

Work in progress, comments welcome

**THE SOCIAL CONSTRUCTION OF THE PARTICIPATORY TURN.
THE EUROPEAN UNION AND THE ‘ORGANIZED CIVIL SOCIETY’.**

Abstract

While interest group influence on EU decision-making has a long history, starting with the creation of European integration in the 1950s, a new discourse seems to emerge at the beginning of the 1990, insisting on the democratic necessity of their participation. Confronted with ever increasing criticism about its inherent democratic deficit, the European Union calls increasingly often upon the participation of the European ‘civil society’ in its institutional reform projects. Direct civil society participation is seen as a means to decrease the so-called democratic deficit and bring the European decision-making process closer to the individual citizen.

The aim of this paper is to question this discourse not on normative but on analytical grounds. Based on a constructivist research design, the paper will address the question of the emergence of this participatory turn linked to the notion of ‘civil society’ in the official discourse and its transformation into a norm. It will analyse the fora in which the discourse of the participatory turn emerged at the European Union level, such as the Forward Studies Unit as well as the different working groups preparing the EU documents and White Papers on this issue. I argue that the genesis of a ‘European civil society’ is both a learning process leading to the acceptance of a new norm as well as the result of a strategic usage by European institutions and non-state actors.

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As in other democratic political systems, the participation of civil society in decision-making processes has become a political imperative at the European Union level during the late 1990. Considered by political and academic accounts a poorly democratic, the European Union institutions, and in particular the European Commission has engaged in a reflection process on the role and legitimacy of the so-called 'European civil society', culminating in the introduction of article 47 on 'participatory democracy' in the Constitutional Treaty . The term 'European civil society' is, however, defined in very large sense. This is not surprising as the concept of 'civil society' has a long history, covering a multiplicity of definitions. Thus, while Aristotle defines every political community as 'civil society', Hegel considers civil society as an autonomous sphere distinct from the state. In contemporary studies, the notion of 'civil society' is conceptualised again differently – either encompassing the State, the market and the private sphere or excluding all actors except non-political and non-economic ones.

It is this absence of a common definition that is used to criticise the inclusion of a 'European civil society' in EU decision-making processes. The aim of this paper is to question this criticism, normatively understandable but based on an erroneous methodological assumption. I argue that the term 'European civil society' has emerged slowly as a dynamic of normative diffusion linked to social learning and routinization as much as it was used for strategic reasons. While the emergence of the term 'European civil society' is certainly influenced by strategic reflections of the European Commission and the Economic and Social Committee (ECOSOC) to reinforce their power relation in the democratic deficit debate *vis a vis* the European Parliament, as Smismans convincingly argues (2003), the explanation based on strategic exchange does not adequately capture how this term has come to be so universally accepted by the main European actors. Strategic exchange is but one of the causal factors that led to the genesis, but does not help us to understand the mechanisms of the social construction of the 'participatory imperative' which needs in particular the so called 'organised civil society'. This emergence represents a learning process whereby actors, through the interaction with broader institutional contexts, that could be norms or discursive structures, acquire new interests and preferences (Checkel 1999, 548).

Based in particular on Checkel's constructivist framework, in « combining an ontological stance critical of methodological individualism with a loosely causal epistemology » (1999, 546), and more specifically in arguing that the usage of the term 'civil society' refers to the imposition of a legitimate normative discourse, this paper analyses (a) the emergence of the term in the European Union and (b) its transformation into a democratic norm. The study insists on the social contexts, and more precisely deliberative forums (Jobert 1994) in which

the different understandings of civil society are developed. In this sense, the paper proposes a study of the relationship between norms, discourse and capabilities. The – intermediary - result is the emergence of a specific understanding of the role of civil society, understood as an intersubjective norm around which demands converge. The participation of the ‘organised civil society’ in the EU policy-making processes is understood as a democratic norm by European institutions, and in particular by the European Commission and the Economic and Social Committee. The norm is taken up and interiorised by non-state actors themselves who see there a possibility to legitimise of their European activities. Thus, applied to Checkel’s constructivist framework, the social construction of the definition of a ‘European civil society’ is both a learning process as well as the strategic usage of a specific discourse that then leads the European integration process in a particular direction.

The paper proceeds in three steps. A first part presents the conceptual and theoretical debate that leads, particularly amongst Europeanist scholars to the normative claim of an increased inclusion of a ‘European civil society’ in policy-making processes. This argument is taken up and developed further together with European officials. This process is then analysed in more detail in a second part, where I study the social construction of both the participatory norm and of the definition of civil society at the European level. I will concentrate on the one hand on the language change from the term ‘interest groups’ to ‘civil society’, and on the other on the debates that have taken place in the different forums of the Commission and the ESC leading to the inclusion of ‘civil society’ and ‘participatory democracy’ in official documents. In a third and last part I will then analyse the ‘translation’ of this discourse into the official documents of the European convention, and finally the European constitutional treaty as a mainstreamed legal norm.

1. Why should a ‘European civil society’ exist?

‘Civil society’ has many different meanings, depending on the political context and the historic development of the particular political system (Foley and Edwards 1997 ; Rossteutscher 2000 ; Khilnani 2003). Jean Leca presents these differences particularly well: « Civil society is like the witch of our tales: sometimes a trout as ugly, local and dated as the old enchanters who served as partners (Ferguson, Hobbes, Locke in their forests of Scotland, England, Ireland or Hegel on the sandy ground of Prussia), sometimes a multiethnic and multipurpose Miss Universe, with impeccable measurements admired by all under the sari,

the chador or the miniskirt” (Leca 2003, p.62). In contemporary analyses, both those developed in the national realm and those in the political systems of the EU and at the international level, “civil society” is thus all that is well. It is opposed to the order built by the States or by a supranational technocracy. But beyond this lowest common denominator, different national usages refer to different theoretical conceptualizations (Saurugger 2007). The analysis of the principal writings of Europeanists recommending “civil society” as a remedy against the ‘democratic deficit’ of the European Union which emerged in the middle of the years 1990, refers to the origins of the concept. Its various contemporary understandings at the European level are based precisely on the very distinct historical aspects developed by Locke, Smith and his fellow theorists of the commercial society, and, finally, by Hegel (Khilnani 2001). If scholarly work fits more in the John Locke’s design, according to which the existence of a civil society requires that of a State, a legitimate political order, theorists of the commercial society of the XVIIIe century argued that the existence of civil society requires an interdependence of individual needs and includes the market as well as civic associations in public space, and finally, the representatives of Hegel’s approach of “civil society” distinguishes more clearly between the State, the market and civil society.

This last understanding refers to the widely used definition by Jean Cohen and Andrew Arato (1992, ix) according to which we can distinguish a “political society” based on political parties and organizations as well as institutions (in particular parliaments), an ‘economic society’ consisting of professional organisations and interest groups, firms and cooperatives, and finally a ‘civil society’ where we find associations, social movements and other forms of political communication.

The work on the link between the organized and European “civil society” and the democratic system of the European Union occupies a central place in the literature on the EU’s ‘democratic deficit’. But beyond the research recommending the necessity of linking European citizens to decision-making process, in particular through the European Parliament, one notes, at the end of the 1990s the emergence of a corpus of political science research arguing in favour of a increased participation as well as consultation of the “organized civil society” in the EU’s decision-making processes. This research is based on the debate initiated as well by political philosophers such as Jean Cohen and Andrew Arato, Paul Hirst (1994), Joshua Cohen and Joel Rogers (1995) as by law philosophers (for an analysis see Saurugger 2003).

The specificity of this literature, which nourishes as many of the institutional debates as it contributes to it, as we will see in a second part of this chapter, is the semantic change that

occurs between the concept of interest groups and that of “civil society”. The role which is granted to this “civil society” or to “organized citizens” is very functionalist, in so far as the participation of the civil society would increase both the democratic legitimacy as well as the efficiency of the EU’s political processes.

Amongst this literature, one must mention Fritz Scharpf’s work (1999) in which he distinguishes between input and output legitimacy. Input legitimacy, or government by the people argues that citizens’ participation must be considered as the only source of democratic legitimacy, referring to the exercise of power through the majority. However the European Union is far from possessing a strong collective identity, whether in cultural or institutional terms, and does not allow for justifying the legitimacy of European institutions, according to the author. This explains that the competences of European institutions largely depend on national governmental decisions (Pollack 1998).

The prospect changes if one analysis this question in terms of outputs where the government for the people draws its legitimacy in its capacity to solve problems the individual or the market cannot solve. This type of legitimacy, based on interests, tolerates the coexistence of multiple identities and is thus not opposed to the consideration of the EU as the relevant governance level for certain collective problems. The essential criterion is here the effectiveness of the policies implemented and their accountability. Consequently, the legitimacy of the European institutions must actually be based on both criteria. While it seems that the much debated “democratic deficit” of EU institutions cannot be decreased through the processes of abstract functional representation, it nevertheless offers a partial corrective measure to the deficits of responsibility, transparency and political representation which were identified.

In the context of these two forms of legitimacy, public and private interest groups, or more specifically the “organized civil society” can contribute to the neo-pluralist process of capacity division between the elites, in the framework of a European Union which represents a new political space left vacant by national authorities but where a real supranational authority does not (yet) exist. The Parliament and the Commission count on interest groups to play a legitimation role of their own actions in decision-making processes, as a potential link between European decision makers and the citizens. These two institutions, confronted with increasing criticisms regarding their democratic character, look for interest groups to support them – through their participation or their consultation in decision-making processes and the implementation of the various regulations, thus trying to establish input legitimation.

According to Grande (2000), this proposal is based at the European Union level on the assumption that private organizations have far greater resources at their disposal than do individual citizens, and that these resources can be deployed for public purposes, either as a by-product of an organization's pursuit of its private interests or as a direct consequence of its altruism. However, the idea of this so-called associative democracy¹ has several drawbacks. First, it is not self-evident that private vices turn into public virtues as soon as they are given wider attention and quasi-official status. Second, the control of political power by civil society organisations tends to remain incomplete and insufficient. Citizen's capacities to organize are thirdly distributed unevenly. This makes the associational democracy more vulnerable to special interests than are competing models. Furthermore, the participation in these processes tends to be limited to a small number of delegates whose representativeness does not meet the requirements of democratic theory. Hence strengthening the role of interest groups in order to improve political power in the European policy process would only solve half the problem. Therefore Grande underlines the necessity of institutional checks and balances (2000, 128).² He argues normatively that the objective is to establish a mixed system of political participation and decision making within the EU, in which elements of direct and indirect democracy are combined pragmatically.

In this same logic we also find authors such as Deidre Curtin (1999), Carol Harlow (1997), Kenneth Armstrong (2002) and Olivier de Schutter (2002). These authors rediscover the concept of the "civil society" in the relationship between democracy and governance while underlining at the same time the inherent limits of such a design. Thus, to be associated, the "European civil society" must be included in the institutional devices of the European Union and will consequently lose its voluntary and deliberative nature. These texts have as characteristic not to be explicit in their understanding of 'civil society', but to underline the principal debates in this field. That means that the question of who participates in this 'civil society' – economic and civic groups – business interests as well as NGOs – or exclusively so-called public interest groups, such as associations and NGOs, is not clearly answered.

Finally, Smismans research (2003, 2004, 2006) argues strongly in favour of a composite functionalistic approach linking Hegel to the theorists of the commercial society. Here, civil society is understood in its largest sense and includes all non-state actors, economic as well as civic, a definition we also find in the majority of the official EU documents. The recent

¹ Developed at the national level by Cohen and Rogers (1995) as well as by Hirst (1994).

² This inclusion of civil society in the decision-making process, however, accentuates the efficiency-democracy divide according to a number of authors such as Scharpf (1999) and Dahl (1994).

volume published by one of the most well known specialist of EU interest groups, Justin Greenwood (2003) is very revealing in this context. While the author never used the term ‘civil society’ in his research before, now the central notion in his book on interest groups is that of “European civil society” which replaces that of business groups and NGOs.

Since the end of 1990, and in particular since the publication of the White Paper on governance in 2001, one notes that academic work on « European civil society » becomes increasingly numerous. Furthermore, it is in the context of research conducted by groups and networks of social science scholars in the Framework Programmes on Research and Development of the European Union (PCRD) that appear a large quantity of working papers and scholarly articles at international conferences on the subject of ‘civil society’ and European governance.³ This research can be found again inside the different forums that take place under the auspices of the European Union. Thus, the emergence of the idea that links civil society and participatory democracy in order to decrease the EU’s democratic deficit is both developed in scholarly and official circles interested in EU governance.

2. The social construction of a « European civil society » as a legitimate partner of EU institutions

The concept of a “European civil society” emerged in the middle of the 1990s in various forums at the EU level. It is during these last ten years that one observes a strange phenomenon. Instead of using the term ‘interest group’, as European institutions used to do from the beginning of the European integration process until the beginning of the 1990s, political actors and scholars alike increasingly often use the notion of “civil society” to describe the same group of actors. The term replaced completely that of interest group during the debates which lead to the publication of the White Paper on governance.

The discovery of civil society as legitimate actor in EU governance

The reflection process on the role of the interest groups in the European Union finds its origin in the debates of the beginning of the years 1990. The documents resulting from this reflection process carried out in particular within two European institutions – the Commission

³ Among the most prominent ones we find NEWGOV and CONNEX, respectively organised by the European University Institute in Florence and by the University of Mannheim.

and the European Parliament – must be understood as part of a larger debate on the right of access to information, annexed to the Treaty of the European Union, initiated by the Birmingham declaration on the necessity to make the EU more transparent. Amongst the European institutions, the European Commission was considered to be the most open and transparent for interest groups. This reputation was always underlined by the European Commission itself, as interest groups can, according to its officials, provide technical expertise and information necessary for efficient decision-making. Initiated by Pascal Lamy, former head of cabinet of Jacques Delors, wishing to create «an exemplary European democracy»⁴, and based on research led by the General Secretariat of the European Commission, the famous 1992 Communication on an open and structured dialogue with interest groups⁵ stressed the idea that a minimal formalisation of the relations between interest groups and European institutions would allow to establish more transparency. The document aimed to realise the engagement taken by the Commission in 1992: “The relations, which the institutions maintain with interest groups, as useful there are, must be better specified. The Commission will thus engage a reflection process aiming at establishing a code of conduct with its interlocutors. This debate was not to call into question, naturally, nor the free activity of the business groups, nor the continuation of the necessary dialogue with different committees ». Two questions are of particular importance in this context: How to enlarge interest group participation in the Commissions proposals and how to make the official documents more accessible? These questions have been central during the 1990 and in particular in the context of the debate linking ‘civil society’ to European decision making processes.

The debate initiated by the Commission is very soon followed by the European Parliament. Confronted with the intensification and the sophistication of business group strategies, the Parliament engaged in a discussion process meant to lead to a stronger inclusion of civil interest groups (McLaughlin and Greenwood 1995). A large number of MPs indeed complained to be contacted abusively by certain interest groups, - a group of actors that should very soon be called “civil society’. Until recently, interest groups had easily access to the Parliament and could contact MPs personally. The internal Regulatory Commission of the Parliament published in 1992 a recommendation for a more transparent and regulated interest

⁴ Interview, Jérôme Vignon, Director of Direction Equality, DG Social Affairs, former head of the Forward Studies Unit, February 2006

⁵ European Commission (1992), *An open Structured Dialogue between the Commission and Interest Groups*, SEC (92) 2272 final

group access to the Parliament. Inspired by the American and German model⁶, it foresaw that the individuals who wished to access frequently the premises of the EP with the aim to inform its members within the framework of their parliamentary mandate and for their account or that of a third party, must respect a code of conduct and join a register on a voluntary base, in return of which they have access to the Parliament's building. The European Parliament insisted on the fact that interest groups complete the fundamental role played by the political parties in the political representation and thus its efforts aimed at linking the citizens closer to the process of EU decision-making. Whereas the Parliament's approach could help to strengthen its credibility with the public, one could blame it for privileging its relations with the registered interest groups, to the detriment of those not registered. The European Commission, on the other hand, was aware of both the difficulty and the necessity of regulating the access of interest groups to the Union, and at the same time the possibility to use interest groups as allies to strengthen the position of the European institutions in power struggles with the Member States.

Kenneth Armstrong (2002) underlines however that these regulatory attempts suffered from a certain number of deficits. Thus, the link between the transnational governance and society is built in terms of particular interest in the individual consumption of social rights than constructed through an active identification with those who produce these norms. Furthermore, the citizens are rather market citizens than political and social actors. Although market citizens play an active role in the realisation of economic objectives, there are passive actors in the context of the establishment of a real political and social transnational governance system at the EU level.

Nevertheless, despite the disappointing result of those regulatory efforts, there are a starting point in a series of reform attempts, pushed forward in particular by the European Commission.

Civil dialogue and social policy

⁶ In the United States this concerns the Administrative Procedure Act (APA) of 1946. In Germany the relations between interest groups and the federal government are regulated by article 73 paragraph 2 of the regulation of the federal Assembly (Geschäftsordnung des Deutschen Bundestages) and articles 61 and 62 of the regulation of ministries (Gemeinsame Geschäftsordnung der Ministerien). If a law is proposed for discussion, the German government has to consult the concerned interest groups.

This debate on the role and the methods of access regulation of interest groups has been enlarged by the inclusion of other actors such as non-governmental organizations (NGOs), welfare associations, actors then transformed into 'civil society'. Thus, Declaration 23 of the Maastricht Treaty stressed the importance of the cooperation between welfare associations and European institutions. This declaration must be regarded more as the result of the interest representation of active German associations in the third sector, and less like an independent initiative of EU institutions. The Declaration is not used until 1993 when the Commission, in particular DG 5 (Social policy), a central actor in the social in the official Social Dialogue decided to intervene increasingly in the field of youth policy, social exclusion, racism or gender equality⁷. The consultation of multiple active associations in these fields in the development and the implementation of the social initiatives gained importance when these questions became priority elements on the European Union agenda. Parallel to the growing importance of these political sectors, the European Commission was confronted with the hostility of the Member States with regard to its intervention in these fields. The co-operation between the Commission and civil society became a factor of legitimation of the European institution under national pressure. By supporting the initiatives by broad consultations of the organized civil society and in particular through "militant civil servants" of the DG 5, the Commission could reinforce its position with respect to the Council of the EU (Smismans 2004). « These civil servants aimed for developing exchanges, experiences, to support pilot initiatives and, thus, to support divers activities led by civil society associations through financial aid ». ⁸

In co-operation with the commission of social affairs and the European Parliament the first European Forum of social policy was organized in March 1996. This bi-annual Forum initiated a new political objective: the creation of a reinforced 'civil dialogue' at EU level which will take its place at the sides of the 'social dialogue', including the social partners. The participants of this forum, created to allow for a large consultation on the direction that social policy should take, were part of European NGOs, social partners, member States, local and regional authorities and research institutes.

This notion of a civil dialogue was also used in an Opinion published by the Economic and Social Committee (ECOSOC) and established the base what should become the new 'European civil society'. ECOSOC's considers itself in this document as the representative of

⁷ COM(93) 551, Green Paper on Social Policy, November 1993 followed by the publication in 1994 of the White Book on the same question COM(94) 33, July 1994.

⁸ Interview, Jérôme Vignon, April 2005

‘civil society’ at the EU level, a position taken over by article 257 of Treaty of Nice (TEC).⁹ In its opinion, ECOSOC insists on multiform, multidimensional and multilevel character of ‘European civil society’. The opinion insists in particular on the notions of pluralism, autonomy, solidarity, civic conscience, participation, accountability and subsidiarity. The ECOSOC intervenes in this debate both in favour of its own institutional position and of including ‘civil society’ stronger than ever in the decision making processes. The advisory status of ECOSOC makes its interventions in the European political debate very random, but the increasingly important ‘participatory imperative’ in political as well as scholarly debates allows for gaining a stronger position in the institutional system.¹⁰ However, while legally and officially recognised as the representative of the ‘civil society’, and in regularly insisting on this role – all documents and interviews the author had led with the representatives of ECOSOC explore this role¹¹ - a large majority among European non-state actors are hostile to this evolution and resist the establishment of a more structured relationship with ECOSOC.

Thus, parallel to ECOSOC’s role in structuring a European civil dialogue, a large number of auto-declared ‘civil society’ organisations started to organise themselves in networks at the European level. It was this construction of multiple public spaces that made the existence of the notion itself possible, transcending the small and informed circles. In 1995 the European Movement launched the idea of creating a Permanent Forum Of Civil Society (Weisbein 2003). The Forum takes the form of network and not that of an organised and clearly structured interest group. Its aim is to create a network through which a more social and democratic Europe could be formed. Contrary to the definitions worked out by the European Commission, the Forum rejects two groups of actors from its understanding of civil society. While organisations committed to public or relatively general societal debates, such as trade unions, are included in the Forum’s definition of civil society, market forces such as business groups or employers federation more generally are excluded, as well as confessional organisations.

The Forum’s main aim was to establish itself the official interlocutor in the debate preceding the Amsterdam Treaty of 1996. The result was, however, not precisely the one hoped for. Only one declaration annexed to the Treaty (n°38) established that the Community

⁹ CES Opinion, *Le rôle et la contribution de la société civile dans la construction de l’Europe*, JO C 329 (17.11.99). See also

http://www.europa.eu.int/comm/governance/areas/group3/contribution_concisereport_en.pdf

¹⁰ See Smismans 2002

¹¹ From 2003 to 2005, the author participated in two official and one private brainstorming meeting which were either organised by ECOSOC or included ECOSOC representatives.

encourages the European dimension of voluntary organisations in particular concentrating on the exchange of information and experience.

Confronted with the disappointing results of the European Forum's activism, discussions are initiated by the Directorate-General on Social Affairs of the European Commission which publishes a communication on the "Promotion of the role of the organizations and voluntary foundations in Europe"¹² in 1997. The document very clearly differentiates between 'civil society organisations' such as trade unions, and professional organisation, business, groups or political parties. However, the document has very little influence on the organisation of 'civil society' at the European level. At the end of the 1990 emerge a number of elements that open a larger debate on the 'civil society' participation in EU decision-making processes. It is possible to distinguish between, on the one hand, a larger media visibility through protest movements at the international level¹³ (Seattle, Porto Alegre, Genua), and on the other hand, institutional questions linked to the EU. These refer to a European Court of Justice Decision, the publication of a discussion paper by the Commission, and finally the White Paper on European Governance.

In 1998, a ECJ decision (C-106/96), based on the request of Great Britain, Germany and Denmark invalidated the decision of the Commission to finance some 80 European projects against social exclusion. This crisis pushed European NGOs active in the social field to form a network under the coordination of the NGO 'European Social Platform' (Socialplatform). Their activity led both to a growing interest among the political leaders and to a careful reflection on the role of the 'organized civil society' in the implementation of the European policy. The relations between the European Commission and concerned associations gained in importance and gradually one could note the emergence of a more structured dialogue (Smismans 2004).

In this logic fits also the publication of a discussion document, on "The Commission and non-governmental organizations: the construction of a reinforced partnership"¹⁴. While the 1997 document was mainly interested in non-governmental actors in the social sector, the discussion documents and position papers enlarge their interest and include NGOs in the policy fields of development, human rights, environment and consumer rights. More than in its previous documents, the European Commission stresses here the essential contribution

¹² COM (97) 241 final, 6 June 1997

¹³ An argument that is stressed by numerous representatives of the 'civil society'. Interview, Tony Venables, European Citizens Action Service (ECAS), February 2006

¹⁴ « The Commission and Non-governmental organisations: building a stronger partnership », COM (2000) 11 final, 18 janvier 2000

made by NGOs to a legitimate European governance. The document is clearly influenced by debates between scholars, Commission civil servants and representatives of the ‘civil society’ in its largest sense that took place in the Forward Studies Unit of the European Commission between 1995 and 1998 under the chairmanship of the French civil servant Jérôme Vignon. After 1998, these debates were conducted by Martin Kroeger, Head of Unit ‘Civil Dialogue’ of the Secretariat General. The 2000 document addresses questions linked to the notion of reinforced cooperation : How can the Commission assure that NGOs receive information sufficiently in advance to consult their members? How to organise the selection process of NGOs for consultation? Exists there a legal basis concerning the consultation? One of the specific proposals relates in particular to the creation of a European Union Web site gathering the co-ordinates of NGOs.¹⁵ The Commission refers here to the web site created in 1992 and devoted to economic interest groups in particular. Thus, this document considerably widens the European comprehension of the ‘organized civil society’ and opens the possibility for the large definition the Commission develops for a ‘European civil society’ in its White Paper on European governance.

The White Paper on European Governance

The White Paper on governance¹⁶, published in July 2001, can thus be considered as the result of a long process of consultation. It started in the Forward Studies Unit of the Secretariat General of the Commission in 1995 and was structured in particular by its chairman, Jérôme Vignon. The Chairman initiated constant and thorough debates in particular with the director of the Centre of the philosophy of Law at the Catholic University of Louvain, Jacques Lenoble.¹⁷ « These people interested us. [...] They told us: ‘It is not the increasing importance and institutional position of the Parliament [...], nor the election of the European Commission by universal suffrage that will really solve the problem of the Commission’s legitimacy deficit’. [...] They made us understand that there were also ways to foster participatory legitimacy and not only the classical representative one. While everyone was concentrated on traditional issues - the decision-making process, decision-making based on a qualified

¹⁵ European Commission, COM (2000) 11 final, *La Commission et les organisations non-gouvernementales: le renforcement du partenariat*, 18.1.2000

¹⁶ COM (2001) 428 final, *Gouvernance européenne, Un livre blanc*, 25 juillet 2001

¹⁷ Jacques Lenoble was responsible for several successive research projects on the question of governance and democracy, financed the EU Framework Programmes on Research and Development (PCRD). It is difficult to show through causality how ideas float from an academic forum towards those existing at European level, but it seems that the assumption of a Co-constitution of this democratic standard between the administrative and university level is highly probable.

majority, all that took place inside the microcosm of the European institutions in Brussels, these law philosophers have shown us [that it was necessary] to be interested much more in what happens before a proposal is formulated, who takes part, who is listened to, who says a word in the development of a Community initiative.”¹⁸

On this basis starts a large process of consultation in 2000. Structured in different sub-groups, scholars, civil servants and representatives of the so-called ‘civil society’ in the large sense, engaged in a deliberation process on European governance during a whole year. Jerome Vignon surrounded himself by a team of Commission civil servants, several of whom are former academics such as Notis Lebessis, French economist, Hartmut Offele, German researcher, and of trainees, of whom in particular the political scientist Amanda Sloat published several articles on the White Paper on governance after the process had ended (Sloat 2003, 2005) and whose reflections are quoted by a number of scholarly writings on this subject. Several europeanists of reputation, such as Rod Rhodes, whose governance definition published in an article is used as official definition in the White Paper¹⁹, but also Mario Telo, Jean Marc Ferry and Paul Magnette, academics and specialists of European integration of the Université libre de Bruxelles, Christopher Lord, professor of political science at the University of Reading, Philippe Schmitter, professor of political science at the European University Institute (EUI) in Florence, Joseph Weiler, professor of law at the University of New York, Helen Wallace, British political scientist and director of the Robert Schuman Institute at EUI, Renaud Dehousse, professor of European law at Sciences Po Paris or Claudio Radaelli, at that time professor of political science at the University of Bradford contributed to the debates. An analysis of these scholars’ writings shows furthermore that their approach is very similar to that recommended by the administrative team of the White Paper on governance.

Official consultations took place for four months between December 2000 and April 2001, during which regional and local actors, the “civil society”, represented by actors such as ECAS (European Citizen Action Service), DTA Fourth World or the CEDAG (European Committee of Associations of general interest), national parliaments, Member States administrations, individual citizens and academics took part in the deliberations.

The ‘working group on the civil society’ was chaired by Luisella Pavan Woolfe, today director of the DG Employment and Social Affairs. This group of administrative actors,

¹⁸ Interview, Jérôme Vignon, February 2006

¹⁹ Rod Rhodes, « The new governance : governing without governance », *Political Studies*, vol. 44, 1996

elaborating largely on the academic writings on the subject of the “civil society”²⁰ produced the most thorough document among the official texts published by European institutions since the beginning of the debate on the interest groups and civil society in 1992. The writings of europeanists such as Jean-Marc Ferry, Paul Margette, or the philosophers Paul Hirst and Graehame Thompson were used to work out a definition and guidelines for structuring of the co-operation between the “civil society” and European administrative actors.

The White Paper on European Governance goes further than the documents published before.²¹ The White Paper takes into account this reinforced role of the “civil society” and very clearly fits in the objective to make the decision-making processes more open and transparent. At the same time, it recommends a more inclusive ‘civil society’ definition. It includes from now on “not only NGOs but also trade unions and employers’ organizations, professional organizations, caritative organizations, local and regional associations as well as churches and religious communities” and is thus based on the definition elaborated by ECOSOC.

« The organized civil society includes in particular the ‘actors of the labour market’, i.e. the two sides of industry, representative organizations of the socio-economic sector in a larger sense, which are not the two sides of industry, NGOs (nongovernmental organizations), who link the people on common causes, for example organizations for environmental protection, organizations for the defence of human rights, consumer associations, welfare associations, organizations on education and learning, etc, basic organizations (i.e. organizations resulting from the grassroots base of society), for example youth movements, family associations and all organizations interested in the participation of the citizens in local and municipal life and finally religious communities”²².

The ECOSOC document reproduces in broad outline an internal report produced by the young researcher Stijn Smismans (Smismans 2006). Its approach is based on functionalism which recommends the use of the “organized civil society” in the European decision-making processes to make European policy more effective and more legitimate. In the analyzed documents, one notes a tension between the aim to include as many actors as possible in the concept of civil society and the attempt to institutionalize the consultation of this civil society at the European level, an attempt ardently criticized by the European Parliament and the Committee of Regions which consider themselves as the only legitimate representatives of the

²⁰ See Amanda Sloat’s study on the subject of ‘civil society’ consultation in the US : SG/AS D(2000)

²¹ COM (2001) 428 final, *Gouvernance européenne, Un livre blanc*, 25 juillet 2001

²² Conseil Economique et Social Européen, *Le rôle et la contribution de la société civile organisée dans la construction européenne*, septembre 1999, CES 851/99

“organized civil society”.²³ This tension is also due to academic reflections which were used to work out the White Paper. The pluralism conveyed by the majority of these academic advisers is at the same time called to be controlled and regulated by structures. To find a compromise on these regulatory methods and instruments still seems more difficult than to find a definition for this “civil society”.²⁴

The analysis of the debate on non-state actors at the European level thus made it possible to show a remarkable semantic change leading from the exclusive use of the notion “lobby” in 1992 to that of “civil society” supported by the “two sides of industry” or “NGOs” in 2001. The European Commission and ECOSOC, while being lobbied both by “civil society” representatives as by university actors, made emerge a group of actors who from now on act in the name of this “civil society” in the decision-making process.

3. A semantic construction : the European Convention

We have seen that the idea of civil society participation in the decision making processes to improve the democratic character of institutions is not a new one. But, at the EU level, it is the constitutional treaty that offers a first recognition to this understanding of democracy. Under Title VI, the constitutional treaty presents eight articles on the democratic life of the European Union. If Article I-46 underlines that the functioning of the Union is founded on the principle of representative democracy, in differentiating between direct representation of the citizen by the European Parliament, and indirect representation by the European Council and the Council of the European Union, it is Article I-47 that is central to the question of civil society participation in the EU policy-making processes. The Article on “Participatory democracy” indicates that:

²³ The debate following the publication of the White Paper has been particularly violent within these two institutions.

²⁴ Thus, the idea of a data base on the civil company is recommended to make the organization of the consultation more transparent. A first version had already been published in 1997 including more than 600 non-profit-making organizations, constituted at the European level and covering a hundred branches of industry. This inscription was elaborated on a voluntary basis. In 1999, an electronic version was created, including approximately 800 associations. Since the summer 2001, the repertory was transferred in a data base which makes it possible from now on to directly carry out the recording of the organizations and the update their data directly via Internet. This new repertory bears the name of CONECCS (Consultation, the European Commission and Civil Society) and includes approximately 1000 organizations.

- « 1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative. »

An analysis of the development of this constitutional treaty shows indeed that the final text takes again the broad outline of the debate on the “civil society” developed in the White Paper on Governance. The Convention on the Future of Europe prepared the idea for a constitutional treaty in a Joint Declaration of the Heads of State and government of the European Union at the Laeken Summit on December 15, 2001. The Convention “will have the task to examine the essential questions raised with regard to the future development of the Union and to seek various possible answers”.²⁵ Prepared by two reports bringing together specialists in law and political science (Cohen et Weisbein 2005) - the reports of Amato and Duhamel - the convention started its deliberations in 2002. The last paragraph of this Declaration is of primary importance for the analysis of the emergence of a “European civil society”: « To widen the debate and to associate all citizens, a Forum will be opened, including the organizations representing civil society (the two sides of industry, economic sectors, nongovernmental organizations, scholars, etc). It represents a structured network of organizations that will be regularly informed of the work of the Convention. Their contributions will be included in the debate. These organizations could be consulted on particular subjects according to methods to be determined by the Presidium”. In this logic, the Convention envisages two organisational forms which should allow the “organized civil society” to take part. It is first of all about the possibility of intervening regularly in the debate in depositing position papers. In order to widen the debate and to associate all citizens, the Convention proposes to open a Forum devoted to the opinions of the organizations representing the ‘civil society’. It should be a structured network of organizations which will be regularly informed of the work of the Convention and whose contributions will be versed into the debates. The Futurum site gives an overall picture of these contributions emanating

²⁵ www.eu2001.be and www.europa.eu.int

both of the civil society and academic scholars.²⁶ Structured in four categories - “Policy and public administration”, “socio-economic actors”, “academics or think tanks” and “Other, civil society, NGOs and currents of thought”, a few 700 organizations deposited nearly 900 proposals, available on the site of Convention.²⁷ It is however important to stress that the Forum was largely criticized. Regarded as a means through which the Convention could better control this much cited “civil society”, the contributions remained very general.

The Convention organized in addition regular meetings with the ‘organized civil society’ during which the organizations had the possibility of exchanging directly with the members of the Convention and their counterparts on the future of European integration. Between 10 and 18 June 2002 meetings were held with the eight civil society contact groups. Covering divers sectors such as social and environmental policy, the academic world, citizens and institutions, regions and local communities, human rights, development and culture, the participants of those groups had between 3 and 10 minutes to present their claims. After this extremely restricted intervention time, their claims were gathered in a report of the meetings, distributed to the whole Convention.²⁸ It is in particular the group “Citizens and institutions” which developed claims with regard to title VI on the democratic life of the Union. Chaired by the vice-president of the Convention, Jean-Luc Dehaene, the few hundred organizations centered their interventions on institutional affairs such as citizenship and participatory democracy. The organizations asked for the inclusion of a certain number of elements in the project of the constitution such as the civil right to European information, the regular organization of a ‘civil dialogue’, equality, the civil right to take part at all stages of the development of the European decisions and in particular their application via a consultation process in the framework of a real partnership, a joint evaluation of the political results, the statute of a European association and the recognition of the role of the non-profit organizations (co-operatives, associations).²⁹ These requests very largely echoed the proposals that we find already in the 1999 Opinion of ECOSOC and in the White Paper on European governance.

While the participation of the civil society in the debate on the constitutional Treaty in general was real and several of these claims had been retained (Balme and Chabanet 2004, Montagner 2004), it must be noted that the results of the constitutional Treaty with regard to title VII and more particularly on participatory democracy do not go further than the recommendations of

²⁶ europa.eu.int/constitution/futurum/civil_society_fr.htm

²⁷ <http://european-convention.eu.int>

²⁸ CONV 120/02, 19 juin 2002

²⁹ Although the project of constitution was criticized by a great number of organizations of the civil society in particular through its spokesman Pier Virgilio Dastoli, the principle of Title VII as such was almost unanimously agreed upon. See the site of the Permanent Forum of the civil society: www.europe-now.org,

the White Paper on governance. The bases were not modified, but were taken over from the White Paper by Giuliano Amato, considered to be as the principal author of this title³⁰. The principle of participatory democracy had already been introduced throughout the years 1990, constructed through a scholarly dialogue as well as through strategic exchanges, but it is in the Constitutional Treaty that we find it mainstreamed and codified.

The idea of a European democracy is thus a top-down construction. While non-state actors exist at the European level and take part in the decision-making processes in the broad sense since the beginning of the European integration process, it is since the beginning of the 1990 that they become study objects in the documents of the European Union. A considerable semantic change can be observed – from “lobbys” one arrives at the end of the 1990s at the notion as of the “organized civil society”. The analysis of the genesis of title VI of the Constitutional Treaty shows that we are confronted with a true construction of a democratic standard that is based on the participation of a specific actor - the “organized civil society” in the decision-making process.

We have noted that the emergence of the concept of “civil society” refers to both the discursive and strategic use of a specific notion and is largely influenced by the “scholarly expertise” of academic actors which led to a particular direction of the integration process. No European actor questions the principle according to which it is necessary to associate the “organized civil society” to the consultations and the implementation of the European public policies. This discursive agreement does not entail that there exists a homogeneous entity which one could call ‘civil society’, nor that the principle of the participative standard is applied. On the contrary, it seems that while, since the arrival of Manuel Barroso to the presidency of the European Commission, no document omits to mention the role of “civil society” in the advisory and consultation processes, the European actors associate these actors less and less.

Thus, the construction of this democratic standard - or of “the participative imperative” is real. The implementation, however, remains partial and its discursive importance does not correspond to actual policy making.

³⁰ Interview, Tony Venables, ECAS, February 2006. The modifications were certainly introduced, most importantly paragraph 4 on the right to a European petition, included at the last minute on request of a German deputy.

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