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The Efficiency and the  
Democratic Legitimacy of  
Commission's Policy Networks

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# Summary

The objective of the present work is to study the relationship between the European Commission and the so-called “civil society” through policy networks. It is considered whether a fair consultation of specialized partners can increase the level of democratic legitimacy and efficiency in the European Union. This hypothesis is considered in the light of the assumption that risk management and risk regulation should be dealt by specialized bodies and partners placed at an arms length from political interference.

Policy networks are defined as *an interaction form between many individuals and/or organisations. When compared to the other two identified forms of interaction, the contract/market and the hierarchy, networks are an intermediate form, which associates in a structured but loose way independent parties each of which controls part of the resources and skills needed by all to achieve a common objective.*

With regard to the efficiency part of the work, game theory is used as a substitutive of empirical research to evaluate the efficiency of policy networks. Our findings show that policy networks offer a solution to problems of collective action by enabling non-strategic action based on communication and mutual trust. Communication and trust distinguish policy networks from other forms of non-hierarchical coordination and render them more efficient than those.

It is a fairly accepted fact in the literature of policy networks that those organisational structures are more effective than markets and hierarchies, but permanent concerns arise to avoid that efficiency is achieved at the expenses of democratic control. The idea behind networks is that democracy needs to be depoliticized because it is a system *for* the people and *not by* the people.

In a Union where systems of democratic legitimization by parliamentary majority have been proven to be inapplicable (where no *demos* exist, no democracy can exist), policy networks can provide *output legitimacy* by delivering efficient policies formulated in conjunction with specialized partners.

In addition to output legitimacy, policy networks can provide additional channels of influence of the civil society through grass-roots organisations, therefore increasing legitimacy through participation. Legitimacy through participation is important because some decisions are controversial and the technocratic consensus is not sufficient, demanding value driven opinions.

Notwithstanding all those advantages, policy networks are not the panacea as some have suggested. Big efforts have to be made to ensure that they remain open and accountable. In addition to this, they are recognizably

efficient for some tasks, but not for all of them. When political decisions on disputable matters have to be made, the administration cannot rely on networks and the Community method or the State of Law cannot be superseded. This is why it can be said that networks should and do function in the shadow of the constituted powers and represent no attempt to the Leviathan.

# Preface

*Esta tese e' dedicada ao meu pai, pessoa de coracao generoso e que, acreditando em mim, fez um sonho se tornar uma historia de sucesso. Obrigado, meu pai. Eu te amo!*

I dedicate this thesis to my father, whose generous heart made a dream become a successful story. Thank you dad! I love you.

# Abbreviations

<b>Commission</b>	European Commission
<b>EC</b>	European Community
<b>EU</b>	European Union
<b>NGO</b>	Nongovernmental Organisation
<b>WP</b>	White Paper on European Governance

# 1 Introduction

## 1.1 Purpose

The objective of the present work is to study the relationship between the European Commission and the so-called “civil society” through policy networks. It is considered whether a fair consultation of specialized partners can increase the level of democratic legitimacy and efficiency in the European Union. This hypothesis is considered in the light of the assumption that risk management and risk regulation should be dealt by specialized bodies and partners placed at an arms length from political interference.

## 1.2 Background

When the Treaty establishing the European Constitution comes into force, its Art. I - 47<sup>1</sup> will require a general scheme of consultation to interested

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<sup>1</sup> Draft Treaty establishing a Constitution for Europe, 18 July 2003, Official Journal C 169, 18.7.2003.

“Article I-47 The principle of participatory democracy

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come.”



parties previously to the adoption of new policies or legislation by all the institutions involved in the decision making process. Despite this recent constitutional provision, the participation of the civil society in the development of European legislation and policies is not a new phenomenon. There is a historical development that made this participation a mainstream discussion when the White Paper on European Governance<sup>2</sup> was published in 2001.

According to the Commission, the WP concerns the way in which the Union exercises the powers given by its citizens. It is central to the debate the paradox existing in the Union of today: people expect the institutions with increased competences to find solutions to their problems, but they do not know or trust those institutions. The WP proposes then to open up the policy making process to get more people and organizations involved in shaping and delivering EU policy. This would be an attempt to deal with the most common criticisms to the Institutions and the Commission in particular, such as the alleged democratic deficit, the inability to deal with risk management and the existing gap between the citizens and the institutions.

When analysing the participation of civil society in the Commission through policy networks it is avoided to assume two things. Firstly, we refuse to assume that the Union is an “emerging state” in the sense that federalists have conceptualized the community as a supranational power. According to this line of thought, the integration would be explained using neo-functional theory and the European State would be the “ultimate spill-over”.<sup>3</sup> This cannot be accepted because, after 50 years of existence, the Union is still not a federal state and cannot simply be called a system in transition. Secondly, one could argue in favour of the realist theories proposing that the Union is an intergovernmental organization and member states still have total control over their sovereign rights, which can be easily refuted if considered some of the legal development present so far, mainly the doctrines of direct effect<sup>4</sup>, supremacy<sup>5</sup> and pre-emption<sup>6</sup>.

An easy but too simplistic solution to the dilemma presented above would be to call the Union a system “*sui generis*”. Rather than doing so, the purpose here is to try to explain the European integration and its system of governance by assuming that the mix of domestic politics with international cooperation produces effects that go into two different dimensions and not just one, affecting the distribution of power between different levels of government and between the public and the private. This, it will be shown, changes the nature of governance.

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<sup>2</sup> COM(2001) 428 final, European Governance, A White Paper, Official Journal C 287, 12.10.2001.

<sup>3</sup> E.B. HASS, *Beyond the Nation State*, Stanford University Press, 1964.

<sup>4</sup> C 26/62 *Van Gend en Loos*, [1963] ECR 1.

<sup>5</sup> C 6/64 *Costa v. Enel*, [1964] ECR 585.

<sup>6</sup> C 106/77 *Simmenthal*, [1978] ECR 629.

In order to develop this argument, it will be highlighted the interdependence between the different actors in Europe, which led to a very particular combination of loosing and pooling sovereignty in the European Union. Different forms of governance have been developed and could illustrate our assumption. The issue of policy networks have been chosen because it touches precisely the relationship between the multi-level system of governance, but also the relationship between the public and the private in the formulation of European policies.

Those who advocate in favour of a network system of governance argue that the main advantage of this system is to foster the efficiency of the Union's policy. It is assumed that the Commission's bureaucracy has not sufficient means to regulate all fields under its competence, being its main deficiency the lack of specialized personnel creating uncertainty in an era based on information and risk management. Networks and consultation to specialized parties would increase the level of efficiency in the European Union because the consulted parties detain valuable information that can be shared with the Commission in order to formulate policies and solve common problems.

A very important concern that emerges from this system of network governance that has already proven to be efficient to gather information in the era of a knowledge society is of democratic legitimacy. This concern is linked to the risk that networks can become closed shops or clubs: Taking decisions and exerting influence without considering the wider interest of stake-holders who are not influential members. Therefore, the main question is: How to avoid that efficiency is achieved at the expenses of transparency and democratic control, i.e. to make sure that networks remain open and accountable?

In order to answer the main question posed above and at the same time cover other issues of interest, the present work is divided into 6 distinct but interrelated sections. Section 1 (Introduction) provides the reader with an overview of the topic and establishes the delimitations, definitions and methodological aspects of the research. Section 2 (Policy Networks) conceptualizes, in a summarized way, the issue of policy networks pointing out the main theories and legal basis. Section 3 (Policy Networks and Efficiency) has the objective to prove, with the use of game theory, the efficient character of policy networks in comparison with traditional organisational structures. Section 4 (Policy Networks and Democratic Legitimacy) studies the principal means to increase democratic legitimacy and the impacts of policy networks upon EU's legitimacy. Finally, Section 5 (Conclusion) puts forward the author's conclusions and Section 6 (Sources) contains the bibliographical list.

## 1.3 Delimitations

As mentioned above, Art. I - 47 of the proposed Constitution and the White Paper on European Governance<sup>7</sup> assure that *all* the European institutions have to consult the civil society previously to the adoption of new legislation or policies. Nonetheless, this process acquires major importance before the Commission since this institution has exclusive competence to propose new legislation and also has a considerable influence in the formulation of general policies. For this reason and given the difficulties to deal with different consultation practices adopted by different institutions, this research will exclusively deal with the Commission's policy networks.

It is important to highlight that most documents, and specially the WP, deal with the participation of civil society in general. The scope of the concept of civil society is very debatable<sup>8</sup> and to avoid unhelpful digressions we take the usually accepted definition established by the Economic and Social Committee.<sup>9</sup> Accordingly, civil society includes the following: trade unions and employers' organisations ("social partners"); nongovernmental 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. For the purposes of this work we focus on the participation of NGOs and professional associations because those tend to be the main source of expertise and less susceptible to be influenced by political reasoning.

The network concept, as it will be presented in the following sections, is very broad and in the field of policy networks, membership is an important aspect of it. They can link international organizations, states, local governments, corporations, professional associations, grass-root organizations etc. Therefore, it can be noticed that policy networks aggregate members in both vertical and horizontal directions of the organizational structure. In accordance with what was mentioned in the previous section, the focus of this work is the participation of the civil society in the decision making process and *not* the implications of the network structure in the member states of the EU and connected sovereignty concerns. Thus, it should be made clear that we concentrate exclusively on the horizontal spectrum of the so-called multilevel system of governance.<sup>10</sup>

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<sup>7</sup> European Governance: A White Paper", COM (2001) 428 final;

<sup>8</sup> For better understanding of the controversies involving the concept of civil society, refer to PETER BURNELL and PETER CALVERT (editors), *Civil Society in Democratization*, Frank Kass, 2004.

<sup>9</sup> For a more precise definition of organised civil society, see the Opinion of the Economic and Social Committee on "The role and contribution of civil society organisations in the building of Europe", OJ C329, 17.11.99.

<sup>10</sup> For reference about networks among governments, see in particular ANNE MARIE SLAUGHTER, "The Real New World Order, *Foreign Affairs*, Volume 76, n. 5.

In addition to this it is worth noticing that the issue of efficiency and the consultation of experts in the decision making process through networks is closely related to the emergence of the European agencies. This subject is, indeed, also very interesting and could be the subject of a thesis itself. European agencies will be discussed throughout this research solely to exemplify some theories, but it is not the main object of this thesis.

With regard to efficiency, as it will be better explained below, it is opted for a very strict concept and its evaluation will be performed with use of game theory, instead of empirical measurement.

Lastly, it will be discussed on Section 4 that there are on the literature a number of concepts for democratic legitimacy and several other means to increase its level. Those concepts and means are interrelated, often compatible, and they can be mutually re-enforcing. Nevertheless, it should be made clear that we are aware of this fact, but the issue of policy network will be studied considering legitimacy as *problem-solving* and the means to achieve this legitimacy will be focused on what will be explained to be *output* and *participation*.

## **1.4 Method and Material**

Throughout this work the descriptive and analytical method of research are simultaneously used in order to facilitate the coherence and the flow of ideas. In the last Section main focus is given to the analytical method as conclusions are provided.

During the research period, it was noticed that the official documentation dealing with these issues comprehend mainly soft law, such as White Paper, Communications, Reports and Opinions. Initially, this fact raised some concerns about the transparency and binding effect of those documents. But, as it can be inferred from the following sections, this is the appropriate mean to deal with policy networks, as they demand a certain degree of flexibility.

With regard to the efficiency part of the work some considerations are necessary. Usually efficiency is a sociological concept that is tested with empirical research. Instead of doing so games theory is used to evaluate the efficiency of Commission's policy networks in comparison with hierarchies and markets. This is not an usual approach, but we agree with Scharpf that "game-theoretic conceptualization of interactions seems uniquely appropriate for modelling constellations that we typically find in empirical studies of policy processes. These processes usually involve a limited number of individual and corporate actors that are engaged in purposeful action under conditions in which the outcomes are a joint product of their separate choices. Moreover, these actors are generally aware of their interdependence; they respond to and often try to anticipate one another's moves. In other words, the game-theoretic conceptualization of strategic

interaction has a very high degree of prima facie plausibility for the study of policy interactions.”<sup>11</sup>

In order to profit from the game-theoretic perspective and understand the analysis proposed in this research, it is not needed to be a mathematician nor assume actors who are omniscient or have at least unlimited computational capacities. It is sufficient that the basic notions of interdependent strategic action and equilibrium outcomes be self-consciously and systematically introduced into the explanatory hypothesis.

Being that said, it is deemed appropriate to mention the basic principles and assumptions of game theory applied to policy research.

Like all variants of rational-choice theory, game theory starts by assuming perfectly rational actors. Thus in introductory treatises on non-cooperative game theory the assumptions are that actors will single-mindedly maximize their own self-interest, that they do so under conditions of complete information, and that their cognitive and computational capacities are unlimited. These are, in fact, exactly the same assumptions on which neo-classical microeconomics has been built. There, however, they are relatively innocuous since the mathematically sophisticated theoretical apparatus of the “invisible hand” is allowed to do its work, as it was, “behind the backs” of relatively simple-minded subjects, whose quasi automatic responses to relative-price changes are then aggregated into theoretically interesting macroeconomic outcomes. Game theory, by contrast, at least in its rational-analytic version that is of interest here, *must impute to the actors themselves all information and all solution algorithms that are used by the analyst*. “Moreover, as the original assumption of omniscience is relaxed in models allowing for incomplete and asymmetrical information, the demands on the assumed computational capacities of the actors are again increased by orders of magnitude and thus to levels that seem completely unattainable by any real-world actors.”<sup>12</sup>

Once hypothetical assumptions are set, the fundamental concepts of game theory – *players, strategies and payoffs*- must be provided.

The concept of player may apply to any individual or composite actor that is assumed to be capable of making purposeful choices among alternative courses of action. Strategies are the courses of action (or sequences of moves) available to a player. A game exists if these courses of action are in fact interdependent, so that the *outcome* achieved will be affected by the choices of all players. The third fundamental concept, payoffs, represents

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<sup>11</sup> FRITZ W. SCHARPF, *Games Real Actors Play – Actor-Centered Institutionalism in Policy Research*, Westview Press, 1997.

<sup>12</sup> FRITZ W. SCHARPF, “Coordination in Hierarchies and Networks”, In: Fritz W. Scharpf (Editor), *Games in Hierarchies and Networks – Analytical and Empirical Approaches to the Study of Governance Institutions*, Campus Verlag, Frankfurt am Main, 1993.

the valuation of a given set of possible outcomes by the preferences of the players involved.

In addition to the above mentioned some important considerations must be stressed. First, the players may be involved in a *non-cooperative* or *cooperative game*. These labels are often misunderstood. A cooperative game is simply one in which binding agreements among the players are possible before each makes his or her choice, whereas in a non-cooperative game anything that may be said before the move is just “cheap talk”. Thus, in the usual case of non-cooperative games with “complete” information, the players will be informed about all elements of the game – that is, about the other players involved, their available strategies, and the payoffs that would result from each strategy combination – but they cannot know, at the moment of their choices, which strategy others will choose. In the cooperative game, by contrast, strategies may be chosen jointly and by binding agreement.

The second important distinction applies only to non-cooperative games. It is between *simultaneous* and *sequential games*. In a simultaneous game, each player must select his or her own move without knowing the strategy choice of the other player. In a sequential or repeated game, one player may (or must) move first, and the other player will then move in the knowledge of that choice.

This background is all that is needed to appreciate the fundamentals of game theoretically thinking, which can be summarized in two concepts: *strategic interactions* and *equilibrium outcome*. The first implies that actors are aware of their interdependence and that in arriving at their own choices each will try to anticipate the choices of the others, knowing that they will in turn do the same. In the non-cooperative game constellation the implications might be an infinite regress of ever more contingent anticipations. This is not the case, however, if the game has one or more equilibrium outcomes. These are outcomes in which no player can improve his or her own payoff by *unilaterally* changing to another strategy.

In the context of empirical research and analysis of policy processes, in this case the efficiency of policy networks, the explanatory power of these concepts should not be underestimated. They provide the basis for counterfactual “thought experiments” that systematically explore the outcomes that would have been obtained had the parties chosen other, equally feasible courses of action. If it can be shown that the actual outcome was indeed produced by strategy choices that for all the parties involved were the best they could do under the circumstances, then this form of explanation has a persuasiveness that is not easily matched by alternative explanatory strategies.

Notwithstanding all of the above and the relevance of game theory as an alternative to empirical research, it should be pointed out that the concepts of strategic interaction and of equilibrium outcomes, though originally

developed in the theory of non-cooperative games, have a theoretical significance that is of much more general application. There are perhaps not many real-world interactions in which all the specific assumptions of non-cooperative game theory are strictly fulfilled and there is a much larger variety of modes of interaction that play a role in the policy process. But regardless of which mode of interaction is actually employed, the outcomes achieved can always be examined with a view to their equilibrium characteristics.

In addition to this, as the study associates efficiency with democratic legitimacy, some observations must be made in order to delimitate this last concept and establish the connection between the two.

Political scientists have long denied the descriptive accuracy of classical models of democratic theory that emphasize unitary policy making by parliamentary majorities legitimated through general elections, and hierarchical policy implementation under the control of politically accountable ministers or chief executives. Instead, policy is said to be produced through negotiations and agreements – either in pluralist “policy networks” involving semiautonomous parliamentary committees and bureaucratic agencies, organized interests, and specialized publics, or through neo-corporatist “concertation” between governments and the peak associations of capital, labour and other societal interests.<sup>13</sup>

In the European arena, for instance, vertical relationships between different levels of government have been shown to have the characteristics of “negotiated “joint decisions system”<sup>14</sup>, while the increasing territorial extension of communication, economic interaction, and environmental pollution has greatly increased the need for horizontal policy coordination.

Against this background it is deemed necessary to establish what is conceived to be democracy for the purposes of this research.

The idea of democracy proposed here differs from the common understanding of democracy, as the empowerment of the collective will. Instead, it is suggested, particularly when one deals with the issue of policy networks as a means to increase *output* legitimacy, that democracy means the empowerment of public reason: more specifically, empowering those considerations that people countenance as relevant to decisions on public policy.<sup>15</sup> It is important here the idea that for democracy to remain deliberative and effective it should be depoliticized. This concept, might

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<sup>13</sup> *Op. Cit.* Scharpf, 1993, p. 8.

<sup>14</sup> See LIESBET HOOGHE, *Multi-level Governance and European Integration*, e-book available [on line] in <http://www.netLibrary.com>, [12/03/2005].

<sup>15</sup> For more information on those concepts, please refer to: PHILIP PETTIT, “Depoliticizing Democracy”, *Associations – Journal for Legal and Social Theory*, Volume 7, n. 1, 2003.

appear paradoxical at first sight, but as war is too important to be left in the hands of the generals, democracy – deliberative democracy – is too important to be left exclusively on the hands of politicians.

Once it is set our concept of democracy, a closer look should be taken at the concept of legitimacy.

The constantly invoked label "legitimacy deficit" covers a broad range of issues, giving rise to different taxonomies<sup>16</sup>. We may distinguish four different fundamental *conceptions* of what legitimacy as follows.<sup>17</sup>

#### 1-) *Legitimacy as Legality.*

Until recently, questions regarding the legitimacy of the European Union could be quickly answered by pointing out its origin. States have created the European Union according to all legal requirements. 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 ruling of the German Constitutional Court on the legality of the Maastricht Treaty<sup>18</sup> explored and accepted this account – within limits. The Union's authority is illegal when such limits are surpassed.

#### 2-) *Legitimacy as Compliance.*

Much concern about the alleged legitimacy deficit stems from authorities' fear of noncompliance with EU regulations and implementation. "Permissive consensus" may be a thing of the past, but current compliance may not be affected: Compliance in the form of acquiescence may stem from apathy or cynicism. The fears may seem overdrawn, given the broad social acceptance of European integration and the EU political system. But this acceptance varies and seems to decrease over time, reflecting circumstances and events. Even so, active disobedience might not occur until politically relevant groups mobilize. Politicians may understandably want to reduce the risks of populations turning down treaties, or refusing to comply.

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<sup>16</sup> For other classifications, please consult MARKUS JACHTENFUCHS, THOMAS DIEZ, and SABINE JUNG, "Which Europe? Conflicting Models of a Legitimate European Political Order." *European Journal of International Relations*, n. 4, 1998.

<sup>17</sup> Those summarized concepts were extracted from ANDREAS FOLLESDAL, "Legitimacy theories of the European Union", ARENA Working Papers, WP 04/15.

<sup>18</sup> "Brunner case", BvR 2134/92, for English translation see [1994] 1 CMLR 57.



### 3-) *Legitimacy as Problem-Solving.*

The EU's legitimacy is sometimes seen as enhanced when it identifies and implements solutions that actually secure certain goals otherwise unattainable. This requires firstly that preferred joint outcomes can only be obtained with the problem-solving capacity of the EU, and that they are in fact so identified, decided on and secured. Such objectives may include economic growth, peace in Europe, human rights compliance, or a sustainable environment, to mention a few. For instance, the technocratic aspects of EU decision-making are said to allow diffuse constituents such as consumers to pursue their interests in ways otherwise prohibitively difficult. Similarly, the common currency prevents unilateral exchange rate adjustments, and an independent central bank can bolster the credibility of member states' commitment to sound monetary policies. The EU suffers from the lack of such legitimacy when it obviously fails to find and implement solutions to common problems.

### 4-) *Legitimacy as Justifiability.*

Some express legitimacy in terms of *justifiability among political equals*, for instance by appealing to hypothetical acceptance or consent. They "ask whether the coercive exercise of political power could be reasonably accepted by citizens considered free and equal and who possess both a capacity for and a desire to enter into fair terms of cooperation." The legitimacy of a political order such as the EU is seen as an issue of whether affected parties *would have or could have* accepted it, under appropriate choice conditions.

We may thus say that laws or authorities are *legally legitimate* insofar as they are enacted and exercised in accordance with constitutional rules and appropriate procedures. Laws or authorities are *socially legitimate* if the subjects actually abide by them and are so disposed and so on.

At this point it should be underlined that the concepts presented above are interrelated, often compatible, and they can be mutually re-enforcing. However, as previously said and given the scope of this research, we focus on legitimacy as *problem solving*.

Once the methods and concepts used in the present research have been put forward, it is appropriate to mention the importance of the relationship between efficiency and democratic legitimacy.

A system of governance has, as every system of collective decision-making, to respond to both efficiency and legitimacy requirements. It has to achieve results and to achieve them in a correct manner. In normative terms these are very different sets of requirements but they are ultimately co-dependent. "Capability bereft of legitimacy is unstable and inefficient.

Legitimacy without capability is futile.”<sup>19</sup>

The nation-state provides a particular response to each criterion and to their interrelation. Efficiency is restricted to the territory where the laws can be enforced. Legitimacy is traditionally nationally constrained in that the laws and regulations are filtered through and assessed in relation to the ethical self-conception of the people as a nation, rooted in history, tradition and way of life. The nation-state puts constraints on legitimacy and efficiency because the ultimate authority to make binding laws rests with a territorially confined and culturally homogenized people. This makes it difficult to shift the boundaries of the citizenry; territorial borders cannot be altered by democratic means.<sup>20</sup>

The limitations regarding capability and efficiency come to the fore as the nation state is facing trans-border problems such as capital flight, large-scale population movements, pollution and the like. In a globalized context and particularly in the EU, the scope of social organization no longer coincides with national territorial boundaries. Increasingly, political bodies beyond the nation state are required to cope with this new problem scenario, but democracy up to now has relied on criteria that are derived from the nation state framework. Consequently, there is need for a conception of democracy that is decoupled from the nation state model. Today, the process of globalization and "europenization" of problems and solutions helps bring forth the emergence of new forms of governance. What notions of legitimacy and capability are these based on, and do they represent democracy beyond the nation state? The answer to this question is one of the main issues to be dealt with in this thesis.

The last observation to be stressed at this point refers to the fact that despite the chosen topic is dealt mainly with a juridical approach it cannot be denied that an appropriate understanding of political sciences is required. However, at the same time that a political understanding is necessary, it is not the objective of this work to provide a political or sociological explanation to the studied issue.

Policy research requires not only a specific division of labour between problem-oriented and interaction-oriented analysis but also a more direct interaction between positive and normative investigations than is otherwise common in the social sciences. In the context of policy research, law, political science and political sociology should contribute to the

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<sup>19</sup> ERIK ODDVAR ERIKSEN and JOHN ERIK FOSSUM”, Europe at a Crossroads - Government or Transnational Governance?”, ARENA Working Papers, WP 02/35.

<sup>20</sup> C. OFFE, “Homogeneity’ and Constitutional Democracy: Can We Cope with Identity Conflicts through Group Rights?”, In: R.V. ERICSON Ericson, and N. STEHR (eds.) *Governing Modern Societies*, Toronto, University of Toronto Press, 2000.

understanding and improvement of the conditions under which politics is able to produce effective and legitimate solutions to policy problems.

As an example of this it should be remembered that every lawyer would admit today that the validity of a norm depends not only on its proper derivation from higher-order norms but also on the positive judgement that it could be effectively realized in practice. Conversely, to judge a policy effective requires not only information about its empirical consequences but also normative assumptions about what should be considered a problem and what would constitute a good solution.

In short, the clear-cut division of labour between political scientists engaged in empirical research and positive theory and others concentrating on normative political theory cannot be maintained in policy-oriented research. Focusing on effectiveness *and* legitimacy, we are necessarily involved as much in identifying and explaining appropriate normative standards as we are engaged in collecting and interpreting empirical information or its substitutes, such as game theory.

## 2 Policy Networks

### 2.1 Introduction – Network Structures

The importance of networks in the organization of the European space can be confirmed by the vast number of studies that have been published in the last 10, 15 years. At the same time the number of publications shows the interest and relevance of the theme, it contributes to blurry the scope of the concepts and makes more difficult the understanding of this phenomenon.

Networks have become a fashionable “catch-word” in recent years – not only in political science but also in a number of other scientific disciplines. Microbiologists describe cells as information networks, ecologists conceptualize the living environment as network systems, computer scientists develop neuronal networks with self-organizing and self-learning capacities. In contemporary social science, networks are studied as new forms of social organization in the sociology of science and technology, in the economics of network industries and network technologies, in business administration, and in public policy. The term network seems to have become “the new paradigm for the architecture of complexity”.<sup>21</sup>

The list of phenomena for whose description the network concept is invoked in the literature could easily be extended. In political science it obviously includes extremely diverse arrangements that have only two characteristics in common: coordination among political, social and economic actors is not achieved by means of any of the three standard forms of institutionalized coordination provided by modern societies – neither through exchanges governed by pre-established prices in anonymous markets, nor through democratic collective choice in a political arena governed by majority vote, nor finally through the unilateral decisions of hierarchically superior authority. Instead, self-coordination among de facto autonomous actors is achieved either through mutual anticipation and unilateral adjustment (“non-cooperative games”) or negotiated agreements (“cooperative games”).<sup>22</sup>

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<sup>21</sup> TANJA A BORZEL, ”What Is So Special About Policy Networks? – An Exploration of the Concept and Its Usefulness in Studying European Governance”, *European Integration Online Papers*, (EioP), Vol. 1, 1997, n. 016, Available [Online] at <http://eiop.or.at/eiop/texte/1997-016a.htm>, [23/02/2004], p. 5.

<sup>22</sup> *Op. Cit.* Scharpf, 1993.

## 2.2 Policy Networks – General Theory

Despite the use of network concept varies a lot between and within the different disciplines they all share a common understanding, a minimum or lowest common denominator definition of a policy network as a *set of relatively stable relationships which are of non-hierarchical and inter-dependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that cooperation is the best way to achieve common goals.*<sup>23</sup>

Two different “schools” of policy networks can be identified in the field of public policy. The so called “interests intermediation school”<sup>24</sup> interprets policy networks as a generic term for different forms of relations between interest groups and the State. The “governance school”, on the other side, conceives policy networks as a specific form of governance, as a mechanism to mobilize political resources in situations where these resources are widely dispersed between public and private actors.<sup>25</sup> This narrower conception of policy networks mainly draws from the works in the field of public policy.

It is worth noticing that the difference between those two schools is fluid and not always made clear in the literature. But they are not exclusive, as it will be discussed in the next Section. However, there is a major difference between the two schools. The interest intermediation school conceives policy networks as a generic concept, which applies to *all kinds* of relationship between public and private actors. For the governance school, on the contrary, policy networks only characterize a *specific* form of public-private interaction in public policy (governance), namely the one based on non-hierarchical co-ordination, opposed to hierarchy and market as two inherently distinct modes of governance.

## 2.3 Networks as a Specific Form of Governance

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<sup>23</sup> *Op. Cit.* Borzel, 1997, p. 7.

<sup>24</sup> See R.A.W RHODES, “Policy Networks. A British Perspective”, *Journal of Theoretical Politics* 2, 3, 1990; GRANT JORDAN, and KLAUS SCHUBERT, “A Preliminary Ordering of Policy Network Labelling” In: Jordan and Schubert (eds.) 1992, pages 7-28; FRANS VAN WAARDEN, 1992, “Dimensions and Types of Policy Networks” in Jordan and Schubert (eds.), 1992, pages 29-52.

<sup>25</sup> *Op. Cit.* Borzel, 1997, p. 8.

Given the scope of this research presented in the beginning of this work and in parallel with the official definition of networks proposed by the Commission<sup>26</sup> and discussed below on Section 2.4, it is deemed appropriate to focus on the theories of networks as a specific fashion of governance.

In the literature on governance, again two different applications of the concept of network can be identified.

Many authors use policy networks as an *analytical concept or model* (especially in the field of policy analysis) to connote the “structural relationships, interdependencies and dynamics between actors in politics and policy-making.”<sup>27</sup> In this sense, networks provide an alternative to analyse situations in which a given policy cannot be explained by centrally concerted policy action toward common goals. “Rather, the network concept draws attention to the interaction of many separate but interdependent organisations, which coordinate their action through interdependencies of resources and interests. Actors, who take an interest in the making of a certain policy and who dispose of resources (material and immaterial) required for the formulation, decisions or implementation of the policy, form linkages to exchange these resources. The linkages, which differ in the degree of intensity, normalisation, standardisation and frequency of interaction, constitute the structures of a network. These “governance structures” of a network determine in turn the exchange of resources between the actors. They form points of references for the actors’ calculations of costs and benefits of particular strategies.”<sup>28</sup>

Hence, the analysis of policy networks allows to draw conclusions about the actors’ behaviour.<sup>29</sup> However, policy networks are here only an analytical model, a framework of interpretation in which different actors are located and linked in their interaction in a policy sector and in which the results of this interaction are analysed. Why and how single actors act, the policy network analysis can only partly explain it taking into consideration the description of the linkages between the actors. Thus, policy networks analysis is not substitute for a theoretical explanation: “Network analysis is no theory *in strictu sensu*, but rather a tool box for describing and measuring relational configurations and their structural characteristics”.<sup>30</sup>

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<sup>26</sup> Report of Working Group, Networking People for a Good Governance in Europe, May 2001, available on line in [http://www.europa.eu.int/comm/governance/governance\\_eu/networking\\_en.htm](http://www.europa.eu.int/comm/governance/governance_eu/networking_en.htm) [20/03/2004].

<sup>27</sup> VOLKER SCHNEIDER, *Politiknetzwerke der Chemikalienkontrolle – Eine Analyse einer transnationalen Politikentwicklung*, Berlin, De Gruyter, 1988 *apud Op. Cit.* Borzel, 1997.

<sup>28</sup> *Op. Cit.* Borzel, 1997.

<sup>29</sup> ADRIENNE WINDHOFF-HERITIER, “Policy Network Analysis – A Tool for Comparative Political Research”, In: HANS KEMAN, (ed), *Comparative Politics*, Amsterdam, VU University Press, 1993.

<sup>30</sup> PATRICK KENIS and VOLKER SHNEIDER, “Policy Networks and

However, as suggested by Borzel<sup>31</sup>, some authors go beyond the use of networks as an analytical concept. They argue it is not enough to understand the behaviour of a given individual unit as a product of inter-organisational relations. The underlying assumption is that social structures have a greater explanatory power than the personal attributes of individual actors.<sup>32</sup> The pattern of linkages and interaction as a whole should be taken as the unit of analysis. In sum, these authors shift the unit of analysis from the individual actor to the set of interrelationships that constitute inter-organisational networks.

While the analytical network concept presented above describes the context of, and actors leading to, joint policy-making, the concept of networks as inter-organisational relationships focuses on the structure and processes through which joint policy-making is organised, i.e. on governance. Policy networks are conceived as a particular form of governance in modern political systems.<sup>33</sup>

The point of departure is the assumption that modern societies are characterized by societal differentiation, sectoralisation and policy growth, which lead to political overload and “governance under pressure”, particularly in the Commission.<sup>34</sup> “Modern governance is characterised by decision systems in which territorial and functional differentiation des-aggregate effective problem-solving capacity into a collective of subsystems of actors with specialized tasks and limited competence and resources”.<sup>35</sup> The result is a functional interdependence of public and private actors in policy making.

Governments have become increasingly dependent upon the cooperation and joint resource mobilisation of policy actors outside their hierarchical control. These changes have favoured the emergence of policy networks as a new form of governance, different from the two conventional forms of

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Policy Analysis – Scrutinizing a New Analytical Tool-box”, In: BERND MARIN and RENATE MAYNTZ, *Policy Networks: Empirical Evidence and Theoretical Considerations*, Frankfurt AM, Campus Verlag, 1991.

<sup>31</sup> *Op. Cit.* Borzel, 1997

<sup>32</sup> BARRY WELLMANN, “Structural Analysis: From Method and Metaphor to Theory and Substance, In: BARRY WELLMANN and S.D. BERKOVITZ (eds.), *Social Structure – A Network Approach*, Cambridge, Cambridge University Press, 1988.

<sup>33</sup> *Op. Cit.* Kenis and Schneider, 1991.

<sup>34</sup> ALBERTA M. SBRAGIA, “The dilemma of governance with government”, In: *Jean Monet Program*, Jean Monet Working Paper 3/02.

<sup>35</sup> KENNETH HANF and LAURENCE J. O’TOOLE, “Revisiting Old Friends: Networks, Implementation Structures and the Management of Inter-Organisational Relations”, In: GRANT JORDAN and KLAUS SCHUBERT (eds.), “Policy Networks”, *European Journal of Political Research*, Special Issue, 21, 1-2.

governance (markets and hierarchies), which allow governments to mobilise political resources in situation where these resources are widely dispersed between public and private actors.<sup>36</sup> Thus, policy networks are “*une reponse aux problems d’efficacite des politiques publiques*”.<sup>37</sup>

In this view, policy networks are best understood as “webs of relatively stable and ongoing relationships which mobilise and pool dispersed resources so that collective (or parallel action) can be orchestrated toward the solution of a common policy.”<sup>38</sup> A policy network includes all actors involved in the formulation and implementation of a policy in a policy sector. “They are characterised by predominantly *informal* interaction between *public and private* actor with distinctive, but *interdependent interests*, who strive to solve problems of collective action on a central, *non-hierarchical level*.”<sup>39</sup>

In sum, policy networks reflect a changed relationship between state and society. There is no longer a strict separation between the two: “Instead of emanating from a central authority, be this government of legislature, policy today is in fact *made* in a process involving a plurality of both public and private organisations.” This is why “the notion of policy networks does not so much represent a new analytical *perspective* but rather signals a real change in the structure of polity.”<sup>40</sup>

## 2.4 Governance White Paper and European Networks

European officials, aware of the strategic importance of networks and its present use, have put this discussion in the governance agenda. The main documents that deal with networks are the White Paper on European Governance<sup>41</sup> and specially the Report of working Group “Networking People for a Good Governance in Europe.”<sup>42</sup> The report was prepared in collaboration with leading European scholars and clearly reflects, in a

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<sup>36</sup> *Op. Cit.* Kenis and Scheider, 1991.

<sup>37</sup> PATRICK LES GALES and MARK TATCHER (eds), *Les Reseaux des Politiques Publique. Debat Autour des Policy Networks*, Paris, L’Harmattan, 1995 *apud Op. Cit.* Borzel, 1997.

<sup>38</sup> *Op. Cit.* Kenis and Scheider, 1991.

<sup>39</sup> *Op. Cit.* Borzel, 1997.

<sup>40</sup> RENATE MAYNTZ, “Modernization and the Logic of Interorganizational Networks”, In: MIPGF Working Paper n. 4 , Koln: Max-Plack Institut fur Gesellschaftsforschung, 1994.

<sup>41</sup> *Op. Cit.* European Governance – A White Paper.

<sup>42</sup> Report of Working Group, Networking People for a Good Governance in Europe, May 2001, available on line in [http://www.europa.eu.int/comm/governance/governance\\_eu/networking\\_en.htm](http://www.europa.eu.int/comm/governance/governance_eu/networking_en.htm) [20/03/2004].



coherent way, the dominant theories of networks. The hybridism of networks, conceived as neither hierarchical nor autonomous structures, would be spreading in Europe because they are able to provide effective solutions for conflicting priorities that characterise today's governance such as:

- “Thinking long term but delivering results today on the basis of uncertain evidence;
- Achieving global scale but being locally responsive;
- Promoting teamwork and flexible structures, whilst ensuring a clear accountability;
- In addition, the pervasiveness of information and communication technologies, notably the internet, have greatly facilitated the emergence of networked organisations and actions through Europe.”<sup>43</sup>

The Working Group Report is very important for this research because it provides us with a definition of networks. Accordingly, “*the networks working in Europe are best described as an interaction form between many individuals and/or organisations. When compared to the other two identified forms of interaction, the contract/market and the hierarchy, networks are an intermediate form which associates in a structured but loose way independent parties each of which controls part of the resources and skills needed by all to achieve a common objective.*”<sup>44</sup>

Furthermore the Report mentions that there are four different kinds networks.<sup>45</sup> In the Report it is stressed that after careful consideration of different options, networks are characterised by their function, as the most determining factor affecting their description. The four broad categories proposed are the following:

- *Networks for Information and Assistance to citizens and organisations on Commission policies and programmes;*
- *Networks for implementing and adapting EU policies such as programmes or legislation;*
- *Networks for consultation when defining or reviewing a policy or programme;*
- *Networks for developing policies/policy making (including regulation).*<sup>46</sup>

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<sup>43</sup> *Ibid.*, p. 1.

<sup>44</sup> *Ibid.*, p. 3.

<sup>45</sup> Different authors point out the existence of other categories of networks. See JACK HAYWARD, “Organized Interests and Public Policy”, In: JACK HAYWARD and EDWARD C. PAGE (eds.), *Governing the New Europe*, Durham, Duke University, 1995.

<sup>46</sup> *Op. Cit.* Report, May 2001, p. 5.

Throughout its report the Commission highlights two key concerns about networks: efficiency and democratic legitimacy. The controversial aspects of both efficiency and democratic legitimacy are the core part of this research and our findings are presented on Sections 3 and 4 below.

## **2.5 Conclusions**

As it can be seen from the main theories of policy networks exposed above there is a great variety of possible spectrums to analyse this issue, but they all share a common understanding that policy networks are a set of relatively stable relationships which are of non-hierarchical and inter-dependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that cooperation is the best way to achieve common goals.

This fascinating subject that is able to provide effective solutions to the coordination problems typical of today's society is not only a theoretical discussion. The issue is in the governance agenda of the European Union and there can already be found a number of networks in the sphere of the Commission and other institutions.

# 3 Policy Networks and Efficiency

## 3.1 Introduction

Before it is shown how networks can contribute to increase the level of efficiency in the Commission and in the European Union in general, it is necessary to establish what is understood as “efficiency” and how this is going to be measured. As stated on Section 1.4 (Method and Material), efficiency is going to be tested with the use of game theory, but it has not yet been established what efficiency is.

For the purposes of this research, efficiency is conceived in the usual sense found in any dictionary: “when someone or something uses time and energy well, without wasting any”.<sup>47</sup>

Once we have a definition we should perform our analysis. It should be clear now that the concept of policy networks, as a specific fashion of governance, does not constitute a proper theory. To explain the phenomenon of policy networks as a new mode of governance, the Max-Planck-School draws from the so called “actors centred institutionalism”, mainly developed by Scharpf,<sup>48</sup> which is often combined with other theoretical approaches, especially game theory.<sup>49</sup>

Actors centred institutionalism combines rational choice and institutionalist assumptions. Institutions are conceived of as regulatory structures providing opportunities and constraints, for rational actors striving to maximize their preferences.<sup>50</sup> A major function of an institution is to overcome problems of collective action by constraining egoistic and opportunistic behaviour.<sup>51</sup> Networks are then conceptualized as *informal institutions* – not formally organized, reciprocal (non-hierarchical), relatively permanent relations and forms of interaction between actors who strive to realize common gains.<sup>52</sup> Networks are based on agreed-upon rules for the production of a *common outcome*. They reduce costs of information and transaction and create *mutual trust* among the actors diminishing uncertainty and thus the risk of defection.<sup>53</sup> Due to these functions networks serve as an ideal institutional

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<sup>47</sup> Cambridge on line dictionary, Available [online] at <http://dictionary.cambridge.org/>, [18/04/2005].

<sup>48</sup> *Op. Cit.* Scharpf, 1997.

<sup>49</sup> *Op. Cit.* Scharpf, 1993.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

framework for horizontal self-coordination between public and private actors, on which policy making is relying in an increasingly complex, dynamic and diversified environment where hierarchical coordination is rendered difficult. Public and private actors, such as the Commission and industries, form networks to exchange their resources on which they are mutually dependent for the realization of common gains.

### **3.2 Inefficiencies of Traditional Forms of Governance**

Scharpf can be considered to be the leading scholar of the Max-Planck-School<sup>54</sup> arguing in favour of policy networks as a particular form of governance. He starts from the assumption that modern societies are characterised by functional differentiation and partly autonomous societal subsystems. The emergence of those subsystems is closely connected with the ascendance of formal organisations forming inter-organisational relations with other organisations on which they depend for resources. In the EU for example, private organisations dispose of important resources and have therefore become increasingly relevant for the formulation and implementation of European policies. In this structural context, policy networks present themselves as a solution to coordination problems typical of the EU.

Under the conditions of environmental uncertainty and increasing international, sectoral and functional overlap of societal subsystems policy networks as a mode of governance dispose of a crucial efficiency advantage over the two conventional forms of governance, market and hierarchy. Unlike hierarchies and markets, policy networks do not necessarily have dysfunctional consequences. While markets are unable to control the production of negative externalities (problems of market failure), hierarchies produce “losers”, who have to accept the costs of a political decision (exploitation of a minority by the majority).<sup>55</sup> Horizontal self-coordination of the actors involved in policy making – as it is the case of the Inter-governmental decision making in the EU - is, on the other hand, also prone to produce sub-optimal outcomes. As it is a bargaining system, it tends to be blocked by dissent, preventing the consensus necessary for the realisation of common gains.

Following the discussion above, there are two main problems expressed by Scharpf, which can render consensus difficult or even impossible in a

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<sup>54</sup> German public policy scholars like Renate Mayntz, Patrick Kenis, Volker Schneider and Edgar Grande. Most of the scholars are or were related to the Max-Planck-Institut für Gesellschaftsforschung (MPIGF) located in Cologne, Germany.

<sup>55</sup> *Op. Cit.* Scharpf, 1993.

bargaining system such as the inter-governmental decision-making. Firstly, the bargaining dilemma (known as prisoner's dilemma in game theory), i.e. situation in which defection from cooperation is more rewarding for a rational actor than compliance, due to the risk of being cheated.<sup>56</sup> Secondly, one has the structural dilemma, i.e. the inter-organisational structure of horizontal coordination itself.

In addition to this, it can be said that horizontal coordination between organisations is based on bargaining between the representatives of the organisations. These representatives are not completely autonomous in the bargaining process. They are subject to the control of the members of their organisation. These intra-organisational "constraints" have major consequences for the representatives' orientations of action and the reliability of their commitments made in inter-organisational bargaining rendering the finding of consensus in inter-organisational process more difficult for two reasons. The first reason relates to the self-interest of the organisational representatives and the second relates to the insecurity caused by inter-organisational control and the need for intra-organisational implementation of inter-organisational compromises (voluntary defection).

The linkage of intra and inter-organisational decision-making processes in structures of horizontal coordination across several levels of government constitutes a bargaining system in which conflicts are not only caused by competing or antagonistic interests, but also by the very structure of the system.<sup>57</sup> Consequently, the probability of producing common outcomes in a bargaining system linking together differently structured arenas, different actors and different interest constellations is relatively low.

*The dysfunction of horizontal self-coordination, however, can be overcome when such coordination takes place either in "the shadow of hierarchy" or within network structures.*<sup>58</sup> As hierarchical coordination becomes increasingly impossible in interaction across sectoral, organisational and national borders, actors have to rely on horizontal self-coordination within networks, which then can serve as a functional equivalent to hierarchy.<sup>59</sup>

### **3.3 Trust as an Important Element of a Network**

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<sup>56</sup> *Ibid.*

<sup>57</sup> ARTHUR BENZ, "Mehreben-Verflechtung: Verhandlungsprozesse in verbundenen Entscheidungsarenen", In: ARTHUR BENZ and FRITZ SCHARPF (eds.), 1992, *apud Ibid.* Borzel, 1997.

<sup>58</sup> *Op. Cit.* Scharpf, 1993.

<sup>59</sup> *Ibid.*

As it can be inferred from what has been stated so far, a basic assumption for the efficiency of networks is that the trust relationship on which those organisational structures are based works. It follows from that assumption that if trust prevails, considering the capabilities of the specialized parties, the search for welfare is successful. Bearing this in mind it is deemed appropriate to study how trust is possible and how it is created. Previously to this, a brief discussion about the science of suspicion – the basis for the traditional organisational structures (market and hierarchies) – is presented.

It was Talleyrand<sup>60</sup> who said that the most suspicious people make the biggest dupes. He could not have been thinking of late 20<sup>th</sup> century social science when he said that, but he might have been. Much of that social science is a science of suspicion. It makes the pursuit of self-interest and the fear of deception (because the others are pursuing their own interests, too) the spring of individual action and the guiding motive of institutional construction.

Applied to one problem at a time, the science of suspicion produces conclusions that are plausible enough. But taken together the conclusions form a curious circle, in which the vulnerabilities of one institutional form lead to creation of another, whose deficiencies mirror those of the first and require solutions that return to it. One can notice the way the debate between markets and hierarchies. Those who study markets worry about hold-ups: we both gain if we dedicate resources to a common project, but both parties fear that the other will draw back from the project for fear of the vulnerabilities it creates. The solution would be to create a hierarchy by exchange of property. I buy your company or you buy mine. But now the students of hierarchies are pointing out that subordinates have interests on their own, and that the agents are adept at interpreting their principal's instructions to their own advantage, and the same applies to constitutional democracies.<sup>61</sup>

Sabel's<sup>62</sup> solution to the problem presented above would pass through an increasing emphasis to be given to network like forms of governance<sup>63</sup>

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<sup>60</sup> A famous French diplomat from the time of Napoleon.

<sup>61</sup> For more information on the problems of hierarchies see PAUL MILGROM and JOHN ROBERTS, "Bargaining Costs, Influence Costs, and the Organization of Economic Activity", In: JAMES E. ALT and KENETH A. SHEPSLE (eds.), *Perspectives on Positive Political Economy*, Cambridge, Cambridge University Press.

<sup>62</sup> CHARLES F. SABEL, "Constitutional Ordering in Historical Context", In: FRITZ W. SCHARPF (ed.), *Games in Hierarchies and Networks – Analytical and Empirical Approaches to the Study of Governance Institutions*, Campus Verlag, Frankfurt am Main, 1993.

<sup>63</sup> In reality he names this kind of governance structure that incorporates elements of both hierarchies and markets "constitutional order", but, for now, to avoid any sort of confusion with the usual meaning of the term in political science and considering that most authors conceive this kind of

because they are based on trust and consequently are apt to adapt to changing environments providing effective solution to problems. According to him, there are empirical reasons to believe that cooperation is a much more likely outcome than the duplicitous self-seeking presumed by the standard theory; that the human capacity for self reflection plays a crucial role in this regard, that an understanding of reflexivity improves our grip of the institutional intricacies of networks.

Sabel claims that the presumption of generalized opportunism in exchange relations is empirically<sup>64</sup> dubious. He argues that there are more comprehensive counter theories that assert the possibility of creating trust in a wide range of social settings without presuming that we are in general trusting rather than opportunistic. By saying that he avoids to affirm that parties trust not because they are naïve, but because they have practical reasons to do so.

The first evidence that networks are based on trust can be inferred from the fact that if trust did not exist, networks simply could not survive. *The culture argument* is the basis for this. In the course of the historical struggles by which collective identity has been defined, particular groups have established norms prohibiting opportunism within the group itself. To be a member of the group is therefore to trust other group members; and the penalty for a breach of trust is exclusion from the community, without reference to which life is literally meaningless. Opportunism becomes in such cases almost unthinkable.

*The repeated game*<sup>65</sup> argument combines good fortune with good sense. For the parties involved in such a game the benefits of current changes are extremely higher in relation to the losses that might be incurred later by a breach of faith. Exchange begins; the parties learn how to value its benefits and this appraisal leads to a re-evaluation of the costs of betrayal, and so discourages bad faith dealings. But on this argument, according to Sabel, *it is more accurate to characterize the parties' relation as a simulacrum of trust as a modus vivendi rather than trust as proper*. Under the circumstances, opportunism is not paying proposition. Consequently, mutually beneficial cooperation is naturally self-motivating when the parties are presumed to maximize their benefits, and cooperation is taken as a sign that they are doing so.

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structure as networks we simply refer to it as “network structures” or “network governance”. See *Op. Cit.* Sabel, 1993.

<sup>64</sup> Due to the limited scope of this discussion in the present research, the extensive empirical analysis made by Sabel in the light of games theory are not presented here, but only its conclusions.

<sup>65</sup> Also known as *sequential game*. See point 1.4.

### 3.4 The Efficient Character of Policy Networks in the Light of Game Theory

Once it has been demonstrated that trust is “broadly possible”<sup>66</sup> within networks, and already having in mind the comparative advantages of network structures against markets and hierarchies, it is time to evaluate the efficient character of networks in the light of game theory. But before such analysis is performed, it is appropriate to remember that here we are dealing with is conceived by Scharpf as networks functioning in the “shadow of hierarchy”,<sup>67</sup> i.e. networks connected and coordinated by a central authority, the Commission in this case.

By combining the autonomy of actors typical for markets with the ability of hierarchies to pursue selected goals and to control their anticipated consequences, policy networks can overcome the major problems of horizontal coordination, as follows:

*1) Networks are able to intentionally produce collective outcomes despite diverging interests of their members through voluntary bargaining.*<sup>68</sup>

Unlike “exchange” and “strategic interaction”, which are based on maximisation of self-interests through cost-benefit interactions, which are prone to produce bargaining dilemma, negotiations in policy networks are based on communication and trust and aim at achieving joint-outcomes, which have a significant value for the actors. The negotiations to achieve a common outcome in policy networks can be guided according to two different strategies: the reconciliation of interests (bargaining) or the perspective of optimal performance (problem-solving).

Once this is said the question is then under which conditions problem solving, as the most optimal logic of negotiation to produce common outcomes, dominates over bargaining. A number of scholars have dealt with this problem.<sup>69</sup> Solutions suggested are the institutional consolidation of a network,<sup>70</sup> overlapping membership in several networks,<sup>71</sup> the spatial and temporal separation of the search for a common solution from the distribution of costs and benefits,<sup>72</sup> or the “*Entkopplung von Handlungszielen und individuellem Nutzenstreben*” (decoupling of goals of action from the individual ambition of utility maximization).<sup>73</sup>

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<sup>66</sup> *Op. Cit.* Sabel, 1993.

<sup>67</sup> *Op. Cit.* Scharpf, 1993.

<sup>68</sup> *Op. Cit.* Kenis and Schneider, 1991

<sup>69</sup> *Op. Cit.* Benz, Scharpf and Zintl (eds.) 1992.

<sup>70</sup> *Op. Cit.* Scharpf, 1993.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Op. Cit.* Scharpf 1992

<sup>73</sup> RENATE MAYNTZ, “Networks, Issues, and Games: Multiorganizational



2) *Networks can provide additional, informal linkages between inter and intra-organisational decision-making arenas.*

The networks informal linkages, based on communication and trust, overlap with institutionalized structures of coordination and link different organisations independently from the formal relationships between them. Consequently, they help to overcome the structural dilemma of bargaining systems because they provide *redundant* possibilities for interaction and communication, which can be used to solve decision-making problems (including bargaining dilemma typical of the inter-governmental decision-making). However, it is worth noticing that networks do not directly serve for the decision-making but for the information, communication and the exercise of influence in the preparation of decisions.

In addition to the above mentioned, interactions in networks are not exposed to constraints such as formal rules of assignments of responsibility. In fact, they reduce transaction costs in situations of complex decision-making as they provide a basis of common knowledge, experience and normative representation. Again, as expressed by Scharpf, networks function better in the shadow of hierarchies.

A *third* important aspect of the networks' efficiency is related to its ability to counterbalance power asymmetries by providing additional channels of influence beyond the formal structures.<sup>74</sup> Notwithstanding the relevance of this factor for the efficiency of networks, it is even more relevant for the discussion on the democratic legitimacy of those structures. For that reason this topic will be dealt with on Section 4.4 below.

To sum up, in an increasingly complex and dynamic environment, where hierarchical coordination is rendered difficult, if not impossible, and the potential for deregulation is limited due to the problem of market failure,<sup>75</sup> governance becomes more and more feasible within policy networks, providing a framework for the efficient horizontal coordination of the interests and actions of public and private corporate actors, mutually dependent on their resources.<sup>76</sup>

### **3.5 Case Study – EC Research and Development Program**

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Interactions in the Restructuring of a National Research System, In: *Op. Cit.* Scharpf (ed.), 1993.

<sup>74</sup> *Op. Cit.* Benz, 1992.

<sup>75</sup> *Op. Cit.* Kooiman, 1991.

<sup>76</sup> *Op. Cit.*, Scharpf, 1993.

If one combines Scharpf's theory of networks functioning in the shadow of hierarchies<sup>77</sup> with Sabel's network governance order terminology,<sup>78</sup> and applies it to a concrete case a very elucidative example of the networks' efficiency is perceived.

Sabel's network order consists of "constituent" units and "superintendent". The constituent units may be for instance market agents such as independent firms, or, analogously, the citizens of a democracy or the members of a trade union or other association. However, they may also be entities such as divisions of corporations, branch plants, or governmental agencies that would count as bureaucratic units in a hierarchical system. The superintendent may be for example, a court of law, the head office of a public or private hierarchy, the elected officers of an association, a bureaucratic entity, or an arbitration committee composed of representatives of the parties to the dispute to be arbitrated. The superintendent of one network, moreover, can be and typically is a constituent of another, more encompassing order. In the case to be presented here the Commission is the superintendent and companies, professional associations and other interested parties are the constituent units.

As the example of the dynamics of the EU suggests, the role of the superintendent is to determine the justification and responsibilities of the constituent units and set the rules by which they conduct transactions and resolve disputes arising under those rules insofar as the constituents cannot do so themselves. The superintendent may subordinate one constituent unit to another and any or all to itself. However, limitations on its jurisdictional and rule setting authority render the superintendent's own hierarchical relation to the constituents indeterminate.

The history of the EC-research and technology programmes especially in the field of information technology gives ample evidence that those actors joined hoping to profit most from a concerted, cooperative and trustful action. The Commission opened channels for consultation to interested parties in the establishment of new rules to serve as paradigm for the EU's research program. The story of the "Round Table" is often told in a way that implies that it was the coalition of big business that brought about the first spectacular programmes in information technology. The Round Table was a successful story because a technocratic consensus supported by the legitimacy of business and Commission acting together.

It is a well established consensus in Europe that the EU is, among other things, about competitiveness: the ensuing argument is that competitiveness depends on the ability for technical innovation, and that scientific knowledge and insight into the requirements of the economy is what is most needed in order to design a good policy. Furthermore, it was a new policy and fixed patterns for choosing policy options were yet not set. This made it

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<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

easy to form a trans-national/ supranational coalition based on a common understanding of the nature of the problem. All relevant actors became part of the policy network and joined in to come to a common understanding of the nature of the problem, the options and measures to be taken.<sup>79</sup>

As this example suggests, once a fair consultation is performed (see Section 4.5) the superintendent reconciles, promulgates and enforces rules proposed by the constituents and derived from their practical experience. In extraordinary cases – a division of among the constituents, a disoriented change in the environment – the superintendent may reserve the right to impose rules, dissolving the network and preserving its authority.

The main point that underlines the efficient character of the network forms of governance derive from the intrinsic characteristics of the players. Having in mind that the trust relationship is established, superintendents have an obligation to consult the constituents, by whatever means, because it is presumed that the constituents typically know more about the general features of their situation and how to order it than the superintendent.

It is important to emphasize at this point that network structures are often practiced in preparation for formal choices governed by majority vote or hierarchical decisions, or that their effectiveness maybe parasitic on institutionalized forms of non-negotiated coordination. Collaboration on industrial research, or intra-firm transactions among autonomous profit centres, are negotiated against a background defined by the options available in the open market, and they are practiced under the continuing control of organizational hierarchies; consensus oriented pluralists or corporatists bargaining is carried on in the shadow of parliaments that could, constitutionally, legislate by simple majority vote; similarly horizontal and vertical negotiations within the public sector, and between the public and private sectors, are often shaped by the latent threat of a unilateral exercise of centralized state authority. *Networks, in other words, often exist in the shadow of market, majority rule or hierarchical authority.*

## 3.6 Conclusions

Notwithstanding all of the above mentioned it should be stressed that networks are no final solution to decision-making problems in bargaining system and they are not the panacea as some have suggested. Because of their self-dynamic – they are built on voluntary participation – they have a higher elasticity with respect to changing demands. Their effectiveness,

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<sup>79</sup> BEATE KOHLER-KOCH, “The Strength of the Weakness: The Transformation of Governance in the EU”, In: SVERKER GUSTAVSSON and LEIF LEWIN (eds.), *The Future of the Nation State – Essays on Cultural Pluralism and Political Integration*, Stockholm, Nerenius and Santerus Publishers, 1996.

however, is limited just because the exit-option is always open.<sup>80</sup> This explains why networks become often “quasi-institutional” arenas with their own structure of conflict and problems of coordination.<sup>81</sup> Additionally, it is often argued that policy networks are not always exposed to democratic control and therefore lack of democratic legitimacy, as it will be discussed on the next Section.<sup>82</sup>

Hence, networks themselves create a dilemma: on the one hand, they perform functions necessary to overcome the deficiencies of bargaining systems, on the other hand, however, they cannot fully substitute formal institutions because of their own deficiencies.<sup>83</sup>

In sum, there is a growing number of works on policy networks, which acknowledge that ideas, beliefs, values, and consensual knowledge do have explanatory power in the study of policy networks. However, the critique of rational institutionalist approaches towards policy networks overlooks a fundamental point: not only ideas, beliefs, values identity and trust matter in policy networks; they are *constitutive* for the logic of interaction between the members of a network.<sup>84</sup>

Scholars like Scharpf and Benz are absolutely right in arguing that policy networks offers a solution to problems of collective action by enabling non-strategic action based on communication and mutual trust. As mentioned in the previous Sections, communication and trust distinguish policy networks from other forms of non-hierarchical coordination and render them more efficient than those. It is curious though that, by acknowledging the relevance of trust and communicative action (problem-solving, deliberation, arguing) as a way to overcome problems caused by strategic action (maximization of self interest, bargaining), rational institutionalists, including Scharpf, start to contradict their basic assumptions of their theory. They contradict the assumption that rational actors always strive to maximize their exogenously given interests. The capacity of policy networks to overcome problems of collective action can only be accounted for when actors’ preferences and interests are endogenised, i.e. not taken as a given and fixed.

Ambiguity, paradoxes and exceptions are constant in the literature of policy networks. Even Scharpf<sup>85</sup> does not deny that hierarchical organization and

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<sup>80</sup> *Op. Cit.* Kohler-Koch, 1996.

<sup>81</sup> *Op. Cit.* Benz, 1995

<sup>82</sup> *Op. Cit.* Scharpf, 1993.

<sup>83</sup> According to Benz, this dilemma or “paradox of interorganizational structures” cannot be finally overcome. Networks and institutions form a dynamic structure context in which politics has to operate in a flexible way. Actors can cope best with this situation if they act “paradoxically”, i.e. “act if what is achieved was not intended”. *Op. Cit.* Benz, 1995.

<sup>84</sup> *Op. Cit.* Borzel, 1997.

<sup>85</sup> *Op. Cit.* Scharpf, 1993.

majority rule continue to have important advantages – specially when there is a need for redistributive measures. But, as he suggests, these advantages tend to be misperceived and overstated unless the basic equivalence of coordination mechanisms in hierarchical and network structures is theoretically acknowledged.

*“When this is recognized, research will be able to focus on the specific implication for coordination games going on within either type of structure and, even more promising, on the all important consequences of the fact that hierarchies and networks are inextricably intertwined – that hierarchical organizations are embedded in wider networks while network-like relationships are emerging within as well as across the boundaries of hierarchical structures.”<sup>86</sup>*

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<sup>86</sup> *Ibid.*

# 4 Policy Networks and Democratic Legitimacy Concerns

## 4.1 Introduction

The previous sections started by acknowledging the concept of policy networks and followed with an explanation on its efficiency, but also its deficiencies and limitations. Now it is time to explore the main topic of interest to jurists: if policy networks can contribute to increase the level of democratic legitimacy in the EU and how to ensure that they remain open and accountable.

## 4.2 Introduction

Once one has a reference for what is conceived to be democracy and legitimacy, the means to achieve democratic legitimacy and how they are interrelated and connected to efficiency should also be discussed. The four conceptions of legitimacy presented on Section 1.4 justify a variety of institutional arrangements or *mechanisms* to achieve such legitimacy, as follows.<sup>87</sup>

### 1-) Legitimacy through Participation.

The legitimacy of the EU is said to increase by including citizens and other parties in the decision making process. This assumption is connected to the idea that interest group and expert democracy may be regarded as direct participation, hence legitimate. Alternatively, citizens might be drawn into political decisions at various stages, and may participate directly in referendums. But what is of particular interest in here is the fact that participation may certainly boost compliance, especially if the parties consulted can bind their members in forms of network governance.<sup>88</sup>

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<sup>87</sup> ANDREAS FOLLESDAL, "Legitimacy theories of the European Union", ARENA Working Papers, WP 04/15.

<sup>88</sup> BEATE KOHLER-KOCH, "Framing: the Bottleneck of Constructing Legitimate Institutions." *Journal of European Public Policy* 7, 4, 2000.

## 2-) Legitimacy through Democratic rule.<sup>89</sup>

It is common knowledge that representative democracy is a special and important case of participation. The democratic character of domestic political rule is regarded as central to legitimacy across Europe – and indeed globally. Citizens hold their rulers accountable for their use of public power by selecting among competing candidate parties on the basis of informed discussion of their relative merits and the objectives to be pursued. Citizens count as equal in the counting and weighing of votes, for instance when relying on majority rule.

## 3-) Legitimacy through Actual Consent.

Some regard democratic legitimacy as a matter of voters conferring legitimacy giving actual consent.<sup>90</sup> Others stress the need to secure actual consent in the form of consensus reached on the basis of actual deliberation among all affected parties: "precisely those principles are valid which meet with uncoerced intersubjective recognition under conditions of rational discourse."<sup>91</sup> In this vein, some argue that EU institutions such as comitology are or can be embryonic arenas for deliberative politics.<sup>92</sup>

## 4-) Legitimacy through Output.

The problem-solving or 'output' legitimacy of the EU firstly requires that organisations and member states explore, identify and finally agree to options that benefit them all. The Union must then go on to actually secure these options, achieving objectives hitherto out of reach. Central mechanisms are the ability to create de facto binding and sanctioned law, as well as credible commitments through policy networks. These arrangements bind member states and enforce compliance, preventing the free-riding that often threatens cooperative arrangements.<sup>93</sup>

The considerations of legitimacy mentioned above form part of alternative 'frames' for further integration according to Kohler-Koch.<sup>94</sup> Unfortunately, the different conceptions and mechanisms of legitimacy can conflict, and require resolution insofar as prescriptions for institutional reforms

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<sup>89</sup> Also conceived by Scharpf as "input" legitimacy. See: FRITZ W. SCHARPF, *Governing in Europe. Effective and Democratic?*, Oxford, Oxford University Press, 1999a.

<sup>90</sup> DAVID BEETHAM, *The Legitimation of Power*, London, Macmillan, 1991; and CHRISTOPHER LOR, *Legitimacy and the European Union*, London, Longman, 1998.

<sup>91</sup> JURGEN HABERMANS, "Comments." *Journal of Philosophy*, 1995.

<sup>92</sup> This is in line with Petit's idea to depoliticize democracy presented on Section 1.4.

<sup>93</sup> *Op. Cit.* Scharpf, 1999a.

<sup>94</sup> *Op. Cit.* Kohler-Koch, 2000.

strengthen some forms of legitimacy at the expense of others. Efficiency, democracy and constitutionalism conflict, even in principle.<sup>95</sup> As examples there is the fact that mechanisms of veto and rights that require actual consent may hinder efficient problem-solving and accountability may stifle creative searches for solutions.<sup>96</sup> Also, increased democratisation and politicization of the EU Commission can threaten its problem solving capacity and its credibility as neutral guardian of the treaties.<sup>97</sup>

### 4.3 Input vs. Output Legitimacy

As stated in Section 1.4 this research concentrates on the relationship between input vs. output legitimacy, as well as legitimacy through participation. Bearing this in mind it is necessary to mention why the path to achieve democratic legitimacy through input is not appropriate in the EU.

With regard to input legitimacy, there are solid arguments refuting the idea of a legitimate democratic order based on national parliaments will. The doctrines of direct effect, supremacy, and pre-emption mentioned on Section 1.2 serve to illustrate the limits imposed to national sovereignty in the development of the European Union.

Given the impossibility of achieving legitimacy through national parliaments there is a widespread advocacy in favour of increasing the power of the EU's Parliament. The validity of this speech is highly debatable, as the problem with a democracy in Europe based on majority voting is widely known. As it was stated by the German Constitutional Court in the famous Brunner case<sup>98</sup>, democracy requires a common sense of belonging to one polity expressed in such things as common press and other media, shared political parties and a common political debate, which does not exist in Europe today. Elections to the European Parliament are in each state concerned primarily with intra-state politics, there are no European parties with European manifestos. There is not a common sense of belonging to or of constitutional loyalty towards European institutions or the constitutional norms that create them. Democracy is rule by the *demos*. Where no *demos* exists, no democracy, and consequently no legitimacy, can exist.

Kohler-Koch<sup>99</sup> goes further refuting the idea that legitimization takes place in the Parliament and the Commission unofficially shares this view, as it is no longer enthusiastic about increasing power given to the Parliament. It

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<sup>95</sup> JON ELSTER, "Deliberation and Constitution Making." *Deliberative Democracy*, Jon Elster (ed.), Cambridge, Cambridge University Press, 1998.

<sup>96</sup> *Op. Cit.* Scharpf, 1999a.

<sup>97</sup> GIANDOMENICO MAJONE, "Europe's 'Democratic Deficit': the Question of Standards." *European Law Journal* 4, 1, 1998.

<sup>98</sup> See BvR 2134/92, for English translation see [1994] 1 CMLR 57.

<sup>99</sup> *Op. Cit.* Koch, 1996.



was already mentioned but it needs to be stressed that for a representative democracy a “demos” is necessary, as well as a trans-national political infrastructure. Still according to Kohler-Koch, given the impossibility to achieve a “demos” in the EU, it is not recommended to have a parliamentary democracy as it would create a democratic illusion. The heterogeneity in language, culture and tradition may be overcome by the cosmopolitan elite, but not by the ordinary citizen. The distance between citizens and their elected representatives in a European Parliament will make the latter independent and not responsive.<sup>100</sup>

In this sense, it is worth noticing that the Commission is a unique institution not only in the European context but also world wide because at the same time it exercises executive power and has the exclusive competence to propose legislation it is not an elected body.<sup>101</sup> It is precisely due to its unique character that the Commission has developed a system of network governance.<sup>102</sup> Without this network to gather knowledge the Commission wouldn't be able to make productive use of its right of initiative, to be successful as a guardian of the Treaty and to manage a vast number of programmes. Thus, to ensure good performance it does not seek political support by a parliament but draws on expert knowledge and gives voice to those who will be affected.<sup>103</sup>

## 4.4 Policy Networks and Output Democratic Legitimacy

In order to start the analysis at this point it is assumed that the usual way to deal with democratic legitimacy through input does not correspond to today's reality. Consequently, alternatives must be contextualized and suggested. The analysis of policy networks can serve both as an example of how incomplete the analysis has been formulated, as well as can be useful to provide additional means to reinforce EU's democratic legitimacy.

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<sup>100</sup> BEATE KOHLER-KOCH, “Europe in Search of Legitimate Governance”, In: *Arena Working Papers*, WP 99/27.

<sup>101</sup> For more information about the nature of the Commission, see: ALBERTA M. SBRAGIA, “The dilemma of Governance with Government” in *The Jean Monnet Program*, Jean Monnet Working Paper 3/02, 2002.

<sup>102</sup> The concept of network governance is further developed in BEATE KOHLER-KOCH and RAINER EISING (eds.), *The Transformation of Governance in the European Union*, London, Routledge/ECPR Studies in European Political Science, 1999.

<sup>103</sup> These principles are shared by authors who defend that democracy to remain deliberative and effective should reduce the power of the people and their representatives by depoliticizing the decision making process. See in particular *Op. Cit.* Philip Pettit, 2003.

In fact, besides states' interdependence to deal with common problems reflected in the creation of the single European market, today's society is characterized by the increasing role of knowledge, science and expertise in state regulation and public services. This has led to qualitative changes in the relation between authoritative state regulation, professional experts with and outside the state and the private parties involved. With an emphasis on problem solving on the basis of specialized knowledge or experience, as opposed to judicial or political decisions, power is progressively increasing on the side of the professional level. Power has shifted into a combination of political, administrative and judicial decisions with professional and knowledge based activities, where the later are not limited to the implementation stage of the former, but also function as vital preconditions and structuring input for the former. Thus, the knowledge created in the public and professional services are a vital part of the basis of political decisions.<sup>104</sup>

As it has been discussed throughout this research, these different, but intertwined, patterns of change have led to a situation where the ruling authority can no longer be described as hierarchical or mono-centred, but rather as multi and poly-centric in itself and as a part of differentiated network of powerful actors interacting and interdependent on each other.<sup>105</sup> The preparation of a regulation in Europe for instance involves a network of immense systems of delegation within the European agencies<sup>106</sup> with relative form of professional, market or judicial authority, corporatists or negotiative boards, consultation to the Economic and Social Committee and Committee of the Regions, cooperation with N.G.Os, private consultancy etc. In practice they are combined and function interdependent on each other.<sup>107</sup>

Therefore, input legitimacy, as Scharpf calls it, or the extensive involvement and participation of citizens and societal interests is quite weak and severely biased.<sup>108</sup> This characterisation of the EU has profound implications for the nature of public policy-making and its legitimacy.

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<sup>104</sup> INGER JOHANNE SAND, "Changes in the organization of public administration and in the relations between the public and private sectors – Consequences of the evolution of Europeanization, globalization and risk society", *Arena Working Papers*, WP 02/04, 2002, available on line in [www.arena.uio.no/publications/wp02\\_4.htm](http://www.arena.uio.no/publications/wp02_4.htm) [07-03-2005], p. 2.

<sup>105</sup> BEATE KOHLER-KOCH, "Catching up with change: the transformation of governance in the European Union", *Journal of European Public Policy*, vol. 3, n. 3, 1996.

<sup>106</sup> RENAUD DEHOUSSE, "Misfits: EU Law and the Transformation of European Governance" *The Jean Monnet Program*, Jean Monnet Working Paper 2/02, 2002.

<sup>107</sup> *Op. Cit.* Inger Johanne Sand, 2002.

<sup>108</sup> FRITZ W. SCHARPF, "Legitimacy in the Multi-Actor European Polity" In: MORTEN EGEBERG and PAER LAEGREID (eds.), *Organizing*

So, in a system where both the member states and the Union cannot be seen as the sole actors, but they rather share power in a complex system of network governance, where does the democratic legitimacy come from? According to Kohler-Koch<sup>109</sup> if one reads the Laeken Declaration the message is quite unequivocal:

“(…) what citizens understand by “good governance” is opening up fresh opportunities, not imposing further red tape. What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life.”

As it can be inferred from the official speech, legitimacy is a matter of performance and the focus of governments and the European Commission is clearly on *output legitimacy: efficiency comes first*.

According to Kohler-Koch, given the variety of cultures and the multitude of private actors involved, network governance seems to be particularly suitable for a Union of States.<sup>110</sup> She argues that this mode of governance does not claim to have democratic quality but legitimacy spawned by processes of deliberation, institutionalized norm orientation and functional representation.

Scharpf also takes this perspective and opts for what he terms *output-oriented legitimation*. In this perspective the veto-power of all participants in intergovernmental relations makes for legitimation in itself, as parties will not consent to decisions that are contrary to their interests. Only decisions that no one will find unprofitable – pareto-optimal solutions – or that will make parties worse off if not accomplished will be produced, and hence lend legitimacy to international negotiations.<sup>111</sup> Scharpf opts for a position on the EU as having to rely on output-oriented legitimacy, which is government “for the people” not “by the people” and which is based on interest rather than on identity.<sup>112</sup> The EU then should be conceived of as merely a problem-solving agency which by itself and its outputs creates legitimacy. According to him: “What is required is no more than the perception of a range of *common interests* that is sufficiently broad and stable to justify institutional arrangement for collective action.”<sup>113</sup> It is the

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*Political Institutions. Essays for Johan P. Olsen*, Oslo, Scandinavian University Press, 1999b.

<sup>109</sup> *Op Cit.* Kohler-Koch, 1999.

<sup>110</sup> *Ibid.*

<sup>111</sup> *Op. Cit.* Scharpf, 1999b.

<sup>112</sup> *Op. Cit.* Scharpf, 1999a.

<sup>113</sup> *Ibid.*

question of “(...) policy choices that can be justified in terms of consensual notions of the public interest.”<sup>114</sup>

As a consequence of this scenario what we see in Europe is, without challenging social movements or a political debate between government and opposition parties, political struggles are not publicly politicised, and attempts by interest associations to persuade broader publics remain largely peripheral and ineffective. On the contrary, in order not to endanger compromise-building, many controversial issues are not made public. The basis for this, again, is the notion of network governance, which means that by drawing on expert knowledge and inclusion of various external actors, private and public, government becomes consensual and embedded in horizontal networks without clear-cut centres and hierarchies.<sup>115</sup>

In connection to what was said in the previous paragraphs and in accordance with what was said on Section 1.2 – the membership of networks as an important aspect – some observations must be drawn. As a direct consequence of the technocratic scenario presented above organised interests that are able to deliver knowledge that improves the public officials’ understanding of specific regulatory problems would be relevant interlocutors. Thus, interests eager to gain access should supply useful policy-relevant expertise. Because of their detailed professional or sectoral experiences, economic interest associations especially are supposed to be better equipped to supply valuable expertise. Diffuse interests, in contrast to more specific economic interests, would face more difficulties in collecting the expert knowledge public officials need. In particular, those with radical and idealistic demands and a lack of policy-relevant expertise would face difficulties in, or even avoid, gaining access to policy networks.<sup>116</sup>

In sum, there is a growing understanding that output legitimacy is and should be emphasized in the EU. In addition to this, it would directly follow from this technocratic view that interest associations capable of delivering useful expertise would prosper, and those pursuing contentious and public forms of politics would be excluded. In general, the view that diffuse interests are less mobilised, poorly adapted to European politics and gain less access appears in numerous writings about European politics.<sup>117</sup>

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<sup>114</sup> *Ibid.*

<sup>115</sup> WILLIAM D. COLEMAN and ANTHONY PERL, “Internationalized Policy Environments and Policy Network Analysis”, *Political Studies*, XLVII, 1999.

<sup>116</sup> JAN BEYERS, “Voice and access: Political Practices of Diffuse and Specific Interest Associations in European Policy Making”, *ARENA Working Papers*, WP 02/39.

<sup>117</sup> See in particular BEATE KOHLER-KOCH, “Organized Interests in EC and the European Parliament”, *European Integration online Papers*, 1, 1997, available [online] at <http://eiop.or.at/eiop/>, [07/02/2005].

## 4.5 Policy Networks and Democratic Legitimacy Through Participation

Although the observed proliferation of specialized economic and business interests in the EU fits nicely into a scenario where diffuse interest associations do not have access to the policy networks, some authors believe that this view is incomplete. “It is monolithic since it presents the EU as being trapped in a technocratic logic incapacitating it to adapt in the face of growing political pressures.<sup>118</sup>” The Commission agrees on that and on several parts of the Network Report<sup>119</sup> it is mentioned that networks can serve as an additional channel for representation of the civil society through what is called “grass roots” organizations.

The issue of policy networks immersed *solely* in a technocratic perspective is incomplete, because it rests on several questionable assumptions, namely that resources internal to an association affect political strategies, that routine access is the most valuable asset one can have and, important here, that officials representing government institutions prefer predictable, stable or supportive environments. Commission officials would avoid open partisan struggles, provocative public debates or protests and, as a result, they would be unlikely to grant access to those making noise. Thus, the institutional environment is seen as conducive to the internal features of interest associations and not as an external factor constraining or enabling particular forms of political mobilisation. This perspective is also incomplete since it does not account for different sorts of information playing a role in the policy process and the various institutional venues through which information can be transferred.<sup>120</sup>

From now on some of these issues are discussed in detail. The discussion focuses on whether it is plausible to assume that public officials generally restrict access and invariably favour predictable, stable or supportive environments concentrating only in output legitimacy or if they also encourage access of diffuse interests, increasing participation and leading to legitimacy through participation.

As a matter of fact, it should be noted that policy-making is not only based upon scientific information regarding the technical feasibility of specific regulatory policies.<sup>121</sup> Many policies touch upon issues of deep uncertainty

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<sup>118</sup> *Op. Cit.* Jan Beyers, 2002.

<sup>119</sup> *Op. Cit.* Report, May 2001.

<sup>120</sup> *Op. Cit.* Jan Beyers, 2002.

<sup>121</sup> White Paper on Governance, Work area 1, Broadening and enriching the public debate on European matters, Report of the Working Group, “Democratizing Expertise and Establishing Scientific Reference Systems”, Pilot: R. GEROLD, Rapporteur: A. LIBERATORE  
MAY 2001 (version finale du 2/7/01).

(e.g. environmental politics) or may have profound re-distributive consequences (e.g. abolishing subsidies), and so satisfying all expectations or needs is almost impossible. Scientific knowledge alone does not generate judgements on what is ethically or socially appropriate and it does not say very much about compliance problems during the implementation stage.

Thus, policy-making cannot be reduced to technical problem-solving or a means-ends calculus only; it also concerns the process of making choices between conflicting values, tastes or interests, irrespective of whether decisions are made by technocrats or elected officials, or within a public assembly or a committee of experts.<sup>122</sup> Not only does information regarding operational feasibilities, but also views about endangered values or norms, the framing of these values and norms, emotional feelings of uncertainty and insights in the acceptability of policies play a role in the policy process.

Because of uncertainties, risks and re-distributive cost-benefits issues, officials inside the decision-making arena have incomplete information regarding the issues they have to deal with and, therefore, they are under stress to seek reliable, valid and trustworthy information. This has several consequences. Given what has been outlined in the previous paragraphs, it would be rather unrealistic to assume that all public officials make all their choices on the basis of technical expertise.<sup>123</sup> Their worries about the need for democratic legitimacy of their policy choices means they are increasingly receptive to explicitly value-driven actors. But, given the problems with a representative democracy in the EU highlighted on Section 4.2, the EU Parliament is not the appropriate venue for political deliberation. Instead, grass root organizations mobilized in policy networks can provide the necessary feed back for policy discussion. Policy networks help to reduce political uncertainty by giving advance warning of problems and providing serviceable structures and procedures for dealing with them. Although they generally have a bias towards the status quo or to incremental change, their prime function is to keep state and society in step.<sup>124</sup>

Discussing networks as an alternative channel for citizens and interested parties participation in the decision-making process, Kohler-Koch argues that network governance is widening the unitary political space. By bringing social actors into European decision making and forging European wide advocacy coalitions the European Commission has played an active role in re-defining the boundaries of the European polity. According to her: "*Interest Intermediation along functional lines* is transforming the

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<sup>122</sup> CHRISTIAN JOERGES and MICHELLE EVERSON, "Challenging the bureaucratic challenge", In: ERIK ODDVAR ERIKSEN and JOHN ERIK FOSSUM, (eds.), *Democracy in the European Union. Integration through Deliberation?*, London Routledge, 2000.

<sup>123</sup> LIESBET HOOGHE, "Supranational Activists or Intergovernmental Agents. Explaining the orientations of senior Commission officials towards European integration", *Comparative Political Studies*, 32, 1999.

<sup>124</sup> *Op. Cit.* Jack Hayward, 1995.

Community system from a Union of States into a trans-national political space.”<sup>125</sup>

Further, what public officials ultimately decide depends on their evaluations regarding operational feasibilities, guesses about uncertainties and risks, and expected distributions of costs and benefits for various constituencies. Policy-makers are only partly informed about such issues and the affected interests themselves often own some of the key information regarding these matters. Information provided by interest associations representing these constituencies is inherently strategic; it enters the policy process infused with values and is not preference-neutral. Public officials are not completely unaware regarding this uncertainty, the incompleteness and the strategic use of information they are provided with.<sup>126</sup> Therefore, it is plausible that they, despite their limited resources, attempt to diversify the supply of access and to shape bias in a way that prevents them from becoming entirely dependent upon one single interest. For example, they may try to stimulate openness via consultation through the media or to bring together a diversity of competing interests in deliberative committees instead of entering into bilateral discussions with one particular interest.<sup>127</sup>

Thus, it can be seen that policy networks are also an important source of democratic legitimacy through participation. Moreover, as it was already advanced on Section 3.4, they complement the technocratic consensus by counterbalancing power asymmetries by providing additional channels of influence beyond the formal structures.

## **4.6 The Need to Keep Networks Open and Accountable**

Once it was explained how policy networks can contribute to increase the level of efficiency and consequently, legitimacy in the European Union, it is deemed necessary to study the ways to make sure that they remain open and accountable, since efficiency cannot simply be achieved at the expense of democratic control.<sup>128</sup>

The human dimension is a paramount: networks link people more than organizations and its important to allow these people to meet, interact and

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<sup>125</sup> *Op. Cit.* Koch, 1999.

<sup>126</sup> *Op. Cit.* Jan Beyers, 2002.

<sup>127</sup> *Ibid.*

<sup>128</sup> It is worth noticing that this subject is not extensively discussed in the literature on networks. For this reason, the strategies to achieve open and accountable networks mentioned hereon are the same presented in the Report of Commission’s working Group on “Networking People for a Good Governance in Europe”.

know each other in order to build trust and confidence which are essential to make networks efficient and effective. Transparency is then needed to allow voicing of all views and debate. Minority views should be acknowledged and decision taken on how to deal with or consider these views should be explained. This will give the network both accountability and legitimacy. In a later stage, there is the need to analyse and express common values/ clearer objectives developed by the network (e.g. in a mission statement).

Another important problem that needs to be solved is the choice of which social partners are consulted and how their positions are evaluated or ranked. In a recent survey published in “The Economist”<sup>129</sup> it is shown that a considerable number of NGO’s delivering opinions on European matters are totally or partially financed by the Commission. The question one should make is: How independent are the opinions put forward by those NGO’s? These findings raise concerns about the fairness of the consultation process, but not only. In face of all the criticism the Commission has been subject to one could speculate if the commission is really worried about the efficiency and legitimacy of the policy making of the EU as a whole or if it is concerned about its own legitimacy.

The last issue in the report that is of importance here are the 4 extra steps in the process to achieve a smooth system of policy networks: (i) formalise the process of interaction, not the duties and competences; (ii) manage networks through clear, shared objectives and measurable indicators; (iii) prepare for managing crisis; and (iv) break down sector and administrative barriers.

## 4.7 Conclusions

Notwithstanding the apparent robustness of the arguments presented above, networks are not the panacea, as some have suggested. They remain one possible solution among others and they tend to be more efficient for some roles than for others.<sup>130</sup>

In modern pluralistic societies it cannot be taken for granted that people agree on what is, for example common interests. Even a minimal set of material interests - *a consensual notion of the public interest* – can not be taken for granted. Since the early 1990s, in particular, the debate on the EU has been marked by dissatisfaction and opposition to the integration process and to the elitist and technocratic structure of governance. There is a cry for more openness, transparency and participation. The debate on enlargement makes clear that there are many goals, needs, interests, entrenched rights and outcomes over which preferences differ. Then the idea of a prevailing

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<sup>129</sup> S/n, “A Rigged Dialogue with Society”, *The Economist*, October 21<sup>st</sup>, 2004.

<sup>130</sup> *Op. Cit.* Report, May 2001.



common interest is at best illusionary, at worst technocratic, as this idea by itself will justify the absence of popular participation.

In addition to this it should be remembered that negotiations are not merely bargaining processes in which given preferences and available resources determine the outcomes. A given outcome is not solely a stricken bargain between sectoral and partisan interests and dependent on the players' resources. It can also be the result of arguing. A lot of deliberation, negotiation, vindication and justification actually takes place in regulatory agencies such as committees, as well as in parliamentary and non-parliamentary sessions, and decision making bodies.<sup>131</sup>

The issue of policy networks remain very controversial among politicians, but also in the academic circles. Scharpf for instance argues that networks can be a weak form of legitimization that cannot convey the capacity to act in the face of strongly divergent preferences based on intensively held values or vital interests. According to him, "technical expertise will only suffice to justify the choice of efficient means in situations in which the goals are beyond dispute (...)." <sup>132</sup> A solution to this problem is given by Kohler-Koch by asserting that when an issue becomes controversial political decisions have to be taken on political grounds.<sup>133</sup> Actors involved will have to take a broader view because of their more encompassing responsibility and because the logic of politics will prevail as soon as an issue is brought to the public debate.

Kohler-Koch also reminds us that this is still the original domain of the national political system, whereas the Community is still a "polity without politics".<sup>134</sup> In addition to this, policy networks cannot replace the State of Law or the Community Method, specially when redistributive measures are necessary, but can rather support them and allow them to face the challenges posed by the greater diversity of today's societies and the speed at which changes take place. In this sense, acting in the shadow of hierarchies, policy networks represent no attempt to the Leviathan.

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<sup>131</sup> *Op. Cit.* Hix and Lord, 1997.

<sup>132</sup> *Op. Cit.* Scharpf, 1997.

<sup>133</sup> *Op. Cit.*, Koch, 1996.

<sup>134</sup> *Ibid.*

## 5 Conclusions

The phenomenon of networks in Europe is a fascinating subject. It has been seen that the interdependence of all the social actors in an era characterized by the need to deal with risk management in a knowledge society urges for the cooperation between the instances of supra-national powers and regional administration as well as public and private in order to achieve the common wealth.

It was demonstrated that, as networks are based on agreed-upon rules for the production of a *common outcome*, they reduce costs of information and transaction and create *mutual trust* among the actors diminishing uncertainty and thus the risk of defection. Due to these functions, networks serve as an ideal institutional framework for horizontal self-coordination between public and private actors, on which policy making is relying in an increasingly complex, dynamic and diversified environment where hierarchical coordination is rendered dysfunctional. Public and private actors form networks to exchange their resources on which they are mutually dependent for the realization of common gains. In the European Union, policy networks can provide ways to increase the efficiency of the Commission's bureaucracy in face of a growing number of tasks attributed to this institution lacking specialized personnel in a number of fields.

It has been extensively pointed out during this research that a system of governance has, as every system of collective decision-making, to respond to both efficiency and legitimacy requirements. It has to achieve results and to achieve them in a correct manner. Capability bereft of legitimacy is unstable and inefficient. Legitimacy without capability is futile. This is why, in addition to efficiency, the legitimacy of policy networks was discussed.

In a Union where systems of democratic legitimization by parliamentary majority has been proven to be inapplicable (where no *demos* exist, no democracy can exist), policy networks can provide *output legitimacy* by delivering efficient policies. This alternative legitimization possibility is already widely known in the EU, and for that reason we decided to focus on another possibility of legitimization that goes through the issue of policy networks

It has been seen that policy networks can provide additional channels of participation of the civil society through grass-roots organisations, therefore increasing legitimacy through participation. We pointed out that policy-making is not only based upon scientific information regarding the technical feasibility of specific regulatory policies. Many policies touch upon issues of deep uncertainty (e.g. environmental politics) or may have profound redistributive consequences (e.g. abolishing subsidies), and so satisfying all expectations or needs is almost impossible. Scientific knowledge alone does

not generate judgements on what is ethically or socially appropriate and it does not say very much about compliance problems during the implementation stage. Facing this situation, the Commission's officials are more receptive to value driven arguments coming from diffuse interest associations, who deliver their opinions through specific policy networks.

A last point to be made as it was constant in our research is the fact that policy networks are not the panacea as some have suggested. Big efforts have to be made to ensure that they remain open and accountable. In addition to this, policy networks are recognizably efficient for some tasks, but not for all of them. When political decisions on disputable matters have to be made, the administration cannot rely on networks and the Community method or the State of Law cannot be superseded. For those reasons, it is claimed that networks should and do function in the shadow of the constituted powers and represent no attempt to the Leviathan.

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