A Voice, But Not a Vote:

A Role of Civil Society in the EU Policy-Making Process

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Abstract

Civil society has been becoming a raising role in the European Union policy-making process. The paper aims to analyze the recent studies on the field, and finds that the role of civil society is increasing, but still a long way to be a real actor of the policy-making process in the EU political system.

Introduction

The paper aims to recap the concept of civil society in order to understand the importance of it in the democratic political system. By assuming the strong linkage between civil society and democracy and good governance, the paper is composed by three parts: first, to review on the concept of the civil society. A relationship between the civil society and the EU' unique political system will be analyzed in the second part. Finally, an increasing, and yet crucial role played by the civil society in the EU policy-making process will be demonstrated and analyzed.

1. A Definition of the civil society

The concept of civil society goes centuries in western politics with its roots in Ancient Greece. The modern idea of civil society emerged in the 17th century, influences by John Locke (1632 – 1704), Charles de Montesquieu (1689 – 1755), Georg Friedrich Hegel (1770 – 1831) or Alexis de Tocqueville (1805 – 1859). They established different schools of thought which have spawned different conceptions of civil society.

The current research emerged in the 1990s, has explored the civil society as a condition of society and seeks to identify the necessary societal infrastructure of participatory democracy. But how does civil society define in a scientific language?

According to Veneklasen (1994), civil society is an organization for social interaction between the household and the state, "which is manifested in the norms of community cooperative, structures of voluntary association and networks of public communication, (…) a structure of association refers to the full range of informal and formal organization through which citizen pursue common interest."

Connor (1999) regards, civil society is compound autonomous associations which contain a dense, diversified and pluralistic network. It consists of a range of local groups, specialized organizations and linkages between them to amplify the corrective voice of civil society as a partner in government and the market (Connor 1999). Tocqueville has called the essence of civil society is "l'*art de l'association*' (the art of association), a term referring to both process and structure. Habermas (1996) stressed, that association's networks as the " organizational substratum of the general public of citizens', thus, as the "core of civil society."

To generalize the above definitions given by scholars, the key feature of civil societies shall be outlined as the following: separation from the state and market; formed by people who have common needs, interests and values; and its development through a fundamentally autonomous process which cannot be controlled from outside. These characters have been closely linked with the democracy in terms of an interest organizations/associations/groups represent themselves in the state government.

Political scientists have complained that "civil society is vague [… and that] most civil society theorists offer intuitive, ostensive, or paradigmatic accounts of it rather than something more rigorous" (Jensen 2006). However, there is an increasing body of literature which seeks to define the concept of civil society (Jensen 2006) This literature has, among other things, highlighted the practical and theoretical origins of civil society and identified different conceptions according to their perception of state -society relations which, on their part, result in different democratizing functions assigned to civil society.

Few scholars explicitly refer to classical political thought for their analyses of civil society in EU governance. Civil society had become to be perceived as a well-ordered social arrangement which demarcates civil from 'uncivil' society and represents the departure from a state of nature (Jensen 2006). The democracy tenet has ensure the civil society' participatory role in the public policy-making arena. "Unless citizens participate (…), and their choices structure government action, then democratic processes are meaningless" (Dalton, 2008). However, strengthening democratic decision-making processes in not an easy mater, particular for the civil society in the European Union.

2. The role of civil society in the EU political system

2.1   Civil society in the EU governance: a theoretical debate
The necessity to understand the level of integration and EU institutionalization has   attracted both International Relations and Comparative Politics scholars, and produced contrasting theory interpretations. Attention has been given mainly to two issues. First, the will of the governments to give life to supranational institutions for better exploiting the advantages of sharing economic resources and a free trade system. Second, the scale of the competences of the European institutions and the consequent problem of a clear division and hierarchy of levels in a complex structure of coexisting centers of power and decisions (Schmidt, 2004).

Due to the lack of knowledge both at the level of state and the level of European Union，a series of actors of the civil society, and representative of specific economic interests, has increasingly played a role essential to the technical aspects of many European policies. During the 1970s, the Pluralist school scientists started to study this new, apparent phenomenon.

The application to the European system of this new interpretative model produced a renewed version of the classical functionalist theory by Mitrany (1975) and Haas (1964). The role played by economic groups in strengthening and diffusing economic integration (so-called spill-over effect) is at the core of the neo-functionalist analysis. It is true that these actors are specifically tied to productive categories and, then, determined to represent and defend some specific interests. Nevertheless, their constant work with the Commission as well as the technical supply they give to the Commission proposals became a real method of consultation, and opened the road to political integration.

Such tendencies continued and strengthened during the 1980s. The publication of the *White Paper* by Jacques Delors, in 1985, supplied a series of provisions necessary to the realization of the single market, while the following Single European Act widened the competences of the European institutions, by modifying the set of decision procedures, and enlarging the power of the European Parliament through the co-decision procedure (Attinà, 2007). The strengthening of the economic dimension, and the widening of common policies further increased the interest and pressure of old and new groups. This phase, named as the *lobbyfication phase* of the European decision-making (Panebianco, 2000), is destined to consolidate and widen further on. This process had important consequences on the policies of the Member states, and the European institutions too. The largest part of the European policies, in fact, took the form of regulative rather than distributive policies, and the need for knowledge and competence resources increased. Thus, non-state actors (albeit the economic ones) become real referents (Magnette, 2003).

Significant changes occurred also in the 1990s. The completion of the Single Market triggered a series of measures of economic and monetary nature that had a cascading effect on the Member States, and involved all the levels of government (Longo, 2005). Moreover, the Maastricht Treaty led to the consolidation of the European ambition to be a political actor. In addition to the economic groups, other groups active on civilian issues knocked at the door of the European institutions. They were new to the European system, and the product of the maturate condition of European civil society. Briefly, a new system of interest representation was re-structuring the EU on the initiative of social groups that had no adequate channels of demand articulation and aggregation[1], but could contribute to narrow the gap between the citizens and institutions, and to manage the problems of democratic decision-making process and institutions accountability at the European level. As Schmidt affirms:

> *"EU democracy does not fit the nation-state definition as 'government by the people'*
> *through political participation, 'government of the people' through citizen representation,*

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[1] This function should have been carried out by political parties which, however, have failed in connecting citizens to the European institutions (Bardi, 2002).

'government for the people' through effective government, and what I call 'government with the people' through consultation with organized interests" (Schmidt, 2004).

The functionalist theories did not focus on this evolution, and failed to answer the problem of democracy. The challenges met by the EU, continually reviewed after Maastricht Traety, deal with the fact that the European institutions make decisions on account of the citizens but without their due control and participation. For this reason, in 2001, the Commission undertook a thorough reform of the EU governance system, which was defined as:

"...rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence" [2].

Nettesheim (2004) argued, A supranational governance must be a democratic governance - and thus cannot be separated from broad participation – for at least three reasons: (1) democracy implies not only that citizens can participate and legitimize political power, but also that the latter is responsible, in turn, to the citizen; (2) the concept of public good means that it is widely shared by all those who are subject to jurisdiction; and (3) democracy requires some appropriate checks and balances.

What emerged clearly from the reflection initiated by the Commission is that, despite the evident shortcomings, the EU is not a beginner. If political participation is not only exercising the voting power, but also the range of activities through which citizens seek to influence political power, then a participation rate which is still low but growing, can be recorded (Longo, 2005). Moreover, referring to Lijphart thesis on heterogeneous democracies (as the EU certainly is), the presence of two factors is essential: political and institutional mechanisms that permit the participation of all social actors interested in the management of interests, and a model of division of skills that will enable these groups to decide at least the most relevant policies (Lijphart, 2004). In this sense, the EU is a system in which many interests are represented through a plurality of actors, but it is at the beginning of reforming its channels of participation.

2.2 Redefine the role of civil society in the EU

For the long time, civil society is not considered to be relevant in the European Union institutions. German political theorist Emanuel Richter argued that civil society is not a point of reference either in EU documents and treaties or in European integration research (Richter 1997). Until the 1992 Maastricht Treaty, the democratic legitimacy of the EU was presumed to be based mainly on the democratic character of its member sates (Majone 1998).

Since the Commission does not make a distinction between civil society organizations or other forms of interest groups, the following part will integrate the two concept s into one, or reflect to one another. With the EU White Paper on Governance, the Commission tools the initiative to improve the democratic character of the EU by encouraging civil society of being

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[2] European Commission (2001), *White Paper on European Governance,* Brussels, COM (2001) 428 def., 5.8.2001, p. 8.

more participatory (EC 2001).   Participation through civil society or interest groups is seen both as beneficial for citizens as well as policy makers. Societal part can be seen as delivering for democracy on two main counts. First, as effective representative vehicles: better policy emerges as a result of group activities. Policy outcomes are more informed and workable because they are more close to citizens' preference (Maloney 2008).   Secondly, civil society's participation can enhance the quality of the political linkage between citizens and decision-makers by facilitating the generation of democracy and civil value. Thus, civil society is not just a group of interest citizens, but a democratic necessity in the democratic political system.

Participatory democracy via civil society involvement was considered as a promising supplement to representative democracy and entered EU documents such as the White Paper on European Governance (EC 2001) and the draft Constitutional Treaty (2004). In this sense, civil society involvement in different policy fields and EU institutions such as the Commission, the European Economic and Social Committee (EESC) or the Constitutional Convention has been studied. At the same time, students of social movement and public space began to orient their research towards the EU political system as an object of contestation and public control.

Some scholars have less positive view towards the democratic contribution of interest groups (Greenwood 2007). As Dahl (1961) stated that the relationship between the policy-makers and citizens in a pluralistic democracy as reciprocal. To the extent, it is worth to ask how civil society plays a role in the decision-making process in the EU level.

2.3 Civil society: a consultant role in the EU decision-making process
Given the importance of its potential contribution to a democratic political system, civil society has been widely recognized as an essential non-state actor in the decision-making process. It seems as an increasing important role for promoting good governance like transparency, accountability and openness.

In the EU, the role of civil society has been legitimatized since 1990s. The consulting role of civil society was legally framed in the Amsterdam Treaty

Table 1: The Legal Framework for the civil society in the EU

"[...] the Commission should consult widely before proposing legislation, and, wherever appropriate, publish consultation documents."	Amsterdam Treaty, "
Regarding to "social dialogue" by which the Commission consults the social partners at European level	At. 137-139, Amsterdam Treaty
application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.	Regulation (EC) N° 1367/2006

(Source: http://ec.europa.eu/civil_society/apgen_en.htm)

From the above, what can be seen among EU institutions is indeed the Commission who particularly focused on civil society and participation as a remedy for the perceived legitimacy crisis. This trend culminated in the White Paper on European Governance published by the European Commission in 2001. The document assigned a key function to civil society for the implementation of good governance by openness, participation, accountability, effectiveness and coherence (EC 2001). The White Paper, and particularly its focus on participatory democracy and civil society, was widely perceived and intensely debated in academia. Practical steps the Commission has taken since to implement the principles and suggestions of the White Paper have further inspired the scientific debate of civil society involvement in the EU. An intense discussion on civil society and participatory democracy in EU governance has unfolded in the meantime.

Approaches to citizens' involvement in EU affairs circulate around the concept of governance which has evolved since the early 1990s and has become a central point of reference for European integration researchers. Beate Kohler-Koch and Berthold Rittberger hence identify a "governance turn in EU studies" in a recent review article (Kohler-Koch and Rittberger 2006). What distinguishes the conception of governance from *government* and, at the same time, predefines its allusion to citizens' participation is the revaluation of non-state actors in policy making: Governance shifts the focus from public actors and hierarchical decision-making to the interaction of public and private actors and non-hierarchical political structures (Kohler-Koch *et al*.2008).

The European Commission has traditionally sought to involve societal stakeholders as experts in its policy making (EC 1992; EC 1997; EC 2000). These efforts are due to the Commission's exclusive right to initiate European policies, its comparatively narrow base of resources, and the necessity to elicit consensual political solutions (Christiansen *et al.* 2003; Kohler-Koch 1996). The civil society in EU policy making was further stimulated by the extension of EU competences in the 1992 Maastricht Treaty. This drew new societal actors to the EU political system and attracted the attention of EU integration researchers. Hence, the European Commission and its informal relations with different types of societal stakeholders became a natural object of research on European governance. These stakeholders range – depending on the changing policy competences of the Commission – from business interests to the social partners, welfare organizations or consumer, women and environmental groups.

In line with the Commission, The Council launched a "Community action programme to promote European civic participation". The main objective of the programme is "(…) to bring citizens closer to the European Union and its institutions and to encourage them to engage more frequently with its institutions". The civic participation is the main mechanism to improve the democratic character of the EU. In order to make decision-making making in Europe more open, transparent and participatory. The European Parliament also has a strategic interest in civil society due to a rather weak position in the institutional architecture of the EU (Neohuld 2005). The literatures on promoting civil society and its relationship with supranational institutions in the process of EU policy process have been summarized in the following table:

However, it is still far from the ideal picture for the role of civil society in the EU policy-making process. As Sandra Kroger (2008) argued that there is a strong bias towards consultations of CSOs outside of legal bodies. In other words, the civil society does not exist in a treaty-base but rather a political driven between semiformal (workshop, conference, on-line consultations, etc). And informal (ad hoc meetings, phone calls, etc) (Broscheid and Coen 2007; Curtin 2003). Kroger pointed out that civil society's access to the EU politics is biased, where It tends to be European civil society based in Brussels with strong constituencies particularly in the lager older MSs which have a better access to the EU policy-making processes than others from new member states (Obradovic and Damsma 2007). In the sense of access to the policy-making process, the role of civil society does not seem to be equally open to all and therefore does not fulfill the democratic norm of both liberal and deliberative democracy (Kohler-Koch and Huller 2008). Through the discourse analysis, Sandra Kroger (2008) pointed out that the role of civil society is perceived as a loss in autonomy by the close contacts with the Commission, and resulted in a halt of voicing consultation processes. Yet, the consultative practices may not contribute to the democratic deficit of the EU, and create little to bridge the gap between the EU and its citizens (Kohler-Koch 2007).

In conclusions, the constant evolution of the theoretical debate is the natural consequence of the transformation which the application of the governance model produces in the EU system by structuring interests, advancing social needs, and, above all, introducing the diversification of the relevant actors.

3. How does civil society play its role in the EU

It is clear that in the EU system, civil society presents diversified faces based on the nature of the interests represented. However, they tend to use, with some diversity, similar methods of pressure and dialogue with all EU institutions. The real difference is in how EU institutions have formalized their relationships with various groups. On this regard, two separate strands of the same social governance are emerging: social dialogue and civil dialogue (Mascia, 2004).

3.1 *Social dialogue and civil dialogue*

Since 1985, with the publication of the White Paper by Delors, the EU system has provided forms and procedures to let the social dialogue active. Art. 138 of the Treaty establishing the European Community is considered as the legal basis of the social dialogue. The relevant aspects are essentially two. First, the EU clearly identifies the social actors (trade unions, professional associations, multinational industrial groups), organized vertically and engaged in areas strictly identifiable, the labor, with some exceptions (like wage issues). Second, there is a consultation procedure which obliges the Commission to question the social partners in all matters within their competence and before starting the legislative initiative. As already seen here above, the initial direction taken by the process of European integration created the conditions for economic groups to become real political actors, and enabled the consultation procedure to become stronger over time.

Civil dialogue, instead, has no legal basis. This led to great uncertainty about the identity of the actors involved but also on access to the decision-making process. This problem refers to

NGOs and associations involved in all areas which do not fall in the economic sphere: consumer protection, development cooperation, environment, human rights, protection of women and children, etc. The characteristics of the interests represented lead to a structure which is not generally vertical or centralized but very flexible through a network structure. There is, of course, no consultation procedure strictly required by law. This did not, however, prevent the Commission to study a range of initiatives to counteract the "excessive power" of economic groups, by putting civil dialogue at various mechanisms of participation.

3.2   Relations with the EU institutions

The lack of standards and procedures ruling civil dialogue began to be felt strongly in the 1990s, to become, in the following years, an authentic exigency. The vastness and complexity of organizations and interests involved made the definition of standard mechanisms very troubled. Taking into account the definition of governance the Commission has given, what has been developing is a system of interactions held separately with each EU institution, sometimes with some convergence, but much more often with no coordination. It is, however, a system still in action (Attinà – Natalicchi, 2007).

Civil dialogue has always been "recommended" to the Economic and Social Committee (ESC) that would have been the natural *maison*, not only because it is the representative body of diverse interests but also because it was given the task of fostering links between society and institutions, acting as a mediator. Relations have never been, however, very productive: the prevalence within the ESC, of the economic groups has led to a sort of "fondness" for the social dialogue.

The Commission is the institution which has shown more spending - as it happened for social dialogue - firstly to an agreed definition of civil consultation and then towards the formulation of more comprehensible procedures. After a structured relationship with the economic interest groups, the Commission noted, during 1990s, a growing demand from actors of a different nature and began reflecting on this phenomenon. In the document "*The Commission and the non-governmental organizations: building a stronger partnership*", published in January 2000, there was a detailed empirical verification of the initial civil dialogue as well as a series of problems linked to the lack of transparency and communication, and the excessive complexity of procedures.

The main difficulties were essentially two. First, the strict division of competences of the Commission into different fields was not always correspondent to the interests represented by various organizations, which were, on the contrary, more flexible and interdependent. This contributed to confuse the organizations in relation to the Directorates General on which to exert the pressure. Second, financing, direct or mediated by the national authorities, was not intended for the benefit of individual organizations, but for single competence, with the result of limiting their activities, particularly those less endowed with material resources.

To these problems, the Commission replied with a statement of greater commitment but, at the same time, requested to the organizations a broader accountability and a greater use of the

consultation. The document appears as a platform to launch a first cooperation strategy based on 5 priorities:

1. Fostering participatory democracy;
2. Representing the views of specific groups of citizen to the European Institutions;
3. Contributing to policy making;
4. Contributing to project management;
5. Contribuiting to European integration.[3]

This strategy was part of the wider reflection the Commission had started to do in those years on the system of governance, and the need to renew it.

Although it was clear that, during a considerably long time, the EU would have represented a unique example in the political system, the need to review the methods and policies was strongly felt.[4] In this context, participation of civil society was an essential element, and enlargement of its base a top priority.[5] The result was the *White Paper on European governance* of August 2001, prepared by the Commission together with over 2,500 experts, academics and operators of NGOs and updated through a mechanism of public and open consultation which continued until March 31, 2002.

The key-word was "participation": if, as Eurobarometer (among other surveys) repeatedly noted, the interest in policies is very low at the individual citizens level, but considerably high in structured groups and organizations, then it is on these that more attention should be focused. In addition to the traditional economic groups, even those "civilians" were finally clearly defined:

"Civil society includes the following: trade unions and employers' organizations ("social partners"); nongovernmental organizations; professional associations; charities; grass-roots organizations; organizations that involve citizens in local and municipal life with a particular contribution from churches and religious communities". [6]

Timeline and ways of that involvement were explained by using the open method of coordination: *"It is a way of encouraging co-operation, the exchange of best practice and agreeing common targets and guidelines for Member States, sometimes backed up by national action plans as in the case of employment and social exclusion. It relies on regular monitoring of progress to meet those targets, allowing Member States to compare their efforts and learn from the experience of others".[7]*

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[3] European Commission (2000), *The Commission and the non-governmental organizations: building a stronger partnership*, COM (2000) 11 def., 18.1.2000, pp. 5-6.

[4] European Commission (2001), *White Paper on European Governance*, Brussels, COM (2001) 428 def., 5.8.2001, p. 7.

[5] Ibid., p. 8.

[6] Ibid., p. 14.

[7] Ibid., p. 21.

In other terms, what the Commission was intended to promote was a new culture of consultation by putting together actors (organizations of civil society, local and national groups, ESC, Committee of the Regions and all institutions) and methods (respect for basic principles of good governance) in a framework of interdependence and coordination.[8]

It is true that the document seemed to be highly innovative; nevertheless, a deeper analysis reveals all its limits. Even though it is revaluated, participation must be initiated by the institutions, it mainly concerns the organized civil society, often focused only on specific interests and, above all, remains relegated to the advisory stage and not extended to the decisional one. Neither the amount of actors and levels of government involved (community, national, regional, local) could afford more. The process, however, did not stop. The White Paper was submitted to public opinion, and feedbacks were copious.

The communication "*Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties*" by the Commission in 2002, was try to summarize, by providing an important support to what is already envisaged in the 2001 White Paper. In the document, further clarification of actors is made: *"'civil society organizations' are the principal structures of society outside of government and public administration, including economic operators not generally considered to be "third sector" or NGOs"*.[9] It continues to affirm the necessity of participation on a broader basis and recognizes the active role played by the organizations of civil society: even though this has been largely underestimated, the key word continues to be still and only "consultation".

The commitment shown by the Commission in civil dialogue is still underway. However, it is possible to say that its major efforts have gone toward a definition, aimed at first to give legitimacy and then to clarify which actors are involved and what methods recommended. This is a request for participation that the Commission makes above all to civil society organizations but extends also to other institutions. If Parliament is traditionally home of popular sovereignty and dominated by another type of actors, namely political parties[10], the Council, despite its purely intergovernmental nature, has gradually turned its attention to civil dialogue, preparing a series of measures that have facilitated their activities. The main results are the legislation that has essentially given effect to the guidelines of the Commission. It has allowed the European NGOs to be associated with the processes of formulation of policies in specific areas (such as the environment, development cooperation, etc.) And, more importantly, direct access to funding (Mascia, 2004). This is not yet a legal basis, which is the strong point of social dialogue. The possibility to count on official deliberations of the Council permits, however, to organizations of civil society to "demand" greater institutionalization of their presence.

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[8] Ibid., p. 17.

[9] European Commission (2001), *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, Brussels, COM (2002) 704 def., 11.12.2002, p. 6.

[10] This did not, however, prevented the organizations of civil society to initiate a network of informal contacts with individual MPs or groups of the European Parliament (Mascia, 2004).

In other terms, there is a strong presence, in the EU system, of a civil society variously organized and eager to be heard in traditional issues as well as in new ones. Next to those which are relevant for the actors of social dialogue (agriculture, internal market, enterprise), there is an increasing pressure in areas where there are different interests at stake, namely security, human rights, and humanitarian relief.

The range of approaches to peace operations that NGOs have developed matches also the EU's role of peace provider and its capacity to afford humanitarian problems. However, for understanding the increasing participation of NGOs in relief and peace-building activities within the EU system, a preliminary analysis is required.

Conclusion

To sum up, through the theoretical debates and recent studies, it can be found that the role of civil society in the EU policy-making process is a rather mixed picture: on the one hand, an increasing consulting role has being raised for the last ten years in the EU, on the other hand, the lack of legitimate voting right in the decision process. The incentive of a rising role for civil society has been engineered by the supranational institutions in the EU legislative process, particularly the Commission. The European Parliament as well as the Council also has interests on promoting the civil society to participate the consultation process in the course of decision-making. However, the designed consulting role of civil society has less significant role in the decision-making process as the real actors, such as EC and EP, does. Some scholars imply that the current structure of civil society's consultative practices may help neither in reducing the democratic deficit nor in bridging the gap between the EU and its citizens.

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