“Mission impossible? Conceptualising the Link between Organised Civil Society and Democratic Legitimation in the EU”

By

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Very first draft – comments most welcome!

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1. Introduction

In recent years, and parallel to the rise of the governance parlance, civil society discourses have become a veritable growth industry (Kohler-Koch 2009). In both politics and academia, there are hardly any discussions which would not, in some way or another, refer to civil society. Civil society today seems to bear responsibility for everything: welfare functions, political legitimacy, constructing a public sphere as well as the citizen as such. The related debates arise in the context of two major crises of industrialised states. For once, in the light of major reforms of welfare state institutions towards a hollowing of the state, civil society became increasingly called upon to participate in the production and maintenance of welfare of citizens. Second, and in the light of increasing dissatisfaction of citizens with the functioning of democracy and the shift of political authority away from the state towards multiple power centres, it was and remains often believed that civil society could serve as a remedy to the legitimacy crisis of Western democracies through bringing the political system closer to the citizens and vice versa, thereby contributing to the input legitimacy of both national and supranational systems (Kohler-Koch and Edler-Wollstein 2008; Kröger 2008a). It is this latter context that is of interest in this paper, i.e., the idea that the involvement of civil society in political processes can appease the legitimacy crisis of Western democracies. More concretely, this contribution asks what role can be attributed to civil society in democratically legitimising multi-level governance in the EU. It thus not only addresses the interaction of organised civil society with EU or domestic institutions and actors, but seeks to combine these interactions in a reflexive way. As far as I can see, both such a research framework and respective empirical evidence are missing thus far.

The hope that civil society could be an ally in fighting decreasing affiliation to democracy has also been actively nourished by the EU. Since Maastricht and the ensuing referendums, the EU has been associated by many to a democratic deficit. Most commonly, this deficit refers to the problem of creating democratic mechanisms within the EU which compare favourably with those existing at nation-state level. In particular, the European Commission ever since Maastricht suffered under the unattractive image of a bureaucratic, not democratically legitimised and unaccountable institution, an image that hardly improved through the circumstances of the retirement of the Santer-Commission in 1999. It thus should not come as a surprise that the incoming Prodi-Commission was particularly interested in changing its public image. It attempted to do so through introducing and supporting the principles of better regulation, good governance and participatory democracy (Kohler-Koch and Finke 2007).
How democracy in the EU can be defined, however, remains an object of virulent political and academic debate, leading to different if not opposing evaluations of the existence of a democratic deficit in the EU (Follesdal and Hix 2005; Moravcsik 2008), not least due to different understandings of democracy and of the finalité of the EU. While some see its main goal – the internal market – more or less accomplished and reject the idea of a political Union, its desirability as well as its feasibility, others strongly encourage the further politicisation and political integration of the EU. The second battlefield in these debates is the definition of democracy. While liberal democratic theorists insist on political equality expressed through equal representation, and accountability through codified, legal checks and balances, defenders of deliberative democracy argue in favour of public reasoning in light of the common good. With regard to the EU, authors have consequently argued in favour of increased parliamentarization or committee and consultation governance respectively.

This paper seeks to combine these research streams – civil society, democratic legitimacy in the EU and multi-level governance. Its ambition is to develop a theoretical framework apt to empirically address the question of whether organised civil society (OCS) can live up to the expectation of increasing the legitimacy of the EU. In order to do so, the next chapter lays out the main theoretical debates and definitions of democracy and democratic legitimacy in the EU as well as of organised civil society (2.). On this ground, the third chapter puts forward a theoretical model as well as first ideas for its operationalisation (3.). While being normatively guided, this model also seeks to adapt as far as possible to the existing system of civil society consultation. The aim of this paper is not to develop a new theory about democracy in the EU, but to address an empirical question with the help and further development of existing theories. The final section concludes (4.).

2. Theories, Concepts, definitions

This chapter seeks to clarify central theoretical debates and definitions. It is evident that the entire respective literature cannot be reviewed here; instead, I will focus on core concepts and debates. This is no easy undertaking as these core concepts are characterised by a burdensome lack of consensus about what the EU is (and what it should be), what democracy is and how it is to be measured and what civil society refers to and what functions it has (or should have). The EU has been described as consortio and condominio (Schmitter 2000), republican empire (Offe and Preuss 2006), empire (Münkler 2005), regulatory state (Majone 1996), an objet
političke identificacije (Schmitter 2000), a polity in formation (Schmitter 2007) or as a mixed polity which has yet to reach its final stage (Wessels 1996), characterised by multi-level governance (Hooghe and Marks 2001), complex world government (Zürn 1998), deliberative supranationalism (Joerges and Neyer 1997; Schmalz-Bruns 1999) or network governance (Kohler-Koch 1999a; Börzel 1997). All these terms, however, are merely descriptive categories which need not necessarily be democratic. However, they illustrate that political science is far from consensus about the nature of the EU. The different conceptions of what the EU is and what its central characteristics are emanate from the different approaches chosen and influence how scholars perceive of democracy in the EU (Zürn 2001).

The problem is still more complex as there is also systematic lack of consensus about the essence of democracy. For some, it is a form of rule based on “public control with political equality” (Beetham 1994: 27–28), for others, it refers to the particular nature of coming to collectively binding decisions (Abromeit 2001), or it is the principle of autonomy (linked to the project of self-determination) which forms the core of democracy (Kohler-Koch and Rittberger 2007) while others have argued that democracies are first of all “the expression of popular will and choice” (Mény 2002). While for these scholars, democracy first of all relates to normative principles, others are more interested in how democratic principles can be made operational in a political system (Dahl 1989). Here, one can find state-centred vs. society-centred, representative vs. deliberative models as well as instrumental vs. intrinsic conceptions of participation (Kohler-Koch and Rittberger 2007).

When these two highly controversial debates are combined as is the case in reflections about democracy in the EU, the chaos is complete. One additional dispute is here whether EU democracy should be evaluated from a comparative perspective, against criteria known from national democracy (Jachtenfuchs and Kohler-Koch 1996: 34; Mény 2002), or from an international relations perspective (Moravcsik 2008). Because democracy has thus far been coupled to nationhood, many scholars tend to transfer the legitimation mechanisms of representative democracy to the European level, a transfer that has been qualified as “inadequate and probably unfair” (Mény 2002: 10).

Despite these difficulties, scholars have tempted to grasp the nature of the European political system, again with differing normative standards: input vs. output standards (Scharpf 1999), participation (Abromeit 1998) vs. representation (Hix 1999), competition vs. consensus and deliberation (Eriksen and Fossum 2000; Kohler-Koch 1999a; Lijphart 1984). It is unclear whether defenders of (network) governance approaches think that they are dealing with an alternative form of democracy which is not in need of further democratisation since by its
very characteristics – new forms of participation and of representation and deliberation – would legitimise policy-making (Zeitlin and Sabel 2007). However, the democratic character of network governance hinges on the assumption that „each component of each network remains accountable to those it represents“ (Lord 1998: 104), which is a heroic assumption. Additionally, it remains unclear how those citizens which are not included in the network are included and represented. The sort of democracy imagined here therefore seems to be a quite exclusive one (Abromeit 2001; Kröger 2007), in which political equality and control are not given (Papadopoulos 2006).

On a very broad level, and depending on the normative preferences and the conceptualization of the EU, one can differentiate between two opposing views. For some, the political system of the EU bears many elements of democracy and is sufficiently legitimized by its Treaties as well as the inclusion of experts and interest groups in decision-shaping. From this perspective, the democratic deficit is, if at all, democratically legitimized. For others, the political system of the EU has a severe democratic deficit, characterised by a lack of democratic control and of participation.

According to the first camp, there is no democratic deficit (Moravcsik 2006, 2008; Majone 1998). From this perspective, the EU compares favourably with national democracies, as institutional checks and balances are more developed than in member states, as EU policy-making is more open to interest representation than are many national systems, and as the salient issues of European integration continue to be crucially dependent on democratically authorized member states’ governments – and their will to voluntarily comply (Scharpf 2007: 16). In Moravcsiks’ view, critics should not employ double standards to which the member states themselves would and could not live up to. The democratic deficit, then, is at best an optical illusion. Rather to the contrary, there is reason to be optimistic about the EU’s future as the “collapse of the constitutional project in fact demonstrates the EU’s stability and success. Contemporary Europe rests on a pragmatically effective, normatively attractive and politically stable European constitutional settlement” (Moravcsik 2006: 221). The point is thus that if critics only knew how well the EU is doing, could they no longer be critics, a perspective that is surprisingly close to the reasoning of Plan D of the European Commission.

According to the majoritarian second camp, the democratic deficit exists (Kohler-Koch and Rittberger 2007). However, there is no consensus about why it exists and whether it can be removed or not. For some, this deficit is structural and therefore insurmountable. The EU
would lack a demos, a common identity (Lepsius 2000), the necessary intermediary structures (Grimm 1995), a common language, it would not be a community of communication, of memory and only to a very limited degree of common experiences and history (Kielmannsegg 2003). Worse, these shortcomings would not only exist, but be there to stay.

More, partly more contingent shortcomings of the EU have been identified by others: A general crisis of legitimacy of Western democracies (Offe 1999; Scharpf 1997), the unexpected and at times undesirable effects of European integration on domestic systems (Dehousse 1995; Mény et al. 1996; Scharpf 1999), and the role the EU plays in a critically perceived neo-liberal turn of economic and social policies (Kröger 2008; Schäfer 2006) have been identified as causing legitimacy problems.

Some of the scholars belonging to the “deficit camp” are more optimistic about the contingent nature of the shortcomings they identify (Follesdal and Hix 2005; Mény 2002; Abromeit 2001) while proposing different ways how to combat the identified democratic deficit. Some favour the national level as the locus where democracy can and should be defended (Bartolini 2005; Kohler-Koch 2006; Offe 1998; Schmidt 2006). Since the EU does not dispose, and will not dispose in the foreseeable future of the necessary preconditions for democracy and therefore also not of the relevant institutions, democracy should primarily be defended at home, and primarily along well established liberal criteria.

Others target the EU level as the main locus of future democratization (Follesdal and Hix 2005; Schmitter 2007): “The connection between democracy and the nation-state is admittedly not normatively compulsory but rather empirical” (Decker 2002: 263). However, the imagined actors of democratization differ. While some focus on parliaments (Hix 1994, 1998; Rittberger 2005), others concentrate on committees (Joerges and Neyer 1997) or, more generally, on governance architectures (Schmitter 2007), deliberative democracy (Eriksen and Fossum 2008; Zeitlin and Sabel 2007), organised civil society (Della Porta 2007; Ruzza 2007) or, more broadly, the public sphere (Habermas 1998). The respective models and their translation into models of policy-making are expected to be known and therefore not reviewed here in more detail. In any event, it becomes clear that there are fundamental differences, in political science, about the essence of democracy and what it should look like in the EU. For some, the supposed democratic deficit is therefore more a deficit of contemporary democratic theory rather than of the EU (Abromeit 2001; Schwehm 2008).

1 In a more recent publication, Offe seems less pessimistic about the potential of democratising the EU, see Offe and Preuß 2006.
There are at least three different ways of thinking about civil society. The first and the oldest one is a liberal view which considers the market to be part of civil society. The state is responsible for law and order while the market and popular democracy can develop in peaceful coexistence. This idea of civil society was introduced by the revolutionary bourgeoisie in its political struggle against the power and privileges of the nobility (Curtin 2003; Nielsen 2007). Second, there is a communitarian way of thinking about civil society which distinguishes between market, state and civil society. Here, the latter is perceived as the domain of democratic life which is in opposition to the market and the state and their expansionary tendencies. Civil society is thus attributed a high normativity in that it becomes the locus where democracy can truly flourish (Putnam 2000). Thirdly, a more critical theory also distinguishes between state, market and organised civil society and also perceives structural problems of disintegration as well as government beyond clearly confined limits (“the system’s colonization of the life world,” Habermas 1981). But to the difference of the communitarian position, this one aims to delimit organised civil society to public, communicative interaction between citizens (instead of family, friends, community, etc.). Thus, the focus is on organised citizens, not on private roles.

A distinction that is somewhat different from the previous categorization is the one between those authors which perceive of civil society as an autonomous interest defender independent from the state, as a democratic, emancipatory force which can succeed in being a counter-part to the regulatory mechanisms of the market and of the state, a conception made prominent in the course of the peaceful revolutions in Central and Eastern Europe, and those who consider civil society from the perspective of the state which, I would argue, is the prominent view in the governance literature. Here, the point of departure is the crisis of the welfare state and the weakening of the state and its political authority which the involvement of civil society is thought to be able to compensate. It should be mobilised so as to supplement activities formerly performed by the state, allowing the state to focus on the organisational reproduction of society and other, more external tasks. From this perspective, civil society obviously looses its theoretical capacity of independently promoting interests as it increasingly becomes interwoven with state and market structures and respective funding and therewith also increasingly dependent on these (Kohler-Koch and Edler-Wollstein 2008; Nielsen 2007). It becomes part of an ideology. These indications suffice to show that civil society and its role in society have been conceptualized in quite different ways in different periods and geographic areas.
As Kohler-Koch and Finke have convincingly argued, at EU-level, one can differentiate between three regimes of civil society consultations. After periods characterized by consultation (1960s and 1970s) and partnership (1980s-1990s), the third regime, dubbed “participatory democracy”, began with the process around the much debated White Paper on European governance, published by the European Commission in July 2001 which can be seen as a key moment in formalising civil society involvement in the EU (Kohler-Koch and Finke 2007; CEC 2001). Its preliminary peak was Art. 47 of the Draft Constitutional Treaty which specified that “the Union’s institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society” (European Union 2004: Art. 47–1).

Since the turn of the century and with the Prodi Commission, civil society participation became associated to “good governance”. Behind this term, we can identify two expectations, namely that the inclusion of civil society would contribute to more effective problem-solving, through involving relevant partners early on, through pooling experiences and ideas, commonly searching for the best solution, and securing loyalty to decisions through the involvement of actors in the process. The second expectation is that the involvement of civil society can bring citizens closer to the EU, as a transmission belt so to speak, which could act against the perceived democratic deficit. From this perspective, the role attributed to civil society is to “mediate between the national and the supranational, thereby connecting national society to transnational governance” (Rumford 2003: 32). It can certainly be seen as instrumental when associated to the objective of legitimising non-elected institutions such the Commission (Armstrong 2002). It strengthened NGO involvement, however diffuse if may be, at the detriment of trade unions which question the representativeness of the former and therewith their legitimation in the policy process (Michel 2008). However, the Commission is not concerned with the issue of representativeness, but in pooling ideas and knowledge and therefore stuck to a broad definition including trade unions, employers’ federations, business associations, NGOs, community-based organisations and religious communities. The mentioned expectations and diagnoses, coupled with the vagueness of the terms civil society and participation which could be associated to different types of actors and involvement allowed for the rise of the pluralistic civil society discourse in Brussels (Michel 2008; Kohler-Koch 2009).

In the academic discourse, a vibrant European civil society is furthermore perceived as a necessary precondition for European citizenship and further political integration. As with the definition of democracy, scholars have had the tendency to use a comparative politics
perspective and transferred to the European level what is known from the national one (Rumford 2003). And the existence of a vivid civil society, from this perspective, would be a benchmark of European democracy (Eder and Giesen 2001). After the discussion of these different concepts, I will now turn towards the layout of my own research project.

3. Linking democratic legitimation, civil society and the EU

In this study, civil society is understood as those parts of organised civil society (OCS) which are voluntary and have a certain degree of institutional existence, which are not created to generate personal profit, which are accountable to their members and donors, which are independent and do not serve self-serving aims. Instead, their aim is to act in the public sphere, on issues related to the well being of individuals, specific groups of people or society at large. Addressed from a political science perspective, their aim in the political arena is not to constitution of society writ large or the socialisation of individuals into citizens, but the defence of autonomous interests. There are at least also member-based. This is necessary for two reasons. Normatively, civil society organisations which cannot show to legitimately defend interests of members, i.e., to have a real mandate from their constituencies, cannot be assumed to be legitimate partners in policy-making. Empirically, it is easier to research whether these organisations stuck to their mandate if there is a certain degree of institutionalisation. One can also assume that those parts of organised civil society which are not member-based do not dispose of the means to regularly get involved in Brussels anyway.

The debate about the nature of democracy in / of the EU and its democratic deficit may be somewhat misguided. The EU need not be a democracy. What it needs to be is democratically legitimised and democratically controlled, and it is here that deficits can clearly be attested. Therefore, it would be more accurate to speak of a legitimacy, more precisely a legitimation deficit than of a democratic deficit (Mény 2002; Schmitter 2007: 12).

“Legitimacy is a shared expectation among actors in an arrangement of authority such that the actions of those who rule are accepted voluntarily by those who are ruled because the latter are convinced that the actions of the former conform to pre-established and acceptable norms. Put simply, legitimacy converts power into authority – Macht into Herrschaft – and, thereby, simultaneously establishes an obligation to obey and a right to rule” (Schmitter 2001: 2; Lipset 1984: 88). While there is also disagreement about the proper definition of legitimacy,
scholars seem to agree that legitimacy has something to do with public support for political decisions and institutions. Generally, two ways of acquiring legitimacy are discussed: results and procedure (Scharpf 1999), and it is the latter, the “input” side of legitimacy that is of interest here. With regard to the EU, it is commonly acknowledged that its legitimacy is “borrowed” legitimacy, borrowed from its member states (Scharpf 2007; Schmitter 2007). However, it is also widely acknowledged that this borrowed legitimacy may not be sufficient anymore and that the EU is in need of more direct legitimacy (Andreev 2007; Mény 2002). And this direct legitimacy, I would argue, can be reached, through more input legitimation, with legitimation referring to the process and rules through which political decisions are reached and political actors controlled. Its product can be legitimacy.

To the difference of most scholars who focus on either the European or the national level when debating what in my view is a legitimation, not a democratic deficit, I will argue that both levels – and eventually more – need to be taken into consideration\(^2\). Legitimation must be reached at EU-level because European law over-rides national law and because people must be able to see themselves as authoring their own laws, because its decisions and policies affect peoples’ lives and values as well as national institutions such parliaments (and therewith the balance of political power), because it redistributes money – even if in a limited way – and controls a significant amount of public funds, because majority voting in the Council systematically over-rides the majoritarian preferences of changing member states, because the Commission also enjoys regulatory competences, and because it binds member states through international agreements to third parties.

However, legitimacy of EU policies cannot be reached through legitimation at EU-level only, it must also be produced through legitimation at the national and eventually regional level(s). The nation state remains the only one that can foster the type of trust and solidarity which is required for a democracy to function, the EU does not dispose of sufficient socialising ability, citizens wish to hold on to their national identity, public debates ever since Maastricht have been dominated by resistance against further integration (thus the switch from an “ever closer Union” to “united in diversity”), and since citizens are not sufficiently represented in the EU, it is important that they be sufficiently represented at “lower” levels of government. The next section will discuss which normative criteria should guide legitimation.

\(^2\) It is indeed astonishing that while the description of the EU as a multi-level system is not brandnew and largely shared, research designs have not really accomodated to this characterisation (Abromeit 2001; Scharpf 2007).
While the EU cannot meaningfully be called a democracy, it still needs to be democratically controlled, and there is no reason to “lower our normative standards to make them fit the EU reality” (Kohler-Koch 1999b: 12; Kohler-Koch and Rittberger 2007). This means above all that political equality of citizens ought to be the core norm. As a procedural idea, this implies that all citizens must to an equal extent have the opportunity to influence political decisions and be capable of identifying themselves as the ultimate author of decisions. From this definition, minimum requirements of democratic legitimation can be derived, namely that political leadership must be authorized by citizens by a democratic mandate, and that citizens must be represented in decision-making processes (representation), and that political leadership must be responsible to citizens, i.e., to those who have mandated it (accountability).

Representation is a core criteria that assures political equality of individuals as well as minority rights, and that citizens are the authors of law and decision-making, at least in the last instance. It describes a relationship between represented and representative and between interests and politics outcomes (Manin 1995). This implies that the representative is obliged to make the absent present, by representing, to the best of his knowledge, the preferences of the represented. Representation is therefore closely linked to input legitimacy and can be devided into the sequences of mandating, articulation of preferences and politics outcomes. To the difference of deliberative accounts, this definition of representation does not accept that representation of organised civil society is accomplished through communication and reason giving alone. It does not share their assumption that at EU-level, policy processes are best characterised by the search of a common good, the very existence of which, in any event at EU-level, can today be questioned. Rather, it sees EU politics dominated by interest representation and negotiation. Therefore, in order to support EU legitimacy, it is necessary to be able to find traces of this representation in politics outcomes.

The EU is a system of multiple representations (Benz 1998: 350). Peoples as a whole (at least their majorities) are territorially represented in the Council and in the European Council, more direct even though impure and limited representation of citizens occurs in the European Parliament, regions are represented in the Committee of Regions, and functional interests in the Economic and Social Committee. The European Commission is supposed and expected to represent the so-called European interest, and it seeks to do so with the help of consultative practices including organised civil society, not least in order to compensate its lack of democratic representation. It is thus impossible to speak of one single system of representation (Lord and Pollak 2008). Rather, there are several channels of representation in
which the representatives are selected along different procedures, based on different grounds, with different mandates and different forms of accountability which coexist.

The representation of OCS the political arena of which are by and large committee, networks and consultative mechanisms, is, in contrast to other channels of representation, very weakly institutionalised. Actually, it will only acquire Treaty status once the Treaty of Lisbon enters into force, Art. 8 B obliging EU institutions “to maintain an open, transparent and regular dialogue with representative associations and with civil society”. The central difference to other channels of representation is that this one is exempt of legal bindingness, indicating its purely consultative nature.

This asymmetric empirical situation is mirrored by an academic discourse in which civil society and representation are not connected. Again, this has to do with the lack of interest that dominant concepts of governance, in which different images of civil society are often embedded, have for democratic theory. Instead, new modes of governance are interested in participatory, associative or deliberative accounts in which the structured representation of interests in order to secure the equality of citizens plays no (important) role.

Accountability is a key feature of democracy which demands that those who exercise public power can be controlled in their function, ultimately by the people (Stewart 1992). It assures that exercising public power is conditional, that representatives must be responsive to critical feedback, and in the case of dubious or erroneous behaviour take the blame and suffer the consequences (Arnall and Wincott 2002; Bovens 2007; Papadopoulos 2006). Accountability is therefore a central mechanism for checks and balances of power. This does not become less true in the case of governance processes where the various actors are mostly not democratically mandated but are nevertheless acting in a field of public interest. Four aspects of accountability can be noted.

Transparency refers to access to information (Deckmyn 2002) and undoubtedly constitutes one of the preconditions of accountability. What is at stake is the public access to information throughout the different stages of a policy process (Deckmyn 2002; Nanz and Steffek 2005; Vesterdorf 1999). It has been argued that transparency not only encompasses the right of citizens to have access to information but also, more pro-actively, the duty of different kinds of actors to ”ensure that information about policy and actions is provided in an accessible fashion” (Curtin et al. 2007: 8) and understandable for citizens. One could say that the more transparent an organisation or institution is, the more it is willing to expose its actions to public scrutiny and involvement. Through transparency a public debate becomes possible.
Public debate implies that discussions amongst involved actors should occur in a public sphere. Public debate is crucial, as it is here that all the relevant reasons and political alternatives can be exchanged and discussed. Only through public debate can a democratic political body arrive at a consensus or at least a political majority about right or wrong. Third, there should be mechanisms that assure responsiveness of representatives. If this cannot be reached through consensus, the door should be open to negotiation and voting. Finally, there should be the possibility to sanction wrong-doings, assuring that political power is conditional and dependent upon the approval of the sovereign.

The last section will now, in some very preliminary way, sketch out how the criteria of representation and of accountability could meaningfully be operationalised in the multi-level context and with regard to OCS. Doing so, I will regard formal rules as crucial safeguards against the lack of representation and accountability that are in many instances causing a lack of legitimation of EU policy processes.

With regard to representation, the following questions need to be addressed at the national respectively regional level:

- Have representatives that participate in policy processes at EU-level been equipped with a mandate to participate in these processes by their national and regional constituency? This can be done both by member constituencies and by public support for specific preferences in public debates as mirrored in mass media.
- Has a specific substantial mandate been given or are we dealing with a diffuse mandate that representatives others than those of national and regional levels are developing?
- What sort of opportunity structures do they have to voice these preferences in the domestic context? Is their participation purely consultative or are they included in the policy process in any binding way? In which sequences of the policy process are they included?

At EU-level, the following questions should be addressed with regard to representation:

- Who is allowed to participate?
- Who are the representatives at EU-level?
- Whom are they representing? How long is the chain of delegation?
- What sort of opportunity structures do they have to voice these preferences at EU-level? Is their participation purely consultative or are they included in the policy
process in any binding way? In which sequences of the policy process are they included?
- Is there a clear, circumscribed and limited mandate from an official institution, preferably from the Council or the EP which sets the legal framework of representation? What is otherwise the basis of the consultation process?
- Is there a difference between the original mandate and the position defended at EU-level?
- Is there a binding mechanism that links consultation to politics outcomes?
- Can an influence of OCS on politics outcomes be identified?

With regard to accountability, the two levels must again be addressed distinctively. At the national level, this implies to ask the following questions:
- Has the opinion-forming process been open and transparent for members?
- Was relevant information circulated timely amongst members?
- Which possibilities do members have to influence decisions?
- Which rules guide decision-making? Can an impact on politics results be enforced?
- Which rules for or practices of sanctioning exist when representatives do not act as expected by members?

At European level, similar questions matter with regard mainly, but not exclusively to the Commission as the main organizer of civil society involvement in EU policy-making:
- Has the opinion-forming process been open and transparent?
- Was relevant information circulated timely to the participants of the policy process?
- Which possibilities do participants representing organised civil society have to influence decisions?
- Which rules guide decision-making? Can an impact on politics results be enforced?
- Which rules for or practices of sanctioning exist when representatives do not act as expected by members?

In a third step, one needs to address the consequences of the participation in the policy process onto OCS and the Commission likewise in order to evaluate the involvement in EU policy processes corresponds to their original mandate (representing the so-called European interests for the Commission and being an autonomous representation of more or less particularistic or universal societal interests for OCS):
How do Commission and OCS communicate the results of politics outcomes?
Is there a unidimensional or a mutual influence between the Commission and OCS and if so, of what nature?
Does such an influence, if it exists, support the original mandates of the actors or does it point to other functions?
Do EU politics outcomes in turn affect members of OSC, and if so, in which ways?

Again, this is only the very first step of this conceptualisation and operationalisation and the lists are therefore likely to be incomplete.

4. Conclusion

This contribution engaged in a discussion of current concepts of the EU, democratic legitimacy and organised civil society. It showed that related theories and concepts are highly contested, not least due to a lack of consensus about what the EU exactly is and what it should be. With regard to civil society, the discussion showed that there are also competing interpretations and functions attributed to it, more often than not, it is linked to output functions, thereby dismantling it of its autonomy. Crucially, the civil society discourses have thus far not been theoretically linked to democratic theory and democratic criteria such representation and accountability, a shortcoming that can also be observed in the governance parlance.

This contribution and the larger research project behind it seek to contribute to fill this gap. It first argued that the EU may not be suffering from a democratic deficit, but from a legitimation deficit, pointing to policy processes and actors and the rules that rule EU policy-making. Secondly, it argued that legitimation of EU policy-making must be sought at both EU and domestic levels and that the ways the different levels of governance and the different actors mutually influence and impact one another must be addressed. It is thus neither an integration, nor a Europeanization study, but instead is interested in reflexive democratic legitimation processes. Starting from the democratic core norm of political equality, I developed representation and accountability as the two criteria that need to be fulfilled in order to legitimise EU politics. Showing that the EU is currently a system of multiple systems of representation, committee governance was identified as the locus where organised civil society is (theoretically) represented. On this ground, questions for empirical research that in the future need further development and operationalisation were identified, first for the
domestic, then for the European levels, and finally with regard to the effects that both levels have on each other.

It is hoped that the ensuing research project including two policies (social policy and agricultural policy) will bring more light into the debate about the degree to which organised civil society is capable of fulfilling the high expectations projected onto it and in how far its inclusion in policy processes is apt to contribute to the legitimation of European policy-making. It does so in a moment in which it is often assumed that the more civil society, the more democracy (Eder and Giessen 2003) while recent studies point in a different direction (Kohler-Koch 2008; Kröger 2008a). It is therefore interested in unpacking the de-politicising ideology of consultation and an often instrumental usage of organised civil society by political actors.

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