

# The three worlds of European civil society—What role for civil society for what kind of Europe?

Beate Kohler-Koch

*University of Mannheim, Mannheim, Germany*

---

## Abstract

The article argues that it is difficult to agree on the political role and the democratic credentials of civil society in the EU not just because the concept of civil society is ambiguous but also because civil society is linked to different images of the nature of the European polity. An analytical model is developed that categorises three distinct conceptions of the Union and spells out the different roles civil society may take in each of them to render the EU more democratic. The empirical analysis exposes the implicit conceptions which inspired the Commission to involve civil society in EU governance and investigates how these conceptions changed with the formalisation of EU–society relations. The article concludes that no coherent normative theoretical concept gained ground and, consequently, civil society is assigned contradictory roles which do not add up but depreciate the democratic state of the Union.

© 2009 Policy and Society Associates (APSS). Elsevier Ltd. All rights reserved.

---

## 1. Introduction

The ambiguity of “civil society” in the European political discourse emanates only partly from the many and contrasting images of civil society and the strategic use of the concept on the part of European Union institutions. It is also the open future of the European Union that invites different conceptions and, consequently, gives rise to divergent views on the potential democratic virtues and roles of civil society in the EU. Therefore, the article will first highlight the volatile use of civil society in the European reform debate. Thence it will present an analytical model that helps to differentiate between three distinct conceptions of the EU and to relate them to specific understandings of civil society. In each model, a different functional and normative role is attributed to civil society. In a third step, the article investigates the implicit conceptions in the programmatic orientation of EU institutions towards civil society and inspects which conceptions of civil society EU policies, above all, the Commission’s consultation regime and the European communication policy, promote. In the conclusion the article argues that programmatic statements and EU policies assign contradictory roles to civil society which reflects the co-existence of different notions concerning the essence of EU democracy and the democratic added-value civil society could bring to it. Accordingly, European civil society is not the answer but rather raises further questions concerning the democratic deficit of the Union.<sup>1</sup>

---

*E-mail address:* [Beate.Kohler@mzes.uni-mannheim.de](mailto:Beate.Kohler@mzes.uni-mannheim.de).

<sup>1</sup> The core ideas of this article were presented as a paper, “Political Representation and Civil Society in the EU”, at the CONNEX Thematic Conference on Political Representation, European University Institute, Florence, 25–26 May 2007 (see [Kohler-Koch, 2007](#)). I have divided that paper into two. In this contribution I concentrate on the question of how distinct conceptions of the political nature of the European Union relate to different conceptions of civil society, whereas the issue of representation and civil society will be published in [Kohler-Koch \(2009\)](#). I wish to thank Hans-Jörg Trenz for a stimulating discussion on the issue, Volker Bali for his critical remarks and an anonymous referee for inspiring comments which sharpened my conclusion.

## 2. How civil society arrived at Brussels: the conventional narrative and some contrasting views

In a nutshell, the story that accounts for the inclusion of civil society in EU affairs runs as follows. Under the pressure of a growing dissatisfaction with the “democratic deficit” of the EU which had surfaced in failed referenda, the Heads of State and governments called for Europe’s institutions to come closer to its citizens (European Communities, 2001, p. 20). The European Commission, in addition troubled by the fading reputation of “Brussels” in the course of the demise of the Santer Commission, also agreed that Europe ought to connect with its citizens better, and for this reason it identified the reform of European governance as one of its strategic objectives (Commission, 2001, p. 3). The Constitutional Convention established “the principle of participatory democracy” as an additional pillar of the “Democratic Life of the Union”, next to “the principle of representative democracy”, and the Commission ambitiously declared it would “devise a completely new form of governance” (Prodi, 2000) including the active involvement of civil society. Both initiatives took up two trendy belief systems of the time. The first was a belief in the withering away of government and the emergence of a new system of public–private partnerships in the “participatory state” (Peters, 1996) which is bound to emerge most prominently in transnational decision-making, where state-controlled hierarchy would be replaced by a deliberative polyarchy (Cohen & Sabel, 1997). The second was a deep scepticism that elections and party politics are any longer appropriate mechanisms to legitimise public authority and that they will ever bring democratic legitimacy to the multi-level system of European governance (Lebessis & Paterson, 2000). Hence, recourse was had to civil society which was and is portrayed worldwide as a remedy to the legitimacy crisis of the modern state (Jobert & Kohler-Koch, 2008). Both belief systems concurred in supporting the expectation that new modes of governance and the involvement of civil society would set off a “virtuous circle” of improving both input and output legitimacy of the European Union.

This portrait has become the conventional narrative not least because it has been told so often by EU institutions. Detailed historical accounts (Armstrong, 2002; Perez-Solorzano, 2007a, 2007b; Saurugger, 2008; Sloat, 2003; Smismans, 2003, 2006) underscore that the turn to civil society was a protracted process which had started already in the early 1990s, that it involved numerous actors who were driven by (institutional) self-interest as much as by principled beliefs, and that it caused conflicts, though it would not have been “politically correct” to question the democratic virtues of civil society involvement. All reports testify that over the last two decades civil society has gained a prominent place in the programmatic re-orientation of EU integration. The authors all agree that the concept of civil society and the role attributed to it is now as ambiguous as it was in the beginning, and that neither the Commission’s White Paper on European Governance nor the Constitutional Convention has achieved a consensus view.

Since the inclusion of civil society was a political project, it carries the imprint of the institutions and organisations which took the lead; the European Commission, the European Economic and Social Committee (EESC), and the EU-level associations representing broad public interests, above all the Platform of European Social NGOs. Given the Commission’s and the EESC’s institutional priorities, the notion of civil society became synonymous with “organised civil society”. Both institutions were preoccupied with structuring the consultation process in such a way as to give it more weight and to strengthen the transnational aggregation of interests. It goes without saying that this met the interests of associations apart from business and trade unions which so far had felt marginalised in EU policy-making. They had an interest in the civil society discourse because it reflected their self-perception of representing the general interest and it entitled them to have privileged access to Community institutions and to gain support. The qualification as “civil society organisation” became a tug of war among EU associations for public legitimacy, status and funds.

The use of the language of civil society instigated expectations of participatory democracy that were not met by this focus on organised civil society. The academic community deplored the approach as “unduly narrow”. Armstrong (2002, p. 121) argues: “In short, the discourses of democracy, governance, and civil society seem like rather oversized constitutional cloaking for the thin frame of improving transnational consultation processes”. And Stijn Smismans (in this issue) draws attention to the fact that “(i)n much of the civil society discourse the citizen nearly entirely disappears from the picture”.

It was expected that the narrow focus would broaden when the discourse shifted to the Constitutional Convention because it became linked more closely to the broader debate on European democracy and was exposed to a wider public. The Convention had opened many channels and deliberately devoted time to hearing from civil society. The report on the first meeting documents that: “The safeguarding and promotion of more participatory democracy featured in many statements, as did the inclusion in the Treaty of the principle of a regular dialogue with civil society (...)”. Given that the exchange took place with delegates of organisations, the idea was that this principle “should in

practice lead to consultation of the relevant representative organisations (. . .)” (The European Convention, The Secretariat, 2002). When the Title on “The Democratic Life of the Union” was presented to the plenary of the Convention, the article that decreed “the principle of participatory democracy” attracted more attention than any other.<sup>2</sup> Few statements took issue with the right of every citizen to participate in the democratic life of the EU and the pledge that the EU shall give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action. However, the request addressed to the EU institutions “to maintain an open, transparent and regular dialogue with representative associations and civil society” prompted many members to propose amendments to clarify how to interpret “civil society”. A division appeared between those who advocated the direct participation of citizens, mainly coming from the left side of the political spectrum, and those who wanted to restrict the participation to collective actors and consequently had a clear preference for defining civil society as “organised” civil society (Gabaglio, 2003; Hoholei, 2003; Jacobs, 2003; Kaufmann, 2003). Several members of the Convention forcefully came out in favour of opening the dialogue to “literally everyone” and asked that every citizen be encouraged to participate in the democratic life of the EU (De Vries & De Bruijn, 2003). As some members put it: “We should foster participation by our citizens, and not lobbyists” (Heathcoat-Amory & Bonde, 2003). This strong statement may have been prompted by the active engagement in favour of “organised civil society” by representatives of organised interest groups<sup>3</sup> and the European Economic and Social Committee (Sigmund, Briesch, & Frerichs 2003). But proponents of organised civil society did not just speak in defence of vested interests. Some statements remind slightly of ideas of fostering social capital or paying tribute to associational democracy as the EU was requested to encourage the participation of its citizens in civil society organisations (Paciotti, 2003). Furthermore, it was a widespread concern that organisations should emanate from civil society (Michel et al., 2003) and be inclusive and representative (Borrell Fontelles & Garrido, 2003; Jacobs, 2003; Michel et al., 2003) which echoes a preoccupation with core principles of representative democracy.

The definition of civil society was not an issue of debate; it was rather a free-floating signifier with positive connotations. On closer scrutiny it becomes apparent that the notion of civil society was associated with slightly different meanings. Nevertheless, nobody questioned the legitimacy of including civil society in EU affairs and no one wanted to discuss what civil society stands for. This silence can be interpreted in several ways. From a pragmatic point of view it can be argued that the role attributed to civil society was vague and marginal so any in-depth discussion under the given time constraints was not worth the effort. From an analytical perspective, it is the composition of the membership which generates a consensus view. It is plausible to assume that members of parliament and governments, irrespective of political allegiance, tacitly agree on the basic normative standards of democracy and, what is more, they project their experience with the “real existing democracies”<sup>4</sup> of their home countries onto the European Union. They adhere to the model of representative democracy which is only marginally complemented by elements of direct citizen and civil society participation. Furthermore, they see the Union as a multi-level political system that is legitimised both by a directly elected Parliament and by politically responsible national governments. My argument is that this tacit agreement on the nature of the European polity explains the broad convergence on the role of civil society among members of the Convention. Existing variations regarding the prominence of citizens as compared with organised civil society reflect political party preferences and to a certain degree institutional self-interest of the advocates.

The Commission is in many respects close to the vision of the Convention concerning the state and the development of the Union. However, because of its institutional position it is more inclined to regard the EU as a system of governance and, consequently, to take a functional approach to civil society. The underlying hypothesis is that the perception of the political nature of the EU has a strong influence on the role attributed to civil society. I will explore how images of the European polity relate with conceptions of civil society for a theoretical and a practical reason. The theoretical impetus is that since the publication of *Civil Society and Political Theory* by Cohen and Arato (1992) it is common knowledge that quite divergent roles are attributed to civil society by different normative theories of democracy. So far, however, we know little about how constitutional models influence the framing of civil society. This

<sup>2</sup> Among the 235 proposed amendments about one-third were dedicated to this respective article and a large number of Convention members spoke in this first discussion (on 24 April 2003) on the principle of participatory democracy (The European Convention, The Secretariat, 2003a); the (slightly) revised version (submitted 5 June 2003) gave rise to relatively few comments (The European Convention, The Secretariat, 2003b).

<sup>3</sup> See, for example, the proposal of the European business federation UNICE (Jacobs, 2003) or the plea from a NGO activist that the Union should “recognise the value of the expertise inherent in many non-governmental organisations” (Filibeck, 2003).

<sup>4</sup> An expression coined by Schmitter (2008).

interdependence is, however, politically not to be neglected. It is plausible to assume that EU institutions will assign civil society a place and provide guidelines for appropriate behaviour not on the basis of normative theories of democracy but on assumptions about the institutional fit.

### 3. What kind of civil society for what kind of Europe?

The nature and the basic structural features of the European Union are still contested, both in respect of its present form and even more so concerning its future development. I do not want to side with one interpretation or the other but rather suggest three analytically distinct conceptions which are approximations to the ongoing discourse both in politics and in the academic community concerning the political order of the EU. They provide quite distinct frames for the incorporation of civil society and attribute different roles to civil society. The framing merges factual and normative belief systems in such a way that the preferred view of the political system of the Union fits with a favoured understanding of civil society.

The *first conception* attributes to the EU the quality of a political system which is exerting the functions of government without having a government and is operating, more or less, just as any other political system (Hix, 2005). 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 negotiated compromise between all actors involved. 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. The EU is called a “demoi-cracy” (Nicolaidis, 2004) as it is not only a union of states but also a union of peoples with the aspiration of connecting citizens directly both transnationally and to the supranational decision-making centre.

The EU is said to face a legitimacy crisis because democratic accountability is deficient, performance is not attuned to the interest of the people and because it lacks the glue of commonality of a demos. Consequently, supranationality has its limits and is increasingly supported by cultivating horizontal cooperation and steering through mechanisms of mutual recognition. In a soft though efficient way the European peoples become functionally ever more integrated without developing into a pan-European demos. This makes it even more urgent to build transnational structures of representation in order to meet the standards of democracy.

Civil society comes in as a remedy to the legitimacy crisis. Though the concept of civil society is highly ambiguous and it is decidedly controversial which associations qualify as representing civil society (Kohler-Koch and Quittkat, in this issue), 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 includes all different kinds of organisations, ranging from member-based interest groups to advocacy groups promoting rights and values as postulated in the Charter of the Union. Social partners have a privileged position in the system and functional representation is institutionalised in the European Economic and Social Committee, which exercises Treaty-based advisory functions.

Civil society brings added value to EU decision-making since it presents the plurality of interests, values and tastes of the Europeans. EU institutions are not just looking for transmission belts which convey demands and concerns from the grass roots to the upper levels of decision-making but for transnational structures able to distil and aggregate interests across borders. By giving citizens a voice and by bringing additional knowledge to the decision-making process, organised civil society is expected to contribute both to the input and output legitimacy of the EU system. Civil society organisations have a role to play in the intermediary space of the European system. They participate in agenda-setting debates and in policy consultations but not in decision-making; they have voice but not a vote. Furthermore, it is expected that the involvement of organised civil society will insert new ideas that might not be common knowledge among Brussels bureaucrats and experts. Additionally, because many civil society associations have a broad agenda, it is assumed that their awareness of cross-cutting issues brings more coherence to policy-making, which is difficult to achieve in the functionally highly differentiated governance system. Participatory engineering is geared towards a more efficient and effective use of civil society input and also pays tribute to standards of democratic representation. Consultations have been institutionalised and principles and norms have been set around which actors’ expectations converge. Openness and transparency are put into practice so that the exchange of positions between EU institutions and civil society organisations is to the point and in time. Procedures and instruments heed the principles of participation and inclusiveness and are designed in such a way as to facilitate easy and equal access. To make civil society involvement sustainable, feedback mechanisms have been introduced to convince the contributors that participation pays.

The *second conception* is closely linked to the governance turn in administrative and government studies (Mayntz & Scharpf, 1995; Peters, 1996; Pierre & Peters, 2000; Rhodes, 1996) which permeated into EU studies (Kohler-Koch & Rittberger, 2006). It was the academic reflection of an empirical manifestation in state-society relations in the late twentieth century, when hierarchical decision-making by government made way for more cooperative forms of policy-making. The EU has never possessed the steering capacity of the modern state and thus, from the very beginning, strived to attain problem-solving effectiveness by close cooperation with non-state actors. The accumulation of more decision power after the Treaty of Maastricht made non-hierarchical forms of decision-making even more pertinent because authority is still allocated to different territorial levels and dispersed to functionally segmented arenas. Thus, transnational and issue-specific negotiation systems evolved, bringing together relevant state and societal actors. To induce reluctant actors – sometimes member state administrations, sometimes economic actors or powerful interest groups – to agree on EU regulations, new modes of governance, have been introduced such as the “open method of coordination”. The trademark of these new modes of governance is that all actors who are potential target groups or are relevant to the success of a regulation are included in the process of setting political objectives and choosing policy 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.<sup>5</sup> It is, in addition, supported by the functional belief that those who are affected possess relevant knowledge to improve policy decisions. They are included on the assertion that they have the capacity to contribute to “best solutions” and that their support will be decisive for the level of compliance. Since regulatory decision-making is seen as a problem-solving exercise and redistributive policies are marginal in the EU, not the representation of interests but their quality and resources stakeholders can contribute entitle them to participate in governance. Actors emerging from civil society often lack specialised expert knowledge but they command specific resources; they introduce lifeworld experience and are close to the political nerve of citizens. When they contest established practices they induce a process of reconsideration and as a consequence contribute to upgrading the deliberative quality of the decision-making process. It is not the representativeness of the actors involved or the equal representation of the diversity of views or interests that matters, but the capacity “to generate novel possibilities for consideration” (Sabel & Zeitlin, 2008, p. 276). The engagement of private actors adds to efficient and effective problem solving by stimulating deliberation and mutual learning and, from this perspective, they are not just consultants but co-producers in governance. Their contribution is appreciated above all when the complexities of technical requirements or contested issues make external political steering difficult, whereas collaboration with target groups promises to come to optimal solutions. The choice of relevant actors is settle on the problem at hand and not with respect to political cleavage lines and consequently there is a distrust of privileging the social partners or any other neo-corporatist arrangement which constrains participation to pre-selected interest groups. Participatory engineering does not rank high on the agenda. Since the quality of the input is considered to be the most crucial aspect, social entrepreneurship is encouraged, but who will gain reputation and manage to participate is rather left to market forces.

The *third conception* sees the EU in a state of deep transformation; it is a process of constitutionalisation in terms of polity building and of “social constituency building” (Fossum & Trenz, 2006). The core element of this transformation is that the EU used to be a multi-level system of governance which relied mainly on the legitimacy of its constituent units, i.e., the member states, and is now on the verge of developing into a system of authoritative decision-making in its own right. This calls not only for the institutionalisation of procedures of democratic participation and accountability but also for the emergence of a European political community. The formation of a European demos along the lines of the history of nation-building in Europe is not on the agenda; rather the political and also the academic discourse addresses the need for and the likelihood of an emergent European civil society that is not based on a new “European nationality” or the allegiance to a “European nation-state”.

Whereas some authors associate a sense of social cohesion and solidarity with civil society (Walzer, 1997), the prevailing academic discourse in the EU context is inspired by the ideas of public communication and deliberative democracy in the tradition of Jürgen Habermas. The essential ingredient of democracy is a “political public sphere”,

<sup>5</sup> The stakeholder concept is thus based on selective responsibilities. For a more inclusive approach, see Schmitter (2002).

“a communication structure rooted in the lifeworld through the associational network of civil society” (Habermas, 1996, p. 359). In this reading, civil society is “composed of those more or less spontaneous emergent 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, p. 367). The associational network of civil society is seen as being definitely distinct from self-interested lobby groups but still it is part of the intermediary sphere of interest mediation. Thus civil society has a Janus face. It is the activated European citizenry that demands to be included in EU policy-making and it is the imagined community of Europeans, i.e., the public that the civil society associations claim to represent. Civil society in the latter sense is a “discursive formation within the public sphere” (Trenz, in this issue). The societal self-description is activated by conflicts and controversies disseminated through the media. The constitutional debates are said to promote this imagined community in the making (Fossum & Trenz, 2006), perhaps not so much through the projections and framing of civil society prevalent in the debates of the Constitutional Convention, which did not reach the yellow press, than through the controversies surrounding the referenda in France, the Netherlands and Ireland which gained high levels of publicity. It is open to debate whether these historic events have the potential to make a European civil society visible as the other side *and* as the identitarian form of governance (Trenz, in this volume).

Public actors have limited influence on this process of societal self-ascription. Social movements are the key actors to create the image of civil society. More often than not it is the construction of a civil society in opposition to an oppressing state, as was the case in the dismantling of communist rule in Central and Eastern Europe, or a civil society coming to the rescue of an under-performing state, as can be witnessed in many countries in Latin America. Civil society is a “collective action frame” which has the potential to mobilise popular support against those in power (Glenn, 2001), or it is the imaginary constituency which provides legitimacy to those who claim to represent “authentic interests” of the people in mobilising the state’s capacity to act in the public interest (Abers & Keck, in press). Citizenship may be seen as being a constitutional prerequisite, especially if it is not just a set of rights conferred on individual citizens, but a participatory empowerment enabling citizens to line up with others and having an impact on political discourse and governance. Civil society is made of “citizens-on-call” (Amna, 2006, p. 11) or rather “stand-by citizens” who act in the public interest whenever they see it fit.

Table 1 gives a short-hand account of the different conceptual frames that link the European Union and civil society as mentioned above. For the sake of comparative assessment, eight questions have been asked:

1. What are the core features of the EU?
2. What are the perceived causes of a (potential) legitimacy crisis of the EU?
3. What is the prevailing image of civil society?
4. What added value does civil society bring to the EU?
5. What is the functional role attributed to civil society in the political system of the EU?
6. What is the role of civil society in EU governance?
7. What is the field of involvement for civil society in the EU?
8. How does participatory engineering relate to civil society?

#### **4. The impact of EU policies on the imagination and formation of Europe’s civil society**

A European civil society, irrespective of how it is defined, is not given but it is a social construction. It emerges from processes of social interaction which are channelled by institutions that give meaning, provide resources and impose structures. EU institutions have been engaged in framing ideas and in establishing principles and norms which civil society is supposed to live up to and in providing opportunities and constraints for the development of Europe’s civil society. Above all the Commission has been an active and successful “norm entrepreneur” in the social construction of the “participatory imperative” (Saurugger, 2008, p. 150) which made the involvement of civil society in EU governance mandatory. Even though “governance” was the key word, the Commission had a broader view and put civil society in the frame of an ever closer Union that needs additional sources of democratic legitimacy beyond those provided by direct elections to the European Parliament and parliamentary accountability of national governments. The Commission is quite obviously committed to expanding the range of interests present in EU policy-making and, above all, to strengthen an intermediary space of interest intermediation that is genuinely European with strong transnational organisations and vibrant cross-border communication. Hence, the Commission draws on different

Table 1  
Conceptual frames linking the EU and civil society.

Conception	EU a regulatory political system with civil society involvement	EU a system of participatory governance	EU an emergent polity with a social constituency in the making
Image of the EU	A multi-level political system with responsible institutions	A multi-level, multi-tier system of governance operating on public–private partnership	An emergent polity in its own right, embracing a political community
Perceived (potential) legitimacy crisis	Declining permissive consensus in face of more intrusive effects of EU policies; higher demand on legitimacy due to the more political character of the EU	Inherent problems of governance and compliance in view of risk society, multi-level complexity; heterogeneity of context conditions and diversity of interests	No successful constitutionalisation of EU polity without building a political constituency encompassing a trans-national civil society and public sphere
Image of Europe's civil society	The plurality of organisations taken collectively; broad definition of CSOs embracing all types of voluntary non-profit organisations	Stakeholders, private (economic) actors who are affected by EU policies and have the capacity to contribute to joint problem solving	'Stand-by citizens' and general interest associations acting in and forming a political public sphere through public deliberation
Added-value civil society can bring	Better awareness of the plurality of interests; broadening the range of expert knowledge; giving citizens a voice; bringing the EU closer to the people	Efficient and effective problem solving; better law making by involving stakeholders; upgrading of common interests through deliberation and mutual learning	Sense of social cohesion; generalized support/active citizenship providing a communicative space accessible for all; an EU-wide public sphere
Functional role of civil society in the EU system	CSOs are intermediaries in the EU political system  Policy oriented	Stakeholders are co-producers in European governance  Service oriented	The social constituency of the European polity  Polity oriented
Conception Role of civil society in EU governance	EU a regulatory political system Redress the hegemony of the expert-bureaucrat coalition; support policy coherence, smooth implementation and compliance through partnership	EU a system of governance Management efficiency; involving stakeholders allows for decentralised administration; redressing the preponderance of social partnership	EU an emergent polity Shed the light of publicity on governance; provide alternatives through public deliberation; mobilise knowledge on the social fabric
Field of involvement	Participation in agenda setting and policy consultation; participation in and monitoring of implementation	Co-regulation; enrich the knowledge base of decisions; proximity management and implementation	Permeating the European political discourse; activating citizens for a trans-national civil dialogue
Relevance of participatory engineering	Regulation on openness, transparency, participation; taking account of and redressing inequalities; make participation pay	Encouraging social entrepreneurs; designing new forms of social involvement; investing in feed-back and evaluation	Citizenship; legally protected space for public deliberation; investment in civic literacy; opposition to regulatory interference

frames and assigns different roles to civil society. What in abstract programmatic statements may look like different but reconcilable roles of civil society become mutually exclusive when enacted in EU policies. When the Commission aims at “participatory governance” for the sake of better law making, “civil society” becomes synonymous with professional stakeholder organisations. Both the choice of actors and the mode of interaction work to the detriment of a civil society that is imagined as composed of active citizens communicating openly in a democratic public sphere. Governance efficiency calls for deliberation among experts which thrives best when shielded from publicity and politisation. Thus, declarations are less relevant than political practice and it is worth exploring how the conceptualisation of civil society has shifted over time and in relation to context conditions.

Since the late 1990s, the Commission has designed a consultation regime that has cemented the vision of civil society as the plurality of civil society organisations representing the diversity of views and preferences of the European citizens. It has established principles, norms, rules and procedures that are anchored in the standard version of representative democracy. Equal and effective participation comes under the heading of openness and inclusiveness. New procedures such as impact assessments and road maps on decision-making, as well as novel instruments such as online consultations have been introduced to lower the threshold of access to EU policy-making. The commitment to redress biased representation has induced the Commission to support presumably weak interests which have difficulty becoming organised on a transnational level and lack adequate resources to have an impact on policy-making. The objective of equal and effective participation has also put civil society associations under strain. The Commission has

pushed for more effective cooperation so that general interest groups speak with one voice and at the same time requested that they ought to be representative. Civil society organisations should validate that their claims reflect the concerns of their members or their constituency; they should be organised in such a way that their responsiveness and accountability is beyond doubt.

Thus the Commission's participatory engineering has confirmed the view (prominent among business, professional and trade union associations) that representing members and well-defined constituencies qualify for participating in civil society consultations. Especially the associations which claim to be the true representatives of European civil society, namely the "civic NGOs"<sup>6</sup> which represent the "rights and value-based NGO sectors"<sup>7</sup> have felt the pressure to define their own identity and to legitimate their claim to "stand for" and "act for" people, values, denied rights, etc. They face a dilemma: Since time is short and they have to compete with well organised umbrella organisations of industry and trade unions and, last, but not least, an expanding number of expert groups, they have united in platforms and networks which give them more political weight in consultations with EU institutions but which makes them even more far-off from their grass roots. The way out is that they professionalise the communication with their constituencies, which often takes the form of engaging in campaigns. Such campaigns provide visibility but are more likely to jump the gap between the Brussels-based organisations and the citizens than to bridge it. Another strategy is to influence the understanding of representation and to redefine the criteria for the involvement of associations representing civil society. The suggestion to substitute "representativeness" by "relevance" (*Active Citizenship Network, 2004*, pp. 106–108) has elements of what *Mansbridge (2003)* has called "surrogate representation" but it lacks a reflection on the social importance of claim making and the potential "confirming criteria" that would give the representation claim legitimacy (*Saward, 2009*).<sup>8</sup>

To summarise, the establishment of a consultation regime has a transformative effect on the meaning of civil society in the EU context. It brought the issue of representativeness and accountability centre stage and by doing so shored up the perception that the universe of civil society organisations represents Europe's civil society which itself is constituted by free and independent societal actors. Civic NGOs are still worried about the selection bias of such an understanding, but many have adopted the official view and support their claim for participation with membership-based representation, despite exceedingly long chains of delegation<sup>9</sup> and weak intra-organisational procedures of accountability. The construction of a "legitimate cause" to justify participation and the ensuing efforts to model a constituency that matches the concerns of the self-authorized representatives is at odds with the representative logic implicit in the consultation regime.

The way consultations are organised works also supports the logic of civil society as transmission belts of issue-specific citizens' interests. The interaction between the Commission and civil society organisations is a vertical relation, mostly issue specific and, consequently, highly segmented. Even though initiatives have been launched in recent years to encourage horizontal communication, interactions between civil society associations mainly take place within the functionally differentiated networks and sustain likeminded policy communities. This is not to say that the Commission is not organising broader dialogues on cross-cutting issues and that there is no public exchange of controversial positions. But such events are sparse; they go unnoticed by the mass media and do not trigger a civil society discourse reaching beyond the confines of Brussels. Thus, consultations and also the more encompassing dialogue with civil society hardly contributes to the formation of a European public sphere. It even falls short of what John Stuart Mill considered an essential prerequisite for public representation: an arena where every section of public opinion "can produce itself in full light and challenge discussion; where every person in the country may count upon finding somebody who speaks his mind (...) in the face of opponents, to be tested by adverse controversy (...)" (*Mill, 1991 (1861)*, p. 116).

A different frame of reference concerning EU–civil society relations comes to the fore when EU institutions spell out the conditions for sustainable integration. For several years now the European Parliament, the Council and the Commission are on record calling for a more active involvement of citizens to ensure that European integration will move ahead. The expressed commitment is "giving the citizens the opportunity to interact and participate in the

<sup>6</sup> This is the term preferred by several NGOs; see *Active Citizenship Network (2004)*.

<sup>7</sup> This is the common denominator of the member associations of the Civil Society Contact Group; see <http://www.act4europe.org/code/en/default.asp> (accessed 24 October 2008).

<sup>8</sup> For a more elaborate treatment, see Hans-Jörg Trenz in this volume.

<sup>9</sup> For an empirical account of the long chains of delegation, see *Kohler-Koch, Quittkat, and Buth (2008)*.



construction of an ever closer Europe” (European Parliament/Council, 2006, p. 34). Above all the Commission’s education and communication policy is geared towards engaging citizens in the European project. Policy programmes such as “Europe for Citizens” or “Plan-D for Democracy, Dialogue and Debate” are framed in the language of participatory democracy and the virtues of civil society. However, the mission statements of the individual projects are more down to earth and spell out more modest objectives such as giving access to information and engaging citizens in debate.<sup>10</sup> Though the promotion of a “European public sphere” is put on the agenda, the policy objective is “better communicating Europe” to foster public support and eventually motivate citizens to get engaged (Commission, 2006). Civil society organisations figure as “project managers” and are assigned the task “to test innovative consultation methods and enable people from the different national public spheres to connect with each other as European citizens (...)” (Commission, 2008, p. 3). The Commission here follows the tune set by the Council with the “action programme to promote active European citizenship”.<sup>11</sup> Though the programme figured under the heading of “civic participation” the objective is rather to teach and communicate with citizens. The effect is at best the activation of the individual citizen but not the self-constitution of Europe’s civil society.

## 5. Conclusion

High hopes have been invested in “civil society” as a remedy to the democratic deficit of the EU. In the political discourse around the turn of the century “European civil society” was all in once: the democratic communicative space transcending national borders, the plurality of associations which serve as transmission belts linking EU institutions to the people and which are efficient partners in governance. The Commission advocated the involvement of civil society in EU governance (Commission, 2001) without paying credit to contradictions in its framing exercise. Civil society was an overarching concept with positive connotations and not explicitly linked to distinct conceptions of a democratic European Union. The abstract language of civil society and the interchangeable use of “civil society” and “civil society organisations” blurred existing inconsistencies. Since the theories of democracy which inspire the different (ideal typical) conceptions of a democratic EU polity incorporate different principles of political order, the respective roles of civil society are equally irreconcilable.

With the successive elaboration of the Commission’s consultation regime the contradicting logics of civil society involvement became apparent. Giving voice to civil society became synonymous with consulting organisations. In order to reconcile the growing importance of “organised civil society” standards of representative democracy were introduced: Pluralism, transparency, representativeness and accountability of the associations involved. Though the Commission from the very beginning insisted that “civil society” embraces all different kinds of societal interests, the phrasing suggested that associations representing public interests should have a prominent role and were best suited to foster input legitimacy. Under the Barroso Commission a shift in language indicates a greater interest in output legitimacy. Now “stakeholders” and no longer civil society are the Commission’s partners in EU governance. The new terminology signals a narrower, functional approach which is more in line with the image of the EU as an efficient system of governance.

The programmatic rhetoric still pays tribute to the importance of civic NGOs which are seen as a constitutive part of the emerging European civil society. This does not deter the Commission to bring them into play as agents of the Union’s communication policy aimed at strengthening “better understanding” and enhancing citizens’ support for Europe. Though European citizenship is a cherished concept in the EU, it is not linked to the idea of a politically active European civil society. As Stijn Smismans argues convincingly (chapter six in this volume): “Active citizenship is mainly limited to the possibility for the citizen to express herself through electoral voting. The underlying conceptualisation of civil society is a minimal one (...) an amorphous sphere of individual citizens.”

When the Commission converts the programmatic visions of civil society in policy strategies, it responds to given institutional requirements. But even though policies reflect a narrow functional approach, it still is a conceptual mix emanating from the co-existence of different views of what brings democratic legitimacy to the Union. EU policies are not at all irrelevant; they shape cognitive and material context conditions and they do it in a way that makes it difficult for European civil society to emerge in one way or another and to fulfil the normative task assigned to it by the

<sup>10</sup> For a detailed analysis see Fischer (2008).

<sup>11</sup> Council decision of 26 January 2004: [http://ec.europa.eu/dgs/education\\_culture/civilsociety/decision\\_en.pdf](http://ec.europa.eu/dgs/education_culture/civilsociety/decision_en.pdf) (accessed 24 October 2008).

respective theoretical concepts. To put it in a nutshell: “(. . .) applying contradicting logics regarding roles of civil society can consequently hardly serve to promote democracy.”<sup>12</sup>

## References

- Abers, R. N., & Keck, M. E. (in press). Mobilizing the state: The erratic partner in Brazil's participatory water policy. *Politics and Society*. Active Citizenship Network. (2004). *Participation in Policy Making: Criteria for the Involvement of Civic NGOs*, Brussels, December 2004.
- Amna, E. (2006). Still a trustworthy ally? Civil society and the transformation of Scandinavian democracy. *Journal of Civil Society*, 2(1), 1–20.
- Armstrong, K. A. (2002). Rediscovering civil society: The European Union and the White Paper on Governance. *European Law Journal*, 8(1), 102–132.
- Borrell Fontelles, J., & Garrido, C. (2003). *Proposition d'amendement à l'Article 34*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34borrell.pdf> Accessed 24 October 2008.
- Cohen, L., & Arato, A. (1992). *Civil society and political theory. Studies in contemporary German social thought*. Cambridge, MA: The MIT Press.
- Cohen, J., & Sabel, C. (1997). Directly-deliberative polyarchy. *European Law Journal*, 3(4), 313–342.
- Commission. (2001). *European Governance. A White Paper*. Brussels. COM (2001) 428 final. 25 July 2001.
- Commission. (2006). *White Paper on a European communication policy*. Brussels. COM (2006) 35 Final. 1 February 2006.
- Commission. (2008). *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. Debate Europe—Building on the experience of Plan D for Democracy, Dialogue and Debate*. Brussels. COM (2008) 158/4.
- De Vries, G. M., & De Bruijn, T. J. A. M. (2003). *Suggestion for amendment of Article 34. Suggestion for Part III*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34vriesEN.pdf> Accessed 24 October 2008.
- European Communities. (2001). Presidency conclusions of the Laeken European Council, 14 and 15 December 2001. Annex I: Laeken declaration on the future of the European Union. *Bulletin of the European Union*, 12, 19–23.
- European Parliament/Council. (2006). Decision No. 1904/2006/EC of the European Parliament and of the Council of 12 December 2006 establishing for the period 2007–2013 the programme 'Europe for Citizens' to promote active European citizenship. OJ L 378/32, 27.12.2006.
- Filibeck, G. (2003). *Proposition d'amendement à l'Article 34, partie II de la Constitution*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34%20FilibeckFR.pdf> Accessed 24 October 2008.
- Fischer, A. (2008). Democratic participation? The involvement of citizens in policy making at the European Commission. *Paper Demociv Workshop, Demokratisierung der EU durch Einbettung der Zivilgesellschaft*.
- Fossum, J. E., & Trenz, H.-J. (2006). The EU's fledgling society: From deafening silence to critical voice in European constitution-making. *Journal of Civil Society*, 2(1), 57–77.
- Gabaglio, E. (2003). *Suggestion for amendment of Article 34 para. 3. Suggestion for Part III*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/Art.34-3-GabaglioEN.pdf> Accessed 24 October 2008.
- Glenn, J. K. (2001). *Framing democracy: Civil society and civic movements in Eastern Europe*. Stanford, CA: Stanford University Press.
- Habermas, J. (1996). *Between facts and norms. Contributions to a discourse theory of law and democracy*. Cambridge: Polity Press.
- Heathcoat-Amory, D., & Bonde, J. P. (2003). *Suggestion for amendment of Article 34 (part 3)*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34Heathcoat-AmoryEN.pdf> Accessed 24 October 2008.
- Hix, S. (2005). *The political system of the European Union*. Basingstoke: Palgrave Macmillan.
- Hoholei, H. (2003). *Suggestion for amendment of Article I-46*. [http://european-convention.eu.int/Docs/Treaty/pdf/34/34\\_Art%20I%2046%20Hoholei%20EN.pdf](http://european-convention.eu.int/Docs/Treaty/pdf/34/34_Art%20I%2046%20Hoholei%20EN.pdf) Accessed 24 October 2008.
- Jacobs, G. (2003). *Suggestion for amendment of Article 34*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34JacobsEN.pdf> Accessed 24 October 2008.
- Jobert, B., & Kohler-Koch, B. (2008). *Changing images of civil society: From protest to government*. London: Routledge.
- Kaufmann, S. -Y. (2003). *Suggestion for amendment of Article I-46*. [http://european-convention.eu.int/Docs/Treaty/pdf/34/34\\_Art%20I%2046%20Kaufmann%20DE.pdf](http://european-convention.eu.int/Docs/Treaty/pdf/34/34_Art%20I%2046%20Kaufmann%20DE.pdf) 24 October 2008.
- Kohler-Koch, B. (2007). Political representation and civil society in the EU. Paper presented at the CONNEX Thematic Conference on Political Representation. Florence, European University Institute, 25–26 May 2007.
- Kohler-Koch, B. (2009). Civil society and representation: Is there a hole in the whole? *Journal of European Public Policy*, in press.
- Kohler-Koch, B., Quittkat, C. & Buth, V. (2008). *Civil society organisations under the impact of the European Commission's Consultation Regime*. Paper presented at the CONNEX final Conference, MZES-University of Mannheim, 8 March 2008. [http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/Final\\_Conference/papers/FinCon\\_BKK\\_CQ\\_VB\\_final2.pdf](http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/Final_Conference/papers/FinCon_BKK_CQ_VB_final2.pdf) Accessed 24 October 2008.
- Kohler-Koch, B., & Rittberger, B. (2006). Review article. The “Governance Turn” in EU studies. *Journal of Common Market Studies. Annual Review*, 44, 27–49.
- Lebessis, L., & Paterson, J. (2000). *Developing new modes of governance Working Paper of the Forward Studies Unit*. Luxembourg: European Commission.
- Mansbridge, J. (2003). Rethinking representation. *American Political Science Review*, 97(4), 515–528.
- Mayntz, R., & Scharpf, F. W. (Eds.). (1995). *Gesellschaftliche Selbstregulierung und Politische Steuerung (Societal self-regulation and political steering)*. Frankfurt: Campus.

<sup>12</sup> A quote from one of the anonymous referees.

- Michel, L., de Gucht, K., di Rupo, E., Van Lancker, M., Chevalier, P., Nagy, M. & Dewael, M. (2003). *Proposition d'amendement: Proposition d'un nouvel article 34*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/art34MichelFR.pdf> Accessed 24 October 2008.
- Mill, J. S. (1991). *Considerations on representative government (1861)*. Amherst, New York: Prometheus Books.
- Nicolaidis, K. (2004). The new Constitution as European 'demo-crazy'? *Critical Review of International Social and Political Philosophy*, 7(1), 76–93.
- Paciotti, E. (2003). *Proposition d'amendement à l'Article 34, partie I de la Constitution*. <http://european-convention.eu.int/Docs/Treaty/pdf/34/Art34paciottiFR.pdf> Accessed 24 October 2008.
- Perez-Solorzano, B. N. (2007a). *Comment l'Europe construit la société civil*. Paris: Edition Dalloz.
- Perez-Solorzano, B. N. (2007b). The Convention experience: Between rhetoric and participation. *Journal of Civil Society*, 3(3), 271–286.
- Peters, G. (1996). *The future of governing*. Lawrence, KS: University of Kansas Press.
- Pierre, J., & Peters, G. (2000). *Governance politics and the State*. Basingstoke: Macmillan.
- Prodi, R. (2000). *Shaping the New Europe*. European Parliament, Strasbourg. 15 February [2000] SPEECH/00/41.
- Rhodes, R. A. W. (1996). The new governance: Governing without government. *Political Studies*, 44, 652–667.
- Sabel, C. F., & Zeitlin, J. (2008). Learning from difference: The new architecture of experimentalist governance in the EU. *European Law Journal*, 14(3), 271–327.
- Saurugger, S. (2008). The social construction of the participatory turn. The European Union and the “Organized Civil Society”. In R. Dehousse (Ed.), *The transformation of EU policies? EU governance at work* (pp. 184–194). CONNEX Report Series No. 8, Mannheim. <http://www.connex-network.org/series>.
- Saward, M. (2009). Authorization and authenticity: Representation and the unelected. *The Journal of Political Philosophy*, 17(1), 1–22.
- Schmitter, P. C. (2002). Participation in governance arrangements: Is there any reason to expect it will achieve “Sustainable and Innovative Policies in a Multi-Level Context”? In J. Grote & B. Gbikpi (Eds.), *Participatory Governance. Political and societal implications* (pp. 51–69). Opladen: Leske & Budrich.
- Schmitter, P. (2008). *A crisis of “real-existing democracy”?* Paper presented at the international conference, “Rethinking Representation: A North-South Dialogue”. Bellagio, Rockefeller Foundation, 29 September–3 October 2008. <http://www.democraciaparticipativa.org/bellagio/bellagio.html> Accessed 24 October 2008.
- Sigmund, A. M., Briesch, R., & Frerichs, G. (2003). *Suggestion for amendment of Article 34*. [http://european-convention.eu.int/Docs/Treaty/pdf/34/art34Sigmund\(ENFRDE\).pdf](http://european-convention.eu.int/Docs/Treaty/pdf/34/art34Sigmund(ENFRDE).pdf) Accessed 24 October 2008.
- Sloat, A. (2003). The preparation of the Governance White Paper. *Politics*, 23(2), 128–136.
- Smismans, S. (2003). European civil society: Shaped by discourses and institutional interests. *European Law Journal*, 9(4), 482–504.
- Smismans, S. (2006). Civil society and European governance: From concepts to research agenda. In S. Smismans (Ed.), *Civil society and European governance* (pp. 3–19). Cheltenham: Edward Elgar.
- The European Convention, The Secretariat. (2002). *Note on the plenary session Brussels*, 24 and 25 June 2002, Brussels, 4 July 2002 (08.07), CONV 167/02. <http://Register.Consilium.Eu.Int/Pdf/En/02/Cv00/00167en2.Pdf> Accessed 24 October 2008.
- The European Convention, The Secretariat. (2003a). *Summary report of the plenary session Brussels*, 24 and 25 April 2003, Brussels, 30 April 2003 (07.05). CONV 696/03. <http://Register.Consilium.Europa.Eu/Pdf/En/03/Cv00/Cv00696en03.Pdf> Accessed 24 October 2008.
- The European Convention, The Secretariat. (2003b). *Summary report on the plenary session Brussels*. 5 June 2003, Brussels, 17 June 2003 (19.06). CONV 798/03. <http://Register.Consilium.Europa.Eu/Pdf/En/03/Cv00/Cv00798en03.Pdf> Accessed 24 October 2008.
- Walzer, M. (1997). The concept of civil society. In M. Walzer (Ed.), *Toward a global civil society* (pp. 7–27). Providence, RI: Berghahn.