Perspectives on European Politics and Society

The European Commission and the public governance of interest groups in the European Union: Seeking a Niche between accreditation and laissez-faire

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The European Commission and the Public Governance of Interest Groups in the European Union: Seeking a Niche between Accreditation and Laissez-Faire

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ABSTRACT   *As interest groups participate in public policy, so demands arise for the regulation of their input. These vary between purposeful laissez-faire, and accreditation in return for norm observance, with attempts to find points between these often focusing on supervised and/or incentivised self-regulation. We classify the EU system as 'de-facto' accreditation, based around generalised and ill-defined notions, and on preferences for the simplification of consultative life and to screen out outsider groups with a narrow membership basis that don't follow the 'rules of the game'. The operationalisation of 'representativity' criteria carries with it the danger of privileging certain categories of groups over other types of groups. A wider legitimacy basis is suggested by a limited comparative literature, a sharpening of the concept of accountability and types of interest groups.*

KEY WORDS: EU democratic legitimacy, interest group regulation, public policy participation

If nothing else, interest groups exercise 'voice' in the public arena. However, when they are drawn any closer to policy-making processes, their involvement raises questions of legitimacy. Such concerns find expression as 'lobby regulation', often narrowly drawn for the avoidance of excess and undue influence. More broadly, however, are questions about what should be expected of what is often referred to as organised civil society (but turns out to be interest groups) 'participation' in public governance, and it is these issues we seek to address. The boundary between 'voice' and 'participation' is elusive and presents practical problems that generally point the would-be regulator down a road leading to self-regulatory models. But the questions centre on concepts of accountability and internal deliberation, transparency, the basis of group 'constituency' (whether membership or conceptual) and the transmission of information to the public domain.

In this paper we examine these broader issues with respect to the European polity. The dispersal of authority and institutional players arising from the multi-level

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governance nature of the EU makes regulation of its exchanges with interest groups problematic. Nonetheless, the European Commission's various powers and roles in the EU policy process make it the principal interlocutor of interest groups. Whilst a variety of exchanges exist, with varying degrees of institutionalisation and formality, there has been a concerted effort to systematise these exchanges as part of an effort to improve the legitimacy of EU policy-making derived from opportunities for participation. The thrust of these has gone beyond simple issues of probity to a system aimed at achieving a 'level-playing field' of access to policy making through empowering citizen interest groups (Greenwood, 2007). Following a wider contextual discussion about the expectations generated by group participation, a content analysis of the European Commission's various schemes of engaging with interest groups follows, leading to a conclusion that these amount to *de facto* accreditation and which constitute a somewhat blunt instrument. We continue by examining the way in which this approach has potential knock-on effects in terms of political inclusion. Taking existing positions of (1) formal accreditation and (2) a 'market place for ideas' as a point of departure, we explore where some of the middle ground might fall. Whilst diverse motivations are listed by the Commission for regulation, we later develop the possibility that current concerns by the Commission – despite rhetorical discussions over democratic deficit and account-ability – are driven by desires to make consultation more manageable, and in finding a way to remove the need to engage with aggressive outsiders who appear to be little more than one-person-and-a-website activists. A concluding statement concurs with an emerging consensus from the literature that increased status in public policy making implies increased scrutiny, but argues that a robust application of one-size-fits-all rules of internal group democracy would be counterproductive. Some wider contextual assurance standards very recently developed by citizen interest groups seem to point the way forward for input legitimacy, particularly when placed in a more formalised regulatory context.

Interest groups are key actors in contemporary forms of governance throughout the western world. Civil servants seek group input, because they *may* have expertise, assist with implementation or they add democratic legitimacy to the outcome. Put in Easton's (1965) terms of input/output legitimacy, the former two points aid output legitimacy, and the latter input legitimacy. A salient point here is that groups *may* bring benefits to the policy process. But, clearly, dis-benefits are possible. Some accounts see them as rent-seeking cartels interfering with the wealth creation process (Olson, 1982), and some see groups as monopolising elites undermining public governance. Groups may lack resources and expertise or advocacy, may be based on faulty, biased or contrived thinking and/or research (hence undermining their contribution to output legitimacy), may lack authority and democratic legitimacy with those they purport to advocate for (hence undermining input legitimacy), and they may contribute to system overload.

Given these issues it is no surprise that questions arise over the need to regulate group access to the public policy process. The EU context is chosen because substantial tensions have recently arisen from its reliance upon groups to act as a substantial secondary channel of input legitimacy due to core weaknesses in EU representative democracy. Among the most distinctive features of EU interest representation are the federated (associations of associations) nature of most EU

interest groups, the reliance upon groups to contribute to a wide range of functions broadly identified as output and input legitimacy (together with the resource deficits of political institutions), and as a channel of political communication between supra-national and inter-governmental forces. EU interest groups are highly institutiona-lised for these roles, with the European Commission playing an exceptionally vigorous role in group formation and maintenance, particularly among citizen interest groups. Around 2% of the entire EU budget – €2000,000,000 – is spent on projects through interest groups (Kallas, 2005). As such, if pressure to regulate interest group activity is likely to arise anywhere, it is in an EU context.

It is possible to crudely present the contending views on the issue of regulation as falling into two opposing camps. On the one hand, some argue that only groups with internal democratic structures or similar should be given access. In the European context, Warleigh (2000, 2001) is particularly 'sceptical' of the potential democratis-ing effects of the EU's engagement with citizen interest groups. His empirical examination of so-called 'consumer', 'environmental' and 'social policy/civil liberties' groups active at the EU level (both European and national) revealed that most groups examined had poorly functioning internal democratic processes and failed to facilitate high levels of engagement with the European policy process among their members or supporters (Warleigh, 2001). An emerging conclusion seemed to be that yielding positive benefits from engaging with interest groups requires a system of tests to ensure that they are 'representative'. In the absence of the requisite standards of representativeness, groups in this account should be excluded from policy processes and governmental institutions. For instance, Warleigh proposes that the EU establish the representativeness of groups before allowing them access to the policy process. He concludes that '...the Union should impose a different kind of conditionality: NGOs must address their internal democracy as the price of access to EU decision-makers' (2001, p. 636). As will become evident below, this approach finds echoes in the practice of other trans-national political institutions. However, as the analysis will show, the various European institutions are clear on some need to scrutinise representativeness and accountability, but settle primarily on *de facto* resolutions. Further, EU institutions equivocate on what representativeness means: For instance, is it geographical coverage or accountability in decision making to member organisations?

At the other end of the spectrum are contributions such as that by Wolf (2006), which argues that in a market place of ideas there is little justification for vetting access for any group – regardless of view, internal structure or funding source. He distinguishes legitimacy granted by processes of authorisation – such as that delivered by internal democratic decision making – with the acceptance of a group as 'an authority' by virtue of other forms of legitimacy. So what may these other forms of legitimacy be? A consensus of much of the literature (most of which originates in analysis of global civil society) asserts that group legitimacy arises in various forms (see Keck & Sikkink, 1998; van Rooy, 2004). Van Rooy (2004, pp. 63–97), for instance, identifies 'representation' as a core source of democratic legitimacy, focusing on dual criteria of membership (size, breadth and depth) and internal democracy (election, control and accountability). However, she also identifies other sources of legitimacy such as 'victimhood', 'expertise', 'experiential evidence' and 'moral authority'. The extent to which these 'other' forms of legitimacy enhance or

undermine democratic ('representative') legitimacy is a question of some considerable debate. Some, van Rooy included, see these as supplementary, and thus second best, to democratic legitimacy. Others see them as being not inconsistent. For instance, Risse (2006), in an analysis of new modes of (trans-national EU) governance, likens the public voices of NGOs as constituting a deliberative form of democracy (with democratic legitimacy flowing from that), and points to external accountability as being more pertinent than internal flows (down to supporters). This emphasis upon public accountability finds echoes in a 'European Transparency Initiative' (ETI) proposed by the European Commission in May 2006 (European Commission, 2006a), in which an issue about distorted information concerning the likely impact of policy proposals being placed in the public domain by civil society organisations is specifically identified as a regulatory issue.

Some authors pursue a middle ground. Typical of these is one offered by Edwards and Zadek (2003, quoted in van Rooy, 2004, p. 138), who argue that 'any non-state actor is entitled to voice an opinion.... But negotiating a treaty is a very different manner, in which detailed rules may be essential to preserve genuine democracy in decision making. In this case, legitimacy through representation is essential.' The argument here is that if a group seeks only to voice an opinion on the world stage, then it need not require internal democratic processes to generate democratic legitimacy, but that participation in public policy making does raise public accountability issues. Citizen interest groups have themselves responded to a legacy of wider challenges upon their legitimacy, most recently in June 2006 by developing (through an alliance of some of the leading 'brands') an International NGO Accountability Charter, defining accountability in the widest possible sense, and embracing a series of detailed principles which extend to the standards of information placed in the public domain (Amnesty International, 2006). A recent core statement of principles from the leadership of the EU citizen interest group community identifies authority and expertise, coupled with trust and reputation, and performance, as the basis of their legitimacy (Fazi & Smith, 2006). With a caveat that the last of these may be self-interested criteria definition aimed at securing a place at the top of an accreditation tree, these developments do reveal an acceptance by mainstream citizen groups of the legitimacy of the accountability agenda. Another is a proposed 'European Union Concordat' (NCVO, 2006) to mirror 'compacts' developed at in a number of national contexts (most notably in Estonia and the UK) between national governments and lead voluntary sector organisations. These national compacts include statements of mutual obligations and expectations without being legally binding, and commit organisations to indicate how interests were involved in formulating their positions and to present accurate information based on unbiased research. The proposed EU Concordat version, however, asks much less from civil society organisations compared to some national variants, with all of its nine statements primarily focused upon what the EU institutions shall deliver, including demands that consultation should not happen during the summer, and shall be available in non-EU languages. The main concession offered from civil society organisations would be a more generalised mechanism of explaining how they arrived at their response (NCVO, 2006).

This debate exists against the backdrop of a more general theoretical discussion regarding the role of 'groups' in democratic life. Those concerned with social capital

emphasise the internal *participative* element of groups as important, while some deliberative democrats see groups as simple catalysts for public deliberation of important issues. But perhaps the most ambitious reworking of the potential for groups in addressing democratic deficit has been that of the associative democrats who advocate a primary role for associations in linking citizens and governing institutions (see Cohen & Rogers, 1992; Hirst, 1994). There is even the talk of a revitalisation of neo-corporatism (even macro-corporatism) in the European context (e.g. Schmitter & Grote, 1997). In such formulations the internal democracy of groups is a critical characteristic determining the capacity of groups to deliver on democratic potential. The debate over the importance of internal democracy is of both practical and theoretical salience, particularly in an EU context given the discursive use that the European Commission makes of the concept of civil society for legitimation purposes.

But there is an argument to suggest that internal democracies – even if they could be established – are less important for legitimating the advocacy of groups pursuing the interests of non-humans and future generations than groups pursuing the interests of humans (Halpin, 2006). There is no dispute about the empirical finding that many groups lack internal democratic procedures and practices. Rather, the implicit judgement that this is automatically a 'deficiency' can be challenged. Some groups – those that pursue the interests of constituencies without the prospects of 'presence' or 'voice' – *cannot* bring into membership those they advocate for. Extending democratic processes to *affiliates* is not clearly going to aid the legitimacy of the group's advocacy (for opposing view see Eckersley, 1999). For example, if the Worldwide Fund for Nature (WWF) does not extend direct participatory opportunities to its supporters, it is not a deficiency so much as simply a by-product of its status as an advocate for nature. Executing this advocacy task is not assisted by understanding the collective will of affiliates (although it is likely that the bulk of affiliates have a high degree of support for very generalised environmental goals). From this perspective, in terms of regulating group advocacy, accreditation on the basis of internal democracies, much as seems to be promoted by Warleigh (2001), would be problematic. It would lead to many groups unable to develop internal democracies involving their constituencies being excluded. Similarly, groups that could at least in principle draw their constituency into membership, but do not, would be excluded under the more narrow definition of representation defined above. This would put projects of political exclusion at cross purposes with projects for democratisation. Many politically marginalised and unpopular social groups lack the resources to effectively mobilise collectively. While there is some caution over benevolent advocacy on their behalf (speaking for those with voice is unfashionable), insisting on internal democracy and participation as a pre-requisite to access would simply remove a large number of citizen groups from formalised political forums. Ensuring the political inclusion and voice (through benevolent groups) for the marginalised and less powerful in society seems an over-riding consideration.

The above debate assumes that input legitimacy is at question. However, none of the above deals with governability issues. That is, the debate does not help where the problem is not increasing the democratic legitimacy of individual groups, but in rationalising the vast (and growing) group system. It is undoubtedly true that the types of risks inherent in group exchanges with policy makers can be eradicated by 'reputational' decisions. That is to say, policy makers simply avoid or refuse contact

with those who have not proven their worth on one of the bases described; while outsiders by choice rule themselves out (content to massage public opinion and exert pressure from outside). Indeed, this is the sort of informal approach adopted by Florini (2000, p. 236, cited in Sikkink, 2002, p. 315), who argues that poor and inaccurate arguments and ideas are eventually picked up by supporters, who will seek change through voice, or ultimately exit. As such, a 'market place for ideas' is self-regulating. But a system in which the procedures required of public administrators in engaging with outside interests do not permit the selective exclusion of interests requires the development of transparent regulatory criteria to manage engagement with groups.

Group accreditation seems to offer the prospect of a regulatory tool with which to shape the qualities valued in groups. Each of the benefits of expertise, democratic legitimacy and implementation, can be emphasised or de-emphasised. In addition, concerns over governability can drive the debate. In the case of supra-national governmental institutions, it is clearly the case that emphases have shifted. Initial focus upon the resources groups can bring by way of expertise and monitoring/implementation issues tends to give way to more fundamental agendas for groups among trans-national institutions because of their structural remoteness from civil society. In this setting, interest groups are cast as agents through which trans-national institutions can engage with a global citizenry. One key aspiration for groups in this setting can be to help plug democratic deficits that emerge from the absence of sufficient mechanisms of accountability and authorisation between global citizens and the decision makers in such institutions.

In the case of the EU, there is clearly a high degree of uncertainty over what problems need fixing. This flows through into the types of criteria that are promoted as necessary tests for group access. While there is ample literature with respect to the EU group system – its growth and constitution – and with respect to the development of accreditation, there is little treatment of the debate internal to the Commission about how to juggle goals of democratic inclusion with those of governability. Whilst the Commission identifies core policy problems of governability issues and demand overload, they equivocate on how best to achieve this, talking of representativity but without any clarity or consistency as to what that may mean. This ambiguity seems to catalyse a debate among groups themselves, with groups trying to shape criteria for access developed in their own image. We argue that the EU, as with many governmental organisations, faces a difficulty in balancing two key priorities surrounding its engagement with interest groups. On the one hand it needs groups to enhance output and input legitimacy, i.e. to enhance its capacity to deliver good policy and to legitimate its authority in democratic terms. On the other hand, it needs to ensure governability. As such, it needs to choose who it engages with well, with criteria that focuses on resources and expertise but also democratic credentials. These are clearly difficult imperatives to balance, arguably even harder for the EU given its basic deficiencies in terms of policy capacity (small civil service etc.) and democratic credentials (relying on weak forms of authorisation and accountability to European citizens).

Against this backdrop we examine the debate within the European Commission with respect to the accreditation of groups. We discover the debate over formal accreditation, its dismissal, and then the development of a *de facto* form of

accreditation. The European Commission, through its *de facto* system of group accreditation, fails to reflect the difficulties, foreshadowed in the literature, over developing criteria by which to limit group access. We speculate over a possible middle road, a 'third way' that may better reflect the dual needs of governability and democratisation, but resist the temptation to demand groups adhere to a democratic practice that many cannot reproduce.

The European Commission and Groups: Shifting Expectations?

There is some general acceptance of the notion that supra-national forms of government (as compared to nation states) tend to rely more heavily on groups. Put crudely, the lack of resources, autonomous capacity and direct accountability to citizens, arguably make them more reliant on groups than national governing institutions (e.g. parliaments, civil servants or governments). The secretariats of international governmental organisations – such as the UN and the Council of Europe – have formalised accreditation schemes for groups based around the role of groups as a source of legitimacy (separate from working through consent from national governments) and a way to garner resources and to help monitor governmental activities and hold them to account to international norms. These roles are explicitly valued in the EU context also, although as we argue later the accreditation scheme is of a *de facto* rather than *de jure* nature.

The role of groups in the EU political system is now codified by the 2004 (unratified) Treaty establishing a Constitution for Europe, where the Chapter on the 'Democratic Life of the Union' includes Article 47 on the principle of participatory democracy, in which clauses make explicit reference to interaction by EU political institutions with civil society, organised or otherwise. As with other supra-national governmental organisations, the EU has slowly shifted its rhetorical emphasis on groups as a necessary source of expertise and implementation power (to aid output legitimacy) towards an emphasis on groups as agents to enhance core democratic functions through participation (to aid input legitimacy). Over time, the European Commission has sought to make its interaction with groups systematic, developing mechanisms beyond those concerned with probity towards transparency, broadening participation, and equity (Commission, 1992), and to empowering the ability of groups to act as mutual checks and balances and as agents of system accountability. But this degree of institutionalisation of interest groups brings a 'responsibilities with rights' agenda, captured in the European Commission's 2001 White Paper on Governance (WPG):

> With better involvement comes greater responsibility. Civil society must itself follow the principles of good governance, which include accountability and openness. The Commission intends to establish a comprehensive on-line database with details of civil society organisations active at European level, which should act as a catalyst to improve their internal organisation. (European Commission, 2001, p. 15)

> Creating a culture of consultation . . . should be underpinned by a code of conduct that sets minimum standards. . . . These standards should improve the

representativity of civil society organisations and structure their debate with the Institutions. (p. 17)

In some policy sectors, where consultative practices are already well established, the Commission could develop more extensive partnership arrangements. On the Commission's part, this will entail a commitment for additional consultations compared to the minimum standards. In return, the arrangements will prompt civil society organisations to tighten up their internal structures, furnish guarantees of openness and representativity, and prove their capacity to relay information or lead debates in the Member States. (p. 17)

These quotations make two points apparent. They firstly make clear that the Commission has raised its expectations of the benefits that can ensue from engaging with groups. It provides a democratic rationale for engagement. Raising input legitimacy is clearly a new, and arguably more important, priority. Secondly, there is recognition that in order to reap such benefits some tighter controls on group access may be necessary. As will be revealed, the latter conclusion has opened up a difficult issue over accreditation.

Is There a European Commission Group Accreditation System and What Group Qualities are Promoted?

The adoption by the Commission of the view that they need to scrutinise groups in order to accrue democratic dividends from an engagement with groups raises the question of accreditation, and in particular what type of system (if any) does it use, and what type of criteria is employed?

Responses to the White Paper on Governance confirmed earlier statements in the Commission proclaiming no formal system. The European Parliament had stated that

however indispensable it may be to consult relevant groups and experts when drafting legislative proposals in particular, it should not be allowed to add a further level of bureaucracy, for instance in the form of 'accredited organisations' or 'organisations with partnership agreements'. (European Parliament, 2001, para 11e)

the creation of consultation standards must not be tied to any quid pro quo on the part of organisations of civil society because independent and critical public opinion is essential for a vibrant democracy. (para. 12)

This reaction against a formal system of accreditation seems to have been borne out in a *de jure* sense but had little impact *de facto* because, as is acknowledged by leading sources in the Brussels citizen interest group community, a system is in place in all but name (Fazi & Smith, 2006). This paradox, of a Commission in formal denial yet continuing in practice has been ever present. The Secretariat General of the European Commission, the lead service for overall relations with organised civil society, has consistently made statements which seem to reject a *de jure* accreditation

scheme. Moreover it seems to endorse the 'market place of ideas' view on interest group regulation through its assertions on an accreditation system. The long established position remains in force, that

> The Commission has a general policy not to grant privileges to special interest groups, such as the issuing of entry passes and favoured access to information. Nor does it give associations an official endorsement by granting them consultative status. This is because the Commission has always wanted to maintain a dialogue which is as open as possible with all interested parties. (Commission, 1992, p. 4)

We find evidence to support the view on the ground among groups in Brussels that a *de facto* scheme does exist, albeit that the criteria it uses to judge groups – the qualities it seeks to foster among groups using *de facto* accreditation as a tool – tend to suggest the Commission sees its biggest aim as rendering consultation more manageable through federal structures with encompassing EU coverage.

Virtually any bureaucracy in a democratic setting likes organisations that are authoritative and credible as a representative of a constituency (broadly conceived), have as broad a coverage as is possible as a means to simplify consultative life, avoid input overload, enhance two-way communication with civil society and play to the rules of institutionalised exchanges. As is evident, the territorial scale of the Commission's remit and the particular problems of democratic legitimacy it faces lead it towards an official preference for particular types of group. A statement of 'guiding principles' to govern its relations with interest groups current on the web pages of the Secretariat General records that the Commission tends to favour European federations (i.e. associations of national associations) over individuals (companies or citizens) or national organizations.[1] Although practice tends to differ somewhat across the organisation, the continued official preference for federations is borne of its wish, visible in WPG statements, for 'one-stop' EU associations that are broadly representative in terms of geographic coverage. These carry a much greater subtlety over the question of their application in any scheme of accreditation.

The White Paper on Governance was used by the European Commission to upgrade the status of its public database of interest groups, CONECCS (Consultation, the European Commission, and Civil Society). The database had been developed from 1996 (and 2002 in public web format) as a measure to assist with making consultation with outside interests more systematic and transparent, designed for use across the Commission services as a means to ensure that the relevant consultation partners could be located, thus providing an incentive upon groups for inclusion:

> The database enables both the general public and civil society organisations themselves to see what voices might be heard in the Commission's consultation processes, both within structured consultation forums and on a more informal basis.
>
> It provides a means for European civil society organisations to make themselves known to the Commission, thus increasing the list of potential consultation partners.

> It is a tool that can be used by the Commission itself to identify the appropriate mix of consultation partners who can offer the necessary geographical/sectoral/target group coverage.[2]

These statements make it quite clear that failure to achieve access to the database carries with it the possibility of being overlooked in consultation exercises. Groups such as Statewatch have made much of the way in which the entry rules to the database (outlined below) seem to exclude them from access to it, although there is as yet no evidence that groups are receiving either preferential or second-rate access to the Commission based upon their presence or otherwise in the CONECCS database. At this stage, the important point to note is whether the database is a *de facto* accreditation scheme in the making, a prospect floated in the Green Paper on the European Transparency Initiative (European Commission, 2006a). Whilst the Commission has consistently stated that its CONECCS database is not an accreditation scheme of any kind, and nor is it intended to confer special privileges,[3] an increasing number of entry thresholds have been placed upon groups since the White Paper on Governance, which seem to enforce preferences for 'extensive partnership arrangements' in return for the observance of certain norms. The Commission reflects that,

> the minimum standards for consultation currently applied by the Commission also suggest strengthening the transparency and accountability of those involved in dialogue and consultation.[4]

> The Commission reserves the right not to include an organisation in the database if it does not satisfy the stated requirements, or to remove subsequently any organisation which it discovers does not, or has ceased to, satisfy those requirements.[5]

Groups are required to confirm certain statements about themselves before access is granted. These include having members in at least three EU or candidate countries, the authority to speak for their members and that they operate in an accountable manner. We return to the issue of accountability later, but note here the emphasis upon representativeness as a geographic quality. Groups representing a 'what' rather than a 'who', such as 'Statewatch', are denied access on this basis.

If entrants to the CONECCS database hold a place on one of the Commission's Advisory Committees, which carry financial support, further requirements are made of them which appear to link the scheme beyond a simple 'telephone directory' concept to a process that reinforces norms of accountability and representativeness (however they may be defined). Thus, such groups are required to detail the spread of member state and candidate countries represented by their membership, a list of their member organisations and the proportion of their income derived from different sources. While at first glance this appears onerous, again it reinforces the 'preference' of the Commission for peak groups with EU-wide geographical coverage: The issue is of curtailing overload.

The criteria for 'representative' carry a degree of qualification in that the reference to 'member' embraces member groups of federations. Most (though not all) EU

interest groups are associations of a relatively small number of (predominantly, national) associations. For such groups, to satisfy the 'test' requires only that national member organisations are consulted by the EU umbrella group. This does not necessarily imply that any individual companies or citizens that may be members of national organisations are consulted, and as such is clearly problematic in terms of representative or participatory standards. The alternative to confederated status is mainly to be found among EU business associations, where direct company membership formats exist in which the application of representativity criteria present few problems for groups beyond explaining their predomination by large enterprises. Almost no EU political action groups have a significant individual citizen membership basis. In the citizen domain, the presence of non-confederated groups active in EU policy making include those which are policy offices of international organisations geared to engaging in institutional dialogue (such as Greenpeace and the World Wide Fund for Nature), and a very small number of 'activist' cells strongly connected to wider social movements (often, anti-globalisation), which are heavily dependent upon a single individual and a website. As the latter type of organisation employ 'outsider' tactics alongside institutional participation, they present a problem in a highly institutionalised system of group participation such as the EU, where groups are expected to perform systemic functions. Regulatory effort may be disproportionately directed towards this type of group, with the CONECCS system presently used as a quasi accreditation system. In sum, a sledgehammer is wielded in the direction of a small nut that is not fully signed up to the 'rules of the game'.

The 2002 Commission Communication on consultation standards records that:

> openness and accountability are important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must be apparent:
> - which interests they represent
> - how inclusive that representation is.
>
> Interested parties that wish to submit comments on a policy proposal by the Commission must therefore be ready to provide the Commission and the public at large with the information described above . . . *if this information is not provided, submissions will be considered as individual contributions*. (European Commission, 2002, p. 17, emphasis added)

In November 2005, Directorate-General Justice, Freedom and Security issued a Communication seeking to develop a code of conduct for 'non-profit organisations' to promote transparency and accountability best practices (European Commission, 2005a). Whilst initially focused upon the need to prevent groups being used as a vehicle for terrorist funding, it strays beyond this agenda to recommend enhanced standards of transparency as good practice to raise the question as to whether Community funding of 'non-profit organisations' could be linked to enhanced transparency and accountability measures, and whether the registration of such organisations as lobby organisations could be made conditional with the compliance of the Code. These appear to have been deferred pending consultation on the Commission's May 2006 Green (i.e. consultative)

Paper on a European Transparency Initiative in which it (initially) proposes 'a voluntary registration system, run by the Commission, with clear incentives for lobbyists[6] to register. This system would consist of a web-based voluntary registration system for all lobbyists who wish to be consulted on EU initiatives.'[7] The original proposal for the ETI (European Commission, 2005b) explicitly raises the prospect that an expanded version of the CONECCS database could provide the basis for such a system. Using CONECCS as a regulatory vehicle has never been far from the surface since its web launch in 2002, with its access criteria providing a *de facto* accreditation basis.

Perhaps the most significant conclusion to be drawn here is about the group qualities being assessed and their contribution to either input or output legitimacy. Despite the White Paper's emphasis on group engagement 'upping' input legitimacy, it appears from the above that the subsequent debate within the Commission, and its limited practice, support the conclusion that it sees accreditation (*de facto*, although it continues to be in denial regarding a *de jure* scheme) as addressing a variety of issues. These range from the control of 'lobbying excesses' (probity, over-crowding) through to broader issues of transparency, accountability, group representativity and a level-playing field for participation. A new emphasis in the most recent of initiatives lies upon the issue of public accountability for the accuracy of information when groups participate in policy making. Where the term representativity is often deployed, it turns out to be operationalised in terms of encompassingness (peak federations) and geographical coverage (funnelling MS groups into a single voice). These types of 'group qualities' do not really assist in ascertaining contribution to democratic legitimacy (beyond a simple notion that the interests of any one sector are organised across all nation states) as they do about demand management, enhancing governability and reducing overload. What is not really considered is whether accreditation should extend to internal group democracy.

Interest Group Accreditation: The Response of EU Interest Groups

The reactions of EU interest groups to the debate over accreditation reflects the ambiguity created by the Commissions over use of the term representativity. Is it scope or territorial coverage? Is it internal democracy?

While the close observer may deduce the Commission's over-riding concern as centred upon controlling overload, groups themselves have tried to re-define the term to suit their own purposes. The Union of Industrial and Employers' Confederations of Europe (UNICE) (renamed Business Europe on 23 January 2007), the principal EU business group, has advocated an accreditation scheme with criteria which very closely reflects its own status as a designated principal social partner organisation. These are based upon a high threshold of 'representativity' criteria, centred upon geographic coverage and the ability of members to speak in turn for their own constituencies. The criteria was established by the European Commission for the principal EU social partner organisations, as these are empowered to enter into the drafting of EU legislation in employment-related fields, and would be a challenge for many (if not most) EU interest groups to meet. Additional to these criteria is UNICE's proposal that organisations must be demonstrably independent of public authorities in terms of finance, a measure which

would exclude virtually every citizen interest organisation operating at EU level from accreditation (Jacobs, 2003), in that most have funding from EU political institutions.

The elite of EU citizen interest organisations have also taken sides on the concept and detail of the accreditation debate in somewhat predictable ways. The leading European Consumers' Organisation (BEUC) was active in promoting access criteria to the European Consumer Consultative Group (ECCG), a formal consultative group of the European Commission involving structured dialogue with national and EU consumer organisations. The ECCG now carries strict eligibility criteria, based upon geographic representativeness and centrality of consumer mission,[8] reflecting BEUC's long and largely successful mission to establish itself as the principal EU consumer organisation and to see off its rivals. On the other hand, the European Citizen Action Service (ECAS) is ill-suited for any system of accreditation (ECAS, 2004). ECAS

> argued strongly that it would be wrong to introduce any system of accreditation of the kind introduced by international organisations – that the Commission should keep an open door to any NGO that wished to put forward its views – and that consultation should go wider than the Brussels 'inner circle'. (ECAS, 2004, p. 5)

The European Social Platform has accepted from the outset of the Commission's deliberations the principle of geographic representativeness for EU groups to observe (European Social Platform, 2000). It has also expressed concerns about the way in which internet based consultations could obscure the extent to which a responding organisation is representative, construed in terms of ensuring a group is actually pursuing the interests it claims (European Social Platform, 2002). As a 'family' of leading EU-level citizen interest organisations in the social domain (currently with 38 members) it would itself have little difficulty in demonstrating its breadth of functional coverage of EU groups in the social domain. These properties ensure it already enjoys a *de facto* 'partnership arrangement' in its dialogue with EU institutions, borne of a history as a creation of EU institutions charged with creating a 'civil dialogue' (Geyer, 2001).[9] It has sought to consolidate the benefits it derives from its *de facto* 'accreditation' and the exclusiveness this entails by 'asking the Commission for a consultative status on grounds similar to the Council of Europe system' (European Commission, 2005c, p. 5). Arguing for the highest level of financial support to be reserved for it, the Social Platform has very recently stated

> we believe . . . that the future programme should also provide lower levels of support to other NGO networks which can prove that they can bring a useful contribution to the EU debate and can help involve citizens in the process. (Cullen, 2005, p. 17)

The Social Platform hosts the Civil Society Contact Group, a 'family of families' of citizen interest groups in different cognate domains. A former Chair argued when in office that

> I personally do believe that we will need to have a system of accreditation for NGOs. . . . I believe that NGOs need to establish criteria for transparency in relation to decision making, in relation to membership, accountability and funding. (Alhadeff, 2003, p. 103)

The European Environmental Bureau (EEB) is another 'family' organisation that has followed its interests by favouring an accreditation system (Fazi & Smith, 2006). Like the Social Platform, the EEB is a creation of the Commission for institutionalised dialogue purposes, and remains the lead player in the formal dialogue between DG Environment and the 'G10' informal grouping of environmental organisations. Like the Social Platform, accreditation would formalise its status, and give it an institutionalised edge over other G10 members (mainly European branches of international organisations) as a dedicated EU federation.

Such organisations, easily able to meet geographic representativeness criteria on the basis of their confederated nature, would thus place themselves in a powerful institutionalised governance position for the wider world of EU NGOs and their access to political institutions. But an open question here is what is meant by accountability, and in particular to whom and over what? Concepts such as 'representativeness', 'transparency' and 'accountability' become synonyms, and statements such as those above, without any further accompanying explanation, contain some degree of ambiguity.

These problematics in turn raise a series of further questions. The first of these concern which type of organisations, if any, should be granted an elevated status through accreditation criteria, and how such criteria could be formulated. One approach is to abandon any attempt at differentiation in a 'market place of ideas' approach, accepting that legitimacy of a kind arises as opinion is voiced and challenged in the political system. This is popular among a number of EU NGOs and national NGOs with significant orientations, stressing the way in which 'representativeness' can arise from a breadth of participation of civil society organisations (Fazi & Smith, 2006). But this becomes problematic when a group seek to participate in the formulation, or/and delivery, of public policy, because it enters the arena of public governance, and there is a continuing legacy of contributions from civil society organisations which have fallen short of public probity, particularly on standards of information placed in the public domain, and which appear to amount to more than isolated examples (see, for instance, Bond, 2000). Yet can a boundary point between groups 'exercising voice' and 'direct engagement' be satisfactorily defined? What standards should be applied beyond the boundary point when putting forward ideas becomes political participation, and by whom? Can a system devise rules to protect against any one group from challenging democratic legitimacy by securing a disproportionate influence on the basis of ownership of superior time or/and financial resources? It is apparent from various lobby regulation schemes that there are more questions than solutions to even minimalist concerns of public probity, let alone the wider questions we can do little more than pose. Our earlier review indicated some of the suggestions that have arisen relating to standards which could reasonably be developed for observation among policy participants. This is relatively unproblematic for public bureaucracies able to govern the behaviour of civil servants in an employment relationship, but

can standards be developed and applied for adoption among a wider constituency of policy participants?

Formal Accreditation Ruled Out but 'Representativeness' Lives On: A Muddle in the Making?

The Commission's 2002 Communication on Consultation reflects the varying inputs thus outlined. It seems to recognise the drawbacks of basing a system around a total reliance on what it describes as 'representative European organisations', although seems to take an 'each-way bet' on the concept:

> The Commission would like to underline the importance it attaches to input from representative European organisations...however, the issue of representativeness at European level should not be used as the only criterion when assessing the relevance or quality of comments. The Commission will avoid consultation processes which could give the impression that 'Brussels is only talking to Brussels' as one person put it. In many cases, national and regional viewpoints can be equally important in taking into account the diversity of situations in the member states. Moreover, minority views can also form an essential dimension of open discourse on policies. On the other hand, it is important for the Commission to consider how representative views are when taking a political decision following a consultation process. (European Commission, 2002, pp. 11–12)

The carefully crafted tone of this paragraph appears to signal the Commission's continued dismissal of a *de jure* system of accreditation based on geographic representativeness. Yet despite distancing itself from such a formal scheme, its desire to hold on to a working practice of representativeness is clear, albeit that precisely what this may mean and for what purpose retains its ambiguity. The Commission's criterion for appointment to advisory committees is to focus 'on the degree of representativeness of the group to be consulted.'[10] David O'Sullivan, Secretary General of the European Commission, told a conference on 'NGOs, Democratisation and the Regulatory State' in September 2003 that

> Openness and accountability are important principles for the conduct of organisations when they are seeking to contribute to EU policy development. It must then be apparent which interests they represent, *and how inclusive that representation is*. (O'Sullivan, 2003, p. 73, original emphasis)

By 'accountability', the Secretary General explained that he was referring both to the Commission's own accountability 'and on the organisations participating in consultation processes' (p. 73), though offered no further clarification as to the latter. Indeed, the sense in which the concept has been used by the Commission in its application towards interest groups has historically had a ring of ambiguity about it, in that the uses covered appear to range from those of general public transparency, financial accountability, member accountability, constituency accountability and even public accountability. As noted above, this ambiguity has catalysed a degree of

positioning among EU groups to try to shape accreditation guidelines in their own image. Some insights into the Commission's positions do however arise from his remark at the conference event[11] that 'some NGOs are run along the lines of regimes we wouldn't approve of'. This may suggest that a key goal of the Commission is to achieve a set of very basic standards designed to screen out to the margins those organisations that are little more than a one-man band with a website.

So, after all, the key concern of overload reveals itself as a primary motivation. A range of 'new', small and resource challenged groups with little expertise would absorb too much of the Commission's time. The use of accreditation mechanisms would exclude them while retaining the valuable input of groups that have expertise, cover a large proportion of a given sector in the EU and provide a good flow of information between member organisations and the Commission.

Yet, using accreditation to flush nuisance groups out of the policy making system presents its own problems. The costs of such a scheme – *de jure* or *de facto* – may exceed the benefits by way of making consultation more manageable for the Commission. Initially, as canvassed above, it provides an opportunity for business groups to raise the bar for access so high as to exclude many of what it would consider 'unrepresentative' cause groups. Similarly, even cause groups may seek to institutionalise existing gains to the exclusion of competitor bodies. But beyond these issues is a larger concern about stifling democratic debate, with the potential to harm the already fragile democratic credentials of the EU system. At the very least, such organisations may be a legitimate part of the general plurality of civil society, and seeking to screen out such groups may end up restricting contributions to democratic deliberation. Moreover it offends some very persuasive argument about the role of removing groups from democratic processes.

Indeed, just this type of concern emerges based on the ambiguity of the Commission's Communication on Consultation, specifically the issue of selective consultations. Whilst recording on page 11 that 'the Commission wishes to stress that it will maintain an inclusive approach in line with the principle of open governance', the next paragraph records that 'best practice requires that the target group should be clearly defined prior to the launch of a consultation process' (European Commission, 2002, p. 11; see also Amiya-Nakada, 2004). As Amiya-Nakada (2004) discovered, this latter statement drew pluralist inspired concerns from no less than the United States Government

> We note that references in the document to 'relevant parties' or 'target groups' also appear to suggest that the Commission's consultation process may not always be open to all interested parties ... we suggest that the Commission simply let interested parties identify themselves instead of the Commission pre-selecting the 'relevant parties' or 'target groups' to consult. (cited in Amiya-Nakada, 2004, pp. 10 – 11)

In similar vein, the UK government responded that it 'would welcome greater clarity on the selection of participants' (UK Government, 2002, pp. 3 – 4).

The trigger for these comments was the consultation paper which preceded the Communication, in which the Commission had proposed the establishment of a dual system of consultations, one 'open' and another 'focused'. This dual system had not

featured in the final Communication, but current descriptions of the Commission's consultation practices on its website show it is very clearly in force today.[12]

The Commission's *de facto* 'partnership arrangements' is evident in a variety of pockets of practice in force across the European Commission, with differing degrees of formality. At the informal end of the spectrum are those between DG Employment and Social Affairs (DG EMP) and its various interest constituencies, where the Commission service has a long record of group formation and maintenance (see, for instance, Cullen, 2005; Geyer, 2001; Martin & Ross, 2001) as a means of serving its ambitions to develop the course of European integration. The Social Platform, and the European Women's Lobby in particular, enjoy a particularly symbiotic relationship with DG EMP (Cullen, 2005; Mazey, 2000). Outside of this service, the survival of DG Environment is said to have been dependent on its core constituency of environmental interest groups (Mazey & Richardson, 2005). The longest standing continuous dialogue is between DG Development and the Confederation of European Non-Governmental Organisations (CONCORD), with its regular Commissioner-level meetings, Commission staff dedicated to NGO liaison, and its 'guidelines for the participation of non-state actors in the development dialogues and consultations' (European Commission, 2004). The dialogue is perhaps the most organised of all within the Commission, designed around Concord's confederal basis founded on 'accurate representation' (CONCORD, 2005, slide 3) of national platforms of member-state development organisations. Similarly, the European Community Humanitarian Office (ECHO) has a highly structured relationship with (around 200) NGOs, based around eligibility criteria for inclusion (Obradovic, 2005). A more recent example (established in 1999) along similar lines is that of DG Trade's bi-monthly dialogue with its very own 'contact group' of civil society, providing expenses for groups to discuss with it at Commissioner level strategic priorities.[13] All of these reflect the highly institutionalised nature of European Commission/interest group relations, borne of the wider roles of groups charged with, inter alia, tasks as democratic agents. Consequently, partnership arrangements have continued to develop since the Commission's apparent rejection of them following the Parliament's expression of disapproval.

Of interest is a recent reflection of the Secretary General of the Commission that he wouldn't rush to repeat the representativeness idea incorporated in Social Partnership,[14] doubtless with a legal challenge it gave rise to in the Court of First Instance[15] in mind. Formal schemes seeking to apply any criteria seem well out of favour in the Secretariat General because of the bureaucratic minefields they enter and administrative costs they incur during attempts at implementation, but this doesn't mean that an informal application of various principles are likewise treated; indeed, the political costs associated with formal schemes may make them unpopular, but the principles that inspired them live on in spirit through informal application, increasing the discretionary control available to political institutions much as described by the extensive principal-agent literature. One consequence of this is that an informal accreditation system has a 'privatising' effect on public policy, and seems to work against the grain of the Commission's substantial procedural democracy measures put in place since the White Paper on Governance aimed at a more systematic basis to engage with outside interests (for a review of these see, for instance, Curtin, 2003). Such measures include comprehensive and easy

access to documents, an annual work programme of legislation alongside consultation plans, open access single web portals for consultation and consultation standards including reports on how responses were used to adjust proposals, in the hope of empowering interest groups as a means addressing asymmetries of power. Many of these are likely to have a limited impact in the *de facto* accreditation environment described above.

Conclusion

We started by drawing a conceptual distinction between 'voice' and 'participation' by interest group in political systems, and drew attention to the difficulties of maintaining this distinction in regulatory models. This difficulty would initially seem to lend support to 'laissez-faire', 'marketplace of ideas' models, while our review of regulatory models in an EU context has drawn attention to the difficulties and muddles which can arise from using representativeness as a criterion for political access. Regulating groups for representativeness clearly undermines, rather than strengthens, input legitimacy on the grounds that it would privilege those groups whose legitimacy is based upon their ability to represent a given membership constituency, and would disadvantage groups whose legitimacy is based on their ability to place a cause in the political arena. Most groups at EU level seem to be able to play the 'representativeness' game through their confederated nature, as trade associations with direct company membership, or as policy offices of international movements.

Yet the privatising effect of *de facto* accreditation schemes upon public policy making seems to be equally problematic for democratic legitimacy, and highlights the problematic nature of laissez-faire models. The paradox is greatest when *de facto* accreditation is used alongside attempts to create legitimacy by developing a formalised set of procedures for exchanges with outside interests designed to address asymmetries of power, as seen in the context of the European Commission. The EU is by nature a highly institutionalised system of engagement with outside interests, and denying the presence of a *de facto* system of accreditation is extremely implausible. The Commission's tangle is compounded by its search to find criteria with which to simplify its consultative life and to screen out aggressive 'outsider' groups which are little more than one person with a website, particularly because such groups are so few in number at EU level. The starting point needs to be a different one.

The European Commission's recent emphasis upon the responsibility that groups bear for the information they bring to the policy-making table seems to offer a way forward. Plant has recently argued that

> Once groups seek to have a direct influence upon the political process and once they are drawn into the circle of consultation over policy they are no longer seen as just civil society organisations, and it is appropriate and important for the health of democratic policy making that searching questions are asked about representativeness and accountability. (Plant, 2003, p. 106)

This focus on enhancing input legitimacy echoes the concerns emerging view among NGO scholars, such as Edwards and Zadek (2003) that decision-making roles should accompany democratic forms of representation. We concur that increased status

implies increased scrutiny over representativeness. Policy makers understandably wish to know that when they hear a 'view' they have a sense of how shared this is by the broader constituency for which advocates purport to speak. At the EU level, the institutionalised nature of EU politics leads to predictable findings in some studies (Sudbery, 2003; Warleigh, 2001) that many groups lack active democratic process and opportunities for affiliates to participate in decision making (although these are repeated more boldly in nation states). This emphasis upon internal group democracy in exchange for access brings a wider set of issues. On the one hand, while there is no guarantee that internal group democracies always work – or in fact deliver authoritative or binding positions – they do seem to offer the best prospect of this type of assurance in political exchanges. However, pursuit of this ideal requires one eye on practice; firmly held and articulated principle is not always enough. There is no ready policy solution 'middle-way' between accreditation and laissez-faire, but a way forward is a conclusion that a robust application of one-size-fits-all rules of internal democracy would clearly be counter-productive; removing large swathes of the group system and working against important projects of political inclusion. It is also not attentive to the fact that for many groups – those advocating for non-humans and nature particularly – divining the interests of their constituency over policy detail is not logically aided by ascertaining the views of affiliates. For these groups, the creation of assurance standards for the placement of information in the public domain, seeking confirmation of processes of internal deliberation and ensuring they are not a 'front' for other interests (e.g. establishing a finance trail) seem to be more important questions shaping judgements about legitimacy than internal democratic practices. The very recent (2006) development of an International NGO Charter by some of the leading NGO brands, and the proposal of an 'EU Concordat' by one civil society organisation, seems to be a first step on the path of these issues and are beginning to stimulate debate on the EU civil society circuit. These are likely to acquire more detail (and in the case of the Concordat, balance) in time, and also need to be given time to acquire wider currency with both civil society organisations and EU institutions, possibly through mechanisms such as international standards and certification agencies. This would follow a long standing tradition from the European Commission in seeking incentivised self-regulatory solutions with a standing. It may also make a contribution to the search for wider EU input legitimacy, where there is a question common to all democratic systems about whether engagement with interest groups amounts to friend (as a model of participatory democracy supplementing and deepening representative democracy) or foe (elites privatising policy making) of participative derived legitimacy. In the case of the European Union, the issue is particularly intense given the reliance upon interest groups to make up for deficiencies in representative democracy, such as their empowered role as agents of checks and balances and accountability, both upon each other and upon EU political institutions.

Notes

[1] http://ec.europa.eu/civil_society/interest_groups/index_en.htm (accessed 1 March 2007) (Commission, 1992). The statement goes on to state that the Commission 'is nevertheless committed to the equal treatment of all special interest groups' (p. 2).

[2] http://ec.europa.eu/civil_society/coneccs/question.cfm?CL=en (accessed 1 March 2007).

[3] Such statements begin with the Commission's Communication of 1992 (Commission, 1992); while the most up-to-date statement to this affect can be found at http://ec.europa.eu/civil_society/coneccs/ question.cfm?CL=en (accessed 1 March 2007). A similar statement can also be found in the Commission's 2002 Communication on Consultation (European Commission, 2002).

[4] http://ec.europa.eu/civil_society/coneccs/question.cfm?CL=en (accessed 1 March 2007).

[5] http://ec.europa.eu/civil_society/coneccs/question.cfm?CL=en (accessed 1 March 2007).

[6] The term 'lobbyists' is defined in the Green Paper (in its endnote 3) as 'persons carrying out activities with the objective of influencing the policy formulation and decision-making processes of the European institutions, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units or trade associations' (European Commission, 2006a, p. 5).

[7] European Commission (2006b).

[8] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003D0709:EN:NOT (accessed on 1 March 2007) (European Commission, 2006a).

[9] This is expressed through access to preliminary discussions preceding Employment and Social Affairs (*sic*) Council Meetings (Alhadeff, 2003), its role at the Treaty drafting Convention in organising dialogue with civil society, its regular meetings at Commission and Director General level and a specially protected grant award status in the funds it receives from the Commission relative to other EU NGOs (Cullen, 2005).

[10] http://ec.europa.eu/civil_society/interest_groups/approche/apercu_en.htm (accessed on 1 March 2007) (Commission, 1992).

[11] The event was co-hosted by the European Policy Forum and the European Economic and Social Committee (EESC), and held in Brussels at the EESC on 16 September 2003.

[12] http://ec.europa.eu/civil_society/interest_groups/approche/apercu_en.htm (accessed on 1 March 2007) (Commission, 1992).

[13] Contact group members are selected by their sectoral 'constituencies' spanning 13 diverse segments of organised civil society, with a Commission requirement that 'the composition of the contact group should reasonably reflect the major issues of civil society stakeholders'; http://ec.europa.eu/trade/issues/ global/csd/dcs_proc.htm (accessed on 1 March 2007).

[14] A remark made by David Williamson at an event on 'NGOs, Democratisation and the Regulatory State' hosted by the European Policy Forum and the European Economic and Social Committee (EESC), held at the EESC premises on 16 September 2003.

[15] Case T-135/96, *UEAPME v Council*.

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