

Political Representation and Civil Society in the EU

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Introduction

Since modern times the idea of representation is closely connected to the organisation of representative democracy in a nation state. The EU is neither a state nor a nation and, consequently, it is a challenge to find the right analytical approach to the assigned topic. To make matters worse, there is no academic debate addressing *civil society and representation*, and both concepts are plagued with ambiguities. The concept of ‘civil society’ is notorious for its vague and even contradictory use (Jobert 2007)¹, and also ‘representation’ is “a many-faceted and elusive concept” (Sartori 1968: 465).² Therefore, I will start with elaborating a concept of representation that (a) can be applied to a non-state system, (b) is open to a normative assessment, and (c) provides some yardstick for measuring the normative quality of representation in the EU. However, even the most appropriate concept of representation does not answer the question how representation figures in the relation of civil society to the EU. I will argue that there is no straightforward answer because the interface between the EU system and civil society can be conceptualised in quite different ways depending, first, on the understanding of the nature of the EU and, second, on the image of the vocation of civil society. By analysing the history of the EU governance debate of recent years I will bring out the divergent conceptual frames that have gained prominence. They can be condensed in three ideal type conceptions and in each of these conceptions representation takes another place. I will then present an analytical model that brings out the underlying concept of representation and allows for a normative assessment and an empirical measurement of its legitimate quality.

¹ For the debate on EU and civil society see the review article by Finke 2007.

² Pollak enumerates “an impressive variety of adjectives” used to differentiate between divergent understandings of ‘representation’ (Pollak 2007: 89).

1. Representation: an elusive concept

What is representation about? Representation is a core concept in political theory on democracy, discussed in depth over several centuries and associated with quite different meanings (Hofmann 1974; Manin 1995). The understanding of the notion of representation is not only framed by differing normative theories of democracy but also closely linked to historical practise that in the case of Europe varies across countries and specific ideological contexts (Hofmann 1974: 35). In political theory a consensus has emerged that political representation is not just meant to be a relation between individual persons with the represented mandating or instructing the representative.³ Rather, representation is conceived of giving presence to something that is “not present literally or in fact” (Pitkin 1967: 8f)⁴. Just because the direct link between the representative and the represented has been severed, representation is closely linked to the idea of responsibility and accountability. Representational responsibility is more than responsiveness to the demands of a constituency or the reliability of a delegate. It also comprises the notion of “functional responsibility” (Sartori 1968: 468) of meeting given standards and adhering to established principles, norms, and rules. Representation is also closely associated with representativeness. Representativeness is a social phenomenon which implies similarity and like-mindedness. Since resemblance does not come by chance and is not easy to appraise in a many-to-one relationship procedures of accountability take precedence (Sartori 1968: 468).

What is the essence of representation that makes it attractive for democracy? Some authors primarily attribute an instrumental value to representation since it facilitates democracy in a mass society by reducing the scale of participants in the political process without reducing the expression of social diversity. But a long tradition in political thinking values representation as a genuine component of democracy safeguarding the equality of citizens, freedom and minority rights.⁵ Though I may be blamed to give “historically bounded answers to modern questions” (Pollak 2007: 90) I will look at the core ideas in classic writings. At the heart of the argument was always the firm belief that “(...) government and legislation are matters of reason and judgment” and, therefore, “Parliament is not a *congress* of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate,

³ Accordingly, the ‘principle-agent’ approach is about delegation, not representation.

⁴ “According to Pitkin representation is “the making present in some sense of something which is nevertheless not present literally or in fact”, see: Hannah F. Pitkin (1967). For a very similar statement see already Carl Schmitt (1928/ 1954: 209).

⁵ Just for the sake of being precise: I use the term ‘democracy’ in its contemporary meaning; James Madison, Abbé Sieyès, and Immanuel Kant called the representative system that they favoured ‘republic’.

against other agents and advocates; but Parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole (...) “(Burke (1774) 1969: 175).⁶ Accordingly, in Edmund Burke’s conception the representative is a “trustee for the people” (ibid 164) acting in the interest of the represented but, nevertheless, acting according to his own judgement. John Stuart Mill put greater emphasise on the plurality of views in the debate. He called for a “Congress of Opinions; an arena in which not only the general opinion of the nation, but that of every section of it, and as far as possible of every eminent individual whom it contains, can produce itself in full light and challenge discussion; where every person in the country may count upon finding somebody who speaks his mind (...) in the face of opponents, to be tested by adverse controversy; where those whose opinion is overruled, feel satisfied that it is heard, and set aside not by a mere act of will, but for what are thought superior reasons (...)” (Mill (1861) 1969: 187). Correspondingly, a representative should be more an agent than a trustee. Whereas Burke sees the function of a representative body more in arriving at consensus, Mill sees it “as more critical than constructive” (Pitkin 1969: 21).

What is delicate in representation? When representation means a substantive acting for others in the interest of others, the relation between the represented and the representative is crucial. The “mandate-independence controversy” (Pitkin 1967: 144-167) has plagued political theorists over the centuries. When representation is conceived of as “acting in the interest of the represented” it all depends on how “in the interest of” is defined: is it the interest how the represented see it or how the representative interpret the interest of the represented or is the representative free in her or his judgement to define what is ‘objectively’ in the interest of the represented? Insisting on individual positions may produce sub-optimal solutions and the projection of such an outcome gives good reasons to discard the view that mandating is the best way to achieve representation. The historical texts quoted above already tell us that the preference for either more independence or for stricter control correlates with the author’s image of the nature of man (the degree of ‘civilisation’ making it indispensable to constrain passion and compensate for lack of knowledge by designing appropriate institutions of deliberation and reasoning) and the essence of politics (making hard choices between irreconcilable values and interests or discovering the common good). Furthermore, the role attributed to the representative is closely related to the political function attributed to representation. When representation is meant to support the exercise of authority then consensus building is put first; when the main function is the control of power, representation

⁶ The idea that deputies represent the will of the nation, not the will of the people is also expressed in the French constitution of 1791.

is expected to give precedence to the views of the represented. Context conditions may further influence the exercise of representation. In a conflict ridden society with a multiplicity of interests the represented will strive for close monitoring of their representatives and an antagonistic or, at least, a pluralistic system of representation is likely to emerge. Nevertheless, a certain degree of independence is needed in order to come to political agreement. In a homogenous society where conflicts are more about means than ends of policies the represented may be less inclined to inspect the representation of her or his interests. But, in spite of wide spread apathy of the represented, representation may turn out to be close to the interests of the individual.

From the classic literature I conclude that it is worthwhile to look through 2 different lenses in order to arrive at an analytical distinction between distinct concepts of representation. The pertinent questions are:

1. What is the function of representation? In a 'constructive' approach it is to support the 'convergence of wills'. In a 'critical' approach it is "to throw the light of publicity" on the acts of government (Mill 1969: 186). Consequently, representation may either be associated with output legitimacy or with input legitimacy (or in empirical analysis be placed on a continuum between the two).
2. What is a representative supposed to represent? An 'agent' is expected to represent the preferences of the represented and, consequently she or he is subject to what Sartori (1968) called 'personal responsibility'. The 'trustee' has to bring together preferences and norms and hence has also to live up to 'functional responsibility'. In the case of the EU functional responsibility may extend to taking account of the 'finalité politique', the laws of the Treaties, and the rights as established in the Charter of Fundamental Rights.

How do we know if representation lives up to our normative standards? From the classical literature we take that the normative quality of representation is defined through the presence of representativeness, reliability, responsibility, and accountability. But it does not provide a yardstick to measure different degrees in the quality of representation. Scholars investigating representative government have developed an analytical framework to grasp the phenomenon of representation and to evaluate the capacity of institutions (above all elections) to secure representation (Manin/Przeworski/Stokes 1999). They define representation to be "a relation between interests and outcomes" that develops in a process and includes different phases. The

analytical model distinguishes different components of this process: preferences, signals, mandates, policies, and outcomes. By looking at the ‘internal’ relations between these components it opens the black box of the represented-representative relationship (Manin/Przeworski/Stokes 1999: 8-9). The relevant actors in this abstract relation are on the one hand citizens and ‘the people’ and on the other a government. Citizens voice preferences; people have collective interest; the government is responsive to the signals of preferences and the policy choice expressed in mandates and it is representative to the extent that it is acting in the public interest.

Since the analytical concept has been developed for the study of representative government in nation states, it cannot be applied straightforwardly to the EU. ‘People’ and ‘government’ are not a given concept in the EU context and all attempts to construct an equivalent are highly disputed. The debate whether or not there is or could be a European demos and a European public space (Kielmansegg 2003; 1995; Abromeit/Schmidt 1998; Eriksen 2005) or a ‘social constituency’ (Fossum/Trenz 2006) is still highly controversial. Also, the EU institutions do not confer the image of a ‘government’. When the term ‘government’ is used (Hix 2005), it connotes rather the “powers of government” that the EU institutions have taken on and exercise in cooperation with each other. Council and Commission share the responsibility of exercising ‘government’ but no partner in this dual executive is directly politically accountable. The governments in the Council are facing two diverse constituencies, namely their own people and the peoples of the EU. However, they are politically accountable only to their national electorate. The Commission is not dependent on any constituency and its responsibility is mainly functional in terms of meeting given standards. Equally, civil society does not seem to fit in this equation of “outcomes relating to interests”. In view of the vagueness of the term ‘civil society’ further inquiry is needed to test whether or not it may be taken as equal to ‘the people’, as the embodiment of the ‘common European interest’, or whether the array of civil society organisations are equal to the voice of citizens expressing their preferences.

Nevertheless, with some revisions I will take a revised form of this analytical model as a road map for exploring how civil society figures in certain images of representation in the EU. After all, representation was and is not necessarily associated with government. The EU has been defined as a system of ‘composit representation’ (Benz 1998) which offers a broader framework of assessing the link between civil society and representation. The revised analytical model and the assessment of how civil society figures in EU representation will be presented in chapter 6.

2. The conspicuous absence of a representation discourse

Empirical evidence: EU-society relations are at the core of the spreading debate on the democratic deficit of the EU. It has been spurred by the initiatives to improve ‘good governance’ and to consolidate the Union by giving it a constitution and in that very context the call for strengthening European civil society and involving it in EU affairs became prominent. Civil society is considered to be a remedy to the legitimacy crisis of the EU. Though the plea to “engage the public” (Lebessis/Paterson 2000: 27) has strong normative overtones and is explicitly related to make the EU safe for democracy, neither the official proposals nor the political and academic comments touched on the question of democratic representation. ‘Representation’ in relation to civil society is a non-issue; it is a missing category both in the White Paper on European Governance and the later documents supporting the “follow-up process” and also in the Constitutional Treaty.⁷

Political reasons and the organisational setting: The conspicuous absence of any reflections on representation may be attributed to the political context and the prevalent conceptual frames of the time. When the Commission launched the White Paper on European Governance the authors took great care to bring forward only those proposals that could be applied without any treaty reform (Commission 2003). Just because the Commission quite obviously was eager to preserve (or even enlarge) its competence which had suffered from past institutional reforms (Scharpf 2000), it avoided any phrasing that could be seen as a challenge to the existing institutional framework and, consequently, as interfering with the Member States prerogative of constitution building and the inter-governmental talks on institutional reform that went on in parallel. Questioning the value of the existing system of representation would have been ‘politically correct’. After all, the EU polity already relies on several channels of political representation: Member States in the Council and the European Council, the electorate in the European Parliament, functional interests and sub-national units in the Economic and Social Committee and in the Committee of Regions, respectively. Therefore, putting emphasise on governance was a more promising approach. A commitment to improve ‘European governance’ was, furthermore, a plausible response to the performance

⁷ In all relevant documents – the White Paper on European Governance (Commission 2001), the reports produced by the Working Groups that gave input to the White Paper (http://ec.europa.eu/governance/index_en.htm), the regulations on Minimum Standards (Commission 2002), the Transparency Initiative (Commission 2006) and the Constitutional Treaty – ‘Representation’ is only mentioned in relation to „international representation“ and to the representation of citizens in the European Parliament.

crisis of the preceding Santer Commission and it drew attention because it was linked to new ideas about governance and participation. The incoming President of the Commission, Romano Prodi, set the tune in his address to the European Parliament. His ambition was not only simply to make the Commission work more effectively. Rather, he set out “(t)o devise a completely new form of governance for the world of tomorrow” (Prodi 2000).⁸ Prodi could rely on an in-house team of new governance enthusiasts who received input from 12 working groups staffed by members from the General Secretariat and the General Directorates who were sympathetic to the political strategy.⁹

3. Conceptual frames linking EU governance and civil society

Conceptual affinities: The White Paper was drafted in the spirit of Prodi’s presentation. It is a telling example of the importance of an epistemic community for a policy initiative. The ground was prepared by the “Forward Studies Unit” analysing the challenges of the changing policy environment of the EU and identifying key features of an innovative approach to EU governance.¹⁰ The message was twofold¹¹: (1) A deep scepticism about the problem-solving capacity of expert based policy-making resulting in a call for ‘more open government’ including a wider debate with stake-holders and (2) growing dissatisfaction with the functioning of parliamentary democracy where participation was said to be limited to voting and accountability to apply only at the point of formal decision making. This prompted the demand for direct participation of stakeholders to be extended to all stages of the political process. The argument was that the looming crisis of legitimacy would not be met by strengthening the mechanisms of representative democracy since the multi-level and functionally segmented decision-making process would still be too distant from the people and beyond public control.

Consequently, the suggested reforms placed the involvement of stakeholders to the forefront. ‘Stakeholders’ were understood in a broad sense, encompassing not just target groups but also actors from civil society and experts that have a stake in view of the wider implications of any policy regulation. The task was to institutionalise a new mode of governance that would

⁸ According to Prodi: “The challenge is *to radically rethink the way we do Europe. To re-shape Europe.*” (ibid, emphasise in the original).

⁹ For a detailed account of the history of the White Paper see Michel 2007.

¹⁰ See the papers published since 1997 in the series of the *Working Papers of the Forward Studies Unit*, of the European Commission (http://ec.europa.eu/comm/cdp/working-paper/index_en.htm); in particular Lebessis/Paterson 2000 and De Schutter/Lebessis/Paterson 2001.

¹¹ The diagnosis referred mainly to Giddens 1991 and Beck 1992.

guarantee wider involvement, redress inequalities that might hamper equal participation, increase opportunities for collective learning and enhance vertical and horizontal articulation in the policy process. Notis Lebessis and John Paterson, who played a key role in substantiating the need for and the key features of the new mode of governance, presented strong arguments in favour of a reasoned discourse between experts and lay people to support the effectiveness and legitimacy of policy making and a wider public debate on European issues to erase the “*deficit of mutual awareness between civil society and public authorities*” (Lebessis/Paterson 2000: 27; emphasise in the original) which in their view is at the heart of the democratic deficit of the EU.

The evolution of the discussion process: Though the intellectual input from members of the Forward Studies Group was still strong in the drafting of the White Paper, it also shows the imprint of the administration represented in the working groups and the influence of the well-established interest groups surrounding Brussels. Civil society engagement still ranked high but became embedded in a more down to earth approach looking at “better regulation”, more efficient consultation, multi-level governance, regulating through agencies, and reflections on the ways and means to ensure the convergence of national policies.¹² A new shift in emphasis came through the public and, above all, the academic debate of the White Paper. The comments on the White Paper concentrated on the proposals suggesting ‘better involvement’ and on consulting civil society.¹³ The White Paper’s understanding of ‘governance’ was criticised for focusing “predominantly on the effectiveness and efficiency of the EU decision-making system, while disregarding issues of democratic legitimacy and democratic deficit in European integration that are seen to be more important.” (Commission 2003: 9)¹⁴ The call for inclusion of more players in the policy process met with a benevolent response but the argument was that inclusion does not by itself lead to increased democratic legitimacy (ibid: 38).¹⁵ Despite a widespread scepticism in the beginning a burgeoning literature developed putting civil society centre stage drawing on the normative theories of deliberative or associational democracy.¹⁶ Another strand in academic research was more interested in the

¹² These were the additional mandates given to the working groups.

¹³ Among the 260 written contributions received in the consultation process on the White Paper 48 % of comments were on ‘better involvement’, whereas the other strong message propagated by Prodi, namely a “radical decentralisation”, drew little attention. (Commission 2003: 34).

¹⁴ The report by the Commission on the consultation concerning the White Paper on European Governance gives a very balanced account of the public reception of the document. The academic response is well documented in Joerges/Mény/Weiler 2001.

¹⁵ For a systematic account see Kohler-Koch 2007.

¹⁶ See in particular Curtin 2003; Eriksen/Fossum 2000.

functional aspect of participatory governance that held the promise of reconciling system effectiveness and citizens' participation.¹⁷

Input from different strands of theories: In recent years we thus have witnessed the emergence of distinctive conceptual frames that informed the political thinking about EU-society relations. There was a shift in the legitimacy discourse from parliamentary representation to participation, civil society, deliberative democracy, and the public sphere. When scholars interested in social movements and contestation expanded their field of research to the EU, the debate on Europe's civil society got yet another impetus (Imig/Tarrow 2001; Della Porta 2007). At the same time the 'governance turn' in EU studies (Kohler-Koch/Rittberger 2006) has influenced the thinking about more efficient ways of policy co-ordination and administration. This array of concepts framed the governance reform of the Commission. They became points of reference in the communication within and across academia, the administration and civil society. Framing did not, however, converge to a coherent single concept but different conceptions were adhered to and put to strategic use.

As a result the governance reform set off by the White Paper is full of ambiguities. The debate on Europe's constitution did not bring any clarification. The Constitutional Treaty decrees '*the principle of participatory democracy*' requesting the EU institutions "to maintain an open, transparent and regular dialogue with representative associations and civil society" (CT Art. I-47, 2). But the text is far from being self-explanatory. Furthermore, this principle and '*the principle of representative democracy*' have been put side by side though stipulating that "the functioning of the Union shall be founded on representative democracy" (CT Art. I-46, 1). Neither the phrasing of the Constitutional Treaty nor the proceedings of the Convention give any clue how both principles might be reconciled. Article I-47 was a latecomer in the debate and the documents confer the impression that little thought was given to the potential fit or misfit of both principles (Göler 2006).¹⁸

¹⁷ See for example Grote/Gbikpi 2002; Heinel 2002; Heinel/Smith 2003.

¹⁸ I will not deal with the role of civil society in the writing of the Constitutional Treaty or the Charter of Fundamental Rights (Kværk 2003; de Schutter 2002) because it occurred outside the political system of the EU. Some of the literature on constitutionalisation, however, put the role of civil society centre stage (Fossum/Trenz 2006).

4. An analytical framework to link civil society and representation in the EU

When trying to make sense of the relation between civil society and representation in the context of the European Union, the ongoing discussion does not give any indication how to approach the issue. I argue that the main reason is the ambiguous use of the concept of civil society and the different image of the European polity. I suggest three analytically distinct frames which combine these divergent concepts in a specific way: Three concepts attributing a distinctive role to civil society as carrier of democracy which correspond to three different understandings of the nature of the EU system. I find these frames by digesting the broad literature on civil society, EU governance and democracy and categorize it in view of the theoretical debate of recent decades.¹⁹ From this exercise I draw the conclusion that ‘representation’ figures in different ways depending on the image of the EU polity and the role attributed to civil society.

Three ideal type conceptions: The nature of the EU is still contested both in its present form and even more so concerning its future development. I do not want to side with one interpretation or the other but rather distinguish three ideal type images of the EU which are present in the political and the academic debate. They provide quite distinct frames for the incorporation of civil society and also are usually associated with different understandings of what civil society is about.

The **first conception** attributes the EU the quality of a political system closely cooperating with civil society organisations. It is exerting the functions of government without having a government. The ruling institutions are autonomous but highly interdependent and in different ways and to different degrees politically responsible. The policy making process is spurred by the Commission and policy output is dependent on negotiated compromise between all actors entailed. It is a political system on the move, with expanding membership and a constant, though mainly incremental deepening of its competence and, consequently, in need of public support. It is said to face a legitimacy crisis because democratic accountability is deficient, because it is too distant from the people, and because it is under-performing.

¹⁹ For a recent review on the literature on civil society see Finke 2007; for a review on governance see Kohler-Koch/Rittberger 2006; on EU democracy see for example the edited volumes by Eriksen/Fossum 2000 or Kohler-Koch/Rittberger 2007.

Civil society is perceived as a remedy to the legitimacy crisis.²⁰ Though it is a fluid concept, consensus has emerged on some core features: Civil society encompasses the wide range of voluntary associations that follow a 'logic of action' that is distinct from that of the state or the market or the private sphere. It encompasses all different kinds of organisations ranging from solidaristic advocacy groups to member based interest groups. Its function is to present the plurality of interests, values and tastes in the setting of the political agenda and in policy making. By giving citizens a voice and by bringing knowledge to the decision making process civil society contributes both to the input and output legitimacy of the EU system. Social partners have a privileged position in the system and the European Economic and Social Committee claims to represent organised civil society.

The **second conception** originates from the governance turn in administrative and comparative government studies. The EU equals the modern state which has lost its steering capacity and strives to attain problem-solving effectiveness by close cooperation with non-state actors. In the EU non-hierarchical forms of decision making are said to be even more pertinent because decision making powers are allocated to different territorial levels and dispersed to functionally segmented arenas. A system of 'network governance' (Kohler-Koch 1999) evolves bringing together the relevant state and societal actors. To induce reluctant actors such as member state administrations, economic actors and interest groups to agree to EU harmonisation new modes of governance have been introduced such as the 'open method of coordination'. The trade mark of these new modes of governance is that all actors that are potential target groups or may support or obstruct the success of a regulation are included in the process of defining policy goals and instruments.

Civil society is an underdeveloped concept in this governance approach. It comes under the heading of 'participatory governance' and suggests including 'stakeholders' in the arrangement of 'public-private partnerships'. The concept is based on the normative supposition that all those who are affected by a political regulation should have the right to participate in the decision. It is, in addition, supported by the functional belief that those who are affected can also bring relevant knowledge to improve the policy decision. Since regulatory and not redistributive policies are prevalent in the EU it is suggested that not

²⁰ Concerning the concept of civil society as a remedy to perceived crisis of legitimacy see Jobert 2007.

interest but the capacity to contribute to ‘best solutions’ should be the relevant criteria for participation.²¹

The **third conception** sees the EU in a state of constitutionalisation that is both a process of polity building and of “social constituency building” (Fossum/Trenz 2006). The EU is on the verge from a multi-level system of governance that was mainly relying on the legitimacy of its constituent units, i. e. the member states, to a system of authoritative decision making in its own rights. This calls not only for the institutionalisation of procedures of democratic participation and accountability but also for the emergence of a European civil society.

Whereas some authors associate a sense of social cohesion and solidarity with civil society (Walzer 1995) the main discourse is inspired by the idea of deliberative democracy in the tradition of Jürgen Habermas. The essential ingredient of democracy is a ‘political public sphere’, “a communication structure rooted in the lifeworld through the associational network of civil society” (Habermas 1996: 359). In this reading civil society is “composed of those more or less spontaneous emergent associations, organisations, and movements that, attuned to how societal problems resonate in the private life sphere, distil and transmit such reactions in amplified form to the public sphere” (Habermas 1996: 367). Civil society is seen as being distinct from self-interested lobby groups.

Sometimes civil society is presented in a way that recalls the role of civil society in the transformation of communist rule to democracy in Eastern Europe. In this reading civil society is a “collective action frame” which has the potential to mobilise popular support against those in power (Glenn 2001; 2007). Though this view is not prominent in the debate, some statements of the Commission sound like appealing to an imaginary ‘European civil society’ to transcend the obsolescent national borders and by-pass the particularistic oriented national governments.

Exploring the properties of the conceptions: This short-hand description of the different images of the EU and European civil society already indicates that representation will be associated with dissimilar functions and different modes of representing. In order to get a better grasp on the potential nature of representation, the three conceptions will be further explored concerning the interaction of the EU and civil society. Six questions will be asked:

1. What are the perceived causes for a (potential) legitimacy crisis of the EU?

²¹ In Philippe C. Schmitter’s concept ‘holders’ are defined more broadly: “they possess some quality or resource that entitles them to participate”, but already rights that are attached to membership is such a quality (Schmitter 2002: 62).

2. What added value does civil society bring to the EU?
3. What is the functional role attributed to civil society in the political system of the EU?
4. What is the role of civil society in EU governance?
5. What is the field of involvement for civil society in the EU?
6. How does participatory engineering relate to civil society?

Conceptual frames linking EU and civil society

Conception	EU a regulatory political system with civil society involvement	EU a system of participatory governance	EU an emergent polity with a social constituency in the making
Image of the EU	A multi-level political system with responsible institutions in search of good governance	A multi-level, multi-tier system of governance operating on public-private partnership	An emergent polity in its own rights embracing a political community
Image of Europe's civil society	The plurality of organisations taken collectively; broad definition of CSOs embracing all types of voluntary non-profit organisations	Stakeholders including private (economic) actors who have a stake and the capacity to contribute to problem-solving	Citizens' general interest associations acting in and forming a political public sphere through public deliberation
(1) Perceived (potential) legitimacy crisis	Declining permissive consensus in face of more intrusive effects of EU policies; higher demand on legitimacy due to the more political character of the EU	Inherent problems of governance and compliance in view of risk society, multi-level complexity; heterogeneity of context conditions and diversity of interests	No successful constitutionalisation of a EU polity without building a political constituency encompassing a transnational civil society and public sphere
(2) Added value civil society can bring	Better awareness of the plurality of interests; broadening the range of expert knowledge; giving citizens a voice, bringing the EU closer to the people	Efficient and effective problem solving, better law making by involving stakeholders; upgrading of common interests through deliberation and mutual learning	Sense of social cohesion; generalized support / active citizenship providing a communicative space accessible for all; an EU wide public sphere
(3) Functional role in the EU system	CSOs are intermediaries in the EU policy system Policy oriented	Stakeholders are co-producers in governance Service oriented	The social constituency of the European polity Polity oriented

<i>Conception (continued)</i>	<i>EU a regulatory political system with civil society involvement</i>	<i>EU a system of participatory governance</i>	<i>EU an emergent polity with a social constituency in the making</i>
(4) Role of civil society in EU governance	Redress the hegemony of the expert-bureaucrat coalition; support coherence; smooth implementation and enhance compliance through partnership	Management efficiency; involving stakeholders allows for decentralised administration; redressing the preponderance of social partnership	Shed the light of publicity on governance; provide alternatives through public deliberation; mobilise knowledge on the social fabric
(5) Field of involvement	Participation in agenda setting and policy consultation; partly co-management in implementation	Co-regulation; proximity management and implementation	Permeating the European political discourse; activating citizens for a trans-national civil dialogue
(6) Relevance of participatory engineering	Regulation on openness, transparency, participation; taking account of and redressing inequalities; make participation pay	Encouraging social entrepreneurs; designing new forms of social involvement; investing in feed-back and evaluation	Citizenship; legally protected space for public deliberation; investment in civic literacy; opposition to regulatory interference

How does political representation come in? What conclusions can we draw from these conceptualisations of EU civil society relations concerning political representation? Is it a category that captures a central feature and will give us an indication how to rate the democratic quality of the EU system?

The first indication is how civil society fares in the three conceptions. The image of the EU as *a system of participatory governance* stands out as being rather unique: it is a system of functional governance systems with overlapping membership that discards any systemic representation. Participation of non-state actors is only partially linked to representation. Those who participate in governance are entitled to so on grounds of “quality and resource” (Schmitter 2002: 62): Schmitter argues that no arrangement could possibly include all potential stakeholders and, therefore, suggests certain principles that justify selection: Two principles out of four relate to output efficiency: (1) stakeholders are privileged who are

“judged capable of contributing to the governance of the designated task” in terms of arriving at a binding consensus and supporting successful implementation and (2) “knowledge-holders” with issue specific expertise. If these conditions are met principles of representativeness apply: (3) participants should be selected on grounds of territorial representativeness, privileging representatives with Europe-wide constituencies, and (4) on grounds of a fair representation of opposing interests. (Schmitter 2002: 63-64) These principles should, however, not be assessed in isolation but only in relation to the idea of “chartering of governance arrangements”²². It is a concept which puts limits on entrusting policy making to ‘participatory governance’ arrangements and sets up principles for the constitution of such governance arrangements. Because of this particular framing representation is mostly a second order issue though the unresolved problems of authorisation, the lack of accountability, and the risks of biased representation and of clientelism are mentioned. Many contributions propagating ‘participatory governance’, however, convey the idea of ‘participation without representation’.²³ Therefore, I will not deal with this conception any further.²⁴

When imagining the EU as *an emergent polity with a social constituency in the making* particular attention is paid to the role of civil society. Therefore, representation is not just a criterion applied to the sphere of the state, i. e. the political system of the EU, but to the social constituency of the European polity. As mentioned above, sometimes the legacy of the role of civil society in the transformation process of Eastern Europe provides a frame that gives the (emergent) European civil society the quality of a representative. It is an abstract representation that equates civil society with an active European citizenship.²⁵ In this reading European citizenship is not just a set of rights conferred to the citizens by the EU, it is rather a social relationship that stems from citizens lining up with others and participating in political discourse and structures of governance that stretch beyond national borders (Bellamy/Warleigh 2001: 6)²⁶.

John Erik Fossum and Hans-Jörg Trenz share this sociological approach and argue that the process of European constitution-making sets off a dynamic of social constituency building.

²² Schmitter builds his argument on Eleanor Ostrom (Ostrom 1990).

²³ See Greven’s criticism concerning the writings of Heinelt (Greven 2007).

²⁴ Schmitter, to my knowledge, is the only one who has given systematic thought to deal with the risks of biased representation in participatory governance (Schmitter 2000). Since he put it in the wider framework of the EU system I will discuss it when analysing the second conception.

²⁵ In contrast to the history of political transformation in Eastern Europe it does not qualify as ‘collective action frame’. National citizenship may have become fragmented but it is (still) a strong competitor and movement activists who might seek to mobilize popular support against the ‘obsolescent nation state’ are still on the periphery.

²⁶ See quote in Winkler/Kozeluh 2005: 31.

In their conception “(...) the EU’s social constituency is conceived of as the ‘collective representation of the people’, which tells us what the Europeans have in common.” (Fossum/Trenz 2006: 61) The constitutional debates, especially when they gained high levels of publicity through the referenda in France and the Netherlands, but also the engagement in European governance promote societal self-description. ‘Citizens’ and ‘civil society’ are addressed by EU institutions as the beneficiaries of EU governance and as providers of support and legitimacy and this way social imaginary is conferred on them. On the other hand, demands are addressed to the EU not just as individual claims but as general concerns as if it were ‘in the name of the public’. This interactive process and, above all the search for legitimacy, support the construction of what I would call an ‘imaginary representation’. It is a category that is supposed to help understand the formation of a ‘political society’ and not to assess the democratic functioning of the EU. As such it is not linked to the core criteria that have been mentioned as capturing the main features of representation: representativeness, reliability, responsibility and accountability and, therefore, is of limited use for my analytical agenda. Notwithstanding the different research interest that is incorporated in this understanding of representation, it is quite obvious, and is stated by the authors, that the claim for representation lacks democratic legitimacy.²⁷

Those who see the EU as *a regulatory political system with civil society involvement* do not apply the concept of ‘representation’. Nevertheless, representativeness, responsibility, and accountability are core categories when talking about EU-society relations. This conveys the impression that the concept of representation is highly relevant but only shows up in disguise. Therefore, the first pertinent question is where to locate ‘representation’. A first approach is to take a close look at the debate on ‘representativeness’.

Representativeness is a generalised norm that applies, first, to the relation between representatives, i. e. the individual CSO, and the represented, i. e. the members or constituency which the CSO claims to represent. The central argument presented by the Commission is that “participation comes with responsibility” (Commission 2003): The claims put forward by a civil society organisation should be representative of the concerns of their membership or their constituency; CSOs should be responsive and held accountable. Secondly, representativeness is a norm that is valid for the interaction between ‘organised civil society’ and EU institutions. Consequently, the EU institutions are asked to make sure

²⁷ John Erik Fossum and Hans-Jörg Trenz comment the general claims for representation by saying: “The problem with such representative structures is that the existing feedback and control mechanisms are only insufficiently established in the transnational polity.” (Fossum/Trenz 2006: 71)

that they invite and take account of all views and concerns of stakeholders. Consultation mechanisms should put the principles of openness and transparency into practice, support equal access and voice and allow for feed-back.

The interaction between the Commission and CSOs is a vertical relation, mostly issue specific and, consequently, highly segmented. Even though initiatives have been launched in recent times to encourage horizontal communication between CSOs and even though the Commission is eager to support dialogues on cross-cutting issues, not least to attain more policy coherence, it is not apparent for the observer what ‘civil society’ at the EU level stands for. Individual CSO may raise their voice and gain publicity but without an arena for the public exchange of views and positions who knows what ‘civil society’, i. e. the CSOs taken collectively, has to say? Only the Commission can get an encompassing picture of cleavage lines and majority and minority views by adding up the individual positions of the numerous interest groups approaching the services. Here it is worthwhile to recall John Stuart Mill: Representation needs an arena in which every section of public opinion “can produce itself in full light and challenge discussion; where every person in the country may count upon finding somebody who speaks his mind (...) in the face of opponents, to be tested by adverse controversy (...)” (Mill (1861) 1969: 187). In recent years the Commission has institutionalised a process of ‘open consultation’ including fora which offer a platform for public dispute and discourse among CSOs. The Commission takes the role of a facilitator and a mediator and with ‘good reasons’ takes sides in the discourse. It is not surprising, therefore, that the Commission portrays itself as representing the European “common interest” (Commission 2001). Does, as a consequence, representation rest with the Commission?

In order to check this claim more systematically and assess the normative implication, I will present an changed version of the analytical model presented in the first chapter (Manin/Przeworski/Stokes 1999).

(public opinion surveys such as the Eurobarometer; online debates and online consultations open to citizens) and some CSOs are worried that the Commission might use it to by-pass CSOs. Consequently, they keep a critical eye on the representativeness of this input and on standards of feed-back.

Since the Commission is not an elected body it cannot be sanctioned by citizens and this way is beyond (electoral) accountability. The Commission certainly has a 'functional responsibility' as the 'guardian of the Treaties', as promoter of the 'ever closer Union' and being subject to the Charter of Fundamental Rights. Without a functioning mechanism of public accountability this functional responsibility rests with the norm orientation of the Commission.²⁹ This does not mean that the policy making of the Commission is beyond any political control. I suggest calling the relation between the Commission's policy proposals and the policy outcome decided by the Council (with or without the consent of the European Parliament) and the judicial control of the ECJ 'horizontal accountability'. Though the Commission is independent from instructions of other EU institutions, the rejection of a policy proposal is a tough sanction.

Does this model help us to re-establish 'representation' as a category that makes sense when analysing the role of civil society in the EU? First it provides criteria for a normative assessment. Representation derives legitimacy from two sides: On the one side it is supported by the horizontal accountability vis-à-vis the Court, the Council and the European Parliament. The assessment of the quality of this type of accountability is decisive for judging the normative content of the Commission's claim for responsibility. On the other side representation derives legitimacy from responsiveness and accountability vis-à-vis the EU's constituency as represented by civil society. Accountability is clearly lacking. Responsiveness gains normative value if it is linked to representativeness. Different normative theories of democracy suggest different criteria to judge the democratic quality of representativeness.³⁰

The model can also be used for an empirical evaluation of the quality of representation. When we link representation to first and second order responsiveness and reliability, we gain indicators that can be measured and will reveal degrees of representation. Furthermore, we can explore the conditions for 'good' representation by asking what contributes to responsiveness and reliability.

²⁹ I do not here enter the debate about the effectiveness of parliamentary control.

³⁰ Kohler-Koch/Finke (2007) offer two alternative theoretical conceptions to assess the democratic quality of representativeness.

The model also puts the normative limitations of the Commission's claim on representation in perspective. It is part of the EU's system of 'composite representation' (Benz 1998) and the legitimacy of the Commission's claim to "represent the European interest" has to be assessed against the competing claims of the Council and the Parliament. They are based on different normative grounds which reflect specific political philosophies. Parliamentary representation is founded on the equal rights of citizens to partake in political rule; member state representation is founded on the federal principle to give political rights to (national) political entities; the Commission's representation is mainly functional since it is representing citizens as 'stakeholders'. Whereas representation in parliament is based on the idea that politics is about contested decisions and, consequently, representation has to be organised through competitive elections, the federal principle gives priority to the accommodation of competing interests between established political communities. Functional representation and, above all, the claim to representation based on CSO input has a technocratic bias: The argument is that CSOs put across the interest of stakeholders, pass on their expertise and in a process of deliberation and mutual learning the 'co-operative state', represented here by the Commission, will arrive at the best problem-solving strategy. The choice between values and irreconcilable interests is negated or deferred to the 'political' decision of the Council and the Parliament.

To sum up: Civil society and representation is an awkward relationship in democratic terms. It presupposes a belief in the technocratic nature of the Commission's policy input or otherwise would have to call for mechanisms of democratic accountability.

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Follesdal, Andreas

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