The Political Inclusion of Organized Interests in EU Social Policy

Implications for Efficient Governance and Democratic Legitimacy

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Abstract

This paper discusses the implications which the political inclusion of organized interests has for standards of efficient governance and democratic legitimacy in EU Social Policy.

The inclusion of societal interests is operationalized as the result of two factors: (1) the evolution of the organizability of interest groups as the sum of their associability, governability and the generalizability of their interest domain, and (2) the mechanisms of active and passive inclusion that are applied by the institutional system of the EU, which includes informal consultation and lobbying, the promotion of interests and building of networks, and institutionalized bargaining between labor and business in the Social Dialogue.

The current trend towards more inclusive styles of governance is first evaluated under aspects of output-legitimation, which includes the impact on the decision-making capacity of institutions, the problem-solving capacity, and the general standards of social policy legislation. The relatively positive results of this part are then confronted to questions about the input-aspect of legitimation, which in the case of EU Social Policy fail to reach the legitimatory standards linked to concepts of associative representation, concerns of institutional design and the principle of deliberative decision-making. The effects of the current development on democratic legitimacy are therefore judged critically, concluding that the causes for deficits can be found in the institutional system of the EU as well as in the realm of organized interests.
1. Introduction

The representation of organized interests in the European Union has grown explosively since the mid-1980s and has become a research subject of high interest to many scholars in political science. With an estimated number of between 2,000 and 3,000 interest groups that employ roughly 10,000 persons lobbying in Brussels, a broad variety of economic, public, promotional and territorial interests as well as professional lobbyists, round tables and legal advisors are active as „Eurogroups“, defining this term as the range of organized interests whose aim it is to influence the EU decision-making process in one or several of its phases (Bindi 1996: 15ff). In the last ten years, knowledge about these groups has grown considerably as a large amount of literature on the subject has been published, a number of research projects has been set up and a Europe-wide network among scholars interested in this subject has developed. Closely linked to the study of „Eurogroups“ is the investigation of the structures and processes that characterize the political inclusion of organized interests into decision-making processes on the supranational level: While a large part of the literature is influenced by the characterisation of European interest politics as a case of „transnational pluralism“ (Streeck/Schmitter 1994), the more recent concept of „network governance“ has received much attention that stresses the non-competitive cooperation of actors, the role of state institutions as mediator and activator and the relevance of learning processes (Kohler-Pochet/Arcq 1999). A detailed analysis of the history, development and structure of the European Trade Union Congress ETUC can be found in (Dølvik 1999), a more concise description in (Ebbinghaus/Visser 2000). Also of interest for scholars are lobbyists’ manuals that provide reliable information on the technical and day-to-day work of Eurogroups (Andersen 1992) or the directories of interest groups that are published annually by AMCHAM, Eurokey and Euroconfidential.

1 The literature on the representation of organized interests in the European Union includes general overviews of „Eurogroups“ (Greenwood 1997, Greenwood/Aspinwall 1998, Bindi 1996, Fischer 1997, Mazey/Richardson 1993) and a recent empirical investigation of interest intermediation in the EU (Kohler-Koch/Quittkat 1999), publications on European business interests (Greenwood/Webster 2000, Fischer 2001, van Waarden 1995, Lanzalaco/Schmitter 1992), a special investigation of the European Round Table of Industrialists (Aeppli 2000) and of the federation of business interests UNICE (Collie 1993, Pochet/Arqz 1999). A detailed analysis of the history, development and structure of the European Trade Union Congress ETUC can be found in (Dølvik 1999), a more concise description in (Ebbinghaus/Visser 2000). Also of interest for scholars are lobbyists’ manuals that provide reliable information on the technical and day-to-day work of Eurogroups (Andersen 1992) or the directories of interest groups that are published annually by AMCHAM, Eurokey and Euroconfidential.

2 Important German research projects in this field are the research programme on the „Interest Intermediation in the European Union“ at the Mannheimer Zentrum für Europäische Sozialforschung (for some recent results see Kohler-Koch/Quittkat 1999) and a research project on the „Europeanization of Organized Interests“ at the Max-Planck-Institut für Gesellschaftsforschung in Cologne. A good example for a Europe-wide research network is the ECPR Standing Group on European Level Interest Representation that was founded in 1994 and brings together researchers specialized in European interest intermediation, policy practitioners that are involved in EU Public Affairs themselves and scholars with a wider interest in European-level policy networks and integration theory. The Standing Group is chaired by Justin Greenwood and presently has a membership of over 300 scholars from 27 countries.

3 „Inclusion“ is this case is understood as the broad range of mechanisms by which organized groups may take influence on the legally authorized process of making collectively binding decisions in a polity: „Entry into the state can come through organization as an interest group and associated lobbying activities; participation in policy development and implementation through ongoing negotiation between group leaders and public officials; …acceptance of government appointments by group leaders; or enhancing the group’s ability to participate in policymaking through changes in public policy (Dryzek 1996b: 475). Inclusion can be passive, when the state is exposed to the influence of interest groups, or active, when state institutions are engaged in promoting, recognizing and delegating functions to organized groups (Dryzek 1996b).

4 Transnational pluralism is characterized as a system of interest intermediation that falls short of centralised labour-industry-state relations and consists of an „American-style pattern of disjointed pluralism or competitive federalism, organised over no less than three levels - regions, nation-states, and Brussels. As in the United States, and perhaps more so, this system would be characterized by a profound absence of hierarchy and monopoly among a wide variety of players of different but uncertain status“ (Streeck/Schmitter 1994: 215).
Koch 1999); in the particular case of EU Social Policy, a third approach has been made with
the identification of an emerging „corporatist policy community“ on the European level
(Falkner 1998, Dølvik 1999). While it is evident that the trend towards a decentralisation of
decision-making into cooperative policy networks in European governance is particularly
dominant in the field of EU Social Policy, there is a growing dispute in political science about
the perceptions, criteria and normative judgements by which the impact of these
developments on the quality of European governance is to be evaluated. Two dimensions of
this debate can be distinguished that correspond to the functional aspects of negotiated
decision-making on the one hand, and the consequences of decentralisation for the democratic
legitimacy of governance on the other:

First, quite different judgments are made about how the growing inclusion of organized
interests affects the function, problem-solving capacity and scope of the emerging social
policy regime on the European level. Here, largely optimistic theses about the emergence of
„Euro-corporatism“ and the rise of a European „regulatory state“ with an increasing range of
competences and a relatively high potential for innovative policies (i.e. Falkner 1998 and
2000b, Majone 1996 and 1999, Eichener 2000) are opposed to positions that point to the
weak, non-binding and neo-voluntarist character of collective bargaining on the European
level and the inferiority of social legislation compared to market integration policies (i.e.
Streeck 1998 and 1999a, Rhodes 1998, Scharpf 1999). This part of the debate is focused on
concerns about the efficiency of governance, as the performance of policy-networks is
assessed according to functional requirements, that is, the regulation of policy-areas beyond
the nation-state. Second, and apart from that, the massive presence of interest groups and the
multiplication of arenas of decision-making in EU governance raises questions about its
legitimacy and the changes that it brings to the perceptions, practices and principles of
democracy. In this part of the debate, many propositions are made of how the presence of a
multitude of organized groups in European politics can positively contribute to the legitimacy
of governance in the EU; the most-well known examples are models of „post-parliamentary
democracy“ (Andersen/Burns 1996), „associative democracy“ (Zürn 2000, Eichener 2000) or

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5 In her investigation of a „corporatist policy community“ in European Social Policy, Falkner (1998: 33ff) proposes a two-
dimensional definition of corporatism which includes both structural and procedural elements. According to the classic
definitions by Schmitter, corporatism is thus defined as „a system of interest representation in which the constituent units are
organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered and functionally
differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational
monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and
articulation of demands and supports“. Furthermore, on the procedural level, corporatism is defined as „a mode of policy
formation in which formally designated interest associations are incorporated within the process of authoritative decision-

approaches that favor the strengthening of „associative representation“ as a complement to the traditional forms of governmental and parliamentarian representation in the EU (Benz 1998a). With an equally positive view on decentralised decision-making, some authors point to the legitimatory function of deliberative decision-making processes in cooperative policy networks, especially in the „comitology“ structure (Joerges/Neyer1998, Joerges 2000), but also in the multitude of advisory groups, expert committees and working groups that provide access to the European governance system for societal actors (Schmalz-Bruns 1999, Heinelt 1999). However, not all opinions are so sanguine about the legitimatory function of interest groups, rejecting models of associative democratisation as flawed and unrealistic (Abromeit 1998, Bieling 2000).

**Question and brief outline:**

The purpose of this paper is to set up the framework for a critical evaluation of the consequences that the political inclusion of interest groups has for the perceptions and practices of democratic governance in the European Union, and to apply it empirically to the field of EU Social Policy in the phase after the implementation of the Maastricht treaty. This evaluation will be restricted to those areas of regulative social policy legislation which can be decided by qualified majority voting according to Art. 118, Sections 1 and 2 of the Protocol on Social Policy and its Agreement annexed to the Maastricht treaty (now Art. 137, Section 2 of the TEU), which includes the protection of workers’ health and safety, working conditions, the information and consultation of workers, equality between men and women with regard to labor market opportunities and treatment at work, and the integration of persons excluded from the labor market (for an extensive description of the social policy innovations in the Maastricht treaty see Falkner 1998: 78ff, Geyer 2000: 45ff, Leibfried/Pierson 1999). The argument of the paper proceeds in three main steps: First, the political inclusion of organized interests will be explained as the result of the co-evolution of two factors: a.) the organizability of European interest groups as the main structural determinant for processes of interest intermediation and b.) the active and passive mechanisms with which the institutions of the European Union provide access to decision-making processes for these collective actors (ch.2). Second, while the term „inclusion“ stands for the independent variable of the question, a differentiation of the two dependent phenomena – the impact on efficient governance and democratic legitimacy – is made and an overview of ways to explore their interrelation with the inclusion of organized interests in the field of EU Social Policy is given (ch. 3). The making and implementation. As such, they are officially recognised by the state not merely as interest intermediaries but as
hypotheses that follow from this discussion – which surely are of a provisional character, given the shortness of this investigation and the complexity of the subject – are summarized and briefly commented on in the conclusion (ch. 4).

2. Interest intermediation in EU Social Policy: Assumptions and two determinant variables

The process of interest intermediation in the European Union can be distinguished from national systems by two crucial characteristics: First, instead of adapting to a firmly institutionalized polity, organized interests in the EU are related to a political-administrative system that is itself subject to a dynamic process of change; this is best reflected in a description that was first used by Eichener and Voelzkow and is now accepted by many others, which states that a co-evolution of the institutional system of the EU and of organized interests is taking place (Eichener/Voelzkow 1994, Eichener 2000: 254ff., Kohler-Koch 1996: 209ff., Falkner 1999b: 89). Second, interest intermediation on the European level is characterized by a high degree of fragmentation across different policy-areas; since the European Union is a highly sectoralized system with quite different decision procedures in each policy field and because the different Directorates-General of the European Commission have different styles of interaction with organized interests, a high cross-sectoral diversity of public-private interaction can be found in each field that includes patterns of statist, pluralist and sectoral corporatist interaction as well as emerging forms of „network governance“ (Kohler-Koch 1999, Eichener 2000: 277ff.). Therefore, to give an accurate description of the actual character of interest intermediation in a certain area of the European multi-level system, it is crucial to analyse patterns of interest intermediation at the meso-level, and to explore how co-existent patterns of interest intermediation that correspond to the ideal-types mentioned above complement to each other in a specific policy area (Falkner 1999a: 7ff). For the analysis of the political inclusion of organized interests in EU Social Policy, these assumptions imply basically two consequences: First, a sectoral-specific approach is chosen that does not focus on a certain ideal-type of public-private interaction, but which assumes that a plurality of mechanisms with different degrees of formalization exists that lead to the inclusion of organized interests. Second, the co-evolution of the political-administrative system and the private realm is recognized in an approach that considers two concomitant factors as the source of inclusion: the evolution of the organizability of interest groups on the Community level as a structural determinant, and the development and gradual extension of

co-responsible „partners‘ in governance and social guidance“ [cited from (Falkner 1998: 33/34)].
various points of access and incentive structures that organized interests are offered by EU institutions as a procedural determinant.

2.1. The evolution of organized interests on the European level

The organizability of European-level interest groups can be operationalized most appropriately in terms of three concrete-empirical terms: First, the generalizability or the breadth of the interest domain which an association claims to represent, second, the associability or the relative success of an association to attract those interests it claims to represent, and third, the governability or the potential of an association to coordinate all the demands within its interest domain and to commit its members to common goals (Traxler/Schmitter1995: 202). With regard to the European level, empirical investigations in the field have shown that labor interests are strong in terms of generalizability and governability, while the business counterpart is weak in these categories and only achieves a relatively high degree of associability (Traxler/Schmitter 1995: 201ff). The main factor for the relatively low generalizability and governability of business is the high amount of over 400 mostly sectoral specific and product-market oriented business associations, which proves this interest domain to be highly fragmented in comparison to only 20 labor unions that are generally much broader and encompassing in scope and more successful in coordinating the behaviour of their member organizations; however, a higher degree of associability can be achieved by business by a organizational density that is significantly higher than the respective values of labor, particularly in the realm of product-market interests (ibid.: 203ff).

The development of the membership numbers and the internal organizational structure of the supranational federations of labor and business underlines these assumptions: After the top representation of labor, the European Trade Union Congress (ETUC), was founded in 1973 on the basis of 17 member associations and 36 million organized members, it has enlarged its membership base across the ideological divides of Christian, Socialist and Communist associations, adopted a large number of new members from East European countries and has by its annual conference 1999 become a giant associational superstructure encompassing 68 national federations and 15 sectoral members from 29 countries. With a membership base of over 50 million organized members, ETUC now formally represents over 90 % of union members in the European Union (Ebbinghaus/Visser 2000: 774ff.). Of course, the growing encompassingness of ETUC has led to an increase in its heterogeneity and has posed problems
to the governability of the federation especially in internal decision-making processes. As a solution for this problem, a number of organizational reforms were carried out in 1991, 1995 and 1999 that led to the introduction of qualified majority voting procedures in the delegation of negotiation mandates, the establishment of better organizational links between the steering committee and the sectoral industry committees, and the strengthening of the secretariat; therefore, in spite of its huge encompassingness, ETUC has developed some effective mechanisms to ensure a minimum of governability (Ebbinghaus/Visser 2000: 782ff., Dølvik 1999: 133ff.). In comparison, the organizational structure of the other social partner, the Union des Industries de la Communauté Européenne (UNICE), has remained less governable in spite of its smaller encompassingness (34 member federations from 26 countries); though UNICE was founded 15 years before its counterpart ETUC, it has failed to develop effective means of intersectoral interest aggregation and does not seek to incorporate transnational or European sectoral organizations (Ebbinghaus/Visser 2000: 772ff, Dølvik 1999: 145ff). Its authority is furthermore weakened by the external competition that UNICE faces with the organization of employers in the public sector (CEEP), a number of sectoral associations, powerful think-tanks like the European Round Table of Industrialists (Apeldoorn 2000) and other European business interest associations. Given the limited supranational resources and the lack of formal competence of UNICE, its internal heterogeneity and the reluctance of members to agree to the delegation of binding negotiation mandates, its authority and representativity as a ‘social partner’ have remained low (Lanzalaco/Schmitter 1992, Greenwood 1998, Greenwood/Webster 2000). A further difficulty for the coordination of business interests is the fact that incentives are high especially for well-resourced companies to realize their interests outside the framework of business associations, as many actors in this realm choose forms of professional and direct lobbying and very often form ad-hoc alliances of companies (Pochet/Arcq 1999, Traxler/Schmitter 1995, Pijnenburg 1998).

This high degree of flexibility and the superior associability gives business interests a clear advantage over labor in terms of lobbying and the building of interest coalitions on certain issues; apart from that, the organizational weakness of UNICE is in fact a strong political

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6 Examples are the associations of small and medium-sized firms (UEAPME), in distribution (Eurocommerce) and agriculture (COPA).

7 As Pijnenburg shows in a first exploratory study, these ad-hoc alliances (which are defined as forms of cooperation displaying little or no formalization, limited duration, considerable autonomy of coalition partners and a single-issue profile) are advantageous with respect to the concentration of actors’ resources, a maximization of their flexibility and room for manoeuvre, the informality of decision-processes and the shortness of communication channels (Pijnenburg 1998: 307). It is concluded that „in some respects ad hoc coalitions are probably better adapted to the nature and dynamics of issue arenas at the EU level. The relevant characteristics of theses arenas are, for example, that agenda-building is unpredictable, that
advantage for business interests that are not interested in a centralisation of their interest domain and that reject the introduction of processes of collective bargaining with labor on the introduction of social regulation policies (Streeck/Schmitter 1994: 214ff, Traxler/Schmitter 1995: 206ff). One main reason for the relative organizational weakness of UNICE is thus a political one, though some attempts have been made by UNICE to overcome the fragmentation of its interest domain, especially by establishing the European Employer Network (Ebbinghaus/Visser 2000: 772ff.). Therefore, significant differences in the organisation of labor and business are important for the structural preconditions of interest intermediation on the European level: While the European federation of labor interests is better prepared for processes of collective bargaining and a concertation of interests, the interests of employers on the European level clearly have their strengths in flexible, issue-related and pluralist-style patterns of interest intermediation; furthermore, a clear bias for business interests within the structure of organized Euro-groups is evident in terms of financial and organizational resources (Lanzalaco/Schmitter 1992, Greenwood 1997: 101ff, Greenwood/ Aspinwall 1998).

2.2. Mechanisms of political inclusion of organized interests

If the level of structural analysis of the European interest group system is left and we proceed to the enquiry of the processes that lead to the political inclusion of these interest into decision-making processes, it is important to keep in mind that a variety of points of access to the institutional system of the European Union exist that differ in formalization and the scope of actors included. Furthermore, whereas in most informal networks a mode of passive inclusion can be observed in which political-administrative institutions merely expose themselves to the lobbying efforts and advice of organized interests, others display mechanisms of active inclusion where the institutional system of the EU offers the promotion of interests, the establishment of networks or institutionally fixed modes of consultation to provide channels of access. On the basis of these premises, three basic modes of inclusion have to be distinguished that have developed in EU Social Policy of the 1990s:

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8 The ‘European Employer Network’ was set up in 1989 by UNICE as a reaction to the establishment of the sectoral social dialogues; it is a forum for information exchange among over 150 sectoral employers’organizations and works as a ‘early warning system’ for the prevention of interest conflicts between unions, sectoral business associations and UNICE (Ebbinghaus/Visser 2000: 773).
a.) Lobbying and informal consultation in non-formalized, open and fluent 'issue communities' (Heclo 1978): The equivalent to this ideal-type where relationships are unstable and informal, no special status is given to any of the actors involved and no clear boundaries of the network can be figured out is the pattern of „transnational pluralism“ that was recognized as typical for interest representation in the EU before the discussion about the emergence of a „corporatist policy community“ in EU Social Policy really started (Streeck/Schmitter 1994: 204ff.). The activities of interest groups as lobbyists in the phase of policy formulation focus mainly on the European Commission as the only initiative body for European legislation, with the European Parliament playing a less important and the European Council a marginal role (Bindi 1996: 63ff., Kohler-Koch/Quittkat 1999). The purpose of this form of interest representation is basically threefold: By lobbying the Commission, interest groups supply the bureaucracy with relevant and up-to-date knowledge, aggregate interests of their members and provide the Commission with political support for policy initiatives in relation to other EU institutions and the member states; the Commission is therefore not only a passive target for the lobbying of pressure-groups, but also plays an active role in instrumentalizing interest groups for its own purposes (Greenwood 1997, Greenwood/Aspinwall 1998, Mazey/Richardson 1993, Kohler-Koch 1996).

b.) 'Networking' and active promotion of interest groups: Apart from including actors from interest groups in the policy process, the Commission takes an influence on the structure of organized interests on the European level, especially by building networks and promoting 'diffuse' interests like consumer- or environmental interests (Eichener 2000: 280). In the social policy sector, the Commission gave considerable financial support to the foundation of the European Trade Union Congress in 1973, contributed to the running costs of its secretariat and the foundation of ETUC-affiliated institutions like ETUI, AFETT, and ETUCO⁹ between 1986 and 1990 (Dølvik 1999: 122ff.). Furthermore, the Commission has been very active in its support for non-governmental organizations in the Social Sector, as those organized in the European Platform of Social NGOs, which are mainly dependent on EU funding (McPhail/Lay 1999, Geyer 2000). Another measure frequently taken by the Commission to gain support for its own policies is to create supportive networks by installing committees, working groups, round tables and

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⁹ The ETUI (European Trade Union Institute) is the main ETUC-affiliated research center, the ETUCO (European Trade Union College) and AFETT (Association for Euroopean Training of Workers on the Impact of New Technologies) are both involved in training services provided by ETUC (Dølvik 1999: 124).
conferences that include actors from organized interest groups\(^{10}\) (Heritier 1999). A recent example of a very detailed empirical analysis of these networking efforts of the Commission is provided by Eichener, who points to the "ubiquitous" efforts of the Commission to build up a multitude of committees and working groups in the field of health and safety (Eichener 2000: 295). The purpose of these networking efforts, which fit well into the description of the Commission as a "political entrepreneur" (Cram 1997, Kohler-Koch 1999), is the building of consensus and the mobilisation of support for the preparation of decisions (Heritier 1999: 273ff., Eichener 2000: 217ff., Kohler-Koch 1996: 203).

c.) Institutionalized forms of inclusion: The most formalized process of interest group participation in EU Social Policy is – apart from the rather marginal Economic and Social Council – the Social Dialogue as the main forum for a dialogue between the 'Social Partners', which are represented by UNICE, CEEP and ETUC (s.a.). Again, the Commission played a leading role in the realisation of this instrument: After two initiatives by the Delors Commission to start the Social Dialogue in the 'Val Duchesse' talks\(^{11}\) in 1985 and a second attempt in 1989 which finally led to UNICE’s agreement to engage itself in talks with labor, the Social Dialogue was formally recognized in the Social Protocol in 1989 and later integrated in the Maastricht and Amsterdam treaties; therefore, in contrast to the other mechanisms of inclusion, the Social Dialogue has gained a 'quasi-constitutional status' in European Social Policy. According to the regulations of the Protocol, the European 'Social Partners' gain three exclusive rights in the realm of Social Policy: First, member states are entitled to "entrust management and labor, at their joint request, with the implementation of directives" (Art. 2); second, a consultation process between the Commission and the Social Partners is institutionalized as the Commission is obliged to "consult management and labor on the possible direction of community action" (Art. 3) before submitting any proposal in the field of social policy. Third, according to Art. 4 of the Protocol, the Social Partners can consult each other on social policy initiatives and have their proposals "lead to contractual relations, including agreements" if

\(^{10}\) The overall number of committees directly related to the European Commission is difficult to calculate, but it can be estimated at a number over 1.000. For the year 1992, the Commission reported the number of committees as 1.063, including 635 expert groups (Eichener 2000: 217).

\(^{11}\) This term is a common nickname for the first response of UNICE and ETUC to the 1985 Delors initiative. It stands for a meeting of two working groups set up by the Social Partners, one of which was related to economic policy and employment, the other to technology and work. The result of these talks were mainly two written reports that stated general principles on growth, inflation and employment and had no impact on EC legislation. While the content of these talks remained merely advisory, the main value of it can be seen in the revival of contacts between the Social Partners which had not existed since 1978 (Geyer 2000: 99).
they are approved by the Council (Geyer 2000: 98ff., Rhodes 1998: 128ff.). The Social Dialogue has been taken up under the new regulations of the Maastricht treaty in 1993; so far, six attempts have been made to negotiate policy proposals, which will be discussed in more detail in the next chapter (Dølvik 1999, EIRO 1998, Sörries 1999, Keller/Sörries 1999).

If the development of the intensity of interest group participation in EU Social Policy is compared over time since the foundation of the European Community, a rough distinction of three phases can be set up that shows the trend towards a growing degree of inclusion of organized interests and the increasing relevance of negotiated decision-making with organized groups in EU Social Policy (Falkner 1998: 193ff):

a.) a first phase displaying a low intensity of interest intermediation and the predominance of „statist‘ policies from the beginning of the EC up to the first Social Action programme and the foundation of ETUC (1957-1974);

b.) a second phase of growing engagement after the first Social Action Programme up to the preparations of the Maastricht treaty: this phase of transition to more cooperative styles of decision-making includes a dramatic increase in interest group activity at the Community level after the passing of the Single European Act in 1986, first attempts of activation of the „social dialogue“ in the mid-80s, a number of internal reforms in the decision-making processes of ETUC and the contributions of the social partners to the preparation of the Maastricht Conference (1974-1991);

c.) the post-Maastricht phase (1992- ) that is characterized by a considerable growth of interest group promotion and inclusion, the introduction of qualified majority procedures and an activation of legislative activities in the field of regulative EU Social Policy, the consultation of NGOs and special interest groups in the formulation of White and Green papers, and the first attempts to negotiate binding decisions via the Social Dialogue. This phase, which has been described as the establishment of a „corporatist policy community“ in the EU (Falkner 1998), is the basis of analysis for the following investigation.

3. Implications for efficient governance and democratic legitimacy

Having outlined the basic development that interest representation has taken in EU Social Policy, we can now turn to the main question discussed in this paper: How does the
remarkable increase in the inclusion of organized interests affect the efficiency and democratic legitimacy of governance on the supranational level? Especially the latter term is difficult to define for the multi-level system of the EU, given its distinctiveness in comparison to national parliamentarian democracies and the highly different set of legitimatory expectations that proponents of a „regulatory state“ on the European level (Majone 1999) have in comparison to recent normative approaches linked to conceptions of „deliberative supranationalism“ or „associative democracy“ (Schmalz-Bruns 1999, Zürn 2000). The evaluation of negotiated decision-making in the European Union therefore has to begin by a discussion of standards that can be applied to the performance of policy-networks on the supranational level. The task of this chapter is to set up a framework that confronts different levels of evaluation, and to formulate hypotheses how the inclusion of organized interests affects these standards. While this discussion is focused on the criteria that can be used to discuss the effects of interest group inclusion on governance and democratic legitimacy, it will be impossible to go into the details of each aspect; therefore, as stated above, many of the hypotheses may be of a provisional character, aiming more at a discussion of the implications that follow from different levels of analysis than at the empirical confirmation of conclusions that can be drawn from a single perspective.

As a basic premise to the following investigation, and in order to separate functional from normative legitimatory concerns, a distinction by Scharpf will be taken up that differentiates aspects of „output-legitimation“, which stand for the effective solution of collective societal problems by other means than individual action or markets and the achievement of policy-outcomes in the „common good“, and „input-legitimation“, which is achieved by the aggregation of authentic preferences, a high degree of participation and the building of consensus in a decision-making process (Scharpf 1970 and 1999a: 10ff.). This choice of terms corresponds with the subject of the workshop by confronting functional concerns of efficient governance, which are best analyzed in terms of „output“-legitimation, with the discussion of non-functional aspects that are connected to a normative understanding of democratic legitimacy, which are represented by the „input“-dimension of analysis. Both basic dimensions include various levels of investigation, which will be discussed in the subsequent paragraphs.
3.1. Implications for the output-aspects of democratic legitimacy

The impact of interest group inclusion on the output-legitimation of governance will be evaluated on three levels, which include the impact of negotiated decision-making on the decision-making capacity and the problem-solving capacity of EU Social Policy, and the discussion of the underlying paradigms that characterise the outcomes of the decision-making process.

a.) First, a major aspect of the possible contribution of interest groups to the 'output'-dimension is whether their participation leads to a change in the capacity of the political system to provide collectively binding decisions in the field of Social Policy, ie its decision-making capacity (Falkner 2000a: 290ff, 2000b: 297ff). Most empirical investigations agree that processes of informal consultation between the bureaucracy of the Commission and private interests as well as the multitude of advisory committees and working groups contribute positively to the decision-making capacity of the European Union by providing support, advice and specialized knowledge of organized interests that is inevitable for the formulation of policy proposals in the understaffed bureaucracy of the Commission and often includes helps for the implementation of policies (Greenwood 1997: 15ff, Kohler-Koch 1996, Eichener 2000, Algieri/Rometsch 1994). Beyond these cognitive factors, the delegation of preparatory tasks to non-majoritarian institutions such as working groups or advisory committees contributes to the efficiency of policy-making by allowing legislators to economise on the time and effort that is required to identify adequate refinements to legislation and thus reducing decision-making costs, by reducing the blame for the content and possible failure of policy proposals and by mobilising credibility and support for proposals (Majone 1999). The Social Dialogue, however, has not always made a positive contribution to the decision-making capacity of EU Social Policy: In the negotiation of directives on parental leave, part-time work and, more recently, on temporary employments, agreements could be found and passed through the legislative institutions where the proposals had been blocked in the Council for years (Falkner 2000b: 289). In other cases such as the negotiation of a directive on European Works Councils, the Social Dialogue led to considerable tensions between the social partners and an agreement could not be reached in spite of intensive preparations by the
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Commission\textsuperscript{12}, so that a directive was passed through the European Council in June 1994 without an agreement of the Social Partners (Rhodes 1998: 143ff., Streeck 1997). A similar setback occurred in the reversal of 'burden of proof in sex discrimination cases', where the social partners began their consultation in 1996, but then were unwilling to reach an agreement because the content would have affected court procedures outside the scope of the social partners; in the case of the initiative on the 'information and consultation of employees at national level', UNICE refused to negotiate with the argument that the initiative would violate the principle of subsidiarity (Keller/Sörries 1999: 116ff). This shows that so far, the path of the Social Dialogue has not always been successful in terms of substantive outcomes, and has in some cases even failed to provide symbolic results such as the mobilisation of a debate on social policy issues and the demonstration of 'good will' between the Social Partners (Keller/Sörries 1999, Sörries 1999, Geyer 2000: 98ff.). The Commission remains the main initiative force to promote talks between the social partners, as two recent communications show that proposed the promotion and reform of the Social Dialogue\textsuperscript{13}. To point to these ambivalences in the outcomes of the Social Dialogue, however, is not meant to neglect its first successes and its potential for the promotion of an exchange of positions and agenda-setting, which has clearly contributed to a change in the dynamic of EU Social Policy legislation in the 1990s (Falkner 1998: 156ff, Rhodes 1998: 144).

b.) Second, apart from the decision-making capacity, an assessment of the 'output'-dimension of cooperative policy networks has to take account of the content of social policy legislation, ie its problem-solving capacity in terms of the ambition, scope, and approach of regulation policies. Again, the assessment of this aspect is dependent on the background of analysis, that is the normative framework of expectations defining the complex of problems that are meant to be solved by Community policies. Three different levels of analysis can be applied to evaluate the problem-solving capacity of European Social Policy by the material content of legislation: First, an essential task of legislation is the solution of regulation problems that are directly created by the internal market where

\textsuperscript{12} At the end of 1993, the Commission made an attempt to mobilise political support for the negotiation of a directive on European Works Councils by organising transnational meetings of labor interests from European multinational companies with a financial support of 31 million ECU; after the consultative process was begun at the end of 1993, negotiations failed and ended in mutual accusations of UNICE and ETUC of not having a real interest in a compromise (Rhodes 1998: 143ff, Keller/Sörries 1999: 116ff).

\textsuperscript{13} In the 1996 'Communication on the Development of the Social Dialogue on the Community Level' (COM (96) 448 final), questions like the representativity of organizations, the improvements of efficiency of the Social Dialogue and better coordination of sectoral dialogues were discussed. However, this as well as the more recent communication on 'Adapting and
clashes between national legislations and the transnationalisation of economic spaces have to be solved; examples for action in this area are the Posted Workers Directive (96/71/EC) that provides a regulation for the legal status of workers being sent to other member states or the directive on European Works Councils (94/45/EC) that ensures the information and consultation of workers in multinational companies. Generally, there is a good basis to argue that on this 'minimal' level, EU Social Policy has generally been very successful (Falkner 2000b: 295ff, Geyer 2000: 58ff). Second, in a more substantive account, an evaluation of the problem-solving capacity can be extended to include questions about the actual innovations that legislative activity on the Community level has brought, ie the introduction of standards that exceed or bring innovations to current national legislations. In this respect, the development of legislation has surprised many integration researchers in providing regulations that in some cases go beyond national practices: One example is the field of health and safety, where the development of new regulation approaches, the setting of standards and the introduction of new general 'philosophies' of regulation on the European level have introduced many innovative elements compared to national legislations (Eichener 2000: 51ff). A second example is gender policy, which can be considered as one of the most successful areas of EU Social Policy that has brought a number of directives and action programmes and has expanded in the 1990s to issues of gender in EU health institutions, gender roles in childcare, work and childcare, women’s health in the EU, gender relations in political institutions and the position of migrant women; a further important element in this area is the development and growing success of gender mainstreaming14 (Geyer 2000: 104ff, Hoskyns 1996, Hafner-Burton/Pollack 2000). One of the reasons for the great relative success of gender policy in the EU is the influence of EU women’s organizations (especially the European Women’s League) and the mobilizing structures in the context of EU institutions more generally, which are well-developed in most areas and have been very important in keeping gender issues on the agenda (Pollack/Hafner-Burton 2000: 451, Geyer 2000: 128). Certainly, these relative successes go beyond a ‘minimalist’ standard of European Social Policy; however, if a maximal comprehension of the ‘problem-solving capacity’ is applied, and EU Social Policy is evaluated with regard to the ‘status quo ante’ of European integration, the

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14 As Pollack and Hafner-Burton show in a study of five issue-areas, mainstreaming efforts have led to the adoption (but not yet implementation) of a new regulation in the Structural Funds, the application of mainstreaming to the 1999 Employment Guidelines, the introduction of a 1998 Council Regulation on training and an action plan in development policy and the introduction of a Women and Science Programme; only in the area of competition policy, mainstreaming so far has not been introduced (Pollack/Hafner-Burton 2000: 451).
demands on the efficiency of the European social policy regime extend to quite another horizon, which is the compensation of the overall tendencies of deregulation and 'social dumping' caused by the process of European integration (Falkner 2000b: 299). This is a completely different perspective on the existent steps of positive integration, as they are confronted not only with the direct pressures of integration via the imposition of market compatibility requirements ('negative integration'), but also with the indirect pressures of integration on national welfare systems, such as the requirements connected to the European Monetary Union, the harmonisation of tax systems, or the competitive pressure created by the internal market. In this dimension, most investigations state that the problem-solving capacity of EU Social Policy has neither reached the stage of compensation of market integration policies nor the state of an 'activist social policy' with far-reaching interventionist competences (Falkner 2000b: 301ff, Scharpf 1999: 47ff, Leibfried/Pierson 1999: 7ff, Geyer 2000: 203ff).

c.) These first two points finally lead to the question about the general character and the underlying paradigms of Social Policy legislation on the Community level. This point mainly refers to the question if the emerging patterns of interest group inclusion and collective bargaining are a considerable corrective of market integration policies and their underlying neoliberal paradigm or indeed an accompanying element of it. In this respect, especially Streeck’s critique of EU Social Policy as a neo-voluntarist regime, imposed as an alternative to „hard“ regulation as well as to no regulation at all and including only a minimum of authoritative modification of market processes, is well known (Streeck 1998, 1999a,b,c). As Streeck points out, the logic of transnational interest intermediation is dominated by a fundamental asymmetry of orientations, as the interests of labor to achieve the formulation of common transnational policy objectives face much higher structural differences to realise their goals than business, which is best served by non-decisions and therefore interested in the weakness of collective negotiations; by a deliberate absence of business from collectively binding negotiations („corporatist decision gap“), the outcome of social policy is therefore expected to be reduced to regulative policies that are depoliticized in character and do not seriously threaten the functioning of markets (Streeck 1999a,b). Moreover, recent ideological-critical approaches of international political

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15 The mode of regulation that is characterised by „neo-voluntarism“ is characterised by granting member states extensive possibilities to exclude themselves from regulations, declaring policies of non-intervention as a step to „subsidiarity“, introducing regulations that are non-binding in character, dominated by expertise and often restricted to rights of consultation and information, and mainly including already existing standards; further elements are the offering of alternatives instead of
economy interpret the social dialogue as a pattern of ‘symbolic Euro-corporatism’ without a substantive impact on regulation that is indeed part and parcel of a neo-liberal restructuration of European Social Policy; in this interpretation, participation mechanisms entitle trade unions to symbolic rights of access to decision-making only in order to ensure their support for a hegemonic political project that is directed at the destruction of the core values of the „European Social model“ (Schulten 2000: 230ff). However, while the critique of neo-voluntarism is in many cases justified in pointing to the structural weaknesses of European-level collective bargaining, to the absence of truly interventionist policies on the supranational level and to the frequent restriction of legislation to consultative rights (such as in the European Works Councils Directive), some of its basic assumptions have to be revised by the end of the 1990s: As especially Falkner has shown from a neo-institutionalist perspective that stresses the role of ideas and the development of common preferences in institutional contexts, an escape from the social policy ‘decision trap’ has been reached by a variety of factors that include the specific dynamic of integration and the connection of material and institutional compromises between member states in the revision of the European treaties, the consideration of partners in the formulation of actors’ positions, the existence of institutions (ie the Commission) with a specialized interest in further supranational integration and, quite importantly, the possibility of European institutions to announce hierarchical decisions to promote collective bargaining „in the shadow of the law“\footnote{As Falkner (2000b: 294) argues, this aspect is particularly relevant for the negotiation process of the Maastricht treaty, where the agreement of business to engage in the Social Dialogue was reached when the introduction of majority voting procedures in social policy issues appeared inevitable; in spite of a „logic of membership“ that was opposed to negotiations with labor, business changed its strategy according to the „logic of influence“ in order to secure itself a place at the negotiation table instead of having to accept decisions by the Council.} (Falkner 1998: 200ff, 2000b: 291ff). Furthermore, though the outcomes of the Social Dialogue and of EU social policy legislation in general are certainly far from being optimal in many cases, the inclusion of business interests in collective bargaining and the accomplishment of a number of policy proposals in the Social Dialogue show that assumptions of a ‘decision-gap’ and the prevalence of a ‘logic of non-decision’ (Streeck 1999a,b) are no longer tenable as premises for the description of negotiated decision-making processes in EU Social Policy. While the concept of neo-voluntarism is plausible in pointing to structural weaknesses of social policy legislation on the European level, its overall expectations of the outcomes of collective bargaining between the European social partners have proved too pessimistic and its overall characterisation of the prevalent interests, dynamics, and developments of
the emerging social policy regime less plausible in comparison to more recent institutionalist approaches (Pierson 1996, Falkner 1998, 2000b).

If the three factors discussed above are considered together, a number of specific strengths and weaknesses of EU Social Policy can be recognized which are typical for its highly decentralized and cooperative mode of governance: While being increasingly interest-group-led, this field of regulation has a highly distinctive character that is not comparable to national social policies, but which has gained a dynamic that has exceeded most expectations at the beginning of the 1990s and has led to significant innovations and extensions from the basic social policy competences of the EU. While certainly lacking the depth, intensity and scope of national social policy regimes and being mainly regulatory and often neo-voluntarist in character, it establishes itself not as a substitute, but as a complement to national social policy regimes; as such, especially regulations in the field of health and safety and gender policies have not only exceeded the level of „minimum standards“, but might play a role as a motor of change in national social policy regimes (Falkner 2000a: 295ff). As such, the evaluation of the output-aspects of democratic legitimation of EU Social Policy and the function that interest groups play within this realm is by no means all negative: While the judgments about the problem-solving capacity of EU Social Policy depend largely on the standards that are applied, the growing body of legislation that has been passed in this area makes clear that EU Social Policy has become an established part of European governance that produces much more than symbolic outcomes; at the same time, a multiplication of processes of negotiated decision-making is to be observed which significantly increases the complexity of this part of European governance (Geyer 2000: 203ff, Falkner 2000a, Leibfried/Pierson 1999).

3.2. Implications for the input-aspect of democratic legitimacy

It is evident that this remarkable trend towards the decentralisation of governance and the multiplication of arenas of decision-making also affects the input-aspect of democratic legitimacy, as the boundaries of the public and private realm have become more blurred and the number of actors that are relevant to a decision has increased. In the subsequent paragraphs, the inclusion of organized interests will be discussed under the aspects of input-legitimation, which concerns the representativeness of patterns of associative representation, questions of institutional design and the subject of deliberative decision-making.
a.) First, under the aspect of interest representation, the inclusion of interest groups in European governance processes affects the input-legitimacy of policy-making as a greater openness of policy networks is achieved, a broader range of interests gains the right to participation and the probability of neglect of relevant societal groups affected by a decision can be minimized\(^{17}\) (Scharpf 1999a: 27ff, 1999b: 677ff). Due to the greater proximity of interest groups to regulation problems, their expert knowledge and implementation skills, proponents of 'post-parliamentary democracy' furthermore argue that the massive participation of societal actors and the trend towards decentralisation of decision-making not only lead to more efficiency of decision-making under conditions of complexity, but also to a more directly participative form of democracy that compensates for the erosion of parliamentary accountability\(^{18}\) and creates a higher sensibility of institutions to the preferences of actors from civil society (Andersen/Burns 1996). In the case of EU Social Policy, a further crucial aspect is that organized interests are not left to themselves, but 'state' institutions provide financial and organizational incentives for the promotion, recognition and inclusion of many underrepresented interests – which expresses a core idea of models of 'associative democracy' suggesting that inequalities in the organizability of interests are to be compensated by a deliberate 'institutional gardening' of interests in the realm of civil society\(^{19}\) (Cohen/Rogers 1994, Wright 1995, Scharpf 1999a: 26ff.). Accordingly, the model of associative democracy has entered the debate about the possible strategies of democratization of the European Union and positive expectations are expressed with regard to the inclusion of a multitude of actors from civil society (Heinelt 2000: 91ff, Zürn 2000: 205ff). However, though associative democracy looks like an attractive complement to other (e.g. parliamentarian) strategies of democratisation of the EU\(^{20}\) and appears suitable to establish a better congruence between decision-makers and those affected by a decision, its realisation is surely problematic in

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\(^{17}\) In more technical terms, Scharpf describes this as a positive impact of pluralistic policy networks on the „Interessenberücksichtigungspotential“ of European politics, which, in his opinion, makes up for negative effects on efficiency that these networks may produce: „Kurz, die europäischen Politiknetzwerke sind vielleicht nicht besonders leistungsfähig, aber die Entscheidungen, die sie tatsächlich produzieren, haben in hohem Maße die Vermutung für sich, daß vermeidbare Interessenverletzungen auch vermieden wurden. Insofern lassen sich ih rer Ergebnisse mit Input-orientierten Legitimationsargumenten stützen.“ (Scharpf 1999b: 678).

\(^{18}\) It should be pointed out, however, that Andersen and Burns do not dismiss the relevance of parliaments altogether; their „strategic role“ is seen in „constitutional questions, to function as a permanent constitutional congress approriate for dynamic modernity“, and „the task of monitoring and regulating the diffusion of sovereignty, representativity, and accountability in contemporary governance structures“ (Andersen/Burns 1996: 249).

\(^{19}\) The crucial passage in Cohen and Roger’s explanation of ‘associative democracy’ reads as follows: „Putting the need for a favorable associative environment together with the fact that such an environment is not naturally provided, we propose the deliberate use of public powers to promote the organizational bases needed for egalitarian regimes – to encourage the development of the right kinds of secondary associations. Where manifest inequalities in political representation exist, we recommend promoting the organized representation of presently excluded interests.“ (Cohen/Rogers 1994: 145).

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some theoretical details\textsuperscript{21} and uncertain in political reality. The most positive empirical evaluation so far comes from Eichener who recognizes that in the regulation of European health and safety policies, a close approach to patterns of associative governance with a high level of representativeness has been reached\textsuperscript{22} (ibid. 2000: 349ff). However, such positive examples for the inclusion of formerly underrepresented interests are opposed to more general structural problems that impede the realisation of such normative approaches in the realm of EU Social Policy: First, the large supranational federations of labor and interest have not yet reached the status of representative and internally accountable collective actors in their interest domains, which are supposed to exist as „encompassing organizations“ in the model of associative democracy (Cohen/Rogers 1992: 425ff): While the social partners have no formal democratic mandate from EU citizens, their remoteness from national membership bases and the lack of representativeness especially in the case of UNICE reduces their legitimacy as social partners that are enabled to take collectively binding decisions (Keller/Sörries 1999: 120). Second, even though much promotion of underrepresented interests in the social sector has been achieved by the European Commission, the interest structure on the EU level is still dominated by business interests, which have a much higher amount of resources, more established relations to EU institutions and are more competent in developing powerful strategies of interest representation (Bieling 2000, Apeldoorn 2000). Third, the active promotion and inclusion of underrepresented interests is not necessarily conducive to the goal of democratisation, as the promotion of interests by the Commission raises a problem of dependency on the side of societal actors: The state-led active inclusion of groups into decision-making processes is conducive to a mechanism of formal participation that does not lead to the realisation of group objectives, but the achievement of symbolic rewards only and the instrumentalisation of the group for concerns of the


\textsuperscript{21} Theoretically, the model of associative democracy as proposed by Cohen and Rogers (1994) bears the danger of a logical circle: As it is recognised that the existing structure of organized interest is not conducive to the achievement of policies in the „common good“, Cohen and Rogers call upon the state to intervene and promote underrepresented interest – however, no answer is given to the questions which interests are to be promoted nor what criteria state institutions are meant to apply in „encouraging the right kind of secondary associations“. Thus, while the formulation of goals in the „common good“ is meant to arise from the interest groups structure of a society, it must in fact be defined a priori by state institutions.

\textsuperscript{22} In the closing chapter of his investigation, Eichener argues that associative democracy does not only appear as an attractive solution to problems of European governance, but that in large parts it has already been realized: „Die assoziative Demokratie vermag ihre Vorteile auszuspielen, wenn in politikfeldspezifischen Entscheidungsprozessen eine direkte Partizipation spezifischer Interessen benötigt wird; ... Tatsächlich entspricht das europäische Entscheidungsverfahren in Prämissen wie Empfehlungen den skizzierten demokratietheoretischen Alternativen: Wir haben es mit einem horizontal und vertikal über mehrere Ebenen ausdifferenzierten politisch-administrativen System zu tun, dem Staatsqualität gar nicht erst zugebilligt wird, in dem verschiedene supra-, national- und regionalstaatliche Akteure institutionell unterschiedlich akzentuierte, aber letztlich dennoch auf Wählerentscheidungen zurückführbare öffentliche Partikularinteressen vertreten, organisierte gesellschaftliche Interessen in den politischen Prozeß inkorporieren und mit Geburts-, Organisations- und
political-administrative system, especially if the defining concern of a group differs from state imperatives and a loss of the autonomy of the sphere of civil society must be expected by the entry of groups into the state (Dryzek 1996a: 64ff, 1996b: 479ff). This risk is certainly high in the context of EU decision-making, where a traditional dominance of business interests and only a weak structure of actors from civil society exists and most participative rights of NGOs are merely consultative. In spite of its progressive approach, the active inclusion of a wide range of actors from civil society can therefore be very harmful to goals of democratisation by creating an artifactual structure of organized interests that is adapted to the ‘political entrepreneurship’ of the Commission (Bieling 2000: 121, Abromeit 1998: 90ff).

b.) Second, the increasing political inclusion of organized interests raises question of institutional design at the ‘input’-side of the political process, as patterns of associative representation stand in latent conflict with the dominant forms of governmental and parliamentarian representation in the European Union; therefore, the achievement of institutional solutions that minimize frictions between the different elements of representation has become a subject of major importance for the achievement of democratic legitimacy in European governance (Benz 1998a,b). In the political decision making of EU Social Policy, however, the frictions between the channels of interest group participation and main EU institutions have remained high: First, the Social Dialogue has to confront a series of objections, as the directly elected European Parliament is not involved in decisions taken by the Social Partners, has no power of co-decision if collective agreements are accepted in a Council decision, and is not able to take direct influence if the social partners decide to exclude certain pieces of legislation from packages proposed by the Commission (Rhodes 1998: 142ff, Keller/Sörries 1999: 120ff). Second, the structure of expert groups, advisory committees and working groups,
while being successful in formally including a number of ‘diffuse’ interests (Eichener 2000), has completely failed to establish standards of transparency and accountability to other institutions, as confidentiality is kept to ensure the efficiency of committees (Algieri/Rometsch 1994: 144). Given these lacks in transparency and mutual control, fixed networks of ‘state’ institutions and private actors with selective views and particular interests tend to be reproduced on the basis of personal relationships, which would turn the multitude of decentralised networks from a solution to the source of legitimacy problems in the EU system (Benz 1998a: 349, Abromeit 1998: 89ff). Third, the multitude of informal relations between interest groups and EU institutions remain largely unregulated, as attempts to introduce a ‘code of conduct’ and transparency standards for informal lobbying processes have remained ineffective: Only a self-regulatory code has been introduced in 1994 for the interaction of the Commission with organized interests; apart from stating some general principles for the conduct of lobbyists, it includes practically no formal regulations and has remained symbolic in character 26. Furthermore, a Commission database on interest groups has been set up in 1997, which mentions the name, contact details, senior officials and principle objectives of interest groups in contact with the Commission and which is accessible online 27; however, it is set up on a voluntary basis and is not connected to any standards of regulation or formal recognition by the Commission (Greenwood 1998: 80ff, Algieri/Rometsch 1994: 143ff.). Without a more developed system of accreditation or the introduction of access passes as it exists in many nation-states such as Germany or the UK, the problems of overcrowding, the lack of transparency and the existent inequality in the chances of access therefore still remain largely unresolved. As a first step to more transparency in the NGO sector, a recent initiative by the Commission for a stronger and more transparently organized partnership - concerning the establishment of general guidelines and principles for the consultation of NGOs, the improvement of information about consultation processes and a reform of the

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26 The 1994 self-regulatory code includes the obligation for lobbyists to identify themselves and their interest in the interaction with EU institutions, to honour confidential information given to them, not to disseminate false information or obtaining information by dishonest means, to refrain from offering financial offers to EU officials or undertake any action that imposes pressures upon them; however, so far practically no sanctions have resulted from this code, so that it is considered minimal in scope and rather symbolic: „As is evident from reading through [the regulation’s] terms, it is somewhat minimalist in scope, and few public-affairs consultants had any trouble agreeing to its measures. Not a single complaint has been filed under its terms. One public-affairs consultancy which signed the code described the scheme ... as a ‘fig-leaf’, commenting that it was „minimal, pointless and complete window-dressing’“ (Greenwood 1997: 86).

funding system as well as the presentation of more information to the public via the Internet - might bring some positive changes (Commission 2000, Social Platform 2000).

c.) A third significant argument for the contribution of interest group networks to aspects of democratic legitimacy in current discussions is focused on the internal processes in decentralised policy networks, stating that these arenas are conducive to a cooperative, problem-oriented and argumentation-based style of interaction and deliberation; the special quality of a deliberative mode of decision-making is that actors are not focused on their own strategic interests, but engage in the exchange of arguments on the base of communicative rationality and orientate their preferences towards the realisation of a „generalizable interest“ in the course of discursive interaction (Cohen 1989, Bohman/Rehg 1997). Especially proponents of „associative democracy“ point to the legitimatory function and the intrinsic value of „deliberative arenas“ as „schools of democracy“, expecting that „assuming fair conditions of discussion and an expectation that the results of deliberation will regulate subsequent action, the participants would tend to be more other-regarding in their political practice than they would otherwise be inclined to be“ (Cohen/Rogers 1994: 155, emphasis in original). The attempt to apply the theory of deliberative democracy to policy-networks in the institutional system of the European Union has been developed first for the „comitology“ structure that in most cases does not include actors from organized interest groups (Joerges/Neyer 1998, Joerges 2000, Neyer 2000), but has by now also been applied to the multitude of advisory committees and working groups in the context of the Commission (Zürn 2000: 205ff, Heinelt 2000: 89ff). Especially Heinelt expects substantive positive contributions to democratic legitimacy from the inclusion of civil society actors like NGOs, social movement groups or citizen initiatives in cooperative structures surrounding the Commission, stating that these actors are less inclined to self-interested and strategic orientations than lobbyists or functional interests, and that they can establish a connecting element („zivilgesellschaftliche Brückenköpfe“) to discourses and practices in civil society (Heinelt 1998: 92). Certainly, while the concept of deliberative democracy is a very interesting one that has gained much interests for questions of democratic legitimacy in the European Union in general (Eriksen/Fossum 2000, Leiße 1999: 158ff), a remark should be made on two aspects that have been cited from Cohen and Rogers as a prerequisite of democratic deliberation - the existence of fair conditions between actors and the expectation that their agreements will regulate subsequent action (s.a.). Both
conditions are rather difficult to establish in the actual decision-making of policy networks on the European level: First, apart from the high normative requirements of deliberative procedures on the cooperative behaviour of actors, the existent asymmetries between the resources and organisational strength of different economic, public, and promotional interests and NGOs transmit into inequalities in terms of cognitive competence, argumentative influence, access to exclusive information, and the possibility to exert pressure on other actors in a network, which makes the approximation of a situation in which „parties are both formally and substantively equal“ (Cohen 1989: 22) hard to realize in actual decision procedures, especially if distributive problems have to be solved (Sanders 1997, Benz 1994: 118ff, Scharpf 2000: 221ff). Second, the requirement that actors should expect that the results of their deliberation will subsequently be realized in the political process, is simply unrealistic in the context of the highly complex decision-making process in the European Union, as a number of external constraints are present by the interests of institutions and actors in the EU which have a much higher influence on decisions than advisory committees, which are active in the rather contested phase of policy formulation and mostly restricted to consultative functions (Algieri/Rometsch 1994). The gist of applying the concept of deliberative democracy to decision-making processes, however, is to take account of the conditions of equality of participants as well as to the absence of external constraints on the outcomes of deliberation - apart from the argumentative style of interaction (Cohen 1989: 22).

Therefore, the main implication from this investigation is that while many positive implications follow from interest group inclusion for democratic legitimacy in theory, there are still important obstacles for the realisation of underlying models of associative democratisation in practice: As the precedent paragraphs have shown, neither the aspect of a broader and more representative input of interests by interest group inclusion, nor the solution of questions of institutional design have reached the standard which would be necessary to rely on patterns of associative representation as a complementary source of democratic legitimacy, while the achievement of legitimatory effects by deliberative decision-making in the phase of policy formulation of EU Social Policy must remain a contested issue.
4. Conclusions

It can be concluded from the argumentation of this paper that the inclusion of organized interests in decision-making processes of EU Social Policy contributes more to the achievement of „output“-legitimation of governance on the Community level, which under certain conditions can be judged positively, than to its „input“-dimension, where deficits and unsolved problems so far exceed the positive contributions of interest group participation. To conclude, the critique of the current state of interest intermediation in EU Social Policy can be focused on three points: First, on behalf of the organized interests on the European level, the significant inequalities in the organizability of associations and the different degrees of integration of interest domains result in a disequilibrium of interests that tends to create problems for the legitimatory function of patterns of associative representation; furthermore, the dependency of many interest groups on the Commission in EU Social Policy runs the risk of introducing a logic of interest representation that is top-down-oriented and adapted to the functional and political requirements of Community institutions. Second, on behalf of EU institutions, the current mechanisms of political inclusion of organized interests are clearly not optimal in terms of transparency and not well designed with regard to the avoidance of frictions between different elements of representation, as especially the example of the Social Dialogue shows. Third, and finally, while the sheer complexity of policy-making in EU Social Policy, the multiplication of arenas, and the decentralisation of competences to various negotiated decision-making processes has contributed to political outcomes that are considerable with regard to expectations at the beginning of the 1990s, the effects of these tendencies require very careful and critical scrutiny with regard to concerns of democratic legitimacy.
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