

in print by **Slovenian Paneuropean Movement in “Joint citizens forces – common European future”**.
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EURPSCEPTICISM OR EUOREALISM: THE EU AND THE “MORE OR LESS OR NO EUROPE” DEBATE.

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Introduction

Two factors thwarted the debate between pro and against the EU. First, misinterpretation generated a distorted image of the EU. Second, traditional categories - such as State and Representative Democracy - were systematically used to interpret a “new” phenomenon such as the EU. In addition, centered on failures, the debate ended up ignoring the on-going positive participation of civil society (economic and social organizations as well as individual citizens) in the EU policy making process. What appears *Euroscepticism* might as well be labeled as *Eurorealism*.

What the EU Is Not

Contrary to what many believe, the EU is not a huge bureaucracy. The Commission, the Council, the Parliament and the Court of Justice do not reach 50,000 employees, the same number of employees of the Paris and Vienna municipalities. The EU is neither a source of financial resources. Its 2017 budget amounted approximately to € 150 billion, while, for example, the Italian government's budget currently reaches € 800 billion.

Even the symbols have their importance. Altiero Spinelli - a founding father of the early European Community in the popular mythology - gathered his group at the very expensive *Le Crocodile* restaurant in Strasbourg, specialized in nouvelle cuisine, while Francois Mitterrand, Chirac and t Kohl used to meet in the popular *Chez Yvonne Brasserie*. However, Spinelli's proposals had little or no impact on the construction of Europe, while the humble *Chez Yvonne* meetings contributed to the establishment of the European Union.

A last peculiarity regards the main Treaties. For simplicity, we usually refer to them with a “single” name the *Maastricht*, or the Amsterdam or the *Lisbon* treaties. In reality, each of them refers to two separate treaties. One regulates economic matters, whereas decisions are made by the majority rule and non-compliance by a member state is sanctioned via economic fines. Another one regulates foreign and security policy, whereas decisions are made unanimously and no compliance by a member state is not sanctioned.¹

¹ Concerning Lisbon, The Treaty on UEFT regulates the first and second pillar of the Maastricht Treaty, whereas the second Pillar has been in the meantime “commutarized”.

Our approach is influenced by the organizational studies which see a close “link between strategy and structure” of the organization² as well as by the familiar systems approach to political analysis - based on the distinction between “output functions” and “input functions”³

We will see, in particular, how the ongoing “evolution of functions” assigned to the EU determines the progressive establishment of institutional “structures” called to carry out the input functions.

Some -non hagiographic- history

Research on evolution requires quite often the setting of phases in which some characteristics of the system change. We identified some official phases, marked by main EUs achievements. A tentative proposal (by no means final at the moment) of division the same period of time in Phases of System’s Inputs characteristics is presented in the next section

The phase of the “Agencies of Integration”

This terminology was used by Robert Schuman - at the signing of the ECSC Treaty - to avoid possible future Franco-German disputes for the control of border regions rich of metals. Here the evolution of the EU is influenced by the Cold War logic as it reacts to the USSR’s increased military power and its dominance over the Eastern European satellites⁴.

In this phase Commission and Council perform opposing roles. The former plays the role of “engine” while the latter plays the role of “the breaks”. A sort of checks and balances system between the supranational and the inter governmental.

Yet, in this phase inputs from civil society are extremely limited. Commissioners were nominated by the member states’ governments, who in the mixt of the cold war would present “safe” candidates, that is “atlanticists” rather than “easternists”, and in any case not communists. Though in charge of legislative initiative, the Commission also lacked the mechanisms and resources to hear the requests coming from civil society.

Roughly, this is picture during the period between the 1950s and the 1970s.

The Judges Phase or Phase of the Tree

This is the phase in which several Decisions of the EU Court of Justice ended up *forcing* the expansion of the “scope of action” of the EU⁵.

² This is the situational approach or contingency theory cf. W. Staele, *Organization und Fuehrung sozio-tecnischer Systeme*, Stuttgart, Enke, 1975 and the approach of A. Chandler, *Strategy and Structure*, trad. it. of *Strategy and Structure* (Anchor Books, New York, 1966, Milan, Franco Angeli 1982).

³ David Easton, "An Approach to the Analysis of Political Systems ", *World Politics*, Vol 9, No 3, 1957.

⁴ When talking of “Agency”, nowadays, we tend to refer to the “Principal-Agent” theory born in Economics and then gradually used also in Political Science. With regard to the application of Principal-Agent. Theory to the European Union, see KASSIM, Hussein, *The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?*, *Journal of European Public Policy*, Vol. 10, No. 1, 2003, pp 21-139.

⁵ *Ibid.*

Brussels EU functionaries call this “The Phase of the Tree”. For example, in the area of the free movement of workers in the EU, the free movement of “individuals seeking work” implies also the free movement of their “family members”, and, eventually even to the “mutual recognition of diplomas” between countries. If these implications were made by Decisions of the Court’s Decisions, we could argue that Court’s Decisions on a case are not Law. Thus, in this phase, the input function was performed in large part by the Communities’ “magistrates”. In the absence of sufficiently powerful tools in the hands of the Commission and the Parliament, it was the Judges to take the driver’s seat⁶.

In this phase, the idea of a Europe united by shared juridical principles emerges among the experts working with the ECJ.

The Phase of the Round Table

In the 1970s - unpredictable by the victorious allied forces - scientific and technological R&D grew at an unexpected speed which shortened the time required to design and develop new products as well as new production processes - especially in the ICT and chemical industries. While until the late 1970s, in France, Italy, Germany or the UK, around 50 million consumers were enough to generate returns to finance the development of a new product, afterwards, a much larger market was needed. Well, indeed that is just what happened during the phase of the Round Table, the phase in which, the “Common Market” will evolve into a “Single Market”.

In 1983, VOLVO’s CEO, Pehr G. Gyllenhammer (though Sweden wasn’t yet a member of the EC), convened a *round table* including representatives of the *European Trade Union Committee* (ETUC) and of the *Union des Industries de la Communauté européenne* (UNICE; now *Business Europe*), the representatives of major European firms; as well as EC Commissioners Ortoli and Davignon (www.ert.eu) The subsequent Treaties Maastricht, Amsterdam 1997, Nice 2000, and Lisbon 2009 - maintained, and improved on, the internal market as the “Core” feature.

The Internal Market

Let’s see in a basic and extremely concise way what the Internal Market is. In very broad terms it is a market (comprising all member states) in which goods, services capital and people circulate freely. Below are some of the major legal and commercial requisites for its implementation.

- a) Any company of any Member State can sell its product directly all Member States without being required to set up a legal (controlled) entity in each Member State;
- b) A single currency to avoid exchange risks;
- c) EU-Wide Standards for Goods and Services. For example, before the Internal Market, a car made by FIAT in Turin, Italy, to be sold or bought in another member state, had to

⁶ Indeed, as mentioned above, at this point we are still under the regime of the Luxemburg Compromise, by which a unanimous decision of the Council was frequently required; Among them, it is worth to remember the *Simmenthal Case* (C-106/77, ECLI:EU:C:1978:49), which affirms the supremacy of EU law over national law. In a few words, a national judge confronted with a national law that conflicts with the supranational “*acquis communautaire*” must not apply the national law and apply the supranational EU norm. According to the *FRIGERIO case* C-357/06, ECLI:EU:C:2007:818) e *Ceoli* (C-224/97, ECLI:EU:C:1999:212) national public servants are supposed, to avoid compensation and fines, to disregard national standards and to implement Community standards.

meet the regulatory requirements of that member state – and, the same, for each of the other member state. With the implementation and the updates to the Internal Market, the EU, gradually eliminated this lengthy procedure by setting up through frameworks directive and regulations

- d) A Single Statute for European firms. Indeed, the EU, with the Nice Treaty (2000), set up a “single statute” for European firms. Until then, a European firm (take, for example, FIAT, an Italian car maker) in order to sell cars in France, had to set up a French company which would purchase FIAT cars and sell them in France. Things have changed with the Nice Treaty. FIAT, for example, can set up a FIAT “branch” in France, which can sell FIAT cars directly⁷.

Just as an example, we selected some EU measures regarding various areas of the Internal Market.

- European Financial System, a series of measures in 2010 created a new institutional architecture for European System for Financial Supervision (ESFS)⁸
- The freedom of movement of workers is crucial to achieve a European Labour Market. As much as a European Qualification Framework - equipped with a functioning System of Professional Profiles - would make the freedom of movement of workers not just a legal reality. We believe that this tool would very much benefit both workers with a job as well as unemployed workers⁹
- The Internal Market and Information and Communications Technologies (ICT). The EU was a key actor in the creation of a Single European Market for the ICT¹⁰
- With regard to rail transport the directive in the footnote eliminates still existing national technical barriers Directive¹¹
- In the pharmaceutical industry the trend is to create a single European Pharmacopoeia, which should significantly reduce the contractual power of the producers with respect to the consumers¹²
- Finally, we should mention the significant contribution of the European Agencies whose job is to provide expertise in specific sectors¹³

⁷ Regulation (CE) n. 2157/2001, on the single statute for “European Firm”, gives the new firm a choice between two management models: (a) a German-type dualistic system, with, in charge, a governing body and a supervisory body, or else, (b) a model with, in charge, a single administrative body. Directive 2001/86/CE completes the model with regard to the employees involvement in the governance of the firm. It mandates the information of the firm’s employees and it allows for the participation of the employees (from simple consultation to actual participation to the work of administrative bodies). Fiscal harmonization is still missing. Yet, the Commission is planning a consultation on a proposal for a “Statute of Private European Companies” better attuned to the needs of small and medium enterprises (SMEs).

⁸ The European Systemic Risk Board (ESRB). See Regulation (EU) No 1092/2010 establishing the ESRB.

The three Authorities that European Supervisory Authorities (ESAs):

1. The [European Banking Authority](#) (EBA). See [Regulation \(EU\) No 1093/2010 establishing the EBA](#).
2. The [European Securities and Markets Authority](#) (ESMA). See [Regulation \(EU\) No 1095/2010 establishing the ESMA](#).
3. The [European Insurance and Occupational Pensions Authority](#) (EIOPA). See [Regulation \(EU\) No 1094/2010 establishing](#)

[the EIOPA](#)

Also in 2010, a EU regulation highlighted the need for the supervision of the ESRB itself, by the the European Central Bank (ECB). See [Regulation \(EU\) No 1096/2010 conferring specific tasks upon the European Central Bank concerning the functioning of the ESRB](#).

After their establishment, a new directive, further explained the powers of the new authorities, with a special attention to the Insurance Services sector. See the “Omnibus” Directive 2010/78/EU.

⁹With regard to this issue, see the *European Qualifications Framework*, available at: https://ec.europa.eu/esco/portal/escopedia/ESCO_Maintenance_Committee.

¹⁰ G. Natalicchi, *Wiring Europe*, Rowman & Littlefield Pub Inc (2001).

2016/797 of the European Parliament and the Council, 11 may 2016, with regard to the relative inter-operability of the railway systems in the European Union see <http://data.europa.eu/eli/dir/2016/797/oj>.

¹² see, https://ec.europa.eu/health/human-use/legal-framework_en.

Is the EU a Space or a Super State?

The EU has the power to set standards for products and services¹⁴. We see at least two reasons. First, the EU is the largest and richest market in the world. Second, EU standards are not set autonomously by the firms which are affected by it. They are the result of negotiations between stakeholders and the mediation of the Commission. In trade negotiation the EU tends to concentrate not just on quantity of goods and services but also at their quality. To the point that some commercial treaties are used as an *escamotage* to bypass European quality requirements. For all these reasons the EU represents a defense against the wild behavior of some actors in the global arena.

The EU is not simply a system of “technical” standards, but also a system of “legal” standards. Article 6.1 of the TEU incorporates the Charter of Fundamental Rights of the European Union in the TEU. That Charter reaffirms the Rights derived from the Constitutional Traditions of the member states and the Obligations derived from International Treaties, from the European Convention for the Protection of Human Rights and Fundamental Freedoms, from social charters of the Council of Europe, and from the jurisprudence of the ECJ and the ECHR¹⁵. These fundamental principles are detailed in collaboration tools in the area of civil law¹⁶ and in the area of criminal law¹⁷. Collaboration in the legal area provides various information tools.¹⁸

A few years ago, two negative referenda – in France and in Holland – botched the dream of a single “Constitutional Treaty”. Currently we are governed (“vulgarly” speaking) by the so called “Lisbon” Treaty. Which is based on two Treaties: namely the TEU (Treaty on the European Union) and the TFEU (Treaty on the Functioning of the TEU). To meet the need for a solution to the recent

¹³ We mention here [The Food Safety Agency https://www.efsa.europa.eu/it](https://www.efsa.europa.eu/it); we mention also two bodies very close to EU even not formally EU agencies i. e. European Patent Office <https://www.epo.org/index.html> and the European Space Agency <https://m.esa.int/ESA>.

¹⁴ The FT noticed that the EU attracts US firms and lobbies because European standards tend to become world standards. [<https://www.ft.com/content/f1435a8e-372b-11e7-bce4-9023f8c0fd2e> <https://www.ft.com/content/60881cfc-3358-11da-bd49-00000e2511c8>].

¹⁵ https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=uriserv:OJ.C_.2012.326.01.0391.01.ITA. And we should also consider that the Charter of Fundamental Rights had an impact on the level of “democratic legality” (ex.: the idea of “the right to a fair trial”) in several member states.

¹⁶ Legal Competences (Bruxelles I) Regulation (EU) n. 1215/2012 - 12 December 2012. | Civil and Commercial (Bruxelles I) Regulation (CE) n. 44/2001 - 22 December 2000. | Mutual Recognition of Protection Measures Regulation (UE) n. 606/2013 - 12 June 2013. | Divorce and Separation (Rome III) Regulation (UE) n. 1259/2010 - 20 December 2010. | Mediation Directive 2008/52/CE - 21 May 2008. | Low Grade Disputes Regulation (CE) n. 861/2007 - 11 July 2007. | Payment Orders Regulation (CE) n. 1896/2006 - 12 December 2006. | Maintenance Obligations Regulation (CE) n. 4/2009 - 18 December 2009. | European Enforcement Order (EEO) - Regulation (CE) n. 805/2004 - 21 April 2004. | Matrimonial Law - Regulation (CE) n. 2201/2003 - 27 November 2003. | Notification - Regulation (CE) n. 1393/2007 - 13 November 2007. | Legal Aid by the State - Directive 2002/8/CE - 27 January 2003. | Evidence - Regulation (CE) n. 1206/2001 - 28 May 2001. | Inheritance - Regulation (UE) n. 650/2012 - 4 July 2012. | Conservative Seizure - Regulation (UE) n. 655/2014 - 15 May 2014. | Compensation - Directive 2004/80/CE - 29 April 2004.

¹⁷ In the area of criminal law we suggest the following links: https://eur-lex.europa.eu/summary/chapter/justice_freedom_security/ | <https://www.ein-crimjust.europa.eu/ein/> | <http://www.eurojust.europa.eu/Pages/languages/it.aspx>

¹⁸ *European Judicial Atlas*. https://e-justice.europa.eu/content_european_judicial_atlas_in_civil_matters-321-it.do?init=true

Citizens can also access the EU Commission “Justice” Portal, which provides a practical view of the *acquis communautaire* in justice as well as national judicial systems <https://e-justice.europa.eu/home.do?action=home&plang=it&init=true>

In e-justice.europa.eu you can also access the *Business Register*, which, linking to national registers, provides detailed information on the legal situation of European enterprises. It is worth to consider the importance of the so-called *Dialogue of the Judges* (see art. 267, TFEU), an example of which is the European Judicial Network (EJN) See the interesting article by Monica Claes and Maartje de Visser, “Are You Networked Yet? On Dialogues in the European Judicial Networks”, *Utrecht Law Review*, Vol 8, Issue 2, May 2012. Quite interesting is also the system of justice-related networks. For example: - The Network of the EU Supreme Courts Presidents www.network-presidents.eu; The European Network for Judicial Training (EJTN) https://e-justice.europa.eu/content_european_training_networks_and_structures. In addition it is worth to consider: a) The exchange programs for magistrates, such as the AIAKOS. b) The various justice-related associations, such as the European Federation of Administrative Judges <https://www.aeai.org/>; or d) the ECJ-sponsored Forum of the Magistrates.

financial crisis, the member states recently added some international treaties, However, on the positive side, with Lisbon, most policies (except for Foreign and External Security) became “common” policies and as such were all placed in the TFEU. Decision Making on common policies occurs by and large according to a regular legislative procedure including (very similar to the Codecision Procedure the Commission proposes legislation and the Council and Parliament approve it) and – if so desired – according to the Majority principle in the Council of Ministers. Not so for Foreign and Security Policy, where member states in the Council dominate the decision making. Could such an evolutionary picture justify the view of the EU as an “incomplete” State? Yes - if you want it to be one. But if you keep a detached view of it, it would be hard to guess what exactly it is going to be twenty years from now.

A crucial point about the EU is that the EU Budget is much smaller than what people believe it is. It amounts to roughly 150 billion of Euro; where the Italian budget amounts to 800 billion. As such the EU is not and cannot be a State. However it is for sure a “common space” based on a set of “common rules” and, as such, has a sort of individual identity, simply because it is indeed based on those rules. Those rules are based on common values, as human rights, free competition, and the rule of law, the quality of goods and services commercialized. These values are clearly stated in the Treaties, and most Europeans would not want it differently. EU is thus a regulatory mechanism which is similar to a Regulatory State¹⁹ even though it is not a state. Here we have to be careful not to use the conceptual tools of State Theory to make sense of the EU, which is something completely new.

Decision Making in the EU: The Mechanisms

In this phase of the evolution of the EU, **inputs** grow rapidly and the Commission sets up sophisticated channels to gather them. Inputs come both from the individual national administration (bypassing the permanent representatives) and directly from civil society. Still operating nowadays, the mechanisms of this phase work on **three dimensions**.

- I. Comitology. Comitology Committees “convert” major legislation into “detailed rules” required for an accurate application of legislation at the national level. This activity is crucial as broad pieces of EU legislation (ex: a directive or a complex regulation) are translated into more detailed rules and directions for an “accurate application” of legislation at the national level. Their activity is crucial also because it should guarantee a “uniform application” of legislation across the various countries of the EU. Comitology Committees are composed by experts from national administrations, and they are usually chaired by a member of the Commission. This process is followed closely by both Commission and Member States. The Commission wants to make sure that the objectives of the originating directive do not get manipulated or erroneously applied. The Council Members are concerned that this process may damage the interests of their countries. Using System Theory jargon one

¹⁹ EU was first linked to the idea of regulatory state by Giandomenico MAJONE, *Regulating Europe*, Routledge, 1996; where Majone avails himself of the concepts of regulatory and functional state see M. Balducci, *État fonctionnel et décentralisation*, Bruxelles, Story, 1987.

could say that this process completes the conversion process, as inputs are converted into outputs²⁰.

- II. An increasing participation of national bureaucracies to the development of legislation (called by Italian Politologues the “ascending” phase of the political process. In the development of legislation, the Commission is supported by “experts’ committees” (of members of the national administrations) and consultative committees (of experts from various policy areas).
- III. A greater use by the Commission of pre-legislative consultations of civil society. Furthermore, the TFEU involves national parliaments in the legislative process, though limited to questions of subsidiarity.

Two points need clarification here. First, regarding the distinction between democratic and technical-professional legitimacy. Second, with reference to the possibility and the opportunity to involve the stake-holders in the decision making process – especially nowadays with the increased potential of the ICTs.

With regard to the first point, most countries experience the difficulty of matching the requirement of a democratic process (e.g. popular elections) with the need for professional competence. The trend is towards governmental rather than parliamentary law-making, and towards the coupling of legal and technical-scientific competence, via ad hoc technical committees. Thus by providing technological-scientific support to the governments’ legal offices. However, at the national level, the relationship is often informal and opaque, while at EU level that relationship is by and large formal and transparent. Indeed one special characteristic of EU is that of placing on its websites information that is usually not accessible (and sometimes not even available) in the member states²¹ With regard to the second point – the opportunities provided by digital technologies – we should consider the entire range of the Commission’s activities aimed at opening new channels for *input* coming from the economic system and civil society at large. The “democratic deficit” and “the transparency deficit” are more visible in the member states than in Brussels. The institutionalization of the relations between democratic legitimacy and technical professional legitimacy would indicate that the EU is more sensible to these issues.

The Commission’s development of legislative proposals

As shown previously, two types of Committees assist the Commission in developing legislative proposals:

- Experts Committees - composed of national administrations officials (in Bruxelles actually called national administrations’ “representatives”) and chaired by the Commission.

²⁰ See Christian JOERGES & Ellen VOS (eds), “Good Governance Through Comitology?”, in *EU Committees: Social Regulation, Law and Politics*, Oxford, Hart, 1999, 311-338. First Comitology Decision of 1987 (Decision 87/373, of 13 July 1987). Second Comitology Decision 1999/468/EC. To adapt the rules to the new Lisbon Treaty to comitology a third act was developed in 2011 (Regulation (EU) No 182/2011) which lays down the general principles concerning mechanisms for control by EU countries of the Commission’s exercise of implementing powers. Con riguardo a quest’ultima vedi, Georg Haibach, “A New Comitology Decision for the 21st Century”, *Eipascopia* (1) 1999, pp. 1-9. See also the new art 291 of the TFEU

²¹ Lists of committees, dates of their meetings, and their agendas, as well as lists of their members. See, for instance, the *Commission’s Inter-Institutional Agreement (IIA) proposal for a mandatory transparency register*, and the Commission’s “report” on the application of Regulation 1049/2001 on the access to documents.

- Consultative (or Advisory) Committees – composed of experts in specific policy areas and civil society representatives²².

Special Decision Making Process for Labour-Related Legislation

For labour-related legislation the decision making process is slightly different. According to Art. 155 TFUE, on a request of the Social Partners, the usual procedure (“Commission proposes, Council and EP approve according to co-decision”) can be substituted by a Decision of the Social Partners, which, later, will also monitor the application of the new norms²³.

The Council

The Commissions’ proposals are sent to the Council of Ministers (Council). They are assigned to one of the 260 Working Groups (composed by member states officials, as for the above mentioned Commission’s Expert Committees²⁴).

If the Group reaches an agreement, the text is placed on the agenda of the Council, which usually ritualistically approves it. If no agreement is achieved in the Working Group, the problem is passed to the CoRePer (COMmittee of PERmanent REpresentatives, composed of permanent national high-level diplomats). If within the CoRePer an agreement is made, the text is placed on the agenda of the Council, which usually ritualistically approves it.

Less than 15% of the approved proposals is “actually” discussed by the Council or the Commission. The same occurs in most member states, where the Councils of Ministers work in a similar manner. However it is commonly accepted that EU institutions work in a more transparent manner than the member states institutions²⁵

Direct “Contacts” between the European Commission and European Civil Society

One the most common critiques made to the EU regards its lack of contacts with Civil Society. If contacts really exist - critics say - they are not with citizens but with organized interest groups. And besides that, such contacts are less than transparent.

It is true that direct contacts with individual “citizens” are basically absent, and that, by and large, the contacts are with “organized groups in civil society”. But, to be fair, it is also true that European citizens do not seem so anxious to contacts the EU. The EU has one of the best and easy-to-use governmental websites in the world. Yet, only a small section of the population looks at it.

²² T. Christiansen & T. Larson, *The Role of Committees in the Policy-Process of the European Union*, E.E. Publishing, Maastricht, (2007), pp. 66-67. Official Information on Committees and their functions are available at:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=1803>. With regards to the Transparency of the Commissions’ Committees Procedures see: <http://ec.europa.eu/transparency/regexpert/index.cfm> | <http://ec.europa.eu/transparency/regexpert/index.cfm?do=faq.faq&aide=2>

| <http://ec.europa.eu/transparency/regexpert/index.cfm?do=transparency.showList>. Proposals which developed by Committees are included in the agenda of the plenary meetings of the Commission. If no requests for clarifications or modifications are transmitted to the Commission’s Secretary General within 48 hours, the text of the proposal is considered “approved”.

²³ See: <http://ec.europa.eu/social/main.jsp?catId=329&langId=it>

²⁴ Information on the Working Groups can be found at: <http://www.consilium.europa.eu/en/documents-publications>.

²⁵ See: <http://en.euabc.com/word/2011>.

Well this is no news: who in the world wants to bother with government websites? Even national government website does not attract many people. However, a problem comes up if you ask a different question: how much time national news dedicate to EU politics if compared with national politic? I could bet that the ratio would be 5% or less. What does that tell you? If most people hear something about national politics is through the TV and to a lesser extent through the newspapers. How can Europeans be interested in or feel close to something to them unreachable? Have you ever seen a public demonstration to get more information on what the EU is and does? Do national politicians bother explaining it? Why should they? First it would not attract votes. Second it could become a threat to their job!

In conclusion, a first very-basic-but-common-sense response to the “no-contacts-with-the-people” critique would be: under the current circumstances, what chance do people have to know the EU

Now, let’s turn to the second critique: “the-EU-contacts-only-organized-interest-groups”. As done with the first the response consists of other questions. If the democratic-circuit (based on elections) in the EU system is more symbolic than efficient (the vote is not based on the probabilities of a good return and on the fact that I am not willing or capable to verify the performance of the person I voted, due to the lack information) would you not want to be represented by an organization, more expert than me, in order to influence – even limitedly - EU decisions?

If the answer is no, I would have to rethink about what rationality is! If the answer is Yes, I would congratulate you for your reasonable approach, but accuse you for using “anti-democratic methods”.

After defining the first dimension of civil society – meaning the individuals or the people we will now turn to civil society as made of organized groups.

Do contacts exist between the EU and such groups? First, although enjoying less resources than a median national government, the Commission, through the years, has created a very large network for a “direct” dialogue with civil society associations. Not just with “business” associations, but also with “socially motivated diffuse-interest” groups, such as labour, environmental, and health NGOs.

Second, this network is not as obscure as claimed by critics. Rather, the contacts, especially recently, have become more transparent – at least more clear than those between national governments and interest groups.

The contacts are maintained through a variety of (more or less formal) channels.

Going down the ladder of institutionalization - but without covering all cases - we find “Forums” and “Platforms”. They are not EU bodies or EU agencies, but associations organized around “a specific policy area” such as (for example) public health, environment, labour-safety, employment, telecommunications, and so on). You can easily find them on their own websites or on the European Commission’s Web Site. They “talk” to the Commission, the Commission “listens”, often participating to their meetings, and “helps” them organizing.

Going further down the ladder of institutionalization, we find the “Public Consultations”. These have become more and more frequent. At first based on “Traditional” means of communication and later “OnLine”.

Are the civil-society interested parties (“stakeholders”) to be considered as “lobbies”?

In a way yes. They exercise pressure on the Commission for more attention to their policy area and an opportunity to present their policy preferences. Indeed, the critiques are, by and large, directed at the more or less presumed “**exclusiveness**” and “**non transparency**” of the Commission’s contacts.

But in another way they are not. In terms of *exclusiveness*, through the years the Commission has expanded the range of groups with which it entertains a policy dialogue from “business” groups to “diffused-interest” groups in the area of environment, labor, public health, and other areas.²⁶ As to “exclusiveness” the trend has been to gain control over consultations rather than have them totally controlled by individual DGs. Obviously DG’s remain the main sponsors and organizers of consultations as these usually relate to “one” policy area. Yet the consultations appear in a single directory through a single observatory – “Your Voice in Europe”.²⁷

But then, what is behind the Commission’s efforts to contact civil society. Staying away for the moment from “inter-institutional” power struggles, the Commission is well known to have an objective reason (if not the necessity) to listen to the voice of civil society. That is, to be informed on the subject matter on which it will have to develop policies from the interested parties as directly as possible. In addition, among the EU institutions, the Commission is the best suited forum for the articulation of interests at the European level.

Therefore, we accept the idea of a growing “European lobby”. But we have to recognize that such *lobby* (if this is the term we want to use for it) is increasingly organized and institutionalized (see Forums and Platforms). It also seems clear that, in terms of types of interests, *inclusiveness* has increased, and that therefore the so called *public sphere* is gaining in size. Whether and to which extent the Commission relative “institutional” gains from the increasing contacts with civil society is debatable. Yet, it would be hard to deny that the Commission (we’ll have to see for the EP) has become the major point of contact of civil society and the EU.²⁸

The numbers below show a basic stability in participation and an expansion of the stakeholders base, which do not support the hypothesis of a *general retreat* of civil society from the EU. It could be just a “lock-in” effect, but that would be very hard to prove.

A few figures from the “Voice of Civil Society”

²⁶ See the three phases presented by Beate Kohler-Koch, in, Beate Kohler-Koch and Christine Quittkat, “De-Mystification of Participatory Democracy: EU Governance and Civil Society, Oxford UP, 2013, pp. 43-47.

²⁷ See the Your Voice in Europe (YViE) website, under the EU portal ec.europa.eu. For an in depth analysis of the Commission’s OnLine Consultations, see, The European Commission’s Online Consultations: A Success Story?, *Journal of Common Markets Studies (JCMS)*, 2011. Vol 49, n. 3, pp 653-674].

²⁸ For an in depth discussion on this matter, see Justin Greenwood’s *Interest Representation in the European Union*, 3rd edition, Macmillan, London 2011, pp. 33-40.

During 2015 the Commission opened **99** new consultations
 During 2016 the Commission opened **113** new consultations
 During 2017 the Commission opened **114** new consultations
 During 2018 the Commission as of June 14 2018 had opened **47** new consultations.²⁹

In addition, the analysis shows that there has been a growth in the participation of Public Interest Organizations, relatively to the other types of organizations (Public Authorities, Professional, and Business)³⁰.

In conclusion, this extra short section suggests that the increasing attacks on the legitimacy of the EU Executive, the European Commission, are not quite justifiable. It would actually seem that the “European Crisis” did not very much upset the relationship between the Commission and Civil Society³¹

SOME CONCLUSIONS

- EU is thus based on shared legal principles and technical standards.
- EU, differently from any state, does not have the possibility of using force.
- Standards worked out in Bruxelles are decided together by the member States according to the principle of *pooling of authority*.
- Decision making involves civil society in two ways: (i) decision making processes are transparent making it therefore possible for civil society to follow of is being prepared at the technical level; (ii) a direct linked is set up between civil society and the Commission so that the Commission can receive the demands of civil (*inputfuncion*).
- The relationship between professionally legitimated bodies and democratically legitimated bodies is established in a way more balanced and transparent than in any Member State

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²⁹ The figures indicated here were extrapolated by the author (on 14 June 2018) from the data shown in the website of “Your Voice in Europe” which reports on Commissions’ consultations from 2015 (<http://ec.europa.eu/yourvoice/consultations/><year>) according to the sequential procedure indicated below.

- All Consultations opened from 1 Jan 2015 to today 14 June 2018 = 373.

- Consultations opened from 1 Jan 2016 to 14 June 2018 = 274. Therefore (373 - 274) = 99 consultations were opened between 1 Jan 2015 and 1 Jan 2016.

- Consultations opened from 1 Jan 2017 to 14 June 2018 = 161. Therefore (274 - 161) = 113 consultations were opened between 1 Jan 2016 and 1 Jan 2017.

- Consultations opened from 1 Jan 2018 to 14 June 2018 = 47. Therefore (161 - 47) = 114 consultations were opened between 1 Jan 2017 and 1 Jan 2018.

- And (as stated above) 47 consultations were opened so far (between January and June 2018).

³⁰ *De-Mystification of Participatory Democracy. EU Governance and Civil Society*. Oxford. Oxford UP, July 2013).

³¹ Carl Menger, *Sulle origini della moneta* at <http://vonmises.it/2012/03/30/973>.

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