‘Civil society’ in European institutional discourses

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Workshop 7: Rescuing Democracy: The Lure of the Associative Elixir
‘Civil Society’ in European institutional discourses.*

In the last decade, and in particular in the last years, the concepts of ‘civil dialogue’ and ‘civil society’ have found a place into the discourses of the European institutions. Two institutions in particular have made reference to these concepts, namely the European Commission and the European Economic and Social Committee (ESC). In this paper I will analyse how this discourse emerged in the Commission (1) and in the ESC (2), and why in particular in these institutions (3). While both institutions have been quite successful in ‘selling’ their civil society discourse, the possibility that the discourse will lead to changes in reality and to more legitimate European governance, as claimed, appears much more modest (4).

1. The European Commission: from ‘civil dialogue’ to ‘civil society’.

1.1. ‘Civil dialogue’ and the supportive role of NGOs in social policy

The concept of ‘civil dialogue’ emerged in European discourses in the mid 1990s to refer to a need for strengthened interaction between the European institutions and non-governmental organisations, mainly within the social and welfare sector. Declaration 23 annexed to the Maastricht Treaty had already stated that ‘the Conference stressed the importance, in pursuing the objectives of Article 117 of the Treaty establishing the European Community [i.e. the social policy objectives], of co-operation between the latter and charitable associations and foundations as institutions responsible for welfare establishments and services.’ The Declaration mainly resulted from the successful lobbying action of German welfare associations that feared European integration would threaten their status acquired at national level.¹ However, the Declaration did not result from a real incentive from the European institutions to strengthen dialogue with the ‘third sector’. In 1989 a unit for ‘Social Economy’ had been set up under Directorate General XXIII, equally responsible for SMEs and tourism, but the ‘third sector’ acquired low policy priority and to the extent DG XXIII paid attention to mutual societies, co-operatives and associations, its focus was on indicating the specific

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* This paper has profited from my involvement in the ESC’s activity on ‘civil society’, as expert to the Rapporteur of the ESC’s Opinion on ‘The role and contribution of civil society organisations in the building of Europe’ (22/9/99) and as author of the Concise Report of the First Convention of the civil society organised at European level, hold on 15-16/10/99. The Report is published in context of the European Commission’s White Paper on European Governance (2001) at http://www.europa.eu.int/comm/governance/areas/group3/index_en.htm

features of the sector in face of economic integration\(^2\) rather than on establishing a strong dialogue with these organisations.

Only in 1996 the concept of ‘civil dialogue’ was coined, not by DG XXIII, but by DG V, the Directorate General responsible for social policy. DG V has a long experience in supporting the social dialogue, i.e. different processes of consultation of and concertation with the social partners (i.e. the associations of management and labour), as well as encouraging their bipartite dialogue. While this social dialogue got even a ‘constitutional basis’ with the adoption of the Social Agreement added to the Maastricht Treaty (and, at Amsterdam, enshrined in the EC Treaty), the ‘dialogue’ with other associations in the social field lacked any institutionalisation. Yet, dealing with such issues as gender, youth, social exclusion, disability and racism, DG V intervenes in policy sectors where co-operatives, mutual societies and (charitable) associations (other than the social partners) play an important role. The consultation and involvement of these organisations in the drafting and implementation of initiatives in these policy fields gained in importance since these issues got more prominently on the agenda in the 1990s. At the same time, the Commission found itself since the beginning of the 1990s in a ‘defensive position’, in particular in relation to social policy, where its previous regulatory intervention had caused the hostility of several Member States. In the context of a more general policy shift from regulatory to persuasive intervention,\(^3\) exemplified in the Green and White Papers on Social Policy published in 1993 and 1994,\(^4\) the Commissioner for social policy, Padraig Flynn found in the ‘civil dialogue’ an issue DG V could focus on without being seen as too intrusive into the Member States’ social policy prerogatives.\(^5\) Moreover, through the involvement of these actors, DGV hoped to build up a supportive network favourable for European social policy intervention in the longer run.\(^6\)

In its attempt to strengthen civil dialogue, DGV found an ally in the European Parliament’s Committee of Social and Employment Affairs, in general supportive for more European social policy action. At their common initiative a first European Social Policy Forum was held in March 1996 bringing together over 1000 participants mainly from NGOs in the social field. The Forum, to

\(^2\) Thus attempts were made to draft a European Association Statute which would facilitate third sector organisations to act in different countries of the EU. Yet, the attempts failed both to disagreement among the Member States and the organisations themselves.


\(^6\) Padraig Flynn: ‘I assure you that, because it is central to our success in meeting our objectives - the role of the social NGOs will be central to our efforts… The development and the application of strong and progressive social policy in the Union demands the engagement of the whole of civil society.’ See Summary Report of the European Social Policy Forum, 24-26 June 1998, published by the European Foundation for the Improvement of Living and Working Conditions and DGV, p.49.
be held every two years, is seen as ‘the launch of a new policy objective: the building over time of a strong civil dialogue at European level to take its place alongside the policy dialogue with the national authorities and the social dialogue with the social partners.’\textsuperscript{7} The Forum is organised as a broad consultation on the general direction of European social policy.\textsuperscript{8} Its aim is above all to reach the NGO world,\textsuperscript{9} though there are also participants of the social partners, the Member States, regional and local authorities and research institutes.

During the preparation of the first Social Policy Forum, 25 European and international confederations of third sector associations formed a Platform of European Social NGOs to act as a permanent framework for co-operation and interaction with the European Institutions. The Platform has soon become the privileged partner of the Commission when the third sector is at stake.

Both the 1996 Social Policy Forum and the Platform, supported by DGV and the EP, tried to get the ‘civil dialogue’ on the agenda of the 1996 IGC leading to the Amsterdam Treaty. Yet, the outcome was only a new Declaration (No 38) annexed to the Treaty, recognising ‘the important contribution made by voluntary service activities to developing social solidarity’, and stating that ‘the Community will encourage the European dimension of voluntary organisations with particular emphasis on the exchange of information and experiences as well as on the participation of the young and the elderly in voluntary work.’

In the run up to the Amsterdam Treaty the Commission presented also a Communication on ‘Promoting the role of voluntary organisations and foundations in Europe’,\textsuperscript{10} drafted by both DGV and DG XXIII. Voluntary organisations - distinguished from the two other sectors making up the social economy, namely co-operatives and mutual societies - were defined as characterised by the following elements:

a) they have some degree of formal or institutional existence
b) they are non-profit-distributing
c) they are independent, in particular, of government and other public authorities

\textsuperscript{7} Commission Communication on Promoting the role of voluntary organisations and foundations in Europe, 06/06/1997, COM(97) 241 final, indent 9.7.
\textsuperscript{8} The 1998 European Social Policy Forum, for instance, discussed three main themes, namely: employment, the future of social protection, and participation and citizenship in Europe. See Summary Report of the European Social Policy Forum, 24-26 June 1998, published by the European Foundation for the Improvement of Living and Working Conditions and DGV.
\textsuperscript{9} Among the 1300 participants at the 1998 Forum, for instance, one could find the Finnish Red Cross, the Panhellenic Federation of Parents and Guardians of Disabled People, the Netherlands Platform Older People or Europe to Swedish Save the Children. Moreover, some delegates came from central and eastern Europe, such as the Women’s Alliance for Development in Sofia, or from south-eastern Europe, such as the Pancyprian Welfare Council.
\textsuperscript{10} COM (97) 241 final, 06/06/1997.
d) managed in a “disinterested” manner, i.e. those who manage them ought not to do so in the hope of personal gain

e) they must be active to some degree in the public arena and their activity must be aimed, at least in part, at contributing to the public good.

Foundations are ‘bodies with their own source of funds which they spend according to their own judgement on projects or activities of public benefit. They are entirely independent of government or other public authorities and are run by independent management boards or trustees.’

Trade unions and employers’ organisations, religious congregations and political parties are explicitly excluded from the scope of the Communication.

The Communication describes in general terms the importance of voluntary organisations ‘to provide the seed bed or “gene pool” from which future social and other policies may eventually grow but also the political, social and intellectual climate in which change comes to be seen as desirable on a wider scale’. Moreover, it is argued that ‘voluntary organisations and foundations foster a sense of solidarity and of citizenship, and provide the essential underpinnings of our democracy. In the light of the challenges now facing the European Community, and indeed in the different countries of East and Central Europe, these functions have never been more vital.’ The Communication mainly provides a survey of the voluntary sector in the Member States and shows the problems and challenges the sector is facing. Though the Communication also suggests to organise a European year of voluntary organisations, create European-wide collection of information on the sector, and create easier access to sources of finance, it does not provide a strong common framework for the further institutionalisation of the dialogue at the European level.

Stephen Hughes, MEP and president of the Committee of Social Affairs in the EP, even argues that the Communication ‘has very little to say about civil dialogue’,\(^\text{11}\) i.e. it is mainly a descriptive account of the situation of the voluntary organisations (within the Member States) rather than a proposal for strengthened institutional contacts. He also notes that the Communication ‘found little political support within the Commission’\(^\text{12}\). In the Commission the issue remained confined to several DGs having already developed their own consultation practices. Though the Secretariat-General got ‘civil dialogue’ on its agenda, since it had to co-ordinate DGV and DG XXIII in drafting the Communication, it hasn’t been particularly pro-active in pushing the issue beyond established practices. Moreover, the Communication met also with low reaction from the other

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\(^{12}\) Ibid., p.50.
Community Institutions and from the national politicians, civil servants or third sector organisations.

As a result, until 1998 the discourse on ‘civil dialogue’ remains confined to some DGs of the Commission, in particular DG V and DG XXIII, and some European Parliamentarians, paying attention to the third sector. The concept is used to point to the need for a strengthened dialogue between the European Institutions - in particular, the Commission - and the NGOs, in particular in the social policy field, in addition to the existing social dialogue with the social partners. Though it is recognised that voluntary organisations play an important role in our democracies, the role of intermediate organisations has not yet been formulated as a key factor for legitimate European governance. The focus is still more on the role of social NGOs as a legitimating support for further European social policy-making.

1.2. ‘Civil society’ as a key for administrative reform and legitimisation

By the end of the 1990s two events will broaden the discourse on the role of NGOs and intermediary organisations, both in terms of policy actors making recourse to it and in terms of content. On the one hand, a ‘budgetary incident’ will bring NGO activity more to the fore; on the other hand, the ‘legitimacy crisis’ of the European Institutions, and in particular of the Commission, leads to the discovery of ‘civil society’ as guideline for administrative reform and as ‘source of legitimisation’.

On 12 May 1998, the European Court of Justice issued its ruling in a case (C-106/96) brought by the UK (supported by Germany, Denmark and the Council) against the Commission (supported by the EP). The UK had sought the annulment of the Commission’s decision to fund 86 European projects seeking to overcome social exclusion. The Court annulled the decision in question - though the annulment would not affect the validity of payments made - indicating that any expenditure relating to Union action requires both a budget entry and a legal basis. The latter was lacking in the case at hand.

As a result of the ruling the Commission launched a review of a number of budget headings without a clear legal basis and decided to suspend their implementation temporarily. This caused serious

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13 With the exception of the ESC; see below.
problems for many (European) NGOs; not only do they get project funding from the EU, many of them also depend on EU funding to keep their organisational structure alive.\textsuperscript{15}

The funding crisis brought the social NGOs to join forces, in particular co-ordinated by the Platform.\textsuperscript{16} Moreover, an alliance was made with the development NGOs and human rights NGOs. The crisis brought the NGO sector to the attention of MEPs, Council representatives, national governments and parts of the Commission that had previously neglected the role of NGOs. By the end of the year, most budget lines were unblocked. Yet, the financial position of the NGOs remained uncertain in the longer run, given the absence of a strong legal basis. The Platform has, therefore, linked the funding crisis to a request for a solid institutionalisation of the civil dialogue, including a Treaty basis and a list of accredited NGOs to be compiled by the Commission on basis of which it would structure its consultation.\textsuperscript{17}

The Commission reacted to the increased demand for institutionalisation of the civil dialogue with a Discussion Paper published in 2000: ‘The Commission and non-governmental organisations: building a stronger partnership’.\textsuperscript{18} To stress that the Paper is aimed to express the intentions of the Commission as a whole - cross-cutting the different DGs - it is formally presented by Commission President Prodi and Vice-President Kinnock. It is placed within the context of ‘a far-reaching process of administrative reform’ of the European Commission.

The Discussion Paper defines NGOs by the same characteristics as used to define ‘voluntary organisations’ in the 1997 Communication.\textsuperscript{19} Yet, while the 1997 Communication addressed mainly the situation of NGOs in the social policy field, the Discussion Paper aims to address relationships between the Commission and NGOs in all policy sectors. In fact, although the discourse on ‘civil dialogue’ emerged primarily from the social policy field, the Commission had also important contacts with NGOs in sectors such as development policy and human rights, and environmental and consumer policy.

\textsuperscript{15} Among the budget headings suspended were those related to ‘co-operation with charitable associations’, ‘co-operation with NGOs and associations formed by the socially-excluded and the elderly’, ‘measures in the social economy sector’, ‘community contribution toward schemes concerning developing countries carried out by NGOs’, and ‘subsidies for certain activities of organisations pursuing human rights objectives’.

\textsuperscript{16} How the funding crisis helped to overcome differences among the NGOs, see Robert Geyer (2001), p. 484.

\textsuperscript{17} The list, so it was argued, could also be recognised by the European Parliament and other EU Institutions. See Platform of European Social NGOs, ‘Political Recommendations on Civil Dialogue with NGOs at European Level’, 14 October 1999.


\textsuperscript{19} A footnote states that the list of characteristics ‘is inspired by the list of common features of voluntary organisations proposed by the Commission in its Communication of June 1997’. The wording is slightly different. The most apparent difference is that the Discussion Paper mentions explicitly that an NGO should be ‘voluntary’; an element which apparently did not need explicit mentioning when defining ‘voluntary organisations’.
While the 1997 Communication set out in general terms ‘the importance of voluntary organisations’, the Discussion Paper specifies in five considerations the rationale of co-operation between the Commission and NGOs:

1) ‘Belonging to an association provides an opportunity for citizens to participate actively in new ways other than or in addition to involvement in political parties or trade unions. Increasingly NGOs are recognised as a significant component of civil society and as providing valuable support for a democratic system of government.’ Although ‘the decision making process in the EU is first and foremost legitimised by the elected representatives of the European people, ( ) NGOs can make a contribution fostering a more participatory democracy both within the European Union and beyond’ (in particular the enlargement countries and developing countries the EU is dealing with).

2) NGOs have the ability to reach the poorest and most disadvantaged and to provide a voice for those not sufficiently heard through other channels.

3) Expert input of the NGOs.

4) They can manage, monitor and evaluate projects financed by the EU.

5) They contribute to European integration. By encouraging national NGOs to work together, the European NGO networks are making an important contribution to the formation of a “European public opinion”.

More than in previous documents the Commission thus stresses the valuable support of NGOs to legitimate European governance.

The Paper gives an overview of the existing ad hoc structures through which the Commission consults NGOs or to which it makes recourse to ensure that information on the EU reaches a wide audience. The Paper equally describes the ways in which NGOs are involved in implementing Community projects or in co-operation programmes with non-member countries.

As a result of the funding crisis the Commission also paid attention to the budgetary issues, acknowledging that the current funding of NGOs (directly or via projects) on basis of A- budget lines (administrative appropriations) and B-budget lines (operating appropriations) lacked any kind of co-ordination and common criteria. Yet, the proposal to eliminate the distinction between A- and B-budget lines risks to block the issue of NGO-funding into a much broader debate on budgetary procedures, the outcome of which would be very uncertain given that it hurts existing institutional positions.

Also the proposals to improve dialogue and consultation with NGOs will not immediately transform current practice. The Commission wishes to ‘develop a framework of principles’, which ‘should
lead to a set of recommendations identifying best practice in consultation, which would be addressed to all Commission departments.’ How to ensure that NGOs get information in good time to consult their members? How to select the NGOs to be included in the various consultation processes? How to ensure more transparency? Should there be a Treaty basis for civil dialogue? The Discussion Paper asks questions, rather than suggesting answers. One concrete measure is put forward; a list of the committees and working groups involved in formal and structured consultation procedures and the NGO belonging to them will be compiled and incorporated into a special EUROPA website on NGOs. Yet, the Commission also specifies that it rejects an official consultative status: ‘the Commission has always wanted to maintain a dialogue which is as open as possible without having to enforce an accreditation system’.

The dialogue with NGOs has also found a prominent place in the Commission’s White Paper on European Governance,20 of which ‘the goal is to open up policy-making to make it more inclusive and accountable’. The starting point is overtly the legitimacy problem of the European institutional framework.21 Under the title of ‘better involvement’ the Commission deals with ‘involving civil society’, after having dealt with ‘reaching out to citizens through regional and local democracy’. The discourse on ‘civil society’ is broader than the attention paid to NGOs until then; it ‘does not only include NGOs but also trade unions and employers’ organisations, professional associations, charities, grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities’. 22 Yet, the White Paper’s definition of civil society is not free from ambiguity. Under the title of ‘involvement of civil society’, the Paper equally mentions that ‘European political parties are an important factor in European integration and contribute to European awareness and voicing the concerns of citizens’, and even that ‘the involvement of national parliaments and their specialised European affairs committees … could also be encouraged.’ Moreover, referring to the existence of nearly 700 ad hoc consultation bodies, it is not clear to what extent the Commission would include also profit-seeking organisations,23 scientific experts and representatives from national administrations into its definition of civil society. There is a tension between on the one hand the Commission’s tendency to define civil

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21 ‘Despite its achievements, many Europeans feel alienated from the Union’s work…’
23 Thus, under the title of ‘involvement of civil society’ the White Paper mentions ‘business test panels’ as an example of existing consultation mechanisms.
society so broadly that all sorts of participatory and consultative fora could be considered as sources of legitimacy, and on the other hand its proposals to institutionalise contacts with civil society, which seem primarily addressed at the NGO sector and are actually a copy of what has been proposed in the 2000 Discussion Paper on the Commission’s relationship with the non-governmental organisations. Thus the Commission repeats its intention to realise an overview of existing consultative structures and of consulted NGOs in order to increase transparency. A database of European NGOs, called ‘CONECCS’, has in the mean time been set up on the EUROPA server, on the webpage of the Secretariat-General of the Commission. Like in the 2000 Discussion Paper the aim is subsequently to formulate a code of conduct that sets minimum standards on what to consult on, when, whom and how. While the Commission argues on the one hand that no strict binding rules for consultation should be imposed to the policy-makers, it introduces on the other hand more strongly the idea that civil society organisations should be representative to be involved in policy-making. This is especially stressed for the more ‘extensive partnership arrangements’, the features of which remain, however, unclear.

One can conclude that since 1998 the Commission’s discourse has changed in a twofold way. First, the discourse on ‘civil dialogue’, which until then had mainly been used within the context of social policy (in parallel to the social dialogue), has been broadened to the interactions of NGOs with the Commission in all possible policy sectors. The discourse becomes part of the Commission’s project of administrative reform, which finds in contacts with NGOs a source of legitimisation. Second, with the White Paper on European governance, in which administrative reform and the legitimacy of governance are the starting points, the Commission makes recourse to an ever broader concept of ‘civil society’.

It is not entirely clear whether the contacts with this civil society - the civil dialogue - is supposed to include all forms of interaction between EU institutions and (private) intermediary actors. On the one hand, the Commission does not always resist the temptation to use ‘civil society’ as a legitimating discourse for all its existing interactions, including with all sorts of private lobbying actors. On the other hand, its definition of civil society organisations does not explicitly include private organisations (individual firms, associations of firms, consultants) and the proposed criteria for institutionalisation of the involvement of civil society (such as accountability, openness and ‘representativeness’) do not seem to fit such actors.

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24 On the website of the Secretariat-General of the Commission, for instance, the issue of ‘the European Commission and civil society’ does not only include the 2000 Discussion Paper on the relation with NGOs, but also the Commission’s
2. The ESC and the concept of ‘civil society organisations’.

The ESC has been created by the Rome Treaty as a body with advisory power in a wide range of policy areas dealt with at European level. It is composed of 222 members from national socio-economic organisations, who are divided into three Groups: (I) employers organisations; (II) trade unions; and (III) a various interests group, including in particular social economy organisations; consumer and environmental organisations; agricultural organisations; and organisations representing SMEs, the liberal professions and crafts. The ESC could thus be considered as an institutional expression of the organisations making up civil society. Yet, only recently the ESC has started to define itself in these terms.

Despite being the only body enshrined in the Treaty to represent associations, the ESC has faced gradually an ever stronger competition in its advisory role from other (ad hoc) consultative fora and direct lobbying activities. The strengthening of the social dialogue - entirely independently from the ESC - and the creation of the Committee of the Regions in the Maastricht Treaty, incited even Commission President Delors to warn the ESC that it risked marginalisation. The ESC responded to this difficult situation with different initiatives, such as the creation of a Single Market Observatory. But the main commitment of the subsequent presidents of the ESC was declared the ‘Citizens’ Europe’ initiative. By organising some (badly focused and often top-down) hearings, and by formulating the (assumed) aspirations of the European citizens in very broad terms the ESC attempted to reinforce its role; an attempt which met with scarce success. Moreover, focusing on ‘its relation with the citizen’ the ESC had difficulties to position itself vis-à-vis the European Parliament.

A decisive change in approach occurred in 1998, when the ESC got both a new Secretary General and a new President. As former collaborator of Commission President Delors and official of DGV, the new Secretary General, Patrick Venturini, acknowledged the difficult situation of the ESC but convinced of the importance of the involvement of socio-economic actors in European policy-making - he also believed that the ESC could still play a role if it could better position itself. In the same year, Beatrice Rangoni Machiavelli was elected President of the ESC, following a rotation system which assigns every two years the presidency of the ESC to one of its three Groups. Rangoni Machiavelli is a member of Group III (various interests), which is traditionally more open


25 Speech addressed to the ESC in the June 1993 plenary session.
to a discourse on civil society, broadened participation, and citizenship than the social partners in
the two other Groups. In her opening speech she notes that ‘the ESC can and must become the
*forum of civil society*, thus contributing fundamentally to bringing the European Union closer to its
citizens and giving practical meaning to EU citizenship’.

In this new constellation ‘civil society (organisations)’ becomes the key discourse around which the
ESC attempts to reshape its role. The focus is no longer on ‘the citizen’ but on ‘the organised
citizen’, namely the intermediary organisations making up civil society.

In January 1999 the ESC adopted its own-initiative opinion on ‘The role and contribution of civil
society organisations in the building of Europe’, which had to serve as a starting point for the ESC’s
First Convention of Civil Society organised at European level, a hearing which will bring together
in October of the same year some 300 representatives from civil society organisations to discuss
their involvement in European policy-making.

Before the Commission explicitly came up with the issue in its White Paper, the ESC’s own-
initiative opinion clearly linked the concept of ‘civil society’ to the legitimacy problem of the
European integration project. Its 1999 opinion has the precise aim to analyse the relevance of the
concept of ‘*civil society*’ in this debate. With a surprising detail for an official document, the
opinion retraces the concept of civil society to Aristotle, over Hegel, Marx, Tocqueville, Durkheim,
Weber and current liberal, communitarianist and discursive democracy approaches. A set of
‘components in the concept’ are laid down, resulting as much from debate in the ESC than from the
fore-mentioned literature. Among them pluralism, autonomy but also education, responsibility and
subsidiarity.

Civil society is broadly defined as ‘a collective term for all types of social action, by individuals or
groups, that do not emanate from the state and are not run by it’. **Civil society organisations** are
defined as ‘the sum of all organisational structures whose members have objectives and
responsibilities that are of general interest and who also act as mediators between the public
authorities and citizens’. They include:

- the social partners;
- organisations representing social and economic players, which are not social partners in the strict
  sense of the term;
- NGOs which bring people together in a common cause, such as environmental organisations,
  charitable organisations etc;

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26 For a more detailed analysis of these attempts, see S. Smismans (1999).
CBOs (community-based organisations, i.e. organisations set up within society at grassroots level which pursue member-oriented objectives), e.g. youth organisations

Religious communities

At the Convention, debate emerged on whether it makes sense to distinguish between NGOs and CBOs, and whether religious communities could be considered civil society organisations. Most questions, however, concerned the ambiguous group identified as ‘the organisations representing social and economic players, which are not social partners in the strict sense’. Can it include business interests, and under which form? If it is supposed to include private economic undertakings this appears at odds with the definition of civil society organisations as ‘organisational structures whose members have objectives and responsibilities that are of general interest.’

Arguing that ‘strengthening non-parliamentary democratic structures is a way of giving substance and meaning to the concept of a Citizens’ Europe’, the ESC’s 1999 Opinion takes account of the measures taken by the Commission to improve civil dialogue. It regrets, though, that the Commission until then had omitted any reference to the Committee in its civil dialogue initiatives. This complaint seems somehow belated since the ESC also, in its older opinions on the third sector, failed to define a particular role for itself in civil dialogue. Thus in its own-initiative opinion on charitable associations and in its opinion on the 1997 Commission Communication on voluntary organizations, the ESC focused on the position and problems of these organisations within the internal market and on the Commission’s relation with them, without identifying its own representative role in this context.

In its 1999 Opinion on ‘the role and contribution of civil society organisations in the building of Europe’ the Committee defines its role as guaranteeing ‘the implementation of the participatory model of civil society; it enables civil society to participate in the decision-making process; and it helps reduce a certain “democratic deficit” and so underpins the legitimacy of democratic decision-making processes.’ Making reference to the difficult definition of the ‘demos’ concept within the EU, the Committee argues that ‘the democratic process at European level - even more so than at national level - must provide a range of participatory structures in which all citizens, with their different identities and in accordance with their different identity criteria, can be represented and

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which reflect the heterogeneous nature of the European identity.\footnote{For a more academic version of the argument, see S. Smismsans (1999), pp.569-574.} The Committee can then act as a representation of the people’s way of identifying with civil society organisations, and provide a complement to the legitimacy offered by the EP representing the citizens in their national (territorial) identity.

Since the ESC sees an important role for itself as representative forum of civil society organisations, the Committee could hardly accept to limit the concept of ‘civil dialogue’ to the structures of interaction between NGOs and the Commission. The issue emerged already at the 1999 Convention where many NGOs and the Commission representatives used the concept in this more restrictive sense, whereas ESC members argued the concept of civil dialogue should refer to the dialogue between the (all) European institutions and all civil society organisations, including in particular also the social partners.\footnote{Concise Report of the First Convention of the civil society organised at European level, hold on 15-16/10/99.} This argument has been repeated three times in the ESC’s Opinion on the Commission discussion paper ‘The Commission and NGOs: building a stronger partnership’.\footnote{‘The form of consultation referred to by the Commission [i.e. its relations with NGOs] can and should take place within the framework of the civil dialogue, but does not represent the civil dialogue as such, which must be defined more widely from both the institutional and civil society angle’, see ESC Opinion on the Commission discussion paper ‘The Commission and non-governmental organisations: building a stronger partnership’, OJ C 268/67, 19/09/2000.} The opinion further argues that ‘the civil dialogue should not take the place of or compete with the social dialogue, which has its own exclusive, clearly-defined participants and remits’. Moreover, it is also specified that the civil dialogue is not only a question of dialogue between civil society organisations and Community institutions, but also of dialogue between the representatives of organised civil society alone.

The ESC does not consider itself as having the monopoly of civil dialogue. Yet, due to its institutional status (enshrined in the Treaty) and its membership (including both social partners and NGOs), it argues to be the right forum in which to further broaden civil dialogue.\footnote{See, in particular, ESC Opinion on The role and contribution of civil society organisations in the building of Europe, 22 September 1999, point 10 and 12.} To play this role, it proposes to strengthen dialogue with those civil society organisations that are not currently represented in the Committee. Given that the ESC has no control over its own composition, this aim is looked for through the organisation of events within the Committee, as well as hearings outside the Committee, which could give more people the opportunity to participate in opinion-forming and goal-setting.

In its Opinion on the 2000 Commission’s Discussion Paper on NGOs, the ESC declares considering the possibility of establishing within its midst a civil dialogue observatory, to serve as a forum for
discussion and interaction. European NGOs, in particular, would be involved in the work of this observatory.

Its tasks could include formulating proposals for the implementation of joint initiatives between the Committee and NGOS; monitoring the development of civil society organisations and the civil dialogue at European level; drawing-up criteria for assessing the representativeness of NGOs; and discussing the feasibility of establishing a system of accreditation for NGOs at European level.

The ESC also stresses the role it seeks to play in the institution-building process in the enlargement countries, through the contacts with and support to civil society organisations in the candidate countries. Finally, in its proposals to the 2000 IGC the ESC also defines its role as a meeting point for the civil dialogue that should be built up between the civil society organisations.

The ESC has sought the 2000 IGC to recognise that the Committee ‘is more than just an institutional framework for consulting the economic and social operators’, but ‘also a bridge between Europe and the diverse and complex world of civil society organisations’. Its aim is not to leave aside its consultative role as representative forum of the socio-economic categories; neither to become the spokesman for all NGOs or to be the body through which NGOs must deal with the EU institutions. Rather, as a body recognised in the Treaty representing various civil society organisations, the ESC seeks a role - complementary to its advisory role - as the catalyst initiating public discourse on civil dialogue. The Committee sees its role as providing the framework, the feedback, the practical support for civil society organisations - at European level and in the enlargement countries - and their relations with EU institutions.

The Nice Treaty has partially replied to the ESC’s intention to play this role. The Treaty article defining the ESC’s composition now states that ‘the Committee shall consist of representatives of organised civil society...’.

3. Whom the cap fits, let him wear it.

35 ESC Opinion on The 2000 Intergovernmental Conference - The Role of the European Economic and Social Committee, 1 March 2000.
36 ESC Opinion on The 2000 Intergovernmental Conference - The Role of the European Economic and Social Committee, 1 March 2000, point 2. Or still: ‘Although its mandate is primarily to issue opinions, the Committee has gradually diversified its activities with the aim of helping to ensure effective involvement of organised civil society in opinion-forming and decision-making, and promoting a Europe that is closer to its citizens’, see ESC Opinion on the Organised civil society and European governance: the Committee’s contribution to the White Paper, 25/26 April 2001, point 4.1.1.
37 ESC Opinion on the Commission discussion paper ‘the Commission and non-governmental organisations: building a stronger partnership’, point 6.3.
Both the Commission and the ESC use the discourse on civil society and civil dialogue as an element of legitimisation of their activities and own institutional position. The discourse introduces elements of ‘participatory democracy’, defined as the possibility to participate in the decision-making process for those concerned by the decision. These elements of ‘participatory democracy’ are said to complement ‘representative democracy’, residing in the electoral mandate of the parliament.\footnote{38} Through such participatory democracy the Commission and the ESC, both non-elected bodies - are less dependent of the control by Parliament as the unique source of legitimisation. Not surprisingly, the European Parliament seems not to be too attracted by the discourse on civil dialogue and civil society. In its comments on the Commission’s White Paper on European governance, the EP stresses that ‘the involvement of both the European and national parliaments constitutes the basis for a European system with democratic legitimacy’, and that ‘organised civil society…, whilst important, are (sic) inevitably sectoral and cannot be regarded as having its own democratic legitimacy.’\footnote{39} Yet, the EP itself has well developed contacts with civil society organisations. The EP is, for instance, seen as very receptive to demands of the NGO sector.\footnote{40} However, these contacts are not defined as participatory structures providing legitimacy. They are but sources of information to the parliamentarians whose democratic legitimacy resides in their electoral mandate. This electoral mandate gives parliamentarians also a very wide discretion in consulting who they want. The EP has always opted for the widest possible liberty for parliamentarians to interact with socio-economic and civil society actors, imposing only a minimal set of standards ensuring ‘smart’ and ‘clean’ lobbying practices.\footnote{41} Though in its comments on the White Paper, the EP has now agreed with the Commission and the ESC that an interinstitutional agreement on democratic consultation be concluded committing all three institutions to common consultation standards and practices, it also stresses that ‘it should not be allowed to add a further level of bureaucracy, for instance, in the form of “accredited organisations” or “organisations with partnership agreements”’.\footnote{42} Also the Committee of the Regions (COR) remains particularly silent on the issue of ‘civil society’ and ‘civil dialogue’. Composed of representatives from regional and local authorities, it prefers to

\footnote{38}{The idea of ‘participatory democracy’ is traditionally linked to direct forms of citizen participation. (E.g. C. Pateman, 1970; and B. Barber 1984). On the contrary, as used in the European civil society debate, it refers to another form of indirect participation, i.e. another form of participation via representation, namely via representatives from associations.}
\footnote{39}{EP Resolution on the Commission White Paper on European governance, A5-0399/2001, point 8 and 11a.}
\footnote{40}{See, for instance, with regard to environmental and consumer associations, Justin Greenwood (1997) p. 191 and 203.}
\footnote{41}{See B. Kohler-Koch (1997) and Thomas Schaber (1998). For the EP the issue of lobbying became above all linked with the financial status of parliamentarians, namely the need for each parliamentarian to declare remunerated activities and any gifts or payments received in connection with their mandate, whereas the Commission has linked the question of lobbying much more with the issue of transparency of its work.}
\footnote{42}{EP Resolution on the Commission White Paper on European governance, A5-0399/2001, point 11e.}
make use of a discourse on subsidiarity, ‘proximity’ and ‘closeness to the people’ rather than stressing the role of intermediary organisations. In fact, local and regional authorities do have often well established relations with intermediary organisations, since they are the most natural direct interlocutor for grass roots organisations. The COR is also perfectly aware of this fact and has used it as legitimisation of its proper role, avoiding, though, to invest intermediary organisations with ‘democratic credentials’, which only belong to territorially elected representatives.

It is worth to note in this context that the Commission’s White Paper on European Governance pays attention to both ‘reaching out to citizens through regional and local democracy’ and to ‘involving civil society’ but treats them separately. The discourse of the Commission and the ESC on civil society and civil dialogue does not take fully into account the multi-level policy nature of the EU. Since both have developed the discourse in defence of their own institutional position the conceptualisation of civil dialogue and civil society has above all been linked to the Community method of governance, and more in particular to the drafting process of new (legislative) Community measures, where the Commission acts as central policy entrepreneur and the ESC has its Treaty based advisory competence. In contrast, the interaction with intermediary organisations in policy implementation or in the ‘open method of co-ordination’, where both Commission and ESC play a less important or minor role, appears to have escaped largely from the ‘civil society discourse’. Yet, in its recent comment on the White Paper the ESC acknowledged that the open method of co-ordination ‘opens up interesting possibilities in terms of increasing the involvement of civil society organisations’ and it appears intended to play itself a monitoring role on civil dialogue at that level.

4. A successful discourse? About discourse and reality

Whether a discourse is successful or not is difficult to measure. Simplified, one could analyse the success of a discourse at two different levels. First, one could look at the extent to which a discourse expands; i.e. to what extent it is taken over by other actors. Second, a discourse is generally aimed at certain objectives, at causing change in reality. One can look whether these objectives are reached.

The discourse on European civil society and civil dialogue seems successful measured by the ease with which it expands. ‘Civil society’ has become a popular tune at the European level.

The ESC, in particular, seems to have been able to ‘sell’ its civil society discourse. Thus, the more restrictive concept of ‘civil dialogue’, limited to NGOs (within the social sector), is bypassed by a broader conception referring to the relations of the European institutions with all civil society organisations. The discourse of the ESC has clearly influenced the debate on the White Paper. Both the Paper itself as the working group on ‘consultation and participation of civil society’ set up by the Commission\textsuperscript{44} use explicitly the definition of ‘civil society’ provided by the ESC, and acknowledge the particular role the Committee should play in civil dialogue.

Therefore, the discourse of the ESC is partially also successful in reaching one (maybe the main) of its objectives, namely defining and promoting a new role for the Committee within the European institutional set-up. As ESC President Göke Frerichs, elected in November 2000, stated in his inaugural speech: the Committee needs an external “corporate identity”: ‘the ESC should…press ahead…with the process of promoting an internal awareness of the distinctive nature of the Committee;\textsuperscript{45} this process must be backed up by a corresponding process of external promotion of the distinctive character in order to enable us shortly to reach a conclusive agreement on the Committee’s role…’. With the civil society discourse the ESC has to a certain extent been able to redefine internally its own role (leading to changed working methods, other Rules of Procedure and different policy priorities) and to convince the main European institutions of its central role in civil dialogue. In addition to the Commission - who does not only recognise the ESC’s role in the White Paper, but also via a new interinstitutions agreement between both - also the EP defines the Committee as ‘an important mouthpiece for civil society’ and even argues that an ‘early consultation of the ESC by the Commission can be seen as a way of increasing participatory democracy at Union level’. The EP opts for strengthening the position of the ESC – giving its independence from the Commission - rather than having civil dialogue via a proliferation of committees and groups of experts to the Commission.\textsuperscript{46} Finally, one should not forget that the Member States recognised with the Nice Treaty the ‘civil society’ character of the ESC.

However, even though the ESC’s discourse may have had some success in redefining the Committee’s role and in placing the Committee back into the European institutional set-up, it does not follow that one can take for granted the Committee’s claims of providing as ‘forum of civil

\textsuperscript{44} In the drafting process of the White Paper, the Commission set up several working groups to deal with a specific ‘governance issue’. The working groups were composed of representatives from the different Commission departments and interacted with representatives of stakeholder organisations and with academics.

\textsuperscript{45} I have argued elsewhere that the ESC should primarily focus on its representative nature in order to strengthen its advisory role, see S. Smismans and L. Mechi (2000).

\textsuperscript{46} EP Resolution on the Commission White Paper on European governance, A5-0399/2001, point 11 c and d.
society’ a ‘fundamental contribution to bringing the European Union closer to its citizens’. I have defined elsewhere\textsuperscript{47} the ESC as a ‘functional assembly’, i.e. rather than constituting a democratically representative body per se, its task is to facilitate and promote technical and sectoral integration. Its initial aim has not been to become a representative forum of associative life in Europe. It gathers the main socio-occupational groups, mostly from industrial production, in particular of those sectors where Community action was foreseen, in order to profit from their expertise and to facilitate implementation of Community measures. Even if the Nice Treaty will come into force, the ESC’s nomination procedure, its composition and advisory power will not really change. Therefore, the Committee is likely to remain above all the expression of the main socio-occupational groups and not entirely adapted to the complexity of civil society organisations in contemporary European society. The organisation of hearings, the creation of a civil society observatory and the attention for civil society in Eastern Europe may only partially compensate for this. Moreover, if the ultimate aim of the ESC’s discourse is to bring ‘Europe’ closer to its citizens, one should also question the relation between the ESC members, their organisations and their members. The ESC may well be able to ventilate into the European debate the concerns, experiences and demands of certain civil society organisations (in complement to some other channels that may be at their disposition) but it does not follow that the ESC can ensure that European issues are debated at grass roots level. This does not blame the role of the ESC or its efforts to broaden dialogue with civil society organisations, but it means that claims about reducing the EU’s democratic deficit by increasing participatory structures should be made with some modesty.

Comparable remarks can be made with regard to the Commission’s civil society discourse. Obviously, the institutional position of the Commission acts as a megaphone on each discourse it develops with some insistence. Yet, the success of the discourse in terms of expansion may paradoxically go against its potential to change reality. By broadening the discourse from civil dialogue to civil society more policy actors (equally within the Commission) make recourse to the discourse. Yet, its objectives have been confused. As long as the concept of civil dialogue was used to plead for a stronger involvement of NGOs in the social sector – in addition to the social partners - the objectives of the discourse were clear, even if only defended by a smaller group of policy actors. When the Commission takes over from the ESC the definition of civil society organisations which include the social partners, the ‘strategy’ of

\textsuperscript{47} S. Smismans (2000).
the Commission starts to confuse. For the ESC such a definition makes sense to defend its proper position. For the Commission, however, who does not intend to change established social dialogue practices, it is rather confusing to place them together with NGOs in the melting pot of civil society. If the Commission subsequently also refers to scientific and national experts and all sorts of advisory committees, including those where private interest groups are represented, the concept of civil society tends to become a vague masking concept attempting to legitimate the Commission’s position and its current consultation practices.

If on the contrary the civil society discourse is precisely aimed at structuring the Commission’s interactions with all sorts of intermediary organisations and private actors, in order to make European governance more legitimate, more inclusive and ‘closer to the citizen’, the Commission will have to face four particular problems:

First, theories on civil society stress the importance of intermediary organisations but generally do not provide criteria on how the State or public authority should structure interaction with these organisations. Rather do they stress the independence of civil society vis-à-vis the State.

Second, the Commission seems to assume that increased involvement of intermediary organisations will strengthen the legitimacy of the EU since such associations – in particular those organised at European level - are supportive of European integration. This assumption was already present in the original use of the concept of ‘civil dialogue’ by the Directorate-General for Social Policy of the Commission which started from the idea that organisations in the social sector would support a strengthened European social policy. Yet, associations from countries with high social standards may well prefer protecting there own standards instead of getting common but lower European standards. I remind here that Declaration 23 added to the Maastricht Treaty, dealing with charitable associations, resulted from the lobbying of German welfare organisations that feared European integration would threaten their status acquired at national level, rather than from a desire for more European social policy. More generally, even if associations organised at European level have an organisational interest in European activity taking place, it does not follow that they will be supportive of the policy measures proposed by the European institutions.

Third, the Commission appears also to assume that the involvement of associations ensures ‘to reach the poorest’ and ‘to provide a voice for those not sufficiently heard through other channels.’ Strengthened dialogue with associations would make the European integration process more inclusive. However, while the ‘excluded’ or ‘weakest’ have strong difficulties to organise at national level, their organisation at European level appears even more problematic.
Finally, while civil dialogue is supposed to provide bottom-up inclusion of those excluded, it is also supposed to lead top-down to a broadened debate on European issues at the basis. If one should question to what extent ESC members are able to reach back to the basis of their organisations, the same question should also be posed regarding the associations organised at European level, to which the European Commission primarily addresses its civil dialogue. Where European level organisations have been set up, the distance between the representatives in Brussels and the basis back home appears often difficult to bridge. It has been argued that the internal governance procedures of the European associations are not sufficiently democratic to make these organisations key actors of the socialisation process needed to democratise the EU.48

References


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