

Why to Choose When the EU Can Have Both: Democratic and Policy-making Effectiveness Legitimacies, Participatory Deliberative and Representative Democracies - Some Critical Thoughts

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Submitted to
Central European University
Department of International Relations and European Studies

In partial fulfilment of the requirements for the degree of Master of
International Relations and European Studies

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Word count: 16,980

Budapest, Hungary,
2014

ABSTRACT

This paper attempts to address the legitimacy issue of the EU, and through a combination approach linking different fields of study. Firstly the EU should not renounce to its democratic legitimacy or its policy-making functioning legitimacy because they are seen as contradictory, rather it can have both through the research of a balance between them. Secondly the EU being a supranational level of policy-making it is necessary to examine such balance where the legitimacy deficit take place: in the policy-making process. Such process is defined concurrently in both ways by the interest intermediation process and the parties-based system both present at the EU-level. Accordingly examining these two types of policy-making at the EU-level through their imbrication, could address pivotal debates tearing apart expertise and politics, participatory/deliberative and representative democracy. These two types of policy-making mainly studied separately in the literature, the analysis proposed here seeks at fulfilling such gap. In the attempt of solving the legitimacy of the EU, this study will propose a normative model enabling to assess the balance between the democratic legitimacy and the policy-making functioning effectiveness the EU is reaching. Such assessment will be made by applying the model on the interest intermediation process and the parties-based system of the EU. Thus this study aim at showing firstly that both types of legitimacies and of policy-making are combinable, and secondly that this is precisely this combination that enables to solve the legitimacy deficit of the EU.

ACKNOWLEDGEMENTS

I would like to thank deeply my supervisor, Professor Friedrich Kratochwil, for his precious orientation and precise recommendations, support in the development of my own model, and great availability. I would like also to extend the thank you to Professor Sarah Svensson and Professor Michael Merlingen for their attention and detailed advices, to Zsuzsanna Toth, my academic writing adviser, for her time and advices, to Mr Janos Molnar for his feedbacks and encouragement. I also would like to thank my parents and my grand-parents for their crucial support, Angelina, Matthew and Zack for our mutual help and support in this thesis writing period.

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INTRODUCTION

One of the constant criticism towards the European Union (EU) since the 1990s articulates on its alleged democratic deficit. It increased brutally after the Maastricht Treaty in 1992¹ setting the internal market and the project of a common currency. With these visible impacts on their lives² citizens realized that henceforward, the EU is about major economic developments requiring more and more political cooperation, pooling the decision-making power at the EU-level. Consequently citizens pay more attention to decisions taken in Brussels and wonder whether they agree with it or not³ putting an end to the permissive consensus on the EU integration⁴. To manage the growing opposition to the EU integration process European Treaties negotiators opened the debate on the raising democratic deficit criticism⁵: the 'Pandora box was opened'⁶.

Indeed the more the EU keeps increasing its democratic dimension, the stronger the democratic deficit is voiced, forming a first paradox. Then the nation-state becomes the citizens' shield against the EU's expansion whereas nation-states build the EU as an engine for a stronger integrated region, forming a second paradox. This second paradox is also reinforced nowadays with the apparent failure of the EU project seen as unable to prevent and tackle the financial and economic crisis creating a "public distrust of European Union institutions"⁷. This alleged inefficiency of policy-making at the EU level refuels the argumentation tank of populist political parties who irritate citizens' sensitivity by pointing out a serious democratic deficit through their lack of power in stopping this powerful *machinery* that led them to the crisis.

Scholars also stress strongly the democratic deficit of the EU and highly debate about its origin. Indeed major theories argue that the deficit occurs in the lack of citizens' participation to the

1 Finke, p. 9 and 17

2 Koopmans and Erbe, p. 1

3 Hix, p. 109

4 Hix and Bøland, p. 109

5 Costa and Brack, p. 10

6 *les négociateurs des traités ont ouvert la boîte de Pandore*, Costa and Brack, p. 10

7 Lefkofridi and Katsanidou, p. 109, based on standard Eurobarometer 2011

policy-making via the expression of their preferences to EU policy-makers (*input legitimacy*)⁸, others on their participation during the policy-making reinforcing the transparency of the policy-making (*throughput legitimacy*)⁹, or in the lack of correspondence between EU's policies and laws and citizens' expectations (*output legitimacy*)¹⁰. These three theories referring respectively to the categories present in the famous quote of Lincoln's definition of democracy: "Government of the people, by [or with] the people, for the people"¹¹, shows the importance of the democratic deficit.

Talking about the democratic deficit of the EU is assuming that the EU should be legitimized by having a sufficient democratic dimension, which would answer the question of "what form of democracy is appropriate for a polity beyond the nation-state"¹², implicitly asking if the criteria defining the democratic dimension at the EU-level should be transposed from the democratic model of the nation-state. These questions are of great importance but will not be treated here. Indeed this study focusing notably on the democratic deficit in the scope of the broader question of the legitimacy of the EU, it will be assumed the EU needs a democratic legitimacy.

To solve the democratic legitimacy, it is necessary to know where it is located. The task of the EU is to establish policies and laws at the cooperation level between its member states. Thus addressing the democratic deficit of the EU requires to look at it in terms of a supranational level of policy-making, whose settings will tell where it suffers from such deficit. However the legitimacy of this policy-making level is not questioned only on its democratic aspect, requiring to address other legitimacy criticism in order to solve the broad question of the multidimensional legitimacy of the EU.

The increase of EU's competences nurturing the democratic deficit criticism, led to the growing of this ruling *machinery*, then questioned for the effectiveness of its functioning. Indeed concerning a first set of critics, does the collaboration of powerful lobbying stakeholders with EU

8 Scharpf, p. 2

9 Schmidt, p. 2

10 Scharpf 1970, cited in Schmidt, p. 2

11 Schmidt, p. 2

12 Craig, p. 4

policy-makers turns into a balance of power between them, then hampering the functioning of the policy-making? Thus forcing EU policy-makers to take into account the preferences of such few actors' interests over EU policy-makers general assessment of an issue, though required to establish policies and laws and task for which they are appointed? Concerning another set of critics, does citizens' participation to EU elections is currently sufficient for EU policy-makers to know the actual needs and preferences of citizens on which EU policies and laws should rely? Thus leaving a too great *marge de manœuvre* to EU policy-makers, that adopt very technically detailed laws instead of political orientations in great policies like financial regulation and foreign policy, as expected?

These two sets of critics articulate respectively on the two types of policy-making existing at the EU-level, that is on the one hand the “interest intermediation“ process¹³ (IPP), also referred to as “network governance“¹⁴ and lobbying activity¹⁵, relying on the consultation of actors outside the EU institutions, including stakeholders of specific policy-fields¹⁶ non-governmental organizations (NGOs)¹⁷, think tanks¹⁸ and foundations, thus covering the large spectrum of the civil society¹⁹ and regrouped under the name of “interest groups“²⁰. And that is, on the other hand, the parties-based system relying on majoritarian dynamics, supported by political representatives elected by citizens among competing political parties, divided along political cleavages, and holding pivotal prerogatives in the division of power, in the context of a nascent European public sphere.

As aforementioned the EU being a level of policy-making it requires to analyze both the democratic legitimacy (DL) and the policy-making functioning effectiveness legitimacy (PMFEL) through its policy-making types. Moreover the focus on these two types of policy-making is justified by the fact that they constitute two important last developments in the literature. Concerning the IPP, it draws the attention of scholars because is targeted as a new mode of governance, compared to the

13 Eising and Lehringer, p. 189; Charrad, p. 2

14 Bähr and Falkner, p. 3 ; Eising and Kohler-Koch 2001

15 Finke, p. 4 ; Charrad p. 2 to 3

16 Smismans 2008, p. 875

17 <http://www.stakeholders-socialinclusion.eu/site/en/concepts/cidi>

18 Eising and Lehringer, p. 195

19 Eising and Lehringer, p. 190 ; <http://www.stakeholders-socialinclusion.eu/site/en/concepts/cidi>

20 Eising and Lehringer, p. 189

old one: the so-called “Community Method“. Smismans observed a change in intensity of the use of the former over the latter²¹ that I argue is at the origin of the focus of European policy-making studies in order to check whether this alien mode of governance is democratic or technocratic. Actually the lobbying dynamics are well-known at the national²² and international level, but its development at the European Union level appeared as a new interesting but frightening phenomena

This can be explained by the fact that anything ongoing at the EU-level seems deserving *a priori* a lot of skepticism since the legitimacy of the EU has not been clearly asserted yet. The same approach and even more skeptical is taken to treat the presence of a parties-based or majoritarian dynamics at the EU level. Indeed “traditional forms of democracy and majority rule“ being less set up at the EU-level than in any of its member states²³, main of the literature seems to conclude that a satisfactory majoritarian governance structure is not currently at the disposal neither feasible for the EU²⁴. However some authors acknowledge this presence²⁵ and argue in its favor²⁶. This controversial issue has been refueled by the coming European Parliament elections whose results will determine officially, for the first time, the President of the European Commission, then reinforcing majoritarian mechanisms. Thus in the same combination perspective through which both the democratic legitimacy and the policy-making functioning legitimacy will be studied to answer the broad question of the EU's legitimacy deficit, these two types of policy-making have to be analyzed.

The application of the combination approach on these two types of policy-making is even more justified concerning two other pivotal debates. Firstly, albeit Haas asserts through the neofunctionalist theory that the lobbying dynamics integrate into politics ones at the EU-level, and thus posits the material necessity of their combination²⁷, scholars tend to oppose them and study them separately in order to prove which one is the best suitable at the EU-level, leaving a gap in the

21 Smismans 2008, p. 876

22 Treib, Bähr and Falkner, p. 10

23 Bellamy, p. 3

24 Scharpf 1999, Majone 1996, Moravcsik 2002 and Weale 2005 cited in Bellamy p. 15

25 Bellamy, p. 15 to 16

26 Hix 2008, cited in Bellamy p. 16

27 Haas 1958, cited in Merchesin, p. 55 to 56

literature concerning their combination²⁸. Secondly the IPP and the parties-based system are seen along the opposition between three types of democracy exercise. The parties-based system relies on the old tradition of representative democracy²⁹ defined as “a political system based on an electoral competition of alternative parties and governed by the majority rule”³⁰ and considered as no longer sufficient³¹ in terms of citizens’ empowerment and political inclusion³², and of input and output legitimacies³³.

But with the spread of new forms of governance like the IPP, scholars seek to develop two “alternative[s] and stronger idea[s] of democracy”³⁴: participatory and deliberative, where the former category focuses on the quantitative access to EU policy-making³⁵ defined by the attempt to increase the participation of all citizens³⁶, and where the latter focuses on the qualitative aspect³⁷ relying on the reasoning between actors and the idea that the better argument will take over³⁸. In this study the IPP will be considered as a form of “participatory deliberative democracy”³⁹, since it creates “Self-organized committees of citizens”⁴⁰ – interest groups – which can directly impact the policy-making notably via deliberative participation⁴¹, then forming “participatory deliberative arenas”⁴². Accordingly the dichotomy opposing the IPP to the parties-based system calls to other dichotomies: lobbying/majoritarian mechanisms; expertise/politics; participatory deliberative democracy/representative democracy. As such, when one of this dichotomy will be treated in the present study, it will be considered as discussing the other ones.

28 Beyers, p. 1188

29 Cini, p. 2 to 3 ; Sartori 1957 and 1993 and Dahl 1971 and 1994, cited in Cini, p. 2

30 Cini, p. 15

31 Cini, p. 15

32 Cini, p. 13

33 Cohen and Fung, cited in Cini, p. 13

34 Cini, p. 3

35 Citroni 2010, cited in Cini, p. 8

36 Lynd 1965, cited in Cini, p. 4; Cini p. 5; Citroni 2010, cited in Cini, p. 5; Cole 1920, cited in Cini p. 9

37 Citroni 2010, cited in Cini, p. 8

38 Classical definition of deliberative democracy that applies only to the policy-making elite: Habermas 1984, cited in Cini, p. 2 and 10; Rawls 1984 and 1993, Habermas 1984 and 1992 and Elster 1998, cited in Cini, p. 5; Cini, p. 11

39 Cini, p. 3, 6 and 14 to 17; Della Porta 2008 and 2010, cited in Cini, p. 6 and 14; Cohen and Fung 2004, cited in Cini, p. 16

40 Cini, p. 14

41 Cini, p. 14

42 Cini, p. 16

The broad combination approach linking on the one hand, the democratic legitimacy literature to the PMFEL one, and on the other hand the literature branches focusing independently on the IPP and the parties-based system, seems more than appropriate to answer the broad question of the legitimacy deficit of the EU. However this perspective is rarely taken by scholars. Indeed by focusing on very specific aspects of a particular issue, scholars unintentionally disaggregated elements constituting a same issue that hence constitute different fields of study that are not only not thought to be linked, but are even conceived as presenting opposing theories addressing a same issue. Thus, and in the same vein of few authors considering the combination approach⁴³, I argue firstly that the wise objective may be not to reach the optimum level of only one type of legitimacy, rather to reach a satisfactory level in the two types through the research of a balance between them, since the optimum of DL reduces PMFEL, but that the optimum of PMFEL usually benefits to DL⁴⁴.

Secondly the combination approach being apparently successfully unwindable, I also attempts to fulfil a gap in the literature by studying both the IPP and the parties-based system at the EU level⁴⁵ through the analysis of their concurrent impacts in terms of DL and PMFEL. Finally the combination approach will be applied in the normative definition of both types of legitimacies, gathering different focuses of the literature. Reciprocally my study will propose an answer to the puzzles addressed in each of these literature branches: the democratic deficit of the EU, the policy-making functioning effectiveness deficit of the EU, the justification for lobbying dynamics at the EU level, and the justification for the developing parties-based system at the EU-level.

Finally the whole combination approach is justified by the way all these fields of the literature are also intertwined in practice regarding the construction of the EU as a polity. Indeed the EU blueprint in the 50's relied on the idea of building a technocratic level, where thus the cooperation among member states would reach an optimum level of policy-making effectiveness and take place in the economic area. However within time the political aspect of the cooperation also expanded

43 Dahl, p. 33; Skogstad, p. 321

44 Dahl, p. 33; refer to chapter 1

45 Beyers, p. 1188

justifying the increase of the democratic dimension via notably the increase of power of the European Parliament thus strengthening the presence of a parties-based system at the EU level. Now both types of policy-making became equal in the competition of salience in criticism. Indeed on the one hand the IPP has developed considerably because it was seen as a way to free the policy-making functioning from the old mode of governance constraints⁴⁶ thus worrying scholars.

On the other hand the parties-based system draws the attention of scholars even more since, for the first time, the Commission's President has to be appointed officially in accordance with the European Parliament (EP)'s elections results. Accordingly nowadays both types of legitimacy and types of policy-making reach the fever pitch in terms of criticism, but also in cross-ways. The IPP is highly pointed out as an opaque process to which the broad scale of citizens have no access, reducing starkly the democratic legitimacy. Likewise the parties-based system is negatively highlighted for hampering effective dynamics of the policy-making via the bias of political competition among political parties at the national and EU levels.

Accordingly this paper attempts to show how to define and assess the EU's multidimensional legitimacy question through the combination approach. In a first chapter I will propose a model enabling to assess the democratic legitimacy and the policy-making functioning effectiveness legitimacy through a balance that must be found between them. In a second and third chapters, I will apply this model on the interest intermediation process and the parties-based system of the EU, to show firstly that they are combinable, and secondly that this is precisely their combination that enables the EU to reach a proper balance between democratic and policy-making functioning effectiveness legitimacies, and thus can solve the legitimacy deficit of the EU.

46 Smismans 2008, p. 874

Chapter 1: a normative model to assess and balance democratic legitimacy and policy-making functioning effectiveness legitimacy

The first objective of the model is to enable the assessment of the current balance between the democratic legitimacy (DL) and the policy-making functioning effectiveness legitimacy (PMFEL) the EU is reaching, since optimum of both types of legitimacy cannot be reached simultaneously. Indeed as it will be demonstrated in details below there is a negative relationship where increasing DL reduces the PMFEL. However it is offset by a positive relationship⁴⁷ where increasing PMFEL usually benefits to DL, which facilitates the possibility of a balance. The second objective is to define this model in a way that is applicable to both types of policy-making of the EU studied here, namely the interest intermediation process (IPP) and the parties-based system (PBS), in order to be able, later on, to examine how their positive and negative impacts in terms of DL and PMFEL, that do not occur independently, but interact, can offset each other and thus solve the question of the legitimacy of the EU. In order to build this model it is first necessary to define the criteria on which rely both types of legitimacies, and second to re-adapt the PMFEL in accordance with the two types of policy-making, the DL not requiring such adaptation.

Concerning the democratic legitimacy, why a democracy should be defined according to only one element when scholars offer plenty, above all if they are combinable. Indeed when one looks at the different theories of democratic legitimacy or elements presented as essential in a democratic system, he can notice that they are combinable because correspond to different stages of the policy-making process. Accordingly the requirement of the democratic legitimacy will be determined along these stages. Firstly the “responsiveness”⁴⁸ of policy-makers towards citizens, defined as the fact that the former will “track the needs and values of citizens, rather than follow their own preferences”⁴⁹ is one democratic requirement. It can be considered as referring to the first stage of the policy-making

47 Dahl, p. 33

48 Schmitter and Karl, p. 84

49 Lord and Beetham, p. 454

process, where a specific mindset is required from both policy-makers and citizens. Indeed citizens – information source platform – must be willing to convey their claims and preferences to policy-makers – information receiving platform – willing to take this information into account to establish policies⁵⁰.

Secondly there is the theory of the “input legitimacy”⁵¹ where citizens, do in practice, express their preferences⁵² turned in claims requiring the intervention of “the society to settle them authoritatively”⁵³. This theory can be associated to a second stage of the policy-making process where occurs in practice the “collection of information”⁵⁴ from citizens to policy-makers. Thirdly a new theory can be taken into consideration that is the “throughput legitimacy” from which we keep the requirement of “transparency” of the policy-making via the extent to which citizens are directly included during the policy-making process⁵⁵. This theory can be correlated to a stage of “control during the processing phase”⁵⁶ of the information previously collected, to observe to which extent this information will be taken into account during the substantial decision-making between policy-makers, defined as “the analysis of information and a search for the best alternative”⁵⁷.

Fourthly there is the “output legitimacy” theory⁵⁸, according to which “authoritative” “political decision” or “policy” established by policy-makers in the ruling system “tend to satisfy the day-to-day demands of [its] members”⁵⁹ and consequently “should serve the common interest of the constituency”⁶⁰. This democratic requirement can be defined as a fourth stage of the policy-making process where the information extracted has been processed into a policy or law, whose “results [can be] appraised against the objectives”⁶¹ of performance defined originally⁶². Finally, once this

50 “willingness of connection between information exchange platforms”, first stage in Annex 1

51 Schmidt, p. 2

52 Scharpf, p. 2

53 Easton, p. 387

54 Jann and Wegrich, p. 44

55 Schmidt, p. 2

56 Third stage in Annex 1

57 Jann and Wegrich, p. 44

58 Schmidt, p. 2

59 Easton, p. 395

60 Scharpf, p. 2

61 Jann and Wegrich, p. 44

62 “Performance of the product of the policy-making”, fourth stage in Annex 1

assessment on the outcome of the policy-making level is made, it is necessary that citizens have mechanisms to either “endorsing what it has done, or rejecting it”⁶³. Thus “accountability”⁶⁴ defined in these terms of “public control”⁶⁵ constitutes the last democratic criteria taken into account in this study. This “democratic control”⁶⁶ refers to the materialization stage of the assessment one (fourth stage) in the policy-making process, that makes possible in practice the adaptation⁶⁷ of the policies/laws previously adopted, in accordance with feedbacks provided at the fourth stage.

Concerning policy-making functioning effectiveness legitimacy, being analyzed in combination with the democratic legitimacy, should also be defined along with the policy-making stages just aforementioned. Thus concerning PFMFEL, the fifth stage should lead to analyze the conditions fostering the will of information exchange defined by the patterns of the relationship between the information source and policy-makers⁶⁸, because if they are not able to communicate and thus exchange information, this will hamper strongly the policy-making functioning effectiveness. Then obviously for the information exchange to occur, yet is needed that not only psychologically as described in the first stage, but also materially the access to the information source – citizens – is possible for policy-makers, and the access to policy-makers is available, for citizens, together forming the “possibilities of access to information exchange platforms”⁶⁹.

Once the information has been extracted, it will be processed by policy-makers through their own analysis articulated on different goals they defined, in order to establish policies and laws. But this process is ruled by legal and organizational norms in a way that a “proper balance”⁷⁰ must be found between policy-makers obligation to take into account the information provided by citizens, and their necessary *marge de maneuver* to elaborate what they consider being the best answer to the issue they have to tackle. The result of this processing will give birth to a policy/law whose impacts,

63 Bogdanor, p. 6

64 Hérítier, p. 269; Bogdanor, p. 6

65 Beetham, p. 443

66 Hérítier, p. 270

67 “Adaptability”, fifth stage in Annex 1

68 “Patterns of relationship fostering the information exchange”, first stage PMFEL in Annex 1

69 Second stage of PMFEL in Annex 1

70 “proper balance of regulation for the information processing”, third stage of PMFEL in Annex 1

on the reality it is trying to shape, have to be analyzed in terms of this “material performance”⁷¹, by opposition to a normative performance defined by citizens collective expectations. Finally the assessment of this performance must lead to the possibility of “revision” of this policy/law ⁷² previously adopted (third stage) and in accordance with implementation feedbacks (fourth stage), and in respect with time constraints imposed by the context of the issue.

Thus the stages of the policy-making process give a road map through which analyze the democratic legitimacy and the policy-making functioning effectiveness legitimacy as it is summarized in Annex 1. However, each policy-making type relies on a different paradigm: actors have different status: the information source is interest groups in the IPP and is the constituency in a PBS, policy-makers in the IPP are concurrently politicians in a parties-based system; the dynamics are lobbying in IPP and politics in PBS; the objective is to select the best policy on an expertise point of view in IPP and the best policy to keep the constituency's support in PBS. Consequently the general requirements of the PMFEL must be redefined according to each type of policy-making. They are presented in Annex 2 and will be used in this study.

However given the short length of the study, the question of the legitimacy of the EU will be studied here only through the second stage of the model. Concerning this specific stage, the positive relationship between the two types of legitimacies is explained by the fact that if citizens are able to express their needs and preferences to policy-makers then made available for policy-makers, they can take into account this crucial information on which they rely to make their decisions. Accordingly citizens will be more willing to convey this information when they will see policy-makers do take into account – PMFEL optimum increasing input legitimacy. Concerning the negative relationship, if the participation of citizens is too important in quantity, it will overload policy-makers of information hampering their ability to set a policy/law quickly enough, and moreover that may be not valuable information biasing the information on which policy-makers rely to make their decisions – input legitimacy optimum reduces PMFEL.

71 Fourth stage of PMFEL in Annex 1

72 “Revision possibility”, fifth stage of PMFEL in Annex 1

In addition to the establishment of this balance per policy-making stage, influences cross-stages have also to be taken into account. The example of the second stage of PFMFEL and fourth stage of IL can be highlighted in that sense, where to facilitate the access of citizens to policy-makers in their expression of needs and preferences, as much as fostering the possibility of policy-makers to collect this information, will foster greatly the normative performance of the policy-making that is the extent to which the policy or law adopted by policy-makers match citizens' expectations. The inter-stage dynamics aforementioned will constitute the main focus of this study, and will be here analyzed only through the second stage. In addition some short examples of cross-stages influences will be also pointed out.

Chapter 2: The current balance the EU reaches between input legitimacy and policy-making functioning effectiveness

The interest intermediation process relies on supply and demand dynamics. On the one hand the EU is asking for information and insights concerning specific policy-fields. This expertise coming from the “lifeworld”⁷³ also reassures EU policy-makers of citizens' potential acceptance and compliance to the policies and laws they will adopt. On the other hand interest groups ask for the increase of their involvement in the EU policy-making to ensure the future policy or law will comply with their needs and interests. The compatibility between both sides' interests, relying on this exchange of goods, makes the relationship possible. Nonetheless there is a conflictual dimension of the relationship in the distribution of dominant and dominated positions. Like in economics, the result of such interaction between actors of demand's and supply's sides relies on the balance of power between the two.

Following Schmitter's description of the process dynamics, it can be assumed that the EU is in a dominant position, given its policy-makers select the “holders” of information, i.e. interest groups, accordingly to the substance of the issue they need to tackle⁷⁴. The theoretical debate opposing policy-making functioning effectiveness legitimacy and input legitimacy is here contextualized. Indeed the academic literature applies this conceptual dichotomy of EU's legitimacy on the conflictual dimension of the relationship. PMFEL becomes an argument to defend EU's dominant position in organizing the IPP the way it deems necessary to do so, and IL is turned into a tautological argument according to which increasing the involvement of interest groups should, in itself, be an objective the EU should reach to increase its own legitimacy, and thus use as a threat on EU policy-makers.

73 Habermas 1996, cited in Finke, p. 15

74 Schmitter 2002, cited in Finke, p. 6

Section 1 – redefining input legitimacy

Following the input legitimacy thinking, the more citizens are involved, the more democratic the policy-making process is. The European Institutions stressed the “participatory nature” of new modes of governance⁷⁵ such as the intermediation process, and the European Commission states that the Union's “legitimacy depends on involvement and participation” of actors outside the EU institutions, notably the civil society⁷⁶. At first sight it works according to the diversity of actors that can be involved through consultation procedures in the intermediation process⁷⁷. Nonetheless Smismans warns against this claim he calls a “participatory myth” regarding the actual participation that does not involve all stakeholders and civil society organizations⁷⁸. According to this debate it seems that the question of the input legitimacy of the EU is reduced to the single objective of involving “actors outside the EU”⁷⁹ as much as possible.

However is it really the question at stake? Smismans argues that thinking the new modes of governance are, by definition, democratic because they reach this quantitative objective in themselves is a myth⁸⁰. I argue that it is the foundation of the reasoning Smismans is criticizing that is irrelevant. Firstly and concerning input legitimacy itself, as Eising remarks, even if the EU is information dependent, it does not mean that all groups consulted will have an impact on the substance of the policy or law adopted⁸¹. Secondly and considering PMFEL, having as an objective the involvement of all stakeholders, to the same quantitative and qualitative extent, is neither desirable nor possible in practice, thus constituting the real myth. Indeed it would require an idealistic extremely well-set organization to face the “procedural complications”⁸² the involvement of tens of thousands organizations would necessarily entail. Moreover such amount of information may overload the

75 Smismans 2008, p. 875

76 Commission of European Communities, p. 11

77 Refer to introduction

78 Smismans 2008, p. 875 to 876

79 Commission of European Communities, p. 11

80 Smismans 2008, p. 875 to 876

81 Eising, p. 387

82 Smismans 2008, p. 876

policy-making process and prevent it from addressing crisis events it is facing.

Thus policy-making functioning effectiveness requires to acknowledge and apply the fundamental law of the division of labor according to which, here, roles between outside actors would be distributed given their respective competences in analyzing and conveying information. However to maintain at the same time a proper level of input legitimacy, it must be redefined also accordingly to the division of labor of law. Input legitimacy must thus rely on the distinction between the quantities dimension of interest groups access to the EU, via their consultation notably by questionnaires on the internet, and the qualitative dimension via the personal meetings and debates occurring with only few interest groups, both consultation proceedings being the main consultation tools the EU is using⁸³.

Concerning this re-interpretation of the concept of input legitimacy of the EU, the second point that needs to be raised concerns the wrong idea that the EU is responsible for any lack of access and equality in this access, thus interpreted as a discriminatory policy established by the EU. For example, we cannot hold the EU responsible if some NGOs are, at the basis, neither interested in gaining access to the policy-making at the EU-level nor prepared for such process, and thus less interested and interesting partners. Consequently the EU must not be the black sheep blamed for any negative democratic aspect, here by advocating the input legitimacy argument. Thus the concept of input legitimacy will here be considered as referring to the access and equality in access of interest groups to the EU policy-making for which the EU can actually be held responsible, which will be defined as follow.

Firstly the topic of access possibilities is an *a priori* perspective which does not focus on the their results to observe to which extent interest groups indeed participated to the EU policy-making that constitutes *a posteriori* perspective, but that could be taken to examine the actual potential of the access possibilities and to which extent interest groups are willing to use them. Secondly concerning the *a priori* perspective that will be taken here, three subdivisions must be drawn according to the distribution of responsibility aforementioned. The actual role the EU holds in the IPP consists in the

83 Refer to Section 2

ruling of the process, its organization, through which it offers interest groups the possibility to participate to the EU policy-making. In this regard the single responsibility that can be attributed to the EU in terms of input legitimacy, is offering such access possibilities for all actors concerned that are willing to use them.

In contrast they are factors creating a discrimination in the access but that are related to intrinsic differences between interest groups, in material and expertise resources for example, but for which the EU is not responsible at the basis. However the EU can have an impact on these intrinsic differences, via funding for example, and thus constitute a second degree of responsibility. Finally some evolution dynamics of the IPP can constitute a path towards the improvement of the system in terms of IL and PMFEL. Nonetheless this path must lead towards a greater development of the IPP in an open corporatist system, in which the EU would exert his responsibility in setting it, for it to reach a better balance between IL and PMFEL.

Section 2 – Access possibilities – EU's responsibility

The aforementioned quantitative and qualitative accesses to the EU policy-making are complementary. Indeed through personal meetings and debate, outside actors can deliver more substantial expertise to the EU policy-makers – qualitative access. Simultaneously EU policy-makers can, through the broader collection of more simple information via internet consultation, check whether the orientation they take correspond to citizens' expectation or accordingly re-orientate their expertise by contacting other outside actors more representative of the pool's majority – quantitative access. This helps to fulfill another element from the demand's side: the “necessity to elicit consensual political solutions”⁸⁴ in order the policy or law project to have more chances to be adopted and implemented thus making the policy-making functioning effective. Consequently this combination of quantitative and qualitative collection of information seems to be a very good asset for EU policy-

84 Finke, p. 6

making functioning effectiveness legitimacy.

Accordingly the division between quantitative and qualitative must not be understood as better or worse information but as in-depth and shallow information both very useful. This distribution is also justified by a simple physical law where the less people are engaged into a conversation, the more they can go in-depth, but when a certain threshold of number of actors is reached, the ratio of in-depth information does not increase proportionally anymore. Thus a pyramidal functioning of the IPP must be accepted where on the top the closer outside actors get with EU policy-makers, the less they will be but offering more substantial information, and at the bottom, information will be more shallow but the number of participants increase. In this regard, the assessment of EU PMFEL is high, and EU's IL thus redefined can still reach an acceptable level. However some questions still remain. Indeed, are these both types of consultation offered in each policy-field? And to which extent? Are the actors having a substantial access to the EU policy-making chosen impartially, based on the representation of their field and competences criteria?

Eising takes the example of business interest groups. He disclaims the hypothesis of elite pluralism, posited notably by Saurruger⁸⁵, but confirms the existence of imbalances based on resources dependencies – EU institutions need information from the ground and national context – already mentioned, and on institutional opportunities – accessibility of each EU institution. Concerning institutional opportunities Eising explains that the Commission, and so the legislative initiative power, is more accessible rather than the Parliament and the Council⁸⁶. Consequently, the Commission not holding the position of a final authority in the decision-making, Kohler-Koch argues that this input legitimacy actually corresponds more to a vehicle of “representativeness“ of those willing to be consulted rather than a vehicle for real “democratic representation“⁸⁷, questioning then the quality of input legitimacy.

However through the Brusselization phenomenon and to ensure policy-making functioning

85 Saurruger 2009, p. 1274

86 Eising, p. 389

87 Kohler-Koch 2010, p. 104

effectiveness, working groups of all three EU institutions tend to work together upstream to ensure that the less Council's and the Parliament's amendments will be made, thus reducing this negative impact on input legitimacy. Moreover, the network governance at the EU level seems broad and dense enough to ensure some interest groups have privileged contacts with national representatives at the Council and the Parliament, which relativizes Kohler-Koch assessment, even if not all interest groups have such privileged access. Thus the EU seems to offer a satisfying level of policy-making functioning effectiveness. Nonetheless, even if the input legitimacy wide spread negative assessment is relativized here, still the EU seems on the border line. However it has a strong potential to develop it by spreading the consultation procedures to more policy fields, make these procedures as regular as possible, and the selection procedure of the interest groups more transparent.

Section 3 – Access possibilities – EU's impact on intrinsic differences

The EU must not held responsible for inequalities in access possibilities that exist originally between the different outside actors, but it can reduce them via different mechanisms. The most obvious difference relies on the organizational and financial resources these actors own to develop public affairs capacities⁸⁸, by providing a thorough and relevant expertise that could interest policy-makers at the EU level. To address this issue, the EU funding policy might be of a great help. However the inequality is not removed but redirected, since it is the EU that decides to who grant these funds. Moreover Mahoney shows how difficult it is to draw a clear answer, so such the information on that question lacks of transparency, demonstrating this question needs to be treated more seriously at the EU level rather than solely by the invitation of the Commission to register as a EU-funded organization⁸⁹ and justify the fact that is it one of the most controversial policy of the EU.

Even if then the EU is not meeting a sufficient level of input legitimacy here, the same logic

88 Eising, p. 385 to 392

89 Mahoney, p. 2 and 11

demystifying idealistic objectives for input legitimacy concept must be applied. It is impossible, in terms of financial resources, that the EU equalizes, and constantly, the financial resources of all actors willing to participate to the EU policy-making. Consequently the focus must be rechanneled on the funding access possibilities. It can be considered that the EU meets the input legitimacy requirement on this particular point because it has already established clear rules, supposed to be applied to all actors, with thresholds determining when an actor can access to the funding. However the criteria on the basis of which policy-makers will indeed decide who will be entitled to such financial privilege remains obscure, reducing back the input legitimacy. Nonetheless, elements influencing this decision that would be considered as reducing the input legitimacy are actually positive in terms of PMFEL.

Indeed similar national attachment between policy-makers and outside actors fosters a good relationship based on a similar cultural background and political orientation, the mobilization power of outside actors make policy-makers more willing to work with them given the advantages they bring in terms of constituency's support, finally as already explained it is justified that outside actors are chosen given their provide interesting expertise, all elements constituting the *marge de maneuver* policy-makers need to make a proper decision. Thus PMFEL, reaching here a high level, re-defines IL in realistic terms, but which still requires some improvements. These could be brought through more transparency on the funding policy.

Another major intrinsic difference relies on the distinction between interest groups representing specific interests, namely business and agriculture, and diffuse interests, environment, consumerism, human rights, development concerns⁹⁰, where the former holds the position of “insiders“, leaving to the latter a “peripheral“ position⁹¹, as shows the empirical study led in the field of chemical policy by Persson⁹². In addition to the intrinsic difference on financial resources, it can be explained by the fact that organizations focusing on diffuse interests have less capacities to provide incentives for collective actions⁹³ and to offer membership dynamics as a “yardstick for

90 Finke, p. 9

91 Fraussen, Beyers and Donas, p. 1

92 Persson 2007, cited in Finke, p. 9

93 Finke p. 9; Olson 1965 cited in Finke, p. 9; Kohler-koch 2001, cited in Finke, p. 14

representativity⁹⁴. Rather they function on an entrepreneurial mode⁹⁵ where the elitist dynamics occurring in their internal governance prevent their supporters from having an actual role in the participation to the EU-policy-making⁹⁶. As a consequence these types of interest groups have less resources to mobilize voters and so engage into EU politics⁹⁷ because they cannot offer to EU policy-makers “chances of re-election or re-appointment”⁹⁸.

Thus the EU cannot be held directly responsible for the intrinsic unequal distribution of political means of actions, since the paradigm of politics is not specific to the EU. To embrace these politics dynamics in a way to increase input legitimacy, EU policy-makers can be responsive and turn these diffuse interests into politicized claims then necessary to take into account. Firstly by creating a specific policy field corresponding to these interests, which is already the case with the nascent EU environmental policy, the creation of EU citizenship and the adoption of the human rights charter. Secondly via EU policy fields coordination integrating these diffuse interest concerns in other policy-fields. The EU Treaties impose this coordination but in general terms, leaving the coordination implementation task in the ability and will of policy-makers. However there are chances they will be eager to do so since the involvement of outside actors becomes in itself a politicized issue on behalf of the EU, which promotes its “concern for transparency and the participation of civil society”⁹⁹.

Thus in terms of input legitimacy, the EU seems to be on the right path, and it seems that only time can let political dynamics set up at the EU-level, where outside actors will empower themselves with more political resources, in light with Finke concerning the gradual Europeanization of civil society which requires time¹⁰⁰. In terms of PMFEL, the politics paradigm can be an asset, because citizens' claims and thus information policy-makers must rely on appear more clearly through the promotion of diffuse interests. Moreover the coordination between policy-fields becoming an

94 Kohler-koch 2001

95 Kohler-koch 2001

96 Warleigh 2001, cited in Finke, p. 17

97 Dür and De Bievre, p. 81-83; Jordan and Maloney, 2007; Finke p. 9

98 Dür and De Bievre, p. 79

99 Ruzza, 2002, cited in Finke, p. 10; during EU membership accession phase: Gasior-Nemiec and Glinski, 2007, cited in Finke, p. 18

100 Finke, p. 19

obligation in terms of IL, can lead to a very well-set and clear working method, enabling to win time during the policy-making and improve the substance of policies and law adopted. Moreover the involvement of outside actors representing diffuse interests will enable to increase the output legitimacy of the EU concerning citizens sensitive to these diffuse interests. However EU policy-makers must pay attention to keep a certain *marge de manœuvre* by not falling under the dictate of the civil society which hampers strongly policy-making functioning effectiveness, and thus be careful with the promotion of the discourse on input legitimacy pushing for the increase participation of outside actors. This way policy-making functioning effectiveness legitimacy discourse remains a convincing argument to maintain a balance between policy-making flexibility and democratic constraints, by advocating the specific competences of EU policy-makers, the necessary coordination between policy fields to justify citizens' claim are not directly transposed into policies and laws but reinterpreted in light of what policy-makers judged the best. Thus the EU reaches a proper level of both PMFEL and IL, where for the latter only time and vigilance of the EU will enable to maintain a correct level.

Section 4 – interest groups associations – developing an open corporatism system

The results of the previous assessment shows that the EU is performing quite well in terms of policy-making functioning legitimacy, however, even if relativized here, the EU still needs to increase its input legitimacy. The common denominator for inequality in the access to EU policy-making relies on the segregation of small organizations, in terms of financial, expertise and political resources. Existing dynamics could bring a solution, via the regrouping of several interest groups focusing on the same policy-field. An example of such organizational solution can be found in the creation of an advisory committee at the EU level in the field of occupational health and safety policy¹⁰¹. The originality of such committee relies on the fact that it comprises diverging interests, namely

101 Smismans 2008, p. 880 to 884

government, trade union and employers¹⁰², which is supposed to foster a productive debate between opposite interests.

This procedure works well as the Commission consults the committee very frequently without being obligated to do so¹⁰³. However this type of committee exists only in the field of social policy¹⁰⁴ and face some shortcomings, notably that when consulted by the Council the committee's opinion will be taken into account only if matches the national position of member States' representatives in COREPER¹⁰⁵. Consequently even if this organizational solution increases input legitimacy while securing policy-making effectiveness via a productive debate at first sight, it has a negative secondary effect on input legitimacy, via such bias created by national attachment. A second regrouping phenomenon can be considered to tackle this segregation issue, that is the regrouping of interest groups promoting the same interests into broader an organization¹⁰⁶, because once integrated in broader organization outside actors become more professional¹⁰⁷ and enlarge the scope of interests they represent thus increasing their weight when addressing EU policy-makers. Thus IL is increased since more actors can participate – quantitative access – via analytical reports and recommendations asked by EU and via their representation by some individuals of the broad association participating to EU policy-making debate – qualitative access. PMFEL is also fostered since these regrouping dynamics improve outside actors' expertise and communication skills to convey faster and more relevant information to EU policy-makers, and because is operated upstream the aggregation of information of all the interest groups concerned.

Moreover this form of regrouping can overcome the national bias aforementioned since broad association have a sufficient power to impose their expertise without complying with national positions to the same extent, like shows the example of the European Environmental Bureau gathering more than 140 national associations, which is one of the most important and consulted association of

102 Smismans 2008, p. 880

103 Smismans 2008, p. 881

104 Smismans 2003(a), p. 3

105 Smimans 2008, p. 882

106 Eising and Lehringer, p. 198

107 Saurugger 2006, p. 261

interest groups¹⁰⁸ and thus constitute a reference in the field. However to prevent another negative secondary effect on input legitimacy, these associations of interest groups must remained open in their membership accession. Otherwise, once again, the discrimination issue would be not removed, but just displaced. Finally this organizational solution seems promising considering the functional and output-oriented approach of the Commission who prefers to enter in contact with these broader organizations, already nurturing the growth of large NGO-networks specialized in EU affairs¹⁰⁹.

However the regrouping dynamics do not concern all interest groups, are not developed to the same extent in all EU policy-fields, and still rely on a competition mode between outside actors thus maintaining the discrimination issues raised earlier. The regrouping dynamics thus appear as a good basis but that could be used as a raw material the EU could shape to increase the input legitimacy dimension while maintaining if not increasing the current level of policy-making functioning effectiveness of the IPP. This evolution could consist in the expansion and the legal institutionalization of the IPP in an open corporatist system as follow.

Two types of citizens can be identified as actors in the IPP. On the one hand there are professionals, citizens identified as working in a specific field, expressing their interests and insights based on their concrete experience on the ground. On the other hand there are experts, citizens officially holding this title and whose task is to identify issues experienced on the ground, contextualize them in the paradigm of the field and broaden the analysis with other issues, interests of other fields, in the aim of proposing a specific reading of the issue and a solution to it. These two types of actors provide then complementary information for EU policy-makers. These actors could take part to the IPP on a voluntary basis, as it is already the case, but by registering themselves officially according to the category to which they belong to. Accordingly NGOs could choose in which category they want to be integrated given they gather experts or professionals.

The system could function as a corporation, where professionals and experts, once registered

108 Eising and Lehringer, p. 200

109 Smismans, 2003(b), p. 491

as such during the second stage of the process, should, during a third stage, also register per specific issue identified in a policy-field, and per geographical area to which they want to be assigned to as information providers. These categorizations would be made upstream by EU policy-makers on the basis of a pool organized in that purpose, where actors could propose the identification of issues and geographical areas they wanted to see created, which constitutes the first stage of the process. Thus there would be a substantial – issue – and a territorial – geographical area – categorization. The substantial categorization enables citizens to raise issues they are facing but unknown or put aside by EU policy-makers and thus fosters citizens' participation, increasing IL, and to win time because information would be very specific and already organized per issue, increasing PMFEL.

The territorial category is useful because citizens across Europe can face the same issue. This second category fosters the European feeling among citizens and offers them the possibility of having more weight, since they will represent more citizens, which increases IL. Moreover PMFEL is also nurtured since information would be gathered across Europe and accordingly organized given geographical areas that can present different patterns of a same issue. Thus these two types of categories have similar impacts in terms of IL and PMFEL, but also offset each other in their opposite impacts. Indeed the substantial categorization opens the IPP to all professionals and experts interested. This seems to increase IL to its optimum at first right. Nonetheless by involving more actors the competition will become harder, which can lead to more discrimination, reducing IL. The territorial categorization offsets this negative impact by giving back importance to actors representing specific geographical areas who are the only once able to provide through and truthful information about it.

Once the aforementioned administrative stages accomplished, the fourth substantial stage of the corporatist system starts. Concerning the qualitative access to EU policy-making, the logic is that according to the issue and location they register to, professionals and experts form interest groups, to elaborate official reports on the situation they are facing with corresponding solutions. For each issue, levels of interest groups forming would be set according to the different sizes of geographical areas

detected: small parts of national territory of the member states, some entire national territories or all national territories – classification also done during the first stage. This classification would enable to have reports on very specific areas, then comprised in other reports drawing a broader conclusion concerning a broader area, and so on. Accordingly the levels spectrum comprises national and transnational levels of interest group formation. Transnational levels would correspond to the level treating the geographical area encompassing all member states territories, which is the upper level, as much as levels concerning smaller parts of national territories specifically concerned by the same issue, which is a low level, for example the different geographical areas concerned by EU regulation on fishing quota for a specific type of fishing culture existing in different member states.

The broader geographical area an issue is covering, the more levels should be set, to make possible in practice the gathering of actors, according to the division of labor and physical laws mentioned earlier. Each level, and notably upper ones, could also integrate actors of other policy fields related to the issue treated, to increase the quality of the expertise and the plausibility of solutions proposed. Official reports of each level would be conveyed to the next one corresponding to a broader geographical area. To ensure to each actor that his participation will be taken into account, each upper level would have to send his own official report to the lower level, which must respond to the points raised and solutions proposed by the lower level. Thus this structuring of interest groups in a corporatist system requires to be based on representative dynamics. Indeed upper levels would officially acknowledge and respect the fact that lower level represents claims and expertise of his geographical area, and lower levels acknowledge and respect the fact that upper levels will elaborate on the claims and expertise they convey, in the analysis of a broader geographical area and in connection with other policies fields, thus without being obligated to transpose the claims and expertise as exactly expressed by them.

Finally concerning the quantitative access to EU policy-making, as is it already the case, there would be online surveys with questions, and a limited space where participants could freely highlight a point not raised in the questions. However the classifications would be made also available for

surveys, increasing citizen participation as they could directly then identify the issues and locations they are concerned without losing time on complicated websites. This information would be gathered and conveyed to the corresponding interest groups, and EU policy-makers. Official reports should also be published online for participants to surveys having feedback on the information they provided. This way citizens could choose to which extent they want to participate to the EU policy-making, via a quantitative or qualitative access, and concerning which issue and geographical area, the feeling that their action would be possible and have a value, citizens would tend to participate much more.

This corporatist system enable to increase IL to its optimum since every professional or expert willing to participate to the EU policy-making can. This is made possible firstly by making the participation of each actor relying on their own registration rather than on their selection by other actors more powerful in the IPP hierarchy or by the EU institutions. Secondly by the distribution of quantitative and qualitative access possibilities that convey both very valuable information. Thirdly by the representative mechanism ensuring to all levels of interest groups hierarchy their claims will be taken into account, strengthened by the formation of common interests throughout levels of the hierarchy the corporatist system fosters. In terms of PMFEL, this very clear organization enables to provide very substantial insights, concerning all the specificities of the issue, thus increasing the quality of information EU policy-makers rely on to make decisions. Finally with the substantial and territorial classification of information, and according substantial debate between interest groups operated thus upstream, EU policy-makers win a considerable amount of time.

Just to be mentioned as an example of linkage between the different stages of policy-making listed in the model, the open corporatist system increases also considerably the output legitimacy and the information basis, corresponding to the criteria of the fourth stage of the model, since citizens, forming the basis on which EU policy-makers will make their decisions, will see EU policies and laws more responding to their expectations. As such they will less reject them and thus less sanction EU policy-makers, improving the fifth stage of the model. And citizens being more involved during the policy-making, IL and PMFEL are also increased at the third stage of the model, and accordingly

the first one too since then policy-makers will work more closely with citizens.

Concerning the corporatist system, the idea pursued here is to avoid the rigidity of main of corporatist systems which would hamper IL and PMFEL. Via actors voluntary registration into the three classifications proposed, and the possibility of including all actors willing to do so by the proportional expansion of levels with the number of participants, actors can move more freely on the levels hierarchy of the IPP, that is usually controlled by the top-level in corporatist system, and thus addresses the aforementioned lack of freedom in entering broader associations of interest groups. However the expansion of levels could hamper PMFE since too many actors and information would be gathered. But the substance of discussions among different levels and groups of same levels would necessarily overlap to a great extent, and the bottom-up approach fostering the consensus or majority forming, there will be a very organized and concentrated amount of information at the end of the process (EU-level), thus reducing this negative impact. Thus this corporatist system proposing a balance between structuring and freedom of actors can be called an “open corporatism”.

Concerning the legitimacy of the EU, the main purpose of the open corporatist system is to connect experts, collaborating with policy-makers in the shadow of citizens, with citizens themselves. In addition to participatory democracy via the surveys, it is done by combining the two spheres of deliberative democracy that Bellamy distinguishes as the deliberation “among experts” or “democratic expertise”, and the deliberation “among the people as a whole or some selected subset”¹¹⁰. This would enable to solve stalemates present in two relationships that I deem being the source of democratic and PMFE deficits. The first, just been aforementioned, concerns the gap between experts and citizens relationship, where the former are seen by the latter as hidden actors having the power and control on decision-makers. Thus experts constitute a policy-making bubble citizens cannot pierce, while policy-makers rely on it to justify their policy choices.

Bellamy offers an example of the consequences of such state of affairs through the eminent example of the deliberative forum in the Convention for a Constitutional Treaty that comprised

110 Bellamy, p. 8

“considerable political bargaining and lobbying by unaccountable and unrepresentative groups”¹¹¹, which consequently did not prevent the Constitutional Treaty to be rejected through national referenda. Thus I seek to remedy to the fact that “no incentive structure existed to consider the public interests as articulated by the public themselves, merely the interests of those with access”¹¹². The second relationship I am referring to concerns politicians, being policy-makers, and the citizens. Indeed there is a dual confrontational relationship where citizens complain constantly about politicians' actions, without understanding the difficulty of their task that do not enable them to solve all the problems and instantly. The other way around, politicians seem to seek more the material support of citizens to keep their seats as policy-makers, by manipulating citizens via vague but impacting speeches, rather than seeking their substantial support, as shows for example the use of pooling agencies to accord political program at the last minute.

Correspondingly the open corporatist system attempts to diffuse these stalemates by giving actors of the IPP the role of intermediaries between the broad scale of citizens and politicians/policy-makers. Thus they would act as representatives and arbitrators between both sides and create the linkages between on the one hand citizens and experts, and on the other hand citizens and politicians/policy-makers. Indeed interest groups could ensure citizens that their claims are taken into account by policy-makers, and at the same time, they could justify policy-makers policy positions and decisions towards the citizens. This reasoning would apply even more for the citizens involved into the IPP. Finally the open corporatist system is thought to be plausible because it relies on the assumption that the representativity between actors assigned to different issues and geographical areas would be accepted, because each actor being able to represent its own branch or field, each actor may easily accept that other actors represent theirs.

111 Bellamy, p. 10

112 Bellamy, p. 10

Chapter 3: The integration of the interest intermediation process into the parties-based system bolstering the EU's input and policy-making functioning effectiveness legitimacies

The development of a parties-based system or majoritarian dynamics at the EU level is a very controversial issue¹¹³, nonetheless it is undeniable that the basic elements for a parties-based system are already present at the EU level, namely political parties divided along political cleavages, elected directly by citizens, and holding pivotal prerogatives according to the statist definition of the distribution of power, in the context of a nascent European public sphere. As explained earlier, these majoritarian dynamics and lobbying ones occurring simultaneously at the EU-level, it is then necessary to wonder firstly how they can not only coexist, but integrate each other, notably via the open corporatist system proposed, and secondly to assess the current balance the EU is reaching in terms of input and policy-making functioning effectiveness legitimacies according to this integration. In that perspective, once provided a first justification for the existence of such parties-based at the EU-level, it is essential to apprehend its different elements through the peculiar dynamics on which their development relies, namely the EU political sphere dependence on the national ones of its member states.

Section 1 – The necessity of a parties-based system at the EU-level

A parties-based system relies on majoritarian mechanisms that can be defined by party competition and majority rule as Schumpeter summarized it¹¹⁴. Bellamy justifies the necessity of this “input based” system on the limit of human abilities that do not enable to determine upstream what would be the best policy or political line to tackle issues (output based system)¹¹⁵, thus requiring that

113 Bellamy, p. 14 to 16

114 Bellamy, p. 6

115 Bellamy, p. 5

this choice would be made between competitive political parties via elections procedure¹¹⁶. However, to delegate to citizens this responsibility might not be enough to ensure the best political line would be in charge, even if Bellamy supports this avenue for different reasons¹¹⁷ while he recognizes the difficulty to do so concerning the output based system, and that political choice is often far from being a very rational one. But still, a majoritarian system requires that voters chose “correctly” the political party that best represents their views on major dimensions of contestation¹¹⁸.

In that perspective, the interest intermediation process, as developed in the open corporatist system, could be of great help, since citizens would be much aware of the political debate and able to build insightful opinion via their involvement in the IPP or the information IPP's actors would convey to the broad scale of citizens. Furthermore it can be observed the role similarity between political parties acting as the “intermediary structure” enabling “channelment”, “expression”, and “communication” between society and government¹¹⁹ in a majoritarian system on the one hand, and interest groups that I also defined as “intermediaries” or “representatives” between citizens and EU-policy makers in lobbying dynamics. As such this two types of representatives, respectively connected to two different worlds: politics and expertise, could work hand in hand to transit political and expertise information between the citizens and policy-makers.

Thus IL would be reinforced by this more valuable participation of citizens, which constitutes more valuable information for policy-makers increasing PMFEL. Finally observing already the possible combination between the IPP and the parties-based system, it is the whole policy-making system of the EU that benefits from this coherence. Coherence overcoming the debate tearing apart the justification of a parties-based system, which opposes the necessity of respecting the equality of citizens in the political participation¹²⁰ on the one hand, and the assumption that citizens may not be

116 Bellamy, p. 5

117 Bellamy suggest that citizens are able “reasoners”, p. 3 to 6, that the need for political equality of citizens in voting takes over, p. 3 to 6, and as aforementioned that a consensus on the best policy being not possible, the alternative available is to let the choice to people to contest ideas between different proposals made by competing political parties, p. 5

118 Rosema and de Vries 2012, cited in Lefkofridi and Katsanidou, p. 100

119 Sartori 1976, cited in Lefkofridi and Katsanidou, p. 110

120 Refer to footnote 5

able to make the right choice, making the “justification of the majority rule” “the crucial problem of input-oriented theories”¹²¹, on the other hand.

Furthermore a majoritarian system is necessary because it can address by itself the issue of national representatives isolated from “domestic majoritarian pressures” at the EU-level who promote selective lobbying interests rather than the public interest¹²², constituting a major criticism towards lobbying dynamics. This is currently the case in the common agriculture policy benefiting from the greatest expenditure policy of the EU while the agriculture sector is losing of its importance¹²³. Indeed majoritarian mechanisms put policy-makers under the pressure of taking into account citizens' preferences to ensure their own re-election or re-appointment. Reciprocally the criticism towards majoritarian mechanisms can be offset by via the IPP in the open corporatist system because it enables to reach a consensus on the best policy to tackle an issue (output based system) via substantial debate between experts and professionals, consensus know as opposed to majoritarian mechanisms that rely on majority¹²⁴.

Another point of the debate articulates around the distinction between regulatory policies and redistributive policies, the EU competences relying on the former, and the pulling of the latter at the EU level being raised as a very controversial solution to the financial crisis. Majone argues that “democratic expertise” is better for regulatory policies and majoritarian system for redistributive policies¹²⁵. Argument Bellamy justifies firstly because regulatory policies suffer from low political salience, citizens expecting solely pareto efficiency, secondly because the issues they comprise are technical, and finally because experts are not disturbed and biased by short-term electoral concerns and thus can provide “suboptimal solutions”¹²⁶, in reference to their “guardianship” role Dahls defines as providing the “science of the public good” “that only specialists [...] possess”¹²⁷. In other words,

121 Scharpf 1999a, cited in Bellamy, p. 3

122 Bellamy, p. 11

123 Bellamy, p. 12

124 Bellamy, p. 3 to 4

125 Majone 1996, cited in Bellamy, p. 8

126 Bellamy, p. 8

127 Dahl 1989, cited in Bellamy, p. 8

depoliticization is advocated for regulatory policies¹²⁸ and policy-makers do not need political support.

However with critical events and issues largely politicized like the economic crisis, asylum and environmental issues, etc., citizens become more sensitive to regulatory policies as they impact directly their lives. Moreover since the combination of the parties-based system and the IPP is possible and offsets their mutual negative impacts, it seems irrelevant that the EU should choose between the two. Then policy-makers would not have to renounce to their electoral support nurtured by expertise insights via the open corporatist system. Thus the argument of Bellamy, following an intergovernmentalist approach of European integration that excludes a supranationalist or “transcendent” approach, précising that majoritarian mechanisms are not needed at the EU-level, can be disclaimed, since EU regulatory policies fall nowadays under the scope of political contestation, and given the EU does rely, at least partially, on a supranational dimension of policy-making.

Nonetheless the development of the IPP via the open corporatist system will reduce the *marge de maneuver* of policy-makers, since substantially constructed claims of citizens will be constantly raised requiring policy-makers to take into account these numerous and precise claims. Moreover policy-makers will be more dependent on the IPP's actors, acting as their representatives towards citizens, to justify their decisions. But via the corporatist system itself, these citizens' claims are supposed to nurture the expertise of policy-makers on which they will rely to make decisions, as such, citizens' claims may become policy-makers' claims, as it is also supposed to be the case in a parties-based system where political parties must represent policy positions of citizens, not only to be re-elected or re-appointed but also by ideological attachment. Policy-makers in the IPP being and politicians in the party-based system at the EU-level being the same individuals, the IPP can correct this personal interest bias of politicians.

128 Bellamy, p. 8

Section 2 – Elections dynamics

The majoritarian mechanism of party competition is a pre-condition for input legitimacy because citizens would participate via voting only if they have to choose between different things, namely different policy positions represented by different political parties. Moreover it ensures “political equality”¹²⁹ among citizens defined as “equal weight in making and contesting decisions”, reinforcing the input legitimacy dimension via this equal access to the political system of the EU. However even if government anticipates next elections by consulting citizens in “an almost daily referendum”¹³⁰, this equal access reaches its fever pitch during the elections period. And the personal autonomy of citizens in their private life is necessarily reduced as it is impossible for them to vote on each decision made at the EU-level that will impact their lives¹³¹. Nonetheless these two negatives aspects of an input-based system in terms of input legitimacy can be offset by the open corporatist system, since citizens would then constantly make their voice to policy-makers on issues that concern them directly. The participation of citizens via elections also constitutes a precondition of PMFEL because it enables to picture quickly the distribution of policy preferences among citizens, fundamental information for policy-makers who direct the ruling polity for the citizens.

More precisely, there are other factors influencing citizens' motivation on voting that may disturb this balance. “The electoral competition for the European chamber is (still) nationally organized. Hence, national political parties are *de facto* and Europarties [...] *de jure* delegated the task of embodying the channelment between citizens and elites in the EU”¹³². Accordingly, comparing national and EU elections, citizens' vote is motivated by different targets. Firstly the fact that citizens vote for a representative of an EP party but presented as a national candidate, makes citizens see the European political sphere as a pure delegation of the national one, thus not requiring much attention. However the mediation of the impact of citizen's vote on the nomination of the Commission's

129 First quote Bellamy p. 4; May 1952, cited in Bellamy, p. 6; second quote Bellamy, p. 6

130 Bellamy, p. 7

131 Bellamy, p. 4

132 Lefkofridi and Katsanidou, p. 109

President may change that partially.

Secondly Reif and Schmitt define EP's elections as being of “second-order elections”¹³³ for citizens¹³⁴. This ranking has a direct negative impact for European elections, but also for national parties. Indeed corresponding to the extent to which this second-order discourse is shared by national parties and spread in the media, voters will tend not to vote at the EP's elections¹³⁵. Moreover where there is a configuration of government alternation at the national level, thus where the impact of national elections is seen as very strong in terms of government formation by citizens, they will behave differently at the EP's elections, since EP's elections purpose is not government formation but choosing a representative of an EP's party¹³⁶, thus making citizens feel free from such constrain for EP's elections¹³⁷. Correspondingly this potential “swing against governments”¹³⁸ at the EP's elections is materialized through voters using EP's elections to sanction national politicians by not voting or choosing other Europarties than the one their national party is attached to¹³⁹, or choosing other Europarties on an ideologically basis¹⁴⁰.

Thus in terms of both IL and PFMEEL this strong dependence on the national political sphere hampers the elections process at the EU-level. However Reif's and Schmitt's theory confirmed by Marsh¹⁴¹ may see its two fundamental assumptions fade. Firstly because the increase of the EU's competences and of the politicization of its actions¹⁴² since 1994 are supposed to make EP's elections more salient for citizens. Secondly because nowadays the Commission's President nomination according to the results of the EP's elections make these elections having an impact on the formation of a government at the EU-level, considering that the Commission constitutes, with the Council, an EU government sharing the executive power. In addition another approach focusing on “policy

133 after the 1979 elections and tested on the 1984 ones by Karlheinz Reif and Herman Schmitt, in Marsh, p. 591

134 Reif and Schmitt 1997, cited in Marsh p. 592

135 Reif and Schmitt 1997, cited in Marsh p. 593; confirmed by the decline of the turnout from 1979 to 1994, Marsh, p. 597

136 Reif and Schmitt 1997, cited in Marsh, p. 593, 597 and 606

137 Reif and Schmitt 1997, cited in Marsh, p. 593

138 Marsh, p. 596

139 Reif and Schmitt 1997, cited in Marsh, p. 593, 596 and 606

140 Reif and Schmitt 1997, cited in Marsh, p. 596 and 606

141 On the basis of the European elections from 1979 to 1994

142 Refer to Section 4

congruence¹⁴³ between voters and Europarties may bring the solution. On the basis of the Mansbridge “Selection Model of Representation”¹⁴⁴ Lefkofridi and Katsanidou explain the congruence between voters and their national parties on the one hand, and the congruence between national parties and the Europarties they join¹⁴⁵ on the other hand, “*jointly* determine the alignment between EU voters and their Europarties”¹⁴⁶. Thus the EU political sphere is totally dependent on the national one: if these linkages are strong, the voter will tend to choose the Europarty that its national party joined, whereas if the linkages are weak, the voter will not necessarily chose the Europarty its national party joined¹⁴⁷.

Thus contrary to what could be expected, the dependence of the EU political sphere on the national one is actually positive in terms of IL. The policy congruencies makes European political scene more familiar to what citizens know, and national parties more willing to join Europarties, for ideological reasons and power ambition at the EU-level, fostering citizens motivation to vote. In terms of PMFEL more participation fosters the information exchange between citizens and EU policy-makers, and lead national and Europarties to align with each other more and more. Accordingly this dependence becomes positive when relies on this coherent complementary imbrication of both political spheres, reinforcing the coherence of the whole multilevel politics dimension of the EU, where the national political sphere and the EU one nurture each other, and thus increase IL and PMFEL. Finally this policy congruence can be fostered by the open corporatist system because it enables a permanent contact between citizens and EU-policy makers at the European Parliament being representatives of Europarties, showing the well combination between the IPP and the parties-based system at the EU-level. This combination will be even more helpful around mid-term of the elections cycle knowing that the “swing attitude” is the most expected at that time and stabilize this way¹⁴⁸.

143 Lefkofridi and Katsanidou, p. 126

144 Mansbridge 2009, cited in Lefkofridi and Katsanidou, p. 126

145 Lefkofridi and Katsanidou, p. 126

146 Lefkofridi and Katsanidou, p. 110 and 112

147 Lefkofridi and Katsanidou, p. 125

148 Reif and Schmitt 1997, cited in Marsh, p. 606

Section 3 - Political Cleavages

Political cleavages in a parties-based system matter because they foster the contestational aspect of politics. As such PMFEL is increased because citizens understand more the different policy positions proposed Europarties and can chose the one that matches best their opinion built accordingly. IL is also fostered since aware and thus interested citizens tend to vote more. However the congruence between national and EU political cleavages must be examined to check whether a coherence between national and EU political spheres exists, which, as aforementioned also impacts IL and PMFEL. Firstly if issues treated at the national and EU level overlap, national political cleavages and EU ones have great chances to match. Two types of issues can be observed. Firstly the topic of the issue, like financial regulation, climate change, etc., that is indeed the same at the national and EU-level since member states share their competences with the EU and thus have to tackle the same issues together. Secondly the way the issue must be tackled by each level that is also overlapping since both member states and the EU debate on which actions must be taken at the EU level, and since both member states and the EU debate on how member states should implement these actions.

However despite the obvious overlap of the two types of issue, still the political cleavages integration question remains and turns into a difficult task pitting scholars¹⁴⁹. The political cleavages left/right and pro/-anti EU integration are known respectively to be originally the national and the EU cleavages¹⁵⁰. Contrary to international relations theories rejecting the possibility of the combination of these both cleavages¹⁵¹, I argue that their interaction results into their co-existence, both at the national and EU-level, because of the nationalization of European politics by the transposition of the national left/right cleavage, followed by a Europeanisation of the national political sphere via the location of national political parties on the EU integration cleavage. Firstly the left/right cleavage is

149 Marks and Steenbergen

150 Marks and Steenbergen, p. 880

151 Mars and Steenbergen, p. 882 to 884

forced to exist at the EU-level. Indeed the left/right cleavage was already transposed at the EU-level via national politicians elected as European deputies and national politicians and agents sent to the Council. Then they make it last because according to a cognitive approach, these politicians being “decision-maker” tend to apprehend new information given what they are already familiar to, namely the left/right cleavage¹⁵².

Moreover politicians integrate new issues to already existing political cleavage like left/right¹⁵³ because of path dependency dynamics given it is costly to detach from existing cleavages¹⁵⁴ since “ideologically motivated activists” and constituencies identify their political parties according to this cleavage existing prior to the EU cleavage. Furthermore with more than one cleavage the political sphere becomes more instable¹⁵⁵ because new cleavages would modify the political sphere paradigm to the extent some political parties will not hold the same advantageous position they used to. However the EU integration cleavage remains as an independent cleavage and is reciprocally transposed at the national level. Indeed with the growing politicization of the EU integration question, raised about all policy-fields or new ones in which the EU may exert its competencies, making the EU become a more openly contested arena¹⁵⁶, national political parties are forced to position themselves around it and thus to take place in the EU integration cleavage.

The fact that the EU integration cleavage remains as a separate cleavage disclaims the political cleavages combination model of Hooghe and Marks arguing for a partial absorption of the integration issue into the left/right cleavage¹⁵⁷. Rather it must be referred to the model of Hix and Lord, where the two cleavages co-exist and enable the following policy positions: left/pro-integration, left/anti-integration, right/pro-integration and right/anti-integration¹⁵⁸. This model relies on the fact that the combination of the two cleavages cannot lead to their fusion into one new single-dimension, because

152 Steenbergen and Lodge 1998, cited in Marks and Steenbergen, p. 881; Mattila and Raunio 2006, cited in Lefkofridi and Katsanidou, p. 114

153 Lipset and Rokkan 1967, cited in Marks and Steenbergen, p. 881

154 Marks and Wilson 2000, and Scott 2001, cited in Marks and Steenbergen, p. 881; “safer” political cleavage in Mattila and Raunio, 2006, cited in Lefkofridi and Katsanidou, p. 114

155 Hinich and Munger 1997, cited in Marks and Steenbergen, p. 881

156 Marks and Steenbergen, p. 881

157 Hooghe and Marks 1999 and 2001, cited in Marks and Steenbergen, p. 887 to 888

158 Hix and Lord 1997, cited in Marks and Steenbergen, p. 884

each cleavage concerns different types of coalition, left/right involving the allocation of resources and values between functional groups and pro/anti integration between territorial groups thus showing that social classes and political parties are internally divided on the EU integration question¹⁵⁹. This also lead to reject Tsebelis' and Garrett's model advocating for a left/pro-integration and right/anti-integration cleavage¹⁶⁰.

Through this political cleavages combination, the EU integration cleavage gain more popularity among citizens¹⁶¹ and increasing citizens' interest into EU politics and thus their participation to EP's elections, reinforcing IL and PMFEL. Moreover this combination of political cleavages fosters the congruence between Euro- and national parties, as shows the fact that Europarties policy positions are extremely close from the ones of the “(weighted) median national party on the left/right and EU integration cleavages”¹⁶². This strengthens the coherence between the national and EU political spheres and thus IL and PMFEL. Finally the nomination of the Commission's President made accordingly to EP's elections results will foster even more the combination of cleavages at the EU level thus reinforcing the coherence between the national and EU political spheres and so IL and PMFEL.

Indeed on the one hand the Commission will integrate also the left/right cleavage because it will be transposed from the EP to the Commission via the person of the Commission's President, who moreover will have to maintain his position on both cleavages in line of the majoritarian party of the EP to keep citizens' support. On the other hand the EU integration cleavage is already very present into the Commission and will be maintained strongly also by the EP to justify the alleged necessity of increasing his power in the policy-making of the EU, that has already occurred via its new influence on the Commission's President. This constitutes also an advantage in terms of PMFEL concerning the pace of the policy-making, because contrary to what argue Klüver and Sagarzazu¹⁶³, it will enable an

159 Hix 1999a, 1999b, and Hix and Lord 1997, cited in Mars and Steenbergen p. 884

160 Mars and Steenbergen, p. 886 to 887

161 like states Hurrelmann about one path possible for the evolution of the politicization of European integration in the aftermath of the financial crisis, Hurrelmann, p. 3

162 McElroy and Benoit 2010, cited in Lefkofridi and Katsanidou, p. 112

163 Klüver and Sagarzazu, p. 403 and 404

ideological alignment between EU policy-makers of the Council, Commission and Parliament, all participating to the legislative decision-making, through the existence of a same dominant party in all these EU institutions.

Concerning the integration of the IPP into the parties-based system, the concern on political cleavages deserve attention. Firstly actors of the IPP being also voters or policy-makers bring political cleavages into the IPP dynamics via their own policy positions which will accord to the expertise points of view. This state of affairs enables the IPP and the parties-based, not only to co-exist, but to integrate each other, and consequently to reinforce the coherence between national and EU political spheres leading to a high level of IL and PMFEL. This is even more the case in the open corporatist model since more individuals are involved, and since they hold the position of representatives towards politicians/policy-makers and the broad scale of citizens. Moreover this imbrication enables all interest groups to use political resources thus reducing the discrimination of those representing diffuse interests. However this shows that the political dimension can be used by outside actors to nurture their own advancement goals and the ones of their organization. But political mobilization of citizens being possible mainly by raising expertise insights protecting their interests, in addition to the formation of common interests aforementioned, it limits this personal bias.

Another bias can be constituted because majoritarian mechanisms “distort decision-making by registering false 'positives' or false 'negatives’”¹⁶⁴, in other words entails the over-representation of “unrepresentative groups” having the power to influence voters given their position within the economy, media, etc.¹⁶⁵ on the one hand, and to the under-representation of minority groups being excluded from the decision-making¹⁶⁶ on the other hand. Firstly, this situation must be accepted as the necessity of choosing one political line that according to which decisions will be made, and more rapidly by facing less vetoes of other political lines represented by other political parties. And still, to prevent these false positive and negative to occur to a too great extent, the open corporatist system

164 Pettit 2004, cited in Bellamy p. 7

165 Bellamy, p. 7

166 Bellamy, p. 8

can be helpful because it enables the substantial debate between these political lines to start upstream and thus reaching more easily a compromise. Moreover it enables to rebalance the importance given to each political line because the result of the debate is supposed to be determined according to the better argument made, grounding then influence on citizens and thus his power in the policy-making on more objective criteria, justifying properly that some actors may be, indeed, more influential in the policy-making.

In terms of IL the combination between the IPP and the parties-based system, notably via the open corporatist system, thus reaches a very correct level, because the EU enables any outside actor to participate and integrate the political dynamics at the EU-level, and in a fair way by making him holding a position corresponding to his value in terms of numerous support from the citizens he gathers and in terms of the quality of the expertise he provides. The PMFEL reaches a high level since once again, both types of policy-making can combine effectively and redistribute clearly responsibilities between citizens, interest groups, political parties and policy-makers. Moreover the previous difficult choice policy-makers had to make of which interest groups to listen to concerning their expertise insights on the one hand, and their impacts on constituency's support on the other and is reduced, since a more or less consensual expertise insight is supposed to emerge progressively through the open corporatist system, and that will be supported then by most of outside actors and citizens in general.

Section 4 - Public Sphere

It is undeniable that there has been an “EU's intense politicization during the current EU crisis”¹⁶⁷, notably of the European integration issue¹⁶⁸, increasing consciousness about the existence of the EU and its power over states and people. Consequently the broadly spread argument stating

167 Lefkofridi and Katsanidou, p. 127

168 Hurrelmann, p. 1

that EU regulatory policies are lacking salience among citizens, and that thus more participation is unlikely to be expected¹⁶⁹ has to be relativized, confirmed by Hurrelmann's prognosis that the financial crisis's impact could lead citizens to develop a "greater interest in EU affairs"¹⁷⁰. Politicization of EU issues is fundamental in terms of IL because it enables the dialog between the three arenas of political actors, ruling institutions populated by politicians, citizens and the media creating the communication between them¹⁷¹. By having more information citizens can understand the heart of political debates and build insightful opinion they will be more eager to defend via voting, increasing the IL quantitatively but also qualitatively with meaningful votes.

Politicization also bolsters PMFEL because then citizens will convey clearer expectations to EU policy-makers thus valuable information on which they base their decisions. The IPP plays also an important role because interest groups foster the politicization by using it as a mean of political resources¹⁷². This is even more the case via the open corporatist proposal, where actors of the IPP develop very thorough and precise opinion that would be conveyed to the broad scale of citizens. Politicization is also a good asset to offset negative impacts of the IPP in terms of IL. Firstly politicization being a mean to gain more political resources, it reduces the discrimination among specific and diffuse interests representation. Secondly politicization offsets the disconnection between NGOs elitist governance and their supporters, since it requires that NGOs leaders have to include more their supporters to keep their mobilization as a political resource.

Politicization triggering debate between citizens and politicians, entails the formation of a European public sphere, where "political elites and mass publics operate in a common political space". The EU political elites operate through political parties that help citizens to express their *political will*¹⁷³, notably in a context where citizens have very few direct contact with the EU being a distant polity and thus need information¹⁷⁴. Respectively the EU collects information about "desires

169 Moravcsik, p. 615

170 Hurrelmann, p. 3

171 Hurrelmann, p. 1

172 Hurrelman, p. 4

173 Lefkofridi and Katsanidou, p. 109

174 Koopmans and Erbe, p. 2

and concerns of the citizenry“via the media¹⁷⁵ in the public sphere. Consequently a European public sphere constitutes a preliminary condition for a parties-based system to work. Indeed citizens cannot participate if they do not know about what to participate (IL), and policy-makers cannot make decisions if they do not know citizens' preferences¹⁷⁶ (PMFEL). Thus if a European public sphere exists, IL and PMFEL would reach a proper level concerning this point. However “the discrepancy between Europe's institution development, its increasing competencies and influence on European's conditions of life, on the one hand, and the continuing predominance of the national political space as the arena for public debates [...] is at the core of Europe's 'democratic deficit' “¹⁷⁷. To address this obvious contradiction, which could hamper IL and PMFEL if the dependence on the national spheres would prevents the European public sphere from existing, is necessary to look at the features of the current European public sphere, still highly debated, notably considering their distinction from a statist definition.

Firstly a European public sphere does not require the existence of a European demos, sharing the same language and culture, as argued by the “no demos“thesis¹⁷⁸ following then a nation-state definition of a public sphere. Indeed what makes citizens vote is their idea that it make sense to do so, because their interests are at stake, and their homologues ruled by the same polity prove this idea to be true because they think alike. This statement materialize progressively as European citizens took conscious of the growing power of the EU over their state and themselves. This discourse aligns with the one of the Bundesverfassungsgericht talking about the EU in terms of an “union of the peoples of Europe (organized as States) and not a state based on the people of one European nation“¹⁷⁹. On the contrary common political culture and values develop within the interaction of citizens forming a public sphere, and thus do not need to pre-exist the public sphere¹⁸⁰. Accordingly the European public

175 Koopmans and Erbe, p. 2 to 3

176 Gabel and Anderson 2002, cited in Marks and Steenbergen, p. 890

177 Koopmans and Erbe, p. 1

178 Lindseth, p. 675 to 677, Brand, p. 7

179 Brand, p. 7

180 Van de Steeg, p. 505

sphere cannot be an “additional level“ superimposed to the national ones¹⁸¹, which would be conceivable only by following the statist definition where the public sphere is defined as a homogenous space of language, national collective identity, etc, delimited by state's borders¹⁸². Indeed there is no such clear-cut between the European Union public sphere and the different national ones, themselves not perfectly homogenous¹⁸³. Accordingly the media constitutes the communication tool enabling the debate rather than a common language¹⁸⁴, which must not be confused with the public sphere itself¹⁸⁵, contrary to some authors for who the existence of a European public sphere relies solely on a “single European Media system covering all member states“¹⁸⁶.

Accordingly the public sphere is the space of the public debate¹⁸⁷, an envelope encompassing all public discourses, conveyed by a specific medium, who content firstly overlaps because they refer to the same facts, arguments, etc, and secondly that enter in contact by making reference to each other¹⁸⁸. In other words, a public sphere is formed when public discourses are “geared to one another“¹⁸⁹. More precisely the European public sphere forms through what Koopmans and Erbe call the Europeanization of national public spheres¹⁹⁰. Firstly there is a vertical Europeanization via “communicative linkages“ between the national and EU levels, where national actors address European actors or make claims about EU issues and where European actors intervene to defend European regulations and common interests towards member states. Secondly through a horizontal Europeanization where member states address each other on European issues¹⁹¹. Thus the national and EU public spheres are intertwined and overlap to a certain extent, even if their conceptualization make them imagined as independent.

181 Grimm 1995 and Schlesinger 1995, cited in Van de Steeg p. 501

182 Van de Steeg, p. 502

183 Van de Steeg, p. 505 and 506

184 Van de Steeg, p. 503 to 504 ; Koopmans and Erbe, p. 1 to 2

185 Van de Steeg, p. 508 and 509

186 Grimm 1995 and Schlesinger 1995, cited in Van de Steeg, p. 502

187 Van de Steeg, p. 507

188 Van de Steeg, p. 508 to 509; making reference to each other for example when in his speech a politician will refer to an article written about the issue he is treated in his speech, Van de Steeg, p. 510

189 Van de Steeg, p. 509 to 510

190 Koopmans and Erbe, p. 5 to 6

191 Koopmans and Erbe, p. 6 to 7

However the mediation of the public debate relies on the manner the national media will convey the news concerning EU matters¹⁹², entailing a strong dependence of the European public sphere on the national ones. This can undermine considerably the PMFEL but also the IL because it can deflect citizens' focus from EU issues as such and consider them only through a national discourse, thus as national matters and biased. Accordingly Koopmans and Erbe add the condition that these issues must be mentioned as EU ones¹⁹³ but it might not be sufficient. Thus the Europeanisation dynamics can be considered as the first stage of the building of a European public sphere, the second and optimum stage being the reinforcing of the “marginal”¹⁹⁴ already existing EU own media, which should then be available in the 28 languages of the member states, to reach the level of a “European-wide mass media”¹⁹⁵ freeing greatly the EU public sphere from the negative aspect of its dependency on national public spheres. In the same perspective is required the identification of EU speakers to enable the EU to spread its own discourse aside national actors to which citizens would then pay attention. The nomination of Commission's President according to EP's elections results takes that path because candidates for this position debated publically to rally public support and citizens' votes to their Europarty.

According to these definitions, Van de Steeg¹⁹⁶ and Koopmans and Erbe¹⁹⁷ in their empirical studies confirms that the first stage is reached: a European public sphere does exist, since there is the overlap of issues already mentioned and formation of public opinions on EU matters¹⁹⁸ “unbounded” to national borders¹⁹⁹. As aforementioned the existence of a public sphere in itself enables to reach a proper level of IL and PMFEL. Finally the imbrication of the EU public spheres with the national

192 Eder and Kantner 2000, cited in Van de Steeg, p. 504

193 Koopmans and Erbe, p. 5

194 Koopmans and Erbe, p. 3

195 Koopmans and Erbe, p. 6

196 Van de Steeg, p. 516

197 Koopmans and Erbe, p. 21, the percentage of Europeanised forms of claim-making is of 43% in the policy-fields or issues of EU integration, monetary policy, agriculture, immigration, troops deployment, pensions and education all combined and covering the spectrum of strong competences to no competences for the EU, in 2000 in Germany according to the content analysis based on the *Frankfurter Allgemeine Zeitung* (center-left), the *Süddeutsche Zeitung* (center-right), the *Bild-Zeitung* (tabloid), and the *Leipziger Volkszeitung* (East German regional paper).

198 Van de Steeg, p.517

199 Van de Steeg, p. 511

ones participate to the coherence between the EU and national political spheres, already presented as a fundamental element to reach high level of both IL and PMFEL. In addition the open corporatist system can bolster the horizontal dimension of Europeanization by putting in contact citizens facing similar issues in different member states, and the vertical dimension by fostering the dialogue between outside actors and the broad scale of citizens located in member states' territory and EU policy-makers. And the other way around, the existence of a European public sphere is fundamental to the development of an open corporatist system as it constitutes the communication space in which interest groups are holding the position of intermediaries/representatives between citizens and politicians, and through which more and more citizens can be interested in taking part to the IPP. Thus it can be said that a European public space is a fundamental requirement for IL and PMFEL for both the IPP and the parties-based system.

CONCLUSION

Firstly it has been observed that the combination of the democratic legitimacy and the policy-making functioning legitimacy, along with their concurrent negative and positive relationships, enabled to redefine and support each other, in a way the EU could gain both through the search of a balance between them. This conclusion has been drawn concerning the second stage of the policy-making process defined in my model, corresponding precisely to the input legitimacy on one hand, and the possibility of a mutual access between citizens and EU policy-makers, to enable policy-makers to gather the valuable and reliable information of citizens' claims and preferences they need, on the other hand. Thus concerning this second stage, the negative relationship where the optimum of the democratic legitimacy hampers the policy-making functioning effectiveness, led to use PMFEL requirements to redefine the input legitimacy in realistic terms.

Indeed PMFEL requirements led to limit the analysis of the democratic deficit to EU's actual responsibilities in offering citizens access to its policy-making. Moreover the objective of citizens' participation in terms of input legitimacy had to be reinterpreted through a division between a quantitative access to EU policy-making, via consultation on internet – participatory democracy –, and a qualitative access, via personal meetings and debate – deliberative democracy –, distribution based on objective criteria, namely expertise and communication competences of citizens and their willingness to participate. Reciprocally, the positive relationship, where policy-making functioning effectiveness legitimacy optimum increases the democratic legitimacy, enables, considering the second stage of the model, to reach a very correct level of input legitimacy. Indeed the distribution between a quantitative and qualitative access imposed by PMFEL enables the equal and valuable participation among citizens, increasing importantly the input legitimacy.

Secondly it has been examined, that the interest intermediation process (IPP) and the parties-based system (PBS), enabled to the EU to reach high level of democratic and policy-making functioning effectiveness legitimacies, through their interacting and offsetting impacts on these two types of legitimacy. Thus, the imbrication of the IPP and PBS constitute a plausible solution for the

broad multidimensional question of the EU legitimacy, and thereby justify their own contested presence at the EU-level. Indeed from a general point of view, this imbrication of PBS and IPP enables to maintain the political equality among citizens via the elections of competing political parties (PBS), while defining a substantial consensus on the best policy to tackle an issue via the debate among interest groups (IPP), normally considered as impossible when a majority political party is elected. This ensures the input legitimacy via the equal participation of citizens into the political system, as much as the PMFEL since a consensus can be reached on the substance of the policy-making.

From a more precise point of view, the imbrication of the IPP and the PBS led to the merging of the lobbying dynamics with the political one, on which they rely respectively. Through this fusion between expertise and political information (policy positions), citizens are more aware of political debate through the thorough insight provided by professional-expert interest groups on the one hand. And EU policy-makers, being elected political representatives, must henceforward take into account all the different interests represented by interest groups supported by the broad scale of citizens. Thus EU policy-makers cannot mobilize the henceforward more aware citizens through shallow and last minute improvements of political programs. Reciprocally EU policy-makers cannot take into account only the point of view of few powerful business stakeholders but also the one of interest groups representing diffuse interests (consumer, environmental concerns), because they are henceforward more able to mobilize citizens via political dynamics. This increases the input legitimacy via the quality of citizens' participation improved by the discourse of experts and professionals forming interest groups in the IPP made more available. It also increases PMFEL since both sides, citizens and policy-makers can exchange then more valuable information needed to form an insightful public opinion on the one hand, and establish efficient EU policies and laws on the other hand.

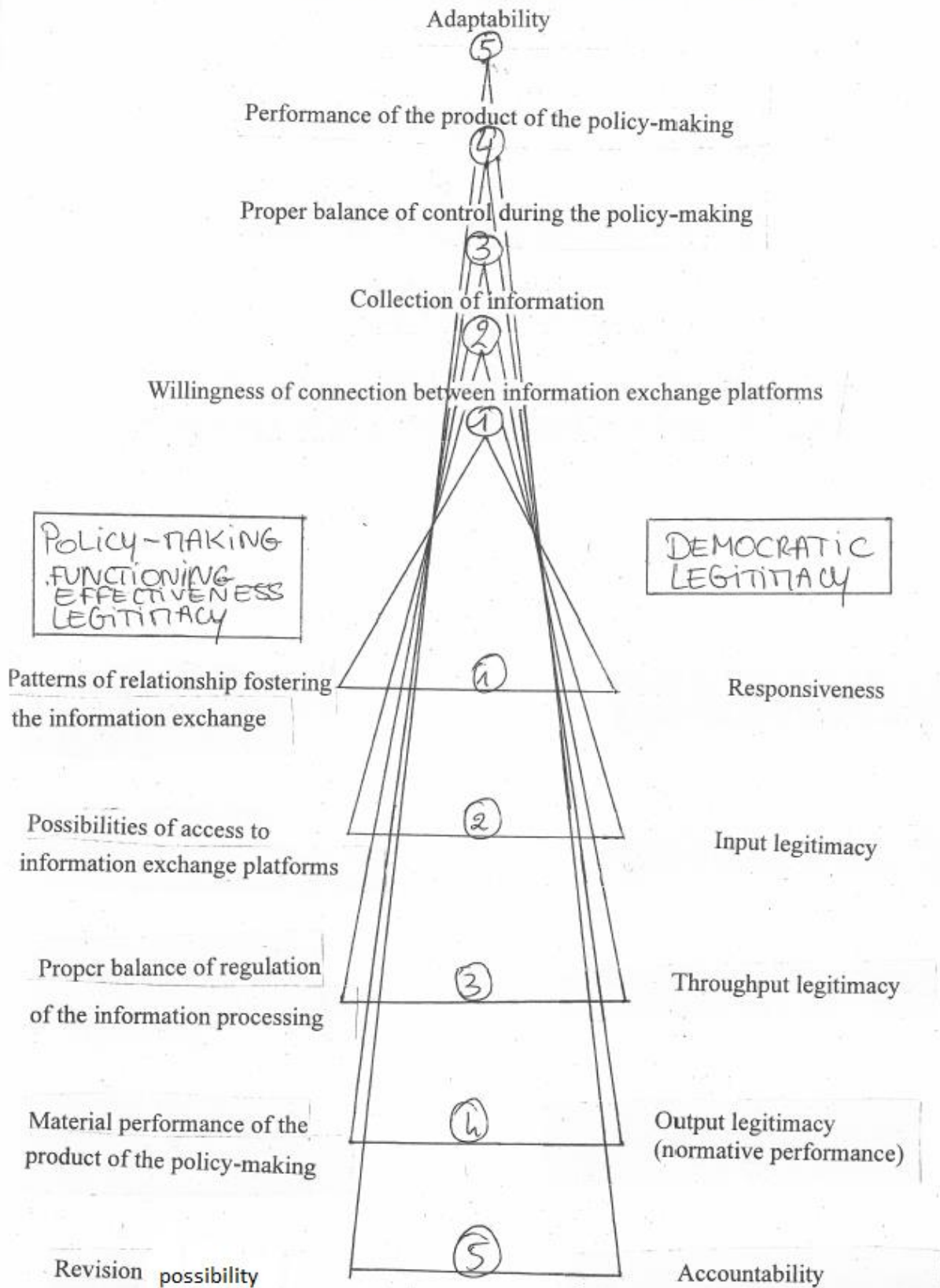
Thirdly this paper attempts to fulfill a gap in the literature by combining, different branches of the literature, democratic legitimacy and policy-making functioning legitimacy in a normative model on the one hand, and interest intermediation process and parties-based system, on which the model has been applied, finally linking the legitimacy literature to the policy-making one. At the same

it provides answers to the question of the controversial combination of expertise (IPP) and politics (PBS), participatory deliberative democracy (IPP) and representative democracy (PBS). Furthermore this attempt has been made in the light of two new developments, an invented one through the proposition of the evolution of the interest intermediation process into an open corporatist system, and by taking into account the official nomination of the Commission's President according to the European Parliament's elections results that strengthens the presence of a parties-based system at the EU level.

Finally in further research this model could be used entirely to study all the aspects of the EU legitimacy question, and even be improved by including new criteria like the distribution of power among EU institutions. Moreover this study shows indirectly that the criteria listed for democratic and policy-making functioning legitimacies are not specific to the model of the nation-state, but general criteria corresponding to such types of legitimacies, then applicable on policy-making at the EU-level but also at the national one. As such, the model could be also used to assess the legitimacy of any democratic ruling system, whose functioning claims to be effective on the one hand, and to answer the question whether the politics and polity dimension of a specific type of policy-making produce specific policy outputs or policy instruments, indicated by Treib, Bähr and Falkner²⁰⁰, on the other hand.

200 Treib, Bähr and Falkner, p. 11 and 16

General Balance Model



ANNEX 2²⁰²

GENERAL BALANCE MODEL

	<u>Policy-making functioning effectiveness legitimacy – GENERAL requirements</u>	<u>Policy-making process stages</u>	<u>Democratic legitimacy requirements</u>
1	Patterns of relationship fostering the information exchange	Willgness of connexion between information exchange platforms	Responsiveness
2	Posibilities of access to information exchange platforms	Collection of information	Input legitimacy
3	Proper balance of regulation of the information processing	A proper balance of control during the information processing	Throughput legitimacy
4	Material performance of the product of the policy-making	Performance of the product of the policy-making	Output legitimacy (normative performance)
5	Revision possibility	Adaptability	Accountability

²⁰¹ Author's illustration.

²⁰² Author's illustration.

PMFEL REQUIREMENTS FOR EACH TYPE OF POLICY-MAKING

	Policy-making functioning effectiveness legitimacy requirements for interest intermediation process	Policy-making functioning effectiveness legitimacy requirements for parties-based system
1	Good working relationship between actors of the IPP and EU institutions \neq rivalry, coercive relationship	Substantial (real policy congruence) or manipulative relationship (superficial policy congruence) between politicians/policy-makers, political parties and constituency, supporters
2	Quantitative and qualitative aspect of the access: the proper amount of quantity and quality of the expertise information exchanged based on the number and competences of actors outside the EU institutions involved in the IPP	Quantitative and qualitative aspect of the policy positions information provided from both sides : politicians/policy-makers, political parties on the one hand, and constituency/citizens on the other hand
3	Proper balance of regulation forcing policy-makers to take into account the expertise information their <i>marge de manœuvre</i> in establishing policies and laws	Proper balance of regulation forcing policy-makers to take into account the policy positions of the constituency transposed in the political parties to which they are attached to and their <i>marge de manœuvre</i> in establishing policies and laws
4	Performance of the product of the policy-making (policy and law) in tackling an issue in a way that the best expertise recommendations available were followed (or did policy-makers reach the right balance between expertise information and their free <i>marge de manœuvre</i> to tackle an issue)	Performance of the product of the policy-making (policy and law) in tackling an issue and in a way that the policy position(s) taken reflects the actual policy position(s) of the repartition of power between political parties determined by elections results (or did policy-makers reach the right balance between policy positions of their political party and their free <i>marge de manœuvre</i> to tackle an issue)
5	Once feedbacks collected after implementation of the policy/law, availability of mechanisms for the revision of the policy/law according to these feedbacks, and in a relevant time concerning the issue	Availability of means of sanctions through which the constituency can force politicians/policy-makers to correct the policy/law in accordance to the policy positions promoted by the political party politicians/policy-makers are attached to

BALANCE MODEL for the INTEREST INTERMEDIATION PROCESS

	<u>Policy-making functioning effectiveness legitimacy requirements</u>	<u>Policy-making process stages</u>	<u>Democratic legitimacy requirements</u>
1	Good working relationship between actors of the IPP and EU institutions ≠ rivalry, coercive relationship	Willgness of connexion between information exchange platforms	Responsiveness
2	Quantitative and qualitative aspect of the access: the proper amount of quantity and quality of the expertise information exchanged based on the number and competences of actors outside the EU institutions involved in the IPP	Collection of information	Input legitimacy
3	Proper balance of regulation forcing policy-makers to take into account the expertise information their <i>marge de manœuvre</i> in establishing policies and laws	A proper balance of control during the information processing	Throughput legitimacy
4	Performance of the product of the policy-making (policy and law) in tackling an issue in a way that the best expertise recommendations available were followed (or did policy-makers reach the right balance between expertise information and their free <i>marge de manœuvre</i> to tackle an issue)	Performance of the product of the policy-making	Output legitimacy (normative performance)
5	Once feedbacks collected after implementation of the policy/law, availability of mechanisms for the revision of the policy/law according to these feedbacks, and in a relevant time concerning the issue	Adaptability	Accountability

BALANCE MODEL for a PARTIES-BASED SYSTEM

	<u>Policy-making functioning effectiveness legitimacy requirements</u>	<u>Policy-making process stages</u>	<u>Democratic legitimacy requirements</u>
1	Substantial (real policy congruence) or manipulative relationship (superficial policy congruence) between politicians/policy-makers, political parties and constituency, supporters	Willgness of connexion between information exchange platforms	Responsiveness
2	Quantitative and qualitative aspect of the policy positions information provided from both sides : politicians/policy-makers, political parties on the one hand, and constituency/citizens on the other hand	Collection of information	Input legitimacy
3	Proper balance of regulation forcing policy-makers to take into account the policy positions of the constituency tranposed in the political parties to which they are attached to and their <i>marge de manœuvre</i> in establishing policies and laws	A proper balance of control during the information processing	Throughput legitimacy
4	Performance of the product of the policy-making (policy and law) in tackling an issue and in a way that the policy position(s) taken reflects the actual policy position(s) of the repartition of power between political parties determined by elections results (or did policy-makers reach the right balance between policy positions of their political party and their free <i>marge de manœuvre</i> to tackle an issue)	Performance of the product of the policy-making	Output legitimacy (normative performance)
5	Availability of means of sanctions through which the constituency can force politicians/policy-makers to correct the policy/law in accordance to the policy positions promoted by the political party politicians/policy-makers are attached to	Adaptability	Accountability

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