THE ORGANISATION OF INTERESTS AND DEMOCRACY IN THE EUROPEAN UNION

BEATE KOHLER-KOCH

Introduction

In recent years, a new discourse has been introduced to the academic and political debate on European interest intermediation attracting much attention in the media and scholarly debate. The focus is not any longer on the influence of interests groups on public policy making but on the democratic potential of closer public-private cooperation. Though the trendy catchwords are civil society and participatory democracy, the debate did not originate in a bottom-up process but was initiated by those in power and has the clear characteristics of an ‘engineered’ discourse: As a response to the slim victories in some referenda which were held in the aftermath of the Maastricht-Treaty negotiations and the decreasing popular support of the European integration project indicated by the Eurobarometer surveys since the early 1990s, the Heads of State and Governments called for “a Union closer to the citizens”\(^2\). The Commission on its part provided an important impetus by framing the debate with the publication of the White Paper on “European Governance” (Commission 2001a). It is propagating a wider involvement of civil society for the sake of efficient and democratic governance. The Commission already adhered to that principle when preparing and launching the White Paper: In the preparatory phase it engaged in extensive consultations with representatives of organised interests and the academic community, it organised and stimulated a broad public debate after publication and since then provides incentives for more thorough investigations on the
conditions for and linkages between European citizenship, civil society and EU democracy (Kohler-Koch 2003: 433-437).

More importantly, however, the publication of the White Paper was followed by concrete measures with which the Commission aimed to provide a new foundation for the cooperation with organised interests, referred to by the White Paper as “civil society” (Commission 2001a: 14). The term carries different connotations in EU documents. Sometimes it is used to express the idea of active citizenship and the notion of ‘organised civil society’ refers to associations working to the benefit of the general interests. When the term is defined explicitly, a broader concept applies and civil society is considered to embrace voluntary associations of all kinds and not just public interest groups. In the “follow-up process” to the White Paper, the Commission issued guidelines and standards for the consultation of and the cooperation with organised interests (Commission 2002a) and extended related instruments such as online consultations, open online discussions and an online forum for ‘interactive policy formation’.

With the Economic and Social Committee (ESC) the Commission has found an enthusiastic partner in this regard. In the middle of the nineteen-nineties (Art. 193 ECT-Amsterdam) the ESC was still clearly seen as a representative of economic and social interests advising the law making institutions on common market policies. In the course of the new debate on civil society it changed its role ascription to become the ‘indispensable intermediary between the EU institutions and organised civil society’. This aspiration is backed up by the treaty revision of Nice (Art. 257 ECT-Nice) and the Constitutional Treaty rephrasing its composition to include ‘parties representative of civil society’ (CT Art. I-32). The aspired role change from a consultative body of functional interest representation to “a bridge between Europe
and organised civil society" will not be achieved without any frictions given the accented role of employers’ organisations and trade unions within the tripartite structure of the ESC. Both groups are reluctant to give up their privileged position and have raised concerns that the political weight of the ‘social dialog’ might suffer from an enhancement of the ‘civil dialog’.

Nevertheless, the ESC has successfully launched different kinds of initiatives to close the gap between demands and constitutional reality. It has pressed ahead with the opening-up to a broader and mainly EU-level audience by organising public fora which serve both as platforms and contact points for advocacy networks. Those are predominantly used by representatives of “common interest” groups committed to the principles of participatory democracy and for whom the ESC – resourceful and well established – is an instrument to enhance their role and status. Since the ESC has no command over its own composition and members only represent national associations, it further aimed to institutionalise closer cooperation with EU level organisations and networks by creating a ‘liaison group with organised civil society’ (ESC 2004a).

Finally, the idea of direct and close cooperation between EU institutions and European civil society has been reinforced by the adoption of the principle of participatory democracy in the Treaty establishing a Constitution for Europe. The provisions of Article I-47 carry explicit marks of the new understanding of democratic governance propagating the increasing prominence of unmediated channels for citizen participation. The article stipulates EU support for citizens and representative associations to make known and publicly exchange their views and calls upon the EU institutions to maintain an open, transparent and regular dialogue and carry out broad consultations with parties concerned.
The notion of ‘participatory democracy’ is by now widely accepted in the debates about the role of organised interests in European affairs. By taking a closer look at such debates it is evident, however, that the term is used as label for competing concepts and objectives (Kohler-Koch 2004). From an analytical point of view the involvement of societal groups in the decision-making process at the European level aims likewise at

- expanding the knowledge base to increase the quality of EU policies,
- making public administration accountable to society as a whole,
- an all-embracing mobilisation of political interests and enhancement of direct participation of citizens,
- creating a trans-national democratic public sphere.\(^\text{12}\)

The conceptual ambivalence of ‘participatory democracy’ and ‘civil society’ does not come by chance. Ambivalence is useful since it is open to divergent interpretations and it is inevitable since it reflects an ongoing and dynamic process of conceptual framing. The idea to take rescue to organised interests in order to fight the EU’s democratic deficit gained momentum in a few years time. Along with a shift in substantive orientation went a shift in terminology. The debate started with reflections on improving governance performance by enlarging the expert basis of EU institutions with the help of interest groups, then turned from output to input legitimacy by emphasizing open access, transparency and responsiveness, and finally concluded with the codification of ‘participatory democracy’ as constitutional principle. The thematic reorientation was accompanied by a change in terminology: The ‘dialogue’ with ‘special interest groups’\(^\text{13}\) was rephrased to ‘partnership’ with ‘NGOs’\(^\text{14}\) and followed by the slogan of ‘involving civil society’\(^\text{15}\).
In the ensuing sections, it will be asked whether the new strategies of ‘involving civil society’ have a democratic potential. ‘Democratic potential’ stands for an improvement in the conditions of governing in a way that the basic criteria of democratic governance are met as they have been formulated by normative theories of democracy. Seeing that there is no theoretical consensus on conditions and criteria, I will take the different perspectives offered by liberal, deliberative, and participatory theories of democracy.

First, in line with liberal theory, I will first explore whether the politics of open dialogue and the new consultation strategies are likely to help redress the unequal representation of interests. When democracy is equated with a market place that is governed by a regime of fair competition, any provision that improves the representation of the plurality of interests, provides equal access and furthers representativity will bring a value added.

Secondly, I will turn to deliberative democracy. Proponents of deliberative democracy are more demanding than proponents of liberal theory: Since ‘deliberative democrats’ want to go beyond the aggregation and trading of given preferences, they ask for institutions that support a discursive structure of opinion formation. The benchmark to be met is not the plurality of actors but the range of competing views that get a fair treatment. A promising consultation regime has to operate in the shadow of the law and in the shadow of the future. Private, informal meetings with EU institutions, one shot interventions and one way communications will not induce actors to take account of the legitimate interests of others and to communicate about the validity of ‘good reasons’.

Thirdly, an equally demanding concept of democracy values participation as an essential part of democratic life. Associations are valued not just because they are
instrumental to the well functioning of democratic rule but because political participation marks an essential condition in the making of an emancipated citizen. Procedures and regulations that work against political consumerism, that activate citizens and provide incentives to reach out from the grass-root to the EU level would be rated positively.

Lastly, I will discuss the emergence of a European, trans-national public sphere which is considered to be a necessary condition in different strands of democratic theory. European-wide awareness of what is at stake in EU affairs is a minimum condition even in the parsimonious concept of liberal democracy. It is a prerequisite for turning voting power into an instrument of political control. Information is, however, not sufficient to make democracy work. All theoretical concepts ask for a well functioning system of trans-national communication. Any improvement in the patterns of communication that reach beyond elite circles and contribute to the emergence of a European public sphere will be considered a democratic asset.

Assessing liberal democracy: the politics of the Open Dialogue

The cooperation with interest groups is seen as an important ingredient in redressing the democratic deficit. In contrast to former proposals which highlighted the contribution of information exchanges with organised interest groups for the quality of European policies (Commission 1992), the White Paper on European Governance provides a new impetus by stressing the Commission’s commitment to the ‘involvement of civil society’ (Commission 2001: 14). This new conception aims at giving greater consideration to representatives of general interests and at the inclusion of the individual citizen into the process of consultation. This envisaged
expansion of societal participation promises to yield a double legitimacy-gain: the consideration of a broad range of preferences and information confers legitimacy both from a procedural and an output-oriented perspective.

Hitherto, there has been a wide variety of practices of consultation among the various Commission Directorates, ranging from ad hoc consultations to institutionalised consultations in committees. Since the 1990s, however, the Commission has increased its efforts to expand and institutionalise the inclusion of organised interests of civil society. Democratic participation shall be attained by following the guiding principles of openness, transparency and inclusiveness. The debates preceding the adoption of the White Paper and the implementation of the principle of ‘participatory democracy’ have demonstrated, however, that the new strategy has an Achilles heel (Commission 2002c, ESC 2004b) and it did not meet the unanimous support of interest organisations on several grounds. Objections were raised against the redefinition of ‘civil society’ and the commitment to a more formal institutionalisation of relations. Whereas the professional lobbyists welcomed the broad definition that put them on an equal footing as ‘legitimate representatives of civil society’ with general interest groups, the latter qualified it as an ‘usurpation’ that must be prevented (Michel 2005: 8). At the heart of this controversy are different concepts of legitimacy but also competing interests because a change in terminology affects the political standing of an organisation and as a consequence its relative weight in the decision making process. The same holds true for the institutionalisation of EU-society relations. Organisations with well established working relations to EU institutions are not enthusiastic to see their competitors advanced and, therefore, bring up shortcomings such as the lack of flexibility which might exclude newcomers and stake holder interests on special issues. From the viewpoint of liberal democratic
theory institutionalisation may cut both ways: It enhances transparency and has the potential to provide for more equality, yet it undermines the competition between organisations in the political market and conserves the gate-keeping power of a not democratically legitimized authority like the Commission. To limit the discretion of EU institutions a definition of specific criteria have been proposed to guarantee equal opportunities for access and to ensure the ‘representativeness’ of the included organisations. The question of how to assess the representativeness of those organisations included in the process of consultation and opinion-formation has proven to be a particularly contentious issue. Irrespective of the consensus that both quantitative indicators (membership, activities, age) and qualitative indicators (autonomy, internal democratic procedures, expertise) shall be borne in mind, it is considered a difficult task to do justice to them all, given the plurality of organisations.\textsuperscript{16} A more comprehensive formalisation of criteria, however, is against the interests of organisations that reject interference in their internal affairs.

By introducing the instrument of online consultations, the Commission aims to take equally into account the principles of openness, transparency and inclusion: every proposal that is to be decided upon is made public, every citizen and every organisation is invited to comment, every petition can be read online, and the Commission reports about the results at the end of the process. However, practice has shown a number of fundamental tradeoffs and procedural shortcomings (Kohler Koch 2003): openness does not correct for the inequality in interest representation. The responses to the consultation-guidelines provide a case in point. Here, state actors and economic actors tend to be over-represented while the advocates of more diffuse interests are under-represented. This imbalance is, on the one hand, a reflection of the different resource endowments of different groups, and, on the other hand, it also
reflects differences in political cultures which is indicated by the geographical bias towards the Nordic countries (Commission 2002b: Annex). *Inclusion*, i.e. the invitation to all affected actors to express their concerns, will necessarily lead to an information overload that forces the Commission to select among the inputs.\(^{17}\) Moreover, online consultations on controversial regulative measures are likely to produce vast input of varying quality.\(^{18}\) One strategy to avoid this problem in the future would be the use of those devices, such as a questionnaire, that pre-structure responses by providing substantive guidelines and formal procedures. However, as the example of the regulation of chemicals has demonstrated, despite great efforts to preserve political neutrality, pre-formulated response items are likely to restrict choices one-sidedly.\(^{19}\) No matter how successful the Commission is in ensuring *transparency* in the preparation and handling of consultations, there is no guarantee that transparency can be preserved in the course of their evaluation. This could only be achieved if the European Court of Justice were to develop guidelines for the justification of regulatory proposals that are as strict as those formulated by American administrative courts. However, this would come at the price of a further judicialization of European politics.

### Assessing deliberative democracy: opening supranational deliberation for general interests?

Fair representation of interests and of opinions is not sufficient alone to allow us to draw conclusions about the possible gain for democracy. John Stuart Mill has already stressed that among the crucial facets of a representative system is not only the election and control of representatives, but also the institutionalisation of deliberation: Policy positions should be heard, weighted, and rejected only in the face
of superior, reasonable arguments (Mill 1972: 239-240). Research on deliberative democracy (Cohen 1989, Habermas 2004, Schmalz-Bruns 1995) has advanced the debate about EU democracy, since the transfer of state-centred model of majoritarian decision-making does not look promising, given the structural specificities of the EU (Cohen and Sabel 1997, Eriksen and Fossum 2000, Eriksen et al. 2003). However, it is not implied here that a deliberative democratic upgrading of the EU polity will have to move governance to ‘decentralised processes of decision-making in deliberative arenas’ (Schmalz-Bruns 1999: 189). The purpose of this analysis is rather to examine whether new procedures of consultation will provide an impulse for deliberative processes and forms of decision-making at EU level that counterbalance the inter-state bargaining processes and self-interested representation of particular interests.

Such a counterbalance is not seen as including ever more ‘interests’ or giving pre-eminence to representatives of general interests, but as a choice for procedures that require reason-giving for positions and their justification in respect to the solution of the problems at stake (Joerges 1999: 334). For authors who perceive of deliberation as a convincing response to the ‘objections against the legitimacy of the European project’ it is the institutional and normative framework that makes the difference and not the constellation of actors. The theorem of ‘Deliberative Supranationalism’ highlights the contribution of European law for ‘transforming strategic action into deliberative problem-solving’ (Joerges and Neyer 1997). Within European law rules and principles structure the decision-making processes to the effect that they ‘…narrow down the range of arguments that are admissible within debate so that only generally reproducible and justifiable grounds or concerns…can be used...’ (Joerges and Everson 2000: 182). Furthermore, these rules and principles ‘promote pluralist discourse and the presentation of all relevant viewpoints’ and force participants ‘to
generalize their arguments … with an eye to the legitimate … concerns and interests of those who do not directly participate within the committee system’. (Ibid) The authors mention and have tested a range of indicators to make their assumption plausible with respect to the comitology system. But will it also function in institutionalised relations between EU institutions and organised civil society? The general principles of European law and the rules and practise defining appropriate behaviour in EU negotiations quite obviously spill over into arenas of consultation. But other institutional conditions limit deliberative interaction. Consultations, by nature, are open-ended and because the final decision will be taken in another arena, participants are not under pressure to arrive at a common understanding. The Commission can not afford to leave the consultation process with tight hands and associations will not compromise on an issue when other channels of interest representation are still open and look more promising. Furthermore, participants do not communicate on equal footing because of the asymmetric power relation between the Commission and the representatives of non-governmental associations in terms of controlling the agenda and making use of consultation input. To make deliberation work, consultations have to deal with substance and have to be organised in an iterative process.

Therefore, it is not so much due to inappropriate institutional design of the respective body that most of the newly created forums for consultation do not live up to the expectations of the participants. For example, members of the European Consumer Consultative Group (ECCG) deplore that it is just a medium for information of a very general nature. The European Consultative Forum on the Environment and Sustainable Development (ECFESD) is another case in point. Even though its structures meet the demands for equal geographical and political
representation, openness and transparency, it neither lived up to the standard of
deliberation nor did it bring about increased participation of interested actors. The
ECFESD was barely consulted by the Commission and, during its four-year existence,
only on two occasions was it able to reach out to the larger public
(Finke/Jung/Kohler-Koch 2003). The shadowy existence of the ECFESD and its
insufficient linkages to societal actors at the grass roots raise doubts whether such a
forum can meet the expectations of deliberative politics. According to Habermas
‘Deliberative politics acquires its legitimating force from the discursive structure of
an opinion- and will- formation that can fulfil its socially integrative function only
because citizens expect its results to have a reasonable quality’ (Habermas 2004: 304,
emphasis in the original).

The introduction of procedures for assessing the consequences of proposed
legislation is another starting point for procedural rationality (Vibert 2004). It is
intended that these procedures lead to a process of decision-making that is as
transparent and rational as possible and, at the same time, identifies affected actors
that could be approached for specific consultation (Commission 2002a). Moreover,
the creation of specific online services maintained by the respective Commission
Directorates providing interested actors with regularly updated data and developments
within a policy area is thought to ensure the provision of high-quality information.
There is thus an aspiration that in the future, the justification of European policies will
not exclusively rest on the knowledge of professional experts but also on ‘reasonable’
arguments that can be introduced by representatives of general interests. The objective
is that participation and efficiency should reinforce each other. Providing easy access
to knowledge is, however, just a necessary and not sufficient precondition for a
discursive debate that is open to all relevant positions.
Assessing participatory democracy: the contribution of organised interests to participation and citizenship

The institutionalisation of EU citizenship in the Maastricht Treaty and the adoption of the Charter of Fundamental Rights as well as its inclusion in the Constitutional Treaty is an expression of the qualitative change of the European system of governance and concomitant political demands: Whereas the notion of the ‘market citizen’ was sufficient for the European Economic Community, the creation of a European Union added political rights to existing economic rights. However, the rights to political participation have remained rather rudimentary until today, a fact to which many observers attribute a major share of the EU’s democratic deficit (Shaw 2000: 382). In the light of the historical and theoretical link between citizen rights and the demand for political participation, the political debate about ‘citizenship’ – which was triggered to a large extent by European institutions –nurtures the hope that their adoption will actually lead to more political participation in the EU. This assumption implies that particularly those non-governmental organisations that act as advocates for general interests in the EU will become the catalysts for enhanced participatory politics. In the tradition of Tocqueville participation is valued not just as an instrument to give people voice but as the ingredient of true democratic life: When citizens associate freely and are ‘pursuing in common the object of their common desires’ Tocqueville 1963: 199), they gain the spirit, the experience, and skills that elevates them to critical and active political citizens.

In this vein, some observers see the increase of trans-national activities of such groups in recent years as evidence for a gradual democratisation from below. However, empirical studies analysing the role of EU-associations in the tradition of
Alexis de Tocqueville (e.g. Warleigh 2003) conclude that these organisations are only insufficient ‘schools of democracy’ in the European multi-level system.

Even though it is true that the public relation efforts of these groups and their advocacy for specific political goals create public attention, yet, a considerable number of organisations are not enthusiastic about rendering their own political activities more transparent. Many associations rather aim at improving general support from a large constituency because it promises to yield greater political weight and higher revenues. Another obstacle to include members and supporters in a substantive inner-organisational debate is the lack of knowledge of EU affairs even among politically interested supporters. Thus, within several organisations a lack of incentives, scarce resources and deficient grass-root response are accumulated: The agenda is set by activists of the association and systematic mechanisms for exchange with supporters are almost non-existent (Warleigh 2003: 29).

Warleigh (2003: 31) hence concludes that even organisations that are committed to represent general interests do neither contribute to the development of a trans-national civil society nor do they act as socialising entities or ensure the participation of its supporters in any other significant way. This assessment is supported by investigations of groups active in European migration and asylum policies respectively (Guiraudon 2001: 165, Trenz 2002: 141). Weak political mobilisation is a general phenomenon also in well established liberal democracies. But the complexity of the European multi-level polity and the well-known obstacles to trans-national communication and coalition building aggravate oligarchic predispositions. The empirical studies also point out that the criteria for participation in EU programs discriminate against ‘grass-root’ organisations: Such groups are usually not able to fulfil the requirement of designing and implementing projects
involving trans-national cooperation (Guiraudon 2001: 173). EU level associations explicitly reject funding criteria demanding the involvement of a high number of national associations because this would prohibit smaller organisations to get access to funds (Commission 2005: 4). Though the explicit objective is to further trans-national cooperation, EU policies may in practice create additional obstacles and, furthermore, lead to different resource endowments in civil society.

However, other studies are less sceptical. The European Women’s Lobby (EWL), for example, has intensified the relations to its national member organisations and improved both mutual communication and trans-national cooperation. In particular, the campaign for the inclusion of rules of equality into the Amsterdam Treaty triggered a learning process about the European institutions among their national members. The national associations not only participated in the EWL-decision process and helped mobilise female supporters in public rallies for a change of the European Treaties (Helfferich and Kolb 2001: 154-157), but they also increased their autonomy from state institutions.

Three conditions for successful member participation can be derived from existing case studies: Vertical communication and cooperation within the multi-level structure of interest group associations will be stronger: (1) when the Euro group is dependent on its members’ expertise, (2) when successful interest representation demands coordinated action at both the member state and at the European level, and (3) when the choice of instruments includes the simultaneous use of an insider and an outsider strategy. As long as Euro associations can take recourse predominantly to independent sources of expertise and pursue their interest dominantly with insider strategies on the European level their linkages to their national members remain weak.
However, the restrictive supply of transmission belts for multi-level interaction is also a response to a lack of demand. Citizens who want to promote general interests such as the protection of the environment or consumer rights, human rights, rights of immigrants or gender equality look for someone to represent them rather than becoming personally engaged. They do not opt for converting into an activist and equally do not feel obliged to participate directly in decision-making and agenda setting. As a survey of European NGOs has revealed, the ‘supply’ of associations has already saturated the demand for political participation: ‘NGO supporters do not wish to use these organisations as a means of active citizenship. Instead, supporters wish to delegate responsibility to organisations whose broad aim they support even if they are ignorant of and might conceivable oppose, these organisations’ policy stances on a range of issues’ (Warleigh 2003: 30). Based on a comparative study of national environmental groups, Jochen Roose (2003) arrives at the same conclusion. He explains this phenomenon by pointing at diffuse objectives and the general trust evoked by members and supporters respectively (ibid. 155-156). There is also much plausibility in the interpretation that links the behaviour of European citizens with that of economic agents: Environmental groups offer themselves as experts for environmental policies with different profiles and of different quality and are ‘purchased’ for the services they provide. Consequently, the demand for political influence is satisfied and there is no need for further interaction.

Overall, the empirical evidence is sobering, yet it does not come as a surprise. Just like in the national realm, general interest groups are a minority at the European level and they are dependent upon the support by EU institutions. EU-associations have structural difficulties to act as ‘schools of democracy’. Their performance is low even when compared to ‘Latin Europe’ where associational life is much weaker than
in the ‘Germanic’ North-Western part of the continent (Therborn 1996:307) and even when sharing the sceptical view that also at the national level associations have a limited capacity to effectively fulfil this function (Offe 1995). The reason is obvious: The majority of these EU-associations are composed of national groups and not of EU citizens. When they are built on private membership or support they mostly act as political entrepreneurs in the market of public opinion. Their democratic effects are thus highly contingent. They depend on the particular relations to national associations and the structural conditions under which these operate.

Though they may not bring about the democracy enhancing effects that have been attributed to associations by de Tocqueville, they, nevertheless, can function as agenda-setters and provide a counter-balance to state and economic actors. By providing an intermediary infrastructure they support the articulation and bundling of societal interests and are also able to give their own impetus to the definition of these interests.

The mobilisation of a European public sphere

Finally, it has to be asked whether the activities of societal groups at the European level contribute gradually to the emergence of a European public sphere. All theories of democracy regard the existence of a public sphere as an integral part of democracy. However, the liberal tradition sees a more modest form of public as sufficient for democracy compared to protagonists of deliberative democracy who ask for an active civil society engaged in public discourse. In the liberal conception of civil society, the public is there to guarantee the weighing of self-interests and the effective control of politics; its main function is to legitimise the exercise of political power. In the democratic conception based on discourse theory, citizen communication strives
for a common understanding concerning efficient and appropriate problem-solving strategies and has a substantial impact on the decision making process of representative institutions (Habermas 2004: 296-302).

An impact of interest politics on the EU-level – the interaction of European institutions and societal groups – on the evolution of a European public sphere is most likely to happen when controversial issues are at stake and political responsibility is attributed to the European level.

In recent years, the EU institutions initiated several campaigns with the declared goal of creating awareness for specific issues throughout Europe. The European Year against Racism in 1997 serves as a case in point. Usually, such campaigns reach out for an affirmative public and offer an opportunity for the institutions to play to the gallery. However, given a shared view in substance and by providing financial incentives, the EU has been able repeatedly to co-opt a number of societal groups at the European, the national and sub-national level. Their participation not only broadened the range of opinions but also increased the public’s awareness of these campaigns. However, if one examines the impact of these campaigns by the amount of media attention they generate, one can quickly realise that the capacity of these campaigns to contribute to a European public sphere are limited. Coverage of national news is still dominating: Most attention is paid to national but not to European actors, activities at the local but not at the European level find their ways into the news, responsibility is attributed to local and national actors but not to the EU (Trenz 2002: 136). It can thus be concluded that these campaigns contribute only at the margin to the creation of a trans-national public.

The response of the public to such campaigns is more lasting when groups in opposition to EU intentions take up the issue and propagate alternative views. The
interplay of contrary arguments increases the demand for public justification (Eder and Trenz 2003: 119). The more plausible a debate can be framed as a competition between the *raison d’état* expressing a narrow self-interest of those in power on the one hand and the autochthonic interests of civil society on the other, the easier it is to create a critical public. These findings confirm the general observation that public awareness is often the product of deliberate action. However, only a few interest organisations, such as Transparency International or the European Citizen Action Service (ECAS), see the creation of a public sphere which promotes discursive debates and good governance as a goal in itself. Public relations activities normally aim at the mobilisation of societal support to achieve specific policy goals. This is true for farmers’ associations, trade unions, and business groups as it is true for the feminist movement campaigning for equal treatment in EU law. The question thus is whether the politicisation of single policy-issues that do not affect civil rights directly can set in motion a European public sphere. The hypothesis of ‘democratic functionalism’ assumes that a ‘pluralisation of the public’ will emerge as a consequence of such sector specific sub-publics (Eder et al. 1998: 325). The authors believe that political projects will continue to be accompanied by a critical debate sometimes on core issues, sometimes in response to unintended consequences or side-effects; they also believe that the EU institutions themselves will become increasingly aware of the necessity of public justification. According to their view, this will initiate a process of gradual democratisation. The argument that public relations activities are used as both a marketing strategy and a tool of power politics does not invalidate this conclusion (Eder and Trenz 2003: 131). Thus it is an empirical question whether issue specific controversies promote the emergence of a critical public. When citizens become progressively more receptive for political debate and open to take sides on
general issues beyond narrow stake holder interests our normative aspirations would be satisfied. Over the last decade, the discourse has become increasingly political and the focus is not just on specific EU policies, but also on the shape and structure of the EU polity and its policy-making procedures. Even though many debates are still restricted to a small circle of trans-nationally connected elite circles, the awareness of EU affairs and the readiness to publicly challenge EU policies has increased significantly. The referenda on the Constitutional Treaty and, in particular, the rejection of the ratification in France and the Netherlands has prompted a controversial and vivid debate across Europe. Yet, the political reality does not fully match the notions about a European public sphere derived from Republican thought or from discourse-theory.

To sum up, the role perception of organised interests at EU level has changed dramatically in recent years. The desire to redress the democratic deficit has nourished a debate that attributes organised interests the potential of a transmission belt conveying the plurality of interests to the EU institutions and bringing Europe closer to the people. Since the conceptual framing is ambiguous and vague it is not surprising that the change in rules and procedures governing EU-society relations do not live up to the proclaimed high principles. Furthermore, it is doubtful whether procedural reforms can overcome the institutional impediments of the EU polity and the national self-reference of European societies. Nevertheless, the normative claims and the more inclusive consultation strategies have given general interests a stronger voice and have strengthened the legitimacy of arguing over bargaining. Policy formulation and decision making at EU level has become more transparent and has attracted more public attention. Especially associations interested in the advance of European civil society are eager to exploit the concurrence of growing awareness and
normative claims in order to trigger a “virtuous circle”. Notwithstanding the good intentions of EU institutions and sympathetic associations, it is quite obvious that they pursue their own agenda. The Commission, in particular, takes a patronising attitude, is often overselling the democratic quality of its exchange with interest organisations and citizens, and is inclined to give preference to its ‘teaching function’. The response to the failed referenda in France and the Netherlands is telling: The Commission issued an ‘action plan to communicate Europe’. The wavering dedication to democratic legitimacy and the inclination to oversell achievements in ‘participatory democracy’ may very well result in undermining the credibility of the whole project.

All things considered, I come to a cautious conclusion: Taking account of the institutional interests of the main EU actors, the unfavourable features of the EU polity and the low level of societal integration, it is plausible to assume that institutional engineering will not have a strong effect. It might even not work to the benefit of democratic participation and a European public sphere because partly it is based on some glaring misperception of aims and instruments of democratic governance. On the other hand, the normative discourse and changed patterns of behaviour have had some positive results and this may build up over time not so much as the result of the intentional strategies but because of unintended consequences due to the dynamics of raising expectations as to what the EU should be about and opposition to what it delivers.
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2 See, for example, relevant publications (e.g. de Schutter/Lebessis/Paterson 2001), conference proceedings (e.g. Europe 2004 – Le Grand Débat, Commission 2001b) and the topics suggested for research in successive Research Framework Programmes.


4 In the White Paper on European Governance the Commission borrowed the description of different categories of civil society organisations arrived at by the Economic and Social Committee (1999: 30). The definition reflects a liberal concept of civil society that rates any voluntary association as good as any other. In this definition the Commission departs from a tradition that conceives of the importance of civil society in terms of promoting the common good and political participation of citizens. See Cohen/Arato (1992) for a comprehensive theoretical treatment of this issue. A more recent overview can be found in Klein (2001).

5 These forums can be accessed under <http://europa.eu.int/yourvoice>.


9 See the ESC-report of July 10, 2001, Economic and Social Committee and Organised Civil Society (CES 1009/2001 rev.).

10 See, for example, the conference on ‘Participatory Democracy: Current Situation and opportunities provided by the European Constitution’, Brussels, March 8 – 9, 2004. By organising the hearings of societal groups as part of the consultation process of the Constitutional Convention, the ESC substantiated its claim to be the ‘mouthpiece’ of organised civil society. See the ESC’s description on its homepage: <http://www.esc.eu.int> (last accessed June 2005).

11 The Constitutional Treaty refers explicitly to both ‘representative associations’ and ‘civil society’ (Art. 47, 2). The reason given is that employer and employee associations as well as the regional and territorial interest groups are different ‘in kind’ from civil society; see CONV 650/03, Art. 34 (12).

12 Art. 47 of the Constitutional Treaty also includes a paragraph on direct democracy which is not mentioned here because it does not relate to the other provisions.

13 See Communication on ‘An open and structured dialogue between the Commission and special interest groups’, OJ C 63, 05.03.1993.


16 In reaction to the Commission’s White Paper the ESC produced such a catalogue of criteria (ESC 2001).
The implementation of the Sixth Framework Programme provides an illustration of this point: the submission of more than 11,500 proposals outweighed the capacity of the Commission to assess all of them in a systematic and balanced way.

The online consultation with regard to the regulation of chemicals provides a case in point: there was a great variety of participants and the quality of the 6,400 responses ranged from substantively and legally sound comments and specific suggestions for improvement to short avowals of ethical concerns.

In the case of REACH, for example, the Commission prioritised the question of efficiency. It set the guideline that ‘in order to ensure the most effective processing of responses stakeholders are invited to concentrate on the efficiency of the mechanism and procedures’.


Interviews in early 2005.

This is particularly true for the elitist branch of liberal democratic theory. See Michael Greven (1998) for an enunciation of more extensive demands in this tradition.

‘Action Plan to Improve Communicating Europe by the Commission’