

« ORGANIZED CIVIL SOCIETY » AS A LEGITIMATE PARTNER IN THE EUROPEAN UNION

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As in other democratic political systems, the participation of civil society in decision-making processes has become a political imperative at the European Union level during the late 1990. Considered by political and academic accounts a poorly democratic, the European Union institutions, and in particular the European Commission has engaged in a reflection process on the role and legitimacy of the so-called 'European civil society', cumulating in the introduction of article 47 on 'participatory democracy' in the Constitutional Treaty . The term 'European civil society' is, however, defined in very large sense, which emerged in the middle of the 1990s in various forums at the EU level. It is during these last ten years that one observes a strange phenomenon. Instead of using the term 'interest group', as European institutions used to do from the beginning of the European integration process until the beginning of the 1990s, political actors and scholars alike increasingly often use the notion of "civil society" to describe the same group of actors. The term replaced completely that of interest group during the debates which lead to the publication of the White Paper on governance. Focusing on the deliberative forums in which the different understandings are developed, this paper studies the social construction of the participatory imperative and the definition of civil society at the European level.

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The discovery of civil society as legitimate actor in EU governance

The reflection process on the role of the interest groups in the European Union finds its origin in the debates of the beginning of the years 1990. The documents resulting from this reflection process carried out in particular within two European institutions – the Commission and the European Parliament – must be understood as part of a larger debate on the right of access to information, annexed to the Treaty of the European Union, initiated by the Birmingham declaration on the necessity to make the EU more transparent. Amongst the European institutions, the European Commission was considered to be the most open and transparent for interest groups. This reputation was always underlined by the European Commission itself, as interest groups can, according to its officials, provide technical expertise and information necessary for efficient decision-making. Initiated by Pascal Lamy, former head of cabinet of Jacques Delors, wishing to create « an exemplary European democracy », ² and based on research led by the General Secretariat of the European Commission, the famous 1992 Communication on an open and structured dialogue with interest groups ³ stressed the idea that a minimal formalisation of the relations between interest groups and European institutions would allow to establish more transparency. The document aimed to realise the engagement taken by the Commission in 1992: “The relations, which the institutions maintain with interest groups, as useful there are, must be better specified. The Commission will thus engage a reflection process aiming at establishing a code of conduct with its interlocutors. This debate was not to call into question, naturally, nor the free activity of the business groups, nor the continuation of the necessary dialogue with different committees ». Two questions are of particular importance in this context: How to enlarge interest group participation in the Commissions proposals and how to make the official documents more accessible? These questions have been central during the 1990 and in particular in the context of the debate linking ‘civil society’ to European decision making processes.

The debate initiated by the Commission is very soon followed by the European Parliament. Confronted with the intensification and the sophistication of business group strategies, the Parliament engaged in a discussion process meant to lead to a stronger inclusion

² Interview, Jérôme Vignon, Director of Direction Equality, DG Social Affairs, former head of the Forward Studies Unit, February 2006.

³ European Commission (1992), An open Structured Dialogue between the Commission and Interest Groups, SEC (92) 2272 final.

of civil interest groups.⁴ A large number of MPs indeed complained to be contacted abusively by certain interest groups, - a group of actors that should very soon be called “civil society”. Until recently, interest groups had easily access to the Parliament and could contact MPs personally. The internal Regulatory Commission of the Parliament published in 1992 a recommendation for a more transparent and regulated interest group access to the Parliament. Inspired by the American and German model,⁵ it foresaw that the individuals who wished to access frequently the premises of the EP with the aim to inform its members within the framework of their parliamentary mandate and for their account or that of a third party, must respect a code of conduct and join a register on a voluntary base, in return of which they have access to the Parliament’s building. The European Parliament insisted on the fact that interest groups complete the fundamental role played by the political parties in the political representation and thus its efforts aimed at linking the citizens closer to the process of EU decision-making. Whereas the Parliament’s approach could help to strengthen its credibility with the public, one could blame it for privileging its relations with the registered interest groups, to the detriment of those not registered. The European Commission, on the other hand, was aware of both the difficulty and the necessity of regulating the access of interest groups to the Union, and at the same time the possibility to use interest groups as allies to strengthen the position of the European institutions in power struggles with the Member States.

Kenneth Armstrong underlines however that these regulatory attempts suffered from a certain number of deficits.⁶ Thus, the link between the transnational governance and society is built in terms of particular interest in the individual consumption of social rights than constructed through an active identification with those who produce these norms. Furthermore, the citizens are rather market citizens than political and social actors. Although market citizens play an active role in the realisation of economic objectives, there are passive actors in the context of the establishment of a real political and social transnational governance system at the EU level. Nevertheless, despite the disappointing result of those regulatory efforts, there are a starting point in a series of reform attempts, pushed forward in particular by the European Commission.

⁴ McLaughlin Andrew M. and Greenwood Justin (1995), “The Management of Interest Representation in the European Union”, *Journal of Common Market Studies*, 33(1), p. 143-156.

⁵ In the United States this concerns the Administrative Procedure Act (APA) of 1946. In Germany the relations between interest groups and the federal government are regulated by article 73 paragraph 2 of the regulation of the federal Assembly (Geschäftsordnung des Deutschen Bundestages) and articles 61 and 62 of the regulation of ministries (Gemeinsame Geschäftsordnung der Ministerien). If a law is proposed for discussion, the German government has to consult the concerned interest groups.

⁶ Armstrong Kenneth A. (2002), “Rediscovering Civil Society: The European Union and the White Paper on Governance”, *European Law Journal*, 8(1), p. 102-132.

Civil dialogue and social policy

This debate on the role and the methods of access regulation of interest groups has been enlarged by the inclusion of other actors such as non-governmental organizations (NGOs), welfare associations, actors then transformed into 'civil society'. Thus, Declaration 23 of the Maastricht Treaty stressed the importance of the cooperation between welfare associations and European institutions. This declaration must be regarded more as the result of the interest representation of active German associations in the third sector, and less like an independent initiative of EU institutions. The Declaration is not used until 1993 when the Commission, in particular DG 5 (Social policy), a central actor in the social in the official Social Dialogue decided to intervene increasingly in the field of youth policy, social exclusion, racism or gender equality.⁷ The consultation of multiple active associations in these fields in the development and the implementation of the social initiatives gained importance when these questions became priority elements on the European Union agenda. Parallel to the growing importance of these political sectors, the European Commission was confronted with the hostility of the Member States with regard to its intervention in these fields. The co-operation between the Commission and civil society became a factor of legitimation of the European institution under national pressure. By supporting the initiatives by broad consultations of the organized civil society and in particular through "militant civil servants" of the DG 5, the Commission could reinforce its position with respect to the Council of the EU.⁸ « These civil servants aimed for developing exchanges, experiences, to support pilot initiatives and, thus, to support divers activities led by civil society associations through financial aid ».⁹

In co-operation with the commission of social affairs and the European Parliament the first European Forum of social policy was organized in March 1996. This bi-annual Forum initiated a new political objective: the creation of a reinforced 'civil dialogue' at EU level which will take its place at the sides of the 'social dialogue', including the social partners. The participants of this forum, created to allow for a large consultation on the direction that social policy should take, were part of European NGOs, social partners, member States, local and regional authorities and research institutes.

This notion of a civil dialogue was also used in an Opinion published by the Economic and Social Committee (ECOSOC) and established the base what should become the new

⁷ COM(93) 551, Green Paper on Social Policy, November 1993 followed by the publication in 1994 of the White Book on the same question COM(94) 33, July 1994.

⁸ Smismans Stijn (2003), « European Civil Society: Shaped by Discourses and Institutional Interests », *European Law Journal*, 9(4), p. 482-504.

⁹ Interview, Jérôme Vignon, April 2005.

'European civil society'. ECOSOC's considers itself in this document as the representative of 'civil society' at the EU level, a position taken over by article 257 of Treaty of Nice (TEC).¹⁰ In its opinion, ECOSOC insists on multiform, multidimensional and multilevel character of 'European civil society'. The opinion insists in particular on the notions of pluralism, autonomy, solidarity, civic conscience, participation, accountability and subsidiarity. The ECOSOC intervenes in this debate both in favour of its own institutional position and of including 'civil society' stronger than ever in the decision making processes. The advisory status of ECOSOC makes its interventions in the European political debate very random, but the increasingly important 'participatory imperative' in political as well as scholarly debates allows for gaining a stronger position in the institutional system.¹¹ However, while legally and officially recognised as the representative of the 'civil society', and in regularly insisting on this role – all documents and interviews the author had led with the representatives of ECOSOC explore this role¹²- a large majority among European non-state actors are hostile to this evolution and resist the establishment of a more structured relationship with ECOSOC.

Thus, parallel to ECOSOC's role in structuring a European civil dialogue, a large number of auto-declared 'civil society' organisations started to organise themselves in networks at the European level. It was this construction of multiple public spaces that made the existence of the notion itself possible, transcending the small and informed circles. In 1995 the European Movement launched the idea of creating a Permanent Forum Of Civil Society.¹³ The Forum takes the form of network and not that of an organised and clearly structured interest group. Its aim is to create a network through which a more social and democratic Europe could be formed. Contrary to the definitions worked out by the European Commission, the Forum rejects two groups of actors from its understanding of civil society. While organisations committed to public or relatively general societal debates, such as trade unions, are included in the Forum's definition of civil society, market forces such as business groups or employers federation more generally are excluded, as well as confessional organisations.

The Forum's main aim was to establish itself the official interlocutor in the debate preceding the Amsterdam Treaty of 1996. The result was, however, not precisely the one hoped

¹⁰ CES Opinion, *Le rôle et la contribution de la société civile dans la construction de l'Europe*, JO C 329 (17.11.99). See also www.europa.eu.int/comm/governance/areas/group3/contribution_concisereport_en.pdf.

¹¹ See Smismans Stijn (2002), "Institutional Balance as Interest Representation. Some Reflections on Lanaerts and Verhoeven", in in Christian Joerges and Renaud Dehousse (eds), *Good Governance in Europe's Integrated Market*, Oxford, Oxford University Press, pp.89-108.

¹² From 2003 to 2005, the author participated in two official and one private brainstorming meeting which were either organised by ECOSOC or included ECOSOC representatives.

¹³ Weisbein, Julien (2003), „Sociogenèse de la 'société civile européenne'“, *Raisons politiques*, n°10, mai, p. 125-137.

for. Only one declaration annexed to the Treaty (n°38) established that the Community encourages the European dimension of voluntary organisations in particular concentrating on the exchange of information and experience.

Confronted with the disappointing results of the European Forum's activism, discussions are initiated by the Directorate-General on Social Affairs of the European Commission which publishes a communication on the "Promotion of the role of the organizations and voluntary foundations in Europe" in 1997.¹⁴ The document very clearly differentiates between 'civil society organisations' such as trade unions, and professional organisation, business, groups or political parties. However, the document has very little influence on the organisation of 'civil society' at the European level. At the end of the 1990 emerge a number of elements that open a larger debate on the 'civil society' participation in EU decision-making processes. It is possible to distinguish between, on the one hand, a larger media visibility through protest movements at the international level (Seattle, Porto Alegre, Genua),¹⁵ and on the other hand, institutional questions linked to the EU. These refer to a European Court of Justice Decision, the publication of a discussion paper by the Commission, and finally the White Paper on European Governance.

In 1998, a ECJ decision (C-106/96), based on the request of Great Britain, Germany and Denmark invalidated the decision of the Commission to finance some 80 European projects against social exclusion. This crisis pushed European NGOs active in the social field to form a network under the coordination of the NGO 'European Social Platform' (Socialplatform). Their activity led both to a growing interest among the political leaders and to a careful reflection on the role of the 'organized civil society' in the implementation of the European policy. The relations between the European Commission and concerned associations gained in importance and gradually one could note the emergence of a more structured dialogue.¹⁶

In this logic fits also the publication of a discussion document, on "The Commission and nongovernmental organizations: the construction of a reinforced partnership".¹⁷ While the 1997 document was mainly interested in non-governmental actors in the social sector, the discussion documents and position papers enlarge their interest and include NGOs in the policy fields of development, human rights, environment and consumer rights. More than in its previous documents, the European Commission stresses here the essential contribution made by NGOs

¹⁴ COM (97) 241 final, 6 June 1997.

¹⁵ An argument that is stressed by numerous representatives of the 'civil society'. Interview, Tony Venables, European Citizens Action Service (ECAS), February 2006.

¹⁶ Smismans Stijn (2003), « European Civil Society: Shaped by Discourses and Institutional Interests », *European Law Journal*, 9(4), p. 482-504.

¹⁷ « The Commission and Non-governmental organisations: building a stronger partnership », COM (2000) 11 final, 18 janvier 2000.

to a legitimate European governance. The document is clearly influenced by debates between scholars, Commission civil servants and representatives of the 'civil society' in its largest sense that took place in the Forward Studies Unit of the European Commission between 1995 and 1998 under the chairmanship of the French civil servant Jérôme Vignon. After 1998, these debates were conducted by Martin Kroeger, Head of Unit 'Civil Dialogue' of the Secretariat General. The 2000 document addresses questions linked to the notion of reinforced cooperation: How can the Commission assure that NGOs receive information sufficiently in advance to consult their members? How to organise the selection process of NGOs for consultation? Exists there a legal basis concerning the consultation? One of the specific proposals relates in particular to the creation of a European Union Web site gathering the co-ordinates of NGOs.¹⁸ The Commission refers here to the web site created in 1992 and devoted to economic interest groups in particular. Thus, this document considerably widens the European comprehension of the 'organized civil society' and opens the possibility for the large definition the Commission develops for a 'European civil society' in its White Paper on European governance.

The White Paper on European Governance

The White Paper on governance, published in July 2001, can thus be considered as the result of a long process of consultation.¹⁹ It started in the Forward Studies Unit of the Secretariat General of the Commission in 1995 and was structured in particular by its chairman, Jérôme Vignon. The Chairman initiated constant and thorough debates in particular with the director of the Centre of the philosophy of Law at the Catholic University of Louvain, Jacques Lenoble.²⁰ « These people interested us. [...] They told us: 'It is not the increasing importance and institutional position of the Parliament [...], nor the election of the European Commission by universal suffrage that will really solve the problem of the Commission's legitimacy deficit'. [...] They made us understand that there were also ways to foster participatory legitimacy and not only the classical representative one. While everyone was concentrated on traditional issues - the decision-making process, decision-making based on a qualified majority, all that took place

¹⁸ European Commission, COM (2000) 11 final, La Commission et les organisations non-gouvernementales: le renforcement du partenariat, 18.1.2000.

¹⁹ COM (2001) 428 final, *Gouvernance européenne, Un livre blanc*, 25 juillet 2001.

²⁰ Jacques Lenoble was responsible for several successive research projects on the question of governance and democracy, financed the EU Framework Programmes on Research and Development (PCRD). It is difficult to show through causality how ideas float from an academic forum towards those existing at European level, but it seems that the assumption of a Co-constitution of this democratic standard between the administrative and university level is highly probable.

inside the microcosm of the European institutions in Brussels, these law philosophers have shown us [that it was necessary] to be interested much more in what happens before a proposal is formulated, who takes part, who is listened to, who says a word in the development of a Community initiative.”²¹

On this basis starts a large process of consultation in 2000. Structured in different sub-groups, scholars, civil servants and representatives of the so-called ‘civil society’ in the large sense, engaged in a deliberation process on European governance during a whole year. Jerome Vignon surrounded himself by a team of Commission civil servants, several of whom are former academics such as Notis Lebessis, French economist, Hartmut Offele, German researcher, and of trainees, of whom in particular the political scientist Amanda Sloat published several articles on the White Paper on governance after the process had ended (Sloat 2003, 2005) and whose reflections are quoted by a number of scholarly writings on this subject. Several europeanists of reputation, such as Rod Rhodes, whose governance definition published in an article is used as official definition in the White Paper,²² but also Mario Telo, Jean Marc Ferry and Paul Maignette, academics and specialists of European integration of the Université libre de Bruxelles, Christopher Lord, professor of political science at the University of Reading, Philippe Schmitter, professor of political science at the European University Institute (EUI) in Florence, Joseph Weiler, professor of law at the University of New York, Helen Wallace, British political scientist and director of the Robert Schuman Institute at EUI, Renaud Dehousse, professor of European law at Sciences Po Paris or Claudio Radaelli, at that time professor of political science at the University of Bradford contributed to the debates. An analysis of these scholars’ writings shows furthermore that their approach is very similar to that recommended by the administrative team of the White Paper on Governance.

Official consultations took place for four months between December 2000 and April 2001, during which regional and local actors, the “civil society”, represented by actors such as ECAS (European Citizen Action Service), DTA Fourth World or the CEDAG (European Committee of Associations of general interest), national parliaments, Member States administrations, individual citizens and academics took part in the deliberations. The ‘working group on the civil society’ was chaired by Luisella Pavan Woolfe, today director of the DG Employment and Social Affairs. This group of administrative actors, elaborating largely on the academic writings on the subject of the “civil society”²³ produced the most thorough document among the official texts

²¹ Interview, Jérôme Vignon, February 2006.

²² Rod Rhodes, « The new governance : governing without governance », *Political Studies*, vol. 44, 1996.

²³ See Amanda Sloat’s study on the subject of ‘civil society’ consultation in the US : SG/AS D(2000).

published by European institutions since the beginning of the debate on the interest groups and civil society in 1992. The writings of europeanists such as Jean-Marc Ferry, Paul Mignette, or the philosophers Paul Hirst and Graehame Thompson were used to work out a definition and guidelines for structuring of the co-operation between the “civil society” and European administrative actors. The White Paper on European Governance goes further than the documents published before.²⁴ The White Paper takes into account this reinforced role of the “civil society” and very clearly fits in the objective to make the decision-making processes more open and transparent. At the same time, it recommends a more inclusive ‘civil society’ definition. It includes from now on “not only NGOs but also trade unions and employers’ organizations, professional organizations, caritative organizations, local and regional associations as well as churches and religious communities” and is thus based on the definition elaborated by ECOSOC.

The organized civil society includes in particular the ‘actors of the labour market’, i.e. the two sides of industry, representative organizations of the socio-economic sector in a larger sense, which are not the two sides of industry, NGOs (nongovernmental organizations), who link the people on common causes, for example organizations for environmental protection, organizations for the defence of human rights, consumer associations, welfare associations, organizations on education and learning, etc, basic organizations (i.e. organizations resulting from the grassroots base of society), for example youth movements, family associations and all organizations interested in the participation of the citizens in local and municipal life and finally religious communities”.²⁵

The ECOSOC document reproduces in broad outline an internal report produced by the young researcher Stijn Smismans.²⁶ Its approach is based on functionalism which recommends the use of the “organized civil society” in the European decision-making processes to make European policy more effective and more legitimate. In the analyzed documents, one notes a tension between the aim to include as many actors as possible in the concept of civil society and the attempt to institutionalize the consultation of this civil society at the European level, an

²⁴ COM (2001) 428 final, *Gouvernance européenne, Un livre blanc*, 25 juillet 2001

²⁵ Conseil Economique et Social Européen, *Le rôle et la contribution de la société civile organisée dans la construction européenne*, septembre 1999, CES 851/99

²⁶ Smismans Stijn (2006), “Civil Society and European Governance: from concepts to research agenda”, in Stijn Smismans (dir), *Civil Society and European Governance*, Cheltenham, Edward Elgar, p. 3-19.

attempt ardently criticized by the European Parliament and the Committee of Regions which consider themselves as the only legitimate representatives of the “organized civil society”.²⁷ This tension is also due to academic reflections which were used to work out the White Paper. The pluralism conveyed by the majority of these academic advisers is at the same time called to be controlled and regulated by structures. To find a compromise on these regulatory methods and instruments still seems more difficult than to find a definition for this “civil society”.²⁸

The European Convention

We have seen that the idea of civil society participation in the decision making processes to improve the democratic character of institutions is not a new one. But, at the EU level, it is the constitutional treaty that offers a first recognition to this understanding of democracy. Under Title VI, the constitutional treaty presents eight articles on the democratic life of the European Union. If Article 1-46 underlines that the functioning of the Union is founded on the principle of representative democracy, in differentiating between direct representation of the citizen by the European Parliament, and indirect representation by the European Council and the Council of the European Union, it is Article 1-47 that is central to the question of civil society participation in the EU policy-making processes. The Article on “Participatory democracy” indicates that:

« 1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.

4. No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for

²⁷ The debate following the publication of the White Paper has been particularly violent within these two institutions.

²⁸ Thus, the idea of a data base on the civil company is recommended to make the organization of the consultation more transparent. A first version had already been published in 1997 including more than 600 nonprofit-making organizations, constituted at the European level and covering a hundred branches of industry. This inscription was elaborated on a voluntary basis. In 1999, an electronic version was created, including approximately 800 associations. Since the summer 2001, the repertory was transferred in a data base which makes it possible from now on to directly carry out the recording of the organizations and the update their data directly via Internet. This new repertory bears the name of CONECCS (Consultation, the European Commission and Civil Society) and includes approximately 1000 organizations.

the purpose of implementing the Constitution. A European law shall determine the provisions for the specific procedures and conditions required for such a citizens' initiative. »

An analysis of the development of this constitutional treaty shows indeed that the final text takes again the broad outline of the debate on the “civil society” developed in the White Paper on Governance. The Convention on the Future of Europe prepared the idea for a constitutional treaty in a Joint Declaration of the Heads of State and government of the European Union at the Laeken Summit on December 15, 2001. The Convention “will have the task to examine the essential questions raised with regard to the future development of the Union and to seek various possible answers”.²⁹ Prepared by two reports bringing together specialists in law and political science³⁰ - the reports of Amato and Duhamel – the convention started its deliberations in 2002. The last paragraph of this Declaration is of primary importance for the analysis of the emergence of a “European civil society”: « To widen the debate and to associate all citizens, a Forum will be opened, including the organizations representing civil society (the two sides of industry, economic sectors, nongovernmental organizations, scholars, etc). It represents a structured network of organizations that will be regularly informed of the work of the Convention. Their contributions will be included in the debate. These organizations could be consulted on particular subjects according to methods to be determined by the Presidium”. In this logic, the Convention envisages two organisational forms which should allow the “organized civil society” to take part. It is first of all about the possibility of intervening regularly in the debate in depositing position papers. In order to widen the debate and to associate all citizens, the Convention proposes to open a Forum devoted to the opinions of the organizations representing the ‘civil society’. It should be a structured network of organizations which will be regularly informed of the work of the Convention and whose contributions will be versed into the debates. The Futurum site gives an overall picture of these contributions emanating both of the civil society and academic scholars.³¹ Structured in four categories - “Policy and public administration”, “socio-economic actors”, “academics or think tanks” and “Other, civil society, NGOs and currents of thought”, a few 700 organizations deposited nearly

²⁹ www.eu2001.be and www.europa.eu.int.

³⁰ Cohen Antonin and Julien Weisbein (2005), “Laboratoires du constitutionnalisme européen. Expertises académiques et mobilisations politiques dans la production d’une constitution européenne », *Droit et société*, n°60, p. 353-374.

³¹ http://europa.eu.int/constitution/futurum/civil_society_fr.htm.

900 proposals, available on the site of Convention.³² It is however important to stress that the Forum was largely criticized. Regarded as a means through which the Convention could better control this much cited “civil society”, the contributions remained very general. The Convention organized in addition regular meetings with the ‘organized civil society’ during which the organizations had the possibility of exchanging directly with the members of the Convention and their counterparts on the future of European integration. Between 10 and 18 June 2002 meetings were held with the eight civil society contact groups. Covering divers sectors such as social and environmental policy, the academic world, citizens and institutions, regions and local communities, human rights, development and culture, the participants of those groups had between 3 and 10 minutes to present their claims. After this extremely restricted intervention time, their claims were gathered in a report of the meetings, distributed to the whole Convention.³³ It is in particular the group “Citizens and institutions” which developed claims with regard to title VI on the democratic life of the Union. Chaired by the vice-president of the Convention, Jean-Luc Dehaene, the few hundred organizations centered their interventions on institutional affairs such as citizenship and participatory democracy. The organizations asked for the inclusion of a certain number of elements in the project of the constitution such as the civil right to European information, the regular organization of a ‘civil dialogue’, equality, the civil right to take part at all stages of the development of the European decisions and in particular their application via a consultation process in the framework of a real partnership, a joint evaluation of the political results, the statute of a European association and the recognition of the role of the non-profit organizations (co-operatives, associations).³⁴ These requests very largely echoed the proposals that we find already in the 1999 Opinion of ECOSOC and in the White Paper on European governance. While the participation of the civil society in the debate on the constitutional Treaty in general was real and several of these claims had been retained,³⁵ it must be noted that the results of the constitutional Treaty with regard to title VII and more particularly on participatory democracy do not go further than the recommendations of the White Paper on governance. The bases were not modified, but were taken over from the White Paper by

³² <http://european-convention.eu.int>.

³³ CONV 120/02, 19 juin 2002

³⁴ Although the project of constitution was criticized by a great number of organizations of the civil society in particular through its spokesman Pier Virgilio Dastoli, the principle of Title VII as such was almost unanimously agreed upon. See the site of the Permanent Forum of the civil society: www.europe-now.org.

³⁵ Balme Richard and Didier Chabanet (2004), « Construire l'intérêt public européen : les mobilisations dans les processus conventionnels », dans Olivier Beaud et al (eds.), *L'Europe en voie de Constitution, Bruxelles*, Bruylant, p. 229-253 ; Montagner Maxime (2004), *Le rôle et la contribution de la société civile dans l'élaboration du Traité instituant une constitution pour l'Europe*, Mémoire, IEP de Lyon.

Guiliano Amato, considered to be as the principal author of this title.³⁶ The principle of participatory democracy had already been introduced throughout the years 1990, constructed through a scholarly dialogue as well as through strategic exchanges, but it is in the Constitutional Treaty that we find it mainstreamed and codified.

Conclusion

The analysis of the debate on non-state actors at the European level reveals a remarkable semantic change leading from the exclusive use of the notion “lobby” in 1992 to that of “civil society” supported by the “two sides of industry” or “NGOs” in 2001. The European Commission and ECOSOC, while being lobbied both by “civil society” representatives as by university actors, facilitated the emergence of a group of actors who from now on act in the name of this “civil society” in the decision-making process. Although non-state actors do take part in the decision-making processes, this discursive agreement does not entail that there exists a homogenous entity that corresponds to this new category nor that the principle of the participative standard is applied. Despite its real effects, the implementation of the democratic standard remains partial and its discursive importance does not correspond to actual policy making.

³⁶ Interview, Tony Venables, ECAS, February 2006. The modifications were certainly introduced, most importantly paragraph 4 on the right to a European petition, included at the last minute on request of a German deputy.