


The European Economic and Social Committee: towards deliberative democracy via a functional assembly
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Abstract
The scarce literature on the European Economic and Social Committee has mostly paid attention to its institutional position and any influence it may have. Contrary to such an 'output approach' this article focuses on the 'input' of the ESC, i.e. its representative role. It argues that the ESC was set up by the Rome Treaty to ensure the agreement of the main socio-economic actors in what was predominantly an elite-driven and technocratic European project. Though the increasing involvement of the European Communities in more policy domains has led to increased powers for the European Parliament as a source of legitimisation for the European polity, this has not pre-empted the representative role of the ESC. The ESC provides a forum for functional representation in addition to legitimacy based on territorial representation. Conceptualised as a form of 'deliberative democracy via a functional assembly', the role of the ESC is defined not only vis-à-vis the Parliament but also vis-à-vis other forms of functional participation.
Kurzfassung
Die dürftige Literatur über den europäischen Wirtschafts- und Sozialausschuß hat sich hauptsächlich mit dessen institutioneller Stellung und potentielltem Einfluß beschäftigt. Im Gegensatz zu diesem 'Output-orientierten' Ansatz konzentriert sich der vorliegende Artikel auf den 'Input' des WSA, nämlich seiner repräsentativen Rolle. Es wird argumentiert, daß der WSA durch die Römischen Verträge eingesetzt wurde, um die Zustimmung der wichtigsten sozio-ökonomischen Akteure zu einem überwiegend durch Eliten betriebenen und technokratischen europäischen Projekt sicherzustellen. Obwohl die Europäischen Gemeinschaften in steigendem Ausmaß in immer mehr Politikfeldern beteiligt sind und dies zu einer Verstärkung der Kompetenzen des Europäischen Parlaments als einer Legitimitätsquelle für das europäische politische System geführt hat, hat dies dennoch nicht die repräsentative Rolle des WSA aufgehoben. Der WSA stellt zusätzlich zur Legitimität durch territoriale Repräsentation ein Forum für funktionale Repräsentation dar. Wenn man somit dessen Rolle als eine Form von "Verhandlungsdemokratie durch eine funktionale Versammlung" begreift, wird sie nicht nur gegenüber dem Parlament, sondern auch gegenüber anderen Formen funktionaler Repräsentation definiert.
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1. Introduction [↑]

Twenty years ago, Juliet Lodge and Valentine Herman (1980) argued in one of the few pieces of literature on the European Economic and Social Committee (ESC) that this Committee had become obsolete. Its mere advisory role, its uncomfortable position in the decision-making process (normally after the Commission has drafted its proposal) and the development of alternative access-channels for interest groups (advisory committees, social dialogue and lobbying) made of the ESC a less than influential body. Moreover, in view of the newly direct election of the European Parliament, the ESC was expected to lose further importance as a representative body.

Some more recent literature (van der Voort 1997; Morgan 1995; Guasconi 1999) shades the picture on the ESC's influence. Though nobody claims that the ESC is a main actor in the decision-making process, the Committee has been able to yield valuable expertise which led to

technical amendments of the Commission proposals and has, on some occasions, put an issue on the policy agenda. However, the aim of this paper is not to prove the influence of the ESC - an exercise fraught with pitfalls (see van der Voort 1997:267-301). Rather than focusing on the output of the ESC, this paper will pay attention to the input side, namely to the representative role of the Committee. Contrary to Lodge and Herman who claim that the ESC's representative role will be pre-empted by the European Parliament, I will argue that the ESC has a legitimate role to play in European decision-making precisely because of its representative character. This does not imply that 'output' does not count, but given the limits of space for this contribution, I confine myself on this point to referring to the recent assessments cited above.

A brief introductory description of the ESC's composition and competence will be given ([point 2](#)). I will then place the representative role of the ESC in the context of the changing nature of the European integration process ([point 3](#)). First, I will pay attention to the conditions under which the ESC was created. I will then describe the dynamics of the competition posed to the ESC's representative role by the European Parliament. Analysis of the current legitimacy crisis of the European Union leads, however, to the conclusion that the ESC has a role to play as additional representative forum to the European Parliament. The discourse of the ESC in the 1990s is put in the light of this finding. I will then further conceptualise the representative role of the ESC ([point 4](#)). The concepts of 'associative parliament' and 'functional assembly' will be developed and the notion of 'deliberative democracy' will be applied to the ESC. Finally the strengths and weaknesses of the ESC as a form of deliberative democracy via a functional assembly will be indicated. The [conclusion](#) will link the analysis with the current debate within the ESC and will close the circle in linking the studied input-legitimacy of the ESC with its output-legitimacy.

2. Composition and competences of the ESC [↑]

2.1. Composition

The ESC is composed of 'representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public' (Article 257 EC Treaty). The 222 seats of the Committee are divided among the Member States according to the list established in Article 258 (which is mainly in proportion with the population numbers, though with overrepresentation of the smaller countries). The Member States propose the candidate ESC members which are then to be appointed by the Council with unanimity. In some Member States (e.g. France and Greece) the central government decides on the types of socio-economic interests to be represented and then asks the concerned groups to propose potential ESC members. In other Member States (e.g. U.K. and Germany) several government departments (often 'Economic Affairs', 'Foreign Affairs' and/or 'Agricultural Affairs') are responsible for proposing the candidates from the groups they are in contact with in their particular sector, though the final authorisation of the list remains in some of these countries the responsibility of the central government (e.g. Italy and Spain). Finally, in some countries (e.g. Belgium and the Netherlands) the national 'social and economic councils' propose the candidates which the government generally approves (van der Voort 1997: 196-199).

According to Article 259 EC Treaty 'the composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity'. Each Member State has to provide the Council with a list containing twice as many candidates as seats allotted to that country. Before appointing the members, the Council shall consult the

Commission, and may obtain the opinion of European bodies which are representative of the various economic and social actors to which the activities of the Community are of concern. However, in practice, the Council simply confirms the proposals made by the Member States (Teisseire 1982: 70; Sidjanski and Condomines 1983: 15). The European socio-economic organisations are not consulted on the issue and, according to the Court, the consultation of the Commission is supposed to have taken place due to the sole fact that a Commission representative was present at the COREPER meeting when the lists were presented, and had not opposed any proposals.(1)

As the result of this appointment procedure, what is the actual composition of the ESC? The Rules of Procedure of the ESC structure the Committee into three groups (though this was not foreseen in the Treaty). Though ESC members are not obliged to join a group, it is very exceptional that they do not (currently only one member is not part of a group). Group I represents national employers organisations while group II represents national trade unions. Group III is composed of divers other national socio-economic categories.(2) It established an internal division in semi-official(3) subcategories, being (1) consumer and environmental interests, (2) social economy, (3) SMEs, the liberal professions and crafts, and (4) agriculture. Group III emerged as a group of socio-economic categories outside the traditional sector of industrial production. Thus one can find, for instance, SMEs in Group III despite their being also employers. The border line between the three Groups is not always easy to draw. So, for instance, one can find representatives of agriculture in both Group I and III. Especially for Group III it is hard to define a common identity as criteria to accept new members or not. In general Group III accepts those organisations that are not clearly part of Group I or II.(4)

2.2. Competences

The advisory role of the ESC is defined in Article 262 EC Treaty. The ESC has to be consulted by the Commission or Council in all the cases 'where this Treaty so provides'. In practice this means that there are near to 50 articles (or paragraphs of articles) which require compulsory consultation, involving the ESC in a wide range of policy areas; from the free movement of goods, industrial policy, employment, and health & safety for workers to agricultural policy, transport policy, structural funds, environmental policy, education, public health etc. The compulsory consultation of the ESC takes place after the Commission has drafted its proposal. The Commission sends its proposal to the ESC and the EP at the same moment, but in general the ESC adopts its opinion before the Parliament debates the issue.

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In addition to compulsory consultation, the Commission, the Council and (since the Amsterdam Treaty) the European Parliament can ask the opinion of the ESC whenever they consider it appropriate (optional consultation). Though this can occur at any time in the decision-making process, most frequently such optional consultation takes place after a Commission proposal in an essentially technical field. Yet an important number of optional consultations concern non-legislative or pre-legislative Community activities such as programs, reports, green and white papers.

Finally, the ESC has obtained (informally since the 1972 Paris Summit, and formally since the Maastricht Treaty) the right to issue own initiative opinions. The right of own initiative is especially useful to take opinions in an early stage of the decision-making process. The Committee can thus bring to the attention of the Commission or the Council a particular issue on which Community action might be desirable, or it can influence the Commission while the latter is still drafting its proposal (a moment in which the Commission is particularly in need of

expertise, and in which changes to the overall approach of a Community action might still be possible).

The advisory capacity of the ESC can produce an output of up to 173 opinions a year (number of opinions in 1996). Most opinions result from optional consultations (49%), followed by compulsory consultations (36%), whereas own-initiative opinions compose 15% of the opinions. (5)

3. The representative role of the ESC and the changing nature of the European integration process [↑]

3.1. The creation of the ESC

One should place the creation of the ESC within the context of the sector-by-sector approach to European integration (Lodge and Herman 1980: 267). The 'Monnet method' (Featherstone 1994: 155; Wallace 1996: 42) was based on the involvement of the economic elites, including organised labour, of the particular sector in which integration should be realised (Milward 1992: 336). The way forward to European integration was to engage key economic elites to build transnational coalitions in support of European policies (Wallace 1993: 300). Groups involved in a particular sector dealt with at European level were supposed to increasingly shift their attention to the supranational level, thus contributing to European integration. This approach was very clear in the European Coal and Steel Community. One could hardly imagine integrating the sector of coal and steel without involving the social partners that had traditionally built up their power in this area. Consequently, the High Authority included persons close to or emanating from the trade union movement (E.T.U.I. 1990: 44). In addition a separate Consultative Committee was created composed of representatives of employers, workers, consumers and traders in order to assist the High Authority.

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In the context of the broader European Economic Community the creation of a separate institution representing socio-economic interests appeared less self-evident. It was only at the final stage of the Val Duchesse negotiations (September 1956) that the issue emerged, and a decision was made on the matter only two months before the final treaty text was concluded (Bernard *et al* 1972: 40). An initial Belgian proposal was followed by a Dutch proposal that became the basis for discussion. The Federal Republic of Germany was very resistant to the creation of an ESC because of its negative experience with the *Reichswirtschaftsrat* (a provisional economic council) during the Weimar Republic (Hrbek 1993: 127).

However, the other five founding Member States all had economic and social councils or committees at national level. Moreover, the Jean Monnet Committee argued for such a Committee (though especially for Euratom) (Calandri 1999), and even the Assembly of the European Coal and Steel Community stressed in a memorandum the importance of the participation of trade unions and employers' organisations in the new European Communities (Bernard *et al* 1972: 41). To further economic integration the involvement of the concerned sectoral interests was considered indispensable and it was doubted whether the Parliamentary Assembly could be an effective forum for such interests (Westlake 1994: 51; Wallace 1996: 44).

Indeed, once the Treaty was signed - in which the Federal Republic of Germany had agreed on the creation of an ESC⁽⁶⁾ - the search for the agreement of the main concerned socio-economic actors

became a key factor in European policy-making. The first Commissions (and the High Authority in the ECSC) did not bring proposals to the Council without having achieved the alliance of the interest groups at European level (McLaughlin 1985: 164), and the ESC was seen to hold a representative function to this extent.(7)

3.2. Competition for the ESC's representative role: the increasing power of the EP ↑

In addition to the involvement of the main socio-economic groups, there was little popular interest in the elite-driven and technocratic European project, though there was diffuse support for the *idea* of European integration (de Burca 1996: 350). The initial European Communities were based on a 'permissive consensus' (Lindberg and Scheingold 1970: 63). The role of the Assembly (the later European Parliament) as a source of popular legitimisation was actually minor. In the original EEC Treaty it had obtained (exception made of its budgetary power and (non-effective) controlling power on the Commission) only status comparable to that of the ESC, i.e. it had only advisory power. It has even been argued that in the initial years of the EEC the agreement reached between the socio-economic interests in the ESC wielded greater weight than the opinion of the Assembly, given that in these years the Committee was composed of the leading personalities of the socio-economic organisations, whereas the Assembly was still a non-directly elected body.(8)

However, with the European Communities intervening in an increasing number of policy domains (beyond strict market integration), and becoming increasingly intrusive into the legal orders of the Member States and into the every-day life of its citizens, the idea that the legitimacy of the Communities as 'special purpose associations of functional integration' (Ipsen 1972: 176) could be based on efficiency and the consent of the main economic actors did not hold true. The response to the collapse of the 'permissive consensus' was sought in the increasing power of the European Parliament. After improving its representative character by introducing direct elections in 1979, the EP gradually increased its legislative power (from consent and consultation to co-operation and co-decision) and controlling power on the Commission. In the same period the ESC faced the ever increasing competition of other advisory bodies, whereas its institutional position was only slightly strengthened by recognising the right of own-initiative opinions and by extending the policy sectors in which its consultation is compulsory. In the debate on the legitimacy of European policy-making, the ESC remained completely absent. The 'parliamentary model', or more general 'territorial representation', has always been dominant in the discussion on the EC's legitimacy (Dehousse 1998:6; Lodge 1996:193; Bieber 1991:407); from the exclusive focus on the European Parliament to the attention for the role of national parliaments and the creation of a Committee of the Regions. Functional representation, and the eventual role of the ESC therein, did not appear on the agenda.

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3.3. Rethinking EU legitimacy ↑

Despite broad political attention for the European democratic deficit in the 1990s, the European population seems to feel no more involved than ten years ago, as the low turn out in the last EP elections have shown. The European Parliament, despite its increased powers, seems not to be able to legitimate European policy-making in the same way as national parliaments can for national policy. This, it is argued, is due to the absence of strong European political parties and to the lack of a European public sphere (Meyer 1995; Hix 1997), which finally leads back to the 'no demos - no democracy' problem. Parliamentary democracy has traditionally been based on the idea that the expression of the general will via majority decisions in the parliament assumes the

existence of a common identity of the people, mostly defined in ethnic terms (a 'demos'). Yet, the EC/EU is constituted of the peoples of the Member States and not of one European people. 'No European demos, no European democracy' might be the conclusion. The alternative might be to rethink the concept of democracy, especially since there is no reason to admit that concepts used in the context of the nation-state should be automatically applicable to a non-state supra-national entity (Jachtenfuchs 1997; Hix 1998).

Actually, parliamentary democracy is a very 'reductive' form of democracy. 'Citizens are deprived of their particularities and their embeddedness in particular communities, cultures, and social roles and conceived as abstract political beings whose opinions converge around a concept of the public good which is more or less shared by all because all are equals. Only equals can form a general will' (Preuss 1998:8) which can be expressed via majority decisions in the parliament. Also at the national level, there has been dissatisfaction with this reductive form of democracy. The modern citizen, more politically autonomous (due to increased education and the role of the media), searches for several ways of political expression of its multiple identities resulting from increasing complexity and communication in society. Moreover, the modern citizen identifies with different levels of government, which has to be seen in the light of the decline of the state as a political ordering principle and the multiplication of 'new forms of governance' (both territorial and functional) (Haaland Matlary 1995). Reversibly, from a top down approach at the European level, one should ask how the very heterogeneous 'European people', of which the citizens have multiple affiliations, could be democratically accommodated. Given the extreme heterogeneity of the 'European demos', the European polity should, even more than at the national level, 'provide institutional devices through which individuals can participate in the process of political decision-making without being forced to give up beforehand the qualities which constitute their individuality, [without being obliged] to abstract from their affiliations to specific communities, life styles, interest groups, social contexts, etc.' (Preuss 1998:9)

In such a model of democracy the European citizen cannot only express him/herself as "European" in European parliamentary elections, but also as 'national' via the Council, the COSAC⁽⁹⁾ and the national parliaments, or as member of a region, city or municipality via the Committee of the Regions. Moreover, in addition to this territorial representation, the citizen should be able to express him/herself politically as member of a particular group, organisation or professional activity, especially since also the additional forms of territorial representation such as the role of the national parliaments or the Committee of the Regions have shown remarkable difficulties both to influence European decision-making and to bring this decision-making closer to the citizen (cf. Westlake 1995, Smismans 1998; Van Der Knaap 1994, Christiansen 1996). Put differently; given the limits of territorial representation, and given the particular heterogeneity of the 'European demos', the legitimacy of the European polity should additionally be based on functional representation.

3.4. The discourse of the ESC in the 1990s

Since the beginning of the 1990s the ESC has tried to redefine its role in the light of the debate on the European democratic deficit. With its 'Citizens'Europe' initiative it tried to strengthen its relation with the European citizen, and projected itself as a vital contribution to the democratisation of the European polity. The initiative included the adoption of an opinion on 'The Citizens'Europe' (1992), and was further based on the organisation of hearings intended to deepen contacts between the public and the EU institutions. However, the opinion was a loose gathering on 'citizens' issues' and some of the hearings looked more like PR-activities than like a serious attempt to make decision-making more bottom-up.⁽¹⁰⁾ Focusing on the citizen, the ESC

was not able to delimit its representative role in relation to, for instance, the European Parliament. (11) More recently, the ESC's attention to its representative character has shifted focus, namely from the individual citizen to the organised citizen. The new ESC President, Mrs Beatrice Rangoni Machiavelli, elected in October 1998 (for two years) defined the ESC as 'the forum of civil society' to stress 'its special role as the representative of civil society organisations'. This role has been clarified in the ESC's own-initiative opinion on the 'Role and contribution of civil society organisations in building Europe' (1999). (12) The Committee argues that it 'complements Parliament's legitimacy' and 'helps reduce a certain "democratic deficit"'.

'The democratic process () -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 which reflect the heterogeneous nature of the European identity. () People's identity is also defined by membership of interest groups in the diverse shape of civil society organisations. These identity criteria, relating to people's role in civil society organisations, are not covered by representation in the EP. It is precisely these identity criteria, however, which are taken into account by the Committee as the representative of civil society organisations.'

Now that the ESC increasingly stresses its representative role and its contribution to the legitimacy of the European polity in addition to territorial representation, one should look in more detail at what the ESC's input-legitimacy seems to be based on.

4. Conceptualising the representative role of the ESC [↑]

4.1. An associative parliament or a functional assembly?

The ESC could be called a 'functional body' because of its role in gathering the principal socio-occupational groups that, amongst others, are active in important sectors of European integration. That is to say, 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. The ESC does not gather all possible associations and NGOs, but only the main socio-occupational groups, mostly from industrial production, but also of those sectors in which Community action was particularly foreseen (e.g. Article 257 EC Treaty on the composition of the Committee mentions explicitly farmers and carriers).

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The ESC, though, is not a mere 'expert body'. ESC opinions are not purely technical reports. They also express the agreement of the socio-economic actors on the issue in question. Nor are opinions a summing-up of the interests of each group represented within the Committee. This situation results from the particular status of the ESC members. According to Article 258,3 'the members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.' An ESC member is thus no delegate but has to represent an abstract socio-economic category 'in the general interest of the Community'. The status of ESC members therefore resembles to a certain extent the status of a parliamentarian; i.e. they have to represent a broader abstract interest than the particular interest of the group they originate from (be it an organisation for an ESC member, or a territorial circumscription for a parliamentarian). Moreover, both the internal organisation and functioning of the ESC can be compared with that of a parliament. The

Committee's Rules of Procedure stipulate a Bureau (which has the political responsibility for the general management of the Committee), a President (who directs the work of the Committee and represents it externally), and an Assembly which holds plenary session ten times a year, and is divided into six specialised sections.⁽¹³⁾ Normally the President (in consultation with the Bureau) refers a request or an own-initiative to the specialised section. The section (sometimes after a preliminary debate on the content) appoints a rapporteur to draft the opinion (often assisted by an external expert). Often the rapporteur drafts the opinion in discussion with a study group of maximum 15 members of the section who can hold a maximum of three meetings. The rapporteur then presents the draft opinion at the section meeting where a general discussion will be held, followed by a page-by-page discussion and ending in a concluding vote. The Bureau will then decide whether the draft opinion should be adopted in the plenary with or without discussion. This depends on the consensus obtained within the section. Frequently agreement has already been reached in the section, so that it is sufficient to present the opinion in the plenary session and to vote on it. Throughout the drafting process the three groups have a function comparable to political parties in a parliament. The distribution of functions within the ESC Bureau, sections and study-groups always take into account the balance between the three groups. Groups have their own secretariat, and always hold an internal discussion before presenting their opinion to the rest of the Committee. The aim of the ESC, however, is to search for consensus so that its opinions can be presented as THE agreement of the socio-economic interest groups. Therefore the ESC is not a corporatist body in which the main socio-economic groups defend their particular interests, bargain on an issue, and bind their organisation. Decision-making within the ESC is the outcome of a deliberative process in which the largest possible consensus is sought. *De facto*, the ESC has often reached this consensus. From all the opinions submitted from 1978 to 1990, 72.6% were adopted with unanimity, and 18.2% with a minority smaller than 10 votes against (van der Voort 1997: 217).

I would therefore call the ESC a functional assembly; an 'assembly' for its internal organisation and deliberative character; 'functional' because - contrary to the European Parliament composed of territorial representatives - the ESC brings together representatives of the main *socio-occupational* groups concerned with European integration (i.e. the large socio-economic 'functions' in society such as employers and employees). Moreover, the ESC represents these socio-occupational groups to facilitate integration in particular sectors, rather than to constitute a democratic body per se, representative of the variety of social, economic and cultural associations in Europe.

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However, both the status, composition and actual functioning of the ESC are not always unambiguously what one could call a functional assembly. Article 257 EC Treaty, which deals with the composition of the ESC, mentions especially the main socio-economic categories of industrial production (producers, workers) and those socio-occupational categories that were particularly concerned in the European integration process at the time of the Rome Treaty (such as carriers and farmers...) as examples of the various categories of economic and social activity to be represented in the ESC, but talks ultimately also about 'representatives of the general public'. The ESC contains in its Group III representatives of, for instance, consumer organisations, environmental organisations or organisations representing the disabled. Thus the ESC does not only represent the main socio-occupational groups of the sectors concerned with European policy-making. It has even been argued that the ESC could develop into a sort of 'associative parliament' (van der Voort 1997: 325-338). Such an 'associative parliament' should not bring together the main socio-occupational actors to further European integration in particular policy-sectors, but should have as its main aim the representation of associative life in Europe, and should give special attention to the weaker interests that do not find access to European policy-

making via other channels. *De facto* the ESC is mainly composed of representatives from associations. Only a very small minority of ESC members (especially the British) do not belong to an organisation but are chosen from the (semi)public sector or academia.⁽¹⁴⁾ Moreover, the ESC's current focus on its role as 'the representative of civil society organisations', which should enhance the democratic character of the European polity, comes close to the idea of an 'associative parliament'.

However, one should not conclude that the ESC has developed from a functional assembly into an associative parliament. Both the juridical status and the actual composition and working of the Committee suggest that this is not the case. The Treaty articles on the Committee and the nomination procedure(s) of its members have not changed. The ESC remains thus largely composed of socio-occupational interests (employers, trade unions, liberal professions, commerce...) and only marginally represents social, cultural, voluntary, charitable or public interest associations. Even in its 'presentation brochure'⁽¹⁵⁾ the ESC defines itself as an expression of 'economic democracy in which the European Union's economic and social players have a say'. The European integration process does not only require 'participation of all its citizens' but 'first and foremost those responsible for the day-to-day functioning of the EU economy'. Moreover, its constitutional role is that of providing opinions on (a broad range of) social and economic issues of European integration. Even though the ESC wants 'to boost civil society' its daily work is that of drafting opinions (by the ESC members) in function of particular sectors of European policy. To date it gives not a 'co-decisive' voice to associations in all matters of European policy-making.

4.2. Strengthening the link with civil society; towards deliberative democracy

Though the ESC to date is not an associative parliament, this does not imply that the Committee's discourse on its role as 'forum of civil society organisations' is just window-dressing. Rather than making changes in its composition (towards an associative parliament), the ESC has tried to strengthen its links with civil society as a functional assembly. Three activities have become central in the Committee's functioning over the last years: the organisation of hearings (sometimes within the framework of an 'observatory'), collaboration with national socio-economic committees, and especially establishing relations with socio-economic categories in third countries.

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Through hearings, ESC members come into contact with a larger diversity of socio-economic organisations, which can provide a larger deliberative basis for the drafting of opinions. Within the context of its 'Citizens' Europe' initiative the ESC has organised 15 hearings in different countries of the EU, involving over 2,000 participants on broad issues such as 'old people in society' and 'lifelong learning'. In addition, sporadic small scale hearings have been organised by some ESC sections in order to prepare particular ESC opinions.⁽¹⁶⁾ More importantly, hearings have been used as a policy-instrument by the Single Market Observatory (SMO). The SMO was established within the ESC in 1993 at the request of the E.P (followed by the Commission and the Council), in order to report on the state of play of the single market, relay the views of its users, assess its malfunctions and pressure the institutions to remedy the situation. It is based on the work of a standing study group of ESC members backed by a special division of the secretariat. Since its creation the SMO has organised 13 hearings.⁽¹⁷⁾ Hearings are preceded by questionnaires sent to interested organisations and possible participants at the hearings. The responses to the questionnaires and the outcome of the hearings are used by the study group to prepare an ESC opinion on the particular issue. Though not all ESC opinions prepared by the SMO result from hearings, the technique of hearings has become an important instrument to

formulate particularly own-initiative opinions.

In addition to hearings (and observatories)(18) which strengthen 'vertically' the link between civil society and European decision-making, the ESC has also worked in a 'horizontal manner' to enhance the role of European civil society. Since 1978 the ESC has been making efforts to strengthen the link with and between the national (and regional) economic and social committees. Through bilateral and multilateral agreements and via regular meetings this collaboration provides exchange of information and best practice, which contributes to a common understanding of the role of socio-economic interests vis-à-vis policy-making in Europe and the further europeanisation of organised civil society.

Moreover, the ESC has played a very decisive role in establishing relations with, and strengthening the role of, economic and social interest groups in third countries.(19) The attention for civil society outside the borders of the present European Union has intensified drastically in the last years, especially in the light of the EU's increased collaboration with its nearest neighbours and possible enlargement. Within the context of the Euro-Mediterranean Partnership (with the 12 southern and eastern Mediterranean countries) the Barcelona summit of 1995 explicitly entrusted the ESC with the task of encouraging contacts between economic and social partners. As a result, annual summits of economic and social councils and similar institutions have been held. The most important 'external relations' role of the ESC is in the relation with associate and applicant countries. Joint consultative committees made up of ESC members and their counterparts in the associated states have been set up in the relation with several central and eastern European countries. Most association agreements have recognised the important role of such joint consultative committees. After the downfall of the communist regimes, civil society within these countries is dispersed in a variety of narrowly specialised groups that have no experience with the rules of the game in a 'democratic society' (Hirst 1997:157; Sztompka 1998:192). Being itself composed of civil society organisations, the ESC has set itself the task of supporting the development and the democratic function of civil society organisations in these countries. Moreover, the Committee's relations with these civil society organisations provide also an enhanced 'consultative basis' and expertise for the Committee's opinions on EU relations with third countries.

It can be said that the legitimacy of the ESC is increasingly sought in a process of deliberation. As explained above; at its creation the legitimacy of the ESC was sought in its expertise (output-legitimacy) and in the consensus of the main socio-occupational interests. Through the internal working of the Committee consensus was the result of a process of deliberation (within each Group, study-group, specialised section and plenary). In the last years the deliberative character of the ESC is also strengthened by enhancing links with civil society. The model inspiring the legitimacy of the ESC could therefore be defined as 'deliberative democracy via a functional assembly'.

The importance of deliberation in democracy has been especially brought to the attention of political theorists by Jürgen Habermas (1996).(20) His 'discursive democracy' is a discourse-based model instead of an interest-based model of democracy. Democracy revolves around transformation rather than simply aggregation of preferences. His model is based on two main elements. The first is 'deliberation', i.e. 'decision making by means of arguments offered *by* and *to* participants who are committed to the values of rationality and impartiality'(Elster 1998:8).(21) This deliberation is not limited to the communicative action of political decision-makers. The second important element in Habermas' model of democracy is the fact that political decision-making is embedded in civil society. 'Legitimacy is assured only insofar as the legal order is

constituted as a “circular process that continuously feeds back” into the arena of citizenly engagement and debate’ (Forbath 1998:275). Through its deliberative character and through its strengthened links with civil society, the ESC corresponds increasingly to these two main features of ‘deliberative democracy’. However, the ESC also departs from the Habermasian model. Habermas’ discursive democracy could be described as a ‘two-track process of collective decision-making’, namely the informal discussion of issues in an unorganised, “wild”, decentered (not centrally coordinated) public sphere that does not make authoritative collective decisions, and a more formal political process, including elections and legislative decision-making, as well as the conduct of agencies and courts (Cohen 1998:18). The contact between the two levels is realised mainly via traditional territorial representation. For Habermas ‘radical democracy is possible largely because of the sporadic bursts of energy by social movements that, in their role as dispersed sensors, detect popular concerns that are on the public agenda and suggest novel solutions to them (Cohen 1998:35).’ Such solutions are translated via the elected and deliberating bodies based on territorial representation and then executed via the administrative system (Habermas 1996:301) that should be insulated from ‘illegitimate interventions of social power, (i.e., of the factual strength of privileged interests to assert themselves)’ (Habermas 1996:11).

The ESC thus departs from the Habermas’ model in that it realises deliberation and the link with civil society via a body for functional instead of territorial representation. It thus avoids the two rigid dichotomies for which Habermas has been criticised. Firstly, the dichotomy between the ‘sporadic bursts of energy by social movements’ and the permanent deliberation of the territorial representative body. Secondly, the dichotomous understanding of “politics” versus “administration” (Forbath 1998:273).(22) Via the ESC civil society organisations have a ‘permanent and institutionalised’ input in legislation, and sometimes, in implementation. Despite this institutionalisation of ‘non-territorial interests’, the model is deliberation-based instead of interest-based.

4.3. Strengths and weaknesses of the ESC as a form of deliberative democracy via a functional assembly

4.3.1. Strengths

The ESC as a form of ‘deliberative democracy via a functional assembly’ theoretically shows several attractive features in the light of the legitimacy of European decision-making. Not only does the model clarify the role of the ESC vis-à-vis the European Parliament but it also enlightens several positive democratic features of the ESC vis-à-vis other forms of functional participation.

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- As argued above, the European polity, given its heterogeneous demos, needs various participatory structures. The ESC provides an additional forum of deliberation to the European Parliament. The respective outcomes of deliberation in the ESC and the European Parliament are not identical. Even under conditions of perfect deliberation (i.e. communication should be completely based on rational impartial argument) one cannot ignore the question ‘who deliberates?’ (Gargarella 1998).(23) Like all indAs argued above, the European polity, given its heterogeneous demos, needs various participatory structures. The ESC provides an additional forum of deliberation to the European Parliament. The respective outcomes of deliberation in the ESC and the European Parliament are not identical. Even under conditions of perfect deliberation (i.e. communication should be completely based on rational impartial argument) one cannot ignore the question ‘who deliberates?’ (Gargarella 1998).(23)

Like all individuals, representatives have only limited information at their disposal. This information will depend on the personal activities and social embeddedness of the representative. Because ESC members originate from certain socio-economic categories, and because they are in touch with socio-economic activity they can be supposed to deliberate differently to professional politicians, whose experience is based in political life, and whose contact with civil society organisations is often via political alignment. For the same reason, hearings organised by the ESC and the EP will have different outcomes. Not only does the social embeddedness of ESC members and MEPs influence their deliberation, it also tends to influence the choice of organisations invited to hearings. The new Secretary-general of the ESC, Mr Patrick Venturini, has also argued that the ESC is particularly apt to organise hearings with socio-occupational organisations, since its members are in closer contact with these organisations than the EP or the Commission. (24)

- The ESC as a functional assembly enhancing deliberative democracy also has advantages over other forms of functional participation such as lobbying or advisory committees. Firstly, the ESC as a functional assembly is a transparent model. It is 'constitutionally established' through its creation by the Treaty; both its plenary sessions and section meetings are public(25); and the names of its members and all its opinions are published in the Official Journal.(26) The ESC is thus more transparent than the representation of functional interests via lobbying, or the representation of these interests via various advisory committees of which the composition, functioning and outcome remain often opaque.

Secondly, the ESC as a functional assembly can provide access for socio-economic categories that would not find their way via other channels. Whereas lobbying leads to an overrepresentation of business interests, the ESC provides a fixed access for 'weaker interests'. As explained above, one of the main reasons for the creation of the ESC was the wish to involve 'organised labour' in the integration process. Through its third Group the ESC also represents various other socio-occupational and some non-occupational groups that are 'weaker' to organise at European level than the traditional social partners. Often participants in the ESC talk about 'the global approach' of the Committee,(27) comparing it, for instance, with the various advisory committees to the Commission or Council which generally only represent the particular interests of the singular sector concerned.

Thirdly, the model of deliberative democracy helps the ESC to overcome the trap which each fixed body of functional representation risks. A body with fixed institutionalised access for certain social-economic categories has the advantage that it can represent weaker groups that would not be heard through pluralist interest group competition. However, it can never be composed of all 'functional groups' in society, and through its fixed character it might not keep up with societal change. Yet the ESC is not an interest-based model. Via its internal structure and the status of its members, and increasingly via its strengthened links with civil society, the Committee represents more than particular interests of the groups that have a seat in it.

Finally, in addition to its particular deliberative character, the ESC offers another added value in relation to functional participation. The ESC is composed of *national* socio-economic organisations, whereas other formalised structures of functional participation at the European level, such as the social dialogue, mostly concern the *European* socio-economic organisations.

4.3.2. Weaknesses

However, there are also limits to the legitimacy of the ESC as a form of deliberative democracy via a functional assembly. Most of these limits can be summarised with the remark that the

supposed 'global approach' of the ESC is not global enough, or that decision-making in the Committee is not deliberative enough. Yet, some remarks touch also on the limits of the model of a functional assembly and deliberative democracy as such.

- The first concern is the composition of the ESC. Even if the ESC does not aim to be an associative parliament (aiming at the representation of the variety of associative activity and weaker social groups), its representativity as a functional assembly can be questioned. The ESC can hardly be called representative of the socio-occupational categories of today's European society. Representatives of, for instance, the artistic world, the media, co-operatives, foundations, charitable associations, the disabled, the unemployed, women's organisations (which are all in one way or another (also) socio-occupational categories) are not represented or under-represented in the ESC. One could also ask whether consumer and environmental organisations, which are not, as such, socio-occupational categories, but which have a clear interest in the socio-economic process should not be better represented. One of the reasons for this under-representation is can be found in the Treaty. Article 257 EC Treaty, describing the ESC's composition, has not been changed since the Rome Treaty. Moreover, since each Member State (and especially the small ones) has only a limited number of seats in the ESC, they tend to propose ESC members from those categories that are explicitly mentioned in the Treaty, which leads to an over-representation of the main employer organisations and trade unions and agricultural organisations, but an under-representation of, for instance, organisations representing SMEs. The national nomination procedures are by now well-established practice which does not seem too open to adapting to societal change. The European ESC thus tends to copy the deficiencies of functional participation at the national level, especially since the Council (as explained above) does not exploit the opportunity provided in Article 259 to ensure a more 'adequate representation at European level'.
- The second concern is the difficult status of the ESC members. As explained, the ESC member should represent a sort of abstract socio-economic category in the general interest of the Community. Yet what if he/she does defend only the particular interest of his/her organisation? This is a problem of accountability. Though the status of an ESC member shows parallels with that of a parliamentarian, the ESC member does not need to present himself in elections. But being no delegate it is also difficult for the ESC member to be accountable to his/her own organisation (which is even more problematic if he/she does not issue from an organisation at all).⁽²⁸⁾ Yet, this weak accountability can also have positive effects on the level of deliberation. Actually, ESC members can deliberate to a certain extent in a sort of 'insulated space' which allows them to adapt their position in the light of the deliberation that takes place in the Committee. This might actually be indicated as a paradox in the model of 'deliberative democracy'; i.e. deliberation can sometimes better occur where participants are less accountable and the process is less transparent.⁽²⁹⁾ But the question remains: if the ESC member does not take his/her status and deliberative role seriously, who would sanction him/her?

- The third concern is 'how many people deliberate?' This question concerns both the drafting of ESC opinions and the organisation of hearings. The 222 members of the ESC might represent a nice variety of socio-economic categories, but do they all deliberate on the opinions the Committee adopts, or do they just vote on what a singular rapporteur has drafted? Deliberation is extremely difficult to measure empirically, first because it is difficult to establish criteria to assess deliberation,⁽³⁰⁾ and second because such an analysis requires very important research resources to enable a massive amount of interviews. Therefore, just two remarks. In general terms, intensive debate seems to take place at the

level of the study group (involving around 10 ESC members and often 4 external experts); the section meeting might in theory open the debate to around 80 members of which roughly one third intervenes; and at the plenary only a handful of members discuss some amendments for half of the opinions. However, one should also note that 'the global approach' of the ESC should not imply that everybody discusses on everything. Rather, everybody *should be able to* discuss on everything. An important feature of the ESC is that it enables the socio-economic categories that have a seat in the Committee to intervene when they think there is need to. The structuring of the Committee into three groups which are equally represented through the all drafting process contributes to this effect.

- Finally, a critical note on the recent efforts of the ESC to strengthen the links with civil society. The total number of hearings in comparison with the total output of ESC opinions remains fairly limited. Broader based deliberation can thus only occur in a minority of cases. Moreover, hearings are not by definition a guarantee of more deliberation and more bottom-up input. How many ESC members participate at the hearing? What is their role at the hearing? And how do they translate the deliberation from the hearing to the deliberation within the Committee? Some of the 'Citizens'Europe' hearings, for instance, looked more like a sort of PR-activity to 'sell Europe' (and the Committee), than like a serious effort to broaden the democratic basis of ESC opinions. The experience of the Single Market Observatory on the other hand, shows how hearings on particular issues can be used as a 'deliberative resource' that can be translated by the ESC members into Committee opinions. The ESC members of the standing study-group of the Single Market Observatory are now used to a double hearing (in two different countries) as an instrument to prepare their opinion. A hearing is thus not a once-off PR activity, but a way to enlarge the input in the opinion.

5. Conclusion

In October 1999 the ESC organised a hearing which brought together 300 participants from national, European and international socio-economic organisations, along with representatives of the European institutions and of the national socio-economic councils. The hearing was a follow-up to the Committee's own-initiative opinion on civil society organisations, and it had to provide a basis for the strengthening of the Committee's role as a representative forum of these organisations. The Convention expressed a broad agreement that the ESC should adapt to societal change and to the diversification of civil society organisations. However, it was not clear how this should be realised. The Committee itself does not decide on its composition, but is dependent on the national nomination procedures which are unlikely to change profoundly. The alternative is a Treaty change. The most radical reform would concern both the ESC's competence and composition to turn the Committee into a real associative parliament. One might even think of basing its composition on a parallel election to EP elections, through which the European citizen could express his/her preference for certain organisations. Much less radical would be to improve the Committee's representativity as a functional assembly by changing, for instance, the list of socio-occupational categories of Article 257 EC Treaty, or by changing the nomination procedure so that the EP should nominate the candidates proposed by the Member States instead of the Council (given that one might assume the EP to be less reluctant than the Council to intervene in the choices made by the Member States). However, to date it is unlikely that the change of the Committee's composition will become an issue of the current IGC. In the mean time, the ESC goes ahead on the path it has taken in recent years, namely strengthening its links with civil society as an 'imperfect' functional assembly. The Convention of October 1999 made several practical proposals such as increasing the number of hearings, inviting NGO representatives as

experts, elaborating common programmes with the European organisations of NGOs. The ESC's 1999 opinion on civil society proposed the setting-up of 'an appropriate "civil society" organisational structure'. One might think of a 'civil society observatory' which (like the Single Market Observatory) would consist of a standing group of ESC members backed up by an administrative unit in the secretariat-general. Such an observatory could organise hearings to prepare ESC opinions and could set up databases on civil society organisations, which could be made available on the internet and which would make the ESC a central point of information for and on civil society organisations (especially in the light of enlargement).

Strengthening links with civil society as a functional assembly will not turn the ESC into THE body for functional participation at European level to the exclusion of other channels. Neither is it a guarantee to turn the ESC into a very influential body. However, one should note that the Commission has in the last years especially appreciated two activities of the ESC: the opinions of the Single Market Observatory on the one hand, and the opinions concerning External Relations on the other hand.⁽³¹⁾ It is not accidental that these are the sectors in which the ESC has strengthened most its links with civil society. Broadening the deliberative basis leads finally also to more expertise, appreciated by the Commission. Increasing the input-legitimacy of the ESC also contributes to its output-legitimacy. Moreover, enlargement and implementation issues (such as those observed by the Single Market Observatory) are (the) major future concerns of the European integration process. If the ESC combines its deliberative character and links with civil society with an increased focus on these concerns, via own-initiative opinions and eventual new observatories, it might appear less obsolete in 2000 than once depicted in 1980.

References [↑]

BERNARD, Nadine, LAVAL, Claude and NYS, André (1972), Le Comité économique et social, Editions de l'Université de Bruxelles, Bruxelles.

BIEBER, Roland (1991), 'Democratization of the European Community through the European Parliament', Aussenwirtschaft, 46, pp.391-410.

CALANDRI, Elena (1999), 'La genesi del CES tra forze professionali e strategie nazionali', paper presented at the conference 'Gli organi consultivi della Comunità Europea attraverso l'esperienza del Comitato Economico e Sociale', Università degli Studi di Firenze & Istituto Universitario Europeo, 29-30 Ottobre 1999.

CHRISTIANSEN, Thomas (1996), 'Second Thoughts on Europe's Third Level: The European Union's Committee of the Regions', Publius Journal of Federalism, vol.26, no.2.

COHEN, Joshua (1998), 'Reflections on Habermas on Democracy', paper presented at the Workshop 'A Discursive Foundation for Law and Legal Practice. Discussing Jürgen Habermas' Philosophy of Law', European University Institute, 13 June 1998.

DE BURCA, Grainne (1996), 'The Quest for Legitimacy in the European Union', The Modern Law Review, Vol.59, pp.349-376.

DEHOUSSE, Renaud (1998), 'European Institutional Architecture after the Amsterdam Treaty: Parliamentary System or Regulatory Structure?', Common Market Law Review, Vol.35, pp.595-627.

ELSTER, Jon (1998) (Ed.), Deliberative Democracy, Cambridge University Press, Cambridge.

E.T.U.I., EUROPEAN TRADE UNION INSTITUTE (1990), The Role of Economic and Social Councils in Western Europe, E.T.U.I., Brussels.

FEATHERSTONE, Kevin (1994), 'Jean Monnet and the "Democratic Deficit" in the European Union', Journal of Common Market Studies, Vol.32, No.2, pp.149-170.

FORBATH, William E. (1998), 'Short-Circuit. A Critique on Habermas' Understanding of Law, Politics and Economic Life', in Michel ROSENFELD and Andrew ARATO (Eds.), Habermas on law and democracy: critical exchanges, University of California Press, Berkeley, pp.272-286.

GAMBETTA, Diego (1998), "'Claro!": An Essay on Discursive Machismo', in Jon ELSTER (Ed.), Deliberative Democracy, Cambridge University Press, Cambridge, pp.19-34.

GARGARELLA, Roberto (1998), 'Full Representation, Deliberation, and Impartiality', in Jon ELSTER (Ed.), Deliberative Democracy, Cambridge University Press, Cambridge, pp.260-280.

GUASCONI, Maria Eleonora (1999), 'Il CES e la Carta Europea dei Diritti Sociali',

paper presented at the conference 'Gli organi consultivi della Comunità Europea attraverso l'esperienza del Comitato Economico e Sociale', Università degli Studi di Firenze & Istituto Universitario Europeo, 29-30 Ottobre 1999.

HAALAND MATLARY, Janne (1995), 'New Forms of Governance in Europe? The Decline of the State as the Source of Political Legitimation', Cooperation and Conflict, Vol. 30(2), pp.99-123.

HABERMAS, Jürgen (1996), Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, MIT Press, Cambridge.

HABERMAS, Jürgen (1998), (untitled) paper presented at the Workshop 'A Discursive Foundation for Law and Legal Practice. Discussing Jürgen Habermas' Philosophy of Law', European University Institute, 13 June 1998.

HIRST, Paul (1997), From Statism to Pluralism, UCL Press, London.

HIX, Simon (1997), 'Executive Selection in the European Union: Does the Commission President Investiture Reduce the Democratic Deficit?', European Integration online Papers (EIoP), Vol.1 (1997) N° 021; <http://eiop.or.at/eiop/texte/1997-021a.htm>

HIX, Simon (1998), 'The Study of the European Union II: the "new governance" agenda and its rival', Journal of European Public Policy, 5:1, pp.38-65.

HRBEK, Rudolf (1993), 'La fonction consultative dans la République Fédérale d'Allemagne', in Jacques VANDAMME (Eds.), Fonction consultative professionnelle et dialogue social dans la Communauté européenne, Presses Universitaires Européennes, Bruxelles, pp.121-136.

IPSEN, Hans Peter (1972), Europäisches Gemeinschaftsrecht, Mohr, Tübingen.

JACHTENFUCHS, Markus (1997), 'Democracy and Governance in the European Union', European Integration online Papers (EIoP), Vol.1, N°002; <http://eiop.or.at/eiop/texte/1997-002a.htm>

LASCHER, Edward L., Jr. (1996), 'Assessing Legislative Deliberation: A Preface to Empirical Analysis', Legislative Studies Quarterly, XXI, 4, pp.501-519.

LINDBERG, Leon N. (1963), The Political Dynamics of European Integration, Stanford, Stanford University Press.

LINDBERG, L. and SCHEINGOLD, S. (1970), Europe's Would-Be Polity: Patterns of Change in the European Community, Englewood Cliffs, Prentice Hall.

LODGE, Juliet (1996), 'The European Parliament' in Svein S. ANDERSEN and Kjell A. ELIASSEN (Eds.) (1996), The European Union: How Democratic is it?, Sage Publications, London, pp.187-214.

LODGE, Juliet and HERMAN, Valentine (1980), 'The Economic and Social Committee in EEC Decision-making', International Organisation, Vol.34, pp. 265-284.

MEYER, Thomas (1995), 'European Public Sphere and Societal Politics', in Mario TELO (Ed.), Démocratie et construction européenne, Editions de l'Université de Bruxelles, Bruxelles, pp.123-131.

MCLAUGHLIN, Diarmid (1985), 'The involvement of social partners at European level', in Jacques VANDAMME (Ed.), New Dimensions in European Social Policy, Croom Helm, London, pp.155-173.

MILWARD, A. (1992), The European Rescue of the Nation-State, Routledge, London.

MORGAN, Roger (1995), 'The experience of the Economic and Social Committee of the European Union' in Renaud DEHOUSSE and Thomas CHRISTIANSEN (Eds.), What Future for the Committee of the Regions, Florence, European University Institute, Working Paper EUF, no.95/2, pp.101-108..

PREUSS, Ulrich K. (1998), 'The Constitution of a European Democracy and the Role of the Nation States', Paper presented at the Conference 'A Discursive Foundation for Law and Legal Practice. Discussing Jürgen Habermas' Philosophy of Law', European University Institute, Florence, 12-13/6/98.

PRYCE, R. (1973), Politics of the European Community, London, Butterworths.

SIDJANSKI, Dusan and CONDOMINES, Jonas (1983), 'Le profil du Comité Economique et Social des Communautés Européennes en 1982-1983', Revue d'intégration européenne, Vol. VII, No.1, pp.9-40.

SMISMANS, Stijn (1999), 'An Economic and Social Committee for the Citizen, or a Citizen for the Economic and Social Committee?', European Public Law, Vol. 5, No.4, pp.557-582.

SMISMANS, Stijn (1998), 'The Role of the National Parliaments in the European Decision-Making Process: Addressing the Problem at the European Level?', ELSA Selected Papers on European Law, Vol. IX, Issue 1, pp.49-76.

SZTOMPKA, Piotr (1998), 'Mistrusting Civility: Predicament of a Post-Communist Society', in Jeffrey C. ALEXANDER (Ed.), Real Civil Societies. Dilemmas of Institutionalization, SAGE, London, pp.191-210.

TEISSEIRE, Jean-Pierre (1982), 'Le Comité économique et social: organe accessoire ou institution à part entière?', Administration, no.117, pp.68-80.

THOMAS, H. (1973), Europe: The Radical Challenge, Quartet, London.

VAN DER KNAAP, Peter (1994), 'The Committee of the Regions: The Outset of a "Europe of the Regions"?'', Regional Politics & Policy, Vol.4, No.2, pp.86-100.

VAN DER VOORT, W.J. (1997), In Search of a Role. The Economic and Social Committee in European Decision Making, PhD thesis, Universiteit van Utrecht.

WALLACE, Helen (1993), 'European Governance in Turbulent Times', Journal of Common Market Studies, Vol.31, No.3.

WALLACE, Helen (1996), 'The Institutions of the EU: Experience and Experiments' in Helen WALLACE and William WALLACE (Eds.), Policy-making in the European Union, Oxford University Press, Oxford, pp.37-68.

WEILER, J.H.H. (1999), 'Epilogue:"Comitology" as Revolution - Infranationalism, Constitutionalism and Democracy', in Christian JOERGES and Ellen VOS (Eds.), EU Committees: Social Regulation, Law and Politics, Hart Publishing, Oxford, pp.339-350.

WESTLAKE, Martin (1994), A Modern Guide to the European Parliament, London, Pinter.

WESTLAKE, Martin (1995), 'The European Parliament, the National Parliaments and the 1996 Intergovernmental Conference', The Political Quarterly, Vol.66, pp.59-73.

Endnotes

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(1) E.C.J., Case 297/87, *Confederazione italiana dirigenti di azienda et al. V. Council*, 30 Juin 1988, ECR [1988] 3549.

(2) The size of the three groups is more or less equal, though Group I today is somewhat smaller than the two other groups.

(3) The creation of (sub)categories is only mentioned in the Rules of Procedure within the context of adding minority statements to an ESC opinion. According to Rule 47D this possibility should only be 'confined to identifiable minorities, i.e. on the one hand the groups formed under Rule 22 (the three main groups) and on the other hand the categories of economic and social activity which are represented at Community level and on the Committee and whose composition has been made known in advance to the bureau'. It is on this basis that group III has created its four subcategories. Though Rule 47F states that 'categories *may* include members from different groups', group III has stressed that the four subcategories are strictly limited to members of group III. Some members of group III are not member of a subcategory. Within group III balance is assured between the different subcategories.

(4) Group III, for instance, has refused an Italian member of a 'consumer organisation' which was

a sub-organisation of a trade union (he finally joined Group II). Group III also refused two members appointed by the Berlusconi government which issued juridically from trade unions but which were for ideological reasons also refused in Group II. They remained 'independent' from the three Groups.

Interview source and internal documents.

(5) Analysis done by van der Voort (1997: 91) for all ESC opinions between 1978 and 1990. In the 1990s, one can notice a further increase in the percentage of own-initiative opinions. Since the realisation of the 1992 Single Market project legislative action involving compulsory consultation has decreased, whereas soft non-legislative action has left more place for optional consultation and own-initiatives.

(6) Though in a watered-down version of the initial Dutch proposal which had stipulated, for instance, the right of own-initiative opinions.

(7) See Lodge and Herman (1980, p.269) on the attitude of the first Commission president Hallstein.

(8) Interview with a former ESC official, active in the beginning years of the Committee's existence. See also H. Thomas (1973), p.26.

(9) COSAC (founded in 1989) stands for 'Conférence des organes spécialisés dans les affaires communautaires' and consists of a biannual meeting of the organs in national parliaments responsible for European affairs along with a delegation from the European Parliament. Its role in the European decision-making has been recognised formally by a Protocol added to the Amsterdam Treaty.

(10) For a detailed analysis of the 'Citizens' Europe' initiative and the difficulties of the ESC to define its role vis-à-vis the citizen, see Smismans (1999).

(11) In its opinion on the 'Citizens' Europe' the ESC stresses especially the role of the EP in ensuring democracy at the European level, without finding for itself a 'niche'. In the same sense its 'Opinion on more democracy for Europe and its institutions; better information for citizens and socio-economic operators; role of the European Parliament's Ombudsman', OJ 30/12/ 93 C 352/15.

(12) ESC, Own-initiative opinion on the Role and contribution of civil society organisations in building Europe, adopted 22-23 September 1999.

(13) The latest reform of the Rules of Procedure, which came into force in September 1998, reduced the number of sections from nine to six, for reasons of both coherence and budget. The sections are now: 'Economic and Monetary Union and Economic and Social Cohesion', 'Single Market, Production and Consumption', 'Transport, Energy, Infrastructure and the Information Society', 'Employment, Social Affairs and Citizenship', 'Agriculture, Rural Development and the Environment', and 'External Relations'. ESC members are part of at least one section, and of not more than two sections (exceptions are possible to ensure fair representation of the MS in each section; or in case more than six sections would be set up) (Rule 13).

(14) E.g. the UK delegation in today's ESC is composed of members such as a professor of European law, a European consultant on Consumer issues, a Senior Labour Relations Officer of the Royal College of Nursing, the President of the Royal College of Physicians, a former Executive Director of the Commission for Racial Equality etc.

(15) ESC (1999), 'The ESC: a Bridge between Europe and Civil Society'.

(16) e.g. by the External relations section, or by the section for Transport, Energy, Infrastructure and the Information Society.

(17) Three hearings had a general nature addressing the general state of the single market, while the other hearings addressed particular single market issues such as technical standards and mutual recognition, protection of the environment, consumers in the single insurance market, freedom to set up a business, cross-border business, the effects of the single currency on the single market, the effects of enlargement on the single market.

(18) In its new Rules of Procedure, which came into force in September 1998, the ESC has introduced a new 'Rule 19A' which formalises the practice of the SMO and enables the setting up of other observatories. Some ESC members have suggested the creation of an observatory for employment and an observatory for consumer issues, but to date there does not seem to be any agreement in the Committee for these additional observatories.

(19) Within the context of the Lomé Convention the ESC has been organising annual meetings of the representatives of ACP and EU economic and social interests. In 1997 it signed a memorandum on institutional cooperation with the Economic and Social Consultative Forum of the Mercosur (an advisory body modelled on the European ESC).

(20) Jon Elster (1998), p.1, notes how the idea of deliberation is as old as democracy itself, and that Habermas was at the basis of a revival rather than an innovation.

(21) Habermas has particularly stressed the rational character of discursive action. Other authors have defined 'deliberation' also more broadly defining the process as 'a conversation whereby individuals speak and listen sequentially before making a collective decision' (Gambetta 1998: 19).

(22) As a consequence, Habermas has not been able to give a clear answer how to organise citizen involvement in large parts of governance practice today.

(23) In the same sense Joseph Weiler (1999, p.348) who criticised normative models based on deliberation in the context of comitology procedures.

(24) Intervention at the conference 'Gli organi consultivi delle Comunità Europee attraverso l'esperienza del Comitato Economico e Sociale', Università degli Studi di Firenze & Istituto Universitario Europeo, Firenze, 29-30 October 1999. The Secretary-General made a comparison between a hearing organised by the Commission and by the ESC, in which both came to comparable results but the ESC realised the task much earlier than the Commission did. (Mr Patrick Venturini has been nominated Secretary-general in October 1998, after having been member of the private office of Delors and advisor to the Director-general of DGV).

(25) Rule 56 of the Rules of Procedure.

(26) Rule 55 of the Rules of Procedure.

(27) Interview sources.

(28) This does not imply that ESC members who do not originate from organisations receive less 'orders' than those originating from organisations. Actually, the most important 'complaints'

about ESC members not respecting their 'non-mandatory status' concerned UK members (who do not emanate from organisations and) who just used to defend the British government's position within the ESC. (interview source)

(29) In this sense, for instance, Joshua Cohen (1998) criticises Habermas for not making clear why precisely his model requires equal political liberties and is concerned about participation and political equality, whereas the ideal deliberative procedure might be best institutionalized by ensuring well-conducted political debate among elites.

(30) For an attempt to establish criteria to measure deliberation by U.S. legislatures, see Edward L. Lasher, Jr. (1996), p.509.

(31) Interview sources.

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