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Civil society and EU democracy: 'astroturf' representation?

Beate Kohler-Koch

ABSTRACT The growing uneasiness about the democratic deficit of the European Union (EU) has incited politicians and academics alike to look for remedies other than institutional reforms and giving more powers to the European Parliament. Strategies of 'good governance' shifted centre stage and the governance turn initiated a lively discourse on the democratic credentials of involving civil society. This article presents the changing views on the role of civil society in EU discourse. Although the Commission and even the Constitutional Convention put high hopes on the legitimacy input of civil society, a representation discourse is conspicuously absent. The article introduces an analytical framework to assess the contributions and limitations of civil society to democratic representation in EU governance.

KEY WORDS Democratic deficit; European civil society; participatory governance; representation.

INTRODUCTION

The aim of this contribution is to account for the widely alleged virtue of civil society for European Union (EU) democracy by linking it to the idea of representation. Unfortunately, when trying to conceptualize the link between representation and civil society in relation to the EU, we are on slippery ground. First of all we are faced with a theoretical challenge. Prominent authors have argued that 'paradigmatically – the idea of civil society and the idea of representation are conceptual rivals' (Schmalz-Bruns 2008: 1); civil society is linked to the idea of participation, and participation is deemed to have higher democratic credentials than representation. Indeed, representation has a long and venerable history in political thinking in which representation was not thought of in terms of involving the citizens (Hofmann 1974). When later the idea of representation was opened up to the idea of democracy, representation was reconceptualized so as to support the principles of democracy, but many meanings of representation that do not necessarily relate to democracy stayed on. Thus, we ought to be aware that representation is 'a many-faceted and elusive concept' (Sartori 1968: 465).

Second, to make matters worse, when addressing the concept of representation in relation to the EU, we move beyond the well-established context of

democratic theories. Democratic representation is conceptually linked to the state and, respectively, since the French Revolution, has been linked to the nation state. The state and the nation have been so omnipresent that it is usually not reflected in what accrues to these specific context conditions. The EU is neither a state nor a nation and, consequently, we have to rethink the concept of representation and ask which of the various conceptions of representation fit this very particular polity.

Third, though the potential contribution of civil society to the democratic legitimacy of the EU ranks high in academic and political discourse (Finke 2007; Greenwood 2007a), it is not linked to the concept of representation. Thus, it is a challenge to find the right analytical approach to explore what civil society may add to democratic representation in the EU. It is noteworthy that up until now there is no academic debate addressing *civil society and representation*. The conspicuous absence of both a theoretical discourse and empirical research may be attributed to the ambiguities which plague both concepts. The concept of 'civil society' is notorious for the diversity of interpretations and uses (Jobert and Kohler-Koch 2008: XII) and needs further clarification.

The article starts with a short account and explanation of why representation in relation to civil society is a non-issue in the EU debate. A subsequent section brings to light the conceptual frames that link civil society and democratic legitimacy in EU governance. Democratic representation is a core element in legitimate governance. In order to capture what civil society may bring to democratic representation in the EU, I will present an analytical model that adds to conceptual clarity and offers a heuristic device for empirical assessment.

1. THE CONSPICUOUS ABSENCE OF A REPRESENTATION DISCOURSE

Since the mid-1990s EU–society relations have been at the core of the fast-growing debate on the democratic deficit of the EU. The Commission responded with deliberations on the improvement of European governance, which finally cumulated in the White Paper on European Governance (Commission 2001) and the member states committed themselves to proceed with institutional reforms and launched the draft of a Constitutional Treaty. Strengthening European civil society and involving it in EU affairs became a prominent topic. The common denominator is that civil society is a remedy to the legitimacy crisis of the EU and, consequently, the involvement of civil society is a main concern. Participation and not representation is under debate. 'Representation' in relation to civil society is a non-issue in all relevant documents. The debate only takes issue with a particular aspect of representation, namely with the representativeness of civil society organizations. As will be argued later on, representativeness is closely related to but distinct from the idea of representation. The EU discourse brings it out fairly well: 'representativeness' is an attribute of organizations; those who want to participate in policy-making have to prove that they are representative.

'Representation' is a more encompassing concept; it has a systemic function insofar as it relates the citizens to the decision-makers and legitimates the exercise of power.

The conspicuous absence of any reflections on representation may be attributed to the political context but also to the theoretical distinctness of the then prevalent conceptual frames. Both merged into a political discourse that left no room for the concept of representation. In the political context of the post-Nice debate on institutional reforms and the future of the EU, the authors of the White Paper on European governance took great care to bring forward only proposals that could be affected without any treaty reform (Commission 2003). Just because the Commission was quite obviously eager to preserve (and even enlarge) its competence, which had suffered from past institutional reforms (Scharpf 2000), it avoided any phrasing that could be seen as a challenge to the existing institutional framework and, consequently, as interfering with the member states' prerogative of constitution building. Questioning the value of the existing system of representation would not have been 'politically correct'. After all, the EU polity already relies on several channels of political representation: member states in the Council and the European Council, the electorate in the European Parliament (EP), functional interests and subnational units in the European Economic and Social Committee (EESC) and in the Committee of Regions, respectively.

Therefore, from the Commission's perspective it was wise to emphasize not the reform but the smooth running of the institutions; consequently it placed the focus on governance. The governance approach was politically attractive for two other reasons. First, a commitment to improve 'European governance' was a plausible response to the performance crisis of the preceding Santer Commission. Second, governance and civil society were new fashionable concepts with positive connotations. The incoming President of the Commission had experienced an unprecedented rise in popularity of both concepts in his home country. Governance was associated with all the characteristics that were allegedly wanting in state government and civil society became the counterdraft to everything negative in Italian party politics. 'Civil society stood out among other conceptual categories because, like the term movement, it incorporated positive values such as morality, spontaneity and freedom' (Mastropaolo 2008: 35–6). Romano Prodi set the tune in his address to the EP. His ambition was not just to make the Commission work more effectively but '*to radically rethink the way we do Europe. To re-shape Europe*' (Prodi 2000, emphasis in original). Prodi could draw on the expertise already gathered by an in-house think-tank of the Commission, the Forward Studies Unit. He set up a team under the direction of Jerome Vignon which received input from 12 working groups staffed by members from the General Secretariat and the General Directorates who were mostly also sympathetic to the governance strategy.¹

The political context conditions give a plausible but not sufficient explanation of why representation was not on the agenda. Equally relevant is that the

prevalent theoretical discourse concentrated on governance and that the governance approach has no affinities to theories of representative democracy.

2. CONCEPTUAL FRAMES LINKING EU GOVERNANCE AND CIVIL SOCIETY

The White Paper was drafted in the spirit of Prodi's presentation. It is a telling example of the importance of an epistemic community for a policy initiative. The ground was prepared by the Forward Studies Unit, analysing the challenges of the changing policy environment of the EU and identifying key features of an innovative approach to EU governance.² The message was twofold: (1) A deep scepticism about the problem-solving capacity of expert-based policy-making resulting in a call for 'more open government' including a wider debate with stakeholders, and (2) growing dissatisfaction with the functioning of parliamentary democracy where participation was said to be limited to voting and accountability to apply only at the point of formal decision-making. This prompted the demand for direct participation of stakeholders to be extended to all stages of the political process. The argument was that the looming crisis of legitimacy would not be met by strengthening the mechanisms of representative democracy since the multi-level and functionally segmented decision-making process would still be too distant from the people and beyond public control.

Consequently, the suggested reforms placed the involvement of stakeholders to the forefront. 'Stakeholders' were understood in a broad sense, encompassing not just target groups but also actors from civil society and experts that have a stake in view of the wider implications of any policy regulation. The task was to institutionalize a new mode of governance that would guarantee wider involvement, redress inequalities that might hamper equal participation, increase opportunities for collective learning and enhance vertical and horizontal articulation in the policy process. Notis Lebessis and John Paterson (2000: 27), who played a key role in substantiating the need for and the key features of the new mode of governance, presented strong arguments in favour of a reasoned discourse between experts and lay people to support the effectiveness and legitimacy of policy-making and a wider public debate on European issues to erase the '*deficit of mutual awareness* between civil society and public authorities' (emphasis in original), which in their view is at the heart of the democratic deficit of the EU.

Although the intellectual input from members of the Forward Studies Unit Group was still strong in the drafting of the White Paper, it also shows the imprint of the administration represented in the working groups and the influence of the well-established interest groups surrounding Brussels. Civil society engagement became linked to a more down-to-earth approach looking for 'better regulation' and more efficient consultation. The mandates given to the individual working groups reflected a broader concern with the potential deficiencies of multi-level governance, the difficulties in ensuring the

convergence of national policies and the promises of effective regulation through agencies.³ The final version of the White Paper placed greater emphasis on the effectiveness and efficiency of the EU decision-making system than an earlier draft of the Vignon group had done. It advocated ‘better involvement’ of civil society for the sake of efficient and democratic governance but did not touch upon the wider issues of democratic legitimacy in European integration.⁴

3. THE GOVERNANCE APPROACH: NO PLACE FOR REPRESENTATION

The argument is that conceptually, governance and representation do not go well together. This holds true from two different perspectives. The first brings into focus the *division of power* in the EU system and the second emanates from the concept of *deliberative polyarchy*. According to the first perspective, EU governance is closely linked to the Commission and to the consultation of stakeholders. Since the Commission’s competence is restricted to initiating and executing EU policies and since civil society organizations have only a voice and not a vote, democratic legitimacy is not at stake. Only the Council and the EP (in the case of co-decision) have decision-making authority, and, consequently, only these institutions have to live up to the standards of democratic representation. From this perspective, representation belongs to the world of the Council and the EP, whereas governance appertains to the world of the Commission. Hence, democratic representation is not an issue of concern in relation to EU governance. Accordingly, the Commission is not apprehensive of democratic representation but of the representativeness of those who want to be consulted. Representativeness is a key issue in the Transparency Initiative⁵ and several in-house initiatives of the Commission aimed at improving EU–civil society relations.⁶

Representation is also a non-issue in the governance approaches that link governance to participation and deliberation. This is most pronounced in the concept of *directly deliberative polyarchy* (DDP). It is a system in which the direct involvement of stakeholders with differing experience is said to generate novel ideas for consideration and in which the power of argument pushes for reconsideration of settled practices and definitions of interests (Sabel and Zeitlin 2008: 276). According to the authors, DDP is prone to flourish in the EU because the diversity of distinct national approaches addressing similar problems provides a wealth of experience and makes mutual learning worthwhile. Their main interest is in the innovative potential of ‘experimentalist governance’. They pass over the issue of power and irreconcilable interests, and, consequently, do not consider how citizens’ democratic rights to have an equal and efficient say in policy-making may be safeguarded. DDP is a model of good governance for the people, not by the people, and, hence, democratic representation is not on the agenda. In general one may conclude that the governance approach has made representation a non-issue in EU studies.

4. DIFFERENT CONCEPTIONS OF CIVIL SOCIETY AND OF REPRESENTATION

Will the picture change when we approach the issue of representation from the vantage point of civil society? Some authors will categorically deny that linking civil society to the concept of representation makes sense. From their theoretical point of view civil society is a realm of participation and not of representation. The democratic potential of civil society emanates from the direct and active participation of citizens, whereas representation means delegation and is equal to a deterioration of political autonomy. However, the notion of civil society changes with research agendas. Those who are primarily interested in the formation of a European political society (Fossum and Trenz 2006; Trenz 2007) will take a different stance from those who want to know how the programmatic 'involvement of civil society' in EU governance is accomplished and whether or not it holds the promises of 'participatory democracy' (Kohler-Koch 2008). The issue of representation might be addressed, from both perspectives though in quite a different way and by making use of different senses of representation.

Scholars who take an interest in the EU as an emerging polity and a political society in the making relate representation to the formation of the EU's social constituency. It is an abstract representation that equates civil society with an active European citizenship. On this reading, European citizenship is not just a set of rights conferred on the citizens by the EU, it is rather a social relationship that stems from citizens lining up with others and participating in political discourse and structures of governance that stretch beyond national borders (Bellamy and Warleigh 2001: 6).

John Erik Fossum and Hans-Jörg Trenz share this sociological approach and argue that the process of European constitution-making sets off a dynamic of social constituency-building. In their conception 'the EU's social constituency is conceived of as the "collective representation of the people", which tells us what the Europeans have in common' (Fossum and Trenz 2006: 61). Trenz (2007: 17, 2009) sees 'civil society as a discursive formation within the public sphere'. The constitutional debates (especially when they gained high levels of publicity during the referenda in France and the Netherlands), but also the policy of EU participatory governance promote societal self-description. 'Citizens' and 'civil society' are addressed by EU institutions as partners in EU governance; this conveys a certain social imaginary. Likewise, those who address demands to the EU that refer to general interests and basic rights present them not as individual claims, but as if it were 'in the name of the public'. This interactive process and, above all the search for legitimacy, support the construction of what I have called an '*imaginary representation*'. As Trenz (2007: 16) has put it:⁷ 'it is not substantiated through procedural designs or socio-structural determinants. In this quality, the EU's social constituency is foremost a formation of discourse. It is a discourse made up of claims for representation and legitimacy that operates through the imaginary of

European (civil) society.’ When we follow his proposition that ‘(s)ocieties exist through the practice of their own representation’ (*ibid.*: 18), our attention is directed towards the ‘autopoietic practice of reproducing and circulating meaning of societal unity and collective self-determination’ (*ibid.*). ‘Representation’ is thus constitutive to the formation of a ‘political society’. In this *constitutive sense* representation is directly linked to the concept of democracy. It addresses a component of ‘democratic government’ in the well-known Lincoln quote that is often neglected: democratic government is not only government by the people and for the people, but also *of* the people.

When looking at civil society from a political science perspective interested in democratic input and output legitimacy, a different conception of representation comes into view. Civil society is still thought of as the (emerging) political community of the Union, an imaginary European people which constitutes the polity and is simultaneously the source of demands on and support for the political system of the EU. Civil society as such has no actor quality; this comes with ‘organized civil society’. Civil society organizations (CSOs) have multiple functions: first, a performative function since they form and transform civil society through discourse and interaction in the public sphere; second, a representative function because they make civil society visible and give societal interests a voice. CSOs are reaching out from the grass roots to remote Brussels and thus bring people’s interests into the decision-making process. As a partner in governance they are expected to voice the diversity of interests and views and to bring the knowledge and down-to-earth experience of citizens into the policy-making process. In other words, they are expected to contribute both to input and output legitimacy.

It seems worthwhile to take a closer look at the different functions attributed to civil society associations to identify in what sense it is meaningful to talk about representation. But what kinds of societal associations qualify as civil society organizations? It turns out that criteria differ considerably with the different theoretical approaches. I suggest distinguishing between a *deliberative* approach based on theories of democracy in the tradition of Habermas and a *pluralistic* approach which pertains to the normative theories of liberal democracy.

In a Habermas approach CSOs provide the ‘institutional core’ of civil society and ‘anchor the communication structures of the public sphere in the society component of the lifeworld’ (Habermas 1996: 367). The democratic credentials of civil society rest with its capacity to constitute a public sphere. Civil society provides the societal infrastructure for public deliberation which is for Habermas and other proponents of deliberative democracy at the heart of democracy. CSOs function as intermediaries that relate citizens’ experiences in the private sphere to the formal political decision-making processes via the public sphere. All kinds of associations qualify as CSOs as long as they perform this function. The distinction between CSOs and ordinary interest groups is not derived from the (self-)definition concerning the organizational purpose of an association but from the *discursive* capacity of an association

and its tight connection to the public sphere. Thus it would be difficult to exclude associations a priori only on the basis of what they stand for and what part of society they represent. The emphasis on communication emanates from the core proposition of deliberative democracy that 'under modern conditions normativity cannot but be derived from intersubjectivity' (Schmalz-Bruns 2007: 284). This calls for the inclusion of a maximum range of voices in public deliberations. The public reasoning among a wide diversity of political views is important because civil society's influence has to be exerted through the public sphere: 'Not influence per se, but influence transformed into communicative power legitimates political decisions' (Habermas 1996: 371).

Theories of liberal democracy attribute to CSOs an intermediary function, feeding citizens' preferences into the policy process. The democratic added value varies with the representativeness of the organizations and an overall balanced presence of societal interests. Whereas some scholars tend to include any kinds of interest, the majority of those who work on civil society advocate a more restrictive approach. They suggest classifying only associations representing 'general interests' as CSOs.⁸ The Commission is propagating a broader, *pluralist* understanding of civil society, which includes all voluntary and non-profit organizations that give voice to the concerns of citizens but also to market related actors (Commission 2001: 15).

How do the different images of civil society fit with democratic representation? The *pluralistic* conception looks like a clear case for the study of democratic representation. Citizens are represented in EU policy-making by civil society organizations; it is a case of representation built on the expression of preferences. In the terminology of Hannah F. Pitkin (1967: 114), it is representation as the substantive acting for others in the interest of others.⁹ Substantive representation does not, however, automatically qualify as democratic. Representation is democratic when the represented have an equal and effective chance of making an impact on the process of representation. Authorization and accountability are the well-trying mechanisms with which to enforce democratic representation, and the core criteria with which to measure it are representativeness and responsiveness.

In the *deliberative* approach, organized civil society is judged in relation to its contribution in terms of enhancing the public discourse. CSOs are expected to respond to the changing societal environment and to bring new themes and issues for deliberation into the public sphere. Political institutions are under the pressure of 'communicative power'; civil society organizations may augment this pressure by building up societal consensus in public discourse. Influence comes with the better argument and through the mechanisms of representative democracy. Representation is not a role conferred on actors but emanates from discourse. To make this happen at the EU level, civil society organizations need a friendly institutional environment that provides opportunities for building a public space. Consequently, it makes little sense to ask whether individual civil society organizations are representative or accountable. What matters is their communicative capacity, the diversity of views offered in

the public arena, the quality of the deliberative discourse and the publicity it receives. Therefore, the focus of research is directed to the emergence (or the absence) of a civil society discourse at the EU level and how it connects with the many national and subnational civil society discourses.

5. LINKING REPRESENTATION AND ORGANIZED CIVIL SOCIETY: AN ANALYTICAL MODEL

How to grasp the contribution of Europe's CSOs to democratic representation? Bernard Manin, Adam Przeworski and Susan Stokes (1999) have suggested a parsimonious model that we can apply to the EU, irrespective of the structural differences between state systems and the EU. They define representation in abstract terms as 'a relation between interests and outcomes'. Accordingly, democratic representation is achieved when the outcome of politics matches the interest of the represented as they see it. The model opens the black box of the represented–representative relationship by conceptualizing it as a process developing in different phases. They have singled out relevant components which allow for putting representation under empirical scrutiny. The focus is on the 'internal' relations between preferences, signals, mandates, policies and outcomes (Manin *et al.* 1999: 8–9). The relevant actors in this abstract relation are, on the one side, citizens who voice preferences and people who share a collective interest. On the other side is a government that is responsive to the signals of preferences and/or to the policy choices expressed through elections or votes.

Since the analytical concept has been developed for the study of representative government in nation states, it cannot be applied straightforwardly to the EU. Government power in the EU is held by the Council, the EP, and by the Commission, and each of these three institutions claims political legitimacy. Their claim, however, is based on different principles of legitimacy and representation. The EP embodies the principle of democratic representation which is based on the fundamental right of European citizens to partake equally in political rule. The EP enjoys direct democratic legitimacy based on elections and electoral accountability, and it represents the European citizenry indiscriminately. The Council is based on the principle of federal representation expressing the autonomous rights of the national political entities. In the Council the principle of democratic representation rests with the governments of the member states; they are subject to parliamentary accountability and represent a clearly demarcated national constituency.

Only the Commission has no constituency and the European Treaties provide no mechanisms of linking the Commission to the citizens of Europe. This explains why representation claims of European CSOs meet with reservations from the EP and the Council, whereas the Commission, in contrast to the EP and the Council, is so eager to engage with civil society. It is looking for a social constituency and regards CSOs as a remedy for its representational deficiencies. The Commission has been the driving force to attribute

CSOs a key role in EU governance, and, consequently, the issue of civil society representation essentially concerns the relation between civil society and the Commission. This relation may best be modelled as an interconnected system; first, it is a relation between citizens (and other stakeholders) and CSOs active at the EU level, and, second, between CSOs and the Commission.

Figure 1 visualizes the role of CSOs in EU representation. CSOs give expression to citizens' preferences by responding to 'signals' (such as public opinion polls, media coverage of public debates) and/or by answering the demands directly addressed to them by members (through elections or voting) or supporters (through active engagement or funding). CSOs, on their part, channel the (aggregate) preferences into the decision-making process by interacting with the Commission. The Commission considers and takes up the suggestions and demands of CSOs in the formulation of policy proposals and decisions. Responsiveness in terms of issue-specific accordance between CSOs and their grassroots constituency (first-order responsiveness) and between CSOs and the Commission (second-order responsiveness) is a key indicator for successful representation. First- and second-order responsiveness add up to bring the Commission's policy proposals in line with the interest of the citizens, and, therefore, is crucial for the democratic legitimacy of EU governance. It is widely agreed that accountability is the mechanism with which to induce the responsiveness of an actor. Accordingly, we may assume a high quality of representation when institutional procedures are in place, which support an efficient transfer of input demands and an uninterrupted chain of accountability. Figure 1 indicates that formal accountability relations do not link the Commission to civil society. The Commission has no accountability relation to citizens or CSOs. Rather, the Commission is subject to 'horizontal accountability' enacted by the other EU institutions which see to it that the Commission acts in accordance with the principles and norms of the Treaties. So we have to ask whether or not informal procedures that are robust and reliable bridge the gap. Another empirical question concerns the efficient functioning and the democratic quality of the input process. In order to qualify as

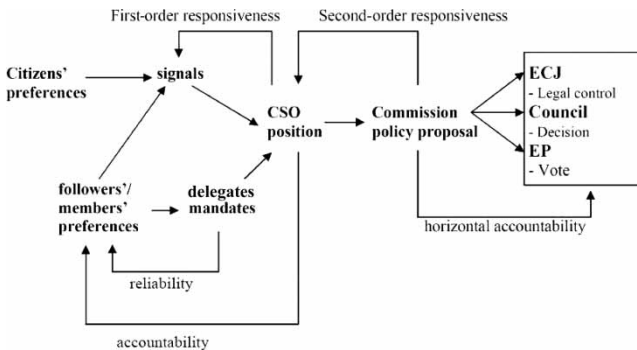


Figure 1 Civil society and democratic representation

democratic, representation has to conform to the principle of equality. So what does empirical research tell us about the representativeness of the input process and the enacting of accountability?

The issue of representativeness ranks high on Brussels' political agenda (Smismans 2009). Whereas in the past 'biased representation' in terms of an overwhelming presence of economic as compared to general interests attracted attention, the main focus is now on the individual organization. The Commission made it an issue that the principle of transparency and responsibility should apply to all those who want to be involved in the policy-making process. The mantra is that 'With better involvement comes greater responsibility' (Commission 2001: 15); all parties involved ought to know if the claims put forward by an organization reflect the concerns of the membership or the constituency. It is agreed that more transparency on representativeness is needed, and for that reason the Commission launched a new, though still voluntary EU lobby register. However, a prominent coalition of EU NGOs has rightly pointed out that the compliance rate is low and that the overall quality of information is poor (ALTER-EU 2009). Furthermore, interviews disclose that Commission officials do not refrain from communicating with CSOs that have not registered. Due to the pressure exerted by ALTER-EU and their coalition partners, it is expected, however, that the pressure to sign up will be rising.

What constitutes representativeness is still highly disputed. The Commission, the EESC, the EP, commissioned academics and NGOs such as the Active Citizenship Network (2004) came up with quite divergent sets of criteria. Most common is the insistence on membership from a minimum number of EU countries. Whereas this criterion corresponds to a '*descriptive*' sense of representation, most other criteria refer to a '*substantive*' sense of representation. CSOs are supposed to act in the interest of the represented and EU institutions, and a large faction of CSOs support the idea that they represent members and not just a virtual constituency that aligns with their mission. A wide territorial reach and a large membership has always been advocated by the Commission and the EESC, but even these straightforward benchmarks are contested because they may have a discriminatory effect. They exclude many advocacy associations and it is debatable whether political support can be measured by numbers. Above all, the even more demanding position of the EESC was fiercely opposed by associations representing the rights and value-based NGO sector.¹⁰ The EESC (2006: 11) had argued that the representativeness of European organizations hinges on having member organizations at member state level which should 'be recognised as being representative of the interests they represent'.

Representativeness, however, also concerns the plurality of societal actors involved in EU policy-making. As we know, the organizational capacity of societal interests is distributed unevenly and, due to the economic origin of the EU, market-related associations have a long history of a forceful presence in Brussels. In order to redress biased representation, the Commission supports so-called 'weak interests' by providing funds and by designing consultation

mechanisms that lower the threshold of access. Over the years the gap between economic and professional interest groups on the one side and general interest groups on the other has narrowed (Greenwood 2007b: 10). But when it comes to speaking and acting in the interest of others, numerous case studies and our own systematic research (Kohler-Koch *et al.* 2009) provide ample evidence that, in terms of social cleavages and territorial origin, representation is still grossly unbalanced: market-related interest groups and groups situated in the centre and northwest of the EU still outnumber all others.¹¹ EU institutions always pay lip-service to equal representation, but in practice and now even in principle, they are satisfied with 'sufficient representation' as it has been defined in the ruling of the European Court of First Instance (CFI).¹² The effect is that the Commission is habitually consulting the 'usual suspects' known in the respective policy field. Nevertheless, research provides empirical evidence that more often than not a broad range of controversial positions are represented (Quitkat 2009a, 2009b). Yet, the practice has its inbuilt limits since it narrows representation to 'thematic representation' and, above all, the principle is objectionable because it puts it at the discretion of the Commission to decide whether or not the participant parties are 'sufficiently representative'.

Until now, CSOs have not had to prove that they have a mandate from their members. None the less, most of them take great efforts to demonstrate that they have adequate procedures and a regular practice of consulting their membership. In the multi-layered system of European interest representation the members of European CSOs are organizations which on their part, again, represent lower level organizations. Consequently, a consultation of members is an interaction with other, highly aggregated groups. In the case of the Social Platform, it involves 42 pan-European networks, which, on their part also do not represent people but associations, and mostly federations of associations. The claim that CSOs are closer to the citizens than elected representatives because they have a short chain of delegation (Lord and Pollak 2009) just does not match reality. So if we think of representation as a social relationship we have to acknowledge that it is not built on direct personal encounter or on direct mandating. At best it is filtered through many layers of organizations – delivering synthetic or 'astroturf' representation.

The same structural impediments obstruct accountability.¹³ In recent years, the Commission has demanded that CSOs must be accountable to those they (claim to) represent. In most cases, the individual CSO is accountable, as it has to explain and justify its conduct to the members or constituencies and it may have to face consequences, either through the mechanisms of elections and voting, or by losing donations. However, because of the long chain of delegation and the need to form encompassing alliances in order to have political impact, the Brussels CSO representatives are highly autonomous.

On their part, CSOs have insisted that the Commission provide feedback to civil society organizations (Commission 2007b). The Commission gave in, but up until now the pledge has just been a political commitment with many reservations. The Commission is not legally obliged to explain and justify its

behaviour and it does not face hard pressure from CSOs. The reason is that CSOs face a dilemma: they are expected to function in a ‘*constructive*’ way, supporting the ‘convergence of wills’ as John Stuart Mill (1969: 186) has put it, but they also are inclined to take a ‘*critical*’ stance and ‘throw the light of publicity’ (*ibid.*) on the acts of the Commission. However, it is difficult to perform both tasks at a time: ‘the different roles assigned to civil society organisations as “watchdogs” and “deliberators” are at times hard to reconcile’ (Steffek and Ferretti 2009); or to put it in a nutshell: ‘watchdogs don’t deliberate’. Since the ‘convergence of wills’ is paramount for the Commission in the interest of ‘better legislation’, which is the declared mission of the Commission, it is inclined to place more emphasis on the constructive than on the critical contribution of CSOs. Empirical research provides ample evidence that CSOs are invited and do provide input to strengthen the representation claim of the Commission but have limited opportunities to hold the Commission to account (Kohler-Koch 2009).

6. CONCLUSION

The model brings to light the deficiencies of EU representation. It is apparent that representation in the sense of ‘accountability representation’ (Pitkin 1967: 57) does not work and that the multi-level EU system makes direct relations between the represented and the representatives difficult. Thus, the rhetoric of CSOs and the explicit request of EU institutions convey an image of representation that is in contrast with reality. European CSOs are distant from stakeholders, in the case of NGOs even more so than in the case of trade associations, and direct communication down to the grassroots level is – except for extraordinary events – marginal (Altides and Kohler-Koch 2009).

Are *all* representation claims flawed? Are we trapped by a romantic image of representation that cannot correspond to real political life? Is the assumption of an uninterrupted chain between represented and representatives valid at state level? Associations’ representative functions vary in EU member states but above the local level CSOs are encompassing organizations, and, especially in the system of democratic corporatism, they not only aggregate interests but also settle societal conflicts. Thus, the mirror image of representation which is so present in the EU discourse does not apply. The representation claim is valid not because of a formal authorization but because citizens have accommodated to the system and because the respective stakeholder audience accepts the outcome of conflict settlements as being legitimate. Along this line one could argue that the only thing that EU representation is lacking is the familiarity of the EU representation claims. From a normative point of view, however, it has to be argued that national associations and policy-makers face public scrutiny which is only marginally present at EU level; that associations exert their autonomy in the shadow of formalized authorization and accountability which reach down to the grassroots level; and that decision-makers are

exposed to mechanisms of political accountability which do not operate in the case of the European Commission.

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NOTES

- 1 For a detailed account of the history of the White Paper see Sloat (2003); Michel (2008); Saurugger (2008).
- 2 See the papers published since 1997 in the series of the Working Papers of the Forward Studies Unit, in particular Lebessis and Paterson (2000) and De Schutter *et al.* (2001).
- 3 These were the additional mandates given to the working groups.
- 4 This was the thrust of the public and above all the academic criticism of the White Paper. Among the 260 written contributions received in the consultation process on the White Paper, 48 per cent of comments were on 'better involvement', whereas the call for 'radical decentralization' drew little attention. For the public reception see the Commission consultation report (Commission 2003: 34). The academic response is well documented in Joerges *et al.* (2001).
- 5 For the debate on and implementation of the Transparency Initiative see http://ec.europa.eu/transparency/eti/index_en.htm
- 6 See, above all, the report of the Peer Review Group on stakeholder Involvement established by DG SANCO (Commission 2007a) and the key recommendations in *Healthy Democracy* (Commission 2007b: 5).
- 7 In his response to an earlier version of this paper, see Trenz (2007).
- 8 This is the result of a survey among more than a hundred respondents from academia. The overwhelming majority (85 per cent) classified associations representing 'general interests' as CSOs; see Kohler-Koch and Quittkat (2009).
- 9 Pitkin (1967) has suggested five different senses of representation. Whereas she attributes little democratic value to symbolic representation and is critical of the authorization sense of representation, she elaborates on how the descriptive, substantive and accountability sense of representation add to democratic representation.
- 10 This corresponds to the self-ascription of the members of the Civil Society Contact Group. See <http://www.act4europe.org/code/en/default.asp>

- 11 In addition, when counting the sheer presence of CSOs in Brussels, a bias in favour of market-related groups still exists. On 1 July 2009, among the 1,647 interested representatives listed in the Commission's register, 101 were professional consultancies, 230 companies, 551 professional associations, 47 trade unions and 367 NGOs.
- 12 For further information on the UEAPME case see Lord and Pollak (2009).
- 13 For a more detailed account see Kohler-Koch (2009).

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