime is effective if it fits the environment. Again, the fit or mis-fit may result from the congruence – or lack of congruence – of the principles, the norms, the rules or the procedures that govern relations in the environment.

Over the years, EU-society relations have been governed by quite different principles. In the early days of economic integration, the overriding principle governing consultations was respect for the Treaties and the efficient transposition of Treaty provisions. With the growth of market regulation and direct interference by the EU in sub-national governance in the 1980s, a new orientation gained ground acknowledging the political character of EU policies and the need for additional mechanisms for gaining legitimacy. In place of hierarchy partnership became the new core principle. It put public and private actors on a new footing, but its application to specific policy areas was circumscribed. The far more ambitious principle of participation was introduced with the White Paper on Governance (Commission 2001). This reflected the growing concern that the mechanisms for representative democracy might not adequately support the emerging political system of the EU and, therefore, should be complemented by the direct involvement of civil society in EU governance. Consequently, the principles of participation, openness, transparency, and accountability were endorsed.

Principles concurred with norms. In older days, it was an established consensus not to question the 'acquis communautaire' and not to challenge the political authority of public actors. Experts and interest groups were invited to contribute their knowledge to efficient policy making. Under the principle of partnership, public actors accepted that cooperation with stakeholders was crucial in order to learn about and respect the broad array of interests affected. But though the right to consultation was acknowledged, it was only applied to selected policy programmes at the initiative of the Commission. With the changing image of the EU as a polity in the making, the unconditional right of voice became a norm. Not only directly affected stakeholders but civil society organizations representing general interests were

to be involved in consultations, and the exercise of this right was not to be conditioned on grounds of functional expediency.

Though extended consultations with non-public actors started early, exchange was for a long time informal and ad hoc, and the selection of participants was at the full discretion of the Commission.[9] Only recently, with the acceptance of a greater say for civil society at large, have rules and procedures become more formalised; criteria for granting access, providing information, and organizing the consultation process have been developed and made public. Codes of conduct and regulations concerning standards of consultation now define the rules of the game.[10] However, the Commission still has authorship of the institutionalization of consultation rights and of the handling of consultation practices, and such authorship includes defining who qualifies as stakeholder in a given policy area. This discretionary power is circumscribed nevertheless by the commitment to the principle of openness and participation.

The shift in principles and norms over the years is more apparent than the changes in rules and procedures. Nevertheless, when taking the change in all four components together they make for distinct regimes. In a stylized form they can be represented by three ideal type models: an 'expert model', a 'partnership model' and a 'participatory model'.[11] The three regimes did not emerge in strict sequence, they rather grew like generations. The generational metaphor is here useful for it reminds us that each regime is built on the achievements of the former while also adding new components. Several generations live and develop parallel to each other in distinct policy areas; they are at odds with each other due to their individual profiles but they are not mutually exclusive.

Today's reality presents a mixed picture. Comparative research by Research Group 4 provided evidence of considerable variation between policy areas and even more so between the pillars of the Union. The difference between the first and the second pillar of the EU is not as marked

as usually assumed. Civil society involvement in foreign and security policies is less in the spot light but it is, nevertheless, very present (Dembinski and Joachim 2008). Institutions and governance styles in the two pillars make a difference, but policy issues and types of conflicts have a more discernible impact on the ways, means and on the degree of civil society involvement. All things considered, it looks like a new consultation regime is reaching maturity, one characterised by features of the 'participatory model'.

The Commission is undoubtedly the most influential actor, but other interested parties are active players in the game. General interest groups have joined forces to push for a fully-fledged participatory civil dialogue putting a premium on general interest associations. Trade union organisations are less enthusiastic as they are concerned that an expanding civil dialogue may downgrade the importance of social dialogue and encroach upon their privileged position in that dialogue (Michel 2008). Business interests have also been calling for a distinction between social and civil dialogue, and demanding that the responsibility of the social partners for certain political decisions not be extended to other areas or other actors (Pérez-Solórzano Borragán 2007: 275). Market related interest groups are on record as saying that stakeholders should be the main target group; above all those who are directly affected and who command issue specific knowledge.

The Draft Constitutional Treaty quite evidently pushed the principled discourse towards a participatory model. Though explicit mention of the principle of participatory democracy was dropped by the Intergovernmental Conference, the retention of the original phrasing in Article 11 (2) strengthens the position of those who understand it as a pledge to participatory democracy and as a general commitment to enhancing the role of civil society in EU governance. Critics, by contrast, refer to Article 11 (3) to emphasise the Commission's duty to carry out consultations with "parties concerned". By their alternative reading, dialogue with civil society ought to complement existing mechanisms and be used in a circumscribed way. The

controversy is framed by an underlying though not very articulate principled discourse: Whereas general interest groups make it a discourse on input legitimacy and consequently put the principle of democratic participation first, other intermediary organisations take output legitimacy as their point of reference and thus give priority to the principle of efficiency in policy-making.

The difference becomes even more pronounced at the level of norms: General interest groups strive to make it the norm that all institutions – including the Council and the Council Presidency – entertain regular and formalised civil dialogue (Fazi and Smith 2006: 31). They claim that the involvement of civil society organisations should be extended to all policy fields and to all phases in the policy-making process. Furthermore, to maximise the chance of voicing their view and being heard, they seek support for capacity building, and for this the provision of funds is considered appropriate to lower the threshold of access. General interest groups justify their call for privileged treatment by emphasising their specific role in the promotion of participatory democracy: They argue that they (1) represent public interests, (2) play a key role in the empowerment of people, (3) raise a voice for marginalised groups whose interest would otherwise not be represented and (4) raise public awareness and thus help to increase transparency (Social Platform 2006a). For these reasons they deem it necessary to "ensure an equitable balance between public and private interests" and to receive public funding "to counter-balance existing power imbalances within society; (…) public funding of civil society is a necessary and positive guarantee for the development of civil dialogue" (ibid). It goes without saying that this is not a consensus view; even the Commission, which provides financial support to most of the EU level platforms and to umbrella organisations of general interest associations, is of two minds: Public funds further the integration of fragmented and weakly represented interests, but they can also breed clientelistic relations (interviews).

Only one norm is not controversial among all kinds of different interest groups, namely that consultations should be meaningful. "Consultation fatigue" (Fazi and Smith 2006: 43) has spread with the expansion of consultation instruments that offer little more than a "ticking exercise". But when it comes to translating this demand into rules and procedures, opposing views, which reflect different role perceptions and institutional constraints, become apparent. The institutional architecture of the EU makes it mandatory that the Commission preserve a high degree of autonomy in its dealings with societal actors. Its overriding concern is policy-making and to this end it must have the flexibility to accommodate the interests of the Council (and the European Parliament). From this perspective, participation becomes instrumental to efficient governance, i.e., not just offering promising problem-solving strategies but also lending the Commission additional support to induce the Council to decide at all.

Under the Barroso Commission "better legislation" has become the key concept of EU governance, emphasizing output legitimacy rather than input legitimacy (which is seen to be strengthened by participation). In the abstract, input and output legitimacy are mutually supportive. But when it comes to organising the interaction of EU-society, opinions split: General interest groups want to strengthen a rights and value based discourse, whereas the policy oriented departments of the Commission are more inclined to strive for "evidence based decision-making". Consequently, they prefer a "stakeholder dialogue" that includes those who have an immediate interest and specialized knowledge.

The present consultation regime reflects these contradictions and competing interests. That regime is far from a uniform set of principles, norms, rules and procedures. The differences across General Directorates are a sign of the dissimilarities of governing principles in different policy fields and the respective constellation of actors. However, from a bird's eye view similar patterns are observable (Quittkat and Finke 2008; Kohler-Koch et. al. 2008).

Over the last years, the Commission has become more committed to open consultations and has developed instruments that facilitate access. Conferences and online-consultations address a wider public and have attracted a large number of respondents. With the exception of the special issues of animal welfare and REACH (Registration, Evaluation and Authorisation of Chemicals), with more than 40.000 and 6400 contributions respectively, online consultations opened to the wider public will have between a hundred and several hundred contributions. Online-consultations have multiplied since the turn of the century from less than a dozen to over a hundred in recent years. Some General Directorates are pace-setters and others are laggards, but the instrument is now used across the board. It is, however, worth mentioning that during exactly the same period expert groups increased significantly both in number and frequency of meetings (Gornitzka and Sverdrup 2008). This ambivalence is also apparent when one compares the use of instruments in the course of the policy-making cycle. Agenda setting and initial policy formulation are linked to online consultations and conferences with wide ranging civil society participation, while subsequent stages of policy formulation and decision-making are supported by meetings of advisory groups with limited civil society representation and expert groups.[12] Quite obviously: "the Commission's 'participatory strategy' is accompanied by a 'strategy of knowledge collection' (Quittkat and Finke 2008).

Assessing the democratic value of civil society involvement

When trying to assess the democratic value added by the move towards a more participatory consultation regime, we have to take into account that normative benchmarks vary by theoretical approach (Hüller and Kohler-Koch 2008). Theorists of liberal democracy rank equal representation,

effective participation and political accountability first. From this perspective civil society involvement enhances the democratic quality of EU governance when it gives citizens a voice, redresses biased representation, and exerts a watchdog function so that citizens can hold decision-makers accountable.

But notwithstanding recent efforts to become more open, inclusive and participatory, equal representation has not been achieved (Persson 2007; Quittkat and Finke 2008). Even the easily accessible online consultations show asymmetries: market-related organisations such as business and professional associations are far more numerous than general interest organisations. Equally pronounced is the distortion in territorial representation: The old and large EU member countries are over-represented when compared to the smaller member states and the recent accession countries. However, it is worth noting that the geographical distribution of civil society associations is significantly wider than that of market actors and market related associations.

Numbers are a proxy and not a reliable indicator of democratic participation. We rather follow Dahl (2006) that the relevant criterion ought to be "effective participation", and that this is not achieved by filling out a questionnaire designed by the Commission. Online-consultations come in different formats: (1) multiple-choice questionnaires; (2) semi-standardised questionnaires providing structured, yet open questions; (3) calls to answer open questions on a specific issue; (4) invitations to voice opinions regarding more general matters. Noting that multiple-choice questionnaires have the highest response-rate, quite obviously, widespread involvement does not signify effective participation.

The increasing use of expert groups and their growing relevance when the policy-making process approaches the decision-making stage are a concern for civil society groups. The General Directorate SANCO (Health and Consumer Protection) recently introduced some new procedures to redress the technocratic bias that comes with involving expert and advisory

groups. The Stakeholder Dialogue Procedure[13] is intended to facilitate a "structured dialogue" between stakeholders and the three scientific committees supporting GD SANCO. Currently a pilot project, this procedure is being monitored with a view to establishing, if successful, a permanent modus operandi.[14] Furthermore, GD SANCO has established a Stakeholder Dialogue Group to advise the General Directorate on processes that can facilitate stakeholder involvement (SANCO 2007a). This includes helping external parties understand, and, where appropriate, engage with comitology processes (SANCO 2007a: 15), addressing procedural questions that concern the advisory groups as well as those related to the asymmetry and representativeness of stakeholders.

Precisely because effective participation comes with accountability, interest groups put pressure on the Commission to provide feed-back, including giving reasons why certain stakeholder views were or were not taken on board. Synthesis reports are now common though not universal practice; but they vary somewhat in style and detail, and are sometimes only circulated to those who were consulted rather than to a wider public via the internet.[15] The legal commitment to transparency, the obligation to submit impact assessments on major policy initiatives and to provide road maps to better track the consultation and decision making process together with feed-back procedures are a step towards greater accountability, but they do not institutionalise an accountability mechanism in EU-society relations. The Commission is not subject to any legally binding obligation to give account, and the political commitment to do so is at the Commission's discretion. That discretion, however, is not exercised by the Commission at will, but is rather in response to institutional constraints: The Commission has to retain autonomy because it would be ill advised to negotiate with the Council and the European Parliament with tight hands. Furthermore, political accountability in the full sense of the term (Bovens 2007) does not work since the Commission does not have to face any consequences. It cannot be

exposed to political sanctions, and soft sanctioning through blaming and shaming has limited impact due to an underdeveloped trans-national public sphere that limits publicity.

Thus, when assessing the present consultation regime from the perspective of theorists of liberal democracy, we see an improvement in democratic participation but the system does not live up to the set normative standards. The Commission has succeeded in widening participation by lowering the threshold of access; it has increased transparency and has lent support to the representation of weak interests. Feed-back mechanisms have improved responsiveness, and the readiness of a General Directorate to subject its communications with stakeholders to scrutiny by an external peer review group reflects a concern with accountability. All this amounts to participatory governance; but this is not one and the same as participatory democracy.

The picture looks different though not brighter when benchmarks relate to theories of deliberative democracy. In recent years, the discourse on EU–civil society relations has been heavily influenced by normative theories advocating deliberative democracy for governance beyond the nation state. The benefits of deliberation and the potential contributions of civil society organisations to enhance the epistemic quality of decisions are well argued in theory. Rather than expanding the theoretical argument, researchers in RG 4 set out to explore the validity of these assumptions through empirical research. The results, again, are sobering. Instruments of participatory engineering aimed at directly involving citizens—through, for example, "citizens' forums" or "Café debates"—at worst reach only a small number of groups and at best raise awareness for European issues in general. Consultation instruments that attract the most responses, such as multiple-choice based questionnaires in online consultations, provide no space for deliberation. The same is true for stakeholder fora, such as the EU Health Open Forum, which is organised over long intervals, gathering several

hundred participants for a one day event. The minimum requirement for deliberation—namely continuity and regular meetings in settings that allow for direct, preferably face to face communication and time to exchange arguments—are rarely met. However, a few network and umbrella organisations—such as the Social Platform, the consumer association BEUC, the confederation of development associations CONCORD, and the Green 10—enjoy continuous working relations with the Commission in their field of interest. They participate in meetings when NGOs are invited to discuss different community matters; they sit on advisory committees; and they are regular consultation partners in issue specific fora. But they are also involved in action programmes funded by the Commission. Given that they are also recipients of institutional funding, further empirical investigation is required so as to ascertain whether this makes for effective participation or for a Commission-biased policy community. What is obvious, however, is the limited reach of civil society participation. Case studies, such as those on EU regulations on GMO, document enhanced societal participation and an intensified exchange of views between EU institutions and NGOs, but this new approach does not "support the emergence of a larger *engaged public and deliberation in the general public sphere*" (Dabrowska 2007: 299; emphasize as quoted).

Changes in the environment push and pull patterns of interaction into different directions. The pledge to involve civil society and make EU governance more participatory has invited even more groups to seek access, and Brussels has turned into a highly competitive market of interest representation. In order to get ear-time, associations cannot simply point to their impressive number of members; they must also prove that their members take issue with the policy under discussion. The recourse to public campaigning is aimed at boosting the political weight of civil society organisations, but the appeal to the heart and emotions of a constituency does not match well with deliberation. Civil society organisations can hardly

escape the trend towards strategic behaviour and elitist professionalisation. The positive effect is that a plurality of voices is present in the debate, but again, this does not constitute deliberation. When civil society representatives want to reach down to grassroots activists, arguing across the many layers of the multi-level system is time and resources consuming. Basic messages travel more easily.

The actors may agree about the virtue of participatory governance, but the rules of the game work against the principled belief. When comparing the Regional Advisory Councils (RAC) set up for the governance of the EU fishery policy with the Civil Society Dialogue at DG Trade, the shortcomings of the latter become quite obvious (O'Mahony 2008). Whereas the participants in the RACs act together and are mainly engaged in horizontal communication, the Civil Society Dialogue in GD Trade has never lived up to a genuine forum. Rather, it has been used as a vehicle for briefings by the Commission (Dür and De Bièvre 2007: 86) and for interest representation by the non-governmental groups. Thus, as Joan O'Mahony notes, communications "(…) run predominantly on vertical lines between individual forum members and the Commission rather than between the forum members themselves." (2008: 226) O'Mahony attributes the dissimilarities to the two bodies' different reasons for being: The Civil Society Dialogue in Trade is an instrument used simultaneously by the Commission to rally support and by the NGOs to gain influence. "In the case of the RACs it is not just about influence in terms of an Actor A trying to influence Actor B. For sure, it is about power, but often a power *to,* rather than power *over.*" (O'Mahony: 231)[16] This brings out a main feature of participatory governance; it is not just about opinion formation it encompasses decision-making.

Conclusion: Will participatory governance hold its promises?

When I summarise the distinctive features of EU-society relations in EU governance and scrutinise them according to standards of democracy, four distinct characteristics stand out:

Pluralism

The participatory discourse and its ensuing changes in the EU consultation regime have promoted the representation of a diversity of interests. The groups present in Brussels have not just expanded in number but have also extended the range of interests represented. The increase in number is true for market and non-market related interests groups. But the "value and rights based" groups, representing public and weak interests, have become far more visible. Their voice became ever more present, not so much because of growing numbers but because they managed to join forces in encompassing platforms and networks. Though we should not forget that their co-operation was often stimulated by (and supported with funds from) the Commission, nor that they sprang out of quite mundane interests (uniting against a severe cut of EU funds), they have enriched the agenda: It is no longer simply about growth and competitiveness, but also about the rights of minorities, social inclusion, gender balance, etc.

An elite system

Civil society and participation have high currency value in EU rhetoric. However, they are conceptualised in distinct ways. Civil society is thought of in terms of *organised* civil society; and participation takes the form of involving organisation officials. Correspondingly, participation is not seen as a "purpose in itself", but as instrumental for promoting the realization of

particular interests. These may well be on behalf of others, nevertheless, participation is not autochthonous but is rather accomplished by a (benevolent) elite group. These advocates are part of the Brussels circuit. In each policy field it is a rather small number of players (well known to each other and to the responsible Commission officials) who struggle to get their message across and to have impact on policy outcome. Given that success requires professionalisation, civil society organisations adopt the organisational features and lobbying strategies of interest groups. In order to increase their political clout, they cooperate in large networks and form issue specific alliances (Kohler-Koch et al. 2008). Horizontal intra- and inter-network communication takes up time and resources, and constrains policy options. Both might work to the detriment of open and intensive vertical communication with members or constituencies, especially in mass based organisations such as trade unions or rights based NGOs with a large and fluid constituency of supporters. In order to be efficient they are lured into campaigning rather than communicating in a deliberative fashion.

Such an elitist system is equal to representation for the people, but not by the people and this has an upside and a downside. It might be yet another manifestation of the "iron law of oligarchy", which only allows for a Schumpeterian type of democracy, or it might tend towards Willke's "smart governance".

A self-regulatory system

A characteristic of an elite dominated system is the lack of democratic accountability. Though the system is not controlled by citizens, it is not a system without control. It is subject to self-regulation, which resembles institutionalised cooperation in international relations. EU institutions and NGOs settle on principles and norms, and negotiate the appropriate transposition in administrative rules and procedures. Even though the

Commission has the right and the competence to regulate EU-society interactions as it sees fit, it is quite obvious that the present regime has been strongly influenced by the principled discourse on participatory governance and civil society. Interested parties within the Commission, the European Parliament and the EESC, together with civil society organisations pushed this principled discourse and linked it to an on-going debate. Had there not been the positive resonance of the value loaded key concepts of civil society and participation in a wider public, it would not have turned into an "idée directrice".

This principled discourse, however, is not uncontested. Those who advocate a greater emphasis on output legitimacy rank the principles of effectiveness and coherence higher. The White Paper on Governance was ambivalent, speaking in favour of both wider involvement and better legislation. To concede that principles are contested and thus that regimes may change depending on the outcome of political competition does not, however, weaken the argument that this elite system operates under self-created constraints.

Bridging issue fragmentation

An outstanding characteristic of the EU is its pronounced fragmentation of policy making. When compared to representative democracy, a participatory regime of governance with the direct inclusion of stakeholders in the policy process adds to that segmentation. The opening of EU governance to general interest groups and the vivid debate on new approaches to participation has had an opposite effect. Even though the so-called "value and rights based" associations seek to influence issue specific policies and – when relevant – defend the interests of narrowly defined stake-holders, they mostly deal with cross-cutting issues. Furthermore, the on-going debate on the best forms of consultation and good governance stimulated reflections on meta-

governance—it raised questions of procedural legitimacy, and, along with this, questions related to the fair and just accommodation of interests across policy sectors.

In view of these findings, we may ask whether participatory governance really does aim at finding a new form of and path to democracy or whether there is a hidden agenda. The present EU (EC) system is based on a system of "composite representation" (Benz), with the Council representing the European peoples and the European Parliament representing the citizens. Participatory governance adds the functional representation of stakeholders and general interests. Civil society is expected to reach out to citizens and to pave the way for direct participation – or rather representation – in EU policy making. With this strategy the supra-national EU institutions are outflanking member state governments. The latter loose their capacity (and their legitimate claim) to aggregate citizens' interests within their territory and to represent "national" positions. If successful, it would bring about political integration and create a single political space just as economic integration has created a single market. So far, the incantation of European civil society is more symbolic than real, but the rhetoric already stipulates that the EU and not the national state is the realm of democratic participation.

From this perspective, participatory governance is not so much about democratic participation than about integration; it is about system building and system transformation. This supposition fares well with the observation that despite all commitments to pluralism, civil society organisations in Brussels have one trait in common: they are putting Europe first, as they are supposed to do from the perspective of the Commission. But what does putting Europe first mean? It means strengthening the European system as the primary locale of societal engineering, and at the expense of the national state and sub-state social systems.

Notes

[1] http://www.act4europe.org/code/en/policy.asp?Page=214&menuPage=214 (22.2.2008)

[2] http://www.socialplatform.org/Policy.asp?DocID=8104 (22.02.2008)

[3] References will mainly include publications that emanated from RG4 research.

[4] For the following paragraphs see Edler-Wollstein and Kohler-Koch (2008): 350-384.

[5] Papers addressing these issues are published in the Journal of Civil Society 2007 3/3 and in Kohler-Koch, De Bièvre and Maloney 2008.

[6] The incoming president, R. Prodi set the tune already in his inauguration speech before the European Parliament in 2000.

[7] See the contributions in Joerges et. al. (2001)

[8] Regimes are institutions structuring cooperation among autonomous but interdependent actors by spelling out principles, norms, rules, and procedures around which actors' expectations converge.

[9] Except for the advisory groups with socio-economic participation laid down in the Treaties or set up by inter-institutional agreement.

[10] See above all the general principles and minimum standards for consulting (Commission 2002) and the Transparency Initiative (Social Platform 2006b).

[11] For a more extensive presentation see Kohler-Koch, Humrich and Finke 2006.

[12] These findings are based on a thorough analysis of GD Employment (Quittkat and Finke 2008) and supported by research on GD Trade from researchers within (Dür and De Bièvre 2007) and beyond (Slob and Smakman 2007) RG4.

[13] http://ec.europa.eu/health/ph_risk/stakeholder_procedure_en.htm (22.02.2008)

[14] See GD SANCO (2007b): 'Pilot Dialogue Procedures'.

[15] Also GD SANCO, perceived as a front runner in participatory governance only committed to distribute and not to publish their reports (SANCO 2007: 10).

[16] O'Mahony point out that the preconditions are manifold: consensus on what the object of regulation is, policy characteristics that call for self-management, a significant degree of independence from the Commission, the pressure to find consensus and make dissenting voices public.

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