

THE DEMOCRATIC DEFICIT AND THE EUROPEAN TRANSPARENCY INITIATIVE*

*Dilek YİĞİT**

Abstract

Because the European Union as a supranational organisation is not predominantly based on representative mechanism there have been concerns about democratic quality of its decision-making process and legitimacy of its political order. This paper discusses why the European Union suffers from a democratic deficit and to what extent the European Transparency Initiative successfully addresses the democratic deficit in the Union.

Key Words: *Democratic deficit, theory of democracy, transparency, civil society*

Özet

Supranasyonel bir kuruluş olan Avrupa Birliği'nin karar organlarının, büyük ölçüde temsili demokrasiye istinat etmiyor olması, Birliğin karar-alma mekanizmasının demokratik kalitesi ve Birliğin meşruiyeti konusunda kaygılara neden olmaktadır. Bu makale, Avrupa Birliği'nde demokrasi açığının nedenleri üzerinde dururken, Avrupa Şeffaflık Girişimi'nin, demokrasi açığı sorununu ne ölçüde çözebileceğini analiz etmektedir.

Anahtar Kelimeler: *Demokrasi açığı, demokrasi teorisi, şeffaflık, sivil toplum*

Introduction

The European integration process by which the member states delegate more powers to the European Union over time and the Union's sui generis institutional structure which is not similar to neither the international organizations' structure nor the national states' institutional structure give rise to debates on whether the European

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** Dr, Ankara Üniversitesi Sosyal Bilimler Enstitüsü Avrupa Birliği ve Uluslararası Ekonomik İlişkiler Anabilim Dalından mezun,

governance is democratic and decisions taken by the European institutions are legitimate.

The democratic quality of the Union, in fact, is assessed through comparing the Union with a nation state and equating democracy with representative democracy. Thus, if the Union is viewed through lens of representative democracy, the conclusion reached is that the Union suffers from a democratic deficit as the system of political representation is inadequate in the Union, that is, the Union lacks a system of responsible government, European elections fought on European issues and Europe-wide political parties.

According to representative democracy, what justifies a political order and makes the will of all expressed is electoral mechanism, that is, “inputs are primarily voiced through elections and, within the electoral process, through parties”¹. Nevertheless, that is not the case in the European Union.

In this regard, the question we face is of how the Union is legitimated. The Union seeks to legitimate itself through arrangements that embody democratic deliberation and tries to encourage civil society participation in its decision-making process. In this context, transparency as a condition to “compel deliberation and force everyone to determine, before he acts, what he shall say if called to account for his actions”² might be a tool for producing input legitimacy of the Union.

The basic question of this article is that to what extent the European Transparency Initiative successfully addresses the democratic deficit in the Union.

In the section 2 of the article, reasons for the democratic deficit in the European Union are analysed. In the section 3, theory of democracy and the bases of deliberative democracy are analysed in order to shed light on why the European Union tries to enhance its democratic quality through arrangements which embody participation and why deliberative democracy is considered to better match the Union rather than representative democracy. The section 4 deals with transparency as a condition for effective deliberation in the Union and as a tool for providing input legitimacy for the Union. In the section 5, civil society participation in the European decision-making process is explored through giving European environment policy as an example.

Democratic Deficit in the European Union

Literature on the democratic deficit in the European Union reveals the differences in views with respect to whether the Union suffers from the democratic deficit.

I shall classify the arguments about the democratic deficit into three groups. The arguments in the first group claiming that there is a democratic deficit in the European

¹ P. Mair, “Popular Democracy and the European Union Polity”, European Governance Papers, No.C-05-03, 2005, <<http://www.connex-network.org/pdf/egp-connex-C-05-03.pdf>>, accessed on 07.07.2008, p.17.

² J. S. Mill, **Considerations on Representative Government**, South Bend, Gateway, 1962, p.214.

Union rely on an abstract model of democracy and tend to equate Community institutions with familiar national institutions.

With regard to the Commission, two factors are considered to be the reasons for the democratic deficit in the Union. First, members of the Commission are not elected directly by citizens. Second, the Commission as an agenda setter determines the direction in which the European Union moves. Follesdal and Hix indicate that:

*“The Commission is neither a government nor a bureaucracy, and is appointed through an obscure procedure rather than elected by one electorate directly or indirectly.”*³

As regards the European Parliament, the European Parliament’s limited role in the European decision-making compared to national parliaments’ competences in national decision-making processes is seen as another reason for the democratic deficit in the Union.

The first group arguments also give more importance to the role of elections and electoral accountability for democratic legitimacy. Although members of the European Parliament have been elected directly by citizens of the member states since 1979, the European Parliament elections are regarded as second-order national contests because elections are fought on national issues rather than European issues.⁴ For this reason, an absence of European elections fought on European issues is claimed as a source of the democratic deficit in the Union. These kinds of arguments suggest that the powers of the European Parliament as the source of legitimacy should be increased, veto power of each member states should be kept in the Council, popularly elected executives and a pluralistic system of interest representation should be established for more democracy in the Union.⁵

Contrary to the arguments in the first group, the arguments in the second group claim that there is no a democratic deficit, but a credibility crisis in the European Union. The main defender of this argument, Majone holds that the member states have delegated regulatory policy competences to the European level, the European Union is a regulatory agency as a fourth branch of government, hence the European Union policy-making should not be democratic in the usual meaning of the term.⁶ Majone asserts that the solution to a credibility crisis is procedural and the European Union needs more transparent decision-making, technical expertise and greater professionalism, ex post review by courts and ombudsman, rules protecting the rights of minority and better

³ A. Follesdal, S. Hix, “Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik”, **Journal of Common Market Studies**, Vol.44, No.3,2006, p.536.

⁴ S. Hix, “Dimensions and Alignments in European Union Politics: Cognitive Constraints and Partisan Responses”, **European Journal of Political Research**, Vol.35, No.1, 1999, pp. 69-106.

⁵ G. Majone, “Europe’s Democratic Deficit: The Questions of Standards”, **European Law Journal**, Vol.4, No.1, 1998, p.6.

⁶ G. Majone, “**The European Community: An ‘Independent Fourth Branch of Government’?**”, EUI Working Paper SPS No. 94/17, Florence, European University Institute, 1993.

scrutiny by private actors, the media, parliamentarians.⁷ Alongside with Majone, Moravcsik challenges the arguments that there is a democratic deficit through arguing that decisions in the European Council and the Council of Ministers are accountable to national citizens in as much as the national parliaments and national media scrutinise what national government ministers' do in Brussels. He also criticises the arguments that the Commission is beyond the control of the European Parliament through arguing that powers of the European Parliament have been increased in the legislative process and in the selection of the Commission. In this context, the Parliament's veto of the first proposed line-up of the Barroso Commission in October 2004 is an example of increased power of the European Parliament.⁸

With regard to the question on whether the European decisions are based on the will of European people, Moravcsik asserts that a system of checks-and-balances ensures that the consensus is required for any policies to be agreed, no single set of private interests can dominate the European Union decision-making process. Moravcsik indicates that the European Union policy-making process is more transparent than most domestic systems of government. For Moravcsik, interest groups, the media, national politicians, private citizens can access to documents about the European Union policy-making easier than access to information in member states.⁹

The arguments in the third group deal with the fact that the European Union is neither a national state nor an international organization. According to these arguments, the European Union lacks a so called demos and it is a polity-in-the-making, consequently the standards of democratic governance should not be applied at the level of Europe. In this regard, Weale holds that:

*"In many ways, the conception of democracy associated with the nation state, though tolerable in a way that it balanced competing values, was based upon a particular conception of democracy couched in terms of majoritarian popular will-formation through party competition. Since this version of democracy can not be a model for EU democracy (given that the conditions for its realization do not obtain), we need to reformulate the notion of democratic legitimacy itself in terms drawn from other strands of democratic theory."*¹⁰

Similarly, Bellamy and Warleigh argue that democratic legitimacy can not be obtained in the Union by modelling the European Union institutions on institutions of the nation state.¹¹

⁷ Follesdal and Hix, 2006, **op. cit.**, p.538

⁸ Ibid, Follesdal and Hix, p.539-540.

⁹ Ibid., Follesdal and Hix, p.540.

¹⁰ A. Weale, "Democratic Theory and the Constitutional Politics of the European Union", **Journal of European Public Policy**, 4(4), 1997, p.668.

¹¹ R. Bellamy, A. Warleigh, (eds.) **Citizenship and Governance in the European Union**, London, Continuum, 2001, p.10.

Certainly, the arguments in the third group mainly focus on how to assess whether the European Union suffers from the democratic deficit rather than to come to the conclusion if there is a democratic deficit or not in the Union. Mair interprets these arguments and puts that;

*“If Europe doesn’t fit the standard interpretation of democracy, then we should change that standard interpretation. Rather than adapting Europe to make it more democratic, it makes more sense to adapt the notion of democracy to make it more European.”*¹²

Indeed, the arguments that the Union suffers from the democratic deficit is more common among scholars’ debates. Thus, the Union of which system of political representation is inadequate has to deal with legitimacy crisis as legitimacy is considered to derive from fair and free elections and elected parliamentary bodies.

If the European Union suffers from the legitimacy crises, how the legitimacy of the Union can be enhanced ought to be discussed. In this context, “vectors”¹³ by which the European Union legitimacy can be described and “distinction between input and output legitimacy”¹⁴ provide a framework for searching for an answer to the question of to what extent transparency is a remedy for enhancing the legitimacy of the Union.

The first “vector” of legitimacy is indirect legitimacy which means the legitimacy of the European Union depends on the legitimacy of the member states. The second “vector” is parliamentary legitimacy, from the perspective of this “vector”, “dual legitimation by a Council of governments and a directly elected Parliament may be the only way of achieving popular sovereignty in a political system...”¹⁵ The third “vector” is technocratic legitimacy, which underlines that the Union is legitimated by its ability to meet citizens’ needs. Lord and Magnette hold that “European institutions are technically able to improve the welfare of the overwhelming majority of citizens in terms of their own felt preferences.”¹⁶ Another “vector” is procedural legitimacy which means legitimacy can be obtained by meeting certain criteria such as transparency and consultation of interest parties.

Scharpf¹⁷ identifies two distinct and complementary perspectives of legitimacy; Input-oriented and output-oriented legitimizing beliefs. He defines input-oriented legitimacy as:

“Input-oriented democratic thought emphasizes ‘government by the people’. Political choices are legitimate if and because they reflect the

¹² Mair, 2005, *op. cit.*, p.19.

¹³ M. Jachtenfuchs, et al. “Which Europe? Conflicting Models of a Legitimate European Political Order”, *European Journal of International Relations*, Vol.4, No.4,1998, pp.409-445.

¹⁴ F. W. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford, Oxford University Press, 1999.

¹⁵ C. Lord, P. Magnette., “E Pluribus Unum? Creative Disagreement about Legitimacy in the EU”, *Journal of Common Market Studies*, Vol.42, Number 1,2004, p.185.

¹⁶ *Ibid*, p.186.

¹⁷ Scharpf, *op. cit.*, 1999.

'will of the people'-that is, if they can be derived from the authentic preferences of the members of a community."

He defines output –oriented legitimacy as:

"By contrast, the output perspective emphasizes 'government for the people'. Here, political choices are legitimate if and because they effectively promote the common welfare of the constituency in question"

Scharpf underlines that:

"They differ significantly in their preconditions and in their implications for the democratic legitimacy of European governance, when each is considered by itself... input-oriented authenticity can not mean spontaneous and unanimous approval, nor can output-oriented effectiveness be equated with omnipotence"

and he also stresses that "input- oriented arguments often rely simultaneously on the rhetoric of 'participation' and of 'consensus'.¹⁸

The "vectors" and elements of input and output legitimacy are summarised in the table 1

Table 1: Input and Output Legitimacy Under the Four Vectors¹⁹

	Input	Output
	EU policies are legitimate to the extent they are based on the following:	EU policies are legitimate to the extent they deliver the following:
Indirect	Authorization by states	State preference
Parliamentary	Elections	Voters preference
Technocratic	Expertise	Efficiency
Procedural	Due process and observance of given rights	Expanded rights

(Source: Lord and Magnette, 2004, p.188)

In the sense of indirect legitimacy of the European Union, Follesdal says that legitimacy can be regarded as a concept of legality and underlines:

*"Democratic member states have revocably transferred limited parts of their sovereignty by treaty, forming a de facto European constitutional order in order to better achieve their goals by coordinated action...The Union's authority is illegitimate when such limits are surpassed."*²⁰

¹⁸ Ibid., F. W. Scharpf, p.6-26.

¹⁹ Lord and Magnette (2004:188) underlines that "none of the foregoing vectors of legitimacy exists in pure form in the present EU"

²⁰ A. Follesdal, "Survey Article:The Legitimacy Deficits of the European Union", **The Journal of Political Philosophy**, Volume 14, Number 4, 2006, p. 445.

This argument is close to Maastricht decision of the German Constitutional Court. With regard to the decision of the German Constitutional Court, Scharpf indicates that:

“The court pointed out that democratic legitimacy does depend on processes of political influence and control deriving from ‘the people’ which, under the circumstances, had to be indirectly derived from the peoples and parliaments of the member states.”²¹

However, Schmitter argues that “...in such a complex and still contingent polity, it becomes rather difficult to discern who is loaning and who is borrowing legitimacy-and for what purpose.”²²

In the context of parliamentary legitimacy, that the Union lacks a representative mechanism based on elections as an element of input legitimacy arises the legitimacy problem in the Union.

In the context of technocratic legitimacy, an element of input legitimacy is expertise. Costa and his colleagues indicate that “It is well known fact that the institutional actors seek to legitimize their actions through their expertise and their capacity to carry out ‘effective’ public policies.”²³ Besides, Kassim and Dimitrakopoulos put that the Commission’s legitimacy comes from its technical expertise²⁴ and Lord and Magnette give the European Central Bank as an example, of which legitimacy comes from expertise even though it “faces no one dominant electoral cycle.”²⁵ Expertise is also an important element for participation as participants bring “much-needed expertise and implementation capacity to the political process.”²⁶

It is apparent that enhancing the democratic quality and legitimacy of the Union²⁷ through civil society participation fall into the concept of procedural legitimacy. This approach is much closer to theory of deliberative democracy, according to which participation and transparency produce legitimising effect. Thus, legitimacy through participation is obtained by respecting the principle of transparency as an element of input legitimacy.

²¹ Scharpf, *op. cit.*, 1999, p.10.

²² P. C. Schmitter, **What Is There To Legitimize In The European Union...And How Might This Be Accomplished?**, Jean Monnet Working Paper No.6/01, 2001.

²³ O. Costa, et.al. “Introduction:Diffuse control mechanisms in the European Union:towards a new democracy?”, **Journal of European Public Policy**, 10:5, 2003, p.667.

²⁴ H. Kassim, D.G. Dimitrakopoulos, “The Commission and the Future of Europe”, **Journal of European Public Policy**, 14:8, 2007, p.1265.

²⁵ Lord and Magnette, 2004, p.186.

²⁶ S. Borras, T. Conzelmann, “Democracy, Legitimacy and Soft Modes of Governance in the EU:The Empirical Turn”, **Journal of European Integration**, Vol.29, No.5, 2007, p.532.

²⁷ Scharpf, in fact, argues that “all discourses that attempt to draw on input-oriented legitimizing arguments can only exacerbate the perception of an irremediable European democratic deficit...input-oriented arguments could never carry the full burden of legitimizing the exercise of governing power” Scharpf, *op. cit.*, 1999, p.187-188.

Theory of Democracy and the Bases of Deliberative Democracy

Weale²⁸ defines democracy as “a form of government in which public policy depends in a systematic, if sometimes indirect, way upon public opinion” while underlining there are various ways in which democracy is thought and it takes variety of forms. As suggested by Catt,²⁹ there are three models of democracy: participatory, direct and representative. Catt defines participatory democracy as “the people rule by collectively discussing what issues need to be debated and talking about possible solutions until they agree on the best solution or option for the group.” and defines direct democracy as “democracy involves all of the people in deciding individual issues but this time they vote on specific questions that are posed for them, most commonly in a referendum.”³⁰ Direct democracy is thought to be applicable to the small-scale nation-state. Fishkin³¹ cites Aristotle who argued that democracy was limited to states where all citizens could come together and listen a speaker in order to indicate that how important the size of nations is for the practice of democracy. The consequence of impossibility of direct democracy in the large-scale nation states where all citizens can not come together is a transformation of democracy.

Dahl speaks of three great transformations which democracy has undergone over time.³² The first is the transformation of non-democratic city states into democracies. The second is the idea of democracy transferred from the city state to the national state. Hence, representative democracy is a consequence of the second transformation. In the third transformation taking place now, the nation states lost much of their political, economic, social and cultural autonomy because of the development of transnational systems.

In representative democracy which is a consequence of the second transformation of democracy, elected persons are given the task of making decisions for the people. The importance of the model of representative democracy derives from that representative democracy is a workable way to practice democracy in the much larger scale. Catt underlines Mill’s argument that representation is the greatest modern invention because it made democracy feasible.³³

Regarding representative democracy, Weale puts that:

“In the representational model of democracy...the emphasis is upon seeing the legislature as broadly representative of varieties of political opinion. In consequence, representational systems typically have a relatively large number of political parties competing for office, shared executive authority, broad representation on legislative committees and

²⁸ A. Weale, **Democracy**, New York, Palgrave Macmillan, 2007.

²⁹ H. Catt, **Democracy in Practice**, London, Routledge, 1999.

³⁰ Ibid., p.13.

³¹ J. S. Fishkin, **Democracy and Deliberation**, USA, Yale University Press, 1991.

³² R. A. Dahl, “A Democratic Dilemma: System Effectiveness versus Citizen Participation”, **Political Science Quarterly**, Vol.109, No.1,1994, p.25-27.

³³ Ibid., Catt, 1999, p.14.

and emphasis upon compromise among competing opinions in the construction of governing coalitions.”³⁴

Yet, representative democracy is challenged in the post modern age. Even though representative democracy is the most familiar form of democracy, deliberative democracy has been the dominant theme in the literature on democracy over the last two decades. The domination of deliberative democracy in the literature does not mean that deliberative democracy is regarded as an alternative to representative democracy. Deliberative democracy ought to be regarded as a complementary to representative democracy as a means for improving the quality of decisions and enhancing legitimacy of the political order.³⁵

I consider that there are two main reasons for the domination of deliberative democracy in the literature on democracy over the last two decades.

First is the argument that sole electoral mechanism³⁶ is not enough for producing normatively binding political decisions and elections may not define the popular will,³⁷ hence, deliberation is regarded as a remedy for the problems attributed to representative democracy.

The second is the postnational age within which the national states delegate more powers to the international and supranational organizations, of which institutional structures and decision-making processes are not based on representative model, consequently deliberation is seen as a means to strengthen democratic quality of transnational decision-making processes.

³⁴ Weale, *op. cit.*, 2007, p. 131.

³⁵ Gargarella underlines the relationship between representative democracy and deliberative democracy in obtaining impartial decisions. He says that, according to the Founding Fathers of the USA, “impartial decisions required careful deliberation among representatives of the whole society. In brief, their ‘formula’ for securing impartiality was ‘full representation plus deliberation’”. R. Gargarella, “Full Representation, Deliberation, and Impartiality”, in **Deliberative Democracy**, ed. J. Elster, United Kingdom, Cambridge University Press 1998, p.260.

³⁶ Knight and Johnson indicate that “Political theorists of various persuasions are critical of democratic institutional arrangements that rely solely or even primarily on electoral mechanisms, that is, on ways of aggregating individual interests or preferences...They insist that aggregation needs to be supplemented and perhaps entirely supplanted by institutional arrangements that embody and enhance democratic deliberation.” J. Knight, J. Johnson, “Aggregation and Deliberation: On the Possibility of Democratic Legitimacy”, **Political Theory**, Vol.22, No.2,1994, p. 277.

³⁷ According to social choice theory, there are two sorts of difficulty with voting. First, voting is unstable as electoral outcomes are subject to manipulation or agenda control. Second, voting is ambiguous as different methods of counting votes yield different outcomes and there is no way to determine which method represents the popular will in a most correct manner. See Knight and Johnson, *op. cit.*, 1994.

Knight and Johnson define deliberation as “...idealized process consisting of fair procedures within which political actors engage in reasoned argument for the purpose of resolving political conflict.”³⁸

This definition leads to important point that is the process within which preferences of political actors are argued and also can be changed, hence, deliberation might increase the likelihood that consensus would be reached.

Regarding the process of deliberation, McGann points out that:

*“...It is possible that the process of deliberation will lead to people changing their ultimate values, allowing consensus on the matters under question... in addition deliberative democrats argue that deliberation forces participants to adopt more reasonable argument... in many circumstances deliberation is constitutive of what is reasonable. That is to say, we can only say what a reasonable decision is after deliberation about it.”*³⁹

More precisely, deliberative theorists establish a link between the deliberation process and the source of legitimacy. Regarding the role of deliberation in the context of legitimacy, Eriksen and Fossum claim that:

*“Without some kind of agreement and mutual understanding, a representative system such as a parliamentary one will be severely hampered in its ability to produce decisions, and those reached will be challenged on legitimacy grounds. In open societies political solutions have to be defended vis-a-vis the citizens in public debate. Outcomes will not be accepted unless they can be backed up by good reasons, as citizens require, and are expected to require, reasons of a certain quality.”*⁴⁰

Whereas deliberative democracy rests on the assumption that legitimacy derives from the popular will on which representative democracy also rests, deliberative democracy differs from representative democracy on how the popular will is expressed. While according to representative democracy, what makes legitimacy possible is election, deliberative democrats state that not only election but also public forum, discussion and participation provide the evidence of the popular will.

Deliberative democracy regards the process of formation of the will as a source of legitimacy, not the sole process in which predetermined wills are aggregated, whereas election which is regarded as a source of legitimacy by representative democracy is based on the predetermined will. In this context, Manin and his colleagues argue that

³⁸J. Knight, J. Johnson, **op. cit.**, 1994, p. 285.

³⁹A. McGann, **The Logic of Democracy: Reconciling Equality, Deliberation, and Minority Protection**, Michigan, USA, The University of Michigan Press, 2006, p.119-120.

⁴⁰E. O. Eriksen, J.E. Fossum, “Post-national Integration”, in **Democracy In The European Union: Integration Through Deliberation**, ed. E. O. Eriksen and J.E. Fossum, London, Routledge,2000.

“the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is, deliberation itself.”⁴¹

As for a role which civil society plays in deliberative democracy, the question of why civil society is claimed to be necessary for deliberative democracy ought to be answered and the account of the separation between the public sphere and the private sphere ought to be given.

Huber and her colleagues who regard democracy as a matter of power and power sharing hold that the balance of power between state and civil society and the balance of power within society are shaped by the structure of the state and state-society relations.⁴² In order to underline the importance of civil society for democracy, they claim that:

*“The structure of the state and state-society relations are critically important to the chances for democracy. The state needs to be strong and autonomous enough to ensure the rule of law and avoid being the captive of the interests of dominant groups. However, the power of the state needs to be counterbalanced by the organizational strength of civil society to make democracy viable.”*⁴³

Hirst defines the public sphere as “sphere is based on representative government and the rule of law; its purpose is both to govern and to protect the private sphere” and defines the private sphere as “..sphere is that of individual action, contract, and market exchange, protected by and yet independent of the state. Lawful association in civil society is a private matter.”⁴⁴ In fact, it ought not to be thought that the boundary between the two spheres is clear. Even though the civil society is conceived as a private sphere,⁴⁵ it play a role in public sphere. Holzhaacker states that:

*“The discussions among citizens and civil society, political parties and the electorate, civil society organizations and decision makers, may create a broad dialogue in the public sphere which enriches the democratic, representative system.”*⁴⁶

⁴¹ B. Manin, et al, “On Legitimacy and Political Deliberation”, **Political Theory**, Vol.15, No.3, 1987, pp.351-352.

⁴² E. Huber, et al. “The Paradoxes of Contemporary Democracy: Formal, Participatory, and Social Dimensions”, **Comparative Politics**, Vol.29, No.3, 1997, p.325.

⁴³ Ibid, p.325.

⁴⁴ P. Hirst, **From Statism to Pluralism**, London, UCL Press, 1997, p.116.

⁴⁵ Hirst (1997) criticises a conception of civil society as a private sector independent from the state, he claims that “civil society must no longer be viewed as a “private” sphere, it needs to take on elements of “publicity”...” With regard to the question of the public sphere, Eriksen and Fossum (2002) underline the difference between strong public which refers to institutionalized deliberations such as a parliamentary assembly and weak or general publics refers to the deliberation sphere outside political system such as civil society.

⁴⁶ R. Holzhaacker, “Democratic Legitimacy and the European Union”, **Journal of European Integration**, 29:3, 2007, p.261.

It ought to be indicated here that there must not be necessarily a contradiction between the government and civil society, Huber and his colleagues underline that:

“It is fundamentally mistaken to view the relation between state action and the self-organization of society as a “trade-off”-the more of one the less of the other. To the contrary, associations in civil society have tended to grow ...as the state took on new tasks in society.”⁴⁷

Regarding the civil society in deliberative democracy, Michalowitz indicates that:

“Deliberative democracy theory maintains that a democratic decision emerges from deliberation amongst those affected by the decision or issue in question, i.e., members of civil society debate an issue and arrive at a solution that is acceptable to all members as the most conducive to the common good...the concept of civil society plays a particular role for deliberative democracy as the space within which public reasoning takes place...”⁴⁸

That is to say, the reason for civil society participation is necessary for deliberative democracy is that participation of civil society in the decision-making process is regarded as a means to contribute to formation of the popular will and to justification for decisions taken, hence civil society participation enriches the democratic quality of the decision-making process.

However, it is worth indicating in this context that Habermas considers that an influence from an active civil society should be mediated through representative institutions to guarantee that decisions satisfy equality and discursive rationality.⁴⁹

Transparency in the European Union’s Decision-Making

Prior to arguing why transparency is one of the central issues for the quality of democracy in the European Union, the different aspects of transparency ought to be given. The first aspect of transparency is access to documents and information, the second aspect is knowledge on who takes decisions and how decisions are taken. The third aspect of transparency refers to comprehensibility and accessibility, the fourth aspect of transparency is concerned with consultation. The final aspect is the duty to give reasons.⁵⁰ To make distinction among different aspects of transparency helps us to see to which of these aspects the European Union gives priority and which of them is regarded as a reason for the democratic deficit in the Union.

⁴⁷ Huber, et.al., **op. cit.**, 1997, p. 328.

⁴⁸ I. Michalowitz, “Analysing Structured Paths of Lobbying Behaviour: Why Discussing the Involvement of Civil Society Does not solve the EU’s Democratic Deficit”, **European Integration**, Vol.26, No.2, 2004, p.151.

⁴⁹ J. Habermas, **Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy**, Cambridge, MIT Press, 1996.

⁵⁰ D. Chalmers, et al., **European Union Law**, Cambridge, The United Kingdom, Cambridge University Press, 2006, p.317.

Chalmers and his colleagues indicate that there are five arguments for why transparency is important. The administrative argument that with greater transparency comes greater accuracy and objectivity in record keeping. The constitutional argument posits that the legal and constitutional roles of the European Parliament and the European Court of Justice, national bodies are supported by greater transparency. The legal argument underlines the necessity of transparency to make citizens informed on their legal rights. The policy argument posits that greater transparency leads to better decision-making and opens the decision-making process to public and media scrutiny, and the political argument asserts greater transparency makes citizens meaningfully participate in a policy making process.⁵¹

Though the transparency as an umbrella term covers a variety of issues, attention has been given mainly to access to documents in the European Union. Therefore access to documents and information in the European Union should not be seen as a reason for the democratic deficit. How to make citizens informed on who takes decisions and how decisions are taken in the European governance, how comprehensibility is provided and what consultation procedure ought to be were ignored although the Treaties changing the Founding Treaties of the European Communities made the European legal structure and procedures of the decision-making more complicated for citizens. That the European integration process goes further and the member states delegate more power to the European institutions over time makes the European governance less transparent and more complex whereas increasing competences of the European institutions raises expectations of more transparency and accountability. The fourth and the fifth aspects of transparency mostly related to deliberation have not received necessary attention. It can be argued that giving more attention to these aspects of transparency enables interested parties to come together to decide matters of common interest.

The first visible attempt to promote transparency in the European governance is the 2001 White Paper. Although the extent to which the White Paper is important step in promoting transparency is a contentious issue, Sloat underlines that “one of its biggest achievements has been placing the ideas of good governance and better policy-making on the European agenda.”⁵²

In the wake of the White Paper, a Communication on the minimum standards for consultation was adopted in December 2002, which defines the minimum standards applied to consultations on the Commission’s major policy proposals listed in the Commission’s Annual Programme and consultations on Green Papers.

Whereas Sabel and Zeitlin⁵³ consider that pressure for more transparency originated from the Nordic countries in the European Union after Sweden and Finland

⁵¹ **Ibid.**, D. Chalmers, et al., p.317-318.

⁵² A. Sloat, “The Preparation of the Governance White Paper”, **Politics**, Vol 23(2), 2003,p. 134.

⁵³ C. F Sabel, J. Zeitlin, **Learning from Difference: The New Architecture of Experimentalist Governance in the European Union**, European Governance Papers (EUROGOV), No. C-07-02, 2007, <http://www.connex-network.org/eurogov/pdf/egp-connex-C-07-02.pdf>, accessed on 07.07.2008.

entered the European Union in 1995, the main issue triggering the debates on transparency was the resignation of the Santer Commission in 1999. This resignation is the main impetus behind the 2001 White Paper. Indeed, the resignation of the Santer Commission received public attention and encouraged citizens to know who does what in the Union and underlined the importance of transparency for accountability of the European institutions.

In the 2001 White Paper, it is indicated that;

“The White Paper proposes opening up the policy-making process to get more people and organizations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This should help people to see how Member States, by acting together within the Union, are able to tackle their concerns more effectively.”⁵⁴

to underline the importance of openness to get people and organizations involved in the policy-making.

In this context, the Commission underlines in the White Paper that :

“Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages.”⁵⁵

What the Commission provides for better involvement and more openness are set out in the White Paper as follows:⁵⁶

“- Up-to-date, on-line information on preparation of policy through all stages of decision-making,

- Establish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy,

- Bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions,

- Establish and publish minimum standards for consultation on EU policy,

- Establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional

⁵⁴ Commission of the European Communities (2001) **European Governance: A White Paper**, COM (2001) 428 final, Brussels, p.3.

⁵⁵ Ibid., Commission, 2001, p.11.

⁵⁶ Ibid., Commission, 2001, p. 4.

consultation in return for more guarantees of the openness and representativity of the organisations consulted.”

Obviously, what the Commission tries to do is to search for a tool for improving the quality of democracy in the Union. In so doing, the Commission underlines what is required for the quality of European democracy is transparency as a basic condition for quality of deliberation and as an element of input legitimacy.

Besides, establishing a link between citizens and the European institutions became one of the priorities to enhance the democratic quality of decision-making process. With the aim of establishing this link, what is needed is to make the European governance open to general public. Thus, a basic precondition for establishing a link between the Union and its citizens is transparency which is also a central issue to deliberative democracy, as publicity is seen as “one of the purifying elements of politics”⁵⁷

Regarding to the importance of transparency in deliberation, Friedrich puts forward that:

*“Deliberation is normatively conducive to democracy if it is organised in a transparent and open way that is inclusive to all those voices that are concerned by a particular policy. The interactions must be based on mutual justification and result in a reasoned responsiveness.”*⁵⁸

Naurin underlines that:

*“...deliberative theorists hypothesise that transparency and publicity will promote a shift away from self-interested bargaining towards arguing with public-regarding justifications...”*⁵⁹

In order to promote transparency in the Union, the European Transparency Initiative was launched as a package in 2005 to promote transparency in the decision-making process.

Kallas vice president of the European Commission and the Commissioner for Administrative Affairs, Audit and Anti-Fraud holds that European Transparency Initiative is needed to ensure a proper functioning of the decision making process, to gain the trust of the public and to protect policymakers against themselves.⁶⁰ According

⁵⁷ A. Gutmann, D.Thompson, **Democracy and Disagreement. Why Moral conflict can not be Avoided in Politics, and What Should Be Done About It**, Cambridge Mass., Harvard University Press, 1996, p.95.

⁵⁸ D. Friedrich, **Old Wine in New Bottles?: The Actual and Potential Contribution of Civil Society Organizations to Democratic Governance in Europe**, Reconstituting Democracy in Europe Working Paper 2007/08, 2007, p.12. <www.reconproject.eu>, accessed on 04.07.2008

⁵⁹ D. Naurin, **“Why increasing transparency in the European Union will not make lobbyists behave any better than they already do”**, European Union Studies Association EUSA, Biennial Conference, Austin, Texas, 2005, p.4.

⁶⁰ S. Kallas, **“The Need for a European Transparency Initiative”**, SPEECH/05/130, Nottingham, 2005, <<http://ec.europa.eu>>, accessed on 03.07.2008.

to Kallas, legitimacy and accountability are guaranteed when European institutions are exposed to transparency and European people are allowed to know who does what.

The first goal of the European Transparency Initiative is to provide a more structured framework for the activities of interest representatives (lobbying). Lobbying is defined by the European Commission as “all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions.”⁶¹ The European Commission indicates that lobbying is a legitimate part of the democratic system and lobbyists can draw attention of European institutions to important issues. The Commission also underlines that undue influence should not be exerted on the European institutions and which input lobby groups provide to the European institutions, who they represent, what their mission, how they are funded must be clear to the public. The Commission have certain concerns about whether lobbying activities go beyond legitimate representation while considering interest representations through lobbies is an essential part of the democratic system. With regard to concerns about lobbying activities, Kalas suggests that transparency of lobbying activities is deficient in comparison to their impact⁶² and he also underlines that if lobbying is designed to extract special monopoly privileges or rights, it is harmful to society overall.⁶³

Due to concerns about lobbying activities, the European Commission gives great importance to outside scrutiny and regards it as a deterrent against improper lobbying. For the Commission, outside scrutiny is implemented by the existing policy on transparency based on two different categories of measures: First, the information regarding to relations between interests representatives and the Commission is provided to the public. Second, there are rules which govern the conduct of those being lobbied and of the lobbyists.⁶⁴ The Commission considers greater transparency in lobbying activities is necessary and a credible system could consist of a voluntary registration system for lobbyists to register, a common code of conduct for all lobbyists and a system of monitoring and sanctions to be applied in case of breach of the code of conduct and/or incorrect registration.⁶⁵ As of 08.08.2008 there were 249 interest representatives in the register in the context of the European Transparency Initiative.⁶⁶

In this regard, the European Transparency Initiative indicates apparently that transparency is believed to be a measure against improper lobbying.

⁶¹ Commission of the European Communities (2006) **Green Paper: European Transparency Initiative**, COM (2006) 194 final, Brussels, p.3-5.

⁶² Kallas, **op. cit.**, 2005.

⁶³ S. Kallas, “The European Transparency Initiative”, SPEECH/07/491, Brussels, 2007b, <<http://ec.europa.eu>>, accessed on 03.07.2008.

⁶⁴ Commission, 2006, p.6.

⁶⁵ Ibid., Commission, 2006, p.10.

⁶⁶ This information is obtained on 08.08.2008 in the European Commission’s web page, <http://webgate.ec.europa.eu>.

The second goal of the European Transparency Initiative is to receive feedback on the Commission's minimum standards for consultation. The Commission defines consultation as "processes through which the Commission wishes to trigger input from interested parties for the shaping of policy prior to a decision by the Commission." and defines interested parties as "all who wish to participate in consultations run by the Commission, whether they are organizations or private citizens."⁶⁷

The second goal of the European Transparency Initiative may be regarded as an attempt to solve a facet of the democratic deficit question, that is the European Union is too remote and secretive. The transparent framework for consultation is considered to be a tool for making the European Union closer to people through providing opportunity for interested parties to have a voice in the European decision-making process. With respect to the consultations in the European decision-making process, Kallas points out that they do not want to create an additional layer between the decision-makers and citizens and there will not be consultation privileges.⁶⁸

The third goal of the European Transparency Initiative is mandatory disclosure of information about the beneficiaries of Union funds under shared management. In respect of mandatory disclosure of information, the Commission wants to raise awareness of the use made of European Union money and to provide information on how European Union funds are spent.⁶⁹ The problem the Commission faces is that the majority of the European Union budget is spent in partnership with the member states and disclosures of information are subject to member states' discretion. The Commission underlines that the existing legal framework prevents the Commission from publishing information on beneficiaries.⁷⁰

The third goal of the European Transparency Initiative is related to providing accountability on the management of European funds, that is, it towards another aspect of the democratic deficit as democracy requires accountability of officials and citizens, which is a universal tenet of democratic theory.⁷¹ Accountability refers to being answerable to citizens and having to account for actions, inactions and their consequences. Accountability is achieved when citizens have information on what actors do and have opportunity to assess the match behaviors and rules regulating behaviours, outcomes and processes. Naurin underlines

*"Transparency is believed to strengthen public confidence in political institutions and increase the possibilities of citizens of holding decision-makers accountable for their actions."*⁷²

⁶⁷ Ibid., Commission, 2006, p. 11.

⁶⁸ S. Kallas, "European Transparency Initiative", SPEECH/07/17, Madrid, 2007a <<http://ec.europa.eu>>, accessed on 03.07.2008.

⁶⁹ Commission, **op. cit.**, 2006, p.12.

⁷⁰ Ibid., Commission, 2006, p.13.

⁷¹ J. G. March, J. P. Olsen, **Democratic Governance**, New York, The Free Press, 1995, p.162.

⁷² Naurin, 2005.

The European Transparency Initiative can contribute to the democratic quality of the Union in two ways. First, it can be a remedy for deficiencies of the Union in terms of parliamentary legitimacy as transparency is an element of input legitimacy in the context of procedural legitimacy. Second, the European Transparency Initiative ought to be regarded as a tool for improving the quality of participation as transparency “exposes injustice, corruption, and general dirty dealing that might otherwise go unnoticed”⁷³

Civil Society Participation in the European Union Decision-Making

That the decision-making process of the European Union does not rely on predominantly representative mechanism implies that legitimacy of the European Union does not derive from the popular will expressed through elections. Thus, there is a question which we face is that how the will of European people ought to be expressed.

Civil society participation in the European decision-making process may make the will of European people expressed and contribute positively to enhancing the legitimacy of the Union.⁷⁴

The concept of civil society is defined in the context the separation of spheres between state and society. Pietrzyk argues that:

*“What makes civil society “civil” is the fact that it is a sphere within which citizens may freely organise themselves into groups and associations at various levels in order to make the formal bodies of state authority adopt policies consonant with their perceived interests.”*⁷⁵

The Commission defines civil society based on the terminology of the Economic and Social Committee as:

*“Civil society includes the following: trade unions and employers organisations (social partners); non-governmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities.”*⁷⁶

Concerning what kind of role civil society plays in the Union, Armstrong underlines that civil society may play a role as a bridge between society and the European Union and he holds that the problem the European governance faces is the gap between society and the structures of transnational governance.⁷⁷ It should be emphasised that Armstrong’s belief is based on the argument that the European

⁷³ S. Chambers, “Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation”, **The Journal of Political Philosophy**, Volume 12, Number 4, 2004, p. 390.

⁷⁴ Schmitter underlines that participation is no panacea and says “it may contribute to enhancing the legitimacy of the EU, but only if it is “seconded” by reforms in the institutions of its government.” Schmitter, **op. cit.**, 2001, p.10.

⁷⁵ D.I. Pietrzyk “Democracy or Civil Society”, **Politics**, Vol 23(1),2003, p.38-39.

⁷⁶ Commission, **op. cit.**, 2001.

⁷⁷ K. A. Armstrong, “Rediscovering Civil Society: The European Union and the White Paper on Governance”, **European Law Journal**, Vol.8, No.1, 2002, p.104.

integration has been the product of supranational technocratic decision-making process in which elite political actors participate.

From the perspective of the deliberative democratic theory, civil society participation is a means of public deliberation and an arena for preference-shaping. That is, if the Union wants to enhance the democratic quality of its decision-making through deliberation, encouraging civil society to participate in the decision-making process should be priority for the Union.

Eriksen says that the European Union is more conducive to deliberation than other political systems because of its supranational nature.⁷⁸

Regarding this issue, Friedrich underlines that

*“...the example of the EU demonstrates that the increasing competences of the European Parliament have not smoothed the unease about the EU’s democratic legitimacy. The participation of civil society organization is only one, but potentially important element in a mix of democratic elements in modern politics.”*⁷⁹

Since the late 1990’s, civil society participation has received more attention as a means of justifying decisions regarding the Union’s future. The Convention for the drafting of the Charter on Fundamental Rights established based on the European Council decision on October 1999 in Tampere and the European Convention established by the Laeken Declaration on the future of the European Union on December 2001 were open to the representatives of civil society.

The most visible attempt seeking to encourage civil society participation in the Union decision-making process is the 2001 White Paper which recorded that:

*“Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people’s needs...Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. This offers a real potential to broaden the debate on Europe’s role. It is a change to get citizens more actively involved in achieving the Union’s objectives and to offer them a structured channel for feedback, criticism and protest.”*⁸⁰

More specifically, the European Commission refers the concept of consultation several times in the White Paper. This makes Michalowitz consider that, from the perspective of a deliberative democracy, what the Commission aims is not to create a space for public reasoning, the Commission aims a dialogue between the European institutions and civil society in which these groups consult.⁸¹ Drawing on Michalowitz’s

⁷⁸ E. O. Eriksen, “Deliberative Supranationalism in the EU” in **Democracy In The European Union: Integration Through Deliberation**, ed. E. O. Eriksen and J.E. Fossum, London, Routledge, 2000.

⁷⁹ Friedrich, **op. cit.**, 2007, p.9.

⁸⁰ Commission, **op. cit.**, 2001, p.14-15.

⁸¹ Michalowitz, **op. cit.**, 2004, p.151.

view, if the Commission aims to develop a dialogue rather than a deliberative arena within which preferences are debated with reasons and participants can persuade each other and influence their preferences, it might be said that the White Paper fell short of satisfying the conditions of deliberative democracy.

A further measure seeking to regulate civil society participation is the 2002 Consultation Standards. The 2002 Consultation Standards recorded that:

-“All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses,

-When defining the target groups in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their opinions,

-The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences. Without excluding other communication tools, open public consultations should be published on the Internet and announced at the “single access point”,

-The Commission should provide sufficient time for planning and responses to invitations and written contributions. The Commission should strive to allow at least 8 weeks for reception of responses to written public consultations and 20 working days notice for meetings,

-Receipt of contributions should be acknowledged. Results of open public consultation should be displayed on websites linked to the single access point on the Internet.”⁸²

The 2002 Consultation Standards were issued in the hope that these standards ensure all relevant parties are consulted. Indeed, these standards are procedural and are not directly related to how the quality of consultation is enhanced. The most striking feature of Consultation Standards is that standards indicate how the Commission has been tried to institutionalise and regulate civil society participation in the policy-making process.

Friedrich says that “participation of civil society organizations requires some institutional means and commitment by the political institutions to democratic participation.”⁸³ In the light of Friedrich’s thought, it may be indicated that the European Commission tries to not only provide institutional means but also guarantee of its commitment to civil society participation.

⁸² Commission of the European Communities **Communication From The Commission: Towards a reinforced culture of consultation and dialogue –General principles and minimum standards for consultation of interested parties by the Commission**, COM (2002) 704 final, 2002, Brussels.

⁸³ Friedrich, **op. cit.**, 2007, p.10.

Greenwood underlines the role of the Consultation Standards in strengthening democracy in the Union through indicating that:

“Procedural democracy at EU level has developed apace in recent years, with systems designed to be actioned by organized civil society, including access to information and transparency measures, and a comprehensive set of procedures for consultation.”⁸⁴

In order to see how consultation takes place in the decision-making process, the European Union’s environment policy can be given as an example. The European Commission starts the consultation process with giving the background of the issue subject to consultation and indicating what has been done by the Union so far in the web-page of Environment Directorate-General (DG), and asks several questions regarding the issue to stakeholders and/or general public. When the consultation process is closed, contributions are published and the Commission starts to prepare a report on the issue.

Within the period between 30.11.2000 and 31.07.2008, 77 consultation processes took place. Details of 77 consultation processes are given in Appendix. Although the Commission does not give the information on the number of participants in each of consultation processes, drawing on the data given by the Commission it is seen that number of participants varies greatly according to subject. While in the process of “Public consultation on an EU System for the Environment Technology Verification”, the Commission received 139 responses, in the process of “Public Consultation on Your Voice-Invasive Alien Species-A European Concern”, the Commission receives 880 responses. Yet in the process of “Creosote stakeholder consultation”, the Commission received only 53 responses.

Moreover, certain consultation processes were kept open to not only European Union citizens and organizations, but also third countries’ citizens and institutions. For example, in the consultation process called “Your attitude towards trade in seal products”, the Commission received 73,153 answers in 160 countries.⁸⁵

As of August 2008, four consultation processes related to European environment policy took place.

⁸⁴ J. Greenwood, **Interest Representation In The European Union**, 2nd ed., New York, Palgrave Macmillan, 2007, p. 208-209..

⁸⁵ The number of responses received by the Commission in consultation processes were collected according to information given by the Commission in the Commission’s web-page, <http://ec.europa.eu/environment/consultations_en.htm.>

Table 2: Open Consultations (as of 22.08.2008) Related to European Environment Policy

Title & Description	Target Group
Stakeholder consultation on adaptation to scientific and technical progress under Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the Annex.	Stakeholders
Towards a comprehensive and ambitious post-2012 climate change agreement	General public, Stakeholders
Deforestation and its impact on climate change and biodiversity loss	General public, Stakeholders
Review of the Recommendation on Minimum criteria for Environmental Inspections	General public, Stakeholders

(Source: <http://ec.europa.eu/environment/consultations-en.htm>)

The principal importance of the consultation processes derives from the fact that the European institution aggregating responses and opinions of stakeholders and general public is the Commission which has monopoly in starting the decision-making process.

Although the Commission consults the stakeholders and general public in the decision-making process, it does not give any clear idea on what kind of process it envisages. That is, we have to draw a distinction between a consultation process in which preferences with reasons are aggregated and a deliberation process within which preferences are debated and persuasion is possible. Obviously, the latter, deliberative model rather than former can be a cure for the deficiencies of the Union in sense of representation.

Indeed, there are at least two reasons to doubt that civil society participation in the European Union is strong. The first is related to the European governance. Answering to the question of why civil society participation in the European governance can not be strong requires to analyse what features of any governance encourage civil society participation. Therefore, I use Magnette's argument in the European context. Magnette says that there are two sets of factors playing important role in participation of civil society: The institutional structure and the polarity of the party system.⁸⁶ According to this argument, the institutional clarity of a political system encourages participation and the polarity of the party system simplifies the electoral choice and makes citizens understand complex political issues through simplified discourses. Drawing on this argument, it may be considered that the European Union's complex decision-making

⁸⁶ P. Magnette, **European Governance and Civic Participation: Can the European Union be politicised?**, This paper is a part of contributions to the Jean Monnet Working Paper No.6/01, 2001.

procedure and a lack of Europe-wide political parties discourage civil society participation.

In this context, Maignette indicates that:

*“The Community method hides political conflicts, the monopoly of initiative conferred upon the Commission procedures consensus oriented decision-making... The Community method, based on a long process of informal negotiation and the elaboration of compromise before political discussions take place, is a very powerful disincentive for political deliberation. Citizens who do not understand both what the issues at stake, and what the choices that could be made, actually are, and who also fail to see what the impact of their participation could achieve, are not likely to be active.”*⁸⁷

Obviously, the European Union governance is deprived of the factors encouraging civil society participation.

The second reason for that civil society participation can not be strong in the Union is related to what kind of civil society the European Union can have. As Armstrong⁸⁸ indicates, we can regard civil society either as the sum of its national parts located within nation states and national cultures, or as a transnational developing across states. If European civil society must be conceived as a transnational in the sense that organizations develop across states and as a sphere of shared cultures, an absence of European identity arises a problem, for conceiving civil society as a transnational establishes a link between the promoting civil society participation and formation of European identity.

Armstrong underlines that civil society is subject to three processes which are “Europeanisation”, “autonomisation”, and “governmentalisation”.⁸⁹ According to him, “Europeanisation” is a process by which civil society actors organise in transnational structure and have a voice in European governance. “Autonomisation” refers to process by which transnational structures develop their strategies independently from the control of constituency members. “Governmentalisation” refers to external pressures from government for making change to the organisational structures and the internal self-organisation of civil society. Nonetheless, there is no empirical evidence that these processes have started in the Union. In this context, Michalowitz claims that “if civil society participation can help resolve the democratic deficit, the possibility to Europeanise civil society must be a priority.”⁹⁰

It may be considered if there can be unintended results of building transnational European civil society although it is admitted that building transnational civil society

⁸⁷ *Ibid.*, P. Maignette, 2001, p.7.

⁸⁸ K.A. Armstrong, *op. cit.*, 2002, p.113.

⁸⁹ *Ibid.*, K. A. Armstrong, 2002, p.114-115.

⁹⁰ Michalowitz, 2004, p.155.

can contribute to strengthening the democratic quality of European decision-making process. With regard to this issue, Armstrong underlines that:

“First there is a static problem that the voices of national civil society actors may be lost or excluded as civil society becomes Europeanised. Second, there is a more dynamic problem that legitimisation through transnational civil society can not make up on the transnational swings what is lost on the national roundabouts of the erosion of national structures of representative and participative democracy.”⁹¹

Although the European Union as a post-national case for application of deliberative democracy seeks to enhance the democratic quality of its decision-making process and the legitimacy of its political order through civil society participation, its attempts do not concern how to build transnational European civil society and how to increase the quality of consultation. There is no strong evidence that the Commission aims to develop a procedure within which deliberation takes place more than consultation.

Conclusion

The democratic quality of the European Union as a transnational organisation has been a matter of debates on how democracy should be in the postnational age. Although we see significant differences in views with regard to the democratic deficit in the European Union, the democratic quality of the Union is mainly assessed through comparison the Union with a nation state and equation democracy with representative democracy. From the view of representative democracy, the political representation in the Union is inadequate because of the lack of responsible government, elections fought on European issues for the European Parliament and Europe-wide political parties, therefore the Union is deprived of parliamentary legitimisation.

The European Union tries to reduce the effects of its deficiencies in terms of parliamentary legitimacy through enhancing procedural legitimacy and technocratic legitimacy, both of which require the observance of participation and transparency.

Thus, the European Transparency Initiative addresses the European democratic deficit in two ways. First, transparency as an element of input legitimacy enhances the quality of participation by forcing participants to argue with the reasons, proposal and claim, hence strengthens procedural legitimacy of the Union. Second, transparency as a factor encouraging participation also gives an opportunity to participants to bring their expertise to the decision-making process, consequently strengthens technocratic legitimacy of the Union.

⁹¹ K.A.Armstrong, **op. cit.**, 2002, p.115.

Appendix 1: Closed Consultations Related to European Environment Policy

Title & Description	Target Group	Responses Received by the Commission⁹²
Stakeholder consultation on the adaptation to scientific and technical progress under Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the Annex. ⁹³	Stakeholders	n.a.
Consultation on revision of the cars/CO2 labelling	General public	n.a.
Creosote stakeholder consultation	Stakeholders	53
Public consultation on Your Voice 'Invasive Alien Species-A European Concern'	Stakeholders, General public	880
WEEE stakeholder consultation-Invitation for comments on policy options	Stakeholders	n.a.
Stakeholder consultation on adaption to scientific and technical progress under Directive 2002/95/EC of the European Parliament and of the Council	Stakeholders	n.a.
Public consultation on the Green Paper on urban Transport Sustainable Urban Transport Plans-preparatory document	Stakeholders, General public	n.a.
Your attitude towards trade in seal products	Stakeholders, General public	73,153
2 nd stakeholder consultation on the review of Directive 2002/95/EC ('RoHS)	Stakeholders	n.a.
Public consultation the draft Implementation Report 2005-2007.	Stakeholders, General public	n.a.
Public consultation on an EU System for the Environmental Technology Verification	Stakeholders, General public	139
Call for evidence on the Economics of Biodiversity Loss	Interested stakeholders in Europe and worldwide, including government, academic, private sector, scientific, NGO and other experts	n.a.
Public consultation on the INSPIRE Draft Implementing Rules for Metadata	Stakeholders	n.a.
Public consultation "Living with climate change in Europe"	Stakeholders, General public	More than 200
Public consultation on the Commission's	Stakeholders,	44

⁹² Responses are collected from various reports of the Commission.

⁹³ The issue can be subject of consultation processes taking place at different times.

Green Paper on better ship dismantling	General public	
Public consultation on the action plans on sustainable consumption and production and on sustainable industrial policy	Stakeholders, General Public	658
Stakeholder consultation on Adaptation to scientific and technical progress under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex	Stakeholders	n.a.
Public consultation on the implementation of the renewed strategy to reduce CO2 emissions from passenger cars and light-commercial vehicles	Stakeholders	41 from organisations ⁹⁴ 28 from individuals
Green Paper on Market Based Instruments	Stakeholders	n.a.
IPPC Review Internet Consultation Stakeholders Questionnaire	Stakeholders	n.a.
Review of Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment	Stakeholders	n.a.
Capturing and storing CO2 underground-Should we be concerned?	Stakeholders, citizens	787
Additional Options to Combat Illegal Logging	Stakeholders	93
Ecolabel revision	Stakeholders	n.a.
Revision of the EU Eco-Management and Audit Scheme Regulation EC N° 761/2001 (EMAS)	Stakeholders	n.a.
Adaptation to scientific and technical progress under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex	Stakeholders	n.a.
Adaptation to scientific and technical progress under Directive 2000/53/EC on end-of-life vehicles for the purpose of a possible amendment of Annex II to this Directive	Stakeholders	n.a.
Possible amendment of Annex II to Directive 2000/53/EC on end-of-life vehicles (Issue of certain spare parts for vehicles put on the market after 1 July 2003).	Stakeholders	n.a.

⁹⁴ Responses given by organisations and individuals are collected depending on the information given by the Commission.

New draft regulation of the European Commission to implement the Globally Harmonised System of Classification and Labelling of Chemicals (GHS)	Stakeholders	n.a.
Community Implementation Plan of the Stockholm Convention on Persistent Organic Pollutants (POPs)	General public+ Experts	n.a.
Revision of Directive 86/609/EEC on the protection of animals used for experimental and other scientific purposes	General public+ Experts	42,655 replies from 25 Member States, as well as third countries 283 expert replies
Review of the EU strategy to reduce CO2 emissions and improve fuel efficiency from cars	General public	1215
Have your say on the White Paper on a European Communication Policy	Stakeholders, citizens	n.a.
Sixth Environment Action Programme mid-term review	Stakeholders	n.a.
Directive 2001/18/EC on the deliberate release in the environment of GMOs - Questionnaire on experiences with the implementation of the Directive	Stakeholders	n.a.
Adaptation to scientific and technical progress under Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex	Stakeholders	n.a.
Simplifications on the Directive related to waste from the titanium dioxide industry	Stakeholders	4
Adaptation to scientific and technical progress under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex.	Stakeholders	n.a.
Communication on Halting the Loss of Biodiversity by 2010 and beyond	Stakeholders, General Public, Experts	n.a.
SCENIHR opinion on how to assess the potential risks of nanotechnologies	Stakeholders	70
Adaptation to scientific and technical progress under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex	Stakeholders	n.a.
Soil Thematic Strategy	General Public	n.a.
The European City – improving the quality of	Stakeholders	n.a.

your environment		
Proposal for a Floods Directive "Reducing the risks of floods in Europe"	Stakeholders	261 from 33 different countries (amongst these all 25 EU Member States)
Final Public Consultation: The sustainable use of pesticides in Europe	General Public, Stakeholders	1772
Thematic Strategy on the Protection and conservation of the Marine Environment	General Public	133
Reducing the Climate Change Impact of Aviation	General Public	5564 from individuals 198 from organisations
Monitoring and Reporting Guidelines under the EU Emissions Trading Scheme	Stakeholders	n.a.
New legal instrument for prevention, preparedness and response to disasters.	Stakeholders	n.a.
Directive 91/689/EEC on hazardous waste	Stakeholders	n.a.
Directive 75/439/EEC on waste oils	Stakeholders	n.a.
Adaptation to scientific and technical progress under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment for the purpose of a possible amendment of the annex	Stakeholders	n.a.
Assessing the actions to be undertaken as part of the Thematic Strategy on the Sustainable Use of Natural Resources	Stakeholders	n.a.
Air Pollution: What Do You Think?	General Public	n.a.
Action on Climate Change Post 2012	All stakeholders	n.a.
Review of the European Sustainable Development Strategy	General public and experts	n.a.
Extended Impact Assessment on the Thematic Strategy on the Prevention and recycling of waste	Stakeholders	n.a.
Information on teak garden furniture and mobile telephones	All stakeholders involved with these products	n.a.
Methodology to assess the environmental impacts of products	Experts	n.a.
Possible amendment of the Annex of Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS)	Stakeholders	n.a.
Development of an EU strategy on mercury	Stakeholders	54 ⁹⁵

⁹⁵ Responses received are collected according to the information given by the Commission.

"Towards a Thematic Strategy on the Urban Environment"	Community institutions, stakeholders	2,807
Preparations of a revision of certain entries of annex II of Directive 2000/53/EC on end-of life vehicles	Stakeholders	n.a.
Towards a thematic strategy on the prevention and recycling of waste	Stakeholders	n.a.
Reactions to the Communication on the future Thematic Strategy on Sustainable use of Pesticides	European Parliament, the Council, the Economic and Social Committee as well as all other interested parties	1772 (total number-this process took place as two steps, numbers of responses of each step are not available)
On the Road to Sustainable Production - Progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control	Stakeholders	n.a.
Integration of environmental aspects into standardisation	Stakeholders	60
Draft chemicals legislation (the REACH System)	General Public	n.a.
INSPIRE	Stakeholders	n.a.
Environmental Technology Action Plan	Stakeholders	n.a.
Revision of Directive 91/157/EEC on batteries	Interested parties	139 ⁹⁶
Financing Natura 2000	Interested parties	n.a.
Working document on Civil protection	Stakeholders in civil protection/disaster prevention	n.a.
Aarhus Convention and Community institutions: Consultation of interested parties on a working documents on the application to Community institutions of the Aarhus Convention on access to environmental information, public participation and access to justice in environmental matters	Experts from national administrations, local and regional authorities, representatives of economic operators, environmental NGOs and consumer associations	n.a.
Access to justice in environmental matters (Aarhus Convention: Consultation of interested parties on two successive working documents on access to justice in environmental matters	Experts from national administrations, local and regional authorities, representatives of economic operators, environmental NGOs	n.a.

⁹⁶ Responses received are collected according to the information given by the Commission.

	and consumer associations	
Environmental Liability: Consultation of interested parties on a Working Document on the Prevention and Restoration of Significant Environmental Damage (Environmental Liability)	Public	n.a.
Environmental issues of PVC: In the Green Paper the Commission invited all interested parties to discuss and comment on this document before the end of November 2000.	Public	More than 32.500

(Source: <http://ec.europa.eu/environment/consultations-en.htm>)

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