

## 5. European Interest Group Representation

The main purpose of this study is to understand the different types of representation at European level and assess them in the light of the current challenges which the European Union is facing. In general, representation is a means to bring about cohesion and integration. Representation may also be a means to enable a community to act. Therefore, as it has been argued in the first chapter, the workings of representation correspond to the principle ideas of the Union's legitimacy (see 1.3.3.). However, a major qualification has to be made as regards the relation of factual group representation to the Union's leading ideas of legitimacy. As has been explained in the third chapter, political-institutional representation is suited to bringing about political integration *and* to enabling a community to act. In contrast, factual group representation is suited to bringing about social integration but it does not enable a community to act as such (see 3.4.). Thus, whilst factual group representation corresponds to the EU's aim to create a broader and deeper community among the peoples of Europe, it *cannot* further the Union's capacity to act in the sense that it creates a unity from a multitude. To avoid any misunderstanding: interest groups can be ascribed the function of furthering the Union's problem-solving capacity, inasmuch as they may provide otherwise unavailable expertise and facilitate implementation. A representation approach, however, is not concerned with a functionally defined output legitimacy in terms of efficiency. It is rather concerned with the pre-condition for - efficient or non-efficient – European governance, namely the Union's capacity to act at all through the workings of representation. Furthermore, and contrary to what is sometimes argued, a representation approach is not related to the issue of providing expertise. A person can stand for expertise, but he/she does not represent *strictu sensu*. The term 'representation of expertise' constitutes an oxymoron when referring to the strict sense of the word

representation, because it does not entail the dynamic relationship between represented and representative which is characteristic for modern representation (see 2.6.).

Bearing these qualifications in mind, the purpose of this chapter is to understand the workings of European interest group representation and eventually assess them in the light of the ongoing deepening and widening process. Since interest group representation only partly corresponds to the Union's leading ideas of legitimacy, the chapter will focus on its integrative effects. The principle question in this chapter, therefore, is whether, and how, factual group representation meets the *theoretical* precondition to bring about social integration under the present and future conditions of European integration. It will be tested, first, whether the actual shape of the European interest group sector corresponds to the state of the Union and, second, whether it can be said to be placed in the framework of pluralist democracy. Hence, the chapter will start with a description of the evolution and actual shape of the European interest group sector, while also touching briefly on the reasons for which interest groups form or become active at the European level (5.1.). Next, the main patterns of interest group participation in EU politics will be described and assessed in the light of pluralist democracy, the requirements for which will also be explicated at that point (5.2.1.). Finally, as interest group activities are increasingly framed as participation of civil society in European politics, the chapter closes with a discussion on existing models of how to engage organised civil society (5.2.2.).

### **5.1. Evolution and Shape of the European Interest Group Sector**

The European interest group sector has not evolved in a constant and linear way. On the contrary, its actual formation has been marked by alternating phases of stagnation and intensive, sometimes even explosive, growth which may be, to some extent, explained by the evolution of the Communities' competencies. Thus, many of the European umbrella associations, i.e. federations of national federations, were established as a corollary of the ECSC Treaty and immediately after the EEC had come

into operation in 1958. The Commission's 1985 White Paper on the Completion of the Internal Market and the SEA, which took force in 1987, can be considered as further milestones on the road of the development of the European interest group sector. New Community policies and the increased use of Qualified Majority Voting in the Council provided crucial incentives for interest groups to organise themselves at European level. At the same time, a considerable pluralization of organisational types as well as types of interests took place. Today, business and agricultural (5.1.1.) as well as professional interest groups (5.1.3.) are active alongside organised labour (5.1.2.), public interest (5.1.4.) and territorial interest groups (5.1.5.). In addition to these interest groups, which will be described below, a great number of consultants and law firms were established at Brussels, mainly providing information and lobbying services for non-Brussels based clients.<sup>85</sup>

The remarkable increase in European organised interests and lobbyists in the 1980s is often described as a reaction of interest groups to the enlarged powers of the EC. However, many of the interest groups which took the step towards Brussels acted in a proactive way by anticipating extended EC powers (Kohler-Koch 1992: 93). On the whole, the evolution of the European interest group sector only partly followed the way European powers were extended – be it in a reactive or in a proactive manner. The symbolic dimension of the EU may also constitute an incentive for groups to organise at European level:

Clearly, the construction of even a symbolic appearance, or a myth, of EU centrality in key issue areas may have important implications for the formation of preferences on collective action from their perspective. (Cram 1998: 77)

In addition to the Community's – actual or perceived – relevance to a group, the Commission has invariably been central to the formation of organised interests at European level. Apparently, interest groups have been regarded as a suitable means to

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<sup>85</sup> According to Greenwood's research (2003: 9) there are currently 125 law firms and 143 commercial public affairs consultancies which offer their services in Brussels.

foster the position of a resource-poor institution in that they can provide expertise which the Commission would otherwise have to get from national authorities and in that they function as potential allies on which the Commission can rely when it has to convince the member states, the Council, and the Parliament of its legislative initiatives and policy projects. In short, interest groups have been used by the Commission in order to increase its capacity to act efficiently and to make it more independent from the member states (see also Kohler-Koch 1996: 201-3). Therefore, since its inception the Commission made it clear that it preferred a European umbrella association as interlocutor rather than individual national associations. In many cases, Commission services have even gone so far as to initiate the formation of European-level organised interests.

### **5.1.1. Business and Agricultural Interests**

The majority of the Euro-federations established in the 1950s and 1960s was concerned with the policy fields the EEC was centred on, in particular, agricultural policy and economics.<sup>86</sup> From the inception of the ECSC up until the inception of the EEC (i.e., from 1950 to 1957), a total of 49 Euro-groups were set up. The EEC then gave European group formation a boost, reaching a peak of 60 newly set up groups in 1959, and leading to a total of 207 Euro-groups in 1962 (Kohler-Koch 1992: 93). For example, in 1958 and 1959, the two European agricultural umbrella associations, COPA and COGECA,<sup>87</sup> were established. As regards business interest associations, the large

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<sup>86</sup> Even before, and immediately after, the Second World War international federations of sectoral national associations were established, the first such formation dating from 1897. Some of the Euro-groups were formed from such international confederations (Tiedemann 1994: 52), for example, UNICE emerged from the *Conseil des Fédérations Industrielles d'Europe*, founded in 1949 ([www.unice.org](http://www.unice.org)).

<sup>87</sup> *Comité des Organisations Professionnelles Agricoles* and *Comité Générale de la Coopération Agricole*. COPA and COGECA merged in 1962.

cross-sectoral Union of Industrial and Employers' Confederations of Europe (UNICE<sup>88</sup>) as well as the European Association of Chambers of Commerce and Industries (EUROCHAMBRES) were founded in 1958. Besides these a number of sectoral groups came into being over time, amongst them the European Cement Industry Association (CEMBUREAU), the European Federation of Pharmaceutical Industry Associations (EFPIA), or the European Chemical Industry Council (CEFIC). Some groups were initiated by the Commission. For example, the Commission deemed it necessary to have a Euro-group at its disposal in order to tackle the crisis facing the European steel sector. As a result, the European Confederation of Iron and Steel Industries (EUROFER) was founded in 1977 (Nollert 1997: 124). On the whole, the representation of business-related interests at the European level can be said to be comprehensive. In the early 1990s, Kohler-Koch (1992: 94-5) found that almost all the relevant national business associations were members of a European association. Since the mid-1990s, the overall number of business associations reached a plateau of about 950 (Greenwood 2003: 75).

Over time, the organisational types and membership structures have changed substantially. The mobilisation of organised interests directly before, and after, the inception of the EEC very much fitted into an overall picture according to which Euro-groups would be confederations of national peak associations bringing together the relevant organised interests from all the member states. Today, the membership structure of COPA still follows that logic, which may not come as a surprise given the centrality of the CAP in European politics. In 2003, COPA brings together 29 national federations from the 15 member states. With a view to enlargement, the relevant agricultural peak associations of the 10 joining member states have signed a protocol of agreement with COPA and, in addition, the relevant agricultural peak organisations from Rumania and Bulgaria that may join the Union later. Yet, this type of membership

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<sup>88</sup> *Union des Industries de la Communauté Européenne.*

and organisational structure is an exception rather than a rule. First, today's European sector of organised business is characterised by Euro-groups that do not have a comprehensive and centralised membership structure like COPA. As this holds true for all other types of organised interests at the European level, in many cases membership neither encompasses associations from all member states, nor is it restricted to EU member states. Even the large cross-sectoral organisation UNICE that one might deem to be just an organisation whose membership is congruent with membership of the EU does not fully fit the category of comprehensive, or 'representative', association. UNICE has a total of 35 member federations from 28 countries. Taking together the current EU member states and accession candidates and comparing it to UNICE's membership, there is no member from three (out of 27) of the countries (Romania, Lithuania and Slovenia). Yet, member federations from non-EU countries include Switzerland, Iceland, Norway, San Marino, and Turkey. Moreover, UNICE membership points to a second characteristic of European level interest representation, namely that many member federations of Euro-groups set up additional direct representations to the EU. Hence, in most cases UNICE is not the exclusive representation of its members since 29 out of the 35 member federations have their own offices in Brussels.

Third, the representation of national peak associations was complemented by direct firm representations, the formation of direct firm membership organisations, the opening up of Euro-groups to direct firm membership, and the setting up of informal clubs and roundtables. Here the EU Committee of the American Chamber of Commerce in Belgium (AMCHAM-EU) set the precedent for direct firm membership organisations in the 1970s. AMCHAM-EU represents American-owned<sup>89</sup> large multinational firms and has become 'the primary representative body for American firms' (Cowles 1996: 348). Today, its membership brings together an impressive array of 128 large

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<sup>89</sup> AMCHAM-EU refuses membership to multinational firms that are not American-owned even if they have an important share in the US and the European market, such as Columbia Pictures or Sony Entertainment (Cowles 1996: 353).

multinationals, such as Microsoft, Kodak, Philip Morris, Gillette, Coca-Cola, etc. It is worth noting that in the case of AMCHAM-EU Community competencies were not the main reason for its formation. Rather, the main incentive for many US multinationals to set up their European offices in Brussels in the 1960s were favourable Belgian tax laws (*ibid.* 343). Another precedent was set with the formation of the European Round Table of Industrialists (ERT) in 1983. Its membership is personal, ERT assembles the CEOs (or Chairmen) of large European multinationals, such as Unilever, Nestlé, Bertelsmann, or Lufthansa. The ERT is primarily interested in developing medium and long-term strategies and this is presumably why it is usually heralded as having had a major impact on the successful agreement on the Single Market project. Other strategy-oriented organisations emulated the ERT, such as the Association for the Monetary Union of Europe (Greenwood 2003: 102). On the whole,

[...] around three-fifths of all EU associations are pure federations (i.e., those which have only national associations as members), a quarter embrace both national associations and firms, and around one-sixth have only companies as members. These latter organizations are almost exclusively large firm clubs. (*ibid.* 77)

Finally, the comprehensive cross-sectoral and sectoral Euro-groups were joined by a number of highly specialised European business associations. For example, there are six associations that represent glass producer interests, specialised, respectively, in flat glass, container glass, cut glass, domestic glass, reinforcement fibreglass, and insulation fibreglass (*ibid.* 20). Other associations are issue-specific, such as the Alliance for Beverage Cartons and the Environment, or the European Brands Association (*ibid.* 77). Overall, given the high degree of specialisation and fragmentation of organised business at the European level one should be cautious when inferring from the sheer numbers of organisations business interests' share (in power terms) in the entire sector of European interest groups.

### 5.1.2. Labour Interests

For quite some time, business interests dominated European interest group representation chiefly because the EEC was premised on a neo-liberal approach to integration. Labour interests, on the other hand, had, and still have, to struggle to find a place within the framework of an economic agenda. Gobin argues that this was not always the case as trade unions were well integrated into the framework of the ECSC Treaty. Their relative marginalisation only began, Gobin argues, with a fundamental shift from the more political ECSC to a technocratic EEC that aimed at avoiding political conflicts by searching for solutions based on expertise rather than on political compromise:

Nous pensons qu'une rupture politique forte s'opère entre le modèle CECA et le modèle CEE sur le plan de la nature du pouvoir politique à mettre en oeuvre: alors que le premier modèle s'apparentait aux formes démocratiques de pouvoir (dans son souci d'organiser de façon centrale l'expression du conflit politique [...]), le deuxième modèle s'apparente à une conception technocratique du pouvoir ([...] prévalence d'une logique de gestion administrative des rapports sociaux où le conflit politique a tendance à être transformé en 'problèmes techniques'). Dans un cadre technocratique, le pouvoir politique cherche à recourir à des 'experts', des 'techniciens', déclarés 'neutres' pour l'accompagner dans ses prises de décisions et non à des représentants de forces socio-politiques, telles que les organisations syndicales. (Gobin 1998: 113-4)

Even though labour interests have, in the meantime, become officially attached to the elaboration of European industrial relations via the Social Dialogue, they continue to oscillate between being a social partner and a socio-political force that regards itself as a public interest group. In addition, the organisation of labour interests at the European level was hindered by the ideological differences between individual trade unions – ranging from catholic to communist orientations – and their strong attachment to national parties (Kohler-Koch 1996: 196). Consequently, labour interests were represented by a socialist, Christian democrat and communist federation (Greenwood



2003: 165). It was not until 1973 that the European Trade Union Confederation (ETUC) was set up, at a time when European business interests were already well established. Yet, the formation of ETUC was a successful attempt to integrate all political affiliations (including the communist one), so that ETUC can rightfully claim to be ‘a united, yet pluralist organisation’ (self-description, [www.etuc.org](http://www.etuc.org)). As of 2003, ETUC represents 71 national trade union confederations from 31 countries and 11 sectoral European Industry Federations, such as the European Metalworker’s Federation or the European Federation of Journalists.<sup>90</sup> Overall, due to its comprehensive membership, ETUC enjoys a quasi-monopoly on the representation of labour interests. Limits to ETUC’s integrative force have so far only become apparent with the formation of a European Confederation of Independent Trade Unions (CESI) in 1990 which mainly brings together Christian democrat trade unions in the field of public services and is strongly opposed to the idea of a single European Trade Union Confederation like ETUC (Nollert 1997: 125).

### **5.1.3. Professional Interests**

The definition of what constitutes a given profession, its exercise and regulation varies widely among European states (for the entire subsection: Greenwood 2003: 124-48) . This is why, according to Greenwood, ‘[o]f all types of interests, the professions are the most weakly organized at the EU level’ (*ibid.* 124). The fact that most European professional groups are not Brussels-based may already indicate that the EU does not attract many profession-related interests. Until 1989, there was only one cross-sectoral European peak association. What is more, the 1974 formation of CEPLIS representing the independent liberal professions was initiated by the Commission. Up until to today, two further peak associations have been set up, CEC in 1989, representing salaried

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<sup>90</sup> In addition, a further seven national trade union confederations have an observer status with ETUC.

private sector managers, and EUROCADRES in 1993, representing unionised managers. Like in the case of business associations, there are a number of professional sectoral associations that mostly are confederations of national federations. Similarly, national associations have become active in the Brussels arena in their own right and the specialisation of professional interests reflects more or less intraprofessional divisions. For example, there are three European associations that represent pharmacists, one for technical issues, one for research and one for practitioner-related aspects. Lastly, and paralleling the idiosyncrasy of national regulation and definition of professions, some of the European groups representing professions may qualify for being the most peculiar associations of the entire EU interest group sector, such as the European Association of Handwriting Analysts, the European Union for Bird Ringing, or the Association of Fish Pathologists.

#### **5.1.4. Public Interests**

Up until the 1990s interest group representation at the European level reflected the fact that it was centred on an European Economic Community that seemed primarily to be occupied with making economic integration happen. Since the mid-1980s, however, there has been an impressive increase in public interest groups in numbers as well as in scope (for an overview see Harvey 1995). While this does not imply that public interest groups were completely absent from the Brussels arena prior to the 1980s, business interests certainly dominated European interest intermediation up to this time. Even in 1993, for instance, Grant (44) still concluded that ‘business interests are likely to remain the most important category of interests organized at the Community level’. Meanwhile, this situation has changed fundamentally. It is quite normal for NGO representatives to complain about the dominance of organised business which is often regarded as being fundamentally opposed to public interests. The fact that, over time, business association representatives also came to complain about the dominance of

public interest groups indicates that the latter have become well established in the Brussels arena, even if they have not come to be on an equal footing, in power terms, with economically-defined interests.

A number of reasons – and usually a combination of these - account for the formation and permanent establishment of public interest groups at the European level. Firstly, as this holds true for other types of interest groups, the EU's growing competencies have attracted much of the public interest groups' attention. Here the competencies may exist already, be anticipated, or the decision to organising at the European level may just be based on a diffuse image that the EU matters (see above). The case of environmental associations illustrates well the connection between Community competencies and the formation of public interest groups. The competency for environmental policy was bestowed upon the Community through the SEA, signed in 1986. Until the mid-1980s, the European Environmental Bureau (EEB) was practically the only environmental organisation at European level. Yet, once the Community was granted powers in this field a further six large environmental organisations opened their offices in Brussels (from 1985 to 1993): Friends of the Earth Europe, Greenpeace, WWF European Policy Office, Climate Network Europe (CNE), Transport & Environment, and Birdlife International (Furtak 2001: 106-8). Together with the EEB and Friends of Nature International, these organisations built up an alliance of the so-called 'G8' environmental NGOs. A similar case is that of human rights policy. Human rights were first mentioned in the preamble of the SEA, and the Maastricht Treaty made them an objective of the CFSP. Presumably as a corollary to this development four large human rights organisations opened Brussels outreach-offices between 1985 and 1994: Amnesty International, Human Rights Watch, the European Council of Refugees and Exiles (ECRE) and the International Federation of Human Rights (FIDH) (*ibid.* 184-7). On the whole, the mobilisation triggered by the SEA led to a considerable pluralization of the interests that claim to have a stake in a given policy field. While the Common Agricultural Policy (CAP) has been a central

Community policy since the Treaty of Rome, groups other than agricultural ones have stated an interest in the CAP since the SEA. For instance, the European Heart Network (EHN) was founded in 1986. A major field of its activities is directed towards the CAP, most significantly issues related to butter and tobacco. Today, the EHN is a member of the European Public Health Alliance (EPHA, established in 1994) which developed a comprehensive approach to the CAP, demanding that consumer, health, environmental and development issues are equally taken into account.

Secondly, as this is again the case for other types of interests, the Commission was very active in initiating the formation of European public interest groups. Here, the driving forces for Commission action might have been a perceived need for pluralization of the European interest group sector (such as the initiation of the European Consumer Bureau (BEUC<sup>91</sup>) in 1962), and for providing the Commission with resources and support for it becoming active in a given policy field (such as the initiation of the EEB in 1974 or of the European Youth Forum in 1978). The Commission invariably attempted to create European umbrella federations and to centralise the public interest group sector. The most conspicuous effort took place in the field of social policy. Initially, the basic framework for European social policy was elaborated in the 1970s without the participation of social public interest groups which, at that time, did not exist. In the late 1980s, however, the Commission initiated European umbrella federations (such as FEANTSA or EAPN fighting, respectively, homelessness and poverty, Harvey 1993: 190), and its centralising attempts culminated in the creation of the Platform of European Social NGOs in 1995. Today, the Platform brings together almost 40 European federations, networks and associations. Overall, and in contrast to other types of interests, public interest groups usually lack the resources to set up and maintain a Brussels presence. The Commission, therefore, is central to their creation and ensures their permanent existence by way of funding, a fact that

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<sup>91</sup> *Bureau Européen des Unions des Consommateurs.*

Commission services are well aware of. As a Commission official who had worked for the Employment and Social Affairs DG from 1990 to 1997 put it in an interview: ‘We have a big social NGO sector in Brussels because we pay to have a big social NGO sector in Brussels’ (see also 5.2.2.).

Thirdly, as the Maastricht Treaty and the ensuing difficulties of its ratification triggered a lasting debate on the Union’s ‘democratic deficit’, this provided another incentive for groups to become active in order to participate in the debates on the continuous reforms of the Union. In the wake of the Amsterdam IGC, for example, the European Inter Citizens’ Conference (ICC) was established to provide a network for ‘a citizen revision of European Union treaties’ (self-description). Equally on the occasion of the Amsterdam IGC the Permanent Forum of Civil Society was set up in 1995 at the initiative of the European Movement. Its aim is to build up a broad network of various types of NGOs (social, environmental, human rights, anti-racism, etc.) and to develop new ideas with regard to a citizen-based Europe. The Forum wants to function like an ancient Greek agora, that is like an open marketplace where broad ideas on the future of European integration can be discussed. The Forum also organised a number of highly symbolical events, such as several ‘stagings’ of a European civil society Estates-General. Overall, institutional reform and the elaboration of a Charter of Fundamental Rights attracted considerable attention and produced mobilisation of public interest groups. Not all of them have formed at European level, although their action is directed toward the EU, such as the French Collective on the Charter of Fundamental Rights (CCDF<sup>92</sup>), bringing together more than 60 French associations in the field of human rights.

Fourthly, some public interest groups were established at the European level because they wanted to redress the imbalance between the representation of economically-defined interests and public interests, or because the European level

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<sup>92</sup> *Collectif sur la Charte des Droits Fondamentaux de l’Union Européenne.*

constituted just another arena in which they deemed it important to make their concerns heard. ATD<sup>93</sup> Fourth World, for example, is an international network that fights extreme poverty. This organisation set up one of the European Parliament's first intergroups in 1980. The Quaker Council for European Affairs (QCEA) that focuses on issues like peace, social policy, human rights and development policy became active in Brussels in 1978/9, because, as a member put it in an interview 'the EEC needed an extra dimension'. Here the European Citizen Action Service (ECAS) is a special case. This professional NGO lobby service was founded in 1990 with the explicit aim to 'correct the imbalance between lobbying on behalf of business and lobbying on behalf of the public interest' (quoted from Harvey 1993: 194). Today, ECAS describes itself as:

[...] the watchdog of the European citizen. This independent non-profit association helps individuals and associations make their voice heard with the European Institutions, which are themselves proclaiming that 'Europe belongs to its citizens'. The association aims to create a strong European civil society, without which there can be no true, responsible, European citizenship. (ww.ecas.org)

ECAS can pride itself in having helped many public interest groups to form permanent European associations and to build up coalitions amongst them. With regard to enlargement, for example, ECAS gave support to a network of Polish NGOs to set up their own Brussels office in 2001 (see [www.eu.ngo.pl](http://www.eu.ngo.pl)).

Finally, and corroborating the 'classical' neo-functionalist assumption, public interest groups formed at the European level because they wanted the Community to become (more) active in a given policy field. Once established, such groups often remain active at the European level because European institutions and, in particular, the Commission, use them to extend the scope of European action. This is, for example, the case for the Association of Voluntary Service Organisations (AVSO). In 1989, several voluntary service organisations from different countries set up a Steering Group with

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<sup>93</sup> *Aide à Toute Détresse.*

the aim to tackle the problems of transnational voluntary services, in particular those stemming from the lack of official status for volunteers and of finances (Wobben 1992: 4). In 1993 the Steering Group set up a Brussels office, and in 1996 AVSO was founded. The Steering Group and AVSO became very active in the promotion of the idea, and later the formulation and implementation, of a European Voluntary Service.

### **5.1.5. Territorial Interests**

Territorial interests other than those represented by the member states joined the Brussels arena as actors in their own right from the mid-1980s on. Often they are labelled ‘regional’ or ‘subnational’ interests, but, as will be explained below it is more correct to define them more broadly as territorially-based interests that are mobilised at a transnational level (see Smets 1998: 321). Types of territorially-defined interests are wide-ranging and extremely diverse, to such a degree that Greenwood (2003: 233) believes that ‘the levels of complexity involved in territorial interest representation are perhaps greatest of all’. Chiefly, this complexity stems from the great number of different forms of cooperation and from the high degree of heterogeneity of territorial organisation within the member states which is equally reflected by the composition of the Committee of the Regions (see 4.5.2.).

The first territorial interests to set up direct representations in Brussels were the City of Birmingham and the Strathclyde Regional Council in 1984 (Smets 1998: 306), and the German *Länder* Saarland and Hamburg a year later (Marks *et al.* 1996: 40). The number of territorial interests with a direct representation to the EU has risen since steadily and has, in the meantime, reached a number of about 170.<sup>94</sup> Contrary to what

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<sup>94</sup> This number as well as the following description of territorially-based interest representation is based, if not otherwise indicated, on the lists of Brussels subnational offices provided by the Brussels-Europe Liaison Office ([www.blbe.irisnet.be/europe/repres\\_en.htm](http://www.blbe.irisnet.be/europe/repres_en.htm)), and the Italian region Veneto ([www.regione.veneto.i/settori/settore.asp?cat=1262](http://www.regione.veneto.i/settori/settore.asp?cat=1262) for subnational representations other than Italian, and [www.regione.veneto.i/settori/settore.asp?cat=1261](http://www.regione.veneto.i/settori/settore.asp?cat=1261) for a list of Brussels offices of Italian regions).

one might assume at first sight, Marks *et al.* (*ibid.* 62) found that the allocation of European resources (and most notably the structural funds) is not a sufficient incentive for regional interests to become active directly at the EU level. This finding is consistent with the patterns of regional representation from Greece and Portugal. Whilst both countries are heavily reliant on the receipt of structural funds, there is only one Greek region with a direct representation to the EU, and none from Portugal. Rather, the position of regions *vis-à-vis* the state helps to explain the presence of some regions in the European arena:

We find that the broader the competencies of a subnational government and the more intense its conflicts of interest or identity with the national state, the more likely it will mobilize in Brussels. This argument has little to do with resources, whether controlled by subnational governments or offered to them by the EU. (*ibid.* 62)

Not surprisingly, then, the regions of federal member states are best represented, most notably the German and Austrian Länder as well as Italian and Spanish regions.<sup>95</sup> On the other hand, some regions may use the European arena for self-assertion *vis-à-vis* national central governments. This is perhaps best illustrated by the Basque representation that displays an additional yellow star on its European flag to demonstrate that it represents a country, and not a region (*ibid.* 62). Overall, since regional mobilisation hinges to a large extent on regional competencies, it exacerbates the discrepancy between European regions. Mostly it is already powerful regions which have direct access to the EU arena, and in cases where they are not competent to do so, member states may even impose conditions when regions set up their offices in Brussels

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<sup>95</sup> The Belgian regions and linguistic communities have entered special agreements with the Belgian federal state to attach their representatives to the Belgian permanent representation to the EU (Smets 1998: 324, footnote 5). Nevertheless, two out of three regions and two out of three linguistic communities have set up their own representations to the EU. Geographical closeness to EU institutions does not seem to make an EU office superfluous in the eyes of regional government since the Brussels region has its own representation to the EU.

Each of the German Länder and the Italian regions has its own EU representation. With the exception of the Austrian Land Vorarlberg, and the two Spanish regions which are located on Moroccan territory (Ceuta and Melilla) Austrian and Spanish regional representation is almost comprehensive.



(Greenwood 2003: 230). Regional representation, therefore, does not undermine the position of the member states. Against this background, Marks *et al.* conclude:

There is little evidence of a Europe of the Regions. Rather we have seen the emergence of a Europe *with* the Regions, or, more accurately, a Europe with *some* regions. (1996: 63, emphasis original)

Not all the regions that have direct representations set them up individually. Some regional offices are based on an alliance of regions from a single (current or joining) member state, such as the *Association des Régions françaises du Grand Est*, the respective representations of Hungarian and Danish Regions to the EU, or the Eastern Poland Euro-Office. Furthermore, there are a number of transnational organisations. These function either along the lines of cross-border cooperation (such as the Austrian-Italian region of Tyrol, South-Tyrol, and Trentino), along the lines of common geographical conditions, as, for example, the European Association of Elected Representatives from Mountain Areas (AEM), the B7 bringing together seven islands from five states around the Baltic Sea, and the Association of European Border Regions (AEBR), or, finally, along the lines of common sectoral concerns.<sup>96</sup>

Representation of local government is as diverse as that of the regional level. EUROCITIES brings together cities with a population of more than 250,000 (Greenwood 2003: 232), but larger cities have also invested in an independent EU office (such as Bratislava, Helsinki, London, Prague, Tallinn), or formed a national alliance (such as the G4 bringing together Amsterdam, The Hague, Rotterdam and Utrecht). In addition, national umbrella associations of municipalities (such as the Association of Swedish Local Authorities or the Association of Netherlands Municipalities) are active at the EU level alongside federations of regional local authorities (such as the Association of Bavarian Communities). Finally, and

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<sup>96</sup> Examples of interregional sectoral organisations are the European Industrial Regions Association (EIRA), the Association of European Wine-Growing Regions (AREV), or the Assembly of European Fruit and Vegetable Growing and Horticultural Regions (AREFLH).

simultaneous to the growing importance of ‘regional interests’ to EU policies, the European peak associations of local and regional authorities that are historically centred on the Council of Europe have established their own Brussels outreach offices (*ibid.* 241, 247, 250).<sup>97</sup>

On the whole, territorial interests that are represented at the EU level are not restricted to public authorities. In a number of cases, the ‘regional interest’ that becomes represented is not a political one, such as Eurodom, the association of four French overseas departments (Guadeloupe, Guyana, Martinique, and Réunion), and the Breiz<sup>98</sup> Europe office both of which are private organisations that represent socio-professional interests (Smets 1998: 309 and 325, footnote 13). In other cases, the ‘regional interest’ brings together all sorts of stakeholders that are, in some way, attached to a given territory. For example, the Scotland Europa Centre brings together diverse interests such as a Scottish local authority association, a Scottish lawyer’s office, a Scottish development agency and an association that represents, *inter alia*, Scottish governmental bodies, chambers of commerce and the Scotch Whisky Association (*ibid.* 325, footnote 14). In the same vein, the *Patronat Catala Pro Europa* which has a Brussels office unites the regional public authority of Catalonia, the Association of Catalan communities, the federation of Catalan savings banks, the chamber of commerce of Barcelona, and four universities (*ibid.* 309).

In sum, territorial interests at the EU level bring together different organisational types of subnational public authorities which, in turn, have extremely divergent competencies. The ‘regional interest’ may be based on national regions, overall geographical and even sectoral conditions. Some regional offices represent entirely private interests, others are mixed public-private bodies. On the whole, subnational

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<sup>97</sup> These are: the Assembly of European Regions (AER), the Council of European Municipalities and Regions (CEMR) which merged with the International Union of Local Authorities (IULA), and the Congress of Local and Regional Authorities of Europe (CLRAE).

<sup>98</sup> ‘Breiz’ is the Gaelic name for ‘Brittany’.

interest representation parallels national interest representation at the EU level, in that neither can be regarded as a monolithic interest but, rather, as being composed of a large set of different interests that are, in some way, attached to the territory. Subnational representation displays yet another feature which may be one of the most striking of territorially-based EU interest representation. The combination of different kinds of private and public interests in one body (such as the Scotland Europa Centre), as well as the thematic networks (such as AEM and B7) resemble a kind of *functional* representation that preceded the emergence of the modern state. Certainly, the public bodies and private associations that are to be found in European-level territorial representation are not estates that use a common body to share their respective privileges, as was the case with the *Landstände* (see 2.3.2.). Contrary to pre-modern estates, this new type of functional-territorial representation takes place under the conditions of a modern state and free associations. Nevertheless, in both cases the territory constitutes the category that unites various social, economic and political forces without establishing a hierarchy between them. Certainly, a ‘Europe with some regions’ (see above) will not replace the nation-state. In the same vein, territory as a basis of representation does not become less important to the advantage of types of functional representation. Yet, territorial interest representation partly brings together functionally-defined interests, that is various interests that have a stake in a given territory. Overall, this can be regarded as the revival of a type of representation that disappeared with the rise of the nation-state, and now comes to be expressed at a supranational level.

#### **5.1.6. Assessment**

According to the latest and best available information on the numerical size of the European interest group sector there are 1,450 formally established groups addressed to the EU throughout Europe, and, in addition, 250 direct firm

representations, 170 national interest groups and 171 regional representations which all have their own Brussels-based offices (Greenwood 2003: 9). 66 per cent of the 1,450 interest groups represent business interests, 20 per cent public interests, 11 per cent professional interests, and three per cent trade union interests (*ibid.* 19).

Such numbers should always be interpreted with the greatest caution as they are conducive to projecting a rather incomplete picture of the European interest group sector. Numerical strength only roughly indicates an interest types' 'share' in shaping the overall landscape of European interest representation because such percentages do not tell us anything about the organisational type and size of the groups, nor their degree of specialisation. Hence, the three per cent share of organised labour interests do not point to the fact that there is one almost all-encompassing organisation in this field, namely ETUC. By the same token, it should be borne in mind that the 66 per cent share of business interests includes a great number of narrowly specialised associations. Yet, the quantitative feature confirms some central characteristics of the European interest group sector that have already been described above. First, the overall number suggests that a considerable Europeanisation of organised interests has taken place over time. Second, the number of types of interests that are worth counting (business, labour, professional, public...) point to the fact that the European interest group sector has seen considerable pluralization, most significantly in respect to the rise of public interest groups, and even produced new types of interests as is the case with territorially-defined interests. Therefore, we can say that the pluralistic structure and comprehensive nature of the European interest group sector fits the context of a no longer economic but political Community. Consequently, it is suited to representing the diversity in European societies which, in turn, constitutes the pre-condition for the factual group representation bringing about social integration.

However, it would be misleading to imagine this type of representation as being an exact mirror of the interests that exist within European societies. The European interest group sector is comprehensive in that it includes a range of possible types of

interests, yet, at the same time, it is very fragmented. Euro-groups represent alongside national groups, regional interests and direct firm representations. Moreover, the membership of Euro-groups is not congruent with EU borders. Kohler-Koch (1992: 94) found that the membership of one-third of Euro-groups is not confined to EU membership. Conversely, many groups have important 'membership gaps', insofar as they do not have members from all EU member states. The picture becomes even more confusing when one takes into account the representation of non-European interests, such as AMCHAM-EU. It is therefore more accurate to think of the factual European interest representation as giving expression to the diversity of social and economic interests that are in some way related to European societies. The current shape of the European interest group sector supports the viewpoint that the European Union is not on its way to becoming a European nation-state because it attracts organised interests to which the Union's borders only matter partly, insofar as they either transcend these borders, or give expression to only one of its geographical factions. Neither does the Union undermine the centrality of its constituent nation-states. Rather, it provides a complementary arena for the representation of interests which may take different forms to those at the national level as can be seen with regional representation at the EU level. The fragmentation and fuzziness of the overall picture of the European interest group sector matches the very nature of the European Union which itself defies clear categorisation. In short, the European interest group sector is as *sui generis* as the Union itself.

## **5.2. Factual European Interest Representation and Pluralist Democracy**

As has been explained in chapter three, public authorities need to regulate the participation of interest groups in democratic politics in order to prevent it from undermining the equality of citizens which is central to democracy. In particular, public authorities need to assure due procedure of interest group participation, grant open and equal access for interest groups, enable both conflict and consensus within the

governmental process, empower diffuse or widely held interests to organise, and take account of those interests that are not represented through a group (see chapter three). The principal question in this section is whether, and how, the approach of European institutions to interest group participation meets these criteria and thereby enables factual group representation in the framework of pluralist democracy.

Before going into details, it might be helpful here to briefly recall Kaiser's argument (see 3.3.). Factual group representation takes place when it is related to the public authorities and, at the same time, to the public sphere. Only when interest group representation is exposed to the public sphere can a representative body that is composed of various categories of interests be formed and have an integrative effect. In other words, factual group representation cannot come into being behind closed doors. It needs to take place within a public sphere that is open to active participation by everyone who states an interest and, at the same time, open to everyone to (passively) follow the discussion taking place within the public sphere (see also Eder *et al.* 1998). According to Kaiser, the Rousseauian notion of a single, encompassing public sphere in which the demos can express itself does not match the reality of fragmented modern societies. Rather, a (partial) public sphere comes into being when institutions and organised interests direct their attention toward a given issue. The public opinion, in turn, results from the articulation of various interests within this 'qualified public sphere'. In Kaiser's model, the group represent *vis-à-vis* the public opinion (in that they try to sway it to their advantage) while, at the same time, they are a component of public opinion.

The remainder of this section will mainly focus on the work of the Commission not only because it is an institution central to European interest groups but also because the Commission has developed, in its function as the Union's think tank, a comprehensive approach for interest group participation in European politics (5.2.1.). In addition, two models of how to organise interest group representation will be discussed with the help of two concrete examples: the Commission 'Civil Dialogue' in the field of

WTO negotiations (5.3.1.) and the role of the Economic and Social Committee with regard to civil society organisations (5.3.2.).

### **5.2.1. The Commission's Approach to Organised Interests**

Since its inception, the Commission has invariably been central to the formation and permanent establishment of organised interests at the European level (see 5.1.). Most significantly in our context, it has been active in the initiation of groups that represent diffuse or public interests, starting with the initiation of BEUC in 1962. Up until today, the Commission has continued to initiate the organisation of environmental, social, youth, and other types of public interests. As many public interest groups lack the resources to remain established at the European level, the Commission is also central to their maintenance by way of funding. For example, European consumer groups currently receive 1.6 million Euros per year, and the funding that European environmental groups receive even amounts to 6.5 million Euros each year (Greenwood 2003: 199). Certainly, the effect of Commission funding on European public interest groups is double-edged: while many just could not afford to remain active in the European arena, the funding risks undermining their capacity to voice criticism independently and makes them dependent on the implementation of Commission-defined projects. While some large NGOs can afford not to accept any financial support from the Commission (such as the QCEA, Greenpeace, or Amnesty International), the problems connected to Commission funding are most pertinent with regard to social public interest groups. The latter's high degree of dependence on Commission funding became apparent when the European Court of Justice issued a ruling in 1998 that declared the budget line which was used to fund most social interest groups as having no legal bases.<sup>99</sup> As a result, the budget line had to be formally suspended by the

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<sup>99</sup> Case 106/96, *United Kingdom v. Commission*, [1998] ECR 2729.

Commission threatening the existence of more than 20 European NGO networks. A solution was eventually found on the basis of an interinstitutional agreement during the negotiation of which hundreds of NGO workers and supporters mobilised on the streets of Brussels (FEANTSA 1998: 2).

In addition to being active in the formation and maintenance of European interest groups, the Commission started to build up a coherent approach to interest group participation in European politics in the early 1990s. The 1992 Commission Communication on ‘an open and structured dialogue between the Commission and special interest groups’ was motivated by the then beginning discussion on a ‘democratic deficit’. Accordingly, the purpose of the Communication was to fix some general rules with regard to interest group participation and make the latter more transparent (European Commission 1992: 3). Overall, the Commission affirmed that it has always been committed

[...] to the equal treatment of all special interest groups, to ensure that every interested party, irrespective of size or financial backing, should not be denied the opportunity of being heard by the Commission. (*ibid.* 5)

To this end, the 1992 Communication laid down some guiding principles. Open access and broader participation should be furthered by a single and comprehensive directory of interest groups and a wider availability of Commission documents. Furthermore, the Commission affirmed its policy not to establish rules for access (such as registration, accreditation, the granting of a consultative status) ‘because [it] has always wanted to maintain a dialogue which is as open as possible with all interested parties’ (*ibid.* 4).<sup>100</sup> Lastly, whilst, in principle, the Commission prefers Euro-groups as interlocutors, it stated its intention to remain open to all other groups as well.

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<sup>100</sup> Interestingly, immediately after its inception the Commission offered a consultative status to the trade unions. Since the latter refused on the grounds that they did not want to be treated on an equal footing with smaller interest groups the Commission dropped the idea of interest group accreditation (Zellentin 1962: 156-7).



As will be described below, the Commission has realised a number of measures in order to assure open and equal access to interest groups. Most significantly, however, the participation of interest groups in European politics came to be framed in a different way: ‘special interest groups’ as they were called in the 1992 Communication have become ‘civil society’. Now, they are framed with regard to the discourse on the Union’s legitimacy and, as a corollary, a component of the Commission’s ‘new governance’ approach. The latter is intended to make European politics more legitimate by enhancing its effectiveness and strengthening the democratic dimension. In these efforts, civil society organisations are expected to play a prominent role, since their active involvement is considered to be necessary in order to make EU politics more efficient and reduce the EU’s remoteness from its citizens.<sup>101</sup> The central document here is the 2001 Commission White Paper on Governance which will be discussed in some detail.

#### 5.2.1.1. The Commission’s White Paper on Governance

Since the beginning of the 1990s the Commission’s internal think-tank has been undertaking intensive research in the field of European governance with a view to modernising the EU. Hence, in May 1999 the then Forward Studies Unit presented its broad findings on improving the effectiveness and legitimacy of EU governance (European Commission 1999). In October 2000 a comprehensive work programme was published (European Commission 2000d) as part of the preparations for the White Paper on European Governance, which was eventually published in July 2001

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<sup>101</sup> It should be noted that the increased interest in civil society is not restricted to the European level. More generally, the notion of ‘civil society’ has attracted increasing attention as a reaction to the rising awareness that both neo-liberalism and the welfare state bring about only a limited problem-solving capacity, and that civil society may fulfil tasks that neither markets nor the state are still able to perform (Rucht 2001: 1-2).

(European Commission 2001b).<sup>102</sup> Overall, the outcomes of these documents are ambiguous. An analysis of the underlying views concerning representation and legitimacy show that the Commission evidently has difficulty overcoming the barrier of ‘technocratic administration’ and in conceiving of legitimacy in terms other than that of efficient output. The term legitimacy is, contrary to the research report’s explicit intention (European Commission 1999: 9), used as if it was a public relations problem when it states, for example, that the ‘European agenda must come to be understood as more relevant by civil society’ (*ibid.* 15). It is, therefore, no surprise that the background analysis sees a ‘perceived lack of [...] legitimacy’ without being able to find any substantial and structural problem which might account for it (*ibid.* 8, emphasis added). The White Paper continues in a similar way. It starts out by stating that, ‘despite its achievements, many European feel alienated from the Union’s work’, but this is a problem common to all sorts of ‘politics and political institutions around the globe’ (European Commission 2001b: 7). Hence, it seems to suggest that it would be superfluous to look for any systematic problems in the Union’s own institutional setting and working approach. One might argue that this reflection does not constitute the ideal starting point for a reform of the Union’s institutions, a problem that is aggravated by a rather confusing use of the term ‘democratic representation’. The White Paper defines the Community method of integration as mediating between different interests with the help of two filters: firstly, the general interest represented by the Commission and secondly, democratic representation in the Council, the European and the national Parliaments (*ibid.* 8). Unfortunately, the notion of ‘general interest’ as represented by the Commission is not defined further. Therefore, it remains unclear whether the Commission deems itself to represent a predetermined European general interest and conceives of the Council and the Parliament as democratic complements to bolster the

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<sup>102</sup> The White Paper proposes a range of governmental and legislative measures, such as a new open method of co-ordination, an intensified use of regulatory agencies, co-regulation, and defines the principles of good governance as being openness, participation, accountability, effectiveness and coherence (for a detailed discussion of the White Paper see Joerges et al. 2001).

Union's legitimacy, or whether the Commission understands the European general interest as the result of institutional and factual interest representation to which it contributes by representing a European general interest (see also 4.3.3.).

Whilst the White Paper stresses the centrality of participation, it does not go as far as seeing it as being of intrinsic value. Rather, policy makers are advised to stay in touch with European public opinion to guide them in identifying European projects that mobilise public support (*ibid.* 12). Openness is thought 'to improve the confidence in complex institutions' (*ibid.* 10). In the eyes of the Commission, participation and transparency serve to generate public support and trust in the European institutions. Yet, the White Paper does not mention that participation and transparency might have an impact on the workings of European institutions.

On the whole, participation provided for by the White Paper is centred on group representation and not on individual citizens. Territorial representation (by which the individual citizen becomes represented) is rejected as 'too broad to accommodate diverse populations' and 'ill-adapted to cope with emergent, interdependent and dynamic problems' (European Commission 1999: 15). On the other hand, as far as the goal of enhancing output legitimacy is concerned, the Commission strives for new working methods that would turn its old approach upside-down. In concrete terms, the re-orientation of administrative working methods is intended to transform the Commission from a bureaucracy that sets the general policy preferences and translates these into detailed programmes into an administration that prioritises 'pluralistic scientific expertise' (*ibid.* 14), enables all groups affected by a policy to participate at every stage of the policy process and sets the general framework for their cooperation.

[...] [T]he entire policy process from the framing of problems, through the formulation of policy, its implementation, evaluation and revision needs to be opened up and liberated from the shadowy world it currently inhabits – *civil society needs to be engaged in and by European action.* (*ibid.* 11, emphasis original)

To this end, the Commission had already launched a discussion process on its relationship with NGOs before the publication of the White Paper (see European Commission 2000b), and eventually developed a code of conduct for consultation (European Commission 2002d). The single directory that was envisaged by the 1992 Communication was published in 1997 (at that time still framed as a directory of special interest groups). In 2001 it was transferred to an on-line consultation database, CONECCS, which stands for Consultation, the European Commission and Civil Society.<sup>103</sup> Finally, a webportal was set up as a single access point for consultation.<sup>104</sup> Overall, these measures aim at assuring open and equal access to Commission consultation processes, which in turn are geared towards being as transparent as possible. The minimum standards for consultation lay down that it should be equitable and reflect a pluralist and balanced spectrum of interests. In concrete terms that means ‘adequate coverage’ of those parties affected by a policy, those who will be involved in implementation and those who have a direct interest in a given policy (European Commission 2002d: 19). Furthermore, the minimum standards proclaim that categories of interests should be consulted with the help of which ‘the wider impact of the policy on other policy areas’ can be assessed (e.g. environmental or consumer interests) (*ibid.* 19). Overall, the representation of social and economic interests, large and small organisations, wider constituencies and specific target groups, and EU and non-EU interests should be balanced (*ibid.* 20). Finally, the Commission intends to open up existing consultative processes. To this end, it states:

Where a formal or structured consultation body exists, the Commission should take steps to ensure that its composition properly reflects the sector it represents. If this is not the case, the Commission should consider how to

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<sup>103</sup> CONECCS is accessible via [http://europa.eu.int/comm/civil\\_society/conceccs/index\\_en.htm](http://europa.eu.int/comm/civil_society/conceccs/index_en.htm). The requirements for groups to register are: to be a non-profit making body organised at European level, i.e. with members in two or more EU or Candidate Countries; to be active in at least one European policy area; to dispose of some degree of formal existence, i.e. to be operated in accordance with a document that sets out the group’s objectives and the way it is to be managed; to be willing to provide some basic information about the group.

<sup>104</sup> <http://europa.eu.int/yourvoice>.

ensure that all interests are being taken into account (e.g. through other forms of consultation). (*ibid.* 20)

The Commission takes care not to grant privileged access to some groups and to be as inclusive as possible. This is reflected in the CONECCS database which enables groups to register by providing some basic information, but does not provide the possibility to become accredited. CONECCS also contains a database on existing consultative bodies providing the public with detailed information on the Commission's consultative bodies. Ongoing consultation processes are also made public via the 'Your-Voice-in-Europe' webportal. Though, in some cases, consultation is reduced to deliberative polls (and therefore no representation of interests takes place in the form of dialogue and conflict), other consultation processes are opened up to the interested public.

In sum, the White Paper and the measures connected to the new governance approach are indeed suited to liberating the European policy process 'from the shadowy world it currently inhabits' (see above). However, it has to be borne in mind, that this new approach is situated within a framework that understands legitimacy exclusively in terms of efficient output and only concerns factual group representation, not the representation of individuals. The following sub-section will discuss two models of how to engage civil society. While the example of DG Trade's Civil Dialogue shows that 'new governance' nevertheless bears the potential to have a fruitful impact on the framing of European politics and the workings of the Commission (5.2.2.1.), the example of the relationship of the Economic and Social Committee to civil society organisations (5.2.2.2.) points to some general problems concerning the framing of European interest groups as 'civil society' (5.2.2.3.).

## 5.2.2. Models of How to Engage Civil Society

### 5.2.2.1. The Civil Dialogue in the Field of WTO Negotiations

The Civil Dialogue in the field of WTO negotiations was initiated in 1998 by the then Commissioner Sir Leon Brittan.<sup>105</sup> At its origin were the first demonstrations against issues of world trade. This development can partly be explained by the success of the General Agreement on Tariffs and Trade (GATT) itself. As the classical impediments to free trade have been dramatically reduced, state protectionism has expressed itself in other fields, such as environmental issues and services. Consequently, the international negotiations on free trade came to include questions of technical barriers and services as well as intellectual property (i.e. the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS)). This eventually led to a significant politicisation of international trade agreements.

The Commission's approach, in this context, to dealing with the NGOs concerned was originally more of a public relations effort, the purpose of which was to allay public fears, than engagement in a dialogue in the proper sense of the word. Accordingly, the dialogue consisted of two meetings a year, during which more than 200 participants could listen to a 20-minute speech by the Commissioner. However, since its inception there has been internal debate in the Commission regarding how this could be changed. The format of today's Civil Dialogue looks quite different:

[T]he objective of this dialogue is to develop a confident working relationship between all interested stakeholders in the trade policy field, to ensure that all contributions to EU trade policy can be heard [...] The process is designed to focus on issues where [...] we can get better mutual understanding of concerns and better contacts between the key players [...] (European Commission 2002d)

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<sup>105</sup> The following description is partly based on an interview with a high-ranking Commission official, currently member of Commissioner Lamy's cabinet, in September 2000.

Hence, in addition to general meetings, a contact group and a number of issue groups have been established. The contact groups' task is to facilitate DG Trade's work in the dialogue: to make sufficient information available to both sides and to the wider NGO 'constituency' and to coordinate the running of the issue groups. A restriction on the number of annual meetings is designed to ensure the latter's efficiency. The dialogue's participants, in cooperation with the contact group, as well as the ongoing WTO negotiations determine the agenda. Several mechanisms aim to make the work of the issue groups meet the requirement of transparency. The agendas are made available on the Internet at least 20 working days before the meeting. The participating groups have the opportunity to make public their positions before the meeting, and the minutes are published as well. In addition, the participants may give feedback after the meetings and contribute to DG Trade's review of the dialogue process. The general meetings have been maintained, but have also been transformed into occasions for discussing general topics of trade policy, for presenting the issue groups' work and for debating the dialogue's organisation in general. As for representation, it is the groups' members that select their contact group members, not DG Trade. Participation in the issue groups is open to everybody who registers with DG Trade. The registration form is available on the Internet. It is a short document and places little administrative burden on the prospective participant. Hence, no formal accreditation of interest groups takes place. The only prerequisite for participation is making explicit the represented interest. This has gained some importance since, in some cases, private interest representatives had adopted the 'disguise' of a public interest group to give their claims more weight.

DG Trade makes public the organisations that participate in the Civil Dialogue by way of an on-line database. As of April 2003, it contains some 475 groups and organisations. Overall, the database indicates an equitable and balanced representation of interest groups as envisaged by the Commission's minimum standards for consultation outlined above. The Civil Dialogue brings together a wide range of groups representing producer and professional interests as well as public interest groups that

either focus on trade issues (such as the European Network on Debt and Development) or have simply stated an interest in world trade (such as the Quaker Council for European Affairs or the European Women's Lobby). European umbrella associations do not seem to enjoy a monopoly of representation. In many cases, the European-level group participates in the Civil Dialogue alongside one of its national members. This is, for example, the case for Friends of the Earth (Friends of the Earth Europe and France), the World Wide Fund for Nature (European Policy Office, WWF International and WWF UK) or the representation of agricultural interests (COPA-COGECA and the French Agriculture Representation to the EU). However, the picture we get from this database differs in an important aspect from the new format of Commission consultation processes. At the same time, it points to a general pattern of interest intermediation at European level: The database displays a picture of a community of interested parties that is neither restricted to organised groups, nor confined to the EU but that has come to form at European level, and more specifically around the Commission activities. In addition to the interest groups that one may expect to have registered with DG Trade, international organisations (such as the World Bank and the WHO), institutions (such as the European Parliament), national representations to the EU, both from member states and non-member states (such as the embassy of El Salvador or the French representation to the EU), national and European standardisation agencies, and finally regional representations (such as from the Southern German *Länder*) feature on DG Trade's database.

The Commission also undertakes some efforts to reach a broader public and has set up 'internet chats' as well as other fora. It is part of DG Trade's policy not to co-opt organised interests. Therefore, DG representatives also meet separately with those NGOs that refuse to participate in the dialogue for ideological reasons, such as was the case with Attac or *l'Observatoire de la Mondialisation*. In the initial stages of the dialogue, funding was not made available to enable interest groups to attend the issue group meetings because of the fear that the Commission might exert undue influence on



interest groups (i.e. to co-opt them by way of granting funds). As a consequence, participation became a problem for those interest groups that do not have sufficient financial resources at their disposal. Therefore, a pilot project for funding was set up eventually. The eligibility criteria for travel reimbursement, once again, demonstrate DG Trade's efforts to promote balanced representation of interests. The funding guidelines state that 'participation should broaden the range of participating organisations, both in terms of way of thinking and of geographical concentration of their membership', and 'provide additional input on substance and contribute to a more balanced overall representation of European civil society' (European Commission 2002d). Interestingly, the underlying approach of the funding eligibility criteria is not centred on producing efficient policy by promoting the idea that interest groups provide their expertise. Rather it emphasises the intrinsic value of the representation of different ways of thinking, in other words: a balanced factual representation of interests. Of course, this does not exclude the fact that it may be in DG Trade's interest to use the Civil Dialogue in order to feed external expertise into the policy process and thereby enhance efficiency. Yet what at first had been dominated by an elitist-paternalistic approach very soon turned into a creative mechanism for engaging organised civil society. As one high-ranking Commission official pointed out, the dialogue has not only helped the Commission to 'sell' its arguments to the NGO 'constituencies', but has meant that over time outside positions have come to influence, and partly even alter, the point of view of the Commission. It is DG Trade's intention to make conflict happen, but within the European arena and among groups, not only between the DG and interest groups. Overall, the current format of DG Trade's Civil Dialogue helps to generate a genuine European public that expresses itself in a partial and issue-centred public sphere.

### 5.2.2.2. Organised Civil Society and the Economic and Social Committee

The visions of new European governance also affect the Economic and Social Committee, where they take quite a different shape. In October 1999 the ESC organised the ‘First Convention on Civil Society Organised at European Level’,<sup>106</sup> debating at length an ESC opinion issued on the contribution of civil society organisations to European integration (Economic and Social Committee 1999a). Since Europe’s remoteness from its citizens has been identified as one of the main obstacles to overcoming legitimacy problems, it was seen as useful for the ESC to undertake efforts to become ‘a bridge between Europe and civil society’, as the institution claims in its self-description (Economic and Social Committee 2001).

The relationship between civil society and the ESC has been developed in greater detail by Anne-Marie Sigmund, President of the Various Interests Group (Economic and Social Committee 2000a). Drawing on a rich, though rather idiosyncratic, theoretical background, she has tried to demonstrate that civil society organisations can play a key role in European democracy. According to her approach, they represent individual citizens, stand for participation, public debate, openness and democracy, and function as mediators. Sigmund concludes that the link between European democracy, civil society organisations and the ESC is as follows:

The citizens of Europe are in search of a new social contract which is based on the Rousseau concept of self-determination and does not look on the sovereignty of the people as transfer of power from top to bottom. It is obvious that civil society organisations have a key role in this ‘Europe project’. The representatives of civil society organisations, and the Economic and Social Committee *as their legitimate representative*, have the opportunity but also the duty to influence this development. (Economic and Social Committee 2000b: 109, emphasis added)

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<sup>106</sup> The English translation is somewhat misleading: this problem could have been avoided by translating the original French terminology ‘société civile organisée’ as ‘civil society organisations’.

What does that mean in concrete terms? Even though the ESC does not see itself as the exclusive voice of civil society, the Committee is nevertheless trying to become a central actor in this field and to function as the main intermediary between the other EU institutions and civil society organisations. For instance, in its opinion on the participation of NGOs in the WTO negotiations, the ESC proposes the creation of an internal WTO Committee that would serve as a hub between the WTO, the Commission services and the European NGOs concerned (Economic and Social Committee 1999b: 6). It is remarkable that the document does not even mention DG Trade's Civil Dialogue and therefore does not deal with the question of how the relationship between individual associations and the ESC as their self-appointed 'legitimate representative' should be conceived. In the same vein, the ESC aims at functioning as a facilitator for the debate between the ongoing European Convention and civil society organisations. It regularly organises information meetings and dialogues on the European Convention in order to enable discussion between, among others, the Vice-President of the European Convention responsible for liaison with civil society and NGOs.

More generally, with a view to the recent Commission proposal to alter the composition of the ESC to consist of 'the various categories of civil society', the Commission has ascribed to the ESC the role of functioning as a 'relay *vis-à-vis* civil society' (European Commission 2000c: 18). As has been discussed above (see 4.5.5), a change in the composition and, more significantly, the nomination procedure would end an important inconsistency within the ESC's representational scheme. Yet, the implementation of the Commission's vision could have far-reaching consequences. It could bestow upon the Committee a potentially powerful competence to be representative of European civil society as a whole. Indeed, an altered composition could enable the ESC to really function as some kind of transmission belt for civil society. However, two caveats in the case of the ESC reform point to the overall problems the EU is facing in its actual attempts to engage civil society in policy making: problems of definition and representativeness.

### 5.2.2.3. Problems of definition and representativeness

The notion of civil society was first employed by Aristotle in order to demarcate the borderline between the public and the private spheres. The Greek *polis* was seen as identical with civil society, in contrast to the life of private households. This ancient identification of civil society with the commonwealth prevailed until the early modern era: the Aristotelian notion of civil society was used by political thinkers such as Hobbes and Kant. At the beginning of the modern era, however, the political and economic spheres grew apart gradually. This was reflected in a new conception of civil society, in which it was viewed as being separated from the body politic. Montesquieu was the first to make a distinction between the political and the civil 'state' (*l'état politique, l'état civil*). In the 20<sup>th</sup> century, the Italian communist Gramsci established a further distinction with regard to civil society. He understood it to be different from the political as well as the economic sphere (that was dominated by bourgeois interests). Hence, civil society was seen to be different from, and opposed to, bourgeois society. Today, the term civil society may point to one of the two more recent conceptions: the first being dual in character, conceiving of civil society in contrast to the state; the second being tripartite, distinguishing between the state, the economy and civil society. Thus, depending on the approach chosen, organised civil society may be defined as a network of associations either located between the state and the private sphere, or between the state, the economy and the private sphere (Ehrenberg 1999: 208, 233; Reese-Schäfer 2000: 76).

Crucially, as soon as the notion of civil society is no longer being used as a broad and sometimes fashionable concept, but serving as a basis for institutionalised or factual group representation, the problem of definition becomes much more significant. At a fundamental level, how the term is defined determines who is 'in' and who is 'out'. In other words, the manner in which the term is used signals who has the right to participate in policy making (and who has not). However, defining the term is not

straightforward. Indeed, we get a very diffuse picture of organised civil society if we compare the definitions that appear, at present, to have currency in the EU.

The first definition is apparent in the Commission's proposal for a reformulation of Article 257 TEC, which would replace a list ranging from farmers, workers and craftsmen to representatives of the general public with the term 'various categories of civil society' (see appendix 4.3.). According to such a definition all members of the ESC, including the employers' and workers' groups, would be defined as representatives of civil society. This definition matches the broad one contained in the Commission's 2001 White Paper on Governance. Here, 'civil society' is defined in functional terms as giving voice to the concerns of citizens, delivering services that meet people's needs, preparing the applicant countries for membership, acting as an early warning system in the field of development policy and as social partners, getting citizens more actively involved in achieving the Union's objectives as well as offering them a structured channel for feedback, criticism and protest (European Commission 2001b: 14-5). In a footnote (*ibid.* 14) the White Paper then enumerates the organisations which fit into these functional criteria. According to this document, civil society includes: trade unions and employers' associations (i.e. the social partners), non-governmental organisations, professional associations, charities, grassroots organisations and organisations that involve citizens in local and municipal life (with a particular contribution from churches and religious communities).

Similarly, for the purpose of the ESC conference Anne-Marie Sigmund identified civil society organisations as those

[...] organisational structures whose members serve the public interest through a process of discussion and understanding and function as mediators between the public authorities and the citizen (Economic and Social Committee 2000b: 107).

In concrete terms, this includes employers' associations and trade unions, all other social and economic organisations, NGOs, community-based organisations and

religious communities (*ibid.* 117). Whilst the ESC definition is more encompassing and precise than the Commission's, in both cases the term civil society could be replaced by 'intermediary organisations'.

By contrast a far more restricted definition is evident in one public interest group perspective. The Permanent Forum of Civil Society excludes economic organisations (even cooperatives) from its membership. Charities, socio-cultural and sports organisations are similarly excluded. Instead, the ETUC is a member and so too are organisations representing the 'New Social Movements', such as associations promoting de-colonisation, consumer protection and public health as well as the anti-nuclear, the students' and the women's movements (Dastoli 1999: 149). Finally, the least compelling version of the term can be inferred from DG Trade's Civil Dialogue where civil society is simply equated with public and private interest groups.

On the whole, 'civil society' and 'civil society organisations' are not clearly defined terms. Sometimes they are even used in a mutually exclusive way, which can be seen if one compares the first two definitions with that given by the Permanent Forum of Civil Society. The first two definitions include all socio-economic organisations, whereas the latter excludes all economic ones categorically. Moreover, the definition of civil society used by the Permanent Forum of Civil Society may seem contradictory, insofar as it excludes economic organisations but, at the same time, accepts trade unions. Finally, there is even worse confusion when, as is often the case, civil society is equated with 'citizen' or 'consumer', or, as is the case for DG Trade's Civil Dialogue, with all interests – groups and institutions alike – who declare that they have a stake in a given issue.

However, these definitional problems are not due to the complexity or newness of European politics. They stem, at least partly, from a general theoretical vagueness of the term.

Part of the problem is that civil society is an unavoidably nebulous and elastic conception that does not easily lend itself to a great deal of precision. (Ehrenberg 1999: 234)

Against the background set out above, the basis on which the Permanent Forum of Civil Society rejects economic organisations, except for trade unions, should become clear. What seems, at first sight, to be a contradiction inherent to the definition is rooted in Gramsci's distinction between civil and bourgeois society. To Gramsci, civil society should function as the motor for overcoming capitalism that was represented by state authority and bourgeois society. According to this perspective, trade unions no longer appear as economic organisations but rather as 'the essence of civil society' (Boual 1999: 45) which is opposed to bourgeois capitalist society. Moreover, this example demonstrates the difficulties of finding a comprehensive authoritative definition of civil society. Since civil society is always situated in relation to the state (and economy), that is exogenous factors, its definition hinges on the actual structures of civil society organisations on one hand, and on the political and economic environment on the other. Civil society cannot adequately be described in and of itself (Ehrenberg 1999: 235).

The problems surrounding the task of defining civil society are apparent in the EU institution's groping attempts to decide who should be included in policy making and how they should be included. Problems of definition with regard to the institutionalisation of civil society, however, could be solved. At least theoretically, we could conceive of a binding definition of civil society, either following the dual or tripartite conceptions outlined above, from which it could be inferred precisely which organisations would fit the criteria (and which would not). Yet, probably more important is a caveat that originates from the structure of civil society organisations themselves, most significantly that of public interest groups. From a pluralist perspective, the latter are valuable contributors to politics because they have the capacity to feed civic perspectives into the policy process. Yet, to this end, they need to

be close to the social forces they represent and need to be able to adapt themselves to changes that occur within society. This makes long-term institutionalisation problematic (see also Warleigh 2001). In some cases the organisations least connected with European institutions are closest to their 'clientele'. As the former Commission President Jacques Delors suggested in a speech given to the ESC conference:

Civil society organisations must not give in to the temptation of saying they represent the general interest. They may identify the general interest in their discussions. But that is quite a different thing. As for the associative interests that flourish around the European Commission, *it would be dangerous for those involved to become too much a part of the system*; to believe they alone have the right to represent society. Associative interests move just as society moves, and *care must therefore be taken not to ensconce privileged lobby groups while ignoring everything that emerges from society as it evolves*. But I think that more than ever we are counting on representatives of civil society organisations to have their finger on the pulse of society. (Economic and Social Committee 2000b: 79, emphasis added)

Even though civil society organisations might have their finger on the pulse of society, they are not 'representative' in the sense that they cover the entire spectrum of interests within a given category. A consumer organisation speaks for consumer interests, but it does not represent consumers in the same way as a European employers' umbrella organisation represents its national members. Furthermore, even if Euro-groups filled their membership 'gaps' by bringing together member organisations from each member state, that would not imply that they represented all the many different approaches that may exist with regard to a given category of interest. Here, ETUC is a rare example of a European organisation that was able to integrate the considerable diversity of ideological approaches within the trade union movement.

Nevertheless, European institutions would like civil society organisations to be 'representative'. In most cases this is impossible because of the great variety of organisations in one field which all have different approaches to a given issue. Moreover, representativeness of public interest groups may be undesirable. What makes



these organisations so rich in variety and scope, vivid and important is that they are not representative in themselves, but factional, and that they are not entirely formalised but have a more or less flexible organisational structure.

The ESC discusses these problems at some length in an Opinion on the Commission's discussion paper concerning the relationship between NGOs and the Commission. It states that representativeness can by no means be measured exclusively on the basis of membership, but must also take into account the organisations' capacity to generate expertise (Economic and Social Committee 2000a: 4). Yet, while participation on the grounds of expertise might render European politics more efficient, it does not enrich the Union's representational characteristics. The more the European institutions count on civil society organisations to provide links to the citizenry and, therefore, help to bolster the legitimacy of EU rule, the more they will demand that they are representative of interests which are, in turn, defined by the institutions. The relationship between 'state' and civic organisations is a very difficult and fragile one, especially if the latter become more and more dependent on funding and power resources provided by the former. The attempts to involve NGOs in an institutionalised context have therefore been criticised by several authors working in this field (Warleigh 2001, Boual 1999: 44). They warn against the danger that such efforts might lead to the creation by European institutions of a 'false' civil society. In addition, the loss of independence due to the inclusion of NGOs might make an open debate on the content of European integration impossible (Herrmann 1998: 144). Therefore, while the pluralization of the ESC's composition would, indeed, adapt its representational scheme to the current reality of European societies, the current reform proposal to make it a civil society chamber carries with it the danger that the ESC starts claiming to speak on behalf of civil society in all its different aspects and thereby hampers the access of other public interest groups to the European arena.

At times, the institutions' call for increased 'representativeness' of interest groups is coupled with an attempt at co-optation. For example, the Commission's on-

line database of civil society organisations is aimed at functioning ‘as a catalyst to improve their internal organisation’ (European Commission 2001b: 15) and the Commission wants the proposed code of conduct to increase the representativeness of the consulted organisations. Furthermore, the new partnership arrangements can be entered into only if the organisation concerned also takes over some duties, such as building up a working internal structure (*ibid.* 17). While the large Euro-groups might be able to fulfil the Commission’s conditions, smaller groups – and not only public interest groups – will certainly face considerable difficulties in becoming ‘representative’ in the eyes of the Commission. On the whole, the Commission’s attempt to manipulate European interest groups in such a way threatens to undermine the entire approach of open and equal access to the Commission.

### **5.3. Assessment**

Notwithstanding the role of other Community institutions with regard to European interest groups, the Commission has the greatest salience with regard to the shape of the European interest group sector and the ways in which interest intermediation and representation take place at the European level. Certainly, in the absence of Commission activity, many European interest groups would simply not exist, either because they would not have been formed or because they would not be able to remain established. In the same vein, the Commission’s overall approach to interest groups shapes, to a large extent, their activities and the way in which factual group representation is expressed at the European level.

As regards the *formation and maintenance of European interest groups*, their initiation and funding had a fruitful impact, inasmuch as it contributed to the considerable pluralization of the European interest group sector over time. On the other hand, the initiation of interest groups was often informed by an attempt to create centralised group structures at the European level in order to make groups as ‘representative’ as possible. Furthermore, the Commission funding has the effect of

consolidating the group structures. Even if the Commission does not use the funding to overtly exert influence on groups, it nevertheless makes them over-dependent on the Commission and the implementation of Commission-defined projects. Presumably, this applies in particular to resource-poor public interest groups. As a reaction to this situation, the ESC called for the establishment of clear criteria and procedural rules with respect to NGO funding by the Commission, *inter alia*, in order to ‘enable NGOs to undertake longer term planning’ and ‘to ensure that political considerations do not affect funding decisions’ (Economic and Social Committee 2000a: 4).

Certainly, the financing of interest groups is not a problem specific to the European Union, as it can be equally observed at the national level. Philippe Schmitter (1994 and 2000) proposed a system of ‘citizen vouchers’ for both the national and the European level. According to Schmitter, associations should be financed by a special tax that would have to be paid by all citizens resident in a given territory. Only registered groups – in Schmitter’s terms: those that have gained semi-public status – would be eligible for receiving funding. Crucially, Schmitter proposed that not public authorities but, rather, the citizens themselves should be competent for the allocation of funding with the help of a voucher system. Associations would then no longer be dependent on state-imposed conditions related to funding. Instead, they would have to convince citizens to grant them financial support (Schmitter 2000: 59-64 and more detailed Schmitter 1994). On the whole, a system of citizens’ vouchers would strengthen the representative dimension of interest group activities because it would provide a crucial incentive for interest groups to further direct their actions towards the public sphere while it would reduce public authorities’ influence on interest groups.

Yet, the problem with such proposals is that they require the registration of interest groups with the public authorities. This, in turn, increases the latter’s capacity to deploy leverage on the organisational structure of interest groups. Any registration system would very likely include ‘representativeness’ in the criteria for funding eligibility. Even the ECS proposal to establish clear funding criteria includes the

requirement that only ‘representative’ NGOs should qualify for receiving Community funding (Economic and Social Committee 2000a: 4). In addition to the fact that many European interest groups would risk not being able to fulfil the representativeness requirement, presumably the accreditation of European interest groups would lead to rigidity in the European interest group sector. Well-established groups could foster their position to the detriment of newly emerging ones, a problem that Schmitter (2000: 64) admits himself. The present system of interest intermediation and representation does not provide for registration or accreditation of interest groups because the Commission rightly assumes that the granting of a special status to interest groups would undermine the aim of assuring open access to the governmental process. Thus, there is no clear-cut solution with regard to funding: Whilst the present funding system generally makes interest groups dependent on the Commission, when changing the system one should be cautious with regard to requiring groups to be ‘representative’ because this entails the danger of restricting access to marginal groups and of furthering rigidity.

As regards the *general framework for European interest representation*, the EU is a remarkably open system. This feature has to do with the EU’s fragmented and multi-level character so that, in contrast to its constituent member states, the European arena ‘is much more open’ and ‘one in which no one type of interest [...] can routinely dominate’ (Greenwood 2003: 7 and 2). Over the past years, European interest representation has come to be entirely placed within the framework of the Union’s quest for legitimacy. As a result, ‘special interest groups’ are now subsumed under ‘civil society (organisations)’.

From a pluralist perspective, this overall shift has produced ambiguous effects. On the one hand, the Union has gone far on its route to becoming a more open and transparent system. EU documents became widely and easily available along with information on ongoing legislative processes. The elaboration of the Commission White Paper on Governance was paralleled by the overall opening up of Commission consultation procedures (for example, through the CONECCS database) and the setting

up of new formats of dialogue, such as the Civil Dialogue in the field of WTO negotiations. In the latter case the notion of dialogue has come to be taken seriously as a two-way process. On the whole, this type of dialogue fits the requirements of pluralist democracy as it assures open access (by additionally providing support for those who otherwise could not afford to participate), enables conflict and consensus among groups and public authorities, and enables passive participation in opinion formation by making accessible the discussions within the ‘qualified public sphere’ to a wider public.

On the other hand, the fact that the quest for legitimacy drives the relationship with interest groups potentially puts into question the positive effects which that same quest has produced so far. For example, the Commission White Paper overtly states that it wants groups to provide expertise, have an effective internal structure and fulfil basic criteria of representativeness. To groups that abide by these rules the Commission holds out the prospect to enter into special partnership arrangements. More generally, in the current discourse on civil society and legitimacy, civil society is mainly understood in functional terms, and a rather mechanistic view on legitimacy prevails. Often, the call for more ‘representativeness’ and more effective internal structures of ‘civil society organisations’ is based on the underlying assumption that the workings of interest group representation will have a *measurable* effect on public support. But this is a rather misleading conception. Factual group representation is suited to bringing about social integration and in this sense it is related to the Union’s bases of validity. Yet, the workings of interest groups do not *eo ipso* increase support values but, rather, factual group representation helps to let integration of European societies happen at all. Despite the efforts undertaken, the Commission has not yet crossed the threshold of no longer understanding politics in a technocratic way according to which the ‘right’ solutions are based on expertise but, rather, as the outcome of public debate. Last but not least, the use of the concept of civil society to tackle legitimacy problems has a somewhat problematic implication for the representation of individual citizens. It is not only the Commission White Paper that understands territorial representation as too broadly

based in order to provide efficient political solutions, but also the Economic and Social Committee that perceives of civil society as being mainly group-based. The idea that in pluralist democracies the representation of groups has to be subordinated to the representation of equal citizens and that, therefore, group-based representation cannot replace the centrality of territorial representation for the workings of democracies often fails to be properly appreciated. Here, it is telling that in the speech quoted above Anne-Marie Sigmund refers to ‘a new social contract which is based on the Rousseau concept of self-determination’ in search of which civil society organisations are crucial (Economic and Social Committee 2000b: 109). Presumably, Rousseau would have been rather surprised to learn that he had informed a view on politics that advocates the participation of partial associations in the generation of the common good.