Environmental NGOs :

Channels of democracy for the European Union

Bachelor thesis by:
Clément Guasco

Supervision:
Mattias Nowak

Spring term 2009
International Program for European Studies
Malmö University - Department of Global Political Studies

Abstract

The notion of democratic deficit has been at the centre of many debates on the European Union for the last 30 years. The reason is, to a certain degree, linked to the lack of legitimacy of the European Commission, which is not elected and remote from the European citizens. However, the Commission seems to have found a positive way to increase its legitimacy by the inclusion of civil-society in the decision-making process. The interaction between the Commission and two Environmental NGOs will therefore be analysed in order to make a constructive contribution to the debate. The present paper does not limit itself to normative statements on reality and considers that there is more to socio-political relations than “true” verifiable facts. Therefore, it is not limited to the formal decision-making process, and goes deeper into the socialisation process at play between the different actors. The outcome is that the Environmental NGOs studied appears as valuable models for the implementation of new democratic channels for the representation and participation of European citizens.

List of Abbreviations

COM	European Commission
DG Environment	Directorate General for Environment of the European Commission
EIO	Economically Interested Organisation
EMP	European Member of Parliament
ENGO	Environmental Non-Governmental Organisation
EU	European Union
GMO	Genetically Modified Organism
MLG	Multi-Level Governance
WWF	World Wide Fund for nature.

Table of Contents

Introduction: Discussing Democracy 1
Previous Studies 3
Problem formulation 4
Disposition 5

1. Methodology 5
Object of study 5
Actors: European institutions, ENGOs and EIOs 7
Green 10: gaining weight in the equation 10

2. Theoretical edifice 11
Legitimacy 11
Sociological institutionalism and the nature of lobbying 14
Participatory Democracy 17

3. Empirical findings 20
Official publications – the tip of the iceberg 20
Interviews – deepening the study 22
ENGOs as counter-balance 26
How both parties perceive the interaction 27

4. Analytical Discussion: improving democracy in the European Union 29
Socialisation Processes 29
ENGOs as channel of legitimacy: representative democracy 29
"Elitisation" of the ENGOs 30
Linking citizens and decision-makers: participatory democracy 31

Conclusion: Discussing democracy 33
Opening 34

Bibliography 36
Primary sources 36
Secondary Sources 37

Introduction: Discussing Democracy

The concept of democratic deficit has become a major issue for the European Union because of the gradual extension of the powers of its institutions over those of the Member States. The democratic deficit can be linked to the concept of legitimacy, in the way that a governing system can only acquire a democratic quality by insuring its legitimacy regarding the governed people. When considering the democratic deficit, it is important to look at what is referred to as "democracy" in a European context. Indeed, when one proclaims the EU as being undemocratic, one consequentially opposes it to a system that is considered as democratic. This system of reference can be found among most of the European democracies. Indeed, however different those societies may be, they have two major characteristics in common: the *separation of 'powers'* and the *accountability* of the government through universal elections[1]. Both concepts can be traced back to Aristotle and have found their way into most of the European democracies. The separation of power, as established formally into the modern European political system by Montesquieu in his *The Spirit of Laws*, has become the base of the European democracies. According to Montesquieu: "it is an eternal experience, that any man who is given power is inclined to abuse it; he will keep going until he finds limits" (1749: book XI, point4). Therefore, in order to prevent any authoritarian decision-making as well as the centralization of power into a dictatorial type of governance, the three major powers[2] of the state should be shared among equal institutions, which can check each other's tendency to abuse their power. As Pierre Manent (1987) says, the main idea is to separate the will from what it wants so that it does cannot make decisions for its own benefit, but for the good of the community. Moreover, Montesquieu's conception of mankind implies that those powers have to be checked by the people in order to keep those institutions away from the temptation of abusing them. This is the essence of the modern discussion about the democratic deficit of the EU and about the lack of legitimacy of the institutions. How can the

[1] This principle is present in the art.16 of the declaration of Human Rights of 1789, the precursor of the Universal Declaration of Human Rights and a foundation of modern democracies.

[2] The three powers are the legislative power (power to decide how the society should be), the executive power (power to make it happen) and the judiciary power (power to judge if it is done in accordance with the laws).

European people be sure that those persons entrusted with the power to decide over them, do it in accordance to their will and do not abuse the power linked to their position?

On the question of separation of powers, the EU appears to feet increasingly into the mould of the European democracy. The separation of powers[3] is respected in a majority of cases and will be even more if the Lisbon treaty is ratified[4]. However, the governance system of the EU is not fitting the traditional representative democracy otherwise spread throughout the EU, thus leading to a problem of legitimacy. In that configuration, only the parliament is directly elected, leaving the Commission in a precarious position concerning its "democratic" quality. The Council can claim legitimacy since it is composed of elected officials, but verifying that claim would require discussion that will not take place here. In order to solve its problem of democracy, the Commission needs to demonstrate its legitimacy to govern, "even though" it is not directly elected by the people. The introduction of elections for the Commission is out of the question for the time being. Therefore, the Commission needs to find other ways to gain democratic legitimacy.

Representativity is not necessarily the only way to go for the EU and other forms of democratic configurations can be considered. The current model of democracy in place in the European countries insures that the people have a means of control on the leaders in charge of making decisions by using a representative model of government. Each of those rulers is representative of a small portion of the people and can be removed after a defined period through elections. Even if this model was to be applied to the EU, it does not seem that the dilemma of the concentration of power would disappear since representative democracies tends to be plagued by a concentration of specialized "representatives", which makes a living out of the function, thus concentrating power onto themselves. This situation has resulted in the distancing between representatives and represented. In order to counter that aspect of the natural evolution of representative democracy, scholars have started to discuss the possibility to implement a participatory democracy, where each element of the represented population could take part into the decision-making process. This model would have the advantage to reduce the gap that appeared between representatives and represented.

The necessity to bring a feeling of democracy to the EU has become even more evident since the ratification crisis of the Maastricht treaty in 1992. The Commission has been actively working on acquiring more powers in the decision-making process during the

[3] the Commission (executive), the Council/Parliament (legislative) and European Court of Justice (judiciary)
[4] The more policy areas will enter the scope of supranationality, and the more the balance between executive and legislative will be respected.

following decades, and the necessity of legitimizing its policies has become inevitable (Føllesdal 2006: 152-154). In order to do so, the Commission has decided to use the civil society[5] as a channel of legitimization in order to insure the adequacy of its actions with the interest of the people. This type of legitimization is linked to efficiency in the fact that it can insure that decisions are made in accordance with the interests and the needs of the governed. It is therefore interesting to study that decision in a normative perspective. However, it is not constructive to make normative statements without any link to reality. The following normative discussion on the legitimacy of the Commission's decisions will be supported by the observation of actual measures taken by the Commissions in order to gain legitimacy. As Myrto Tsakatika (2005) points out, most of the intentions of the Commission on that matter can be extracted from the White Paper on Governance. It exposes the conflicting views of the Commission between the legitimacy by the results introduced by Jean Monnet during the creation of the EU and a representational legitimacy introduced in a recent period by scholars studying the gap between the Commission and the European citizens. It also introduces the idea that The Commission will gain much legitimacy by including representatives of the civil society, in our case interest groups, since it will make the commission's decisions more 'efficient' in the same time that it will introduce a share of participatory democracy into the decision-making process. This will constitute the second point of my analysis since it can help to discuss democracy. Moreover, the environmental policy is a very interesting case because it displays an elaborated interaction between the Commission and a well-structured organisation, which can be used as model for a constructive discussion on democracy in the European Union.

Previous Studies

The problem of democratic deficit has led the EU to look for measures that could help countering it. The most noticeable one is the introduction of civil society within the decision-making process with the claim that including direct representatives of people's everyday life will make the decisions taken at the EU level more legitimate. This claim has awakened the attention of many scholars. Dawid Friedrich from the University of Bremen has made an interesting participation to the discussion in the domain of Environmental policy and the inclusion of civil society (Friedrich, 2006). He assessed the quality of the relation between the

[5] This paper will not go any deeper in a normative definition of civil society, but will look at some actors considered as part of the civil society by the Commission, in order to better assess 'their' role. (see also: White Paper on Governance)

European Institutions and selected representatives of the civil society through the study of the REACH regulation and a series of interviews of members from NGOs and the European Institutions. His aim is to evaluate the degree of development of participative democracy through the channel of civil society, which he considers as a "transmission belt" (Friedrich, 2006: 3). This evaluation has a very normative standpoint, which requires the presence of several factors in order for participatory democracy to be. Those factors are the formal accessibility of NGOs to, transparency of, and inclusion within, the decision-making process. However, it is clear that such a democratic structure does not exist yet within the European decision-making process, a fact that is corroborated by Friedrich's findings. He focuses too much on participatory democracy as a model without taking into account the fact that it needs to be incorporated within a thousand years old model of governance. He deplores the fact that participatory infrastructures did not keep up the pace with the discourse of the EU, but his argument becomes too critical (Friedrich, 2006: 31). According to him, the participation of civil society should be artificially formalised in order to be effective at the EU level, but history shows that this type of management do not always give the best results. I will rather advocate that institutionalisation be deeply linked to socialisation and that, if effort are kept in the same direction, the effective integration of civil society will come. However, his work contains abundant valuable data and clearly shows that the interaction between the EU and the civil society is at a beginning. In another segment of civil society, we can find an interesting study of the institutionalisation of participation through unions by Joel D. Wolf, who comes with an answer to a noteworthy dilemma, brought by Robert Michel in his work on the oligarchical tendencies of modern democracy. Michels claims that institutionalised participation, as can be found in the unions, leads to the appearance of an oligarchic type of leadership, which usually cut the base from the top within the union. A very interesting point since it seems to be found within NGOs has well. The "oligarchisation" of NGOs means that the leadership is hold by specialised elites, which tends to settle at that level and prevent the base from participating. In the contrary, Wolf answers that democratic participation is possible due to the process of solidarity and community formation that such unions generate and the educational principal it fosters, which in turn restore the link between representatives and represented that has been lost during the development of representative democracy.

Problem formulation

The goal of this thesis is two-fold. First, it aims at assessing the possibility of the Commission to gain legitimacy through the inclusion of NGOs into the decision-making process, and thus

consolidating the democratic link between the EU and the European citizens; secondly, at discussing the quality of the democratic link established by this inclusion.

Disposition

In order to answer the problem formulation, this thesis will follow a dual structure. The first party (chapter 1 and 2) will address the methodological and the theoretical structure of the thesis, without much link to the empirical case. The methodology will expose the object of study, the type of data considered and the actors involved in the interaction. The theoretical part will focus on the concept of legitimacy, on the political structure in which it will be applied, and add the theory of participatory democracy in order to enrich the debate on the democratic deficit of the EU. The second party will focus on the object of study itself, the interaction between the Commission and Environmental NGOs. The analytical findings, both factual and extrapolated, will be depicted in a first section (chapter 3). They will then be discussed in correlation with the theoretical structures in a second section (chapter 4) that will encompass legitimacy, institutionalisation and democracy. Finally, a brief conclusion will present the contribution this thesis can make to the debate on democracy in the EU and open it toward further researches that could complement the present one.

1. Methodology

Object of study

In order to obtain a factual perception of this legitimization process initiated by the Commission, I will focus on the environmental policy, because it can be considered as an established supranational policy where the EU is more active than the MS[6] themselves. This is partly due to the fact that policy-makers gradually recognized that environmental problems could not be dealt within a national perspective, since they were global problems, and partly because this policy area was not part of the group of policies constituting the core of the nation-state's sovereignty, namely defence and taxation. Therefore, it was easier for the member-states to surrender their powers to the EU in that area, a process which began in the 1970s but was formalized in the SEA in 1986. However young this policy may be, it has been important in the contest for power between supranational and national levels and can be

[6] Member-States of the EU

considered as one belonging to the supranational level (Lenschow 2005: 307-309). To such extent, that the Commission used this policy area to promote its role as a supranational actor by linking "europeanness" and "greenness" (Ibid 2005: 313). If it was primarily linked to the regulation of environmental matters affecting the creation of the internal market, it rapidly went beyond that scope, to become part of the core values of the EU as promoted by the Commission (Ibid 2005: 309). It finally acquired a strong supranational quality with the generalisation of Co-decision and QVM to the environmental policy area by the Treaties of Maastricht and Amsterdam. Having a strong supranational character, this policy-area is then an interesting topic for the discussion about the Commission's legitimacy.

Among all representatives of the civil society present at the European level, it seems that European environmental NGOs[7] are the most interesting case. They have recently assembled into a network called Green10, which gathers about 20 mil members. Many of them have created a specific office in charge of lobbying at the EU level. Those ENGO's represent their members as political representatives represent their voters. If they do not find their work satisfying, they can remove their support (and money). Moreover, becoming a member of an NGO can be paralleled with supporting a political party on the ground of its electoral program. This study will therefore focus on the interaction between Environmental NGOs (ENGO) and the Commission. For practical purpose, it cannot assess every single ENGO and will therefore concentrate on the two major ENGOs of the Green 10, namely WWF and Greenpeace. They both show a well-established interaction with the Commission and have been lobbying at the European level for many years now.

This study will also focus on the discourse of both parties in order to understand better their mental configuration, since it considers it a constructive factor of this interaction. In order to do so, it will rely largely on qualitative interviews of the three actors in presence. Those interviews have been done at the European offices of WWF and Greenpeace, as well as at DG environment. In that situation, the discourse of the Commission must be taken carefully. Even though it is constitutive of the Commission's identity, it is also a political tool. Therefore, one must remain aware that not all the words of the representatives of the Commission can be taken for granted. They rather reflect the logic of appropriateness present inside the Commission. It is very difficult to draw the line objectively between what the Commission actually believes and what it says. Therefore, it has to be paralleled with the claims of green interest groups, which are subject to the same type of criticism, and with

[7] European Environmental NGOs will be referred to as ENGOs.

factual observation, such as the progressive institutionalization of their relation and its impact on policy-making. In order to do that, I will limit the empirical data to the study of a legislation on CO2 emissions from passenger cars, to a report from a meeting at the UK permanent representation in Brussels between Lords, the secretary general of the Commission Secretariat, and the director of the WWF EPO, and finally to three interviews with one representative of each party. The first interview was conducted with Tony Long, the director of WWW European Unit Office, the second one with Marta Vertier, GMO campaigner for Greenpeace European Unit and the third one with Katharina Spens, an Environment Policy Officer from the DG Environment. Since this study focuses on a social institutionalist perspective, it will rely on interviews rather than pure quantifiable facts. Those interviews can help to grasp the mental configuration of each actor in order to establish a picture of the interaction in a social perspective. In the same way, the meeting held by the Chamber of Lords can help to assess the actual relation between interest groups and the Commission and be a valuable source of information regarding the discourse of both parties in that matter. However, I will parallel that discourse with an actual occurrences of this relation, which can be observed through the transparency initiative (COM(2008) 323 final) as well as in the recent discussions on a regulation to reduce CO2 emissions from passenger cars (COM(2007)856 final). Here again, one needs to remain aware of the fact that those two occurrences do not allow to objectively assess the contact between an interest group and the Commission in term of quantity, but rather in term of quality. However, this is a minor problem since it is the contact itself, which will trigger a socialization process, which can lead to greater integration of the interest groups into the decision process in the future.

Actors: European institutions, ENGOs and EIOs

The pre-proposal part of the decision-making process of the EU, concerning environmental decisions, can be schematized by a quite complex equation with multiple variables. Here is a simplified version of that equation which can give an overview of what is happening: $Z = X^{10} + Y^{n>10} + I + c$, or: COM decision = ENGO x 10 + EIOs x n + influence of other institutions + independent citizens. X and Y are the main variables in the sense that they are the most numerous and influential. ENGOs can easily be reduced to the Green 10 network but EIOs represents an almost unlimited possibility of cases. For making this research meaningful and understandable, I will only focus on X, but a study of each of those variables would be required to be able to pretend to objective truth regarding the decision-making

process of the Commission. A case study[8] can help to limit the number of variables, but it will not give a general picture of the process since X, Y and c would change on a case-to-case basis. Before being able to assess the link between environmental NGOs and the Commission in a democratic perspective, I will make a concise presentation of the Variables/actors that will be discussed later on. This presentation will necessarily be reductive since it cannot take into consideration every single actor in the process, but it will focus on the major ones in the most objective manner possible. This thesis is focusing on specific actors from the civil society doing active lobbying toward the European Institutions, but not on civil society itself. It considers as lobbying any activity of non-governmental groups aiming at influencing the decision taken by EU institutions during the policy making-process. It is not the aim to make grand discourses on the nature of civil society and its composition, but rather to focus on a specific part of civil society and to assess its interaction with the Commission. It will therefore consider civil society from the Commission's point of view (Report CPCS, 2a). The purpose of this research is thus to assess the quality of the interaction between the Commission and some ENGOs in order to participate to the debate on legitimacy and democracy in the EU. However, we must keep in mind that the actors in presence are of multiple origins and qualities and can therefore not be limited to a dual interaction EU/ENGOs. Several actors will appear along that study, even though it focuses only on three of them. Here is a brief presentation of those actors, which will help to understand the structure of that study.

EU institutions

Even though several EU institutions have an interesting role to play in the decision-making process and a functional interaction with civil society, this thesis will focus on the Commission since it owns the power of initiating the laws. The Commission is the most concerned by the discussion on democratic deficit since it cannot claim representativity through election like the European Parliament or the Council. Both institutions are also the place of lobbying and have daily encounters with the ENGOs. They would be perfect objects of study for further research, which could complement the present thesis.

Representatives from the industries: economically interested organisations

Representatives from the industries constitute the third pole of the interaction. They differ from the environmental NGOs in the fact that they protect or even promote economical

[8] Based on one legislation

interest rather than moral values or political programs. They are mainly representative from the industries, but in order to avoid a reductive classification, they will be referred to as Economically Interested Organisations (EIO), which include other economically interested members from non-industrial parts of the civil society. This separation into NGO and EIO is for the sole purpose of this thesis and does not mean that NGO do not have any economical interest or that EIO do not have any moral interests. It rather emphasizes the main motivation behind their action out of a need for schematization that such a study requires. Moreover, EIOs cannot be a channel for legitimacy or participation since they are not connected to the European citizens.

Environmental NGOs

Environmental NGOs represents the largest non-profit groups within the field of environmental policy. The major motivation of those organisations is to protect and promote moral values, such as the protection of nature and the implementation of a mode of development that will not endangered non-born members of our society (i.e. our descent). This motivation is in anyway relatively more altruistic than that of the economically interested organizations. In our case, the ENGOs have created a network of the 10 most active NGOs at the European Level in order to gain some weight against larger EIO. This Network is called the Green 10 and possesses a shared website.

The Green 10 is just a platform for the elaboration of coordinated actions and each of the 10 ENGOs remains completely independent. This thesis will therefore focus on the two largest ENGOs of the Green 10 since they possess the strongest voice, renowned public image and the largest number of members[9]. Those two ENGOs are World Wide Fund for nature (WWF) and Greenpeace. Both ENGOs have a hierarchical structure going from the international office to the national offices and then to local offices. This structure itself presents specific qualities that can be used in the discussion of the necessity and feasibility of democratic participation within the EU. All the levels are linked together in a pyramidal structure where decisions travel from the top to the bottom and vice versa. Both WWF and Greenpeace are membership-based ENGOs, which means that they receive most of their funding from their members, which can provide or withdraw their support at anytime. This situation creates a strong link between the ENGO and its members, providing for a good channel for participation. They both encourage the participation of their members through a system of volunteers. However, it seems that Greenpeace represent the best model for a

[9] A presentation of the Green 10 network will be made in the next subchapter

discussion on participatory democracy since only physical persons can be members. Both ENGOs have a European Office dedicated to lobbying activities towards the EU institutions. Those Offices present a very similar working method and are both linked to a board of management issued from the national offices of the biggest European countries. This is their direct formal link to the general policy of the ENGO.

To summarize, this thesis will mainly focus on the interaction between the Commission and two major ENGOs, which, according to the Commission, are part of civil society. However, it is important to keep in mind the larger structure in which this interaction takes place while reading it. Moreover, other actors such as individuals and scholars can participate to the decision-making process, but it does not appear, neither in the official reports nor in the discourses of the interviewees, that their participation is significant enough to be taken into account in the above mentioned interaction.

Green 10: gaining weight in the equation

A presentation of the actors would not be complete without introducing the Green 10, which contains both ENGOs studied in that thesis. It is an informal network of major European ENGOs. It gathers very different types of ENGOs. The members of the Green 10 are the European Federation for Transport and Environment (T&E), International Friends of Nature, Climate Action Network Europe (CAN), Friends of the Earth Europe (FoE), European Environmental Bureau, European Public Health Alliance – Environment Network, WWF European Policy Office, Birdlife International, Greenpeace European Unit and CEE Bankwatch Network. They can be classified according to different criteria such as their structure, the fact that they have a European representation in Brussels or that they are purely European-based.

- Structure: there are two major types of structures, one hierarchical and centralised, such as for Greenpeace, WWF or Birdlife international, and one in loose network of local associations such as FoE or CAN. The network structure relies on much smaller and more numerous units and is therefore more efficient at the local level, while larger centralised NGOs are focusing on lobbying at higher levels such as national governments or the EU.
- Representation in Brussels: Those NGOs can also be classified according to the fact that they are, or are not, active at the EU level. Larger centralised NGOs all have a representation office in Brussels, such as Greenpeace or WWF while network structured NGOs are less present (ex: FoE).

- International vs. EU based NGOs: even though they have a dedicated European Office many of those NGOs represent members from non-EU countries, such as Greenpeace, WWF or Birdlife International.

Their common point is that they base their legitimacy on representation, which they achieve through membership. They came together in order to enlarge their support. Actually, even if some of their 20 million members are also situated in other developed countries, the large majority of this number consists of European Citizens. Membership usually requires the payment of a symbolic sum and is open to all, regardless of sex, age or nationality, though it often requires holding a resident permit within the country of registration of the NGO.

2. Theoretical edifice

Legitimacy, and the democratic quality it brings, cannot be reduced to the link between nation-states and their citizens through direct elections. Many other aspects must be taken into account in order to give it a modern sense. Before doing so, it is important to define the theoretical structure in which this research will develop. It will include the concept of legitimacy and the structure of governance in which it is to be applied. Once legitimacy has been defined in a structure of governance specific to the EU, the debate will be enriched by a discussion on participatory democracy brought by the incorporation of ENGOs within the decision-making process.

Legitimacy

The discussion on legitimacy can be very delicate since it is a very subjective concept, which has been given various, and sometime opposite, definitions. A received definition of legitimacy can be found in Schuman's work (Koppell 2008; OSSWAARDE, NIJHOF & HEYSE 2008; Lister 2003):

> Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions (Schuman 1995: 574).

On top of his definition of legitimacy, Schuman concludes that legitimacy is a very variable concept that will differ according to the context (1995: 573). It must therefore be applied to a particular case before one can draw any conclusions on its nature and its necessity. Moreover, the concept of legitimacy has a dual quality in the fact that it is "possessed objectively but created subjectively" (ibid 1995: 574). In other words, it is considered as an objective fact by the individuals and at the same time socially constructed. Legitimacy is therefore based on the belief that the legitimated entity behaves in accordance with the values of the social group. However, the medium of accordance is not necessarily the same in each social structure. As Schuman (1995: 574) states, an organisation may not respect the values of the social group yet remain legitimate because it does not provoke public disapproval.

In a European context, that discussion is made even more difficult by the fact that it is still impossible to 'clearly' classify the EU as a national/federal or as an international system of governance. However, this demarcation remains central to the definition of legitimacy, since scholars discussing legitimacy in an international perspective do not perceive it in the same way than those discussing it in a national perspective. In an International Relations perspective, the link between direct representation and legitimacy is much thinner than in a national oriented one. For example, Jonathan G. S. Koppell (2008) discusses Global Governance Organizations' legitimacy in relation to their authority, in a context where direct representation is not conceivable yet [10]. He bases his discussion on Schuman's tripartite division of legitimacy, but does not consider the necessity of a formal representational link between the institution in charge of authority and the individuals over which that authority is exercised. This approach contrasts very much with some of the discussions on input legitimacy at the European level. They have a stronger focus on citizens' will and local representation (see Beetham and Lord 1998; and Abromeit 1998 cited in Newman 2006: 388-389). It is, therefore, necessary to assemble several aspects of legitimacy in order to produce a richer debate.

The triple definition of legitimacy

The tripartite division of Schuman distinguishes between a normative, a cognitive and a pragmatic legitimacy. The normative legitimacy defines what the criteria for an institution are, in order to become the "just holder" of the power to decide over a community. It means

[10] GGOs such as the United Nations, the International Monetary Fund or the World Trade Organization

that there is no specific criterion for legitimacy out of the one already in place. In our case, the most received conception of normative legitimacy is public accountability through direct election. Even if the citizens doubt that their political representatives really listen to them, they will not question the legitimacy of the system because it is normatively legitimate. Nevertheless, normative legitimacy is a problem for the Commission, which cannot adopt the structure of a legitimized institution, and which have to struggle with legitimate holders of authority, the member-states. On the other side, the cognitive and pragmatic legitimacy focus on a purely psychological aspect of legitimacy, outside of any political system of reference. Cognitive legitimacy considers to which extend the institution is unconsciously accepted by the members of the community. As opposed to cognitive legitimacy, which presupposed an unconscious acceptance of the right to make decisions, the pragmatic legitimacy emphasizes the conscious "interests-based" acceptance. The institutions therefore become legitimate because the affected parties find it in their interest to consider it as such. This is the base of the legitimacy as promoted by the Commission. It adopts a functionalist perspective and argues that the decisions of the Commission are legitimate because they benefit the European citizen (Newman 2006: 588). It is therefore legitimised by its results and will remain legitimate as long as it performs well. However, this situation cannot prevent any deviation from the will of the people prior to its happening. It can only be detected after the outcome of a proposal is rejected by the public opinion, which in the EU case is not even fully formed yet. To summarize, normative legitimacy is the construct, whose hold on reality is strongest. It does not concern the decisions made but the system in which they are made. It does not require the citizens to believe that they have an actual impact on the system of governance (cognitive) or to think that their interests are best promoted by the established system even though they have no say in it (pragmatic). This is the main problem of the Commission which, anyway it might go, is unable to claim normative legitimacy in a European context. Moreover, the recent referenda on the constitutional treaty and the Lisbon treaty have shown that both cognitive and pragmatic legitimacy tend to have evade the grasp of the Commission.

Input and Output Legitimacy

Where Schuman solely focuses on legitimacy as a passive, post-policy, reaction from the governed, Michael Newman (2006: 388-389) comes with a complementary discussion on input and output legitimacy. The EU being a hybrid construct, halfway between international and national configurations, the tripartite definition of legitimacy is not covering the entire

scope of legitimacy as applicable to this hybrid. In fact, it only refers to the output legitimacy of an organisation and completely omits the input legitimacy discussed by Newman. Output legitimacy is based on the fact that legitimacy is acquired by the system of governance through the making of laws and decisions, which are beneficial for the people, regardless of its will. This is exactly the type of legitimacy described by Schuman as pragmatic legitimacy. Being more efficient at producing beneficial policies than the member-states' governments, the EU is consequently legitimized. Some scholars defend output legitimacy as the 'only' route to legitimacy for the EU since it cannot implement input legitimacy because it would require direct participation, voting and party activity (Fritz 1999 cited in Newman 2006: 388). The EU should therefore focus on producing policies of democratic relevance in order to secure legitimacy, democratic relevance being best achieved by using the expertise of interest groups (Newman 2006: 388). However, output legitimacy is not persuasive enough in the European context since its configuration puts the people in a very weak position to exert pressure (see Beetham and Lord 1998 cited in Newman 2006: 388). In order to re-establish a balanced democratic link between the European institutions and the people, it is necessary to reinforce input legitimacy. Input legitimacy can be found in national structures thanks to universal elections, but must be achieve differently in the case of the Commission. It can be done by including a larger portion of the civil society movements, which could be a complement to the representation operated through member-states representatives (Hix and Lord 1997; Bellamy 2001 cited in Newman 2006: 388-389)) and by introducing participatory democracy through the use of referendums (Abromeit 1998 cited in Newman 2006: 389). However, this approach on input legitimacy emphasizes more on control and accountability than on active participation in policy-making as suggested by the normative vision of legitimacy through elections. This is why a discussion on participatory democracy becomes constructive for the future of European democracy. It has been argued that both input and output legitimacy must be balance in order to achieve a democratic system (Pollack: 84; Newman 2006: 389). It means that the production of efficient policies is not enough for the EU to be able to reach the next step in its democratization process, and that the inclusion of the people has become inevitable.

Sociological institutionalism and the nature of lobbying

The polity is a major aspect in the discussion on legitimacy. Indeed, the channels of legitimacy as discussed previously will vary greatly according to the polity in question. They are not, and cannot, be the same in a national hierarchical structure than in an international flat one. Therefore, we have to return to the traditional discussion on the nature of the EU. If legitimacy can be clearly linked to the electoral system in a national perspective, it is impossible to confine it to such measures in the European case. The EU structure of governance is less hierarchical and expertise[11] plays a major role in the establishment of the scale of influence within the decision-making. By scale of influence, I refer to the place each of the actors in presence occupies in the decision-making process and their influence onto the result of this process. It is clear that the EU cannot be understood as a linear hierarchical type of governance and that another structure must be considered. In order to transcend the old cleavages between intergovernmentalists and federalists linked to a traditional linear conception of governance (i.e. hierarchical government), Marks and Hooghe (2003) have developed an alternative theoretical approach, which they named Multi-level Governance (MLG), and which was rapidly adopted by a number of scholars of EU studies. In the case of the EU, lobbying must be understood within that new structure. In fact, it became increasingly obvious that "power was wielded by actors and groups both in and around the formal national and supranational institutions" (Warleigh 2006: 77). Therefore, MLG refers to the concept of governance as opposed to the traditional concept of government. To sum it up, MLG is "an approach that recognises state power but does not consider it the whole story" (Ibid 2006: 81). In the EU context, heavily institutionalised ways of doing politics are less predominant, and social alternative social actors have entered the policy-making process (Ibid 2006: 77). It is therefore very difficult to assert or deny legitimacy by simply focusing on electoral representation. MLG allows then for a better understanding of the EU polity and its working, which in turn gives better tools to discuss the question of legitimacy at that level. Marks and Hooghe (2003: 236-238) distinguish two types of MLG at the EU level. The Type I Governance refers to a rigid and hierarchical structure resembling a federalist organisation. Several levels of governments are hierarchically linked in a nonintersecting, purpose-specified structure, so that they will be more efficient in their domain of expertise. Type I MLG relies on a strong sense of community and is more easily conducive to political representation. The

[11] Expertise plays a major role in the integration of ENGOs has well.

Type II Governance is looser. The number of potential jurisdictions is vast and they have no clear demarcation, so that overlapping occurs. Their hierarchical structure is much looser as well and they are characterised by flexibility rather than durability. The classification of the EU as a type I governance by Marks and Hooghe can be discussed. As Warleigh points out (2006: 86-87), even if the EU appears, in theory, to fit in the type I governance, it is in fact sharing many of the characteristics of the type II governance. In this type of governance, political representation seems quasi unworkable because the EU is a very experimental form of policy-making relying on coalition-building and informal politics to a significant extent (Warleigh 2000; Richardson 2001; Christiansen and Piattoni 2003 cited in Warleigh 2006: 78). The European governance is increasingly delegated to informal networks. The old centralized top-down form of government is losing ground in favour of other actors and institutional forms. It is replaced by a process-oriented model of governance structured in policy networks. Policy networks and MLG are best analysed together, especially in type II MLG. Actually, the diverse actors brought together in the policy-making process of the EU act in networks issued from functional and costs reduction needs. However, those networks cannot be reduced to merely functional symptoms because of the socialisation process they trigger.

That perception of a MLG at the EU level is therefore best understood if one applies a sociological institutionalist prism to it. We have seen that policy-making cannot be reduced to formal institutions at the EU level. Moreover, the EU is a dynamic system in constant evolution. These two characteristics are particularly well tackled by sociological institutionalism (SI), which focuses on informal institutions in a dynamic process of socialisation rather than on formal institutions. For SI, institutions are both formal and informal procedures, routines, norms and conventions embedded in the organisational structure of the polity (Hall and Taylor 1996: 938 cited in Wiener 2006: 36). Sociological institutionalism joins two concepts together, institutions and socialization. Institutions participate in insuring the continuity of the system and have a significant impact on the policy-making. Social practices in turn are considered as institutions, which will, in time, give birth to formal procedures of interaction (Wiener 2006: 39&44). It means that social institutions are mutually constitutive rather than mutually exclusive, and that the dynamic process of socialisation is more important than each institution's initial standpoint. Social practices therefore become the main object of study rather than the formal institutional structure, since it is highly subject to modification by social practice. In other words,

according to SI, the interest groups will integrate the decision-making process because of the socialisation process and because the EU will ultimately believe in its own discourse. In our case, it means that the permanent contact of the EU institutions with interest groups will participate in the institutionalisation of their relation, which should increasingly switch from informal to formal. This is where the central dilemma on legitimacy of the institutions reaches its height. Actually, if other levels of non-governmental actors gain an increasing influence on the policy-making process, democratic safeguards must be established to insure that the system remain democratic.

To conclude, the EU is not on the way to adopt a traditional federalist organization with a clear hierarchical sharing of functions. Therefore, the progressive entry of interest groups into the official modus operandi of the EU decision-making can be perceived as the apparition of another level in the governance system. In a strictly institutional perspective, the integration of those interest groups is not very formal yet. However, in a sociological institutionalism point of view, one can extract much meaning from the formalization of the relation between the Commission and interest groups. Formal institutions are not the only ones to influence the policy-making process (Warleigh, 2006). For example, the existence of the register of European lobbies is rather a symptom than a consequence of the influence of those interest groups in the policy-making process. A closer look at the practical interactions between environmental interest groups and the Commission in the context of the environmental policy-making will help to bring the theoretical debate to a more pragmatic level and to discuss if some ENGOs can legitimise the European environmental policy-making.

Participatory Democracy

As we have seen before, the European Commission seeks to increase its legitimacy, and therefore reduce the democratic deficit, by including the civil society into the decision-making process in order to legitimise its decisions. This process can be interpreted in different manners. In fact, for European models of democracy, legitimacy remains deeply rooted in representative democracy. One can therefore interpret the Commission as acting in a "representative democracy" perspective and as trying to prove that it is representing the interest of the governed. In order to do so, the Commission claims to listen to the needs of the European Citizens through the channel of the civil society. However, the integration of civil society into the decision-making process can have a deeper impact on the European democracy than simple representativity. Indeed, one can argue that including civil society into

the decision-making process open for another kind of democratic structure known as participatory democracy. This concept can be very useful in the discussion on the democratic deficit of the EU because it offers an alternative to the traditional representative democracy that presents several problems for the current European structure of governance.

Participatory democracy is not a concept issued from the mind of educated scholars but rather an answer issued from left movements, during the second half of the twentieth century, to answer the problem of the concentration of representative power into major parties (Powell, 2008: 50). This answer was motivated by a growing concern for a problem linked to democratic deficit, voters' apathy and increasing alienation of the states from the citizens (Ibid, 2008: 52). This situation called for the creation of new types of democratic organizations (ibid, 2008: 50; Friedrich, 2006: 2). Participatory democracy is a concept that has been created by opposition to representative democracy. It advocates that representation is not sufficient to insure an effective democracy and that the participation of citizens into the democratic processes can improve the democratic quality of the decisions taken. Participatory democracy strives to create opportunities for all members of a political group to make meaningful contributions to decision-making, and seeks to broaden the range of people who have access to such opportunities. Indeed the increasing distance between democratic representatives and the citizens they represent is at the heart of the present discussion on the democratic deficit of the EU and the crisis of legitimacy. In fact, how can we insure that decisions taken by increasingly specialized leaders are in adequacy with the will of the majority? This problem is even more important in the case of the EU since it has come to develop a type of decision-making based on efficiency and expertise, disconnected from any democratic concern. If we return to the problem exposed by Montesquieu on the nature of man and the necessity to limit the concentration of power, we can see that representative democracy has been introduced in order to limit the danger of one man to abuse power by submitting the rulers (representatives) to the ruled (the citizens). However, the alienation of citizens from their representatives shows that this solution is limited. Additional measures must therefore be taken in order to insure democracy. This solution is to be found in the participation of the citizens to the decision-making process in order to bring them closer to their leaders. This idea is not new; a major philosopher of democracy such as Aristotle already praised the superiority of the many on the one: "A mob judges better than any one of them, arbitrarily chosen, might. Similarly, many are more incorruptible, or indestructible, than the few (…)" (Winthrop, 1978: 159: book 1286a29-33). This superiority should not be viewed

in terms of efficiency, but rather in term of democracy. Therefore, legitimacy must not be limited to the efficiency of decisions for the well-being of the community. In fact, the more citizens will be included in the decision-making process, the more democratic this one will be. Participatory democracy can thus be seen as a way to bring back representatives and represented together in order to insure a sustainable democracy for the EU. For John D. Wolfe, it can be done through the development and integration of organized groups from the civil society into the decision-making process. Actually, those groups can foster the maturation of collective solidarity in the form of an interest-based community, which can help to strengthen Man's psychological and practical capacity for political participation, and thus its capacity to make constructive contributions (Wolfe, 1985: 371). In other words, the active participation of citizens to the decision-making process contains an educative quality that triggers the increasing inclusion and efficiency of the system. This educative claim of participation can, here again, be found in Aristotle's work, who considers that by participating, the citizens increase their knowledge of the city's matters and becomes "better at participating", thus improving democracy (Winthrop, 1978: 169). By including the citizens into the decision-making process, participatory democracy provides them with the opportunity to learn how society is working and how to make better decisions, thus becoming a "better citizen". In theory, this system is self sufficient and will automatically result in the improvement of European citizens. This is why the ENGOs can play an integrating role in the European democracy. In fact, they can be considered as the "transmission belt" between the citizens and the European decision-makers (Friedrich, 2006: 3, see also Friedrich, 2006: 7). In the same way that a transmission belt connects the engine to the wheels, ENGOs can connect citizens to the decision-making process taking place in the Commission. It has been argued that participation cannot be achieved through large-membership organization because of their tendency to mimic the oligarchic structure of governments, resulting in an elite-type concentration of power into the leadership and in the inefficiency of the above mentioned educative property (Michels in Wolfe, 1985: 372). However, the creation of a community-based solidarity induced by those groups has a deeper impact on leadership itself, than Michels wants us to think. In fact, if one approaches this problem in a social constructivist point of view, one can see that it is not possible to make such a clear-cut separation between leadership and members. Indeed, as Aristotle argued, the participation itself contributes in including the citizen into the system, even though the structure does not appear to be favorable. Moreover, ENGO's provides access, transparency and inclusion for the citizens,

because it gives them the opportunity to obtain information and participate in the decision-making process. Participatory democracy presents numerous advantages, but we must keep in mind that it is still a very theoretical approach and that it must be adapted to the existing structure of governance of the EU in order to function. I will argue, As Sousa Santos (Santos in Powell, 2008: 54), that participatory democracy cannot fully replace representative democracy in the actual structure of European democracies due to reasons of scale, democratic traditions or citizens' capacities; but it can be very constructive for the emerging European democracy if combined with the existing representative structure because it can improve three criteria of democracy: accessibility, transparency and inclusion.

3. Empirical findings

This analysis will constitute of a mix of several empirical data related to the object of study. They will be presented in two paragraphs, one examining the formal interaction through official publications: the regulation on CO2 emissions and the formal structure of interaction between the Commission and the ENGOs, represented by the register for interest representatives. The other one deepening this preliminary observation through interviews and through the report on the meeting of Lords with Catherine Day and Tony Long. A combination of both will help to establish the scale and the attributes of the interaction between the Commission and ENGOs in order to assess its social quality and its capacity to develop.

Official publications – the tip of the iceberg

If we look at an important environmental legislation for the industry, the regulation on CO2 emissions from passenger cars (*COM(2007)856 final*), it appears that the Commission's claim of involving interest groups from the European civil society is verified. Many interest groups are present during the pre-proposal consultation procedure, both from industrial concerns and ENGOs, and their respective opinion is mentioned in the report following the consultation. However, the process is still at an early stage and the degree of involvement is very difficult to assess through the published reports. A formal procedure of assessment and consultation has indeed been carried out during the pre-proposal phase (public hearing for *SEC(2007) 1723*). This consultation included the DG for environment, the DG for enterprise and industry, interests from the automotive industries (both traditional and green industries)

and from various NGOs dealing with environment and consumer interests. Four of the Green 10 members were present at the consultation. Transport & Environment seems to have had a leading role because it is the main source of information taken into consideration by the report. However, Greenpeace, WWF and FoE's points of view are mentioned in annexe, which shows that their voice is given enough weight to be noted down in the official report. This observation does not allow assessing the quality of their inclusion, but it shows that this interaction exists and can therefore be the manure for socialisation. In fact, the more interaction will take place, the more those interest groups will have to find a formal position within the system. An interesting point is that none of the ENGOs questions the actual "120g target" fixed by the Commission, which shows that this target must have been discussed at an earlier stage without requirements for an official publication. Their main questions concern the method to achieve it, which they find to accommodating for the automotive industry. It is not surprising since their role is to keep the pressure on industries and politicians for more environmental regulation. What is more important is that they all seemed to agree about the target before discussing it during the assessment. Even The secretary-general of the Commission introduces the meeting by recalling that the target has been fixed and will not be discussed anymore. It is impossible though to find a report on the discussions that led to the establishment of the "120g" target, which is even supported by a highly dissenter ENGO such as Greenpeace (public hearing for *SEC(2007) 1723*, Greenpeace website: press release). The most logical answer is thus to assume that it has been agreed upon during an earlier stage of the process, which led to the publication of the official report. This earlier negotiation is not regulated by legal dispositions but indicates that the consultation procedure is not the only way in which ENGOs can have a say[12].

The last development in term of relation between the Commission and interest groups is the implementation of a *voluntary register for interest groups* in the frame of the transparency initiative (*COM(2008)323 final*). This register is managed by the secretariat general and aims at listing all the interest groups in relation with the Commission and making them available to the public as well as formalising the interaction between them and the Commission's employees. It is a first step toward the formalisation of this relation but it is still very vague in term of quantity and depth of information. It does not seem that detailed information on the origin and use of funds as well as a list of actual lobbyists is required.

[12] Interviews have revealed that ENGOs are members of expert groups at the earliest stage of the proposal drafting. This information will be treated in details in the extrapolated data.

There is a project of review of the Register by the Commission, but it still has not been carried on. Moreover, it does not collect information on the formal meetings between representatives of those interest groups and the Commission in terms of dates, places and contents of discussion, which would participate to the transparency of the process. However, the initiative states that the Commission will progressively establish a formal procedure for consultation, which will lead to the publication of each consultation by the office in charge of the Register. It is still at the project stage, but it predicts that the institutionalisation of the interaction between the Commission and representatives of the civil society will increase in the future. This register only concerns the Commission but another register has been set up for the Parliament, which shows that both institutions are interested in formalizing this relation in order to increase transparency. The Commission is increasingly asking interest representatives to be registered in order to get an appointment or to participate to the consultation procedure. The same requirement is made by the MEPs, which often complain about being contacted by interest representatives, which are not registered. It indicates a will to formalize the procedure. Along the Register for interest representatives, the Commission is financing a number of NGOs every year in order to allow them to maintain a European representation in Brussels. This financing is frowned upon by some MEPs, which considers that public money should not be spent on private organisations, but when one looks at the budget of EIOs, it is clear that very few ENGOs could compete on their own. Moreover, this funding has been established by a resolution adopted by the Council and the Parliament, which indicate a clear desire of the majority to institutionalise their interaction with NGOs by insuring their stability in the system. In the case of ENGOs, Greenpeace is the only one of the Green 10 to refuse funds from the Commission. The funding is transparent and is based on the application of each NGO, in which they must explain how they intend to use the funds in order to promote European policies. There is no official instruction[13] from the Commission on how ENGOs ought to think, but the mere fact that funds are given to projects that support European policies insure that they will not go against the general guidelines determined by those policies. The ENGOs are however free to choose their political line, which is more often in phase with their members than the interest of the Commission. Finally, the funds allocated to some international ENGOs are to be used only for expenditure within the EU 27. The Commission allocates money to the European Offices of those ENGOs in order to insure that

[13] The only restriction of the Commission is that funds cannot be used for project outside the European Union, but there is no political restriction posterior to the attribution of funds.

those funds are used for the European citizens only, and regular audits takes place to control if they have been used properly.

Interviews – deepening the study

We have seen that the inclusion of ENGOs can be observed in the official publication of the Commission. However, this is but the tip of the iceberg. Interviews of the actors involved have revealed that the actual interaction between the Commission and ENGOs are more developed than official publications can let us think. A part of this interaction has even begun a process of institutionalisation. It comports therefore both formal and informal interactions between the two sides. This analysis will try to expose findings with limited comments. Those findings will then be discussed later on in the analytical discussion chapter.

Formal methods of interactions are those that follow an established protocol without however being part of a structured process written down in the form of a treaty or legislation. Several procedures, by which ENGOs interact with the Commission, have been established over time. The most important one, in our case, is the participation of ENGOs in the working committees that produce guidelines and reports for the design of legislative proposal. Those working committees are composed of expert from various institutions, NGOs and EIOs; and are the key points in the decision-making process since they are the main source of expertise for the elaboration of proposals, which will eventually lead to regulations, directives and other types of European legislations. Both Greenpeace and WWF are systematically invited to take part in working committees by the DG environment, where they can influence the discussion by their expertise. This type of expert group is probably at the origin of the "120g target" that we discussed earlier on[14]. A lecture of the regulation on CO2 emissions from passenger cars and of the public consultation held for that purpose had showed that an agreement on the target of 120 g CO2 had been reached prior to the public earring. The fact that none of the four ENGOs present at the public consultation discusses this target could mean that a certain consensus has been reached within the working committee in charge of that matter. Both Greenpeace and WWF expressed the importance of their participation within those groups and that they actually have a good collaboration with the Commissioners and the other parties in presence. However, there is no written procedure to determine how DG environment select

[14] Cf. "factual data" p.19

which ENGOs to invite in a specific working committee. This choice is left to the employee of DG environment in charge of the dossier. There are several criteria for the selection of actors to invite. In the case of DG environment, expertise is a major criterion. Indeed, environmental policy is an area, which requires advanced technological knowledge on how the environment reacts to human activity and how it works in general. Both WWF and Greenpeace seem to be recognised for the quality of their expertise by DG environment and are very often invited to participate in expert groups. It gives them the opportunity to influence efficiently the decision-making process at the roots, thus including them at a key point of the environmental policy. Of course, the fact that they are invited, included and listened too, does not insure that their voice is heard as the voice of others, but it insures their democratic participation to the process. They are also recognised because of the size of their membership. Both Greenpeace and WWF rely on their large number of members to legitimize their voice, which is a very good point in term of representative democracy, since they can represent a large amount of citizens at the EU level. They also rely a lot on the public opinion in that they use their capacity to communicate and bring attention to specific subject in order to put pressure on the decision-makers so that they consider their opinion. On the one hand, it can be problematic in term of participatory democracy, since it is clear that smaller organisation will lack a large number of members as well as the budget for developing qualified expertise. Thus not having access to the decision-making process because they will not be able to reach the level of reputation needed to be included by the Commission. On the other hand, it can ensure than only the most representative ENGOs are included, which ensure a workable number of channels of participation established by democratic support. Indeed, it is better to have few functioning channels of participation than a multitude of imperfect ones.

A second formalised method of lobbying is the use of factual and voting sheets. Factual sheets are produced by ENGOs on specific subjects in order to communicate their official position. They can be established through independent studies commissioned by the ENGO, which can compete with studies commissioned by EIOs. They can be addressed to members of the Parliament, the Commission or the Council, who can use them to know the position of major ENGOs or for qualified expertise. They are a part of the communication tools of the ENGOs with the European institutions. They are not an institutionalised part of the decision-making process, which means that the European institutions do not have to take them into account or to include them within the official reports. However, the fact that the Commission accept those ENGOs as valuable partners supposes that they will listen to their

voice in a certain way. Voting sheets are a type of factual sheets that are directly aimed at the Parliament in the occasion of votes on major environmental issues. They contain the position of the ENGO and a clear recommendation for voting. Both factual and voting sheets participate in the dispositive of pressure implemented by those ENGOs, which largely rely on public opinion to support their voice.

Informal interactions are those that do not follow any protocol, but still participate in the connection between the Commission and ENGOs. The first informal interaction between the Commission and the ENGOs is the fact that they meet for professional purpose on a daily basis. The Commission recognises both ENGOs as valuable and effective partners and they are welcome to meet with its employees. Those meetings can have various purposes and are not recorded. In the case of WWF, it seems that informal meetings takes place along those official ones, and that personal relations are developed as well. The extent of those relations is impossible to assess though, but the mere fact that they take place indicate a process of socialisation that will strengthen further interactions. On the other side, Greenpeace insist on having only official appointments with employees of the Commission and do not use the means of dinners and informal meetings as many EIOs' lobbyists do. Nevertheless, they are a part of the Green10 network, which holds a regular dinner with representatives of the Commission to discuss environmental matters as well as one-time meetings with representatives of the country in charge of the presidency, as well as the preceding and the following ones, at each turn of the presidency. One can expect that people working on an everyday basis on the same subjects develop a certain level of acquaintance, which facilitates further interactions. Especially since all actors agree on the fact that Greenpeace and WWF are valuable participants within the decision-making process. Those meetings are important for the formation of the image each actor has of each other. The more they know the positions and the methods of the other actors, the easiest they will collaborate in the future.

A second informal interaction is the traditional method of pressure traditionally used by ENGOs. Those methods can take the form of petitions and attention bringing actions, which base their power in the public opinion. Those types of activities are most common to the national offices, but they are also used towards the Commission. Those methods can be used in order to influence the agenda setting or a decision of a European institution. An example is the production of scorecards classifying countries according to their implementation of an environmental directive in order to push the less effective countries to

take measures. In the case of REACH[15], WWF made a campaign in order to sensitize the members of the Parliament to the presence of chemicals in our bodies. The survey of human toxic contamination showed that 76 persistent, bio-accumulative and toxic industrial chemicals were present in the blood of the tested MEPs. The purpose of this action was to attract the attention of the MEPs on the fact that all European were concerned by the problem. This is a method, which the ENGOs masters since they enjoy the support of numerous European citizens as well as the capacity and the knowledge to attract attention on the decision-makers at the most appropriate moment to influence their decision. The fact that they are a part of the decision-making process gives them the necessary information to determine that moment as well as the most cost/time effective method.

ENGOs as counter-balance

One important point that came back in each interview was the fact that the Commission can use the ENGOs as counterbalance to the EIOs. Indeed, the EIOs carry out heavy lobbying activities towards the Commission. They possess large budget for the commission of scientific studies supporting their interests or the remuneration of a multitudes of lobbyists. The role of the Commission is to act as a mediator capable of taking the best decisions for the entire society, while satisfying the largest part. In order to do so, it relies on expertise. The expertise of the EIOs is not always the most objective and the Commission needs other sources of information in order to promote a more balanced legislation. This is where the ENGOs can be very valuable, since they operate with a non-mercantile goal and therefore tends to be stricter on the regulations to apply to the protection of the environment. For example, the agro-industries were arguing that the EU should withdraw its ban on some GMOs[16] on the ground that they were accepted in the rest of the world and that the EU should stop being protectionists. That argument was proven false by Greenpeace since only the United States has authorised more GMOs than the EU, while the rest of the world tends to follow the European legislation on that matter. Following that input of Greenpeace, the text was never implemented. Moreover, it appears that some employees of the Commission use ENGOs when they consider that the content of the proposal, on which they are working, reflects too much the interest of the industries. This situation varies on a case-to-case basis, but shows the value of the integration of ENGOs within the decision-making process. It helps

[15] European regulation on chemicals
[16] Genetically modified organism

bring balance to the equation and it is recognised as valuable by both the Commission and the ENGOs. They can also be used in order to maintain balance within the Commission itself. When the Barroso Commission was appointed, the entire Commission was focused on the new goals established by the Lisbon strategy and relegated the seven strategies of the sixth environmental action program to the archives. When, Stavros Dimas, the Commissioner for environment realised that they were not ready to support the commitments made by the previous Commission in the sixth EAP, he asked the ENGOs to help put pressure on the Commission so they would respect their obligations. This was a successful lobbying action, which resulted in the reintroduction of the seven strategies. The question of balance of powers is crucial for democratic regimes, not only in an institutional perspective, but also for the general operation of decision-making. ENGOs can therefore be considers as useful partners of that process.

How both parties perceive the interaction

This assessment will first consider a report of the meeting between representatives from the British House of Lords, the secretary general of the Commission (Catherine Day) and the director of WWF European policy office (Tony Long); then make the connection to the interviews held with the representatives of each actor. The meeting was held with the purpose of assessing the degree of connection and collaboration between the Commission and WWF EPO. According to the report, the Commission and this NGO meet each other during the policy-making process and both claim a significant degree of collaboration. The secretary general explains that they need such collaboration in order to gain the necessary knowledge to make the most appropriate decisions, but also to ensure that all the points of view from all the actors of the civil society are represented in the proposal. However, without denying an informal relationship in the ‘corridors of Brussels’, she tries to emphasise the formalisation of the consultation of interest groups during the pre-proposal phase and the new ‘voluntary register for interest representatives’ managed by the Commission. The interview with an environmental officer of the DG environment confirm that working relation and insists on the fact that the ENGOs are appreciated and valued by the Commission for their alternative qualified expertise, and thus well integrated into the decision-making process. Tony Long also recognises a good cooperation but gives it a more informal tone. He explains how the Green

10 network[17] had been able to influence the new Commission when, in 2005, It was questioning the 'seven strategies'[18] adopted by the previous Commission. He also explains the role of monitoring played by ENGOs and their capacity to expose noncompliance with environmental decisions. They can also commission independent studies in order to introduce them into the legislative process (which they share through the Green 10 network). The Commission keeps them informed during the entire proposal-making process. He also develops on the informal relationship behind some decisions made by the commission. However, he recognises that opposing interest groups have had very successful impacts on the Commission, such as in the REACH case[19], which shows that EIOs do have a strong influence on the decisions taken by the Commission. During her interview, Marta Vertier also recognises the good collaboration of Greenpeace with the Commission. They have a proper access to information and to the expert groups set up for the elaboration of environmental legislation. Overall, both Greenpeace and WWF recognise a successful inclusion within the decision-making process, which they attributes to the credit given to their expertise, the importance of their membership support and their acceptance of the "rules of the Game". Greenpeace and WWF consider that they are recognised, listened too and invited to participate in a relatively satisfactory degree.

However, the situation is not always so ideal. The Commission makes an effort in term of inclusion and transparency, but they remain limited. For example, ENGOs do not have access to information on what is happening during the conciliation procedure between the Commission, the Council and the Parliament[20]. Moreover, they regret the fact that they often have the impression of being heard, but ignored. White papers are sometime published without a single reference to their inputs, or they reflect too much the desires of a specific EIO and omit the inputs of other actors. They also observed cases where the revision of a piece of legislation did not consider their inputs. It can be because the choice to integrate some inputs more than others relies on the employee of the Commission in charge and that his political configuration, as well as the ones of the Commission ultimately influences his judgement. This observation holds true for most democratic institutions and represent an eternal problem, which can hardly be solved by regulations. Finally, it seems that ENGOs

[17] Green 10 is an informal network of the 10 major interest groups in environmental protection in the EU. See following paragraph on Green 10 network for more information.
[18] Series of legislative goals linked to the 6th Environment Action Program.
[19] REACH: European Regulation on hazardous chemical products.
[20] This appeared clearly when the Council modified the proposal for a regulation on CO2 emissions, attracting the disapproval of many environmental NGOs. See also *letter of Green 10 to the commission*.

suffer of a lack of feedback from the Commission. Indeed, they do not receive comments on each of their inputs and sometimes wonder if they have really been taken into consideration. This shows that even though they have been relatively well integrated to the decision-making process, they are still not an integrated part of it, and that the institutionalisation of that interaction can still be improved.

4. Analytical Discussion: improving democracy in the European Union

The previous observations can bring new perspective to two different discussions. The first one will revolve around the socialisation process, which brings interest groups closer to the Commission. The second will focus on the legitimacy this interaction can bring to the EU.

Socialisation Processes

As we have seen, the relation between environmental interest groups and the Commission is not completely structured yet. There are few formal rules that establish the procedures and the degree of involvement they should have during the policy-making process. However, it is undeniable that they have a certain influence on the Commission. In a sociological institutionalism point of view, this phenomenon becomes very interesting. In fact, we are witnessing a process of socialisation through informal institutions, which started during the seventies. This process is slowly moving toward a more formal relation, as pointed out by the Transparency Initiative and the Register for interest groups created in June 2008. There is a clear will from the Commission and the Parliament to include interest groups from the civil society within the decision-making process. Both institutions are presently working on a common register that will formalise the first step of the integration of interest-representatives[21]. This process is still at the early phase of socialisation, but it is likely to continue and bring interest groups even closer to the EU. ENGOs have been present within the decision making process for many years. It appears that the Commission and the Parliament are increasingly interested in officialising this union in order to improve

[21] An agreement on a common register has been reached on March 17th, 2009. It could be implemented by the end of the year. See http://ec.europa.eu/commission_barroso/kallas/doc/news12_03_09.pdf

transparency as stated in the transparency initiative. In such a scenario, it is important to consider their role and their capacity to improve democracy to the EU.

ENGOs as channel of legitimacy: representative democracy

Now that it has been established that NGOs will come to play a more and more important role in the policy-making process, one must discuss to which extent they fulfil the search for legitimacy of the Commission. Legitimacy has several aspects, but the main one is the fact that the people need to be linked to the policy-making process in order to develop the necessary feelings that will bring legitimacy to the Commission. In the case of the European Union, that link does not need to be bound to direct elections. Direct elections are linked to the normative legitimacy in place among European countries, but we have seen that this type of legitimacy will be very difficult for the Commission to achieve in the present political configuration. However, the Commission can gain the legitimacy linked to representative democracy by other means. If one considers the participation of ENGOs within the decision-making process of the Commission, one can see that they are a new channel for representativity. The ENGOs are structured in such way that they automatically bring forward the opinions of their members. Indeed, ENGOs do not exist outside of their members and their main goal is to gather as many of them as possible around a thematic subject. If at any time their politic diverge from the desires of their members, they risk disappearance. It can therefore be argued that they most effectively represent their members in a very specific political area. Moreover, in the case of Greenpeace and WWF, membership is open to any adult with a bank account and a valid address within the country of residence of the national office. Membership fees tend to be very symbolical to gather the largest amount of members possible. On top of direct elections, legitimacy can be linked to efficiency, transparency and participation. Efficiency in the fact that the decisions taken must fit with the needs of the people[22], transparency in the fact that the people must be informed in an understandable and direct manner of the reason for such decisions and finally participation in the fact that people need to feel that they can participate if they choose so[23]. The Commission already fulfils the criteria of Efficiency, but transparency and participation can be greatly improved by the NGOs mentioned previously. Actually, they base a large part of their work on communication

[22] Legitimacy through efficiency is the one described by Jean Monnet and on which the EU was built.

[23] Participation is linked to the discussion on participatory democracy in chapter 3. It also includes accessibility, transparency and inclusion.

to the public and on the participation of their members into the process. They could therefore participate to the reconciliation of the public with the Commission, and thus to its legitimacy.

"Elitisation" of the ENGOs

Robert Michels has brought up the problem of specialisation and "elitisation" of large-member organisations such as Unions, a type of organisation similar to the NGOs. Michels argues that modern organization renders participatory democracy impracticable because it invariably results in leaders dominating followers (Wolfe, 1985: 2). It results in the creation of oligarchic type of structures that prevent any forms of participation and limit the democratic connection between the base and the leadership, which was the basement for the legitimacy of such organisations. This problematic is interesting to discuss because it has also been raised by Tony Long (director of WWF EPO), who is concerned that WWF employees at the European Policy Office were ultimately mimicking the elite structure of the Commission in order to be accepted within the policy-making process, thus becoming elite themselves. The more ENGOs mimic elite behaviours, the more distance they put between them and their support. In that case, it is difficult for them to keep the claim of legitimacy linked to that top-bottom connection. However, it seems that Michels' assertion is exaggerated. Indeed, there are several factors, which can contribute to the limitation of such an oligarchic structure. First, the fact that the director of WWF EUO is concerned by this problem shows that he is aware of it. There is consequently less chances for the formation of an oligarchic structure in that case. Secondly, the functioning of the ENGOs itself participate in strengthening the link between base and top through the formation of a collective solidarity (community) (Wolf, 1985: 3), which ultimately bring the leadership closer to the base from which they are issued. This collective solidarity is the cement that link smaller units together in larger sub-units, which finally associate to form the ENGO in question. This community is what insures that leaders adopt interests issued from the base in order to insure its durability. Moreover, as Aristotle already argued more than two thousand years ago, this community possesses an educative capacity, which benefits each of its members. Each of the members acquires the possibility to participate through the collective solidarity, which in turn gives them the knowledge to act more efficiently and to take wiser decision, making them 'better' members. In the case of Greenpeace and WWF, the link between the top and the base seems well developed. Indeed, the goals and politic of the European offices are decided within a board of management composed of the directors of the largest national offices, which themselves represent the interest of their national office. Moreover, the structure of such

ENGOs gives place to the participation of their members through petitions and voluntary work, which include them within the elaboration of the common goal of the collective solidarity and reduce the risk of oligarchy.

Linking citizens and decision-makers: participatory democracy

The Commission suffers a lack of legitimacy in a representative democracy perspective because it is not composed of elected representatives, but of appointed officials. The "legitimacy of efficiency" advocated by Jean Monnet[24] in a context where the EU was still a remote international system has reached its limits. This problem has already been at the centre of the debate on the democratic deficit of the EU. In theory, the Commission is not directly accountable to the people when it takes decisions. The introduction of direct elections for the Commission, or the inclusion of channels of representation from the civil society such as NGOs and unions, may be a solution. However, the democratic deficit is a broader problem than pure political representation. Indeed, the question of democratic deficit concerns also national governments. This question is linked to a growing apathy of the voters as well as an alienation of the citizens from the state (Powell, 2008: 52). Low turnouts are not limited to the European elections and can be found in national elections like for example in the United Kingdom (Wright, 2006: 236). This symptom shows that the limits of representative democracy itself have been reached. Therefore, it might not be the solution for the resolution of the democratic deficit, since it will only transfer a problem already present at the national level. This problem is linked to the psychological side of legitimacy as discussed earlier on. The Commission is lacking both cognitive and pragmatic legitimacy. According to the low turnouts at the European elections, it seems that European citizens do not believe that the European institutions are accountable to them or at least efficiently representing their interests. This disbelief also affects the Commission.

The inclusion of civil society within the decision-making process, on the other side, shows very promising possibilities. The two ENGOs studied can be valuable models for the implementation of participation within the European democratic system. The present studies have revealed that the interaction between the Commission and the ENGOs is functioning better than official publications would let us think. Representatives from both Greenpeace and WWF recognise a good access to the decision making process, and are included by the commission. Even though the actual interaction can be improved, they present a valuable

[24] Cf. Discussion on the white paper on governance p.3

channel for the implementation of ground principles of participatory democracy such as transparency, accessibility and inclusion[25]. They can help spread information from the EU to the citizens because they already base their functioning on high communication skills, allow access to the decision-making process for their members and present a relatively good level of inclusion. In that way, ENGOs are a good channel for participation and should be considered in further discussion on the democratic deficits. Those qualities can be very useful to reconnect the European citizens with the European structure of governance since the ENGOs are highly inclusive. They are inclusive in the sense that they rely on the number of their members to support their voice, thus being open to all citizens.

On top of it, they can improve the quality of the already existing European democracy. Indeed, if they can trigger participation among the European citizens, they automatically contribute to the educative quality of participation. The more citizens will take part, the better "participant" they will become. One could parallel it to the discussion of Aristotle on "the democrat", who becomes a better and better democrat through its involvement in the affairs of the city, thus improving the overall quality of the democracy in which he evolves (Winthrop, 1978:169). It can also improve the European democracy by the fact that the more citizens will be included, the more democratic the resulting decisions will be. Here again, this position is shared by Aristotle, which already recognised that "a mob judges better than any one of them, arbitrarily chosen, might" (Aristotle in Winthrop, 1978: 159). This sentence reflects the fact that consultation and consensus are always an improvement for democracy, two traits that can be enhanced by the presence of ENGOs within the European system of governance.

Conclusion: Discussing democracy

The democratic deficit is based on the fact that European citizens do not have a direct electoral power over two of the major European Institutions. The Commission is trying to gain democratic legitimacy by including the civil society (and NGOs) into the decision-making process[26]. The present study has established that this relation was relatively well functioning. It can bring a new perspective to the concept of political representation in the EU. Actually, until now, the concept of political representation was limited to elected representatives and therefore to the European Parliament. However, one can discuss to which

[25] Cf. Participatory democracy, ch. 2 § 3
[26] Cf. White Paper on Governance

extend supporting an NGO with a political program is different from supporting a political party with another political program. It will finally depend on the organization of the political system itself. For example, in the Danish political system, representation through unions can be considered as important as representation through the political system, when it comes to political decision-making in labour policy area[27]. Moreover, NGOs are providing channels of information and socialisation for the European citizens, which can reduce the gap between them and the EU.

Nevertheless, we know the significant number of interest groups involved in the process, which makes it difficult to establish and control an effective system of governance. Therefore, it is still impossible to advocate the replacement of a traditional political representation by one based on the participation of citizens through interest groups from the civil society. It would be, for the time being, unworkable. However, I advocate that representative democracy is not enough anymore and that it can be highly improved by the introduction of channels of participation within the democratic structure of the EU. The participation of NGOs can become a valuable complementation to the European democracy because it can form a channel of representation and participation for the citizens, which can help the EU overcome its democratic deficit, reconnect the citizens with their leaders, and with the notion of democracy. ENGOs are very interesting because they present a well-established and well functioning cooperation with the Commission, which can be used as model for the establishment of similar type of cooperation within other policy areas. ENGOs can bring alternative expertise and counter-balance the pressure of industries and financial sectors, which are becoming more and more influential in a globalised system of governance, a fact that is probably responsible for the progressive alienation of citizens from their governments.

Opening

This research presents but a minor section of the overall structure of interaction between the Commission and the civil-society. Moreover, the democratic deficit of the EU is not limited to the Commission and concerns the entire system of governance. The present thesis focuses on the Commission and the ENGOs because they present a valuable source of inspiration for tackling the problem of democratic deficit, although other studies could beneficially complement the present one. Further research should focus on the same type of relation

[27] Not a single law concerning the labour market and worker rights is passed without the approval of state, unions and employers together.

between ENGOs and other European institutions in order to assess their integration within the overall system; and between EIOs and European institutions in order to better understand their weight within the equation described earlier on.

Moreover, a democratisation through civil-society requires looking at two stages of this system. Firstly, at the efficacy of the interaction between the Commission and the ENGOs to be sure that those ENGOs are integrated within the decision-making process. Secondly, at the actual possibilities for representation and participation of basic members within those ENGOs in order to address the critic of elitism voiced by the director of WWF EPO and by Robert Michels, which was mentioned in that thesis, but not fully answered. This study focused on the first stage. Further research should therefore focus on the actual possibilities of participation for the basic members of those ENGOs would therefore be a valuable complement to the present paper.

Bibliography

Primary sources

Official publications of EU legislations: (material found on Prelex)

- *COM(2001) 428 final* : White Paper on Governance

- *COM(2007) 856 final*: PROPOSAL FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND COUNCIL for a regulation to reduce CO2 emissions from passenger cars

- *COM(2008) 323 final*: EU transparency initiative

- *SEC(2007) 1723*: Impact Assessment accompanying the PROPOSAL FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND COUNCIL for a regulation to reduce CO2 emissions from passenger cars.

- Public hearing: "*Reducing CO2 from passenger cars and light-commercial vehicles*", Brussels, 11 July 2007, 9.00-13.00, FINAL REPORT

- Report CPCS 2a : *Report of working group "consultation and participation of civil society"*, Group 2a

Interviews

- Interview of Tony Long, Director of WWF European Policy Office, 14/04/2009

- Interview of Marta Vertier, GMO Campaigner for Greenpeace European Unit, 15/04/2009

- Interview of Katharina Spens, Environment Policy Officer, European Commission, 15/04/2009

Report from the House of Lords

- Report "*INITIATION OF EU LEGISLATION"* from the hearing at the UK representation in Brussels on THURSDAY 7 MAY 2008, between Mr. Tony Long, director of WWF European Policy Office and the SUB-COMMITTEE E of the House of Lords

- Report "*INITIATION OF EU LEGISLATION"* from the hearing at the UK representation in Brussels on THURSDAY 8 MAY 2008, between Ms Catherine Day, Secretary General of the Commission Secretariat, Mr. William Sleath, Assistant,

Office of the Secretariat-General, and the SUB-COMMITTEE E of the House of Lords

Official Websites: (all consulted in April-May, 2009)

- Official Website of the Commission: section Environment:
  http://ec.europa.eu/environment/index_en.htm

- Official Website of the Commission: section transparency initiative and voluntary register for interest groups:
  http://ec.europa.eu/transparency/index_en.htm

- Official Websites of Green 10 and of each of its ten members (for information on membership requirements, publications on CO2 regulation and general knowledge)
  - www.green10.com
  - www.greenpeace.eu
  - www.wwf-epo.com
  - www.foe.com
  - www.birdlife.org
  - www.bankwatch.org
  - www.climnet.org
  - www.env-health.org
  - www.transportenvironement.org
  - www.eeb.org
  - www.nfi.at

Secondary Sources

- Føllesdal A., 'EU legitimacy and normative political theory' in Cini M. & Bourne A.K., *Palgrave Advances in European Union Studies*, Palgrave MacMillan 2006, p.151-173

- Friedrich D., 'Participatory Democracy in the European Union? European Governance and the Inclusion of Civil Society Organisations in Migration and Environmental Policies', *Fifteenth International Conference of the Council for European studies*, March 29-Arpil 2, 2006

- Hooghe L. & Marks G., 'Unravelling the Central State, but How? Types of Multi-Level Governance', *The American Political Science Review*, Vol. 97, No. 2. (May 2003), pp. 233-243

- Koppel J.G.S., 'Global Governance Organizations: Legitimacy and Authority in Conflict', *JPART* 18:177-203

- Lenschow A., 'Environmental Policy' in Wallace H., Wallace W. & Pollack A.M., *Policy-making in the European Union*, 5th Ed., Oxford University Press 2005

- Lister S., 'NGO Legitimacy: Technical Issue or Social Construct?', *Critique of Anthropology* 2003; 23; 175

- Montesquieu , *The spirit of laws*, book XI, 1749

- Myrto Tsakatika, 'Claims to Legitimacy: The European Commission between Continuity and Change', *JCMS* 2005 Volume 43. Number 1. pp. 193–220

- Newman M., 'After the 'permissive consensus': still reaching for democracy', in Richardson J., *European Union: Power and Policy-Making*, 3rd Ed., Routledge 2006, p.377-395

- Manent Pierre, *Histoire intellectuelle du libéralisme: dix leçons*, (1987, réed. 1997)

- Osswaarde R., Nijhof A. & Heyse L., 'Dynamics of NGO legitimacy: how organising betrays core missions of INGOs', Public Admin. Dev. 28, 42–53 (2008)

- Pollack M.A., 'Theorizing EU policy-making', in Wallace H., Wallace W. & Pollack A.M., *Policy-making in the European Union*, 5th Ed., Oxford University Press 2005, p.14-48

- Powell F., 'Civil Society, Social Policy and Participatory Democracy: Past Present and Future', *Social Policy & Society*, 2008, 8:1, 49-58

- Schuman M.C., 'Managing Legitimacy: Strategic and Institutional Approaches', *The Academy of Management Review*, (July 1995), 20; 3; p.571

- Warleigh A., 'conceptual combinations: multi-level governance and policy networks', in Cini M. & Bourne A.K., *Palgrave Advances in European Union Studies*, Palgrave MacMillan 2006, p.77-95

- Wiener A., 'constructivism and sociological institutionalism', in Cini M. & Bourne A.K., *Palgrave Advances in European Union Studies*, Palgrave MacMillan 2006, p.35-55

- Winthrop D., 'Aristotle on Participatory Democracy', *Polity*, Vol. 11, No. 2 (Winter, 1978), pp. 151-171

- Wolf J.D., 'A Defense of Participatory Democracy', *The Review of Politics*, Vol. 47, No. 3 (Jul., 1985), pp. 370-389

- Wright S., 'Electrifying Democracy? 10 Years of Policy and Practice', *Parliamentary Affairs* Vol. 59 No. 2, 2006, 236–249