Democratizing the EU-Civil Society Relations - the Question of Normative Standards

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Abstract
According to the Commission European democratization could be fostered via civil society involvement. First a theoretical framework for such a path to democracy, which is open for empirical assessment, is developed. Then it is shown that even the weaker version of such a democratization – where civil society organisations significantly contribute to the democratic quality of EU decision making – can not be sufficiently ensured by the conducted reforms.

Since the White Paper on European Governance, strengthened integration of civil society organisations is one of the Commission’s central aims to foster EU democracy. The rhetorical change (see Bignami 2003, Kohler-Koch/Finke 2007) has been supplemented with many institutional innovations and reforms. First, the procedural rules have been opened for wider political engagement. The Commission’s legislative and work programme has been made more transparent, as well as relevant documents and political processes. These reforms have generally broadened the opportunities for political activities. Then the Commission has developed

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1 This is a draft version. Comments are very welcome (thorsten.hueller@mzes.uni-mannheim.de).
2 For the work programme (and the impact assessments), see http://ec.europa.eu/governance/impact/practice_en.htm. With respect to public access to documents, see EC regulation 1049/2001 and the Commission’s current review process of the regulation.
guidelines about when and how to ask civil society organisations for input. Now there is an (even if: unenforceable) obligation to consult civil society organisations in important legislative processes (Commission 2002). And via impact assessments the Commission is also obliged to give reasons for what she has made of all the input she got. Second, reforms in the formal rules are accompanied by the adoption of new instruments for expanded involvement of civil society organisations, as open online consultations, which have become regularly used exercise in the political process.³

Also many scholars have more or less optimistically supported at least the general theme of the White paper’s idea to foster European democracy via civil society engagement (see most of the papers in: Grote/Gbikpi 2002; Ruzza/Della Sala 2007; Smismans 2006; Steffek/Kissling/Nanz 2008).

But there also is still scepticism, if the EU can be democratized at all (Peters 2005), if civil society involvement is the appropriate means⁴, and if the Commission’s efforts to foster democracy via civil society involvement are effective (Kohler-Koch 2007). This scepticism is prima facie justified, first because most of the literature does not even develop a normative term of democracy, not to mention the missing of a theoretical and/or empirical assessment (Greven 2007). And second, at least since the vigorous critique of the pluralist theory in the 1960s, the dominant scientific discourse about democratic functions of voluntary associations in legislative processes was and still is rather ambivalent in its results.⁵

Despite the broad literature addressing the democratic effects of the EU’s civil society involvement, a systematic analysis and answer is still missing. This paper tries to add three important pieces to such a more systematic analysis: What should we look for? Where should we look for? Should we expect the post-White Paper reforms of civil society involvement to be sufficient to democratize the EU or at least a step in the right direction?

The paper starts to develop a principles-based normative term of democracy. If we don’t know what makes a certain polity ‘democratic’, we can not theorize adequately about the positive or negative consequences of certain institutional means (1). A regulative ideal of democracy is not

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³ See http://ec.europa.eu/yourvoice/.
⁴ This point is at least implicit in many views arguing for European democratization and thereby bypassing the role of civil society organizations.
⁵ Is it by accident that the word democracy is not mentioned in a recent review article about lobbying in the EU (see Coen 2007)?
the same as a yardstick for empirical research. By combining the more philosophical reasoning with approaches to measure democratic performances empirically, we gain applicable normative criteria for democratic processes (2). In both sections civil society organizations and their possible democratic functions don’t play any role. It is a general normative term which is developed here. Only before this background, the literature can be screened to detect and discuss expected democratic functions of civil society organisations within legislative processes in general and within the EU polity in particular (3). Finally the above mentioned institutional reforms are put into perspective: Do they support or even ensure a sufficiently democratic performance of the EU’s civil society involvement (4)?

1. On Democracy in the EU

Even if the news value is low: Democracy is a contested concept. And it is difficult to measure it, when we can not be sure, what we should measure. So what is or what would a democracy be? Reviewing the normative conceptions of democracy and the attempts to measure democratic quality empirically, we see many different normative conceptions and analytical designs.\(^6\) In order to capture the differences, it is suggested to set apart three dimensions of contested values: the relation of the fundamental values of liberty and political equality, the desired extensity and quality of citizen participation, and the normative ideal of will formation.\(^7\)

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

\(^6\) For a historical account on different conceptions of democracy, see Held (1987). For contemporary normative conceptions, see the broad overview by Cunningham (2002), but also the more systematic debates e.g. by Christiano (1996), Dahl (1989), Shapiro (2003) and Weale (2007).

\(^7\) Therewith we disregard the additional justificatory pluralism: Why is democracy desirable at all? It is curious, that authors starting even with identical fundamental values arguing for contrary institutional designs. Some e.g. argue that personal autonomy is that fundamental value (what is contested), but then either defend majority rule (Dahl 1989), or unanimity rule (Gould 1988), or supermajority rule (Gaus 1996) on the level of application for the same political entity. To bypass the problem of justificatory pluralism we don’t add another or choose one of these contested foundational theories, but stick to coherent second-order justification (Rawls; Gutmann/Thompson 2004). The core idea (with respect to the contested normative values) is to reconcile or accommodate the reasonable but contested and in some respects contradictory values on the level of application.
Christiano 1996), and the third position tries specifically to reconcile individual autonomy and political equality as far as possible (Rawls 2001)\(^8\).

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

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

These are just three of the many contested dimensions of the normative concept of democracy. These evaluative differences are also mirrored in the literature, which tries to measure democratic quality empirically.\(^9\) It goes without saying that assessing the democratic quality of any political system, including the EU, has to relate to a specific understanding of democracy, which is decisive with respect to the mentioned positions. My point here is, we can reconcile (or: leave aside) at least some of these differences, when discussing democracy at EU level. Why is this so?

The strongest normative point for the protective model of democracy is the expectation to secure personal autonomy and individual rights – to prevent the tyranny of the majority. But in the multi-level system of the EU the liberal democratic idea of augmenting the personal autonomy of the individual citizen is best secured at the national and local, and not at the EU level of decision making. Human, political and social rights are constitutional rights at member state levels which have been secured for decades by the European Convention for Human Rights. The EU Charta for Human Rights brings little added value and doesn’t have to. Even more important, to comply with these rights is a pre-condition for becoming a member of the EU, in the first place. Even if iterative consensus or super-majority rule would be the desired general decision-rule, it might be

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\(^8\) A prominent version of this third approach is the ideal of “non-domination” (Pettit 1997) or “minimizing domination” (Shapiro 2003).

\(^9\) To point only at a few differences here: With respect to the first divide, most authors restrict their indicators for measuring political equality in the political process, but see e.g. the Polity IV project by Jaggers and Gurr (http://privatewww.essex.ac.uk/~ksg/polity.html) who focus in addition on constitutional restrictions. Some authors are strongly opposed to the idea of making actual participation a relevant indicator (Lauth 2004: 338ff.), but others are equally strong in favour of it (Vanhanen 1997). And parallel to the mainstream of conceptions measuring aggregative democracy, there is a rapidly growing literature measuring deliberative democracy (e.g. Steenbergen et al. 2003).
sufficient to have adequate veto power restricted to the ‘constitutional moments’ in the EU. And the more the EU is actually working in an ‘other-regarding’ or ‘deliberative’ mode, the less relevant is the decision rule.

For most democratic theorists, political equality is not only a constitutive element, but the core normative principle (Dahl 2006). It should have become clear, that beyond all general theoretical arguments there are good specific reasons to restrict democratic analysis of the EU to formal and actual realization of effective political equality.

With respect to the aggregation-deliberation divide we would argue in favour of the deliberative approach. There seem to be general reasons for the superiority of the deliberative mode compared to its alternatives, mainly due to the expectation that only this kind of generalizable backing of political decisions can equally secure political equality as well as certain basic liberties. And it might be, that theorists in favour of one of the other normative visions of will formation with respect to a democratic nation state might none the less support reciprocity at European level, due to its expected rather careful dealing with underdeveloped societal prerequisites for a strictly competitive democracy (see Neyer 2006).

But irrespective of this theoretically founded ‘preference’ for the deliberative approach, empirical research should remain open for both options. First, as argued above, securing basic liberties is not a core task for the EU. Second, to treat national cultures and social prerequisites with care is not part of a democratic ideal – even if this might undermine empirical legitimacy or at least social acceptance. Third, maybe a kind of deliberative equality or reciprocity is the best democratic option, but an aggregative version of equality (representativeness and responsiveness) might be not only the second best option, but might also be a substantial part of a more sophisticated normative model of democracy (see e.g. Mill 1861).

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

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

A few explications are in place here. A political system is defined as a societal association which makes and implements collectively binding decisions for their members who have no real individual exit-option. And the normative criteria which qualify a system as ‘democratic’ have to be specified further. In our approach we will refer to the principles of reciprocity, publicity, and accountability.10

Political Equality as Reciprocity. Democracy necessitates citizens being treated as (political) equals (Christiano 1996, Dahl 2006, Weale 2007: 62ff.). How should citizens precisely be treated equally? This is contested even among egalitarians. I assume that political processes are democratic only if collectively binding decisions are derived from a procedure with effective

10 For a more comprehensive defence of these normative principles and a discussion of alternative normative conceptions of deliberative democracy, see Hüller (2005: chapter 3).
egalitarian imprint – like majority rule or the idea of implementing the will of the median voter. And what should be treated equally? Empirical preferences, individually enlightened preferences or morally justified preferences? And how should we institutionalize political equality?

Sometimes it is argued, there is no conflict between an aggregative and deliberative mode of will-formation: “elections [and thus: aggregation - TH] do work as a process of truth oriented deliberation” (Bellamy 2007), but this is everything but plausible. Political decision making processes in general and elections in particular are not primarily about seeking truth. And if the electorate is not seeking for truth it would be fantastic if they find it.11

To be sure: Certain kinds of elections and modes of majority rule in decision making are a plausible way to perfectly meet the principle of political equality. But we should not merge this with a deliberative ideal of opinion and will-formation. Social inclusion, representativeness, and responsiveness to the majority of preferences are criteria for this kind of political equality.

In contrast, reciprocity is the core egalitarian principle in deliberative approaches to will-formation (Gutmann/Thompson 1996: cp. 2; Habermas 1996, Rawls 1999). The main difference to the aggregative conception of political equality is: Reciprocity demands an ‘other-regarding’ behaviour and the justification of political claims with ‘good reasons’, which means that they are accepted as being rational and legitimate. The process and output should be “mutually acceptable” (Gutmann/Thompson 1996: 55).

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

11 The theoretical point, that the many, many citizens (which are all a little bit closer to the right than to the wrong side) would aggregate to ‘definitely right’, depends inter alia on the assumption of autonomous opinion formation of all these citizens. And this assumption is empirically wrong. For an exhaustive discussion of the most sophisticated version of this argument presented by David Estlund, see Hüller (2005: 86ff.).
The idea of reciprocity (just as the idea of justice) is inseparably linked to the principle of political equality (see e.g. Dworkin 1978, Gosepath 2004) and it can be equally applied to a representative and a participatory approach. What is necessary is that everybody’s (justified) claims and positions are taken into fair consideration. Whether affected citizens should present and defend their claims themselves or not is not a matter of principle, but a matter of pragmatism. It is an open empirical question if representation or direct participation will foster deliberative political equality more successfully – and the answer might change depending on the context.¹²

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

Publicity. When can political actions, policies or politics be regarded as public? In a decision making process we could think of publicity in a weak sense, meaning that political actions, documents and decisions are published and accessible at low costs. If these conditions are met, we speak of publicity in the sense of transparency.¹³ A stronger conception of publicity would take transparency as a necessary but not sufficient condition. Here, an action, policy or political process only counts as public if it is an issue in public debate: everybody knows it and everybody knows that everybody knows it (Luban 1996: 170). In that sense, publicity means common public knowledge. This kind of publicity we find in various aspects of Rawls’ “idea of public use of reason” and “public justification” (Rawls 2001: § 9, §26; 1999).

Now what is the appropriate normative principle for a democratic theory for generally attentive, but with respect to most actual (routine) political processes absent ‘stand by-citizens’? Our answer is – very roughly – a combination of both. Without transparency of the political process, even intermediary organisations would not be able to exert a reliable political ‘control’.¹⁴

Transparency is the necessary condition to subject politically contested issues to a wider public

¹² It seems to be fair to expect that both extremes of the participatory and the representative ideal are not attainable in modern societies. Whereas the participatory ideal is (and has always been) naïve from a sociological point of view, the pure representative ideal underestimates the functional need for citizen activities, such as popular instruction and control via elections and referenda, public deliberations, demonstrations etc. (for a prominent diagnosis, see Barber 1984: part I), and it overestimates the good-will of the political elite, or both.

¹³ For a normative conception of “weak publicity”, see Christiano (2008 forthcoming: chapter 2)

¹⁴ Therefore, transparency has been introduced to European politics as an institutional cure for the deficiencies in multi-level accountability. But this does not imply an obligation that every political act and process must be transparent. There are plausible normative as well as pragmatic exemptions from the transparency rule (see Gutmann/Thompson 1996: cp.3, Naurin 2007).
debate. The important democratic function of civil society organisations is the monitoring of a basically transparent policy process and in stimulating the awareness of the general public of relevant political issues. If a certain kind of involvement of civil society organisations in legislative processes is desirable (see below, section 2 + 3), then transparency is also a precondition for associations to inform EU institutions about their respective positions on certain matters.

The need for publicity concerns, first of all, what Rawls (1993: Lecture 6, § 5, 2001: § 9) has called “constitutional essentials”. Beyond certain substantial rights, fundamental procedural rights and competences are a core element of this idea: If citizens do not know how the political system works, what their rights are and how to use them, they can not act as ‘stand-by citizen’ but are simply excluded from political decisions. Second, although for good reasons most of the political processes and decisions operate in a ‘routine’ mode and, irrespective of being transparent, pass by unnoticed, they operate in the shadow of publicity. Not the number or the intensity of public debates indicate the democratic quality of a political system, but the institutionalised mechanisms, such as party competition, which contain the risk that routine operations will go public. The system has to remain permeable for public discussions about occurring problems and conflicts (Habermas 1996: cp. VIII).

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

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

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15 Empirically, political education or civic literacy is unequally distributed and will be so for the time being. The point here is that there have to be certain kinds of personal political capabilities (Sen) to make it possible that citizens can exert their democratic function. Especially “procedural competences” (Buchstein) (i.e. knowing the rules of the political ‘game’) seem to be on average significantly less cultivated on the European level than they are on the national one. To be clear, we do not talk about the intellectual capacities of the European citizens, but about their ability to assess and to take a position in the political processes on the EU level.
grasp the binding of rulers and the ruled. ‘Control’ bears the connotation of someone who supervises the political processes all the way down. But this would make the whole differentiation between citizens and representatives unnecessary. If every political act was accompanied and reviewed by the people, they would not ‘stand by’, but do the entire work themselves. As already mentioned, there are severe empirical restrictions to such an ideal. And there might also be certain cases, policies and polities, where it is not desired, that the people have such a direct hold on policy formulation (see e.g. Pettit 2004).

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

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

According to Marc Bovens, “accountability is a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences” (Bovens 2007: 450). Thus, accountability is about justification that embraces both symbolic and material aspects. Representatives have to justify the appropriateness of their positions with respect to the underlying value judgements and norms. They also have to argue convincingly that they act in the interest of the represented and they have to prove that they have taken into consideration the legitimate claims of everybody affected. This is the symbolic dimension. “May face consequences” indicates the material dimension: The forum can throw the actor out of office (normally via elections).
In working accountability mechanisms both dimensions have to go hand in hand, so that actors will be held accountable on the grounds of principled belief systems and they will face consequences on the grounds of policy output and policy outcome. Political accountability (as compared to legal or administrative accountability) is a judgement which indicates ‘displeasure’ and not the violation of given standards or deviant behaviour (Bovens 2007: 463).16

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

2. Measuring Democracy

It is the aim to comprehensively evaluate the democratic quality of processes of political participation and decision making. For this purpose, Dahl (1989: 108ff.) has analytically differentiated three aspects of political decision making processes: the question of agenda control, the processes of opinion formation as well as the decisive act, where the binding decision is taken. The more citizens or their representatives can put their issues on the political agenda, can articulate their claims and recipe and discuss the others’ claims and can freely format their opinion as well as have an equal impact on the finally taken decision, the more democratic is such an institution. The relevance of the three different aspects should not be that contested. Now these aspects can be combined with the normative principles outlined above: The more the three normative principles are realized along the three aspects of a decision making process, the more democratic are such processes.

16 With respect to the EU, it is difficult to detect just one of those complete accountability mechanisms. The members of the EP can be held accountable materially, but adequate symbolic processes are missing and the Commission and the ECJ give many reasons for many things, but do not have to face consequences. If there is any accountability of the Council, it is in national segmented forms.
Combining principles and aspects we preliminarily get nine criteria for democratic quality (see table 1, criteria A – I). By analyzing the realization of each criterion we should ideally focus on the supply as well as on the demand side of its functioning. The supply side (1) contains the formal enabling and guarantees of these criteria and also the effective (informal) practice offered by the centre of the political system. If this supply is actually used for political participation is a question of the demand (2). It comes with no surprise that it is desirable to focus on both aspects of the realization of democratic criteria (see Dahl 1971).

By applying this differentiation (of the formal and informal democratic offers and their actual use by the demos) to the nine preliminary criteria we finally get 18 criteria of democratic performance (see table 1).

Table 1: Criteria of Democratic Performance

<table>
<thead>
<tr>
<th>Democratic Principles</th>
<th>Idealized aspects of a decision making process</th>
<th>Control of the Agenda</th>
<th>Opinion formation / deliberation</th>
<th>Decisive Stage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political Equality / Reciprocity</td>
<td>A (1) (2)</td>
<td>D</td>
<td>G</td>
<td></td>
</tr>
<tr>
<td>Publicity</td>
<td>B</td>
<td>E</td>
<td>H</td>
<td></td>
</tr>
<tr>
<td>Accountability</td>
<td>C</td>
<td>F</td>
<td>I</td>
<td></td>
</tr>
</tbody>
</table>

Along this scheme, we have to investigate on 18 separable criteria. For this purpose here, I only very roughly try to clarify the more precise content of some of the criteria. For example, with respect to criterion A it has to be asked if all relevant issues and claims have an effective chance to be put on the agenda. With respect to the supply side provided by the political elite the formal rules and informal practice have to be analysed, and with respect to the demand, the actual practice of agenda setting processes has to be analysed. Criterion B refers to the question, if and how far these processes of agenda setting are publicly reproducible and - with respect to criterion C - it is asked, if and how far the agenda setters are accountable for their acting.

It is noteworthy that some (but not all) of these criteria might have to be adjusted due to different normative positions (see above, section 1). Especially criteria D, E, and G would vary with
respect to different ideals of opinion and will formation. Here it makes a big difference, if the citizens are expected ‘only’ to enlighten their individual preferences or if they should enter collective discourses and aiming at more generalizable positions. And the criteria A, D and G might have to be specified with respect to the desired mode of participation and/or representation of institutional settings – as it makes a difference if we are focussing on direct citizen participation or on the participation of civil society organizations.

If all 18 (or which section of) criteria can appropriately be applied to a certain political institution depends on the contextualized function of this institution itself. In some ‘comprehensive’ institutions (like processes of constitution making) the whole range of criteria should be applied, but in other cases, the analysed institution might have only a partial function (for example agenda setting). If there can be an institutional division of democratic labour, not all criteria can appropriately be applied to every institution. And with respect to some institutions certain criteria are simply unnecessary (as criterion C in the case of citizens’ initiatives). In section 3 I discuss, if and where there are democratic functions for civil society associations on EU level.

To be a complete democratic assessment, all relevant institutions of the EU polity (EP, Commission, Council, ECJ, Comitology, executive agencies, etc.) have to be integrated in such an analysis. But this task is beyond the scope of this paper. But even if only parts of the EU polity are analysed (as the ‘consultation regime’ here), the question how the particular democratic performance of the consultation regimes fits into a more comprehensive picture of the democratic performance of the EU polity (for such views, see e.g. Lord 2004 and Schmalz-Bruns 2005; with respect to our normative framework, see Hüller/Kohler-Koch 2008).

I don’t develop a mathematical operationalization of these criteria and also don’t proceed to an overall quantitative measure of democratic performance.17 Too easily the reader might suggest an unambiguousness, which simply not exists: How should – for example - the 9 or 18 criteria aggregated to an overall measure of democratic performance, by summing up coequal criteria, or as a sum of weighted criteria, or as a product of coequal or weighted criteria? Tentatively I would suggest a weighted addition within each of the three aspects of the decision process, and determine the overall measure as the product of these three sums. Then a democratic index would

17 Most of the democratic indices are using quantifiable measures. An overview also about more qualitative approaches can be found in Lauth (2004: 280ff.).
be: \((A+B+C)*(D+E+F)*(G+H+I) = \text{Overall Measure of democratic performance}\). But to be sure, the democratic reality seems to be more complicated as we can grasp with the means of elementary mathematics.

Institutional innovations and reforms, which should be evaluated here, might have effects with respect to the developed criteria. Democratization would clearly occur, if the performance with respect to one or more criteria improves significantly over time and if there is no decrease with respect to the other criteria. So every significant Pareto-superior change would count as democratization.

Here two questions come up: When might a certain change be called significant? And what conclusions can be drawn from more ambivalent changes?

Somewhere between the complete realization (degree 5) and non-realization (degree 0) of the different normative criteria, certain threshold levels of democratic performance can be specified. A basic threshold might specify a certain minimum level (degree 1), medium thresholds represent the average (degree 2) and best (degree 3) practice we know from democratic nation states, and another threshold specifies the - under recognition of given structural conditions of modern societies - best possible practice (degree 4). Only those changes in democratic performance leading to a classification to an upper threshold level are called significant democratization.

Even well minded reforms may have ambivalent impacts (and this not only with respect to their democratic quality\(^\text{19}\)). And if the analysed institutions have ambivalent results (according to the suggested criteria) they will be first and foremost systematically discovered. In general we should try to figure out and balance the assets and liabilities. With respect to the effects of institutions, which are results of participatory engineering, we have additionally to assess the cui-bono-question.

Last but not least the democratizing effects of institutional reforms might vary according to the ‘context’, like the overall political system, the societal conditions, etc. in which they are embedded (see Abromeit 2004). That’s the point, where appropriate diagnoses about the democratic deficit fit in. If we would have a perfectly democratic political system, democratizing

\(^{18}\) The problem here is, if completely absence of performance with respect to certain criteria might be substituted by the performance with respect to other criteria. I tend to argue that such a substitution is possible within the different aspects of a democratic process, but very much restricted among the aspects.

\(^{19}\) In a comprehensive analysis of the political performance of political institutions other criteria are relevant as well and therefore should also be assessed. See e.g. Roller (2005). Here we are solely focussing on the specific democratic quality of such institutions.
strategies would simply be superfluous. As this is not the case, the democratizing effects of institutional reforms are depending on their curing effects.

3. Can Associational Involvement in the political decision making processes contribute to democratic performance in the EU?

The Commission and much of the literature cited in the introduction, is optimistic about significant democratic functions of civil society organizations and their involvement in EU legislature. This optimism is not ‘mirrored’ in democratic theory. In most general normative conceptions of democracy civil society associations don’t play the most important (Shapiro 2003; Weale 2007) or an entirely positive role (see e.g. Rousseau’s fear of faction).

To be sure, “associational autonomy” (Dahl) or “freedom of association” (Gutmann) is central for a democratic polity. But normally the direct democratic functions in the legislative field are restricted to political parties (see e.g. Weale 2007). And political bodies with legislative functions and central roles for civil society associations are valued for reasons beyond democracy, like efficiency (neo-corporatism, policy networks). There are only very few exemptions, trying to combine a normative conception of democracy (as developed above) with important democratic functions of civil society organisations in legislative processes. Three approaches are briefly discussed here.

Jürgen Habermas (1996: cp. VIII) reserved an agenda setting and deliberative function to a certain kind of ‘non-vested’ voluntary civil society organisations with respect only to certain kinds of problems and conflicts which are transported and discussed mainly in the public sphere. Habermas’ bottom-up approach to voluntary associations has some difficulties: First, it is not clear, how the inclusion of all relevant associations and their positions can be guaranteed on a ‘free market’ of public communication. Second, the Habermasian model is ‘public sphere’-centred. But precisely the kind of general public sphere, which is widely receipted by the citizenry and thus carries much of the democratic expectations, is not available at EU level for the time being. Third and contrary to Habermas’ expectations is has been shown, that non-vested

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20 Since Tocqueville, authors found many - more indirect - contributions of associations to democracy, namely the democracy fostering formative effects of associational life: effects of active membership in associations on (other) political activities, effects on political skills and virtues. For the purpose of this paper, we can leave this aside.
voluntary associations are on average less deliberative, less reciprocity-oriented in public communications than other political actors (Gerhards/Neidhardt/Rucht 1998). Fourth, Habermas’ model rests on a rather sharp distinction between a power-centred mode of operation within ordinary politics, and a deliberation-centred mode within and among non-vested associations. This is at least not as plausible for the EU as it might be for certain national political systems (Neyer 2006).

Cohen/Rogers (1995) can be read as going a step further favouring complete decision making processes by representative associations, where inequalities among associations are constructively equalized or neutralized by state action, and decisions are derived directly within associational deliberations. This conception does not suffer from the problems of the Habermasian model, but others: First, are even best representative associational deliberations an appropriate way to discover or invent the ‘will of the people’ even for a representative political system? Civil society organisations represent (compared to political parties) a narrow range of rather special positions. Together the full range of civil society organisations can bring up many important issues, arguments and perspectives, contribute to deliberative uptake. If decision making would be about simple isolated political issues, these kinds of deliberations might be perfectly representative. But in almost every political decision many (kinds of) merged questions are at hand, and it is quite unsure, if even the sum of these narrow views, operating in a deliberative mode, end up with democratic solutions. Only if citizens additionally choose themselves on how to precisely merge different kinds of positions over a variety of issues, then we can expect to have democratic representation. This kind of overall representation might be derived from elections and party systems but not from systems of associational democracy. If this argument is valid, then associational involvement can contribute to democracy at the stage of agenda setting and deliberation, but not at the decisive stage.

Second, even if we would neglect the first criticism, it is rather difficult to see how the Cohen/Rogers model might be institutionalized. There are two main options to finalize negotiations – by unanimity or by some kind of majority rule. As in the associational model is no numerical representation, but at best a representation of different positions or perspectives, a numerical approach of equality does not make sense. And the more inclusive such processes are (the more associations participate) the more improbable is unanimity.
Third, Cohen and Rogers have been criticised for a ‘constructive overload’. It is the ‘state’ who has to finance, organize and frame the associational proceedings. Despite the question of motivation to foster associational democracy and thereby dis-empowering state actors, it is unclear, if it is possible to finance the right associations over a long period of time (Offe 1998).

Thomas Christiano (1996) put forward a dualist approach to connect representative political systems to the demos. Broad preferences and beliefs are intermediated by a functioning pluralist party system, and more special interests and beliefs should be introduced via civil society associations (in a broader sense) into political decision making processes. As in Habermas’ conception to role of civil society organisations is not extended to the decisive stage, but the emphasis is put on a deliberative function before. Associative inclusion can contribute to deliberative processes by introducing new issues and perspectives, positions and arguments and devaluating existing ones.

In Christiano’s model associative inclusion have a complementary democratic function, to broaden the perspectives, information and arguments at the deliberative stage. But the main load remains for elections and the party system, where the democratic control of the agenda as well as the accountability of decision making processes have to be ensured. So we can call Christiano’s conception of associational involvement a restrictive one. In the next section, we turn to the question if the EU’s supply of participatory options for civil society organisations meets the normative democratic expectations?

But here we first have to turn to a problem with Christiano’s dualist approach if applied to the EU. It has been argued forcefully, that European elections and the European party system due to their nationally segmented institutionalization and its second-order ‘character’ do not perform adequately. And this, so it is argued, would make democracy at EU level impossible.²¹ It is this conclusion which should be challenged in the following way: Even if there is a democratic malfunction of European elections, it remains an open question, if and to what degree these functions can be filled by other political institutions. And if not by one institution alone, maybe (in a kind of division of labour) several institutions together might substitute for the malfunctioning party system. So the question is: Can there be a democratic control of the political agenda, democratically based deliberation and decision making without (or with a poor performance of) political parties? As far as I see, is there no reason to expect that this is

²¹ See Weale (2007: cp. 10) for a precise argumentation.
impossible. Then it remains an empirical question to what degree we actually have democracy in the EU and if civil society organisations can have significant functions in an expanded conception.

How might such an expanded version of associative involvement, what we might call ‘associative democracy’ look like? Associative democracy differs from the broader concept of democratic participation since not citizens as individuals are participating in the political process, but delegates of civil society organisations. With respect to the democratic question it is most important to be aware of the different intermediary roles which are connected to civil society organisations (Greven 2007). From a normative perspective, the demos (citizens or affected persons) is the only unit of reference, and not associations. If civil society organizations are supposed to have a central function within democratic decision making, we need to make a two-dimensional analysis. One dimension has to focus on the political interaction between the centre of the political system and the civil society organizations and the other dimension on the interaction between the demos (however defined) and the civil society organizations. Quite evidently, in most empirical works the second dimension is at best under-investigated and also underdeveloped theoretically.

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

Democratization might also work the other way round, if a more egalitarian chain of input or ‘bottom-up’ mechanism was strengthened by intermediary associations. If associations have many members or a wide constituency to whom they are responsive, and if these associations work in very different ‘local’ contexts, then their representatives might represent hidden, but relevant information as well as different perspectives (Williams 1998; Young 2000). So they

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22 Switzerland is such a case. Due to the inclusion of all relevant parties within government, the competitive character of regular elections are undermined and low voter turnout is the consequence. But the relative insignificance of Swiss elections is balanced by the wide use of instruments of direct democracy, where political parties don’t play an outstanding role.

23 For an interesting theoretical approach reflecting on this double-step, see Nanz/Steffek (2006) and, of course, Habermas (1996: cp. VIII).
might bring expertise and claims and a diversity of views into the decision making process. As a consequence, the knowledge base (about relevant political preferences, claims and possible solutions) for political decisions can be extended and this is a pre-condition for egalitarian deliberations and decisions (see Fung 2003: 523ff.).

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

So with respect to the expanded view of associative democracy, we also have to investigate the whole range of criteria developed in section 2. Before we enter the debate to what degree the institutional design of the EU is fit for the restrictive and expanded conceptions of civil society involvement, we should try to clarify which kinds of associations and systems of associational involvement might have such democratizing functions.

So which kinds of associations might foster the restrictive and expanded view? Drawing on few important differentiations Mark Warren (2001) has distinguished more than hundred types of associations and some authors have argued that only some of them are favourable for democracy: This might be internally democratic ones (Cohen/Rogers 1995), encompassing membership organizations (Cohen/Rogers 1995; Skocpol 2004) or non-vested (Habermas 1996: cp. VIII) associations. But in the restrictive conception the participation of civil society organisations are limited to contribute to deliberative processes. And the general normative rule is: The more inclusive, the better.

But if civil society associations (together with the Commission and the weaker EU version of elections and parliament) should ‘stand for’ democratic quality themselves, then their internal

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24 There is a long literature on organisational self-interests, the possible democratic malfunctions of group pluralism and neo-corporatism.
25 To be sure, for deliberative theorists it is very difficult to specify the desired impact. Nanz and Steffek (2005) have argued for ‘responsiveness’. But as the search is for reasonable or generalizable decisions, we either have to assume that all claims from civil society organizations are of such a kind (what is implausible) or we have to qualify the desired responsiveness (see above, part 1).
26 Warren (2001) also presents a long differentiated theoretical assessment of the expectable democratic effects of different kinds of associations.
27 Of course there can be a trade-off between democratic inclusion and the amount of ‘transaction costs’. But there is no general reason to expect e.g. internally democratic associations to put forward better arguments.
democratic quality, their membership base and internal political communication, their contributions to and reception of public communication have to be reflected.

In both cases it seems prima facie plausible to assume, that the sum of many more fragmented associations are better prepared to fill a democratic function then few rather concentrated peak organisations.\(^{28}\) We should expect a wider range of perspectives and positions and thus a more inclusive input to deliberative processes. But most associative democrats expect few, but encompassing organizations with wide and active membership to be superior due to the superior quality of internal deliberation\(^{29}\), as well as due to the fact that with increasing numbers of participating associations, the likelihood of any kind of agreement declines. Empirically we can find in the EU both types of participation patterns in different consultative instruments and hybrids as well (see Fazi/Smith 2006; Quittkat/Finke 2008).

Specific participation patterns are just one element of systems of associational involvement, a precise classification with respect to the three aspects of the democratic process and a specification of relation between civil society organisations and governmental or other actors are important elements, too. With respect to the democratic process, we have distinguished a restrictive and an expanded version. The Commission’s expectations can not be unequivocally related to one of these versions.

Anyway, in both cases there are roughly three options for the relationship between government and civil society organisations: the governmental actors may frame and supervise civil society input, they may act as equal partners, or governmental actors might be substituted by non-state actors. At least with respect to the legislative dimension of civil society involvement it is clearly the first kind of relationship (‘subordination’ of civil society associations), which is aspired by the Commission.

\(^{28}\) Such a distinction between more fragmented and more concentrated patterns of associational involvement in political systems is a standard distinction in comparative research (see e.g. Lijphart 1999: cp. 9; Abromeit/Stoiber 2006: cp. 4). Note that this expression does not exclude any expectable trade-offs, as with respect to decision efficiency, economic performance etc. and that this is just a hypothesis, which can be tested empirically (but this would be rather laborious).

\(^{29}\) Encompassing associations have – on average - a more heterogeneous membership and thus have to accommodate a wider range of perspectives and positions in their internal deliberations.
4. Lessons for the Commission’s Consultation Policy

It is not the aim of this final section, to present prescriptive statements about what system of associational involvement would be appropriate for the EU for normative reasons, but to ask if the Commission has approximately realized her own vision - or at least made progress. Here the focus is solely on the relations between Commission and civil society organisations, and on the Commission’s supply of participative options.\(^{30}\)

In section 1 + 2, the normative yardstick has been developed: The EU would be more democratic, the more political equality/reciprocity, publicity and accountability are effective in general, and in its legislative processes in particular. In section 3 two versions of possible democratic functions of civil society organisations within legislative processes have been separated, a restrictive version drawing on Thomas Christia no’s dualist approach, where civil society organisations have mainly functions in the processes of opinion and will formation, but neither with respect to the control of the political agenda, nor to the final decision making. When democratic impact is expected with respect to all three aspects, then an expanded conception is defended.

I first turn to the restrictive conception, or to be more precise to the criteria D, E, and F in table 1. Then the question is: Are the formal rules of the Commission’s supply of civil society involvement appropriate to foster democratic quality, i.e. political equality, publicity and accountability in the processes of deliberation and opinion formation? With respect to all three principles significant improvements have been made in the last decade due to the reforms conducted in the light of the White paper’s vision: there are more instruments to involve civil society organisations, enabling broader inclusion of different kinds of associations and perspectives. Documents and legal processes are in general more transparent, and with the impact assessment at least a mechanism for symbolic accountability has been developed.

\(^{30}\) A wider perspective is of course desirable, as especially the EP, national governments and the ECJ might have important functions, which have to be integrated into a comprehensive picture. Also the demand for and actual participation of civil society organisations in the legislative processes, but also their internal processes and relations to the public sphere should be part of a broader picture (see above, section 2; also Abromeit/Stoiber 2006: 247). But both are in no way a disqualification for the more restrictive focus taken here. Even if not sufficient, the supply of effective participatory options is a necessary condition for effective democratization.
It is always up to the Commission to decide, who is consulted, and this opens up the path to arbitrary and imprudent selections (just to mention the missing consultation with respect to services directive). According to the Commission’s view, even entirely open consultation instruments should leave room for secret contributions. Of course, everybody has the right to deliberate privately, and some deliberations should be kept confidential for pragmatic reasons, but it is difficult to see, what the democratic or epistemic use value of secret contributions to public consultations might be. A problem comes up, when the Commission has to respond to the contribution in the impact assessment process. How should the Commission publicly respond to confidential contributions within consultations? As there are no clear instructions how to respond to any of contributions, this might the smaller part of the problem to ensure (at least) symbolic accountability.

Of course, these consultative instruments can be improved, and they will be improved in the nearer future – as we should expect from the review processes of the transparency guideline or the impact assessments. But, as we have seen above, in the restrictive conception the main burdens for democracy have to be carried by the framework for such kinds of deliberative involvements. There we have to face at least two problems: First, how should two kinds of not entirely democratic institutions (administrative and civil society organisations) sum up to a democratic one? Second, at least a part of the answer might be, to point at a kind of neutral or at least democracy enhancing task or ideology practiced by the Commission. But this motivation might be undermined by some of the other competences and motivations, which we might attribute to the Commission (e.g. as ‘guardian of the treaties’). There is almost no division of labour to safeguard the democratic quality from possible interferences by other motivations and aims. It is the Commission, who asks the question, who pays for many of the contributors, who counts and evaluates the contributions, and finally decides which of the contributions are taken into consideration and which not.

Besides the more general scepticism, that there are or even can be single actors to execute such an altruistic or at least neutral policy to promote democracy, there is strong evidence that the Commission is not such an actor in particular - and can not be it.31

To be sure, the restrictive conception of civil society involvement can at best lead to particularistic democratization. How much of this particularistic democratization has been

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31 It would be part of a democratic debate to be open for criticism of relevant parts of the political framework. And ‘the treaties’ are part of what should be open to criticism. And if the Commission is responsible for both, to organize the discussions as well as to guard the treaties, then we should expect a clash of interests.
induced by the reforms is to a large extent an empirical question, which also depends on the societal will to participate as citizens and via associations. The answer is beyond the scope of this paper.

It is an expanded version which might - at least theoretically - solve the democratic problem. But here, there are even no observable attempts – with respect to the supply side - to democratize the control of the agenda or to introduce material accountability mechanisms via civil society involvement. But it is the ‘demand side’ which will constrain such a project for an indefinite time. The ideal of associative democracy is dependent on the existence of encompassing associations with broad and active multiple memberships. There is not a single association of this kind existing at EU level. Therefore, a more or less autonomous associative democracy at EU level is not a plausible ideal.

If civil society organizations can contribute to an expanded view of democratization in the subordinated version (framed by EU institutions), depends inter alia on the quality of their internal processes of opinion and will formation, on effective internal accountability mechanisms, on their activities in national public spheres. And these are of course empirical questions with open answers as well.

Even if the tone might seem to some readers already sceptical, this has been only the positive side of the story. By making European political processes more transparent, publishing work programme, documents etc., informal activities of associations (some of them are normally called lobbying, manipulation, or corruption) gain new options for activities. If this leads to more influence is an open empirical question. But this kind of influence is not to the benefit of democracy. So it is the net effect of both expectable developments induced by the reform of the consultation regime, which has to be identified to give a realistic assessment of its democratic improvements.

**Literature**


Gutmann, Amy; Thompson, Dennis (1996): Democracy and Disagreement. Cambridge, MA


