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**RECON**  
**Reconstituting Democracy in Europe**

Integrated Project  
Priority: 7 - Citizens and Governance in a Knowledge-Based Society

**Deliverable No. 52**  
**Workshop on alternative forms of representation: Courts and civil society**

Due date of deliverable: July 2011  
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Start date of project: 1 January 2007

Duration: 60 months

Lead contractor for this deliverable:  
Partner 14 UniHB  
University of Bremen, Germany

Final Version

Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
PU	Public	
PP	Restricted to other programme participants (including the Commission Services)	
RE	Restricted to a group specified by the consortium (including the Commission Services)	X
CO	Confidential, only for members of the consortium (including the Commission Services)	

## 1. Introduction

RECON Deliverable No. 52 – *Workshop on alternative forms of representation: Courts and civil society* is part of work package 3 – Representation and Institutional Make-Up. The aim of WP 3 is to assess the status of democracy in Europe, with emphasis on (a) clarifying the nature of the challenges facing systems of representation at the national and supranational levels in Europe; (b) analyzing interactions between these levels; (c) establishing the direction of change (towards which of the three RECON models these systems develop); and (d) evaluating the democratic quality of these arrangements. Such an assessment presupposes proper attention to the broader institutional settings within which patterns of representation are entrenched in the European multilevel setting, and WP 3 analyses the contribution of institutional structures of representation – elections, parties and parliaments – to the EU's 'capacity for democracy'.

During months 49-60, the WP would complete its projects and concentrate on exploiting and disseminating the research of the last four years. This would involve a series of initiatives by WP 3 researchers to engage the wider scholarly community in the discussion of preliminary findings, to make data available to other researchers, and to turn the high output of working papers from this work package into peer-reviewed publications. The WP would also hold workshops to prepare landmark publications summarising its main findings. Deliverable No. 52 was one such workshop, leading up to a book proposal on representation and the EU.

## 2. Presentation of the workshop

Ulrike Liebert and Tatjana Evas from the Jean Monnet Centre for European Studies (CEuS) at the University of Bremen, in cooperation with Christopher Lord (ARENA, University of Oslo), organised the two-day workshop in Bremen entitled 'Strengthening democracy in the EU: Alternative forms of representation' on 14–15 July 2011 under the auspices of the Jean Monnet Centre for European Studies (CEuS). More than 40 political and social scientists and legal scholars, as well as a number of graduate students, participated in the workshop. At this workshop, RECON research findings from three different, though strongly interlinked, work packages were brought together, namely critical assessments of parliamentary representation in the multilevel EU polity (WP 3); comparative studies on the role of courts in the EU polity (WP 2) and analyses of civil society and of the public sphere (WP 5). In addition to seven RECON-affiliated researchers from the three work packages, five external researchers contributed with paper presentations.



*From left: Philippe C. Schmitter, Tatjana Evas and Christopher Lord*

The workshop focused on the key issue of the EU's democratic legitimacy – also alluded to by the German Constitutional Court's 2009 Lisbon Ruling – namely the development of a representative system of government in a (con-)federation of nation states. One of the

questions addressed by the workshop participants was whether and how democracy in the EU could be strengthened by bringing in alternative forms of representation, including competing as well as complementary ones, to elections and parliaments.

Philippe C. Schmitter (European University Institute, Florence) opened the debate with a provocative keynote ‘Re-presenting Representation’. Taking his point of departure in the present crisis of *real existing democracies*, he questioned the conventional wisdom following Seymour M. Lipset’s equation of representation with elections and political parties. Claiming that the crisis of democracy was in fact primarily a crisis of representation, and although the concept of representation had remained fuzzy, he argued that representation was by no means synonymous with these two institutions, but could be found in a variety of other mechanisms of political interest mediation in social and political life. Alternative conceptions such as those developed by Pierre Rosanvallon (‘counter democracy’), John Keane (‘monitory democracy’) and Colin Crouch (‘post democracy’) were identified and theorised. Drawing on the changing mechanisms of representation, Schmitter developed five hypotheses to depict the European Union as ‘an extreme version of counter-monitory democracy’.



From left: Petra Guasti, Gesche Lange and Tatjana Evas

The first panel ‘Re-assessing Representative Structures and Practices of the EU’s Multilevel Parliamentary Field’ started the exploration of the state of representation in the EU with a focus on the issues of political equality, the European Parliament and national parliaments. Leader of WP 3, Christopher Lord (ARENA, University of Oslo) discussed, in his joint paper with Johannes Pollak (Webster University Vienna), how the German Constitutional Court (GCC) in its 2009 Ruling on the National Act Approving the Treaty of Lisbon understood the notion of representation at the EU level. Lord and Pollak forcefully argue that the understanding of representation by the GCC is based on a standard theory of representation. However, the application of this theory to the EU context regrettably leads to *dubious assumptions of value* that in turn could result in heavy losses regarding the democratic quality of the EU system of representation. Ben Crum (Vrije Universiteit Amsterdam), in his joint paper with John Erik Fossum (ARENA, University Oslo), both leaders of WP 2, addressed the issue of representation in the EU through the notion of ‘multilevel parliamentary field’. Crum and Fossum argue that (in the context of the internationalization of politics) this notion conceptualizes a system of parliamentary democracy beyond the national state, thus contributing to a better framework for understanding the preconditions and mechanisms of proper and effective democratic control of political power in the EU. Their central argument suggests that national parliaments remain key actors for democratic representation in the EU. However, supranational and transnational institutions and practices are required as well.

Richard Rose (University of Aberdeen) discussed the system of representation in the European Parliament. Based on quantitative data, Rose compared the EP’s system of digressive proportionality with methods used to choose second chambers in national parliaments. He concluded with a set of propositions about how European citizens could cast a ballot in an election in which their votes would be counted equally. Richard Bellamy

(University College London) and Sandra Kröger (CEuS, University of Bremen) turned their focus on domestic representative institutions – parliaments and parties – and discussed whether those domestic institutions can and should still provide a forum for either reasonable disagreement or control of power over issues of European governance. These four papers were commented by Philippe C. Schmitter, Carlos Closa (Spanish National Research Council, CSIC) and Aleksandra Maatsch (CEuS, University of Bremen) and followed by an extensive plenary discussion.

The second panel ‘The Role of Courts in Reconstituting Democracy in Europe: Unaccounted Players or Arenas for Citizen's Representation?’ shifted the focus from the classical representative institutions to courts at both the national and EU level, to explore to what extent these (do, should or could) play a role in protecting citizens’ traditional channels of representation or in providing them with new avenues for representing their interests. Opening the panel, Dagmar Schiek (University of Leeds) presented an extensive scrutiny of the European Court of Justice’s jurisprudence in the area of industrial relations. She argued that the social ideals on which the Court builds its reasoning are generally based on scepticism toward industrial action by trade unions; however, the Court acknowledges the regulatory function of collective agreements and their potential to regulate flexibility. Schiek concluded that the social ideals underlying its case law ‘lean towards valuing spontaneous market regulation higher than negotiated self-regulation’. Carlos Closa presented systematic comparative data on the engagement of national constitutional courts with European integration, specifically through their adjudication on the constitutionality of the European treaties. Empirically testing normative assumptions grounded in the constitutional pluralism literature, he concluded that Constitutional and Supreme Courts’ decisions on the constitutionality of the EU reform treaties have largely attempted to avoid or limit the clash between different legal orders.



*From left: Christopher Lord, Richard Rose and Ben Crum*

Harald Koch (Humboldt University, Berlin) developed further the national courts’ perspective by discussing the enforcement of EU law through mass litigation lawsuits. Comparing procedural rules in the EU member states and the USA, Koch identified a number of shortcomings and suggested reforms that could improve procedural standing rules at the EU level and hence provide avenues for representing citizens’ rights through court proceedings. Tatjana Evas concluded the panel by presenting a joint paper with Ulrike Liebert (both CEuS, University of Bremen) exploring the role of domestic courts in the EU’s system of multilevel judicial governance. By comparing the judgements of the Czech, Latvian and German Constitutional Courts on the constitutionality of the Lisbon Treaty, Evas demonstrated that domestic courts diverge in their understandings of current problems of the democratic deficit in the EU and use a variety of different legal methodological tools to support their reasoning. Petra Guasti (Institute of Sociology, Academy of Sciences of the Czech Republic), Richard Bellamy and Norbert Reich (University of Bremen) commented on the four presentations in this second panel.

The third panel 'Combining or Colliding? Alternative Forms of Democratic Representation in the EU: Political Parties, Civil Society and the Public Sphere' focused on civil society and the public sphere as forums for representing contesting claims, public opinion, and political discourses; asking whether and how these mechanisms would enhance the potential of representative structures in the EU polity. Hans-Jörg Trenz (University of Copenhagen/ARENA, University of Oslo) presented a joint paper with Pieter de Wilde (Social Science Research Center Berlin) in which they argue that Euroscepticism should be understood as part of the general practices of assessing the legitimacy of European integration and analysed as a meta-critique of the polity. This would imply an analytical shift from the critical practices within a polity to a critique of the polity.

Aleksandra Maatsch investigated dominant discourses on the EU polity in the national print media in six EU member states. With respect to the three RECON models of democracy in Europe, Maatsch demonstrated that two main factors account for the kind of specific democratic model that are discursively constructed by the national print media; first, the political orientation of the newspaper; and secondly, the actors' affiliation, that is whether they are political, civil society or non-political social actors. The final paper was delivered by Ulrike Liebert. Discussing which kind of democracy would be represented as appropriate and viable for the EU polity at the national level, the paper adopted the framework of *discursive representation*, based on a broader notion of representation, to describe the relationship between representatives and the represented. Focusing upon EU constitutional and reform treaty politics and European elections, the paper established to what extent the discursive representations of democracy in the EU collided or cohered within and across diverse national contexts. Preceding the general discussion, Richard Rose and Martin Heidenreich (Carl von Ossietzky University, Oldenburg) provided extensive comments on the papers presented in the third panel.

The event ended with a Round Table to discuss the main conclusions of the workshop. It was agreed to publish the workshop proceedings in a joint book. The contributions were subsequently revised and the volume 'Multilayered Representation across the European Union in Question: Parliaments, Courts, Civil Society and the Public Sphere', edited by Tatjana Evas, Ulrike Liebert and Christopher Lord, is to appear on Nomos in the Spring 2012.

### **3. List of participants**

See attachment.

### **4. Programme**

See attachment.



# Strengthening Democracy in the EU Alternative Forms of Representation



**RECON Workshop**

**WP 2 – Constitutional Politics, WP 3 – Representation and  
Institutional Make-up and WP 5 – Civil Society and the Public Sphere**

**Bremen, 14-15 July 2011**

Venue: Gästhaus der Universität, Auf dem Teerhof 58, Bremen

Organised by the Jean Monnet Centre, University of Bremen

## List of registered participants

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# Strengthening Democracy in the EU Alternative Forms of Representation



RECON Workshop

WP 2 – Constitutional Politics, WP 3 – Representation and  
Institutional Make-up and WP 5 – Civil Society and the Public Sphere

Bremen, 14-15 July 2011

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Organised by the Jean Monnet Centre, University of Bremen

## Programme

Thursday 14 July 2011

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13:00-13:30 **Registration**

13:30-13:45 **Introduction**  
**Ulrike Liebert / Tatjana Evas**  
*University of Bremen*

13.30-14:45 **Keynote**  
**Philippe C. Schmitter**  
*European University Institute, Florence*

### Panel I: Re-assessing Representative Structures and Practices of the EU's Multilevel Parliamentary Field

*Chair: Ulrike Liebert*

15:00-15:10 **Introduction**  
**Ulrike Liebert**  
*University of Bremen*

15:10-15:30 **Ensuring Political Equality? The European Parliament and the Democratic  
Performance of the EU**  
**Christopher Lord / Johannes Pollak**  
*ARENA – University of Oslo / Webster University, Vienna*

15:30-15:50 **European Citizen's Two Representation Channels and their Political  
Interplay in the EU's Multilevel Parliamentary Field**  
**Ben Crum / John Erik Fossum**  
*Vrije Universiteit, Amsterdam / ARENA – University of Oslo*

15:50-16:10 **A Crisis of Representing Europeans?**  
**Richard Rose**  
*University of Aberdeen*

16:10-16:30 **The Challenge of Representation in the EU**  
**Richard Bellamy / Sandra Kröger**  
*University College London / University Bremen*



16:30-17:00     **Comments**  
**Philippe C. Schmitter**, *European University Institute, Florence*  
**Carlos Closa**, *Consejo Superior de Investigaciones Cientificas, Madrid*  
**Aleksandra Maatsch**, *University of Bremen*

17:00-18:00     **Discussion**

**Friday 15 July 2011**

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**Panel II: The Role of Courts in Reconstituting Democracy in Europe: Unaccounted Players or Arenas for Citizen's Representation?**

*Chair: Norbert Reich*

09:30-09:40     **Introduction**  
**Norbert Reich**  
*University of Bremen*

09:40-10:00     **The Social Ideal of the European Court of Justice**  
**Dagmar Schiek**  
*University of Leeds*

10:00-10:20     **Constitutional Courts and European Integration. Constructing a Systemic Relationship**  
**Carlos Closa**  
*Consejo Superior de Investigaciones Cientificas (CSIC), Madrid*

10:20-10:40     **Lessons from Mass Litigation in and for Europe**  
**Harald Koch**  
*Humboldt University, Berlin*

10:40-11:00     **Coherence in Application of European Union Law: National Courts Perspective**  
**Tatjana Evas**  
*University of Bremen*

11:00-12:30     **Comments**  
**Norbert Reich**, *University of Bremen*  
**Richard Bellamy**, *University College, London*  
**Petra Guasti**, *Czech Academy of Sciences/Julius-Maximilian University Würzburg*  
**Discussion**

**Panel III: Combining or Colliding? Alternative Forms of Democratic Representation in the EU: Political Parties, Civil Society and the Public Sphere**

*Chair: Christopher Lord*

13:30-13:40     **Introduction**  
**Christopher Lord**  
*ARENA – University of Oslo*

13:40-14:00     **Euroscepticism in EU Elections and Referendums**  
**Hans-Jörg Trenz**  
*ARENA – University of Oslo/University of Copenhagen*

14:00-14:20     **National Parties, Parliaments and European Political Discourses**  
**Aleksandra Maatsch**  
*University of Bremen*

14:20-14:40     **Democratic Representation as Public Responsiveness. Political Parties, Civil Society, and the Mass Media in EU Policy-making**  
**Ulrike Liebert**  
*University of Bremen*

- 14:40-16:00    **Comments**  
**Philippe C. Schmitter**, *European University Institute, Florence*  
**Richard Rose**, *University of Aberdeen*  
**Martin Heidenreich**, *Carl von Ossietzky University, Oldenburg*  
**Discussion**
- 16:15-17:30    **Round Table: Lessons from RECON Research for the Reconstitution of Democratic Representation in the EU**

The workshop is open to public and free of charge but those interested should register by emailing Tatjana Evas (ta\_ev [at] uni-bremen.de) by 12 July 2011.