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Constructing ‘Corporatist’ State-Society Relations? : Current Discourses on the European NGOs and Its Democratic Weakness

Ryosuke Amiya-Nakada*

INTRODUCTION

Nowadays, it is commonplace to characterize the European Union as “*sui generis*”; more than a usual international organization but less than a federal state. Especially through several treaty revisions since 1990s, the EU comes to be seen as constituting a “polity” in its own right. This development prompts scholars to apply research tools other than those developed in the International Relations studies. This paper is also such an attempt to illuminate the current situation of the EU from the perspective of “state–society relations”.

In the followings, I first review the literature dealing with state-society relations and elaborate analytical framework that guides subsequent arguments. Based on it, recent developments and legitimating discourses in the relationship between the “civil society”, especially the NGOs, on the one hand, and the EU institutions such as the Commission and the Economic and Social Committee (EESC), on the other, is examined. Especially, the paper examines recent attempt by the Prodi Commission to involve civil society actors as a Commission-wide strategy of constructing “Citizen’s Europe” or “Networking Europe”. Further, it analyzes discourses of several NGOs to remedy “democratic deficit” of the EU by way of their participation in policy processes.

1. The perspective of “state-society relations”

In this article, the “state-society relations” denotes the whole of composite channels mediating between the political center and the citizens. Typical channels in democratic societies are organized political parties, interest groups or social movements. But the closeness of the state and the society and relative weight of each channel varies widely among European states.

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This complex constellation of various channels is a product of the unique historical development of each society and itself influences current norms and behavior in each society.

This research agenda has been explored by the authors like Badie and Birnbaum (1979), Dyson (1980), Crouch (1986) and Schmitter (1992) in broader terms. But most authors have dealt with the theme in the framework of “Comparative Political Economy” and focussed on the relationship of the state, the labor and the capital. In recent years, however, we have seen the flourishing research on social capital, non-profit organizations and the third sector. Both the state failure and the limit of neo-liberal recourse to market make such topics important and prompt researchers to investigate societal organizations and networks other than economic interest groups.

As for the study of the European Union, we have witnessed the increase of literature on European political parties (e.g. Hix and Lord 1997) or European interest groups (e.g. Falkner 1998; Greenwood 2003) but the study of other societal organizations is relatively scarce¹. This article aims to fill the gap.

In concrete, the article investigates the relationship between the EU institutions and civil society organizations², especially various NGOs. The analysis is focussed on discourses of these organizations and institutions on the role of civil society organizations in the European governance. The focus on the discourse is justifiable on two grounds. First, discourses reflect and shape the norms, which influence actual behavior of relevant actors. Second, analyzing discourses and investigating strategies of EU institutions is especially important because administrative strategies of interest intermediation was instrumental in shaping the state-society relations at the nation-state level (Lehmbruch 1991).

Then, how can we categorize the relationship between the “state” (here, EU institutions) and the “society”? One way is to look at relative importance of the two spheres; “state-centered” or “society-centered”. Its variations are such schemata as “from above” against “from below”, or the “strong state” against the “weak state”. But this is not enough because the structure of the “society” also varies; in some societies, the organizations are relatively well organized in general, in others, however, most organizations suffer from weak basis and they are constrained by competing organizations. In classifying political modernities, Jepperson (2000) deployed these two contrasts and distinguished four modern polity models.

1 Relevant works are Armstrong (2002), Curtin (2003), De Schutter (2001), Kendall and Anheier (1999), Obradović (1999), Ruzza (2004), Sudbery (2003), and Warleigh (2000; 2001). Because of submission deadline, I could not give due regard to Smismans (2004), published in December. It is a comprehensive and insightful book on the involvement of societal organizations, mainly social partners.

2 In this paper, “civil society organizations” means non-state and non-profit organizations other than political parties and socio-economic interest groups. “NGOs” is the term for civil society organizations except co-operatives and mutual societies.

Figure 1 : Four Predominant Modern Polity Models (Jepperson 2000, slightly modified)

“corporate” (how “corporate”)	social-corporatist (Nordic)	state-corporatist (Germanic)
	liberal (Anglo)	state-nation (France)
“associational”	societal (how “statist”)	statist

This article concentrates on the latter dimension, “corporate” or “associational”. In those corporate societies, societal organizations are more deeply involved in the policy processes. Then, as for the EU, what is the expected role of societal organizations? Do they merely advocate and lobby to influence decision-making? Or do they participate in policy processes in a more or less institutionalized way? If the answer to the first question is affirmative, then we will expect statist or pluralist state-society relations at the European Level. If the latter is the case, we will say that state-society relations at the European level is structured in a corporatist way.

In the next section, the development of relationships between the Commission and civil society organizations is briefly reviewed. It constitutes the basis for the empirical evaluations in the following sections.

2. The Commission and civil society organizations.

The ideas of European integration and its realization cannot be reduced to mere contracts between nation-states. From its inception, societal organizations have been given some role. In this section, we first make an overview of the general, treaty-level developments in involving societal organizations. Then, more concrete developments in several policy areas are examined.

(1) Progress of the integration and the role of societal organizations

We can trace the institutionalized participation of societal organizations back to the establishment of the European Coal and Steel Community (ECSC)(Armstrong 2002). The article 18 of the ECSC treaty stipulated the establishment of advisory committee, which consisted of the representatives of producers, workers and consumers. Moreover, among nine members of the High Authority, one is a co-opted representative of the trade unions.

In practice, additional two members (among eight) were trade unionists, which means a third of the High Authority came from the trade unions (Rumpf 2001). This is not surprising because early integration process was characterized by “neo-functional” strategies of Jean Monnet. It should be added here that such corporatist organizations were not rare in the making of the postwar politico-economic regimes in West European countries, whose prime example was *Conséil économique et social* in France.

After that, there is no remarkable development in the incorporation of societal organizations. Through the Treaty of Rome (1957) establishing the European Economic Community, the EESC (European Economic and Social Committee) was set up as advisory organ, but neither the system of “co-opted” member nor *de facto* representation of the trade unions was introduced. By the Merger Treaty of 1965, the Commission of the European Economic Communities became common executive organ of the three communities. There were attempts to institutionalize corporatist dialogue in the 1970 s, which failed in the end.

As in the case of the integration itself, it is Jacques Delors who gave momentum to the move toward enhanced incorporation of societal actors. He took an initiative first to involve the labor and the capital through the so-called “Val Dusches Social Dialogue” in 1985, which led to the institutionalized role of the social partners in the Social Protocol at Maastricht.

Although the Declaration on Cooperation with Charitable Associations (Annex 23) was adopted at Maastricht, the trend to place the theme “civil society” in the center of European Integration discourse only began in the latter half of the 1990 s. The accelerating integration stimulated European activities of societal actors and actually increased number of European organizations. They actively lobbied at the post-Maastricht Intergovernmental Conferences. But the Amsterdam Treaty (1997) did not contain any suggestion of the role played by the civil society organizations.

In contrast to the development at the treaty level, policy discourses touching on the role of civil society increased dramatically through the 1990 s. In the discussions leading to the adoption of the Green Paper (COM (93) 551) and the White Paper (COM (94) 333 final) on European Social Policy, the concept of “Civil Dialogue” has emerged to become one of the main strategic discourses of the Commission. The first European Social Policy Forum, held in March 1996, marked a point of departure (Armstrong 2002 ; Kendall and Anheier 1999).

In 1997, led by the Social Economy Unit Which was set up within DG Enterprise (ex-DG XXIII) , the Commission Communication on “Promoting the Role of Voluntary Organizations and Foundations in Europe” was released (COM (1997) 241 final). Hereafter, the role of the civil society organizations, NGOs, and associations has been repeatedly discussed. In the Communication, social and political importance of the civil society organiza-

tions to strengthen the "Europe of citizens" is reaffirmed. Based on the review of the relationship with the NGOs, strengthening of the contact with the NGOs was advocated. Here, although not featured as a catchword, the concept of the "Civil Dialogue" was introduced, which should "take its place alongside the policy dialogue with the national authorities and the social dialogue with the Social Partners" (Ibid., 7). But the repercussion of the Communication was still small and this strategy of civil inclusion was confined to the DG Employment and the DG Enterprise (Smismans 2002, 7-8).

However it was not evident for the NGOs why they should work at the European level. Additionally, there are hurdles for transnational activities. As is reviewed in the next section, the role of the NGOs in the EU policy varies widely according to the policy area. Neither the legal status and regulations on associations were harmonized nor mutual-recognition of the status was realized, while commercial enterprises made avail of the freedom achieved by the completion of the internal market. To resolve the latter problem, the Commission published the draft statute for the European Co-Operative Societies, Mutuals, and Associations in March 1992 (OJ C 1992/99/1, 21.04.1992). Regarding the opinion of the EESC (OJ C 1992/223/52, 31.08.1992) and the European Parliament (OJ C 1992/42/84, 15.03.1992), the Commission released the revised draft in July 1993 (OJ C 1993/236/1) but the proposal failed at the Council (Kendall and Anheier 1999).

This stagnation was broken through by, paradoxically, the crisis of the Commission-NGOs relationship. Britain under the Tory government sued the Commission at the European Court of Justice, insisting that a budget line paid by the Commission for the NGOs to remedy social exclusion was illegal. The decision of 1998 judged that this budget line, added by the European Parliament, had no sufficient legal basis and urged clearer legal basis such as the Community laws for such actions. Therefore, the budget which amounts to ca. 800 million ECU was partly frozen. Although the freeze was lifted up by the end of the year, this incident made some NGOs more active in demanding institutionalized role in policy processes.

Based on these developments, the Nice Treaty of 2000 revised an article on the status of the EESC and the consolidated Treaty Establishing the European Community now states: "the Committee shall consist of representatives of the various economic and social components of organized civil society (Article 257)". Here, the word "civil society" appeared in the treaties for the first time. To the Convention on the Future of the Europe, the EESC and the NGOs lobbied actively to have an explicit status for "civil society". As a result, the Draft Treaty establishing a Constitution for Europe contains an article titled "the principle of participatory democracy" (Article I-46) which states "the Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society." (CONV 820/03, 797/1/02 REV 1, Article I-47 in the Consolidated Treaty)

Once failed statutes for associations have seen progress recently. In the latter half of 2002, the Danish Presidency requested the Commission to submit new draft statutes. The commission elaborated new drafts in consultation with the NGOs, among which “the Statute for a European Co-operative Society” was firstly adopted in July 2003, which was followed by the Communication “On the promotion of co-operative societies in Europe” in February 2004 (COM(2004)18). The Statute for a European Association is currently under discussion in the Council working groups.

(2) Involvement of the civil society organizations in specific policy areas

As we have seen, the theme “civil society” have obtained a firm footing in the European discourses in general since 1990 s. Then, how far does involvement of the civil society organizations develop in specific policy areas? (Alhadef and Wilson 2002)

It is often said that four policy areas, namely environment, development, human rights and social policy, constitute the central field of activity of the European NGOs. Among them, the NGOs are most involved in the environmental policy process. Here, organizations like the Greenpeace or the WMF have developed a European-level coordinating organization, the Green-8, which is explicitly mentioned in the European-level regulations. For Example, prompted by the Council and the Parliament decision in 1997, the Commission proposed “a Community Action Programme promoting non-governmental organizations primarily active in the field of environmental protection” from 1998 to the end of 2001, in order to promote activities of the environmental NGOs. This programme was adopted by the council (OJ L 354, 30.12.1997, 25) and the experience of the first three years were externally reviewed (COM (2001) 337 final/2, 09.10.2001). Because the review was positive one, the new action programme from 2002 to 2006 was adopted by the Council and the Parliament (OJ L 75, 16.03.2002). Its article 1.3 states, “the Programme shall also promote the systematic involvement of NGOs at all stages of the Community environmental policy-making process, by ensuring relevant representation in stakeholder consultation meetings and public hearings.” The environmental NGOs receive not only project-based grants but also relatively sufficient core funding. In fact, the NGOs have opportunities to participate through regular meetings with the commissioner or the director general and sending representatives to more than fifty special committees.

The activities of the NGOs in development policies have its long history, too. In 1976, the Commission set up the CLONG (*Comité de Liaison des Organisations Non-Gouvernementales*), funded by the commission itself. Now it was transformed into the CONCORD, which represents more than 1200 organizations (ACP-EU Courier, 197, 2003, 4). More than a 1000 million EURO is allocated to the development NGOs. Some NGOs complain that

“the present relationship of the European Commission to NGOs is ambivalent...we are not regarded as legitimate development actors in policy dialogue.”(BOND 2002, 3) Still the role of the civil society organizations are explicitly mentioned in the Cotonou Agreement with the African, Caribbean and Pacific countries. In the articles 2(Fundamental principles) and 6(Definitions [of the actors of the partnership]), involvement of civil society organizations in the partnership is stressed.

In the area of the human rights, the activities of the NGOs like the Amnesty International have been important but the ties between the Commission and the NGOs have been rather weak. They lack a coordinating organization at the European level.

Although it began recently, the development in the trade policy is notable. Traditionally, the DG Trade had not involved the NGOs, but the demonstration at the Geneva WTO Summit taught an important lesson. Preparing for the Seattle WTO Summit, the Commissioner Leon Brittan held a consultation meeting with the representatives of the civil society organizations, in addition to those from the trade unions and the business. Then, he appointed the first civil society liaison officer among all the DGs. Under the next Commissioner Pascal Lamy, the officer was a member of his cabinet. The civil society contact group, including representatives of the four NGO networks(environment, social, development and human rights) , as well as consumer organizations, trade unions and employers' organizations was set up two months before the Seattle Summit, whose representatives were among the EU delegation to the Seattle.

In social policy, the first initiative came not from the DG Employment but from the DG Enterprise. This was because the freedom given to commercial enterprises affects the non-profit activities of the associations and the co-operatives. With the progress of the internal market project under Delors, the “social dimension” came to the fore and the promotion of the so-called third sector, or non-profit social activities in general, began to take shape as policy objective. In 1989, the DG Enterprise launched the Social Economy Unit, which held six conferences on the social economy in ten years. Although the Commission tabled a three-year action programme in 1994, it was not adopted by the Council and the Unit was merged with the section for small and medium sized enterprises. Publication of the Communication “Promoting the Role of Voluntary Organizations and Foundations in Europe” was one of its achievements.

Organizationally, informal consultation began in 1994 and the CCCMAF (Consultative Committee of co-operatives, Mutuals, Associations and Foundations) was established in 1998(OJ L 80/51, 18.03.1998). In 2000, with the re-organization of the formal consultative structures of DG Enterprise, the CCCMAF was replaced by the CEP-CMAF (European Standing Conference (*Conférence Européenne Permanente*) of Co-operatives, Mutual

Societies, Associations and Foundations). Two representatives of the sector also have a seat on a formal consultative body (OJ L 285/24, 10.11.2000), the Enterprise Policy Group.

In the domain of the DG Employment, it is not until in 1995 that similar organizational framework began to develop. In that year, the Platform of European Social NGOs was launched by seventeen organizations, networks and federations. Because the opinion of affiliated organizations was still diverse after that, internal decision rules were changed and the decision was to reach by consensus in 1999. They themselves admit that “discussions about the areas of competence of the Platform strangely resembled the disputes over subsidiarity between the member states. (Alhadeff and Wilson 2002, 5) Because of this diversity, they have striven for institutionalization of its position in the policy processes. After the two Social Policy Forum convened by the Commission in 1996 and 1998, now they are consulted by DG Employment twice a year.

3. The institutionalization of the concept “organized civil society”

The previous section has dealt with general development of civil society discourses at the treaty level and specific arrangements of involvement in several policy areas. Beyond that, the deepening involvement of the civil society organizations was recently utilized strategically by the Commission as a whole or the EESC. This section analyzes such strategic use of civil society discourse by the EU institutions.

(1) The definition of “civil society” by the EESC

One of the main problems in involving civil society organizations lies in the diversity of relevant organizations or in defining “who is civil society?”. This contrasts with the Social Dialogue, in which the relevant actors are obviously trade unions and employer organizations, which are already structured more or less hierarchically within a country. In defining the concrete shape of relevant actors, it is the concept of “organized civil society” proposed by the EESC that has become dominant in European civil society discourse.

The EESC has been active in establishing a direct channel with civil society organizations. Facing the Nice treaty reform, they adopted an opinion on its own initiative and convened conferences twice. Through these activities of promoting discussion on civil society, the EESC tried to improve its position (Armstrong 2002, 118). Hence it considered itself as “a bridge between the Commission and organized civil society. (CES 1069/2002, 5).” Then, what is civil society for the EESC, the self-nominated channel? EESC (1999 a) lists up constituting elements of civil society, which includes plural-

ism, autonomy, solidarity, public consciousness, participation, education, responsibility and subsidiarity. In concrete, civil society includes organizations of the social partners, other representatives of social and economic interests, NGOs, community-based organizations like youth organization, and religious community. This image of civil society is best summarized in a phrase "organized civil society", which has quickly become established usage after 1999 in European discourse. True, various forms of organizing civil society is recognized, but "only those with a certain basic organizational machinery and which are qualitatively and quantitatively representative of their particular sector can be expected to make positive contribution to European integration (EESC 1999 a, 8)" It is remarkable that this definition of civil society is not based on "citizen" or "individual" as is often done. It is just an *assemblage* of organizations!

This definition is not shared by all European-level actors. For example, attending the seminar of the European Party of Socialists, a representative of the Social Platform complained that the image of amorphous mass taken up by several MEPs had nothing to do with what NGOs mean by 'organized civil society'. Especially concerning the employer organizations, there is strong voice denying their status as a part of civil society (EESC 1999 b).

But this formulation was taken over by the Commission and used frequently in official documents.³

(2) Commission strategy of involvement for better governance

Independently of the EESC, the Commission has proceeded toward more institutionalized dialogue with civil society organizations. In 2000, the Commission released the Communication entitled "The Commission and Non-governmental Organizations : Building a Stronger Partnership" (CEC 2000). In the next year, the Commission published the "White Paper on European Governance", one of whose central themes is involvement of civil society (CEC 2001 d, 14-18). This move is welcomed by the NGOs, as is exemplified by the welcoming comment of the Social Platform ; "We welcome proposals to establish a more structured consultation of NGOs within the EU's decision-making process (Social Platform 2001 b)." Although the White Paper was overshadowed by the launch of the Convention on the Future of Europe and the following Inter Governmental Conference, institutionalization and standardization of involvement has been in progress at practical level. The CONECCS database, the directory of consultative bodies and participating organizations, was set up on the Web (http://europa.eu.int/comm/civil_society/coneccs/index_en.htm). The one-stop portal to consultation is on the Web, too, where one can take an overview of consultation processes in progress. Further, the Commission published the Communication concern-

3 For example, the Governance White Paper explicitly cites this definition.

ing reinforcement and standard-setting of consultation (CEC 2002 a) for comments from different actors, which resulted in the Communication "Towards a Reinforced Culture of Consultation and Dialogue - Proposal for General Principles and Minimum Standards for Consultation of Interested Parties by the Commission (CEC 2002 b)."

Why has the Commission been making such efforts?⁵ The first reason is the hope on the NGOs as an agency of deeper integration. Manifestation of such hope was exemplified by the setup of the CLONG by the Commission. Correspondingly, the NGOs themselves regard such function as their own; "NGOs when organized in European network stimulate the emergence of a European thinking among national members (Social Platform 2002)."

Second, in such policy domains as development or environment, expertise and experiences of the NGOs are mobilized for effectiveness and legitimation of specific policy proposals.

Last, but not least, the Commission as a whole is now trying to enhance and structure contact with civil society. Two leitmotives in this strategy are "direct legitimation of the EU through contact with civil society" and "better governance through involvement of societal actors". For example, the Commission President Romano Prodi had advocated "network Europe" as "a new division of labor - a new, more democratic form of partnership - between civil society and the other actors involved in governance", which would "make European democracy much more direct, more participatory" (Prodi 2000, 4-5) This may read like stressing the need of legitimation by strengthening "citizens' Europe". But this discourse of participation was accompanied by the discourse of better and effective governance, which manifests itself in references to the White Paper in Prodi's speech.

Because of this second leitmotif, the concept of "relevancy" comes to the fore. Although the Commission states that it will take "an inclusive approach in line with the principle of open governance", concerning the participants in consultation procedure, it is followed by restriction in view of effectiveness; "best practice requires that the target group should be clearly defined prior to the launch of a consultation process. In other words, the Commission should actively seek input from relevant interested parties, so these will have to be targeted on the basis of sound criteria (CEC 2002 b, 11)" Restrictive connotation of this statement was best described in the typically pluralist comment by 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 sim-

5 CEC (2000) makes five points; Fostering participatory democracy; Representing the views of specific groups of citizens to the European Institutions; Contributing to policy making; Contributing to project management; Contributing to European Integration.

ply let interested parties identify themselves instead of the Commission pre-selecting the “relevant” parties or “target groups” to consult (US Government 2002, 4)”

Here, the nature of the Commission’s strategy becomes clear. Its approach to the involvement of civil society organizations is not pluralist “open to all, but at arm’s length” type. Rather, the main target of consultation is “relevant” groups, which may gain an institutionalized status in the policy process as in the cases of environment or development policy. We may call this “corporatist involvement” strategy.

Similar stress on corporatist involvement of societal organizations can be found in various documents of the EESC. Such framework is legitimized by the concept of “functional subsidiarity” (EESC 1999 b, 35). In the opinion to the Convention, it is said, “The call for civil dialogue rests on the principles of democracy and subsidiarity... When deciding who is to be involved in the preparation of decisions, account should thus be taken not only of territorial (vertical) subsidiarity but also functional (horizontal) subsidiarity, which is a major factor in good governance.” (CES 1069/2002, 3) This concept is highly regarded as “paving the way for new forms of European governance.” (EESC 2001, Workshop 3, Conclusions, 2)

Thus, we can say that the discourse of civil society by the EU institutions has specific character in ;

1. civil society is mainly understood as a collectivity of organizations ;
2. the Commission and the EESC intend to involve the NGOs into transnational governance in corporatist way.

4. Democratic weakness of institutionalized involvement

(1) “Representativeness” and civil society

If “civil society” is defined as a collection of organization, the accompanying question is “which organization should be counted.” And when the EU institutions sought contact with it, which forum should be central? Here, the EESC stresses “its special role as the representative of civil society organizations” (EESC 1999 a, 10) and tries to enhance its role as the central forum.

But this is much criticized by the NGOs. For example, the Social Platform rejected this insistence, arguing that many among the third group (diverse interests) of the EESC are in fact employers and it should be reformed to represent “civil society” more clearly (Alhadef 2001). Its working method of opinion by consensus is also criticized as it reduces necessary variety of opinions (BOND 2001, 6). The EESC made an excuse by pointing out that the right of nomination belonged to the member states (EESC 1999 b) but it also promised to search for the way to involve more representatives of civil society organizations (EESC 2000, 10).

However, the NGOs themselves are not free from legitimacy problem. This is because usual criterion of legitimacy, “representativeness” has less use when applied to the NGOs. Some NGOs owe their importance to their size or continuity of activities, but other NGOs have their strength in flexible and quick response to the needs or problems. In fact, at the conference convened by the EESC in 1999, some participants insisted that representativeness should be judged not only on numerical criterion but also on the quality of activities or special knowledge (EESC 1999 b, 41).

The NGOs themselves do not accept “representativeness” as proper criterion. The Social Platform insists that “it is impossible to create a single standard of ‘representativeness’ which can be used to measure all NGOs. ... Representativeness alone is not a sufficiently precise or appropriate standard to measure good NGO practice (Social Platform 2001 a)” As alternative criteria, for example, the CLONG and other development NGOs refer to transparency, accountability, effectiveness and responsiveness (Clong et al., 2002, 5). This insistence is based on the Cotonou agreement, which stipulates in Article 6 that “Recognition by the parties of non-governmental actors shall depend on the extent to which they address the needs of the population, on their specific competencies and whether they are organized and managed democratically and transparently.”⁴ This cautious attitude against “representativeness” criterion is found in the comment to the Commission Communication on the consultation (CEC 2002 a), which welcomes “a less strict vision of <<representativeness>>, which cannot be conceived in the same way as the representativeness of public authorities” (CEDAG 2002)

(2) Dilemma of involvement : governance and legitimacy

Then, which criteria should be applied to the European-level consultations?

The Commission refers to the criteria given by the EESC (CEC 2002 a).

These criteria are rather general and vague. Organisations should ;

- “exist permanently at Community level ;
- provide direct access to its members expertise and hence rapid and constructive consultation ;
- represent general concerns that tally with the interests of European society ;
- comprise bodies that are recognised at Member State level as representative of particular interests ;
- have member organizations in most of the EU Member States ;
- provide for accountability to its members ;
- have authority to represent and act at European level ;
- be independent and mandatory, not bound by instructions from out-

4 Social Platform (2001 a) adds efficiency and track-record to these.

side”

The NGOs criticize ambiguity of these criteria, stating ; “clear criteria for the NGOs to be involved in the decision making process are needed” (EWLA 2002); “The Commission should, in consultation with civil society actors, set clear and transparent guidelines and standards for assessing NGO legitimacy and representivity .(BOND 2001, 4)

To remedy this weakness, the Commission considered introduction of the accreditation system as is conducted by the Council of Europe or the United Nations. In the process of drafting the White Paper on European Governance, the Commission consulted the NGOs on this issue but the idea of a Commission-wide NGO accreditation schemes was discarded in the end, because of lacking consensus among relevant NGOs.

Some NGOs still demand the accreditation scheme or other means of formal institutionalization. The Social Platform warned that Nice treaty revision of confirming the role of the EESC was not enough for more effective procedures and a legal basis for the consultation of NGOs(Alhadef and Wilson 2002, 8-9). It reacted affirmatively to the proposal of accreditation system, for the system would help demarcate between civil society organizations, on the one hand, economic or political lobbyists, and social partners, on the other hand. They also asked the Convention to replace the reference to “dialogue with representative associations” with “dialogue with organized civil society — employers and employees, trade unions, associations representing the interests of the regions and regional and local, authorities and democratically organized non-governmental organizations (*Social Voice*, 4, May 2003, 4)” The purpose of this demand is to institutionalize “Civil Dialogue” alongside “Social Dialogue” and to ensure financial basis of the social NGOs.

But this scenario, more or less official recognition of some European organizations as insitutionalized partner of consultation, has also inherent weakness. Stress on the involvement in governance may reduce legitimating potential of civil society (cf. Sudbery 2003) In concrete, following problems may arise.

First, it may be the case that the voice of smaller-scale NGOs is disadvantaged. Especially, if the selection criteria of the Commission is based on previous track-record, new NGOs will be seriously damaged. Therefore, even those who want clearer criteria state that “these criteria should take into account also small and recently founded NGOs (EWLA 2002.)” External evaluation of funding to the environment NGOs makes a similar point (COM (2001) 337 final 2, 09.10.2001).

Second, such involvement is accompanied by the notion of “responsibility” on the side of civil society organizations. In the words of the Governance White Paper, “with better involvement comes greater responsibility (CEC 2001 d, 15)” Here, “responsibility” has specific meaning. What is demanded

from civil society organizations is “the principles of good governance, which include accountability and openness (Ibid .)” Representativeness is out of the question. In this regard, civil society organizations are quite different from traditional public actors like political parties or trade unions and their legitimating potential might be questionable.

Third, Warleigh(2001) insists that NGOs cannot be an agency of Europeanization of civil society as long as their internal governance structure are not sufficiently democratic. In fact, to reconcile democratic internal governance with effective external activities is not an easy task, for the role and norms of civil society organizations are more different among member states than those of social partners. For example, the failure of the association statutes in 1990 s was partly due to the opposition of German welfare organizations, who feared its privileged positions to be undermined by the statute(Kendall and Anheier 1999, 290 and 301) . Some in those organizations still advocate transfer of the German system to the EU level. But others are more pessimistic about the prospect of transnational cooperation with NGOs from other countries because “it is very difficult to convey concepts specific to the German system, like orientation to the common welfare” (AWO Mittelrhein 2002, 20) .

(3) Solution of the Commission : loosely structured corporatism?

The commission does not make clear its policy on this problem yet. Requirement for the registration into the CONECCs database have only four points and they are rather general ;

1. Is your organization a non-profit making representative body organized at European level, i.e. with members in two or more European Union or Candidate Countries?
2. Is your organization active and does it have expertise in one or more of the policy areas of the Commission?
3. Does your organization have some degree of formal or institutional existence? That is to say, is it operated in accordance with a document that sets out its objectives and the way it is to be managed?
4. Is your organization prepared to provide any reasonable information about itself required by the Commission, either in support of this request or for inclusion on the database?

The Commission even states that “the Commission believes that consultation should be undertaken as widely as possible and does not wish, as a general principle at this time, to accord certain organizations special status.”

To the contrary, Justin Greenwood (2002) argues that the Commission s criteria does represent a *de facto* form of accreditation. It is true that the Commission has an intention to reduce the number of involved actors and thereby increase effectiveness. But “*de facto* accreditation” seems too much

an exaggeration. The Commission says “the European Commission encourages organizations to work together in common associations and networks at the European level since such organizations considerably facilitate the efficiency of the consultation process(CEC 2000, 9)” but adds that “[s]elfselection by the NGO Community, through the appointment of representatives and the setting up of networks or platforms can be a useful alternative to the selection by the Commission (Ibid., 11)” Judging from such statements, the Commission aims to induce civil society organizations to form a coordinating framework themselves, by giving a status of the central consultation partner, as was already practised in case of the Social Platform or the Green-8. In a conference held by the Republican-leaning American Enterprise Institute, a speaker even commented that “belonging to the consortium becomes a must for an NGO that wants to either heard or funded by the EU (Peeters 2003, 11-12)”, from a very critical standpoint on the involvement of the NGOs. If it succeeds, the Commission can avoid both the blame of selecting arbitrary and the difficulty facing too many organizations.

Comparable system can be found at the nation-state level. The Federal Working Community of Free Welfare Services (Bundesarbeitsgemeinschaft der freien Wohlfahrtspflege) in Germany consists of five national organizations (cf. Backhaus-Maul 2000). It coordinates opinion among member organizations and speaks with one voice against the government in the corporatist style policy-making. They also make use of the concept “subsidiarity”, which is almost same as “functional subsidiarity” coined by the EESC. As is shown by this example, corporatist involvement does not necessarily presuppose single centralized organization. What the Commission envisages can be such loosely structured corporatism.

5. Conclusion

As is shown above, the discourse of civil society by the EU institutions and the NGOs has specific bias. Civil society is regarded as an *assemblage* of organizations. Such organizations will be involved in policy processes in an institutionalized way for the sake of policy effectiveness and legitimacy. The Commission tries to induce the NGOs to form a co-ordination framework for more effective involvement. Here, we can see the tendency toward loosely structured corporatist state-society relations, although we should be careful how for this tendency develops. This is the first point, which concurs with the work of Gerda Falkner (1998), this article makes on the formation of “corporatist policy community” at the EU level.

But such corporatist state-society relations will not have such legitimating potential as it had at the nation-state level, which is the second point. For the EU-level organizations, there is a dilemma between governance and le-

gitimacy. Further the NGOs are involved, smaller their legitimating power by estrangement from the grassroots. This is what Armstrong (2002) criticizes as “transnationalisation, governmentalisation, and autonomisation”. Coping with this dilemma, Curtin (2003) advocates more open, pluralist criteria of consultation to make an open and inclusive space of deliberation. On the other hand, Greenwood (2002) characterizes the EU as “overloaded democracy” and De Schutter (2002) points out the necessity to structure societal actors. Balancing act in this dilemma is difficult.

For the civil society organization, the EU is becoming more open and participatory polity than some nation-state democracies, just because the alleged “democratic deficit” forces the Commission to involve them into the policy processes in an institutionalized, “corporatist” way. Here is an interesting dynamics in the construction of the European polity. But it does not guarantee the desired effect of legitimation, let alone offer a panacea for democratizing the EU.⁵

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5 This difficulty is particularly manifest in the EU, as we have seen, but the existing nation-state democracies are no exception. For they increasingly govern in “governance” mode, as the EU does.

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