

**If participation does not do the job, will accountability make a difference? The role of CSO in EU accountability.<sup>1</sup>**

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Paper presented at the 8th Biennial Conference of the European Community Studies Association – Canada, Victoria, BC, April 29 - May 1, 2010

Panel

Does Civic Participation Strengthen Democratic Legitimacy?  
EU and Canadian experience compared

*Draft – comments most welcome*

**Abstract**

After an era of highflying expectations in the democratic potential of civil society involvement in EU governance, critical voices are now predominant: Empirical research documents that equal and effective representation of citizens' concerns is deficient and that the responsiveness of decision-makers is low. The paper argues that the transmission-belt model is leading us astray and that scrutinising accountability relations will tell us more about public control of EU governance. Civil society organisations (CSO) may be actors or facilitators of accountability; they may constitute the forum to which account is to be rendered, pass judgement and exert sanctions or they may trigger judicial, administrative or political accountability relations. Irrespective of the different roles CSO may play, EU actors will have to explain and justify their conduct and are exposed to consequences. The crucial question is if CSO engagement is effective in terms of "putting matters right" and democratic in terms of reaching down to citizens.

The White Paper on European Governance has triggered a wide debate on the democratic virtues of civil society involvement in EU governance and the European Constitutional Treaty proclaimed the "principle of participatory democracy"<sup>2</sup>. The paper will start with a clarification concerning the meaning of civil society. It will then give a short account of the most prominent modes of civil society participation and summarize the findings of empirical research. The main part of the paper will be devoted to outlining a conceptual model that will allow us to grasp the different roles civil society actors may play in order to make EU governance more accountable.

**Civil society in EU governance: Whom are we taking about?**

Notions of civil society are closely linked to ideational concepts of society and democracy and normative theories of democracy have developed different images of civil society and attribute to it divergent roles (Cohen and Arato 1992).<sup>3</sup> Furthermore, in the EU context conceptions of civil society are closely related to the image of the European Union.

For some the EU is a political system like any other, for others a trans-national system of governance and for others a polity with its own social constituency in the making and in each of these images civil society is perceived in quite different ways (Kohler-Koch 2010a). Consequently the image of civil society ranges from “a logic of action” (Gosewinkel 2004), a “social construction” (Eder 2009) to civil society as social and political actors. Even within this actor image authors strongly disagree. For some civil society only includes those spontaneous emergent associations, organisations, and movements that distil and transmit life world problems to the public sphere (Habermas 1996: 367). This conception comes close to the self-image of the associations which have gathered at EU level in the Civil Society Contact Group (CSCG). They claim that only they represent civil society because they give voice to the general interests of citizens and stand for the pursuit of the public good (such as social justice, environmental sustainability) and the defence of universal rights and values (such as civic liberties, human rights ). Other authors are more in line with the official EU terminology and opt for a broad definition including all different kinds of voluntary, not-for-profit associations representing non-state actors (Steffek and Nanz 2008). The understanding of civil society in the EU context has been heavily influenced by the use of the Commission and the Economic and Social Committee which (mostly) equate civil society with civil society organisations (CSOs) and accept a wide variety of non-governmental actors to qualify as CSOs ranging from associations of business, trade unions, professionals to citizens’ organisations or cause groups.

In this paper I only refer to “organised civil society” since it needs actor quality to exert accountability and - despite my personal normative reservations - I will follow the established terminology and use CSO in the broad sense whereas the term NGO is reserved for “public interest groups” .

## **Participatory governance EU style: Does it hold its promises?<sup>4</sup>**

The “participatory turn” (Saurugger 2008) has produced favourable conditions for CSOs to play an active role in EU affairs and it has been praised as an improvement in democratic legitimacy. The involvement of organised civil society has become a central element in EU governance since the turn of the century (Greenwood 2007). The EU has subscribed to the principle of participation, openness, transparency and accountability and is actively providing information to improve a knowledgeable dialogue with societal actors. The exchange with CSOs is highly valued for many reasons: CSOs are expected to bring citizens closer to the Union, to give the stakeholders’ view, to command specific knowledge, to

stimulate deliberation by questioning established wisdom and to enforce efficiency by monitoring and evaluating executive behaviour. The Commission (2001: 3) actively propagated participation claiming that “opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy (...) promotes greater openness, accountability and responsibility for all those involved”. This view was widely endorsed by civil society actors (Commission 2003: 35).

The readiness of EU-institutions to engage with CSOs, however, differs in practice. CSOs rate the European Parliament (EP) and the Directorates General (DG) of the Commission as being very open while the Council is seen as the most closed institution, “untouched by the concept of dialogue” (quote from Fazi and Smith 2006: 35). The Court of Justice is more or less out of reach. The Commission has pushed the principle of participatory governance more than any other institution and has done so with the strong support of CSOs. Following the White Paper on European Governance, the Commission has reorganised its dealings with non-governmental actors in a way that paved the ground for easy access and higher levels of involvement. Step by step it developed a “participatory consultation regime” which offers favourable context conditions (Kohler-Koch and Finke 2007). It has to be kept in mind, however, that participatory governance EU style is for the most part a system of institutionalised participation of civil society organisations in the consultations organised by the Commission. The constraints are apparent: The rule of the game is that civil society has a voice but not a vote, and the agenda is set by the Commission.

When trying to assess the democratic value of the EU model of participatory governance, we have to take into account that normative benchmarks vary by theoretical approach. Theorists of liberal democracy will put emphasis on equal representation, effective participation and political accountability. From this perspective, civil society involvement will enhance the democratic quality of EU governance when it gives citizens a voice, is redressing biased representation and act as watchdog to hold decision-makers accountable.

Notwithstanding the Commission’s recent efforts to become more open, inclusive and participatory, equal representation has not been achieved. Even the easily accessible online consultations show asymmetries: market-related organisations such as business and professional associations are far more numerous than general interest organisations. Equally pronounced is the distortion in territorial representation: The North-Western tier of Europe is over-represented when compared to the Southern and Eastern countries.

Such statistical findings have to be taken with a grain of salt. The presence in numbers is a proxy and not a reliable indicator for democratic participation. The relevant criterion ought to be what Dahl called “effective participation”: having impact on output. Here participatory governance is faced with a dilemma: Instruments well suited for lowering the threshold of public involvement such as online-consultations with multiple-choice questionnaires give participants hardly any influence on substance. Civil society groups rebuffed this kind of “ticking exercise” and blamed it to cause “consultation fatigue”. Members of the CSCG pressured for efficient and effective dialogue structures. They got a positive response from GD SANCO (Health and Consumer Protection) which has been ready to engage in a Peer Review process and has established a Stakeholder Dialogue Group to receive advice on process issues that will facilitate stakeholder involvement and to address the thorny issue of the asymmetry and representativeness of stakeholders. In order to redress the aloofness of scientific committees and comitology, a Stakeholder Dialogue Procedure has been initiated.

Thus, the good news is that the Commission succeeded in widening participation by lowering the threshold of access; it has increased transparency and has lent support to the representation of weak interests. Feed-back mechanisms have improved responsiveness, and the readiness of a General Directorate to subject its communications with stakeholders to scrutiny by an external peer review group reflects a concern with accountability. But the accountability has not been enacted and in terms of more equal representation the present regime of participatory governance still does not live up to the normative standards set by liberal democracy.

The picture looks different though not brighter when looked at from the perspective of deliberative democracy. In recent years, the discourse on EU-civil society relations was heavily influenced by normative theories advocating deliberative democracy for governance beyond the nation state. The benefits of deliberation and the potential contributions of civil society organisations to enhance the epistemic quality of decisions are well argued in theory. Insights provided by empirical research, again, are sobering. Instruments of participatory engineering aiming at directly involving citizens, such as “citizens’ forums” or “Café debates”, reach only small groups and at best raise awareness for European issues in pro-European elite circles (Fischer 2010; Hüller 2010a). Consultation instruments that attract most responses such as online consultations provide no space for deliberation (Hüller 2010b). The same is true for the usual fora where several hundred participants meet for a one day event.

The minimum requirements for deliberation, (namely continuity and regular meetings, settings that allow for direct, preferably face to face communication, and time to exchange arguments), are rarely met. However, some of the Brussels networks and umbrella organisations enjoy continuous working relations with the Commission. They regularly participate in meetings to discuss different Community matters, they sit on advisory committees and they are accepted consultation partners in issue specific fora. In addition, they are involved in action programmes funded by the Commission. Thus, we see a Brussels organised civil society community in the making which has potential to further deliberation but fails to advance the emergence of a larger engaged public.

A major shortcoming of EU participatory governance is the weak link from Brussels down to the grass roots. NGOs, above all, are faced with a dilemma. They claim to represent citizens but the overwhelming majority of citizens are unwilling to get organised on political grounds (Van Deth 2008) and the multi-level EU system makes for long and knotty ways of communication (Kohler-Koch and Buth 2009). Most EU level NGOs are federations of federations and for the sake of greater political impact they have gathered in sector specific platforms and networks. This has added an additional level to the long chain of interest representation. The benefit is that NGOs themselves take care of interest aggregation and don't leave it to the discretion of the Commission. The flip side of the coin is the growing distance to members at the grass roots. To bridge the gap, EU associations increasingly use modern management and communication technologies to address their constituency directly. Electronic dissemination of information and campaigning do, however, contribute little to active political participation and are detrimental to a deliberative political discourse. Some federations have institutionalised mechanisms for delegation and mandating which assure valid representation but further a streamlining of policy preferences and generate middle of the road positions.<sup>5</sup>

Thus, there are many reasons why NGOs do not function as transmission belts linking citizens to the EU in a way that meets democratic standards. The multi-level structure and high level aggregation of interests make the representation of citizens' preferences difficult and limits their capacity for active participation. Organisational properties of the Brussels based NGOs such as career patterns, the dependence on EU funding, communication patterns emanating from proximity, etc. tend to support the formation of a self-referential European NGO community which works in the interest of but with little exchange with citizens (Buth and Kohler-Koch 2010).

Furthermore, participation is only considered to be democratic when it is effective. It is conventional wisdom that effective participation comes with accountability. The question, therefore, is whether or not NGO can contribute to strengthen accountability in EU governance.

### **CSOs as actors and facilitators of EU accountability**

The principle of accountability is acknowledged in key EU documents and NGOs have regularly insisted that the Commission ought to render account on how it responded to the consultation input. In the meantime, the Commission is committed to provide feed-back and give reasons why certain stakeholder views have or have not been taken on board. A synthesis report following consultations is now common though not universal practice. The legal obligation of transparency, the requirement to submit impact assessments on major policy initiatives, the pledge to provide road maps to better track the consultation and decision making process, and the above mentioned feed-back procedures are important stepping stones to accountability.

But do all these procedural innovations institutionalise accountability in EU-society relations? And above all, do they contribute to effective and democratic participation? And what is the appropriate role of organised civil society? To provide an answer we will, first, clarify the concept of accountability and the different modes of accountability and, secondly, present different role models which enable CSOs to enact accountability under the given institutional constraints of the EU system.

In the most general term one can say that accountability is a mechanism “to put matters right” (Harlow and Rawlings 2007: 546). The idea is that accountability will enforce effective participation because the obligation of a decision-maker to explain and justify his conduct and the likelihood that he has to face consequences will keep him in line with the preferences of the represented.<sup>6</sup> Democratic accountability is a more demanding concept because it does not only require that accountability mechanisms have an impact on those who exert public authority but it requires that it relates back to the “principle”, i. e. the citizens and that they have an equal chance to have a say in it. Consequently, CSOs can only claim to further democratic accountability when they contribute to bring citizens in. They can do so as an *actor* or as a *facilitator* in an accountability relation. As an *actor* they have to prove that they enjoy democratic legitimacy, as a *facilitator* they have to engage democratically legitimate actors.

When CSOs constitute the forum to which account is to be rendered we may call it “*social accountability*” as suggested by Bovens (2007: 457). This social accountability may be a one-level relationship linking EU institutions to CSOs or it may be a two-level relationship which combines the accountability of EU institutions with the accountability of CSOs towards their own membership or constituency. CSOs can act as facilitator in what Bovens (2007: 454-455) called *political accountability*, and, again, we have two different models. CSOs can be crucial for activating political representatives such as political parties, parliaments or national governments to demand EU executives to render account or CSOs may enable citizens to participate in EU accountability. In both accountability models the essential difference is who constitutes the ultimate accountability forum. When CSOs constitute the accountability forum to hold EU authorities to account we may call it *EU level social accountability*; when at the same time CSO are subject to accountability exercised by their own members it is a case of *two-level social accountability*. When political representatives constitute the forum it is a matter of *elite based political accountability* and when the public is involved we may call it *grass roots based accountability*.

Tab. 1: The role of CSOs in EU accountability

	<i>Roles of CSO</i>	
	<i>Actor</i>	<i>Facilitator</i>
<i>Types of accountability relations</i>	EU level social accountability	Elite based political accountability
	Two-level social accountability	Grass roots based political accountability

### ***Social accountability***

Social accountability attributes CSOs a central role in EU accountability. They oblige EU institutions, above all the Commission, to explain and justify their conduct; they question

the appropriateness of policy proposals; they pass judgements and as far as they can they impose sanctions. Social accountability may be restricted to the Brussels arena or it may be a two-level mechanism. In the latter case CSOs are under the obligation to render account to their own members and constituencies and thus draw them into a system of extended accountability.

### *EU level social accountability*

This mode of social accountability establishes a direct and explicit accountability relation between those who decide and implement public policy and CSOs. CSOs take advantage of their close relationship with decision-makers; accountability is not so much an ex post facto mechanism but embedded in a process of ongoing consultation and dialogue. This practice has developed into a concept that considers accountability and participation to be inseparable (Grand and Keohane). The argument is that exacting accountability from within is stimulating deliberation and mutual learning and thus is providing both input and output legitimacy. The idea is that civil society actors are engaging with decision-makers directly "(...) in a more informed, organized, constructive and systematic manner, thus increasing the chances of effecting positive change" (Malena et al. 2004: 5). The World Bank has more explicitly than the EU propagated a concept of social accountability that induces democratic responsiveness by building on "state-civil society synergy" (Malena et al. 2004: 13). However, such synergies may end in capture or collusion. Accountability needs a detachment of those who demand accountability from those who have to render account. When it comes to gaining information, participation is an advantage but when CSOs want to bring to light controversies and push for publicity they soon experience that it is a mixed blessing.

At first glance information is easily available. But on closer scrutiny it becomes apparent that the Commission provides information in the interest of smooth running consultations and thus information is selective. Furthermore, the most pertinent information is made available in the process of consultation which is far from being inclusive. Since the Commission is looking for partners who are well informed and knowledgeable, hearings organised on invitation, expert group meetings or consultative committees are targeted at a selected group of CSOs. Two selection criteria stand out: CSOs have to represent "stakeholders" and have to be able to deliver the knowledge needed for efficient problem-solving. In practice both criteria have a conservative selection bias. New associations have difficulties to gain the status of stakeholder representatives and to prove that their knowledge



is reliable. An indication for the conservative bias is that in all the committees, conferences and hearings more often than not the Commission meets with the “usual suspects” (Quittkat 2010b). In addition, the exchange of information is a matter of trust and it is most of all familiarity that breeds trust. The Commission is most familiar with organisations that have been around for a long time or have been recurrently engaged in EU funded projects. Furthermore, over time close policy communities have emerged in most policy fields; NGOs find easy access to DGs in charge of social affairs and employment, of public health and consumer affairs and of the environment, but have difficulties to get ear-time from DGs dealing with internal market, competition, or economic and monetary affairs. Consequently, depending on the issue, some associations have more difficulties than others to get into the inner circle of information exchange and information access is not uniform across policy fields.

As stated above, CSOs may promote accountability by bringing out what is at stake in a policy and by confronting policy-makers with alternative options. Even though CSOs cherish close collaboration with EU institutions the relation is not free of conflict. As Greenwood (2007: 346) has pointed out, even NGOs enjoying EU financial support have been highly critical of EU policies „...challenging fears that Commission funding of groups might create dependency relationships”. Nevertheless, in interviews most CSO representatives confirm that they are well aware of the trade-off between acting as a “trustworthy though critical partner” and an “opposition force stirring controversies”. Many potential controversies are subdued by the Commission’s strategy to shift the task of interest aggregation to the interest groups. The Commission prefers to deal with umbrella organisations or CSO networks because they can provide the specialised knowledge which small sector specific interest groups hold but they can put it into a wider context and take account of countervailing views of other member organisations. It is clearly in the interest of the Commission to deal with partners who alleviate its task of aggregating competing interests. In recent years the Commission has pushed and supported the many public interest associations to get together in encompassing networks in order to make them speak with one voice. The formation of such CSO families is adverse to exposing conflicts of interest in the public and thus controversies and publicity are not a prime strategy. In addition, the norms and rules of the Commission’s consultation regime smooth the exchange of controversial positions. Since the definition of stakeholder is most of the time very broad, a wide variety of interest groups qualify. In the case of market regulation business, environmental and consumer interests are on board; in the case of labour regulations employers, trade unions, the women lobby, etc. are involved

(Quittkat 2010a). Because of the wide range of interests many actors take an in-between position and facilitate a mode of negotiation which is marked by reason giving and reciprocity (Hüller 2010b).

In this model of social accountability, two essential elements are missing: the obligation to give account and an accountability forum. The formal obligation to give account may be substituted by the readiness - for what ever reasons - to render account. The commitment to the principle of accountability is one element; the other is the readiness to acknowledge that CSOs are legitimate actors to ask for explanation and justification. In this respect the concept of social accountability is on shaky grounds since the legitimacy of CSOs is contested. The European Parliament has made it quite clear that CSOs are in no position to ask Parliament to give account because the EP is only accountable to the electorate<sup>7</sup> and the Council insists on the responsibility of member governments to their national constituencies. The Commission (2001) has written the principle of accountability into the White Paper on European Governance but the question is, accountable to whom? It is noteworthy that even Commission officials who have been involved in the long standing Civil Society Dialogue of DG Trade have strong reservations to accept any accountability towards civil society: “We work for Member States and it is to them that we are accountable” (quote from Slob and Smakman 2007: 74). Accountability is accepted as a political and not a legal obligation; it is strictly linked to the consultation process which is anyway under the control of the Commission; it is restricted to feedback and reason giving without conceding CSOs the *right* to ask questions, to pass a judgement and to impose consequences.

Another important deficit is that there is no arena for rendering account. The feedback mechanism is linked to the consultation process and so it is issue specific and makes for a compartmentalisation of the accountability relation. Furthermore, some consultation instruments such as the widely used online-consultations are accountability adverse (Quittkat 2010c). The “structured dialogues” which have been established in some policy fields and will be extended with the implementation of the Civil Dialogue<sup>8</sup> have a potential of providing an accountability forum. So far, however, CSOs regard these meetings as an opportunity for a general exchange of views and for establishing good working relations.<sup>9</sup>

To conclude: the ability to gain information is distributed unevenly and no EU-institution is obliged to render account to CSOs. In the case of the Commission the willingness to submit to CSO accountability is at the discretion of the individual Directorates General and exercised in various ways and to various degrees. The issue of accountability is closely linked to consultations, yet the widely used instrument of online-consultation is hardly

suitable. Furthermore, there is no arena where CSOs can ask questions and demand to the point explanations. When CSOs succeed in obliging the Commission services to render account and pass a judgement, it is a bilateral exchange which makes for compartmentalised accountability. The most relevant obstacle is the institutional position of the Commission. It is autonomous and it has to retain autonomy vis-à-vis CSOs because it would be ill advised to negotiate with the Council and the European Parliament with tight hands. By extension, political accountability in the full sense of the term does not work because the Commission is engaged in a principle-agent relation not with civil society but with the Council and the European Parliament. Thus, the readiness to give account has to be at the discretion of the Commission.

Even if this EU level social accountability would work more effectively, its democratic quality would be dubious. In order to satisfy minimal standards of democracy the plurality of CSOs active in Brussels would have to be a fair representation of the divergent preferences of the European public and all different kinds of CSOs would have to have an equal chance to put EU institutions under pressure to give account. So far research rather presented evidence to the contrary.<sup>10</sup> The most pertinent question, however, is if CSOs qualify as a legitimate actor to impose accountability.

### *Two-level social accountability*

Will CSOs become legitimate accountability actors when they themselves are accountable to their members? All European CSOs assert their commitment to accountability. The sine qua none prerequisite is a well functioning communication between the European level organisation and member organisations at all levels down to the individual members at the grass-roots. As outlined above, an easy flow of information and communication is difficult to achieve because of the multi-level structure of European organisations. These structural impediments affect some CSOs more than others. Not only size but the complexity of the organisations and the degree of organisational consolidation make a difference. Streamlined hierarchical organisations combining the principle of territorial and functional representation in a systematic way are mostly found among market and labour related associations. NGOs, especially the encompassing NGO confederations stand out as being far more complex. Part of the explanation is that the European Platforms, which are the main interlocutors of the EU institutions, are still in the process of consolidating their organisational structures.

The enlargement of the EU by twelve new member states has aggravated the situation. Above all, the European NGOs feel the need to improve communication. How difficult it is to

gain such knowledge may be illustrated by two recent initiatives. CONCORD (2006: 1), the European NGO Confederation for Relief and Development, commissioned a survey study to achieve a clearer picture of their membership, and the Social Platform on the occasion of the Annual Conference 2008 for the first time organised a workshop on how to bridge the gap between European and national levels.

CSOs have developed a number of instruments to disseminate information such as newsletters, annual reports and open channels for communication such as annual conferences, thematic oriented workshops, regular visits and above all interactive web sites. The question, however, is whether this information reaches member organisations at lower levels and the grass roots members. Empirical research gives a sobering picture. When we take national CSOs reporting on EU related activities as indicator of awareness, the level of information is very low. Even on salient issues we find few reports on what is done in Brussels in order to serve the interests of members. In a comparative perspective striking variations between countries and type of organisations are discernible. More information is provided by German and British associations than by French and Italian associations and this difference cuts cross all types of CSOs. When comparing economic and professional associations, trade unions and general interest groups, market-related actors have been found to provide more information than the latter (Altides and Kohler-Koch 2009: 8-10). Apart from distinct national associational cultures, the different availability of resources combined with a difference in organisational capacity partly explains these variations. Market related actors have a long history of dealing with the EU and their predominantly hierarchical structure makes communication across levels easier. Furthermore, it is also quite evident that those who have a specific interest and have existential economic or professional stakes are more attentive than those with a diffuse interest.

Assuming that information would be wide spread and controversial issues were in the open would this boost up CSO accountability and would it deserve the quality label “democratic”? In the case of member organisations, agents are obliged to render account and with exit and voice members can definitely impose consequences. But what if European CSOs have only a restricted membership? We lack systematic empirical data, but from comparative investigations we may conclude that EU organisations are far from being inclusive. Bozzini (2007: 14) found in her cross-sectoral and cross-national comparison that on average far less than half of national associations are members of an EU umbrella organisation. And how can advocacy groups be accountable which have no members and are mainly funded by the EU so that neither exit nor voice will work?

### *Political accountability*

Political accountability sees CSOs as facilitators that draw the attention of other actors to the poor performance or even wrong-doings of authorities. Their role is to provide additional information, to raise awareness, to disclose alternative policy options, to bring out controversial issues and raise opposition to specific policy options so that other actors will be motivated to enforce accountability. It is the most common perception of CSOs as political watchdogs and whistleblowers. CSOs may target their activities primarily at political actors such as the European Parliament, national parliaments, political parties and governments on national or sub-national levels. Or they may address the general public. In both cases they call on a third party to put pressure on EU institutions to explain, justify and eventually modify, amend or cancel their actions.

Political accountability lives on public controversy and in this respect it is a good starting point that nowadays so many CSOs are active on the EU level representing a wide range of interests and being in conflict with each other on key issues of EU policies. Nevertheless, EU decision making structures and the dedication to a culture of deliberation rather than confrontation are taming political conflict. The EU, from the very beginning, has been geared towards consensus and expert based joint problem-solving. For structural reasons the Commission would be ill-advised to take sides along party cleavage lines because the Council as the ultimate decision maker is an “all-party government” characterised by party pluralism. The institutionalisation of “participatory governance” has, in addition, furthered what Mouffe (2005) has called the consensus ideology of the post-modern democracy.

Another factor that mitigates controversies is the dilemma situation well known by all intermediary actors who want to have impact on policy-making. They can exert influence by participating in the decision-making process and by putting pressure on decision-makers from the outside. It is not an either – or choice; rather both options are always latent and used by all CSOs. Based on our knowledge about CSO performance in member states it is plausible to assume that different kinds of CSOs face different choices. In general, business and trade associations prefer an insider strategy because they have the necessary resources to opt for the “expert knowledge” approach; they either can mobilise expertise from their members or commission scientific advice. General interest groups can often not provide the scientific and technical expert knowledge asked for in EU decision-making. Empirical research provides ample evidence that, consequently, “(...) participation in target consultations, where the bulk of decision-making takes place, is limited” (Chen 2008: 14). The logical conclusion would be

that NGOs are more inclined to engage in political mobilisation whereas associations representing business and professional interests rely on lobbying. Donatella Della Porta comes to a contrary conclusion. Her comparative research documents that NGOs “... use strategies for addressing the EU traditionally considered characteristic of interest groups” and takes this as evidence that the style of EU decision-making influences action strategies of all CSOs (Della Porta 2009: 106).

### **Elite based political accountability**

Notwithstanding the constraining effects of the EU decision-making culture, the choice of strategy is also conditioned by public resonance and potential alliance partners. Both depend on the policy issue at stake which may or may not stir political sensitivities and bring out latent conflicts. It is easy to gain public attention and mobilise support or opposition along existing cleavage lines: trade unions against industry; consumer and environmental interests against business concerns; minority rights against mainstream positions, etc.<sup>11</sup> As to alliance partners, all CSOs agree that the media are crucial and all CSOs put high priority on media resonance. Just because NGOs are in their self-ascription oriented towards the public interest and are “rights and value based” as the Civil Society Contact Group put it, they are more inclined than economic oriented CSOs to see political parties and parliaments as potential allies.

However, political actors must have an interest on their own to take up what CSOs lay at their doorstep. Thus it is crucial that in recent years the European Parliament and the European political parties have become more assertive than before in playing the game of politics. Nowadays, the EP is quite eager to assert its role as accountability actor and does not hesitate to get engaged in a power struggle with the Commission (Bouwen 2006). The higher the salience of an issue, the level of conflict and media resonance the more is it likely that the EP is taking up the issue and becomes a valued partner for CSOs. Though CSOs primarily address their “natural” allies, the environmentalists the Green parties, trade unions and the Social Platform the European Socialists, Business Europe the European People’s Party, the Human Rights Network the Liberals, etc., all CSOs aim at mobilising a broad coalition to have an impact. They are eager to engage parliament and party groups not just on the EU but also on national level. Since the left – right (social versus economic) and also the liberty against law-and-order cleavage in the EP mirrors the prevalent cleavage structure in most member states (Mair and Thomassen 2009) mobilising and networking with national political actors is made more easy.

It could be argued that for elite based political accountability the role of CSOs as information providers is less relevant than their role as activator of publicity and controversy. Members of parliament can easily get first hand knowledge and should have the proficiency to evaluate the information so that they can hold EU decision makers to account. However, based on the findings of Steffek and Ferreti (2009: 56) one can argue that participatory governance has put CSOs in an advantage. Institutionalised participation in highly technical European Agencies has not empowered CSOs to exert their watchdog function directly, but it provides NGOs with insight so that they can “act as transmitters and translators of highly specialised information (...). They may also provide the (...) audience with critical counter-expertise to challenge IOs and governments.”

Unfortunately, we lack systematic empirical research for a sound assessment of CSOs as facilitators of political accountability. Selected cases illustrate favourable conditions which help CSOs to assert their role: Close relations between a CSO and a faction in the EP, a controversial issue that is, nevertheless, difficult to ignore because it touches on fundamental rights, receptive media.<sup>12</sup> In order to get the full picture, the focus should be broader and not just concentrate on the EP. Costa and his colleagues (2003: 670-672) have reminded us that the EU is characterised by a multiplication of control mechanisms. Accordingly, a well-founded assessment of the role of CSOs as facilitators of political accountability would have to keep in mind the many ways of triggering these control mechanisms. Above all, it would be interesting to know when and how European CSOs manage to reach beyond Brussels and are able to engage national parliaments and governments as opposition powers.

It is less difficult to decide whether or not elite based political accountability qualifies as democratic. The sine qua non condition is that the political actors who enforce accountability possess democratic legitimacy which is beyond doubt in the case of the EP or national parliaments if they act in common.

### **Grass roots based accountability**

Accountability that involves the general public deserves the highest mark of democratic legitimacy. The popular argument is that civil society achieves what political parties and other mass based organisations such as the trade unions no longer deliver: the mobilisation of grass roots and the participation of ordinary people. Grass roots based accountability, however, is more demanding than elite based political accountability. The essential precondition is that ordinary citizens have to become alerted. It is not sufficient to make information available, rather the task is to make citizens aware of and sensitive to the

issue and the options entailed. Only when a controversy gains publicity, citizens will form a judgement and translate it into political behaviour. CSOs can do what citizens cannot do themselves: regularly monitor the daily policy process in Brussels and watch if decision-makers deviate from the declared preferences of the public. CSOs will spot controversial issues, bring them to the attention of the people and advocate in favour of one position or the other. Citizens have to rely on intermediaries such as CSOs and the media if they want to hold political authorities to account.

The EU is supporting CSOs in their function as transmission belts. EU funds are used in two ways. Part of the money is invested to launch projects, run mostly by NGOs but also by think tanks, which may be classified as political education. Some NGOs are more responsive than others and ready to act as service provider. The European Civil Society Platform on Lifelong Learning (EUCIS-LLL) frankly states: “The Platform is a partner and a voice for the Commission”.<sup>13</sup> Other NGO networks prefer to keep a critical distance but, nevertheless, often engage in EU sponsored projects. One reason is that they are short of resources and financial support comes through project money, the other reason is that Brussels based NGOs adhere to a pro-European belief system and see engaging with citizens as strengthening participatory democracy.<sup>14</sup> Critical voices from national member organisations call for a more bottom-up approach. They argue that in principle political education is not adverse to accountability since it paves the ground for reasonable judgement but it should be combined with a critical stance on those who are asked to render account. As one interview partner put it: “They claim to voice the concerns of citizens, but their mission statements read as if their primary objective is to rally support for Europe”.<sup>15</sup>

CSOs active in Brussels would all agree that it is their mission to raise the awareness not just of their members but also of the wider public. Above all EU NGOs are on record that communicating with their constituencies and the public at large ranks high on their agenda. But empirical research on European NGOs confirms what we know from national and sub-national NGOs: Though they employ the full range of the action repertoire (Bozzini 2007; Kriesi et al 2007), their first preference is to have contacts to decision-makers, to provide expertise and to participate in consultations. They also make use of a wide set of strategies to target the public and media campaigns are regarded a most effective form of action, but many NGOs have experienced that despite all efforts the media are not very responsive (Bozzini 2007: 3). This confirms our own findings (Altides and Kohler-Koch 2009). All CSOs are keen to communicate their position to the media when the issue under discussion is both highly salient and controversial. Since media campaigns proper are restricted to instances of utmost



importance, CSOs rely on their standard instruments such as personal contacts, policy briefings and up-to-date web-site information. We found that resonance in the press is limited and except for a few cases it is difficult to tell whether CSOs have served as transmission belts for spreading the news or not.

If CSOs manage to serve as issue specific transmission belts and bring critical choices to the attention of citizens, the question with regard to accountability is: what will happen next? Public protest is a demanding strategy of exacting accountability since it has high thresholds for participation. Elections have very low thresholds for participation but are a rather indiscriminate instrument to sanction decision-makers. Only if the salience of a single policy issue is strong enough to make a difference or if it adds up to other disappointments, electoral preferences may shift. Even then democratic accountability may fail. Two reasons are often mentioned: one is that EP elections are second-order elections and, as a result, electoral choice is influenced by national experience; the other argument is the weak position of the EP. The first hypothesis has been challenged by Rohrschneider and Clark (2008: 137) who found strong support that EU performance matters and voters to a considerable extent evaluate EU-level factors. This gives hope for the future as the EP is increasingly exerting its power to gain control over policy output.

It seems as if the positive image of civil society as a political actor forcing decision-makers “to put matters right” is resulting from a methodological research bias. Scholars have concentrated on the role of CSOs in extraordinary events such as the fight against the “Bolkestein directive”<sup>16</sup>, but have not looked in a systematic way at less spectacular though still important instances of EU accountability.

## **Conclusion**

The message of this paper is that a sound assessment of CSOs in EU accountability needs an analytical approach that differentiates between distinct types of accountability relations and different roles attributed to CSOs. Accountability relations vary depending on who is considered to be the legitimate actor to hold EU-institutions to account. CSOs can take different functional roles; they may be actors or facilitators of accountability. Accordingly, we have suggested four models of accountability – EU level and two-level social accountability, elite based and grass roots based political accountability. When examining how the four models fit reality we find that context conditions for exacting accountability have improved over the last years. The principle of accountability is widely acknowledged and information on substance and procedures of EU decision-making is provided. CSOs are focused on

making the Commission render account (EU level social accountability). Only more recently, in response to the demands of EU-institutions, they are concerned with their own accountability in relation to their members and constituencies (two-level social accountability). Engaging other political actors (elite based political accountability) and paving the way for easy and equal access of citizens (grass roots based political accountability) is not part of a purposeful concept of accountability but is rather a by-product when CSOs aim to increase their influence. Social accountability ranks high even though crucial elements of an effective accountability relation are missing: EU-institutions are not obliged to render account to CSOs and they do not have to face hard consequences if they choose not to give explanations and justifications for their conduct. Even more important is that CSOs can hardly claim to have a legitimate mandate to exact accountability on EU-institutions.

Why then are such high flying expectations attached to social accountability? A political answer is that CSOs see it as a useful tool to gain control over the Commission and that the Commission is equally interested in pushing accountability but with the intention to make consultations more manageable rather than for the sake of democracy (Greenwood and Halpin 2007: 190). The theoretical answer is that accountability is seen in the context of “participatory governance”. In contrast to the principle-agent delegation model suggested by Bovens, accountability in participatory governance is not a formalised ex post facto mechanism but a constituent element in the on-going process of negotiation. According to the logic of participatory governance the diversity of views can only be reconciled by providing explanation and justification. Thus, reason giving and feedback has been stylized as a permanent process of accountability. In other words, participatory governance is internalising the process of accountability. This conception is in apparent contradiction to the ideas presented in this article which take accountability to be essentially a public procedure with a clear demarcation of responsibilities. Fusing participation and accountability bears the risk that questioning and evaluation will be overshadowed by the mutual interest in policy-making efficiency and long-term relationship (Harlow and Rawlings 2008: 289). CSOs will only contribute to the democratic legitimacy of EU governance if they foster accountability procedures which are public and which will open windows of opportunity for citizens to pass a political judgement and compel decision-makers “to put matters right”.

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<sup>1</sup> The paper is based on a research findings gained from an empirical collaborative DFG-funded project on *Democratic Legitimacy via Civil Society Involvement?* It draws heavily on previous, not yet published papers, especially on Kohler-Koch 2010b.

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<sup>2</sup> Though this headline has been dropped, the article has been retained with the exact wording in the Treaty of Lisbon.

<sup>3</sup> For a more in depth discussion of the link between normative theories of democracy and conceptions of civil society based on a survey among scholars see Kohler-Koch and Quittkat 2009.

<sup>4</sup> A more extensive account is given in Kohler-Koch 2008.

<sup>5</sup> For a detailed study of this effect in the European Women's Lobby association see Strid 2009.

<sup>6</sup> According to Bovens (2007: 450) "Accountability is a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences" (italics in the original).

<sup>7</sup> European Parliament resolution on the Commission White Paper on European Governance (COM(2001)428 - C5-0454/2001 - 2001/2181(COS)) point 11(b).

<sup>8</sup> The Civil Dialogue has been institutionalised in the Lisbon Treaty and has not yet been formalised.

<sup>9</sup> Even in this respect the assessment varies: when communicating with their members, most CSOs present such meetings as an asset; in private conversation many say it is for the gallery.

<sup>10</sup> See the critical account of the literature on biased interest representation (Eising 2008).

<sup>11</sup> Well documented is the cleavage between industry and environmental interests in the case of the chemical directive REACH (Registration, Evaluation and Authorization of Chemicals) with consumer organisations and trade unions taking an intermediary position (Persson 2007; Friedrich 2008) and environmentalists and consumers against agro-business in the case of GMO (Dabrowska 2007; 2008; Ferreti 2007; Steffek and Ferreti 2009).

<sup>12</sup> The resignation of Rocco Buttiglione is an illustrative case; see Kohler-Koch 2010b.

<sup>13</sup> <http://www.eucis.net>.

<sup>14</sup> See the web-site presentation of the CSCG and the CSCG contribution to the EU budget review consultation 2008, <http://www.act4europe.org/code/en/about.asp?Page=255&menuPage=255> and [http://ec.europa.eu/budget/reform/library/contributions/ng/20080403\\_NG\\_7\\_en.pdf](http://ec.europa.eu/budget/reform/library/contributions/ng/20080403_NG_7_en.pdf).

<sup>15</sup> Interview with the representative of a national member organisation of the Social Platform.

<sup>16</sup> The issue was the liberalisation of services, see Della Porta 2009.

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