

# The European Citizens' Initiative: A New Model of Democracy in the European Union?

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## **Abstract**

The European Union's Lisbon Treaty introduced the European Citizens' Initiative (ECI) as a means of strengthening citizen involvement in EU decision making. It is in force since April 2012 and gives the right to at least one million citizens from at least seven of the EU's current 27 member states to request that the European Commission submits a legislative proposal on the issue of the initiative. However, the goal of the ECI is not only to strengthen participatory democracy in the EU. It also bears the potential for a more fundamental transformation of democracy namely in the direction of transnational participatory democracy.

The thesis starts with a historical and theoretical analysis of such notions as participatory and deliberative democracy, as well as democracy within the European Union. The author analyses also selected examples of national citizens' initiative and presents an in-depth analysis of how the ECI functions, the importance of civil society organisations in that context and what can be done to improve the tool. Based on that, the thesis tries to answer its main question: can the European Citizens' Initiative become a new and effective model of EU democracy, which will transform it into a more participative political system?

## **Keywords:**

European Citizens' Initiative; European Union; democracy; participatory democracy; deliberative democracy

## List of Abbreviations

AFCO	European Parliament Committee on Constitutional Affairs
ALDE	Alliance of Liberals and Democrats for Europe
CSO	Civil Society Organisation
EC	European Commission
ECAS	European Citizen Action Service
ECI	European Citizens' Initiative
EESC	European Economic and Social Committee
EP	European Parliament
EPP	European People's Party
EU	European Union
FCI	Finnish Citizens' Initiative
MEP	Member of the European Parliament
NCI	National Citizens' Initiative
NGO	Non-governmental organization
PETI	Committee on Petitions
TEU	Treaty on European Union

# I. Introduction

The definition of democracy has been disputed by philosophers and political scientists ever since the word was first used. Since then, there has been a myriad of connotations of what democracy is supposed to mean as well as theories that substantiate them (e.g. Satori, 1987; Kaiser, 1997; Cunningham, 2002; Teorell, 2006; Birch, 2007).

Still, there is little confusion on two basic principles of democracy: political equality among adult citizens and popular control of the institutions of government (e.g. Dahl, 1982; Arnot, 1991; Knight & Johnson, 1997; Post, 2006; Keane, 2009; Przeworski, 2009; Saunders, 2010; Citrin, 2018;). Recent history shows that more or less half of our planet's population have lived in a democracy in the last few decades, depending on how rigorously democracy is defined. Some scholars even claim that the default governance structure of new nations – and nations newly liberated from autocracy – has finally become democracy (Fukuyama, 1989; Fukuyama, 1995; Henning, 2017). Yet, the words of John Adams, first vice-president and second president of the United States seem to be now more accurate than ever: (...) “Remember, democracy never lasts long. It soon wastes, exhausts and murders itself. There never was a democracy yet that did not commit suicide” (...).

Over the years the word “democracy” has become a distraction with the illusion of being inclusive – many observers would agree that the legislative process in democratic countries often depends on bargaining among elites with the people occasionally determining which faction of the political elite sits at the high table (Covell, 1981; Du Toit, 1987; Tsebelis, 1990; Talbot, 1995; Highley, 2006). In that mood, the European Union (EU) has been facing accusations of democratic deficit for almost three decades (Geddes, 1995; Talbot, 1995; Pogge, 1997; Ward, 2002; Føllesdal, 2006). One of the key criticisms in this regard is that the EU is perceived by many as being too distant from its citizens. The gap between EU's elite of representatives and its citizens has been one of EU's main challenges since its creation and has led to numerous reforms in an effort to mitigate it. One has to mention introduction of direct elections to the European Parliament, creation of European

citizenship or implementation of EU petition, just to mention few of them. Parallel to that processes, scholarly debates on the notions of participatory and deliberative democracies have developed presenting an alternative (or an amendment) to a deficient system of representative democracy. These ideas have grown over the years focusing on a greater involvement of citizens in the political process with the desire to strengthen decision-making legitimization and to generate more socially desirable policy outputs (e.g.; Warren, 1993; Dryzek, 1994; Mather, 1995; Weithman, 1995; Fishkin & Laslett, 2008; Boussaguet, 2015; Marti & Besson, 2017).

Finally, after two decades of lobbying by civil society organizations a new participatory instrument was born: The European Citizens' Initiative (ECI). It was introduced by the Treaty of Lisbon and after two years of discussions and vivid debates became operational in April 2012. For the first time in the history of European integration the EU has incorporated a mechanism of participatory democracy into its primary law.

The ECI is one of four elements in Article 11 of the Treaty on the European Union (TEU). However, it should be seen in the light of Article 10.3 TEU, which provides that every citizen shall have the right to participate in the democratic life of the Union. That means that the ECI gives at least one million EU citizens the right to put forward a proposal for new European legislation to the European Commission, which by virtue of the European Treaties has a quasi-exclusive right of legislative initiative. Nonetheless, the Commission is not bound to pass the proposal on to the legislative bodies of the European Union, i.e. the European Parliament and the Council of Ministers.

While it shares some characteristics with existing democratic tools, the European Citizens' Initiative is in fact a one-of-a-kind instrument. The ECI's novelty has meant that decision-makers, bureaucrats and citizen users often hold differing and sometimes contradictory visions of its true nature. These fundamental misunderstandings and disagreements have unfortunately been embedded in both the design and application of the ECI's governing rules, as well as expectations of its users and EU institutions.



Specifically, the ECI's implementing rules are similar to those of a direct democracy tool -- which leads users to expect policy change. However, the Commission has treated successful ECIs as tools for public dialogue -- which leads citizens' groups to accuse the Commission of maladministration and disregard for democracy. By clarifying the true legal impact and political nature of the ECI, its implementing rules and the expectations of all involved can be brought into alignment.

The ECI, through its transnational vox civilis character, figures among the most important novelties in the Lisbon Treaty and in the long run may facilitate and accelerate the bottom-up building of a European demos. The question is, however, whether the mechanism of pan-European signature collection is strong enough to face the democratic challenges present in the EU, especially during the ongoing European crises.

This PhD thesis proposes a broad analysis of this new participatory tool used on the EU level. Named by the European Commission (EC) a "real step forward in the democratic life of the Union" and "a concrete example of bringing Europe closer to its citizens" (European Commission, 2010a), it generated a lot of enthusiasm among civil society representatives and regular citizens. However, the collision with political reality was quick and painful. The ECI uncovered its flaws and errors, which shake the declarations of a "real step forward". In order to address the issues that make the ECI ineffective, it is crucial to look at the instrument from a broad and historical perspective first.

This thesis defends and builds on a position represented by Brett Hennig (2017) who argues that "Electoral democracy is not a terminus. The struggle for a more legitimate forms of government will continue. The history of democracy shows that this very recent governmental form, which is less than a century old if we date it from the time of widespread universal adult suffrage, will surely mutate and evolve again." Based on that thought, the main research question of the thesis is: can the European Citizens' Initiative become a new and effective model of EU democracy, which will transform it into a more participative political system?

This central question raises several further questions that must be addressed within the thesis in order to provide an adequate answer: Is the ECI an efficient participatory instrument in its' current design? What can be done to improve it? Can it become a deliberative instrument? What is the relationship between the ECI and the European Civil Society? How the ECI relates with the notion of demoi-cracy?

In order to be able to answer these questions, the thesis is divided into two sections. The first one consists of chapters two to four and its aim is to give a theoretical and historical background of new models of democracy and one of its practical examples – a citizens' initiative. In *Chapter Two* I present the academic evolution of the notion of participatory and deliberative democracies. The aim of this part is to create a theoretical basis, which shows what are the roots of the idea of stronger engagement of citizens in the political life. The chapter departs from the tumultuous years of 1960's when the modern concept of participatory democracy was born, through the 1980's when deliberative alternative started to emerge, until recent times characterised by a more critical and reasonable approaches towards both concepts. In *Chapter Three* I focus on the evolution of democracy in the European Union and address the issue of European democratic deficit. My goal here is to analyse the ongoing debate on the democratic quality of the Union and to present arguments from various side of the academic spectrum. I also argue that the future of EU democracy is not solely dependent on two visions of either supranational or national democratic solutions. Hence, I present and analyse the concept of European demoi-cracy, which constitutes a possible "third-way". *Chapter Four* is no longer a theoretical or historical analysis, but a comparative one, focusing on presenting various examples of national citizens' initiatives with its' advantages and disadvantages. The aim of this chapter is to explore an empirical fundament for the European Citizens' Initiative including the national experiences, which might improve this European democracy instrument.

The second section consists of chapters five to seven and focus on the in-depth analysis of the European Citizens' Initiative. In *Chapter Five* I present (1) the historic background of the ECI, (2) discussions that preceded its creation, (3) specifics of how it functions, (4) what initiatives have been registered or rejected, and (5) what initiatives have been successful. This extensive analysis enables me to examine in *Chapter Six* the potential improvements

of the instrument. This part gives hands-on proposals on how to make the instrument more inclusive, effective and civically engaging. The goal of *Chapter Seven* is to examine the relationship between the ECI and the European Civil Society. Already before the ECI has become operational, many voiced concerns regarding the ability of spontaneous citizens' groups to successfully organise a Europe-wide initiative. The aim of this chapter is to discuss whether these voices were justified, and to what extent the ECI represents a participatory instrument accessible to all EU citizens.

Last but not least, in *Chapter Eight* I focus on the possible impact of the ECI on the future of EU democracy. Its aim here is to answer one of the research questions of this thesis of whether the ECI can save the European democracy? I argue in this part that the ECI can be creatively merged with the concept of European demoi-cracy, provided some conditions are met. Finally, *Chapter Nine* sets out the overall conclusions of the thesis with regard to the central research question and its underlying components.

## II. From participatory to deliberative democracy. Historical and theoretical approaches to new models of democracy

Since the 1960s, participatory discourses and techniques have been at the centre of decision-making processes in a wide range of sectors around the world. This phenomenon has been often referred to as the participatory turn (Bherer, Dufour, Montambeault; 2017). Over the last years, this participatory turn has resulted in creating a broad array of heterogeneous participatory instruments developed by a wide variety of organizations and groups, as well as by governments. However, as Bherer, Dufour and Montambeault notice, these experiences are often far from the original 1960s' radical conception of participatory democracy, which had mainly a transformative dimension. Its aim was mainly to overcome unequal relationships between the state and society and in consequence to emancipate and empower citizens in their daily lives.

In the last two hundred years, we have come to accept that democracy can only be organized as representative democracy. In particular, the US democracy was organized with a high dose of scepticism with regard to citizens' participation, which was visible, among others, in the institution of the electoral college (e.g. Diamond, 1977; Urbinati, 2006; Streb, 2015; Edwards, 2019). However, the ideas of more civic participation came to the fore in the 1960s, mainly in the context of the civil rights movement and as a critique of the US elite democracy. Similar ideas spread in Western Europe, where students' protests called for more participation in the post-war European democracies.

As Carole Pateman (2012) stated in her presidential address to the APSA: "Over the past two decades we have heard an historically unprecedented volume of talk about and praise of democracy, and many governmental, non-governmental, and international organizations have been engaged in democracy promotion." Still, it seems that theoretical discussions on participatory democracy continue to fall behind the pace of real-world

experiments. In result, one objective of this dissertation is to help fill this scholarly gap, drawing on empirical research as well as theoretical inquiry.

## **1. The Port Huron Statement – Beginnings of Modern Participatory Democracy**

Participatory democracy is a concept that has existed under various political circumstances since the Athenian democracy. The theoretical fundamentals of the notion have been built by Jean-Jacques Rousseau and later promoted by J.S. Mill and G. D. H. Cole, who argued that political participation is crucial for the development of a just society. Nevertheless, the dynamic popularization of the concept in the academic literature only began in mid-19th century. In the late 19th century, a small number of thinkers, including Karl Marx (1871) and Mikhail Bakunin (1871) began advocating for participatory democracy. However, it was only in the 20th century that practical aspects of participatory democracy once again began to take place, albeit mostly on a small scale.

“It was an age of courage and folly, of darkness and light, hope and despair. At marches and demonstrations around the world, the forces of order shot tear gas and bullets. The forces of disorder responded with bricks and Molotov cocktails. (...) Anarchy seemed the order of the day.” Although it seems like a corny introduction to a B-class science-fiction movie, this is how the Western world looked like in the 1960’s in the eyes of James Miller (1987: 3), Professor of Politics and Liberal Studies at The New School for Social Research. In order to fully understand the birth of new models of democracy in the second half of 20th century one has to go back in time to this turbulent episode of our history. It was a decade of constant turmoil related with the civil rights struggles in different parts of our world (Pateman, 1970; Grygieńć, 2017). An important time when generation of youth significantly impacted not only domestic, but also international politics.

On June 12, 1962, 59 people came to Port Huron, Michigan, USA to draft a platform for a new kind of democratic politics. Students, members of trade unions and civil rights activists gathered to prepare a manifesto for an organization called Students for a Democratic Society (SDS) (Hayden, 2012). As time has shown, this was the document which helped the

notion of participatory democracy come into widespread use (Mansbridge, 1983). However, at that time, the precise meaning of the term was still unclear. In fact, in the coming years it became even less well-defined, as it was being associated with nearly every form of organization that brought more people into the decision-making process.

SDS was a student activist movement in the United States standing in the forefront of the so-called New Left. They believed, that human beings were "infinitely precious and possessed of unfulfilled capacities for reason, freedom and love" (SDS, 1962; Kazin, 1969; Flacks, 1971; Kazin, 2012; Hayden, 2015a; Hayden, 2015b). This anthropological perspective led to the organization's belief that the only society in which mankind could fully live in freedom was a participatory democracy. In their Port Huron Statement, they sought for "the establishment of a democracy of individual participation, governed by two central aims: that the individual share in those social decisions determining the quality and direction of his life; that society be organized to encourage independence in men and provide the media for their common participation." They have proposed rather general, but at the same time universal aims of participatory democracy: "that decision-making of basic social consequence be carried on by public groupings; that politics be seen positively, as the art of collectively creating an acceptable pattern of social relations; that politics has the function of bringing people out of isolation and into community, thus being a necessary, though not sufficient, means of finding meaning in personal life; that the political order should serve to clarify problems in a way instrumental to their solution; it should provide outlets for the expression of personal grievance and aspiration; opposing views should be organized so as to illuminate choices and facilitate the attainment of goals; channels should be commonly available to relate men to knowledge and to power so that private problems--from bad recreation facilities to personal alienation--are formulated as general issues." (SDS, 1962)

The Port Huron Statement was primarily based on the feeling of personal helplessness and the lack of access to political decision-making taken over by the ruling strata (Hornel, 1952; Schrecker & Deery, 1994). As Gibson (2008: 96) notes: "Fifty years ago, the Americans witnessed a major out-break of political intolerance and repression. During this infamous period named after its leader, the Republican Senator from Wisconsin, only the most

centrist political differences were tolerated. To many, McCarthyism stands as one of the most shameful episodes of intolerance in modern American history.”

Those feelings dominated American society in the 1950s and resulted in a birth of a new generation of young citizens, who were thirsty of active civic life (Miller, 1987). The Statement seemed to characterize the 1950s as a period of apathy.<sup>1</sup> However, the power of the statement came not from its’ more or less detailed practical proposals, but from the call for a life and politics built on moral values as opposed to expedient politics. A significant objective of SDS was to create a prototype of participatory democracy. Paradoxically, the term “participatory democracy” was closer at that time to what we call now representative democracy, meaning the right to vote. As Tom Hayden (2012), one of the main authors of the legendary statement, pointed out: “participatory democracy was a psychologically liberating antidote to the paralysis of the apathetic “lonely crowd” depicted by David Riesman et al. in the 1950 sociological study by that title.” Participatory democracy at that time did not mean to abandon organizational structures of the usual sort, it was rather a concept of radical social change (Flacks, 1966). In fact, the vague definition of participatory democracy in the Statement was deliberate. It was an open concept with the potential to interest broader audience, an “invitation to embark on a shared adventure of political discovery” (Miller, 1978: 143).

The idea of participatory democracy could not be born without the fundamentals of Jean-Jacques Rousseau’s thought. One of his most important works “The Social Contract” published in 1762 is perceived as the theoretical cornerstone of more participatory democracy. His theory of social contract was based on the belief that legitimate and effective contract involves each person giving up all of his powers to everyone else (Cunningham, 2002). Rousseau believed that when the people are in legislative mode it is assumed that majority will expresses the general will. Although his theories became an important basis for many participatory democrats, at the same time, his ideas have been

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<sup>1</sup> The Port Huron Statement included the issue of apathy several times, including: „The apathy here is, first, subjective--the felt powerlessness of ordinary people, the resignation before the enormity of events. But subjective apathy is encouraged by the objective American situation--the actual structural separation of people from power, from relevant knowledge, from pinnacles of decision-making.”

heavily criticised for being exclusive, sexist (he excluded women from the social contract on the grounds that they are only suited to the service of men and eventually) and eventually undemocratic (Pateman, 1985; Kelly, 1987; Cunningham, 2002; Rosenblatt, 2002). What is more, his concept of self-rule was possible only under certain, relatively strict conditions. According to Rousseau, in order to create a fertile ground for participatory democracy one needs an appropriately sized political unit, relative social equality and sufficient cultural homogeneity. In that sense, he was surely a utopian, who knew that his ideas cannot be introduced universally (e.g. Straus, 1947; Wade, 1976; Miller & Miller, 1984; Bohman, 1996). Nevertheless, at that time his visions were in many aspects revolutionary and shed new lights on how democracy could or should work.

However, the modern notion of participatory democracy was neither born in Switzerland, homeland of Rousseau, nor on the turbulent streets of New York. It was the University of Michigan Professor, Arthur Kaufman, who in a 1960 essay, "Participatory Democracy and Human Nature", described a society in which every member had a "direct responsibility for decisions". Kaufman believed that the crucial justifying function of participatory democracy "is and always has been, not the extent to which it protects or stabilizes a community, but the contribution it can make to the development of human powers of thought, feeling and action. In this respect, it differs, and differs quite fundamentally, from a representative system incorporating all sorts of institutional features designed to safeguard human rights and ensure social order." (Kaufman, 1960: 272)

The concept of participatory democracy needed over a decade to become present in the scholarly debate. Many scholars tried to devise more or less accurate definitions, including provocative ones such as one by Arnstein (1969), who compared it to eating spinach: no one is against it in principle because it is good for you. Citizens' participation was defined by Arnstein as "the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parceled out. In short, it is the means by which



they can induce significant social reform which enables them to share in the benefits of the affluent society” (Arnstein, 1969).

As we can see the analogies with the Port Huron Statement are self-evident and gave important fundaments for further academic discussions on the issue. One of them focused on the notion of a “ladder of citizen participation”<sup>2</sup> proposed by Arnstein (1969), with the aim to acknowledge the gradation of citizens’ participation in contrast to the black and white concept of competition between representative and participatory democracy. At the same time, some scholars tried to find a stronger anthropological fundament for the definition of participatory democracy, meaning that “men must share in the decisions which affect their lives” (Richard Flacks, 1966). Having said that, in a participatory democracy man should be seen as a citizen and citizenship should be extended beyond the conventional political sphere to all institutions. Last but not least, some believed that “the theory of participatory democracy is built round the central assertion that individuals and their institutions cannot be considered in isolation from one another” (Pateman, 1970). The primary aims of participation in the theory of participatory democracy are therefore: inclusion meant as share of power, strengthening of social cooperation and solidarity, as well as citizens’ education and teaching deliberation (Florida, 2013; Grygieńć, 2017). These functions have to be seen in a very wide perspective, including both the psychological aspects and the gaining of practice in democratic skills and procedures. Participation has to refer to equal involvement in the making of decisions, and “political equality” needs to be connected to equality of power in determining the outcome of decisions.

## 2. The Transitional Phase

The first half of the 1980s can be seen as the transitional phase that took the notion of participatory democracy to the next level (Florida, 2017). Researchers started to directly or indirectly incorporate the deliberative view into the debate, further opening a new door in the research on new democratic perspectives (Barber, 1984; Mansbridge, 1983). Barber

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<sup>2</sup> According to Arnstein eight rungs on a ladder of citizen participation are: 1. Manipulation, 2. Therapy, 3. Informing, 4. Consultation, 5. Placation, 6. Partnership, 7. Delegated Power and 8. Citizen Control.

(1984) opted for the “politics in the participatory mode” instead of “participatory democracy” as such. By that he meant that public policy should be deliberated not by professional politicians but by an active, dynamically engaged citizenry concerned with bringing about what is best for all citizens. The concept of more participation in democracy derived from the critique focused on the fact that representative democracy puts to sleep citizens’ activity and narrows down their role to mere voters. The strong opposition to the representative liberal theory (Montesquieu, 1989; Marx Ferree; Gamson; Gerhards & Rucht, 2002), which claimed that public life is actually better off without the active involvement of citizens was inspired by Rousseau’s classical claims. As a consequence, limiting ourselves to just periodically evaluating our governors’, results in a dramatic impoverishment of democracy. Urbinati (2006) even claims that it is paradoxical to call this type of rule democratic, as the only moment the citizens decide directly is when they delegate legislative power. Popular sovereignty expressed by the act of voting appears much like a comet. It appears for a moment in order to disappear for a longer period of time. Hence, representation serves only the function to select those who will then decide, it is merely expedient to authorize those that will rule on behalf of the people. On that basis the concept of “strong democracy” emerged on “pragmatism” presented by such philosophical thinkers as William James, Charles Sanders Peirce, and John Dewey. However, paradoxically its’ theoretical fundamentals were general and weak. Strong democracy tried to “revitalize citizenship without neglecting the problems of efficient government by defining democracy as a form of government in which all the people govern themselves in at least some public matters at least some of the time” (Barber, 1984: XIV).

Gradually, the opinion that full participation of citizens is unrealistic started to become more present in the academic discussion. Strong democracy was not meant to cover all issues at all time in every political or social aspect of our lives. However, it aspired to include and involve all people some of the time in some of the responsibilities of governing (Barber, 1984). This moderate concept was seen by Barber as a realistic counterproposal to representative democracy. Interestingly, its fundamentals were laid over very critical opinions on representative democracy, including ones saying that to delegate, meant not only to cede power, but also to lose the very sense of civic autonomy (Barber, 1984). However, the idea was not to create a system where citizens are fully absorbed with

producing legislation and implementing laws, this would be both unpractical and impossible. Strong democracy was meant to lead to the usage of a decisional role and, thereafter, of a direct engagement and involvement in the implementation of those political choices. This perspective focused on direct decisional, as well as executive and operative functions, which naturally lead to privileging the local and communitarian dimension, where direct empowerment and community control is much easier from a social, as well as purely geographical point of view (Florida, 2017). It clearly refers to the city-state ancient Greek democracy, which gave some citizens the possibility to be directly involved in the political issues of the *demos* (Dahl, 1989).

Participative democracy could not survive only as a utopian and purely theoretical concept. Practical dimensions of new models of democracy in developing and growing societies became a crucial issue. Researchers wanted to show its' practice, especially the dilemmas, difficulties and conflicts it entailed (Mansbridge, 1983; Florida, 2017). However, instead of speaking about one participatory democracy the notion of "participatory democracies" emerged. Mansbridge (1983: 40) recalled that "in the late 1960s and early 1970s, thousands of small collectives that sprang up across the United States called themselves 'participatory democracies. They used the term not just as a slogan, but to define themselves as organizations that made decisions: 1) so that the members felt equal to one another; 2) by consensus rather than majority rule; and 3) in face-to-face assembly, not through referenda or representation".

On that basis, the concept of "unitary democracy" was introduced into the debate by Jane Mansbridge. A model which was constructed in the opposition to "adversary democracy", also known as divisive democracy, "where the diversity and plurality of interests and inequalities of resources make it necessary to ensure that each individual has equal power in the collective decision-making process" (Florida, 2017: 20). In fact, the idea was unconsciously adopted by the participatory democrats of the late 1960s and early 1970s. It was a utopian concept, where "people who disagree do not vote; they reason together until they agree on the best answer. Nor do they elect representatives to reason for them. They come together with

their friends, to find agreement. This democracy is consensual, based on common interest and equal respect. It is the democracy of face-to-face relations. Because it assumes that citizens have a single common interest” (Mansbridge, 1983: 3).

As far as some blamed “thin” liberal democracy for its’ excluding character (Bakunin, 1871; Barber, 1984; Hartz, 2003), other did not put an equal sign between adversary democracy and democratic elitism (Mansbridge, 1983). In that sense adversary democracy is fully consistent with, and may well require, the active participation of all citizens to ensure that their interests are protected equally. Unitary democracy did not mean simply a widespread participation. Paradoxically, the concept took into consideration situations when interests coincide, and participatory procedures cannot be dragged endlessly. It was a very practical approach towards participatory democracy, stating that more debate will not usually produce agreement, and it might be better to cut short a potentially bitter debate with a vote. Unitary democracy underlined the need of passion and emotions in democratic procedures, instead of impersonal and strict mechanisms for handling disembodied conflicting interests.

In fact, the two contrary models of democracy were not in conflict. “Unitary” and “adversary” were two adjectives which meant different, but still democratic, decisional procedures. The difference between them concerns the interests at stake and their conflicting and/or communal structure. The concepts were not superior to each other. On the contrary, even the ideals typical for an adversary democracy acquire a strong normative projection. As Florida (2017) pointed out: “just because there may be a radical, irreconcilable diversity of interests and values, this view of the democratic ideal requires that equal respect and protection be accorded to all interests at stake, even in terms of social and economic resources”.

The adjectival couples, that is thin-strong and unitary-adversary democracies had much in common. They were both creating new and refreshed theoretical fundamentals for the notion of participatory democracy, strongly based on the fundamentals of the Port Huron Statement. Their visions tried to prove that citizens should be a key element of democracy, however not primarily as delegators of power, but more as direct participants of the

decision-making processes. Certainly, the devil is in the detail, and those approaches had some crucial differences, partially described above. Nonetheless, both of them touched upon issues that soon constituted the new theoretical paradigm of deliberative democracy. In consequence, those two concepts gave an important basis for such practical issues like: the scale and dimensions of deliberation, the costs and benefits of participation, the quality of dialogue, the polarization occurring in face-to-face sittings, etc. Those aspects became a fertile ground for a new model of democracy.

### **3. The King Is Dead, Long Live the King!**

In the second half of 1980s the theoretical model of participatory democracy experienced a definite decline. The ideas that grew out of the political and intellectual ferment of the 1960s did not find any firm and sustainable political platform on which they could develop (Hauptman, 2001). Participatory democracy was shadowed by its representative older brother.

In the multi-layered complexity of our modern reality representation has its crucial function, which focuses on carrying out socially necessary tasks on behalf of larger number of citizens who cannot carry out those tasks as a larger non-hierarchical collectivity. In that sense, representation gives large communities creative structure and simplifies decision-making processes. In fact, this developing complexity has pushed democracy into a channel of representation mode, which it cannot leave until now. In consequence, a new concept of “pseudodemocracy” was introduced (Green, 1985). It was a more explicit version of criticism towards “thin” liberal capitalism democracy and a critique on the notion of “representation” or to be more precise “pseudorepresentation”. “Real democracy” meant extending as much as possible institutions of participatory decision-making, at the same time underlying that they cannot be the whole of democratic process. In that sense, it was far from Barber’s radical concept of micro-communitarian participatory democracy, which “requires that membership of a political community is a constitutive attachment, and it presupposes participation in self-rule seen as the essence of freedom” (Pietrzyk-Reeves, 2006: 48). The purpose was to create a well-designed combination of participatory and

representative democracy on a local level, something which later became known as “semi-direct democracy” (Kobach, 1994; Uziębło, 2009). Nevertheless, according to Green (1985), neither model of democracy will work unless the problem of “pseudorepresentation” is resolved.

The concept of “pseudorepresentation” is not surprising. It criticises the disconnection of political elites from ordinary persons. What is nondemocratic about this model “is that it turns political access and influence into an episodic and occasional or even non-existent event in the lives of most people” (Green, 1985: 179). The solution did not, however, go into the direction of participatory democracy, but into more effective and bottom-up model of representative democracy, which would include more debate on political issues as well as higher and more egalitarian standards with regards to the election procedure of our governors.<sup>3</sup>

On the basis of the disappointment towards representative democracy, however, parallel to the declining concept of participatory democracy, the idea of the “deliberative democracy” has emerged (Bassette, 1980; Habermas, 1981; Dryzek, 1987; Manin, 1987; Cohen, 1997). It needed almost a decade to become discussed in and beyond the academia circles (Manin, 1987; Cohen, 1989). The concept was mainly built on the opposition to aggregation and strategic behaviour encouraged by voting and bargaining (Bohman, 1998; Mouffe, 2000). Bassette (1980) explicitly created it to oppose the elitist interpretation of the American Constitution. In his 1980 article, he proposed a provocative “hypothetical test”. A situation is imagined, in which citizens possess the same knowledge and experience as their representatives. What is more, they are able to devote the same amount of time reasoning about the relevant information and arguments presented in the legislative body. The fundamental question is, would they reach fundamentally similar conclusions on public policy issues as their representatives? If the answer is yes, then the result is basically democratic, although the outcome may differ substantially from the citizens’ original inclinations or desires.

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<sup>3</sup>Issues related with representative democracy were later elaborated by Bernard Manin in his book „The Principles of Representative Government”, Cambridge University Press, 1997.

This procedural perspective became later an important, one could say crucial, element of the deliberative model of democracy (e.g. Estlund, 1993; Elster, 1998; Fishkin, 2009; Baynes, 2010). Cohen (1997: XV) stressed that “outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals”. The procedural approach has been also praised by Habermas (1996: 110) who wrote: “Only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted.” Knight and Johnson (1994) viewed deliberation as an idealized process based on fair procedure thanks to which political actors engage in reasoned argument with the aim of resolving political conflict. Thus, the bright side of ideal procedural conditions is the fact that the reached decision is fair and accepted by all. However, the problem lies in its political justification. Ideal procedures do not show why such decisions are good or not.

The idea of deliberative democracy was based on such classical liberal thinkers such as aforementioned Jean-Jacques Rousseau as well as modern thinkers such as John Rawls. In fact, the former used the term deliberation in an opposite manner to how it is perceived nowadays, that is to say, he saw it as pertaining to the “decision”, rather than decision-making process. The “deliberations of the people” (Rousseau, 1762/2003) referred to the choice that people make, and not to the process that leads to these choices. Interestingly, Rousseau saw danger in discussions and communication between citizens. He was of the opinion that persuasion and the power of rhetoric are a great danger for democracy. His criticism towards deliberation came however from an idealistic concept, which says that citizens are already convinced of their decision, while taking part in a decision-making process. Therefore, what is evident and simple should not be deliberated. This concept was later elaborated and led to the conclusion that legitimation of political power and the examination of the justice of institutions should be viewed as public process open to all citizens (Rawls, 1971; Benhabib, 1996). The notion of “public reason” came to the fore. It represented “the reason of equal citizens who, as a collective body exercise final political and coercive power over one another in enacting laws and in amending the constitution” (Bohman & Rehg, 1997: 94). However, the Rawlsian model of public reason had some crucial differences with the model of public deliberation. Rawls restricted the usage of

public reason to deliberation on specific subject matters such as “constitutional essentials” and questions of basic justice (Benhabib, 1996: 74). He saw it not as a process of reasoning among citizens, but as a regulative principle imposing limits upon how individuals and institutions should reason about public matters (Benhabib, 1996).

Certainly, political decision-making is by its nature always a choice under uncertainty (Manin, 1987). There is no reason to assume that individuals have from the start of a deliberation process a complete set of preferences. With the development of deliberation procedures, it is quite clear that the individual may discover that his or her original opinion was nothing more than a prejudice and decide to change it. Hence, deliberation can be seen as a process during which the will formation takes place. It is the particular moment that precedes choice, and in which the individual contemplates different solutions before settling for one of them. Cohen (1989) used the concept of deliberation and combined it with democracy. Deliberative democracy was supposed to be an “ideal of a democratic association in which the justification of the terms and conditions of association proceeds through public argument and reasoning among equal citizens”. Furthermore, he pointed out five main features of deliberative democracy: (1) A deliberative democracy is an ongoing and independent association, whose members expect it to continue into the indefinite future. (2) The members of the association share the view that the appropriate terms of association provide a framework for or a result of their deliberation. (3) A deliberative democracy is a pluralistic association. (4) The terms of the association should not merely be the results of members’ deliberation, but also be manifest to them as such. (5) The members recognize one another as having deliberative capacities.

Introduction of deliberative democracy challenged the fundamental conclusions of Rousseau and Rawls and gave a new perspective on decision-making in democracies. Legitimate political decision would not necessarily have to represent the will of all, but rather resulted from the deliberation of all. In this sense, the process itself is highlighted and not on the final political outcome resulting from it. Argumentation, information, debate, those were the key elements of a legitimate democratic decision-making process.



In the 1990s, scholars continued to deepen the concept of deliberative democracy. Some saw deliberative democracy as “a popularly based system or practice of fundamental law-making that meets a threshold standard of overall deliberativeness”, and moreover a “procedural ideal correlative to a bottom-line moral demand for political self-government by the people—where <by the people> is taken to mean <by everyone>” (Michelman, 1997: 149). For instance, Gaus proposed three ideals of deliberative democracy: (1) the *Ideal of Reason*, which directly refers to Cohens’ concept; (2) the *Ideal of Public Justification*, which means that a policy is justified only if it can, in some way, be embraced by all members of the public; and (3) the *Regulative Ideal of Real Political Consensus*, which means that “public discussion must remain open until common conviction is reached” (Gaus, 1997). This warrants the conclusion that deliberative democracy requires a particular, relatively complex sort of equality. As the results produced by democratic arrangements are always uncertain, such arrangements obviously cannot provide the equality of outcome. Democracy, then, requires some version of equality of opportunity (Nickel, 1987; Edwards, 1990; Fleurbaey, 1995). That means that democratic deliberation should be based on equal opportunity of access to political influence. The importance of such equality was already underlined by Cohen (1989: 33) who wrote: “[t]he participants are substantively equal in that the existing distribution of power and resources does not shape their chances to contribute at any stage of the deliberative process, nor does that distribution play an authoritative role in their deliberation”. Furthermore, deliberation can be treated as democratic, as long as it is based on a process of reaching reasoned agreement among free and equal citizens (Boheman, 1997). The more equal citizens are in the deliberation process the more democratic it is.<sup>4</sup> In fact, legitimacy in complex democratic societies must ought to emanate from the free and unconstrained public deliberation of all about matters of common concern (Benhabib, 1996).

#### 4. New Models of Democracy – Challenges and Chances

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<sup>4</sup> According to Rousseau, inequalities of wealth produce problems for democracy only when there are extreme differences: “No citizen should be rich enough to be able to buy another, and no poor enough to have to sell himself.” In: Jean-Jacques Rousseau, *The Social Contract* (New York: Pocket Books, 1967), chapter 9, especially p. 55.

From a democracy theory perspective, it is difficult and seems almost irrational to oppose participation and deliberation. Both are designed to find a way to address our concerns, resolve disagreements, and overcome conflicts using arguments supported by reasons to our fellow citizens. As Sanders (1997) states, deliberative democracy offers morally justifiable and rationally produced solutions to vexing political problems. In fact, deliberative democracy is a normative ideal of democracy (García Alonso, 2012). In that sense, it can be also viewed as an ideal of political legitimacy. Remodelling our politics means making them more deliberative (Gutmann and Thompson, 1996). Elster (1998: 112) claims that under deliberation “there would not be any need for an aggregation mechanism, since a rational discussion would tend to produce unanimous preferences”.

However, it is not yet certain how participatory and deliberative democracies can be introduced into today's mass democracies described by Ortega (1997) as “hyper-democracies”. Max Weber (1958) believed that engaging masses into politics makes them more politically responsible. At the same time, he was not enthusiastic about the idea of self-government by the people (Müller, 2016). According to Weber (1958), more direct democracies can be only introduced in small societies, where people know each other, as sentiment also shared by Rousseau. Weber (other than Rousseau) was therefore in favour of the representative model, as a more practical and in consequence more realistic one in mass societies.

Returning to theory, deliberation as well as participation are supposed to be processes of political decision-making where citizens are not excluded (Sanders, 1996). Their aim is to advance all citizens intellectually, as well as morally or civically. Some scholars believe that participation and deliberation are the best tools to teach us about the political concerns of other citizens and encourage mutual respect (Barber, 1984; Elster, 1998). However, it would be a misunderstanding to consider that these potentially beneficial results are automatically generated from any process of deliberation. In fact, there is nothing democratic about deliberation as such. A solitary individual, an oligarchy, or a despot can also deliberate (Chambers, 2012). Therefore, deliberation is democratic only if it is undertaken by a group of equals faced with a collective decision.

Nonetheless, this utopian condition of universal equality among all faces strong criticism, especially from theorists of social complexity (Wojciechowska, 2010). In fact, unanimous democratic decisions might inspire less trust and confidence than democratic outcomes which were approved with an active minority which voted against (Elster, 1998). This leads us to the unrealistic assumption that participants of any deliberative platform will behave unselfishly and rationally, even if it was in principle possible and normatively desirable to do so. One of the possible consequences of deliberation is that people's preferences may change. What is more, even if our opinions are consistent, other people might have the persuasive power to change them or to make us believe that they are false (Perote-Peña and Piggins, 2011). As a consequence, striving for democratic discussion to be rational, moderate, and unselfish implicitly excludes public talk that is impassioned, extreme, and the product of particular interests (Sanders, 1997).

Political practice shows that many citizens act in a conformist way, often ready to accept the majority view. This is because either they are not strong and confident enough to stand the pressure and reject it, or because their preferred option is seen by them as infeasible and gradually embrace the majority's choice as their own. Hence, critics of deliberation underline that the apparent commitment to equal consideration of everyone's views on their merits in fact masks the domination of the process by the most privileged (Mouffe, 1999; Fishkin & Laslett, 2008; Fishkin, 2009; Fishkin, 2011; List, 2013).

Critics of deliberative democracy (Callan, 1997; Ruitenberg, 2009, 2010; Backer, 2017) indicate also the issue of difficulty to reach consensus in complex political environments. Politics become more and more complicated, touching on problems which are difficult to understand for most of citizens. In this vein, already the 19<sup>th</sup> century Walter Bagehot (1867) rightly noted that strong forms of political power, such as monarchy, are popular among people, because it is easier to understand them. In practice, it happens often that deliberative processes are concluded with common agreement only with regards to trivial issues, whereas "real problems" are always solved in smaller circles (Krzewińska, 2016). Other question concerns the (dis)satisfaction resulting from decisions made through deliberative procedures. Is it actually possible to incorporate deliberative democracy into

real political life, although its core idea is to find solutions which satisfies all? Or maybe a fair delineation of differences is already a deliberative success?

Potz (2010) believes that the way to bring citizens closer to democracy, to restore their trust in its institutions and to motivate them to engage in public life is independent of more opportunities to debate. In the first place, it is crucial to give people more power, rather than opportunities to debate. As soon as they are empowered and enabled to make policy decisions (as opposed to electoral decisions only), the possibility that the exchange of views and opinions will be more fruitful grows. Therefore, “the question is not whether discursive democracy can become the practice of complex societies but whether complex societies are still capable of democratic rule” (Benhabib 1996: 84).

A further issue is, whether deliberative models of democracy should apply to all institutions of our democratic life. This approach was heavily criticized by Jürgen Habermas (1996), one of the main supporters of deliberative democracy. He argues that if deliberative politics is supposed to be incorporated into a structure shaping whole of society, then the “discursive mode of sociation expected in the legal system would have to expand into a self-organization of society and penetrate the latter's complexity as a whole”. According to Habermas, this is impossible, for the simple reason that democratic procedure must be embedded in contexts it cannot itself regulate.

In the course of further research on the topic at hand, the criticism of the universal applicability of deliberation has become more common (Dryzek, 2002; Miller, 1993). Deliberative democracy was supposed to be rooted primarily in institutions working in the domain of civil society. It was seen less as an instrument of changing institutions of the modern state into big discussion forums. The advantages of deliberation were trusted to those citizens who have knowledge about the given subject or those affected the most by the decisions to be made. This could warrant the conclusion that transformation of representative democracy into participatory or deliberative democracy does not require solely the change of institutions and procedures. It is the citizen who has to be changed in the first place. As a consequence, one could argue that new models of democracy impose

unrealistic conditions on citizens - an (un)active citizen must become a “hyper-citizen”, interested and competent in all discussed issues (Gałkowska & Gałkowski, 2010).

Last but not least, a further core question is whether these new models of democracy can produce more legitimate outcomes. Bohman (1997: 407) claims “that the fundamental idea of democratic legitimacy is that the authorization to exercise state power must arise from the collective decisions of the members of a society who are governed by that power.” In that sense, participatory and especially deliberative democracy moves us closer to the idea of comprehensive democratic legitimacy. A political outcome will be legitimate once it “survives” the deliberative process. This is because it is collectively produced by the sort of reasoned argumentation under fair procedures that define deliberation as a critical ideal (Knight and Johnson, 1994). What is more, deliberative freedom is based on the assumption that citizens submit only to decisions that are made through a deliberative process in which they have been able to take part in giving and responding to reasons (Rostbøll, 2008). At the same time, the deliberative attitude does not presuppose the existence of an objectively best answer (Estlund, 1993). Even more, more participatory or deliberative democracies do not give best answers *per se*. But their priority is to be more inclusive, and therefore create more legitimate decision-making procedures, leaving the accuracy of those decision solely to the citizens.

## 5. Audience Democracy

One cannot analyse different models of democracy without considering the dynamically changing political and social reality we live in. The increasing dependence of the political parties on mass media and political communication experts has led to the transition of representative politics from 19th-century parliamentarism and 20th-century party democracy formats to ‘audience democracy’ (Manin, 1997). Political parties and elected representatives progressively lose control over the management and even control of their constituents and face difficulties to pre-empt the reactions of their voters. Subsequently, the formal principal–agent relationship that is underlying promissory representation based on the mechanism of aggregating interests tends to shift to the more informal mechanisms

of: anticipatory representation (media observation and anticipation of audience attitudes and preferences); gyroscopic representation (media-generated images and generalized trust towards selected representatives); or surrogate representation (the performative act of representation, through which a particular person claims to speak for somebody taking account of the rules for creating mass media attention).

Established representative systems, within the nation-state and beyond, are even more challenged by the digitalization of traditional media spheres and the practices of publishing, sharing and commenting political news online. In cyberspace, political communication and debates are increasingly unbound from the control of established political actors and professional journalists, who have traditionally provided a 'representative sample' of political news to the attention of a mostly nationally confined audience (Michailidou and Trenz 2012).

Transnational governance further disempowers formal constituents (e.g., national electorates) as agents of authorization and control and facilitates the formation of new audiences, which transcend formal constituencies. The flip side of this is that political parties are also disempowered as representative bodies, as they remain anchored in the nation-state framework and neither show much initiative, nor have the capacities to act as interest aggregators in the European arena. Instead, collective-interest representatives are replaced by self-proclaimed universal common-good defendants like transnational nongovernmental organizations (NGOs) and their aspiration to represent global (or cosmopolitan) concerns. (Michailidou and Trenz, 2013).

The fact that audience democracy has signaled the transfer of political debate from "the backrooms of parliamentary committees and the central offices of parties and associations" (Kriesi, 2004, p. 184) to the public (media) sphere widens the possibility of public action, or as Kriesi puts it, "if the political actors are more frequently going public, they are also much more frequently challenged by the public" (2004, p.185). This makes audience democracy more unpredictable and volatile, as it is significantly more difficult to anticipate public support, but at the same time media communication and mobilization have become core components of representative governance.

## 6. Criticism of New Models of Democracy

The dynamic development of new models of democracy has evolved parallel to criticism towards those ideas. The reasons behind fast expansion of such concepts as participatory or deliberative democracies are various (Donovan & Karp, 2006). Some see it as a result of an elite response to popular demands for new forms of participation (Budge, 1996; LeDuc, 2003: 30). Other (Norris, 1999; Inglehart, 1999) suggest that these demands come from the so called “disaffected critical citizens”, who are losing confidence with representative government and conventional modes of politics, at the same time retaining a strong commitment to the principles of democracy. The spread of various direct democracy models and instruments, such as the rise of citizen’s budgets (Sintomer, Herzberg & Röcke, 2008; Sintomer et al., 2012; Sintomer, Röcke & Herzberg, 2016) can be also linked to a rise in dissatisfaction with governments, however a disaffection that corresponds with either a lack of enthusiasm for classic democratic principles, or with a lack of interest in participatory politics in general (Dalton et al., 2001).

However, parallel to the constant and dynamic development of participatory and deliberative democracy models, they also face a lot of criticism. In fact, during the first part of the twentieth century, citizen participation which exceeded periodic voting in elections, was seen as something contrary to democracy. Schumpeter (1943) criticised participatory processes as empirically unrealistic in large societies where conditions were much different to those presented by classical scholars. He disputed the idea that democracy is about values or fundamental principles, by stating that it is simply a method or a process for selecting elites to make decisions. The essence of democracy was to be found in “that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people’s vote” (Schumpeter, 1943: 269); that is to say, in the competition for leadership. In his vision participation was reduced to simply the choosing of representatives, a mechanism for securing legitimacy and accountability. Any form of participation which went beyond the formal exercising of the vote in elections were perceived as suspicious attempts to exert control, undermining

the notion of leadership, and distorting and destabilising democracy. Schumpeter's views did not survive the test of time. Leaving democracy to the sole responsibility of elites eventually weakens it, or even terminates it (Gutmann and Thompson, 1996; Lijphart, 2003). Nevertheless, the development of participatory and deliberative democratic instruments created new issues and challenges.

The concept of constant trying to reach consensus and unanimity proposed by new modes of democracy is seen by some as an illusion and should be even seen as fatal for democracy (Mouffe, 1993). Moreover, in a liberal-democratic society consensus is - and will always be - the result of a hegemony and the crystallization of power relations (Mouffe, 2000). Therefore, the pursuit of common agreement and harmony is not only utopian, but also noxious for democracy. In fact, conflicts and confrontations indicate that democracy is alive and inhabited by pluralism (Mouffe, 2000). However, it has to be noted that deliberative democrats do not exclude the existence of conflict in political debate. However, they focus on the procedural aspect of decision-making. Habermas (1996) believes that it is reason that leads to good solutions, yet democracy is not only based on the right procedures, independently of the practices that make possible democratic forms of individuality. Democracy needs more attunement (*Einstimmung*), fusion of voices made possible by a common form of life, not mutual agreement (*Einverstand*), product of reason - like in Habermas (Mouffe, 2000).

Although participatory and deliberative democracies by definition ought to include and integrate, in fact sometimes they lead to even stronger marginalization, empowering the most active citizens. We tend to forget about the integrative role that conflict plays in modern democracy. Debate about possible alternatives is crucial for democratic society and it must provide political forms of collective identification around clearly differentiated democratic positions. Consensus is no doubt important and necessary, but it must be accompanied by dissent (Mouffe, 1993). This discord comes in one package with inequality, even in modern democratic countries, where a universal human equality has been established (Schmitt, 1923). There is no democratic society where absolute equality of persons exists. There is always a category of people who are excluded as foreigners or children. Therefore, what is needed is a hegemony of democratic values, which requires a



multiplication of democratic practices, institutionalizing them into varied social relations, something that Mouffe calls a “radical democracy” (1993).

Democracy is a platform of conflict between various majorities and minorities, depending on the issues to be decided at the polls. In fact, in representative democracies the tyranny of the majority is potentially much more possible than in participative or deliberative models of democracy. Contradictory to what Mouffe states, studies have shown that direct democracy gives (social) outsiders and marginal groups a platform to propagate their ideas and to be heard (Höglinger, 2008). Therefore, new modes of democracy create additional political arenas outside of parliament (Palinger, 2013). Schmitter and Karl (1991: 78) note that, “however central to democracy, elections occur intermittently and only allow citizens to choose between the highly aggregated alternatives offered by political parties, which can, especially in the early stages of a democratic transition, proliferate in a bewildering variety.” What is more, citizens participation in these new political arenas increase their competences and potentially can lead to a situation where participation in the political process spills over into other arenas of social life (Diamond, 2003). Civic engagement, understood as participation in voluntary associations and community networks or informal groups, empowers trust, reciprocity, and cooperation, which in result reduces cynicism, encourages political participation, and facilitates economic development, democratic stability, and the resolution of social problems (Diamond, 2003).

Some scholars look at this argument also from a totally different perspective, claiming that people are not competent enough for direct democracy (Hartz, 2003; Geissbuehler, 2014, Backer, 2017). Due to the constant change of our complicated global multilayer reality, direct democracy on a wider scale is simply impossible and ineffective. The alleged lack of political understanding and cognitive capacities of the “common” citizen makes deliberative democracy a continuous rally, without concrete decision-making (Brennan, 2009; 2011; 2017). According to the critics, the “average” citizen is disinterested in politics and not capable of grasping complex political problems, therefore he is not able to take reasonable political decisions (Hibbing & Theiss-Morse, 2002).

Both of those arguments assume that people are too thoughtless or too disinterested for direct democracy. On the one hand, they are unable to reach in reasonable time effective solutions. On the other hand, they lack knowledge and competence to find those solutions. Matsusaka (2005: 198) claims that “in any case, the argument that voters are incompetent and uninformed would seem to cut against democracy in general, rather than against direct democracy alone”. He also argues “that, if anything, uninformed voters are more likely to make mistakes when voting on candidates than ballot measures because candidates represent bundles of issues and characteristics, while ballot propositions typically involve only a single issue.”

The “too stupid for direct democracy” prejudice implies wrongly that politicians always know better than the “average” citizen, that they are always more competent on all issues and that they always take the “correct” decisions. Empirical research has proved that at least the citizens who regularly go to the polls are well informed. Researches (Baynes, 2010; Potz, 2010; Linder, 2011) show that they know the issues, frequently discuss politics and policies, and they consult a wide array of sources of information. Direct democracy could help citizens to inform themselves about politics and policies, to discuss political issues, to join interest groups and to participate.

## **7. Conclusions**

The idea that political decisions in a democratic polity should be reached through a process of deliberation among free and equal citizens is not new. It has accompanied democracy since its birth in fifth-century Athens. Democracy without citizens’ participation stands on shaky ground. People themselves are the foundations on which a democratic society rests. Democracy’s quality can be judged by how citizens relate to one another, and how they nurture the values and ideals that are meant to guide and shape their communal life (Jentges, 2013). The less participation in political deliberation, the more our politics become shrill and less balanced. Putnam (2003: 19) argues that “deliberation is the most appropriate way for citizens collectively to re-solve their moral disagreements not only about policies but also about the process by which policies should be adopted”. Moreover,

talking about strengthening participation in liberal democracies can be seen as a kind of aberration. A sane democracy requires by its very definition participation of citizens. It is citizens' fundamental right, not duty. Hence, participation should be viewed not as a struggle for the right to participate, but the way to execute it (Prośniewski, 2016; Grygień, 2017).

The two alternative or complementary models of democracy – participatory and deliberative - described above ought to play a much stronger role in the discussions on the future of local, national and European democracy. They both present inclusive features, which are of great value in today's political life, as they engage the unengaged citizens. On the one hand, participatory democracy is based on the direct involvement of citizens who exercise some power and decide issues affecting their lives. On the other hand, deliberative democracy is founded on argumentative exchanges, reciprocal reason-giving, and on the public debate which precedes decisions (Florida, 2017). Although participatory and deliberative democrats are not unified on how to implement both of those models, they agree that today's dominant model of representative democracy needs reform which will activate and include larger number of citizens in the decision-making processes.

At the same time, these new modes of democracy face a lot of criticism, often well grounded. Are they more effective than representative democracy? Can deliberative democracy function beyond local polities? Is reaching consensus possible in today's dynamic and fast political reality? The fact is that in majority of modern societies which are becoming more and more complex one will find some kind of popular assembly (parliament). The basic political power architecture in modern states is bound to be representative. Yet, finding weak points in representative democracies is not difficult. Alienation between elites and masses, citizen passivity and absenteeism, or lack of responsivity on the part of the political elite. These are just few out of many disadvantages, which eventually lead to weakening of democracy. In that sense, direct modes of democracy seem intuitively to offer a remedy for these issues (Johnston, 1996; Dalton, Burklin & Drummond, 2001; Lupia & Matsusaka, 2004; Donovan & Karp, 2006; Bengtsson & Mattila, 2009; Palinger, 2013).

The conceptual evolution of participatory and deliberative democracy shows an interesting historical perspective on the ongoing academic discussions related to the potential introduction of both models. Since the 1980s, a number of participative and deliberative instruments have been tested and introduced in democracies around the world. However, most of them were organised on a strictly local, at best national level. This could confirm Dahl's (2000) opinion that smaller political organisms create more participative and deliberative opportunities. Nevertheless, and perhaps exactly because of that, the European Citizens' Initiative (ECI) can be seen as an important democratic innovation, which for the first time engages masses in transnational participatory democracy. An instrument which can give answers to doubts whether participatory or deliberative democracy can be successfully introduced in large transnational communities.

### III. The European Union's Democracy- From Top-down to Bottom-up? Not yet.

#### 1. European Integration as a Permissive Consensus

More or less three hundred years ago David Hume (2006, p. 37) asked with surprise why so many people let themselves be governed by so few. His question seems still important and unanswered. In fact, the political process of European integration, although innovative and for many exemplary, focuses that surprise as none other democracy. Europe's future after the Second World War started as a new chapter. The six ministers responsible for the creation of the Coal and Steel Treaty in 1957 started negotiations by signing a blank sheet of paper (van Middelaar, 2013). The decision has been made before any concrete proposals were worked out showing on the one hand political determination concerning integrative steps. On the other hand, the first steps of European integration have been taken without any participation of citizens making it a model example of a top-down political solution.

At the time when across the Atlantic, Students for a Democratic Society created ideational basis of participatory democracy, Europe was focused on economic integration. European political elites did not focus on the fact that national democracies become gradually more interdependent. Moreover, the aspect of legitimacy and participation was not seen as important at that time. In fact, the issue of democratic legitimacy of decisions made at the European level started to emerge in the academic and public sphere only in the 1990s. Certainly, it is understandable, that in the aftermath of the Second World War, citizens priorities focused on peace and prosperity and democracy was to be consolidated in a number of European nation-states first. Political disagreements were directed and negotiated through intergovernmental channels. As a consequence, European integration has been a product of intergovernmental treaties. The institutional outcome was a transnational delegation of powers combined with shared sovereignty in decision-making procedures. This however was dissonant with the intergovernmental legitimation theory of popular sovereignty (Beetz & Rossi, 2017).

The so-called founding fathers of the European Union – for instance Jean Monnet, a French civil servant who was never elected to office – envisioned European integration as a rather technocratic project focused on a top-down management of European economy, without stronger democratic roots. Many EU leaders from Monnet onwards, it has been argued, were even frightened of democratic and participatory politics (Marquand, 2011, p. 10). The influence of the “peoples of Europe” was supposed to be limited to the indirect election of national governments, and the European Assembly – as the European Parliament (EP) was first known – only had a consultative role in the decision-making processes. The largely passive role of citizens in the integration process was described as a “permissive consensus” (Lindberg and Scheingold, 1970, p. 62). A correspondence between the concept of John Stuart Mill (1993), who believed that free institutions are next to impossible in a country made up of different nationalities, and a belief that a legitimate, stable and well-functioning polity is based on a strong relation between citizens and the state (Kern, 2017). The core of this consensus relied on the problem-solving capacities of the EU. The key for further integration was to create a mechanism of effective policymaking, without focusing on its legitimacy.

Abraham Lincoln believed that democratic legitimacy consists in “government by the people, of the people, and for the people”. On that basis, one can highlight the distinction between the “input” democracy – government by the people, focused on the procedures that allow for citizen participation and input into the democratic process – and the “output” democracy – government for the people, focused on government effectiveness and performance (Scharpf, 1999). Dahl (1989) is of the opinion that political representation contains both - a procedural and a performance-oriented component. However, citizen’s participation in EU governance has hitherto been mostly analysed from a functional, output-oriented point of view investigating interest groups’ contribution to effective problem-solving and governance “for the people” (Finke, 2007). As the permissive consensus started to weaken in late 1980’s, politicians, bureaucrats, and academics shifted their attention towards the input-oriented dimension of democratic legitimacy, which results from authentic participation and governance “by the people” (Finke, 2007; Zalewska & Grstein, 2013).

Returning to Abraham Lincoln, it is important to note that the phrase “government by the people” is based on the notion that the outcomes of democratic processes are legitimate as long as they can be said to reflect the “will of the people” (Schumpeter, 1942). Support for democracy therefore lies in the procedures, which have to ensure that people’s preferences are correctly translated into democratic outcomes, and additionally that people trust that these institutions provide a fair articulation of each person’s interest (Dahl, 1989). In fact, trust in the fairness and responsiveness of democratic institutions is the key factor in the procedural model. Moreover, participation in electoral processes provides input legitimacy, meaning that individuals who participate in the democratic processes are more likely to be supportive of them (Lord & Magnette, 2004; Smith & Tolbert, 2004). Of course, participation may lead to satisfaction or vice versa, as the direction of the causal arrow is difficult to determine. On the other hand, “government for the people” assumes that democracies draw their legitimacy from their ability to solve problems requiring collective solutions. Therefore, according to this approach, it is the output of the democratic process that matters rather than the input (Donovan & Karp, 2006; Hobolt, 2012).

Individuals do not conduct cost-benefit analysis when assessing whether to grant a system legitimacy. The relationship between legitimacy and support is a non-calculative one. Hence, legitimacy deficits – in contrast to performance problems – can remain latent for considerable periods, and they do not necessarily provoke an explicit withdrawal of acceptance (Bolleyer and Reh, 2012). It is easy for citizens to identify a system’s failure to produce outputs, however a mismatch of values and structures is less evident. Therefore, one cannot assume that the public is permanently engaged in the conscious evaluation of the system’s normative foundations, or that the *demos* is able to apply clear-cut moral criteria once legitimacy becomes explicitly contested (Beetham & Lord, 1998; Bolleyer and Reh, 2012).

From a legal point of view the European Union, as we know it now, is founded on the value of democracy, which is expressed in article 2 of the TEU (Bellamy & Castiglione, 2013). Its functioning is based on representative democracy constructed as a two-level system: citizens are directly represented at the Union’s level in the European Parliament; Member States are represented in the European Council by their heads of state or government and in the Council

by their governments, themselves democratically accountable either to their national parliaments or to their citizens (article 10 TUE).

In 1980 (ECJ, pt. 22) the European Court of Justice has recognized the “fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly”. What is more, the democratic principle also highlights that the power to adopt EU measures, that can alter the non-essential elements of an EU legislative act, must be exercised by a European institution that is democratically accountable. However, for many years this was not the case. In the early years of the European Union the power for legislation was in the hands of the European Commission and the Council of Ministers, i.e. the Member States. The European Parliament, although directly elected since 1979, had merely a consultative role and was only allowed to adopt non-binding advice on legislation in very limited areas, such as creation of rules prohibiting discrimination on grounds of nationality. The European Commission held the exclusive right of initiative and submitted legislative proposal to the Council of Ministers for the actual decisions to be made. The Member States could then debate on the matter and either approve, amend or refuse the European legislation. This procedure clearly showed the scale of the impact that Member States have had on the decision-making process in the European Union for decades.

Although the European Parliament has been subject to reform, starting in the early 1970s, the process of its empowering was rather sluggish. Consecutive treaty amendments granted the European Parliament more leverage in the decision-making process, thereby providing the citizens, who elected it, with more say in the matter (Chalmers, Davies and Monti, 2014). Due to the newly introduced legislative procedures the amount of EU legislation has increased, and the European Parliament played an increasingly active role with each new treaty amendment (Chalmers, Davies and Monti, 2014). However, the role of the EP within the political system of the Union, even under the co-decision, is to legitimate the legislative output rather than legislate, since policy proposals are drafted solely by the Commission (Craig and de Búrca, 2015).

Over the years, advancing European integration has transformed the EU-polity into a new kind of democracy or quasi-democracy. Since the 1990s, the Union has become more



institutionalized, and stronger emphasis has been put on direct relationship with EU citizens. The EU, therefore, has started to drift away from a “normal” international organisation, in which negotiations between Member States are the rule. Already the European Communities, the predecessor organisation of today’s EU evolved towards “less than a federation, but more than a regime” (Wallace, 1983). Paradoxically, these very developments have become a catalyst for the so-called democratic deficit. Throughout those years, EU-citizens might have been alienated from their political power rather than delegating it (Agné, 2015). Hence, the primary purpose of democratic reforms in the EU was not to create a European *demos*, but to build public support for the EU. In 2001, the Declaration of Laeken was adopted committing the European Union to stronger democracy, transparency and efficiency. The main conclusions of the Leaken Declaration were straightforward: more democracy was primarily supposed to increase public support for European integration. In this view, the main value of democratic reform was to maintain the system, rather than to improve it. Moreover, the three main institutions (the Commission, the Council and the Parliament) based their attitudes towards the issue on different conceptions of democracy. The Commission has seen EU democracy as a “representative governance”. The European Council was of the opinion that democratic legitimacy was achieved through a “democratic union of states”. On the contrary, the Parliament wanted the EU to be led by a “federal parliamentary government”. These institutional traditions can be named as technocracy, nationalism and federalism (Rittberger, 2007). As a consequence, the provisions on democracy of the most recent EU treaty— the Lisbon Treaty—incorporated a mix of these ideas transforming Union’s polity into a composite of concepts that seemed to exclude themselves (Bevira & Philips, 2016). European and national decision-makers wanted more integration but without stronger transnational democracy. The almost apocalyptic vision of giving European citizens the power to roll back existing policies or treaty provisions, painted by EU officials, blocked more decisive moves to strengthen European democracy (Bevira & Philips, 2016).

Although the EU started to become more political over the years, taking actions not only in purely technical areas, the transnational delegation of power to European institutions had no direct link to EU citizens. Without a proper European *demos* the EU governance still relies on a singularist type of representation – that is, democratic rule between and for Member States based on a consensual or quasi-consensual decision-making, rather than decisions of and for

the people. This arrangement suffers from several fundamental limitations and drawbacks. First of all, because agreement among the multitude of state is so difficult, the will to reform the EU is very weak. Policies that have outlived their usefulness or failed seem to last for years and responses to crises and fast-changing situations are too gradual. Secondly, such inflexibility applies even more to the independent EU institutions – partially the Commission and especially the European Central Bank (ECB) and the Court of Justice of the European Union (CJEU). They monitor EU policies outside of the political process, and risk either applying uniform rules dogmatically to very different situations, or to cope with novel and unplanned circumstances by exercising their powers in ways that may depart from what was intended by EU Member States. That means that if their power and competencies have legitimation in the EU treaties, as is the case with the ECB's remit to maintain price stability at all costs, or the CJEU's power to interpret EU law, then it is practically impossible to reverse or effectively challenge their decisions (Bovens, 2007; Bellamy & Castiglione, 2013).

Within the institutional architecture of the European Union it is still the European Parliament which evolved the most (Hix et al., 2007; Rittberger, 2005). Coming into existence as an Assembly of 78 members delegated by national parliaments, it now is composed of 751 directly elected members. What is more, the Lisbon Treaty strengthened the legislative, budgetary and oversight powers of the EP. Although these reforms have not revolutionized EP's position within the EU power system, they created new opportunities for citizens, as well as civil society, to participate in the EU decision-making. Moreover, national parliaments obtained new legislative rights and powers, however, still mainly advisory. For instance, the Lisbon Treaty allows them to block the use of the so-called "simplified revision procedure", under which the European Council can decide unanimously in favour of shifting from unanimity to qualified majority voting (Zalewska and Grstein, 2013).

From a purely legislative point of view, the Lisbon Treaty has put the Parliament on an equal footing with the Council, as co-decision became the "ordinary legislative procedure". This procedure is applicable in 85 different policy areas, covering the majority of the EU's areas of competence (Chalmers, Davies and Monti, 2014). Additionally, the Parliament enjoys a clearer role in the nomination process, since it now elects the Commission President from candidates proposed by the European Council considering the outcome of the European Parliament

elections. This means that former unanimous diplomatic negotiation conducted among the Member States have been replaced by a more democratic so-called Spitzenkandidaten election (Penthin Svendsen, Skibsted, Westergaard Knapp, 2015). Although this new instrument worked during the EP elections in 2014, it was totally omitted in elections in 2019. Therefore, the value of the Spitzenkandidaten process still remains unclear and shows that the democratic innovation remains weak and dependent on the will of European political leaders.

Although the EP's size and competences have been expanding since its founding (Hix and Crombez, 2014), the turnout during the European elections has fallen from 62% participation in 1979 to a disappointing 42% in 2014 (Schmitt, Hobolt and Popa, 2015). In 2019 the turnout grew to almost 51%, still, citizens' decreasing interest in the most direct democratic participation in the EU affairs, has paradoxically run in parallel with the progressive increase of the Parliament's powers. Although it seems straightforward that what remains to be done in order to fully empower the Parliament as a legislator is to enlarge the scope of the Parliament's involvement in current decision-making processes and to give it the right of legislative initiative (Castro Nacarino, De Corte and Freudenstein, 2012), data show that this might not be enough in order to engage and empower European citizens.

## **2. Democratic Deficit in the European Union**

Along the process of deepening the European integration, which meant a gradual transfer of political powers from the national to the European level, EU institutions have also been reformed in order to give citizens more of a say in EU decision-making processes. Paradoxically, today the EU institutions are more transparent than ever, but also less trusted than ever. European democratic elites are more meritocratic than ever, at the same time more resented in the population than ever. At the same time, we live in societies that are more open and democratic than ever, but also less effective than ever (Krastev, 2012; Mair, 2013). Democracy, as a political system, is now recognized in international documents as "the best means to realize human rights". Some argue that international law, formerly little concerned with internal affairs of states, establishes now a "democratic entitlement" (Bohman, 2010). Yet, some claim that democracy has never been weaker (Mounk, 2018; Runicman, 2018).

European citizens have more opportunities to influence the Union than ever before. The EP has been directly elected since 1979 and successive treaty amendments have expanded its powers considerably. Moreover, in the last decades more than 50 national referendums have taken place, giving citizens a direct vote on the future of European integration (Hobolt, 2012). Nevertheless, the EU still remains a rather vertical organization with power concentrated in the European institutions, whose democratic legitimacy is weak (the European Commission) or indirect (the European Council).

Interestingly, the concept of EU democratic deficit was first introduced by David Marquand in 1979, in a paper called – “Parliament for Europe” (Marquand, 1979), which proposed a direct and universal suffrage for the European Parliament. Still, throughout the years no single definition of the “democratic deficit” has emerged. In the mid-1990s, Joseph Weiler and his co-authors proposed what they called a “standard version” of the democratic deficit - a set of widely-used arguments by academics, practitioners, media commentators and ordinary citizens (Weiler et al., 1995). They labelled it as a “inverted regionalism” and explained that:

“Inverted Regionalism does not simply diminish democracy in the sense of individual disempowerment, it also fuels the separate and distinct phenomenon of de-legitimation. Democracy and legitimacy are not co-terminus. One knows from the past of polities with arguably democratic structure and process which enjoyed shaky political legitimacy and were replaced, democratically, with dictatorships. One knows from the past and present of polities with egregiously undemocratic governmental structure and process which, nonetheless, enjoyed or enjoy high levels of legitimacy. Inverted Regionalism, to the extent, that it diminishes democracy in the sense outlined above or to the extent that it is thought to have that effect, will, to a greater or lesser extent, undermine the legitimacy of the Union.”

From a purely technocratic point of view, the most common argument is that the Union suffers from a democratic deficit because competences are transferred from the national to the European level, however without the establishment of corresponding democratic control at the latter (Føllesdal and Hix, 2006). The European Union as a political body is still a bureaucratic and expert-based technocracy that focuses its activities on competition or cooperation with big business and national public servants. The system is constructed in such a manner that many

of the decisions never reach the public eye. Organised lobbies have still strong position in the decision-making process, which favours special interests at the behest of the larger public (Eriksen and Fossum, 2002; Devuyst, 2008).

From a representative democracy perspective, transfer of power without democratic control affects outcomes in two major ways: first, the lack of ability of parties at the European level to control the governing bodies of the EU; and second, the inability of the European Parliament to represent the will of the citizens of Europe (Mair and Thomassen, 2010). The democratic deficit in this context stems from the fact that “European” issues are not at the forefront of the electoral debate. Rather, as Mair and Thomassen (2010) note, European elections focus mainly on national issues and are fought by national political parties. On top of that, voters make their choices taking into national issues and their perception of the position of national political parties on these issues (Lord, 2007). Voters also tend to “use” European elections by using them to express their support or opposition towards the incumbent national government (Emmanouilidis and Stratulat, 2010). In that sense, European elections fail as a democratic instrument at the European level in that they do not to express the will of the European people on European issues.

European integration has led to an increase in executive power and a decrease in national parliamentary control. The Lisbon Treaty has formalized the decision-making power of the European Council, chaired by a permanent president, who personifies the executive role finally acquired by the intergovernmental institutions in the EU. What is more, the Lisbon Treaty also removed the pillar structure of the Communities, however left untouched the distinction between decision-making regimes. In consequence, the Treaty has institutionalized the executive role of the national governments making decisions in the European Council. The decision-making process in the EU is therefore dominated by executive actors: national ministers in the Council and government appointees in the Commission. The European Council-based executive has evolved without a significant control from the European Parliament. For example, during the euro crisis, the decision-making process has moved towards the relation between the European Council (and the Euro Summit) and the ECOFIN Council (and the Euro Group), with the European Parliament and its co-decisional power shadowed by the intergovernmental logic. Although politically enhanced, the European Parliament has not

succeeded in offering citizens the same democratic control as national parliaments. This does not only result from EP's weak position, compared to the governments in the Council (Føllesdal and Hix, 2006), but also because the members of the European Parliament do not have a proper European mandate due to the national nature of EP elections. EU citizens do not identify with European parties, as these are non-existent, and the EP elections are thought to be of "second-order". One could name this process "deparliamentarisation" of the EU decision-making structure and, consequently, of its policymaking, which has led to the erosion of parliamentary control over the executive branch (O'Brennan & Raunio, 2007; Borońska-Hryniewiecka, 2013). Lack of opportunity to participate in EU politics, among others, via the European Parliament generates disillusionment, distrust and dislike of the EU, which in consequence reinforces citizens' ignorance and unwillingness to participate in EU politics. For many European citizens, the Union is perceived as a distant bureaucratic apparatus that does not provide the appropriate institutional structures for democratic input. People's inability to participate in – and influence – the EU's decision-making process, makes them feel like subjects rather than sovereign citizens in European politics (Lord, 2007; Conrad, 2010; Emmanouilidis and Stratulat, 2010; Krastev, 2012).

That is why, on the national level, parliaments play a crucial political role. They guarantee democratic legitimacy of the system, as the members are elected directly, and the body they constitute does not only vote on new laws, but also acts as a political platform of discussions and conflict. In the case of the European Parliament, its political impact is relatively low, and the decision-making competences lie within transnational bodies with no stronger democratic legitimacy. Therefore, the issue of democratic deficit in the EU is mainly, but not only, about lack of democratic legitimacy (Føllesdal & Hix, 2006; de Witte et al., 2010).

Max Weber said that the source of legitimacy lies in the value-beliefs of the stakeholders, in that case those over whom the power is exercised. However, a regime becomes illegitimate if it bases its official justification on the fact that the people have not yet come to realise that there are no other reasons than the power of this regime for them to accept it as legitimate (Beetz and Rossi, 2017). Furthermore, the fundament of popular sovereignty is that the people are the source of all political authority in the polity; hence, the right to rule derives from the citizens as part of a larger collective. Jonathan White (2011) claims that a "bond of collectivity"

creates a people out of a diverse multitude, which in consequence sets the standards of legitimate (democratic) rule. That means that popular sovereignty can only have legitimizing effect if citizens truly believe in the existence of a collective bond of some sort. However, the EU is a political regime that is entirely built of minorities – each nation is, after all, in the minority. Yet in the debate about EU democracy deficit it has been widely acknowledged that national standards of democratic legitimacy are problematic to apply. There are two reasons for that. Firstly, the European Union lacks a common communicative space, and secondly, there is no shared identity that generates sufficient solidarity among citizens to accept majority rule (Grimm, 1995; Kielmansegg, 1996; Scharpf, 1997; Weiler, 1991). What Europe has forgotten (or failed) to build, parallel to common market, currency and decision-making institutions is a European demos — a European society that can be seen as the political subject of European-level democracy. However, while some scholars conclude that the “arrested case of demos construction” is the issue to be tackled (Warleigh, 2003; Karolewski, 2006; Kaina, Karolewski, & Kuhn, 2015), others claim that the challenge to be faced is not whether and how to construct an overarching European demos, but rather how to reach a new and more complex understanding of democracy (Conrad, 2010). Bohman (2010) suggests that current democratic deficit is rather a deliberative deficit, a deficit in the reflexive capacity of citizens to initiate democratic reform. He claims that the problem is “not to create a European demos, but to create in the EU institutional structure the democratic capacity of the EU to initiate legitimate democratic reform, if it is to be something like a transnational republic” (Bohman, 2010).

Regardless of who is correct, one cannot build a demos without a common public sphere, which entitles and enables everybody to speak freely. Public sphere is clearly a precondition for realizing popular sovereignty. Eriksen and Fossum (2002, p. 403) describe it as “a common space for free communication that is secured by legal rights to freedom of expression and assembly, where problems are discovered, but also thematised and dramatized and form into options and wills that formal decision-making agencies are to act upon”.

Public spheres are nowadays divided into different types and categories. They consist of different assemblies, platforms, arenas, fora, scenes and meeting places, where citizens can gather and discuss. They became a highly complex networks of various parts, which stretch across different levels, spaces and scales (Eriksen and Fossum, 2002). The notion consists now

of multitude of different publics. The more publics are present the easier it is to test democratic legitimacy as more opinions and viewpoints are presented and more arguments are aired (Eriksen and Fossum, 2002). According to Habermas (1992), to a large extent, the EU democratic deficit is a public sphere deficit. Europe lacks a transnational communicative network in which public opinion and will can form at the European level. The public sphere plays a crucial role in producing communicative power, which is used as a control mechanism vis-à-vis the administrative power held by the institutions of the political system (Habermas, 1992). In consequence, the European public sphere deficit – beyond fundamental questions on the locus of democratic rule in the EU – is the missing link in EU democracy (Conrad, 2010).

Democratic legitimacy is related to on the interplay of the political system and the public sphere. As the EU does not have a proper and functioning transnational public sphere, the link between rulers and the ruled is quite weak. If this interplay is to strengthen the rulers-ruled-link, public opinion formation has to move beyond the nation state alongside decision making (Conrad, 2010). This has been acknowledged even in official EU documents, such as European Communications Policy White Paper from 2006, which clearly states that: “People feel remote from these decisions, the decision-making process and EU institutions. There is a sense of alienation from “Brussels”, which partly mirrors the disenchantment with politics in general. One reason for this is the inadequate development of a “European public sphere” where the European debate can unfold. Despite exercising the right to elect members of the European Parliament, citizens often feel that they themselves have little opportunity to make their voices heard on European issues, and there is no obvious forum within which they can discuss these issues together” (CEC, 2006: 4-5).

At the same time, some scholars argue that the absence of a European lingua franca makes transnational debate difficult (if not outright impossible) to imagine (Kraus, 2002, 2004; Kielmansegg, 1996). It seems that it should be the role of national education systems to equip Europeans with the necessary language skills so that English can eventually become the European lingua franca (Habermas, 1998). However, it is not only the lack of common language which might obstruct the emergence of a European public sphere. Transnational public sphere emerges to the extent to which debates in the EU Member States become interdiscursive, meaning that the same issues are discussed at the same time with the same criteria of



relevance (Eder & Kantner 2002). Nevertheless, a genuine European public sphere will not emerge, unless a European sense of community will be constructed from or in transnational debates on European politics. In other words: Europeans have to recognize themselves as Europeans in debates about European politics (Risse & van de Steeg, 2003).

As the European Union stretches from Lisbon to Nicosia the significance of the mass media in this multilevel representative system of the EU polity is also crucial. On the one hand, mass media have become the central platform for focusing public attention on the ways the legitimacy of the EU is debated and increasingly contested (Koopmans and Statham, 2010). On the other hand, the so-called EU audience democracy often leads to disinformation, stronger emphasis on emotional over factual content, unequal chances of political representatives to access the media sphere and an inbuilt nationalism of media frames and interpretations (Marks et al., 2006; Szczerbiak & Taggart, 2008a, 2008b). In consequence, the EU audience representation results in a populist and nationalist backlash and strengthened those actors who oppose delegated authority to the EU (Michailidou, Trenz and de Wilde, 2014). At the same time, mass media have the potential to enhance what can be called accountability through publicity. They have the ability to turn the EU into a more accessible, more relevant and also more understandable for the citizens. However, this will not happen as long as the EU actors and institutions will not anticipate public support and resistance, to generate images, emotions and trust (Michailidou, Trenz and de Wilde, 2014; Parvin, 2018).

When talking about EU democratic deficit, one also has to take into consideration the notion of representation in the European Union which meanders between (at least) two different democratic visions. On the one hand, a crucial normative target are individual citizens. On the other hand, the normative target is member-states. The former one relies on national representative democracies resting on the principle of political equality of citizens together with the European Parliament that in turn seeks, better or worse, to transfer the representation of individual citizens to the EU level. In this case, democratic rule remains in the hands of individuals who are treated as political equals. The latter one is a supranational system which rests on the equality of states that represent their people at the EU level. In that case, democratic rule is in the hands of states and, more particularly, governments. As mentioned before, the provisions of EU democracy cover divergent visions of the EU, which often exclude

themselves. EU representation based on individuals points towards an integrated European polity with state-like characteristics, enacted through electoral, functional and potentially direct representation. Whereas, representation dependent on states treats the EU as an advanced intergovernmental organization enacted through territorial representation. As Kröger and Friedrich (2013) point out, these two kinds of subjects refer to different normative goals and a related distribution of rights and obligations. Consequently, in liberal democracies, it is the citizen who is the normative subject of political equality and thus of democratic representation. The individual bears rights and obligations. Political equality here refers to the individual's equal right to elect, control and sanction government. Whereas, in international organizations, states are the subject of political equality and thus of democratic representation, and it is states which bear certain rights and obligations (Kröger & Friedrich, 2013).

However, recent political theory developments suggest that representation should be seen as a dynamic continuous process between represented and representatives, and not a static product of elections (Saward 2006, 2010). As mentioned before, the success of democratic representation is not dependent on whether formal mechanisms to constitute representation – like elections – are in place but on whether the people (*demos*) acknowledge the representation to be legitimate and on whether this “accepted” representation affects policy (de Wilde, 2013). In that sense, democratic representation is an endless interaction between representatives and represented, as well as the translation of this interaction into policy.

It does not come by surprise that the EU has been classified as a system of “compound representation” (Benz, 2003). Brzinski et al. (1999, p. 10) define it as a “interaction between principals and agents under conditions of shared rule, in which multiple agents compete for and share authority in overlapping jurisdictions and are accountable to multiple constituencies”. In that light, if one treats democracy as an instrument responsible for matching the present preferences of voters to policy outputs, it is hard to explain what is wrong with the EU. Føllesdal & Hix (2006) argue that the citizens' preferences that do have impact on the political agenda are those that have a possibility of being constructed or modified within platforms of political contestation. Hence, what is crucial are institutions that accurately ensure that policies are responsive to these preferences, rather than matching by happy coincidence. The main challenge is to create institutions that provide such opportunities and responsiveness.

The EU, unlike other European federations such as Germany, does not propose a clear division of competences between the different levels of governance, and moreover, there is no direct chain of authorization that links the citizen to an EU government (Kröger & Friedrich, 2013). The EU as an intergovernmental organization draws its legitimacy from its capacity for effective problem solving. As Eriksen and Fossum (2004) observe, as long as the supranational institutions facilitate problem solving on behalf of the Member States, the legitimacy of pooling sovereignty at the supranational level is assured. Problems appear once the organization fails to demonstrate its greater problem-solving capacity compared with that of alternative arrangements. At this point its legitimacy is being called into question because it would no longer serve its purpose (Eriksen & Fossum 2004).

At the same time Scharpf (2007) claims that the multilevel nature of the EU raises its acceptance, rather than reduces it. He argues that the EU has been continuously shielded altogether “from the behavioral responses of the governed”, because its rules are implemented via the Member States (2007: 8). He further claims that “an acceptance crisis will therefore only erupt if supranational governance explicitly challenges the legitimacy of – and compliance with – both domestic and EU rule.” EU democratic legitimacy is therefore defined and constrained by the EU’s multilevel nature: legitimate rulemaking beyond the state must not undermine legitimate rulemaking within the state (Bellamy 2009; Scharpf 2007; Schmidt 2007).

In fact, the co-existence of different political subjects in one polity is not unique: several EU Member States are multilevel systems themselves – constitutionally federal or decentralized. Competition between individual citizens and constituent government in these systems is accepted as a rule. National multilevel systems manage to solve the tensions between political subjects in one of two ways: through democratic procedures that privilege the individual or through a constitutional hierarchy of levels and competences. The European Union, most of the time, privileged the federal – or intergovernmental – over the democratic principle (Føllesdal & Hix, 2006; Bolleyer & Reh, 2012).

As we could see, the issue of EU democratic deficit is multidimensional and covers interrelated issues such as democratic legitimacy, the lack of public sphere and a European demos and the

concentration of power in executive bodies of the EU. The issue of the EU democratic deficit has become one of the most discussed and analysed political notions over the years. Yet, not all academics believe that the problem is real, or at least that it needs the attention it is currently attracting.

### **3. The EU Democracy Deficit - Just a Myth?**

Some scholars believe that the European Union does not suffer from a democratic deficit at all, simply because the current problems are inherent to its existence and its tasks, rather than normative deficits. They argue that the EU already has a functioning and effective system of checks and balances, indirect democratic control and a sufficiently powerful European Parliament (Moravcsik, 2002; Lord, 2008). Scholars who believe that the European democratic deficit is a myth criticise the vague understanding of what it actually means. They underline that concrete empirical data show that it actually does not exist, and that the EU is being compared to the impossible standard of an idealized conception of Westminster democracy or ancient-style democracy – a perfect democracy in which informed citizens participate actively on all issues (Moravcsik, 2008).

From a nation-state perspective, it is often claimed that the EU is so undemocratic that it would not be accepted as a member state. However, not all agree with that. Moravcsik, one of the leading critics of the “EU democratic deficit” issue, argues that studies systematically comparing EU policy-making to national policy-making, controlling for the type of issues the EU tends to handle (disproportionately those that are insulated or delegated in domestic politics, such as monetary policy, constitutional adjudication, trade policy, expert regulation, and prosecution), prove that it is more transparent than national policy-making, less corrupt, at least as accountable, and able to provide policies single governments cannot (Moravcsik, 2006).

Moreover, majority of legislation produced in Brussels must likewise surmount higher barriers than in any national system. The legislative process in the EU is highly complex and multistage. First of all, a consensual support from national leaders in the European Council need to be placed on the agenda. Secondly, the majority of the Commission has to issue a formal proposal, and later a formal 2/3 majority (but in practice, a consensus) of weighted member state vote

in the Council of Ministers. Finally, a series of absolute majorities of the directly elected European Parliament need to be reached, and national bureaucrats or parliaments have to transpose it into national law (Moravcsik, 2008, p. 334; Norris, 1997). Thus, the entire process is guided and controlled by sovereign democratic states (Majone, 1998). One could ask – where are citizens in this complicated configuration?

According to the critics, an organization of such wide geographical scope will appear rather distant from the individual European citizen. Additionally, as the EU is a multinational body, it lacks the fundament of common history, culture, discourse and symbolism on which most individual polities may draw. However, all these drawbacks do not disqualify EU as a democratically legitimate body (Moravcsik, 2002). Moravcsik even claims that stronger participation in European issues will not generate a deeper sense of political community in Europe and indicates one crucial fact: issues covered by the EU lack salience in the minds of European voters. Of the five most salient issues in western democracies – healthcare provision, education, law and order, pension and social security policy and taxations – none of them is primarily an EU competence (Moravcsik, 2002, p. 615). This has slightly changed during the economic crisis within the Euro zone in 2009-2012. However, even then it was the national heads of state and government who were taking the critical decisions. In order to give citizens a reason to care about EU politics, it would be necessary to give them a stake in it. This has been ignored over the years, and that is why European citizens have resolutely refused to avail themselves of existing institutional opportunities to participate in EU politics (Moravcsik, 2006).

While Moravcsik claims that the lack of a real European community does not imply that the EU faces the problem of democratic deficit, others argue that the “level and scope of integration” has gone far beyond the communitarian resources available to the Union. Conrad (2010, p. 209) posits that “the very possibility of European democracy has been questioned by reference to the ‘no demos thesis’, i.e. the assertion that popular sovereignty cannot be exercised at the European level for the lack of a European popular sovereign – a European demos.” Yet, Majone (1998, p. 17) sees the democratic deficit less problematic than a “credibility crisis”. The EU does not need fundamental changes, it is the procedures that have to be improved. The decision-making has to be more transparent with ex-post reviews by courts and ombudsmen and greater impact on professionalism and technical expertise. The European Union has to increase the

quality of its legislation, and the European Parliament should play an essential role in it. However, the EU legislation should not be moved beyond the preferences of the elected governments nor should the EP try to influence the policy positions of the Commission through blocking procedures.

Additionally, critics of the EU democratic deficit claim that if one defines legitimacy as legislating in such a way as to secure minority rights while responding to the majority will, then the EU, if anything, does better than most nation-state democracies. This is because any decision subject to the unanimity rules can be vetoed by national executive. What is more, the aim of the consensus rule - by which any issue with high political saliency is not forced on the concerned member state - is to protect minority rights that would not already be protected by the supermajorities (of over 70 percent) required in qualified majority voting (Craig & de Búrca, 2015).

As a consequence, European policy-making faces depoliticization. According to Majone, this is the price one has to pay in order to preserve national sovereignty largely intact. As long as the majority of the citizens of the Member States oppose the idea of a European super-state, while supporting far-reaching economic integration, one cannot expect democratic politics to succeed at the European level (Majone, 1998). That is why there is good reason to believe that European citizens are not interested in participation meaningfully - independently of the institutional forum - because the issues they care about most are not handled by the European Union. As they do not feel empowerment on the European level, they rationally choose to allocate their time and energy to matters that have direct impact on their daily life (Moravcsik, 2006). Therefore, arguments about EU's democratic deficit are really arguments about the nature and ultimate goals of the integration process (Majone, 1998). The issue will remain endemic to the Union as long as the Member States will remain, for their people, the first and principal focus of collective loyalty and the real platform for democratic politics (Majone, 1998).

Opponents of the EU democratic deficit notion also agree among themselves that the task of educating and engaging voters is much more difficult within the EU, than in any national setting. Stronger participation on the transnational level would require a redefinition of existing political identities, learning entirely new set of institutions, new patterns of cleavages and

alliances, and the formation of new civil society organizations. Against this background, Moravcsik (2006) maintains that such involvement would thus require an even more substantial motivation. Hence, he does not believe that citizens should pay these high costs, even though they do not share with pan-European democrats the same enthusiasm for the EU's relatively arcane and obscure set of concerns.

Last but not least, democratic deficit is also an issue of lack of trust. Here, critics say that with regard to trust in political institutions, the European Union, United Nations and the European Parliament score more highly than elected national parliaments and governments. In fact, constitutional courts and administrative bureaucrats are often more popular with the people than the legislature. On the other hand, political parties, which are essential intermediaries of any modern electoral process, score the lowest trust and popularity of any political institution. Against this background, some scholars believe that even if the constitutional deliberations are to be more intense, transparent or inclusive, or the resulting reforms more populist and participatory, they would not lead to deeper political legitimacy, higher trust and broader popular support. Even more, they argue that they might have the opposite effect. Moravcsik (2006) argues that democratizing the EU would render it less popular and legitimate in the eyes of publics. Member States would no longer guarantee the sovereignty of their people, placing a "gifted resource" - the status of sovereignty - beyond their control. This would sit badly with the democratic legitimization story of popular sovereignty.

#### **4. The Demoi-cratic Third Way**

The EU's democratic deficit analysis usually operates within a national democratic framework of research (Riedel, 2008), meaning that authors often follow their own national hermeneutics, diagnosing a lack of majoritarian (Westminster) parliamentary democracy (Lord and Beetham, 2001), a lack of a pre-political "Volk" (Kielmannsegg, 1996), a lack of centralistic statehood and universal "citoyenneté" (Manent, 2007), or a lack of direct democracy (Frey, 1996). Most of them tend to forget that democracy in the European Union does not fit the nation-state frame which defines "government by the people" through political participation, "government of the people" through citizen representation, "government for the people" through effective government, and "government with the people" through consultation with organized interests

(Bohman, 2010). The European Union justifies its' democracy through actions "for the people" and "with the people" - mostly through the complicated process of interest intermediation known as the "community method" - leaving to its Member States government by and of the people. As political participation and citizen representation are situated in the EU primarily at the national level, political participation "by the people" and citizen representation "of the people" has been much weaker than effective governance "for the people" (Conrad, 2010, Hobolt, 2012) .

Some theorists centre the normative vision of the European Union on a celebration of diversity, an ideal of transnational pluralism, a "persistent plurality of peoples" – forever separate, but equal (Müller, 2010). As Joseph H. H. Weiler (2001) described it – Europeans as a People of mutually respectful Others – a kind of supranational multiculturalism. Against this background, in recent years, the concept of "demoi-cracy" has gained increasing visibility in political theory. The notion of "demoi-cracy" comes from *demoi* (the plural form of *demos*), meaning peoples, and *kratos/kratein* meaning power/to govern. However, the peoples are seen both as individual citizens and collectively, as states, that is the separate political units under popular sovereignty which constitute the Union (Nicolaïdis, 2004, 2012). The concept is seductively simple as it describes the Union as a conglomerate of peoples who govern together but not as one (Nicolaïdis, 2013). It is a euphemism for democracy not just without one *demos*, but also without a legal and political machinery (such as powerful parliaments and functioning party systems) which gave peoples in the past at least some chances to form collective agency and, at least to some degree, to influence their common fate (Müller, 2010).

J. H.H. Weiler described the idea of multiple *demoi* long before the concept became widely discussed in the academic circles. He proposed a "concentric circles" approach to *demoi*, based on the assumption that individuals simultaneously belong to overlapping and interrelated *demoi*, each engaging the same feelings of identification albeit at different intensities (1995: 252). This concept has been often used by EU citizenship theorists who see it as a layer of citizenship on top of national citizenship. Empirical data presented by Beetham and Lord confirm that the idea of multiple overlapping identities of EU citizens is a fact. However, within that constellation the European identity is being perceived as the weakest (1998: 47). The idea of *demoi-cracy* is that these numerous and multi-layered identities can enhance solidarity



among citizens because they are reflexive, changeable and negotiable (Beetham & Lord, 1998). In that sense, demoi-crats do not see any single European demos as a *sine qua non* condition for a stronger EU legitimacy. It is believed that reflexive and adaptable bonds formed between citizens with overlapping interests create a network of 28 (or more) national demoi under the EU's demoicracy umbrella, a kind of "deliberative supranationalism" (Joerges, 2001; Joerges, 2002; Liebert, 2005; Joerges & Neyer, 2006; Joerges, 2006).

Therefore, demoi-cracy proposes a third way between two alternatives which both equate democracy with a single demos, whether national or European. The Union can be seen as a demoi-cracy-in-the-making. It is neither a Union of democratic states, as "sovereignists" or "intergovernmentalists" would describe it, nor a Union-as-a-democratic state to be, as "federalists" would like to see it. Demoi-crats see it rather as "an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate peoples" (Nicolaidis, 2013). Hence, the idea of demoi-cracy rests fundamentally on three interrelated empirical assumptions: that the form of democracy is not given forever, and it changes and varies with the form of the polity; that we are currently witnessing the emergence of a new form of polity, which requires and generates an accompanying transformation of democracy; and that the European Union is a prime example of this new kind of polity and transformation of democracy (Cheneval and Schimmelfenning, 2012).

James Bohman, one of the fathers of the concept, describes demoi-cracy as democracy across borders, a democratic transnational polity of polities. Although the term "transnational" suggests that states continue to play an important role in the political life of the transnational polity, they are not treated as the democratically favoured form of organization. Instead, they are seen as one of the demoi and of the polities that are organized within the human political community. Demoi-cracy is also not democracy beyond borders. As Bohman (2010, p.12) describes it: "demoi-cracy means that borders do not mark the difference between the democratic inside and the non-democratic outside of the polity, between those who have the normative power and communicative freedom to make claims to justice and those who do not. It is not a democracy beyond borders, but across borders; not a democracy of a single

community, but many different communities; not of one demos, however multileveled, but of many demoi.”

This transnationalism functions both at the vertical and at the horizontal level (Cheneval et al. 2015). In the vertical dimension, also known as multi-level, demoi-cracy rests on the interactions among states, peoples, citizens, and other stakeholders within the context of the common, multilateral institutions that have been provided with decision making authority. In the horizontal dimension, also known as multi-centric, the same actors, as mentioned above, use their transnational connections to decide about political issues which are of common concern, but on which no multilateral decision-making competences have been established. Demoi-cracy is also surely deliberative, since these authors also stress the need for policymaking through deliberation-based, non-majoritarian procedures (Besson, 2006; Cheneval and Schimmelfennig, 2012; Nicolaïdis, 2013). They all agree that creating European from multiple demoi which remain predominately national or even subnational, generates a danger of consistent minorities and majorities split along national lines. As a consequence, the most realistic and pragmatic models of supranational democracy will continue either to refer to an elite based concept of solidarism, or to involve a compound system of multilevel representation that remains entrenched in the concept of singularity. Thus, the shift from national to transnational democracy requires a change in forms that “may sometimes seem like less democracy” (Bohman, 2010: 21). Nevertheless, the aim of demoi-cracy is to assure that citizens are able to place any subject on political agenda, potentially giving a voice to the oppressed. The ability to initiate deliberation on constitutional essentials, appears to be the fundamental characteristic of the concept (Müller, 2010).

The idea of demoi-cracy, as many others, faces the danger of staying just a theoretical concept discussed by academics. In response to that risk, Kalypso Nicolaïdis, one of the leading researchers of demoi-cracy, suggests ten tentative guiding principles in order to put that concept into life (Nicolaïdis, 2013). First of all, in a demoi-cracy, relations between Member States are ultimately constrained by the collective autonomy of its peoples (1). All peoples-as-states must benefit from institutional and legal safeguards at the centre (2), and governance institutions, as well as decision-making should eschew majoritarian logics and privilege pluralities, horizontal cooperation and shared leadership (3). A demoi-cracy should give priority

to transnational rights and obligations while guarding against assimilation (4) and shared projects (eg single market, single space, single money) do not require harmonized standards but minimal compatibility and maximal recognition (5). In a European demoi-cracy the enforcement of common disciplines requires strong, legitimate domestic mediation (6) and common disciplines and resources should primarily empower lower loci of governance (7). What is more, direct accountability in a demoi-cracy must appeal to a range of alternatives to traditional political representation and thus strengthen rather than compete with indirect accountability (8). Last but not least, European citizenship can serve as a political, legal and cultural referent to enmesh rather than replace existing citizenships in the Union (9) and advocates for a demoi-cratic union must counter the messianic discourse calling for 'oneness' and advocate a shared ethics of transnational mutual recognition (10) (Nicolaïdis, 2013).

As we can see, demoi-cracy plays an important role of a non-domination device (Pettit, 2010). It puts emphasis on the ability to launch deliberation as necessarily belonging to all demoi, where responsible deliberation plays first fiddle. The concept of demoi-cracy reaffirms that Europe should remain/become a polity of peoples (Nicolaïdis, 2013). The potential of European demoi comes from the fact that European peoples can govern together rather than as one. Therefore, demoi-cracy puts emphasis on the strategy to treat the national demoi of the Member States as the basic building blocks and deliberative contexts of a European democratic association (Christiano, 2010). From this perspective, such type of an association takes the democratic peoples of Europe as its starting point and tries to promote an ever-closer Union between them based on principles of political equality and mutual respect. According to Pettit (2010), two criteria govern such a Union. First of all, demoi-cracy should seek to "establish and preserve the conditions provided by the ontology of civicity under which the citizens of each member state can be part of a representative democracy based on a shared conception of the public interest." Second of all, democratic polities which construct such an association must be able to equally control it. In consequence, Member States are prevented from dominating one another, and encouraged to promote collaboration to solve common problems and enable citizens to move and trade freely beyond borders on equal terms without undermining their separate political systems.

Demoi-cracy has so far remained a strictly academic notion, unknown to the wider public. Its strength lies, however, in the fact that it does not have to be named in the public sphere(s) to exist and develop further. In fact, it already functions, and the European Union can be seen as a demoi-cracy-in-the-making.

## 5. Conclusions

Bohman (2010) accurately describes democracy as a set of institutions through which individuals are empowered as free and equal citizens to form and alter the terms of their common life together, including democracy itself. This means that democracy is reflexive and stems from procedures by which its rules and practices are made subject to the deliberation of citizens themselves. Democracy can be viewed as an ideal of self-rule, in that the terms and boundaries of democracy are determined by citizens themselves and not by others. This however leads us to the observation that crisis of democracy does not require that democracy evolves into an authoritarian regime (Krastev, 2013). In fact, as democracy is reflexive, and it can easily lose its' ability to self-improvement without changing its nature and become dictatorship. Democracy in crisis is the one, which at some point stops to take into consideration public's opinion and makes citizens lose their ability to believe in change.

In that sense, it is hardly understandable why European elites are not keen to strengthen European democracy. Empirical data taken from number of Eurobarometer surveys show that the people, although influenced by European legislation on a daily basis, do not feel sufficiently included in the legislative procedure. They feel that "European governance is governance without government" (Haverland, 2013). Therefore, the problem of the democratic deficit in the European Union is an issue of demos construction in the sense that "democracy must now not only change its institutional form, it must also rethink its political subject" (Conrad, 2010). If we want democracy to become "the only game in town" we have to increase the quality of democratic interactions and processes which in consequence affect its' legitimacy in the eyes of citizens and political elites alike (Bernhagen & Marsh, 2007; Przeworski, 2009). The improvement and enhancement of EU legitimacy needs to involve a rescue of the notion of full political representation. This implies, among others, the duty for national governmental representatives to explain and justify what they do in Brussels (Urbiniati, 2006). However, this

cannot be done through a one-way narrative, but through a two-way deliberative accountability (Piattoni, 2013).

However, any such reconfiguration demands not only new ideas about the soundness and appropriateness of Europeanization for national polities but also new discursive interactions. As Schmidt (2004) points out, the nation-state typically consists of two overlapping spheres of discourse – on the one hand, policy actors who “coordinate” the construction of new policies and practices, on the other hand, political actors who “communicate” them to the general public for deliberation and legitimization. Yet, in the European Union, the “coordinative” sphere among policy actors is overly sophisticated, and the communicative discourse between political actors and the public particularly thin. In consequence, in the coordinative sphere, national policy actors can and do take part in debates on EU-level policies and their potential impact, however in the communicative sphere, national publics are almost entirely dependent on national leaders to transfer information on and lead deliberation about the EU’s impact on national polities.

Critics of the EU democratic deficit claim that the problem is overrated, as the EU confronts a range of potential problems of legitimacy, however, is probably no worse off than most nation-states (Lord & Magnette, 2004). Moreover, the EU as a regional entity, makes up for its limits with regard to government by and of the people - which is largely conducted by the Member States - with more governance for and with the people through a wide variety of policymaking processes that insure against “federal” excesses. What is interesting, even the critics believe that democratic legitimacy in the European Union, rather than being weakened by being based on multiple and often seemingly contradictory principles, is actually strengthened by this, especially if the contradictions lead to an informed and full deliberative process.

Obviously, transnational democracy has its own distinctive form but can be shown to fulfil what Bohman (2010) calls the democratic minimum. It means that it is not only crucial for the people to be the authors and subjects of the laws, but it is equally important to achieve a normative status sufficient for citizens to exercise their creative powers to improve democracy according to the demands of justice. Therefore, rather than discussing the possible sources of legitimacy in the traditional input/output paradigm, some authors propose to understand the European

democratic deficit as a consequence of the regime's inability to reflect EU-citizens' commitment to popular sovereignty (Beetz & Rossi, 2017). The challenge within that concept appears when one takes into consideration the Rawlsian notion that modern societies rarely (if ever) are communities. They do not integrate around one, but around several conceptions of the good and are made up of many communities, often with mutually irreconcilable "comprehensive doctrines" (Rawls, 1971).

This is where the idea of *demosi-cracy* can help solving the knot of European democracy. The word "*demosi-cracy*" was used by Philippe Van Parijs (1997, pp. 298–9) to critically express the fact that in the European Union, the *demosi* are the primary subjects to whom accountability is owed. *Demosi-cracy* cannot exist without deliberation, hence the notion of "discursive representation" (Dryzek & Niemeyer, 2008) was introduced into the scholarly debate. It defines the enrichment of EU democracy through forums of debates and deliberations among citizens (Bellamy et al., 2006; Bovens, 2007), which in parallel to the premises of audience democracy, serve the double purpose for representative institutions to observe and to propagate public opinion. This is conducted not only through the repeated measurement of aggregated individual attitudes (as for example via Eurobarometer) but in a more sophisticated manner as the "reasoned reflection" of properly selected citizens about what they perceive as the public good. The "enhanced legitimacy" of these fora is based, then, on the publicly raised claim to "represent" the collective will of the people of Europe, not only through aggregative methods but most preferably by constituting a so called "true microcosm" of deliberation and informed opinion-making that is able to speak in the name of the whole population.

It seems that from the perspective of deliberative democrats the future of European democracy can take in principle two main routes: gradualism and transformationalism. Gradualists believe that larger polities will reproduce nation-state democracy at a larger scale, of course with gradual differences. Participation will become more indirect as the distance between the individual and government increases. Communities will become larger and more diverse, hence they are unlikely to be constructed on the basis of (imagined) common origins and cultural traits. Instead, collective identities will rely more on abstract, "cosmopolitan" norms and values. Gradualists believe that European democracy requires a single *demos*: a

community where individuals are politically equal and deliberate about the common good in a single, transnational public sphere.

On the other hand, transformationalists reject the belief that regional or global democracy can or will reproduce nation-state democracy. Therefore, they propose a concept of “demoi-cracy”, which questions the single-demos assumption inherent in gradualist conceptions. The idea builds on the premise that national demoi will remain important for the foreseeable future rather than being replaced or outmoded by a regional or even global demos. Transformationalists stand by the opinion that national demoi will continue to create or sustain the strongest collective identities, public spheres and political infrastructures, and enjoy the strongest legitimacy and loyalty among individual citizens. They see in the consolidated demos the prerequisite of a legitimate and well-functioning democracy, as long as it is based on a resilient collective identity, a common public sphere and a developed political infrastructure. Any democratic polity beyond the state, has to use multiple demoi as bearers of negative and positive rights of protection and participation (Cheneval & Schimmelfenning, 2012).

The future of European democracy raises a number of questions. Can Europe become a horizontal and decentralised network consisted of many demoi (Müller , 2010; Nicolaïdis, 2013; Guérot, 2017)? Will the Union be able to bear the burden of post-democracy were citizens can elect, but cannot choose (Crouch, 2004)? Or will European democracy suffocate in the vacuum between EU and national institutions? Further chapters will show that we already have instruments to decentralize European political decisions. The question is whether we want to use and enhance them or propose new ones?

## IV. National Citizens' Initiatives in Selected EU Member States and Switzerland

Direct democracy should not be framed only as a utopian dream of an ideal society with well-informed and free citizens. From a conceptual point of view, it is rather a political process “in the making” and popular initiatives are one of its key elements. As presented in the previous chapters, direct democracy has a long tradition, both politically and in political theory. Citizens' initiatives as well as referenda have been used for decades to enlarge the possibility of voting and expressing common interests. Research shows that more than half of European citizens have signed during their life some kind of petition or citizens' initiative (Quaranta, 2015). It means that millions of Europeans have used their signature to try to improve a certain aspect of reality they are living in. It also means that great number of citizens in Europe do not want to narrow down their democratic activity only to the right to vote in local, national or European elections. Although majority of these initiatives can be described as bottom-up and grassroots, some public institutions in Europe, such as the European Commission, are trying to regulate it as a way of influencing public decision-making (Alarcón et al., 2018).

The European Citizens' Initiative did not come out of the blue. The European Commission, while drafting the Green Paper and eventually the proposal for the ECI Regulation, used the so-called method of “reasoning by analogy” (Głogowski & Maurer, 2013). The proposed regulation was drafted on the basis of similar procedures in the EU Member States. Warleigh accurately noted that “the formal granting of such ability to citizens, acting collectively, would be unparalleled in the history of international organisations and would thus have potentially enormous significance” (Warleigh, 2007: 64). Therefore, it was impractical and impossible to directly copy a design of one or various national procedures and apply them to the ECI. Instead, the architecture of the ECI had to be based on an original concept, adapted to the political reality of EU democracy.

Nevertheless, the experience of number of national citizens' initiatives (NCI) and similar democratic instruments have helped to create a unique European concept. As NCI's are present



in 12 out of 27 EU Member States (Cărauşan, 2011), in this paragraph three cases will be analysed, including one from a non-EU state. This will help conducting a more in-depth analysis of its designs. As EU Member States differ in terms of population, legal and political structure, as well as many other factors, the analysis will focus on three different examples of citizens' initiatives: one from a large EU member state with long tradition of using NCI's (Poland), one small EU member state where NCI is a relatively new instrument (Finland), and a non-EU state where direct and participatory democracy are highly developed (Switzerland). This configuration of examples enables to create an efficient comparison with the current ECI structure without the need to analyse each NCI in all EU Member States which use it.

## **1. The History and Types of National Citizens' Initiatives**

The concept of direct democracy goes back to ancient Greece. Although, at that time the inclusiveness of various participatory instruments was very low, the sole idea of political deliberation can be perceived as a prototype of today's democratic innovations. Later history shows that tools such as the petition (predecessor of the agenda initiative) spread throughout Europe during the VI-VII centuries (Alarcón et al., 2018). According to Suárez Antón (2017) the origins of agenda initiative go back to France from Capeto (987-996) and, more assuredly, with Louis IX (1226-1270). The practice of addressing the King in demands for justice, grace or help has also long tradition in Spain where it exists from the XI century. In XIV-XV centuries a more complex version was found in the articles of the House of Commons submitted in 1406 by Henry IV who enabled to present petitions written in the form of a Bill, that the King had to accept or reject without the right to modify it.

However, the citizens' initiative, as we know now, appeared for the first time in the constitution that emerged from the French Revolution of 1793 but never came to be applied (Kaufmann and Waters, 2004). Still, the strongest roots of contemporary citizens' initiative are rightly associated with Switzerland, where it has been adopted by many cantons in the mid XIX century (Collins and Oesterle, 1995), and the initiative was later introduced on a national level in 1891 (Seo, 2017). As far as non-European countries are concerned, in the USA, 19 states introduced legislative initiatives between 1898 and 1918, inspired directly by the Swiss experience (Collins and Oesterle, 1995). In consequence, Japan decentralized and incorporated citizen

participation mechanisms during the American occupation, after the II World War. In other European countries, the emergence of participatory instruments took place after periods of dictatorial rule, such as, in Italy or Germany (at the regional level) since 1945, and later in Latin America (Ruth et al., 2017). Similarly, in Eastern Europe, citizens' initiatives were incorporated in the 1990s during the Post-Communist period.

In 1920 Austria incorporated in its' Constitution first concrete provisions regulating agenda initiative. In the period of 1921-1950, Latvia, Liechtenstein and Estonia joined the Alpine country. Between 1951 and 1988 Latvia and Estonia withdrawn these mechanisms; whilst they were adopted by Uruguay, San Marino and Italy, where it was formally used for the first time in 1954 (Welp and Suárez, 2017). Since the fall of the Berlin Wall in 1989, the agenda initiative has been introduced in various parts of the world such as Southeast Asia (Philippines and Thailand) West Africa (Ghana and Niger) and Central and Eastern Europe (Hungary, Poland and Slovenia) (Beramendi et al., 2008).

All in all, different types of citizens' initiatives have mainly evolved since the 1990s. However, there is no rule in terms of how these participatory instruments changed in various countries, as in some of them steps have been taken towards adopting regulations that are more citizens-friendly (such as in Bulgaria in 2009, and some German states or Sweden in 2011), while in others more restrictive regulations have been introduced (such as in Slovakia in 2001 or in the Czech Republic in 2004) (Schiller, 2011). Based on the Swiss case, one can note that the development of these tools is not directly interrelated with any specific moment in history. In most cases, the establishment of strong initiative instruments has been a gradual and slow process, advanced through pressures from powerful citizen movements (Kaufmann and Waters, 2004).

Therefore, in order to better understand the political position and significance of the ECI, we should analyse different categories of the analogous institution, that is, the broadly named popular or citizens' initiative. Uleri defines popular initiative as a democratic procedure enabling a predetermined number of registered electors to propose a political demand either to the whole electoral body through a referendum ballot or to the elected representatives (Uleri, 1981: 81). The main difference between a referendum and a citizens' initiative is that

the first one enables to decide on propositions formulated by authorities, whereas the latter gives citizens the power to bring new issues to the political agenda (Schiller and Setälä, 2012a).

As citizens' initiatives do not necessarily enable citizens to take the final decision, some treat them as soft forms of direct democracy (Jäske, 2017), and others even question whether citizens' initiatives can be treated as proper instruments of direct democracy (Schiller and Setälä, 2012a; Smith, 2009). Nonetheless, popular initiatives allow citizens to have a say in political decision making on a daily basis, which enables them to influence and impact political outcomes, maybe even to a higher degree than potentially more empowering mechanisms (Qvortrup, 2013).

Against this backdrop, one can derive two main categories of popular initiative: the direct popular initiative (also known as referendum initiative)—a tool of direct democracy addressed to the electoral body—, and the indirect popular initiative (also known as agenda initiative)—a participatory democracy procedure—that is fully dependent on the political will of the representatives that could approve, change or reject the citizens' proposals (Setälä & Schiller, 2012a). The best-known example of the first one is the Swiss *initiative populaire* for constitutional amendments, which has a strong and binding political impact. On the other hand, the agenda initiative gives the right to place an issue on the political agenda (Kaufmann and Waters, 2004). However, it is often considered an incomplete initiative (Schiller, 2011), as the relevant public institution has the power to make the final decision on the proposed issue. The agenda initiative opens up the public agenda and discourse to innovative points of view coming from the bottom. Thus, it can potentially counteract dynamics of exclusion by putting forward proposals and issues that would otherwise never be heard (Christensen et al., 2017). What is more, those who are sceptical about referendums, or any other direct instruments of democracy tend to push for inclusion of agenda initiatives, as non-binding and rather consultative.

Popular initiatives can be also classified according to the scope of the citizens' political demands (Cuesta-Lopez, 2008). They can enable citizens proposing the adoption of a new legislative measure (legislative proposition) or a constitutional amendment (constitutional proposition). The European legal tradition knows also examples of popular initiatives that are intended either to ratify or to repeal a constitutional or legal norm already adopted by the political

representatives (constitutional or legislative ratification). This kind of popular initiative is formally known as referendum and is always addressed to the electoral body (Cuesta-López, 2012). What is more, one could find other variations of popular initiative whose aim is not the proposition or ratification of a proper legal act but the call for a popular consultation on a significant political subject. In some cases, once the required number of statements of support is collected the consultation is compulsory (i.e. Hungary, Lithuania), while in other EU Member States the final decision is fully depended on the political will of the representatives (i.e. Poland, Portugal).

Certainly, the catalogue of popular initiatives is not closed, and the above-mentioned categories represent just part of all types of initiatives. The political reality of today's countries, not to mention such organizations as the European Union, is far more complex, and the categorization cannot always be fully defined. In fact, there is no consensus on the terminology used to refer to these citizens' initiatives, nor is there any universal referendum terminology (Suksi, 1993). What is common in all types of popular initiatives is their relevance within the democratic system. It ranges from being an instrument of control or counterbalance of political representatives, to directly affecting political agenda. Citizens' initiatives may also play an important role in mobilising support on behalf of the political authorities—even the undemocratic ones—, when launched by parties with representation along with the support of other associations.

Popular initiatives are also often mistaken with petitions. However, these are generally understood to be weaker in nature than popular initiatives. In most cases they can be signed by an individual citizen and they merely call for a given course of action to be considered by the responsible political institutions. Therefore, their outcome is fully dependent upon the discretion of the decision-maker (Dogan, 2011). Still, citizens' petitions to public authorities, even before being formalized in the form of popular initiatives, are an important democratic tradition.

If we take into consideration that European citizens can submit an “appropriate proposal on matters where citizens consider that a legal act of the Union is required” (art. 11.4 TEU), one could conclude that the ECI is a legislative proposition. Moreover, given the fact that the final

decision on the future of each successful ECI is in the hands of the European Commission, which can easily reject its demands, the instrument can rather be categorized as an agenda-setting initiative. A crucial issue to consider about the scope of the ECI is whether it could act as a constitutional initiative proposing the amendment of the treaties. These issues will be discussed in further chapters.

## **2. Polish Citizens' Initiative**

Poland is one of the EU Member States with relatively long tradition of citizens' initiatives. First attempts to introduce popular initiatives go back to the beginning of XX century, when Poland became independent after the end of World War I in 1918 and started working on its' new constitution. Eventually, no direct democracy instrument was introduced into the so-called March Constitution from 1921. After the World War II Poland became subject to the Soviet dominance and communist rule. The idea of civic participation has been frozen until the political transformation of 1989.

Since 1990 Polish governments have incorporated into country's legal system a number of participatory and direct democracy instruments. Although first initiatives were of local character, a national popular initiative was introduced in 1997 by the new constitution. It became operational in 1999 and since then it has enabled one hundred thousand citizens — eligible to vote— to sign an initiative which is directed to the national Parliament (Sejm) and discussed by its members. It is a typical agenda initiative, which is non-binding for the decision-makers and serves mainly to highlight issues important for specific groups of citizens (Kuźelewska, 2016).

What is important, the Polish Citizens' Initiative (PCI) has no power to change the constitution. Although such idea was proposed in the mid 1990s, there was no political will to introduce it into the new constitutional act. Moreover, rules governing the PCI turned out to be restrictive and burdensome for the organisers. First of all, it requires establishment of citizens' committee consisting of 15 people. Additionally, in order to formally register it, 1000 signatures (not more, not less) have to be collected, which are verified and if accepted then taken into the consideration in the overall list of signatures. Once this requirement is met, the organisers have

only 3 months to collect another 99.000 statements of support. As every interested citizen has to sign such an initiative on paper, there is no online instrument to support PCI. As a consequence, number of disabled people (mostly the blind ones) are excluded or at least it is much more difficult for them to sign such an initiative. Second, personal data requirements are among the most demanding in the European Union. In order to support an initiative, one has to provide name, surname, full address and ID number (Rachwał, 2016). These requirements are much more restrictive than in other EU countries such as Finland or Estonia where ID numbers are not required in order to sign a national initiative. Thirdly, it is not clear in what form the initiative has to be presented. The legal act governing the instrument mentions the notion of “bill proposal”, however without listing specific requirements, which have to be met. Last but not least, organisers of the initiative are not supported in any way by the state. There is no information point or financial support for the citizens’ committee. In fact, on the main website of the Parliament there is no information on the instrument whatsoever. Data and basic information on petitions are accessible, but the very institution of the citizens’ initiative is completely left out. The positive organisational aspect of the PCI is that it is not bound by the so-called “rule of discontinuation”. It means that, although all legal acts proposed by members of parliament or government are cancelled after the term of the Sejm has expired, citizens’ proposals are still valid. However, also this rule has its disadvantage, as it refers only to the next term of the parliament. In consequence, if the citizens’ proposal remains “frozen” until the next term, it also becomes discontinued (Gulińska, 2015).

In Poland, 120 initiatives were registered between 1999 and 2013. 42 of them managed to collect over 100.000 statements of support and direct their proposal to the national parliament. Within that period, 12 initiatives became new laws, however, some of them were amended during the parliamentary debates. These numbers show that the formal requirements hamper citizens’ potential to use the instrument on a wider scale. 120 registered initiatives within 14 years gives only around 9 initiatives a year. Given the fact that Poland is a country of over 30 million voters this number is dramatically low in comparison to such countries as Switzerland, Finland or Estonia. What is somehow positive, is that the ratio of initiatives which managed to reach the threshold is relatively high. 35% of registered initiatives managed to collect over 100.000 statements of support. 28% of them became new laws, which is 10% of all registered initiatives.

In sum, the Polish Citizens' Initiative—although in place for 20 years, is a participatory instrument with many flaws. As it sets high conditions for the organisers, it actually hampers civic participation in Poland. As a result, it can be viewed as a flawed example of citizens' initiative, which should rather be treated as a lesson on how not to design popular initiatives.

### **3. Finnish Citizens' Initiative**

The Finnish Citizens' Initiative (FCI) has come into force just one month before the European Citizens' Initiative. It became operational on March 1 2012, together with the new Finnish constitution. Since then 50.000 Finnish citizens eligible to vote (about 1.2 percent of the total electorate) have had the right to propose legislative acts to the Finnish parliament (Eduskunta), which is obliged to decide upon. The FCI, similarly to the ECI, is a so-called "indirect" or "agenda" initiative, as it does not lead to a popular vote.

The specific rules of the FCI are defined in a separate law, also enacted in March 2012. The initiative can be launched by one or more Finnish citizens of a voting age and it can be written in the format of a law or as an informal proposal for the government to start a legislative process. What is important, the initiative must apply to a matter that can be enacted by law, that means that the issue has to be concrete and solvable by new law proposals. Organizers have a period of six months to collect signatures, both online and on paper. The Finnish Ministry of Justice has enabled collecting signatures on an official online platform, however, other organizations are also allowed to develop independent platforms. Still, majority of statements of support are collected on the governmental website called [www.kansalaisaloite.fi](http://www.kansalaisaloite.fi) (Christensen et al., 2017). The online service is free of charge, accessible and is available in Finnish and Swedish.

The fact that Finnish citizens can support initiatives online does not seem surprising, yet Finland and Latvia are the only countries in Europe that allow online signatures in national-level CIs (Auers 2015; Bukovskis & Spruds 2015). The fact that initiatives can be supported via online tools has a significant impact on their popularity, as well as on organizational aspects of the CI. In comparison to time- and cost-consuming offline campaigning in public spaces, online

expressions of support are much simpler and faster to collect. In consequence, the FCI becomes much more accessible for smaller and marginalized civic groups, which are able to reach the signature thresholds without the need to fundraise considerable amounts of financial resources. Additionally, in order to sign an FCI one needs to provide only the family name, full first names, date of birth and municipality of residence from the signatories of statements of support. Finnish authorities do not require neither ID numbers, nor specific address. Thus, the minimal amount of data needed to support an initiative encourages more people to get involved.

Once the statements of support are collected and verified, the Finnish Parliament has to decide whether to approve, amend or reject the submitted initiative. However, neither the constitution, nor the FCI law regulate the parliamentary procedures on CIs. Before the FCI came into force some changes were made to the parliamentary procedures imposing that they should be dealt with like any other law proposals and that organizers should have the right to be heard in the relevant committee (Christensen et al., 2017). The first parliamentary debate on a CI took place in April 2013 and concerned a ban on fur farming. Only then a wider debate on the procedures emerged focusing on the issue of priority. The doubt was whether citizens' initiatives should be given priority in committees, especially with regards to legislative initiatives proposed by individual members of the parliament. The political reality in Finland is that individual MPs' initiatives tend to be "frozen" in committees, which results from the fact that governmental proposals are prioritized to the extent that individual MPs' initiatives do not even make it to the committee agenda before the end of the parliamentary term (Christensen et al., 2017). The current practice is that organizers of each submitted initiative are heard by relevant committees at open hearings. Afterwards the committee produces a report on the initiative, which opens a wider public discussion, eventually leading to a vote at the plenary.

The Finnish Citizens' Initiative has been practiced for longer than seven years. During this period it has become a fairly popular instrument among the civil society actors and individual citizens. Altogether, almost 1000 proposals for CIs were launched on the website from its beginning until April 2019, collecting more than 3 million signatures either on paper or online. Although, in the beginning it seemed that collecting over 50.000 signatures within 6 months can be problematic, statistics show that over 20 CIs have reached the threshold, with five initiatives



collecting over 100.000 statements of support. Obviously, this means that only around 2% of the submitted CIs makes it to the Parliament but given the fact that launching an initiative is fairly easy and straightforward the relative numbers should not mislead us.

As the FCI has been practiced so far mostly as an online tool, the potential risk is that it might become an instrument mostly used by the already active citizens, rather than those marginalized ones. Nevertheless, it seems that the FCI managed to activate also some of the marginalized groups, mostly young people, who are not keen to use other forms of political participation, as well as women who s more often than men. It seems that so far, that the FCI has not led to the mobilizing of the people from less politically active milieus. Research indicates that people with direct or indirect links to political parties and associations are more likely to initiate and support initiatives (Christensen et al., 2017). The current practice shows that it is more likely that the young, more educated people living in cities will launch or support an initiative. This also applies to citizens who identify themselves as being politically closer to the Left rather than the Right. Paradoxically, people who are unemployed and with poor health appear to be more likely to use the FCI, although usually these factors decrease traditional political participation (Christensen et al., 2016).

According to the research conducted by the Ministry of Justice 74% of the Finnish population sees the Finnish Citizens' Initiative as a positive change to democracy. More than one third (35%) of the whole population claims to have supported at least one initiative (Christensen et al., 2016). There still seems to be much place for improvement, especially if one compares these numbers to the fact that 70,1% of the population used their vote in parliamentary elections in 2015 (Grönlund and Wass, 2016). Considering that the new democratic instruments have been in use only since 2012, the experience of the Finnish society with regards to the CI seems positive.

All in all, the current experience of the Finnish Citizens' Initiative suggests that it has served as an effective channel to test campaigns on new topics, as well as raise awareness on issues that are often under-represented in the parliamentary decision-making agenda. As in other EU Member States, in Finland the parliamentary agenda is mostly defined by political parties, which represent cleavage structures focused on consensual decision making (Karvonen, 2014).

Although, the direct legislative impact of the FCI could have been stronger, previous research has proven, that the impact of such instruments as citizens' initiative does not solely depend on legislative changes, but rather on improving the process of decision making (Lind & Tyler, 1988). Although, new laws might not have been introduced, through such instruments public institutions observe citizens' participation and interest in public matters. In consequence, decision making processes become more transparent and political actors more reactive towards citizens' needs. Thus, the FCI has managed to create a new path of agenda-setting, mostly thanks to its unbureaucratic and citizen-friendly structure, as well as technical support from the Ministry of Justice. Finland has so far been the best example of an EU member state with regards to implementing a democratically effective participatory tool adjusted to the 21. century.

#### **4. Swiss Citizens' Initiative**

The history of Switzerland as a modern state dates back to 1848, when it formed itself out of 25 cantons and half-cantons, with universal (male) suffrage. It was initially designed as a representative political system. However, the first Swiss Constitution included a provision stating that any constitutional amendments had to be subjected to a popular vote, so-called compulsory referendums. What was even more innovative was that it was possible to ask for a total revision of the Constitution through collecting statements of support. Yet, it was never the intention of the constitution-makers to regularly introduce amendments to the highest legal act (Kobach, 1994). In fact, the introduction of the mandatory referendum was a result of a consensus constructed towards the Catholic minority, to assure that constitutional amendments could not easily be pushed through by national legislatures (Lutz, 2012).

Further instruments to influence policymaking by citizens were introduced in 1874, when the 1848 Constitution was revised entirely. The new version of the Constitution enabled citizens to challenge any law passed by the federal parliament through the collection of 30,000 signatures. However, this new right was of a responsive character, meaning that it did not allow citizens to set the political agenda themselves. They could only react to what was proposed by the federal parliament. Nevertheless, it gave the political opposition the right to challenge laws passed by the parliamentary majority and make them the subject to a popular vote (Lutz, 2012).

The instrument of citizens' initiative was finally introduced in 1891. It enabled at least 50,000 citizens to present proposals for constitutional amendments, if they collected the needed number of statements of support within 18 months. This prompted then to a popular vote on the proposals, which was binding for the decision-makers. What is important, a similar procedure was earlier introduced at the cantonal level and instruments of direct democracy were strengthened on the fertile ground of a well-functioning representative democracy.

Current provisions on the citizens' initiative are outlined in Chapter 2 of the Swiss Constitution. It formally distinguishes initiatives which result in two different revisions of the Constitution: total or partial. The first one has no practical significance and it has never been used. Nevertheless, Swiss law enables 100,000 citizens with the right to vote to propose a total revision of the Federal Constitution. The same numbers apply to initiatives requesting partial revision of the Constitution. In both cases, the statements of support have to be collected within 18 months. The initiative for partial revision may take the form of a general proposal or of a specific draft of the provisions proposed. As the Constitution states: "If the Federal Assembly is in agreement with an initiative in the form of a general proposal, it shall draft the partial revision on the basis of the initiative and submit it to the vote of the People and the Cantons. If the Federal Assembly rejects the initiative, it shall submit it to a vote of the People; the People shall decide whether the initiative should be adopted. If they vote in favour, the Federal Assembly shall draft the corresponding bill."

What is interesting, the federal constitution describes procedures applicable to an initiative and counterproposal. In the case of two counterproposals the citizens vote on both of them at the same time and they may vote in favour of both proposals, indicating the proposal that they would prefer if both were accepted. If in response to the third question one proposal to amend the constitution receives more votes from the people and the other more votes from the cantons, the proposal that comes into force is that which achieves the higher sum if the percentage of votes of the citizens and the percentage of votes of the cantons in the third question are added together.

These rules have been in place in principle since 1891, with one important change introduced in 1977, that is, the increase in the number of signatures from 50,000 to 100,000 for popular initiatives. The modification was related to the introduction of female suffrage in 1971, which resulted in doubling the number of voters. Although the number of statements of support remained fixed, and the number of voters gradually increased, the percentage of signatures required among those with the right to vote had decreased constantly. In 1891, when the initiative was introduced, 50,000 signatures accounted for about 7.6 per cent of the citizens with the right to vote. By the end of 1960s this number has decreased to only 3 per cent, followed by a sudden drop when female suffrage was introduced. Currently, around 2 per cent of the citizens eligible to vote have to support an initiative in order to call for a popular vote (Lutz, 2012). If one compares these numbers to full-scale initiative in other European countries, it seems that the Swiss threshold is very low. For example, the signatures of 10 per cent of the electorate are required in Latvia, 11.4 per cent in Lithuania (300,000 signatures) and 8.2 per cent in Slovakia (350,000 signatures). In many German states, 10 per cent of the electorate has to support a direct initiative, whilst Hesse or Saarland set an extremely high threshold of 20 per cent of registered voters (Schiller, Setälä, 2012b).

How is the procedure for launching a popular initiative carried out in Switzerland? First of all, an initiative committee has to be set up, composed of between seven and twenty-seven persons who are entitled to vote at federal level. Secondly, the committee must draw up the text of the initiative in an official language and give the text a title. The text and title are submitted to the Federal Chancellery, where it is translated into the other official languages. Next, the committee provides the Federal Chancellery with a model signature list and it checks to ensure that the signature lists conform with legal requirements. In result, the Federal Chancellery's decision is published in the Federal Gazette, from which date the committee has 18 months to collect at least 100,000 signatures, have them validated by the communes and submit them to the Federal Chancellery. Signatures are collected only on paper, however, the personal data requirements are very low, as statement of support consists only of one's name, surname and signature.

Signatures are checked by two authorities. The communes check that the signatures are valid. They control whether the people who have signed are registered on the electoral roll and

whether anyone has signed more than once. After that the Federal Chancellery checks to make sure the signatures fulfil the legal requirements. Once all the legal and formal conditions are fulfilled, initiative is not put to a vote immediately. First, the government writes a report on behalf of the parliament in which it expresses its opinion on the proposal. Afterwards, the parliament debates the initiative and takes a position. Only then the initiative is put to the vote.

Interestingly, the Swiss federal government has kept full statistics of all citizens' initiatives since 1891. Until 2016, some 209 popular initiatives were voted on but only 22 were accepted. It shows that the approval of an initiative has been a very rare event until recently, as only 10 per cent of them were approved. Numbers show that with very few exceptions, the government and the parliament have always been against citizens' initiatives. In fact, between 1949 and 1982 not a single initiative was passed. In the last decades the trend has changed in favour of approving citizens' initiatives with around 50% of them being approved. Although most of them touched upon environmental issues, crime and foreigners, some were launched by populist right-wing groups or parties, always leading to a discussion as to whether they should be declared invalid, as it would have been difficult to implement the initiative without violating the international commitments of Switzerland. Nonetheless, in all the cases the parliament opted not to declare the initiative invalid (Lutz, 2012). Indeed, Swiss citizens' initiatives are rarely declared as invalid. So far, only four initiatives have ever been declared invalid and two other initiatives have been declared as fulfilled by the parliament, which had adopted a similar proposal already (Lutz, 2012).

Although majority of initiatives in Switzerland do not catch attention beyond the national discourse, some of them raised controversies, for example the 2009 initiative to ban minarets, which was described as unconstitutional by the Swiss government, and the 2014 anti-immigration initiative. The Swiss example shows that even in cases where popular initiatives fail to be put in life, they still have an important effect on stimulating political debate and developing engagement in political issues. It also creates a political system in which political parties must seek consensus not just across party lines, but also in the broader community, as any new law can be challenged by the people.

As mentioned before, Switzerland has introduced instruments of direct democracy into a well-functioning system of representative democracy. Although the tradition of citizens' initiatives is over 100 years old, it started to be effective only a couple of decades ago. What is important, the range of various democratic instruments in Switzerland is much broader than in any other European countries, therefore, the culture of democratic participation is much stronger. This however does not mean that other European states cannot be inspired by the Swiss example. It rather shows that development of direct democracy needs time.

## **5. The Impact of Citizens' Initiatives on Political Life of Nations**

The instrument of popular citizens' initiative is a well-known democratic instrument used in many European countries. In some of them, its tradition reaches 19<sup>th</sup> century, in others it is a novelty which still needs more observation and perhaps potential reforms. Nevertheless, the experience of various forms of initiatives in numerous countries not only in Europe, enables us to analyse the impact of these participatory instruments on different aspects of political life.

### **5.1 Do popular initiatives strengthen political trust?**

The current political crisis, not only in Europe, but also in many countries around the world is often described as a crisis of political trust. Our political systems have in the last decades witnessed a global trend of decreasing confidence in the institutions of representative democracy, such as political parties, parliaments and governments. Since the 1970s, civic participation has been seen as one of the leading antidotes in the face of increasing political antipathy (Pateman, 1970). Research focused on the support for participatory processes in countries such as the USA, Spain, Finland or the UK, confirms that public opinion is generally in favour of direct democratic tools such as referenda (Alarcón et al., 2018). However, it is hard to see it as a general trend. This point of view is mainly presented amongst particular social groups, such as the young and those who position themselves on the left of the ideological spectrum (Font et al., 2012). The pressure for institutional change is constantly growing and seeks to open up the democratic process by using instrument that allow to bypass political parties, such as the popular initiative (Dalton and Welton, 2005).

It is not yet clear in how far the introduction of new direct democratic mechanisms such as the citizens' initiative affects the levels of trust in the institutions which they are managed by. It seems clear that participatory instruments can result in contextual changes both in terms of public policy, as well as political culture. Citizens' initiative can be treated as one of the solutions to various challenges, such as decreasing levels of participation, the abuse of power or unresponsive governments (House of Lords, 2010). Yet, what at first looks like a solution to a problem can also produce adverse effects. This especially relates to the design of particular participatory instruments. If they are perceived to be ineffective and of low practical use, they could generate frustration and increase dissatisfaction, even leading to lowering political trust in the decision-making institutions.

## 5.2 Do popular initiatives increase electoral and non-electoral mobilization?

A further often raised question with regard to the relationship between participatory instruments and representative democracy is whether the former one has any impact on the latter. Research shows that there is no singular correct answer to this question. If one looks at the usage of citizens' initiatives in California (USA), it is somewhat lower than that in representative elections, and slowly decreasing since the initiative has been introduced. Therefore, the fact that citizens of California can use popular initiative did not have any bigger influence on their electoral mobilisation (Collins and Oesterle, 1995). Switzerland is another example of this possible tendency: it offers wide range of opportunities for direct participation, yet electoral turnouts are relatively low. The reasons for that relationship are certainly more complex, however, it seems clear that the possibility to use multiple channels for political participation could promote a more strategic and selective use of these (Alarcón et al., 2018).

Other studies observe higher electoral participation in those places where referendums and popular initiatives are used more frequently (Smith and Tolbert, 2004). According to Donovan et al. (2009), those American states that regularly use citizens' initiatives have higher electoral turnouts. A spill-over effect can be observed in these cases, which show direct relationship between participation in citizens' initiatives and higher voting rates in elections for public office. The argument is that the possibility to use well-designed direct democratic tools can increase motivation for participation in general. This is because a greater interest in public matters and

a more positive perception of political institutions can generate a positive synergy leading to educational effects, as citizens learn to participate and trust that their involvement is meaningful (Smith and Tolbert, 2004).

### 5.3 Are popular initiatives time and cost consuming?

One of the leading arguments against the usage of participatory processes in our democratic life is that the majority of citizens lack the necessary resources in terms of time, financial means, knowledge and abilities to initiate them (Każmierczak, 2011). Hence, such instruments as popular initiatives are in most cases suitable for already active citizens, who use them as additional channels to influence decision-makers. It is evident that more advanced societies indicate a higher tendency for participation, as they are better informed, readier to participate which in consequence results in higher political culture (Inglehart, 1990).

The main answer to the high-cost argument are new technologies which help to reduce the costs of participation, both in financial and organizational terms. Online participation takes up less time, dedication, physical presence and even contact with other actors, which from a deliberative point of view can have also negative consequences. Lack of possibility to discuss issues and confront them with other views creates danger of taking decisions without being aware of other perspectives on the issue. Yet, still majority of countries do not offer well-designed online tools to participate. Moreover, more systematic studies regarding the formation of preferences underline the important role of political parties in influencing the formation of preferences, including those cases when citizens themselves initiate referendums (Le Duc, 2002). All in all, every participatory process involves a commitment of resources and time and since both of them are limited and, as such, highly valued, participation must involve demonstrative or instrumental benefits (Font et al., 2001). This means that public participation has to give tangible results, which can be later assessed by the public opinion. This is why the cost-benefit analysis that can inspire a group of citizens to propose an initiative will be directly dependent on its design (and costs) as well as the potential for influence and success offered by the instrument.



#### 5.4 Can interest groups “buy” legislation via popular initiatives?

Participatory democracy is often confronted with the accusation that it enables interest groups to easily influence the decision-making process. As any political campaign requires human and economic resources, there is a real danger that citizens’ initiatives can be used by interest groups with higher capacity to influence the result (Lissidini, 2008; Berg & Thomson, 2014). Experience with a number of political campaigns has shown that powerful economic interests are able to “buy” legislation by promoting proposals, no matter if it means approving or rejecting a concrete solution. Still, in-depth studies suggest that funding campaigns is more effective when it comes to rejecting an initiative but is much more difficult when the aim is to support a proposal (Lupia and Matsusaka, 2004). Therefore, economically powerful groups are much more influential when focusing on a rejection of citizens’ initiatives, rather than promoting their own (Kriesi & Trechsel, 2012).

One cannot forget about the impact of political parties on participatory instruments. As most of them are rich in resources to support or fight against any initiative, the risk of hijacking the democratic tool is high (Welp, 2018). In consequence, mechanisms that have been introduced with the goal of opening up channels for participation for citizens to control and propose their own solutions, can end up being dominated by organised interests or political parties that.

#### 5.5 What is the relationship between direct and representative democratic processes?

Direct and representative democracies are in constant interaction. For instance, in the case of recall referendum critics view it as undemocratic, because it potentially undermines representative democracy and the accountability mechanisms associated with periodic elections (Garrett, 2004). What is more, it can be argued that, compared with referendum initiatives, the interests of minority groups could be better voiced in parliamentary procedures which by definition involve deliberative processes, especially in committees. However, the institution of agenda initiative does not conflict with the concept of parliamentary sovereignty and it does not change the distribution of institutional power in representative democracies.

Breuer (2008) is of the opinion that the relationship between different kinds of citizens' initiatives and representative democracy highly differs. If one considers reactive tools, which enable citizens to block the proposals or decisions of public authorities, we could describe them as complementary to representative democracy. On the other hand, proactive participatory tools, through which citizens can develop their own proposals can be seen as a substitute for representative democracy. There is no single example where such instrument like popular initiative would dominate the legislation production. Hence, it seems more accurate to describe them as mechanisms of correction, rather than mechanisms of substitution (Alarcón et al., 2018). Citizens' initiatives have not replaced representative democracy, they complement it. Sidor (2012) believes that participatory tools can "democratise democracy", and as such, they allow for the introduction of complementary platforms for participation in decision-making, above and beyond the election of candidates or parties, motivating the bottom-up development of ideas and support (Beramendi et al., 2008). What is more, from the perspective of the decision-makers popular initiatives, such as agenda initiative can be treated as a tool for translating citizen needs and enriching the legislative agenda, bringing public administration closer to citizens (Welp and Suárez, 2017).

#### 5.6 Do popular initiatives improve political debates and deliberation?

Popular initiatives can serve to put forward new political ideas, or even change legislation. However, they can also contribute to improvement of political debates and deliberation. One of the key goals of direct democracy is to increase transparency in the decision-making process. Direct democracy means *per se* a greater access to information and more inclusive public debate. In theory, a referendum campaign should be based on an exchange of arguments that leads to greater rationality in making collective decisions, going above and beyond parliamentary debate (Kersting, 2009). However, practice shows that this rational exchange of arguments and ideas is usually dependent upon the influence of the intervening actors and their resources.

One cannot forget that direct democracy instruments such as referendums can also divide and polarize societies especially along social and ideological lines (Morel, 2018). If political participation lacks deliberation it can produce adversarial and majoritarian logic which excludes

the possibility to reach a consensual solution amongst the different parties involved. Therefore, it seems crucial for the effective inclusion of direct democracy instruments to accept that conflict is a natural component of democracy and every society (Mouffe, 2000). Initiatives, referendums, deliberation and other participatory methods can resolve differences, but only if based on a series of agreed rules and procedures.

Depending on the type of popular initiative, different deliberative actions have to be taken by the initiators. In the case of legislative and referendum initiatives their role is to explain and justify the proposal to the electorate. On the other hand, through agenda initiatives a demand is communicated to the political authorities, who then take a final decision. Hence, initiators goal is to activate a public debate, which is initiated a-posteriori (Büchi, 2011). The agenda initiative by definition should promote and enhance public discussion and deliberation on issues that representatives may not have put on top of their list of priorities (García Majado, 2017). Yet, practice shows that this effect does not seem to materialise. In fact, majority of agenda initiatives do not even access the parliamentary agenda and remain unresolved. In many cases, the impact of agenda initiative is purely dependent on the support it enjoys amongst established political actors.

#### 5.7 Do popular initiatives improve accountability of decision-makers?

As mentioned before, tools of direct democracy can be seen as substitution or correction of representative democracy. However, they can also be useful for its supervision. Some belief that direct democratic mechanisms offer possibilities for political control and, thus, improve accountability and responsiveness of elites vis-à-vis citizen demands (Setälä and Schiller, 2009). Representative democracy cannot be deprived of control by citizens and electorate. If public officials make decisions on behalf of their voters, the latter should have the right to annul political decisions through the legislative and abrogative initiative (Matsusaka, 2003). Initiatives which result in abrogative referendums guarantee that the actions of governments are under democratic control of citizens and might be challenged by a majority of the population.

If we consider the fact that majority of democratic elections take place in periods of four to five years, the possibility to control decision-makers only through ballot seems very limited.

Therefore, it is also argued that the right to start an initiative improves political representation, because it keeps representatives alert (Alarcón et al., 2018). The case of Switzerland shows that the threat of an abrogative initiative is in some cases more impactful than a legislative initiative, since those whose political goals are not put in life through representative bodies often initiate these kinds of initiatives (Collins and Oesterle, 1995). As Cronin (1989) points out, abrogative initiatives allow constant accountability and control over an excessive influence of single interests over government. They also promote citizens participation in political affairs in between elections. On the other hand, it could be argued that abrogative initiative undermines the idea of the free representative mandate. Moreover, such processes can be divisive and polarising, often unjust, costly and connected to a multitude of abuses and unintended consequences.

All in all, it seems that the mixture of participatory mechanisms and their ability to control governmental actions indicate that these instruments have the potential to become an important incentive for representatives to find consensus for their proposals before approving them, given the real risk that they could be paralysed after being approved.

#### 5.8 Do popular initiatives improve quality of decisions?

The effectiveness of direct democracy instruments cannot be limited to the input aspect of the process. The role of direct democracy is not only to enable involvement of actors that are traditionally excluded from the policy processes, but also to improve the quality of the proposals, that is the output part of the procedure. The first objection which direct democracy has to face, is the alleged low level of resources amongst citizens characterized by limitations of technical and expert knowledge, which can lead to ineffective decisions (Kaźmierczak, 2011). What is more, as public opinion can be easily manipulated, some argue that direct democracy could lead to irrational decisions about complex matters (Rourke et al., 1992; Petit, 2012).

Yet, it seems that successful citizens' initiatives approximate public policies towards the preferences of the average voter (Gerber, 1996; Arnold and Freier, 2015). A US research focused on the 1970-2000 period (Matusaka, 2008) shows that States where a legislative initiative is in force spend less and decentralise more spending from the state level to the

municipal level. However, this same analysis finds that according to municipal data, local initiatives were associated with higher public spending in the 1980's and 1990's. This can be confirmed by another US research which analysed 350 Californian cities in 2000, demonstrating that citizens' initiatives lead to increased public spending, when acceptance requirements are relatively low (Gordon, 2004). Additionally, a study of 2,056 municipalities in Bavaria (Germany) between 1983 and 2011 associates higher public spending with local initiatives (Asatryan et al., 2016).

In sum, there is no consensus in the debate about direct democracy in general and citizens' initiatives in particular, whether they have a direct influence on the quality of the decisions taken. Some analyses focusing on the US and Switzerland link the existence of direct democratic procedures with results such as cleaner environment as well as educational and mental health improvements (Matsusaka, 2008). However, there is still need for more empirical data.

## 6. Conclusions

Popular initiatives have become an important element of democratic systems in many states around the world. They differ depending on number of political, historical and societal factors. Research shows that their impact on political life is uncertain. Although experience in many European countries shows that not many initiatives become eventually transformed into concrete legal outputs, the theory sustains that such tools of direct democracy offer various benefits, among them: enhancement of mass political participation between parliamentary elections, creation of a formal platform for the expression of broad-based "single issue movements", voicing of the issues important for minority interest groups that might otherwise struggle to be heard in representative assemblies as well as strengthening the sense of constitutional ownership and political responsibility among citizens which in consequence may be used as an important and effective counterweight to the apathy and cynicism which often weakens public participation in mature democracies. Hence, it seems that the main value of popular initiatives lies in their potential and possibility to expand the political agenda beyond the preferences of established and entrenched political institutions. Their goal is to raise the profile of issues important for the public which the ordinary apparatus of government might otherwise prefer to ignore (Dogan, 2011).

As mentioned before, the European Citizens' Initiative has been constructed based on various designs of national citizens' initiatives. The aim of the European Commission was to create a unique participatory instrument which would avoid mistakes and errors detected on national levels. Although number of national solutions were considered, the fact that the ECI is a first transnational citizens' initiative resulted in a unique architecture adjusted to the political reality of the European Union. Does this mean that the EU found a perfect solution to involve citizens' in its' political life? I will try to answer this question in the next paragraphs.

# V. The European Citizens' Initiative – An In-depth Overview of a Unique Mechanism of Transnational Participatory Democracy

## 1. Historic background

The efforts to introduce new instruments of participatory democracy into the EU law are not new. One would have to look back to the beginning of the 1990s to see that strengthening of citizens' participation was on the EU agenda already back then. In fact, civil society organizations have been lobbying to enhance engagement of citizens in EU integration for almost 30 years now (Efler, 2006; Berg, 2008; Behringer, 2016). It can be argued that one of the first big steps in the direction of more subjective position of citizens' in the European Union was the establishment of the Citizenship of the Union by the Maastricht Treaty signed in 1992. It was created in addition to national citizenship and granted EU citizens (citizens of all Member States) the right of free movement within the EU, the right to vote in communal elections in all Member States, the right of diplomatic protection, the active and passive voting right in European Parliament elections, as well as the right to petition to the European Parliament.

Few years later, in the run-up to the Amsterdam Intergovernmental Conference (IGC) in 1996 the then foreign ministers Wolfgang Schäussel (Austria) and Lamberto Dini (Italy) came up with the concept of a right of submission to the European Parliament (Efler, 2006). This was the first formal proposal similar to today's European Citizens' Initiative and it was based on the idea that if 10% of the electorate in each of at least three of all Member States submitted a political proposal drafted in the form of articles, the European Parliament would then be obliged to consider that submission. However, the proposal, at that time, was seen as too progressive and was refused.

Although executive and national bodies in the EU structure, such as the Commission or the European Council, were not keen to strengthen political rights of citizens, the European Parliament had expressed its support in that matter at least several times. Already in 1988 it made a reference to the role of political participation in the political process and highlighted “specific consultation on legislative matters”, as well as underlined the important role of the (national) political parties in the European public sphere (Efler, 2006). In 2002, the Petitions Committee of the European Parliament (PETI) – parallel to the debates in the Constitutional Convention – proposed to upgrade the right to petition to a right of submission, so that changes in the community legislation could be initiated by petitions. The Committee tried to find a third way between a rather weak petition and a strong right of initiative, however, one year later it declared that the current legal setting of the Union does not allow such a solution. As a consequence, in 2004 the Committee declared the rights of petition and complaint to the Ombudsman as a tool of direct engagement of EU citizens in the EU political process.

Concrete proposals on how to enhance political engagement of European citizens did not come solely from the European Parliament. Civil society and academics for years have been trying to lobby for the introduction of a wide scope of participatory instruments into the European political sphere. Among many others, the German political scientist Heidrun Abromeit (1998) proposed the establishment of a set of direct-democratic instruments – mainly veto rights (territorial and sectoral veto), as well as mandatory referenda in the case of new treaties and treaty amendments. At the same time, the Austrian lawyer and political scientist Michael Nentwich (1998) created the idea of “European indirect popular initiative” - one that is very similar to the Swiss citizens’ initiative. It was based on the concept that 3-4% of the electorate (or of the ballots cast in the previous European election) in at least five of all Member States can submit a proposal to the Council and the European Parliament. In the case of a refusal, a European-wide referendum would take place.

Non-governmental organizations (NGOs) and civil society groups have been even more active over the years in proposing direct-democratic instruments suitable for transnational political participation. “Eurotopia”, a network of leading European activists, argued for a European constitution which should be drafted with the usage of direct-democratic instruments and should include elements of direct democracy (Kaufman and Köppen, 2001). Another European



network of citizen groups, called the “Loccumer Erklärung” (Loccum Declaration), drafted a proposal to introduce the right of submission to the European Parliament (1% of the electorate of at least three of all Member States would need to sign) and a Swiss-type European referendum with the right of treaty-amending in the case when 10% of the electorate in every member state sign an initiative (Efler, 2006). A detailed and elaborate proposal was initiated also by the network of European democracy movements called “Democracy International”. They elaborated concrete proposals for a three-step citizen-law making procedure and obligatory referenda in the case of transfer of sovereignty and treaty/constitutional amendments (Efler, 2006).

In consequence, it was somehow expected that in 2001—when new discussions on the future of the EU emerged—the issue of democratic legitimacy in the Union was brought to the forefront. In parallel, the European Union was getting closer to a significant enlargement following the accession of Central and Eastern European Member States. Also, the Treaty of Nice, signed in 2000, highlighted the need for reform of the EU (Hatton, 2016). Further actions were established through the so called “Declaration on the Future of Europe”, prepared by the Member States in 2001, which focused among other things on their commitment to improve and monitor democratic legitimacy and transparency in the EU. The document came to be known as the Leaken Declaration and proposed to discuss the future of the Union in a wider formula, that is, a Convention comprising of many actors and stakeholders. The Declaration was strongly inspired by the European Commissions’ White Paper on Governance in Europe, which was published few months before and highlighted the need for increased accountability, transparency, participation, effectiveness and subsidiarity as the fundamental principles of good governance and consequently as the core objectives of the future of the EU (Greven, 2007).

The European Convention started in February 2002 with the aim to draft a European Constitution. The idea of introducing the European Citizens’ Initiative was faced with much resistance from many members of the Convention (Hatton, 2016). In consequence, it was initially not included into the Draft Constitutional Treaty. However, thanks to the backing of several members of the Convention who supported the cause from within, such as Jürgen Meyer, a member of the German national parliament, and Alain Lamassoure, a French MEP

from the European People's Party, the proposal was formally introduced in the very last session of the constitutional Convention under Article I-47 "The Principle of Participatory Democracy" (Aurer, 2005) and signed by 66 members of the Convention, among them 52 members of national parliaments, 9 members of the European Parliament, 4 government representatives (from Greece, Italy, Malta and Romania) and Vice-president of the Convention Giuliano Amato (Maurer and Vogel, 2009). In his amendment to the draft Constitution Meyer argued that the European Citizens' Initiative aims "to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU" (Cuesta-López, 2012: 5). This "risk for more democracy" made it clear that it was not another mass petition instrument, but a new legal and political situation in which citizens were given the same status to that of a majority in the European Parliament (Meyer and Hoelscheidt, 2008). As the original provisions regulating the ECI were not deliberated thoroughly by any Working Group, or the Convention plenary, it is not surprising to find that the Draft Constitutional Treaty contained only a broad outline for the instrument – the important details were to be determined by future Union legislation (Dougan, 2011). Lack of any serious debate on the new democratic tool led to many controversies and fears. Some raised concerns that this approach would raise expectations that would not be ever meet. In fact, still before the French "non" and Dutch "nee" in 2005 the President of the European Commission, Jose Manuel Barroso, said in one of his speeches: "The constitution provides new ways for citizens to actively participate in the decision-making process by being able to propose initiatives, if backed up by one million signatures across a significant number of countries. To put it simply: we will have more democracy." Barroso's deputy, Margot Wallström, Communication Commissioner, optimistically announced that "real progress for direct democracy" will be made (Thomson, 2012). Other asked questions about the tension between representative and direct democracy (Böttger and Plottka, 2016). Number of MEPs were against the idea, perceiving the initiative as a kind of competition to their own competences and work. Although the European Parliament supported the introduction of a citizens' initiative, one could also hear opinions that the EU democratic deficit could be more easily solved by strengthening the powers of the EP and the national parliaments rather than by introducing elements of direct democracy into the EU context (Trzaskowski, 2010).

As we know, the Treaty Establishing a Constitution for Europe was afterwards rejected by French and Dutch citizens in referenda that took place in May 2005. Civil society activists feared that during the “period of reflection” the ECI will be left behind as a nonimportant issue for the general adoption of the text. In 2006 proposals to introduce the ECI on a lower level appeared in the debate (Efler, 2006). However, they did not have to be further discussed, as earlier drafts for the provisions concerning the ECI —originally included in the Constitutional Treaty — were ultimately transferred to the Lisbon Treaty (Maurer and Vogel, 2009; Aloisio et al., 2011). The Lisbon Treaty contained a “copy-paste” article (Article 11 under Title II: Provisions on Democratic Principles) with identical wording to that included in the Constitutional Treaty under Article I-47:

“Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”

After years of lobbying by civil society, discussions on ECI moved from whether there should be a transnational citizens’ initiative at all, to making concrete decisions on what kind of citizens’ initiative there should be. In consequence, the Treaty of Lisbon for the first time in the history of European integration incorporated into the primary law of the European Union a mechanism of transnational participatory democracy (Greenwood and Tuokko, 2017). However, the practice of implementing such instruments teaches us that much of the eventual nature of a policy instrument is shaped in the process of using it and putting it into practice. This has been particularly true for the ECI, which will be explored in this chapter (Monaghan, 2012). In fact, on the wave of that enthusiasm in 2006 number of civil society groups decided to organise pilot-style European Citizens’ Initiatives. The aim was to test if such a transnational instrument of participatory democracy would work and whether citizens would be interested in using it at all. The issues included initiatives ranging from the proposal to establish Brussels as the only official headquarters of the European Parliament to abolition of nuclear power. Several of those pilot-ECIs were successful to collect the required 1 million signatures and deliver them to the European Commission (Kaufmann, 2008).

Before the entry of the Lisbon Treaty into force on December 1, 2009, the European Commission published a Green Paper on the ECI in November 2009 (Denkinger, 2010). The consultation period ran from November 11, 2009 to January 31, 2010. 65 registered organisations, 70 non-registered organisations, 153 individual citizens and 41 public authorities (central government or Federal State, national or regional parliaments) answered the call. In addition to this consultation, there was a public hearing in Brussels on February 22, 2010 that gathered 40 stakeholders (Böttger and Plottka, 2016). Based on the collected opinions and comments, on March 31, 2010, the Commission presented its “Proposal for the regulation of the European Parliament and the Council on the citizens’ initiative”. Negotiations between the Commission, the Council and the European Parliament started at a break-necking pace, rarely seen in the history of EU law-making (Dogan, 2011).

The legislative procedure started in the appropriate committees where four rapporteurs have been appointed - two from the Committee on Constitutional Affairs (AFCO) (Alain Lamassoure, from the European People’s Party (EPP), and Zita Gurmai, from the Group of Progressive Alliance of Socialists and Democrats (S&D)), and two from the Committee on Petitions (PETI) (Diana Wallis, from the Alliance of Liberals and Democrats for Europe (ALDE), and Gerald Haefner, from the Group of the Greens). Both duos of rapporteurs drafted working documents, which were accompanied by the organisation of a number of seminars and public hearings prepared by almost all political groups in the European Parliament. The rapporteurs of the PETI Commission, Gerald Häfner and Diana Wallis, noted that never has there been such widespread and open debate about a Draft Regulation in the history of the Parliament’s activities. Also, it was the first time ever for the Committee on Petitions to be directly involved in the legislative activity. Until then, members of the PETI Committee were only involved in the analysis of petitions directed to the European Parliament. The justification of the Committee on Petitions involvement in the legislative process gave first signals of what can be expected from the Commission. The Committee was invited to provide its knowledge and expertise in relation to the rights of citizens as expressed through the right of petition with which, according to the Commission, the citizens’ initiative had much in common.

The fast-paced negotiations revealed different approaches in the institutional triangle towards the final shape of the European Citizens’ Initiative. On the one hand, the Commission proposed

the least citizen-friendly solutions, making the instrument a bureaucratic and organizational nightmare (Berg & Thomson, 2014). On the other hand, the European Parliament tried to voice concerns of civil society and push for more open and user-friendly instrument, which would encourage as much participation as possible. The Council situated its proposals somewhere in between these two positions, but with a stronger leaning towards the European Commission (see the table below). The rules and procedures through which the initiative right was to be used were eventually agreed and finalised in Regulation 211/2011 in February 2011, and the launch date for the first ECIs was set for April 1, 2012.

	<b>Draft Regulation (31/03/2010)</b>	<b>Position of the Council of the EU (General Approach June 22, 2010)</b>	<b>EP's Position (October 2010)</b>	<b>Regulation (December 2010- January 2011)</b>
<b>Minimum number of Member States from which signatories have to come</b>	One third of the Member States (i.e. 9 Member States)	One third of the Member States (i.e. 9 Member States)	One fifth of the Member States (i.e. 5 Member States)	One quarter of the Member States (i.e. 7 Member States)
<b>Minimum number of citizens per Member State</b>	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750	Number of MEPs in the EP x 750
<b>Organisers</b>	Natural person, legal entity or organisation	Natural person, legal entity or organisation	Natural person within a citizens' committee comprising at least 7 members living in at least 7 Member States	Natural person within a citizens' committee comprising at least 7 members living in at least 7 Member States
<b>Minimum age required to support an initiative</b>	Voting age in European elections	Voting age in European elections	16 years of age	Voting age in European elections
<b>Registration of proposed initiatives</b>	Obligatory in an online register made available by the European Commission.	Obligatory in an online register made available by the European Commission which	Obligatory in an online register made available by the European Commission which	Obligatory in an online register made available by the European Commission which

		reserves the right to refuse the registration of an initiative.	reserves the right to refuse the registration of an initiative.	reserves the right to refuse the registration of an initiative.
<b>Procedures and conditions for the collection of support statements</b>	On-line and/or paper collection	On-line and/or paper collection	On-line and/or paper collection	On-line and/or paper collection
<b>Time allowed to collect support statements</b>	12 months	12 months	12 months	12 months
<b>Decision on admissibility of proposed initiatives</b>	The organiser must submit a decision request to the Commission with regard to the admissibility after collecting 300.000 signatures from at least three Member States.	The organiser must submit a decision request to the Commission with regard to the admissibility after collecting 100.000 signatures from at least three Member States.	No decision on admissibility provided for.	No decision on admissibility provided for.
<b>Requirements relatives to checking and authentication of support statements.</b>	Responsibility of Member States	Responsibility of Member States based on checks that can be undertaken by means of random surveys	Responsibility of Member States based on checks that can be undertaken by means of random surveys	Responsibility of Member States based on checks that can be undertaken by means of random surveys
<b>Examination of a Citizens' Initiative by the Commission</b>	The Commission has four months to examine an initiative and say what action it intends to take	The Commission has four months to examine an initiative and say what action it intends to take	The Commission has three months to examine an initiative and say what action it intends to take	The Commission has three months to examine an initiative and say what action it intends to take
<b>Commission Report on the implementation of the regulation</b>	5 years after the entry into force of the regulation	3 years after the entry into force of the regulation	3 years after the entry into force of the regulation	3 years after the entry into force of the regulation

## 2. What is the European Citizens' Initiative?

To answer the question, it is probably best to define what it is not. The European Citizens' Initiative is not a petition, nor is it a popular initiative (Petrescu, 2014). The former consists of a written submission—individual or collective to any state organ—in order to undertake some action lying within the petitions' powers. Petition is valid with one signature, which means it does not require collection of larger support among number of people. There is also no legal duty of the state organ to fulfil, nor even to answer, a petition. The ECI is also not a popular initiative, as it grants the right to a number of citizens to submit a draft constitutional or legislative provision to the voters, which cannot be blocked by the Parliament, although the latter may submit a counter-proposition to the voters (Aurer, 2005). What is more, article 11.4 TEU empowers neither the signees nor the Commission to call for a European referendum on the subject of the initiative. The ECI regulation also does not indicate such an option. In consequence, the ECI is not a direct democracy instrument through which citizens can call fellow citizens to give their opinion in a referendum initiative. It is rather an agenda-setting initiative, "a mechanism of participatory democracy which is fully subordinated to the political will of the representatives that could approve, alter or reject the citizens' proposals" (Cuesta-López, 2012: 256). Although the European Union invites citizens to participate via the ECI, the European Commission, remains in total control of the process. The abilities of both organizers and signatories to alter the decision taken by the institutions are very weak and time consuming and require long-term involvement in judicial procedures in front of the European Court of Justice. Therefore, the ECI remains fully coherent with a representative democracy framework (Bouza Garcia, 2012). It is a minority instrument that creates an opportunity to influence the European political agenda (Kandyla and Gherghina, 2018). The right of legislative initiative still remains with the European Commission, which means that any legislative process that may follow will do so in accordance with appropriate procedures described in the Treaties. Still, the Treaty makes it clear that the ECI should not be confused with the right to petition, since a petition is directed to the European Parliament while a citizens' initiative is directed to the Commission (Ventura, 2010).

In fact, the reason the European Commission has to give in justification of its decision to accept or decline an ECI can be compared to that granted to the European Parliament by the Commission in the framework agreement on relations between the European Parliament and the European Commission dated October 20, 2010. That means that if the European Parliament requests a legislative initiative on the part of the Commission the latter “puts forward a legislative proposal within one year or it includes a proposal in its working programme for the following year. If it does not put a proposal forward the Commission gives detailed reasons for this to the Parliament”. Current practice shows, however, that in case of a successful ECI the Commission justifies its refusal to put forward its own legislative proposal, yet it is hard to describe it as detailed. Sauron (2011) states with optimism that the obligation to give reasons for rejection of a citizens’ initiative increasingly undermines the Commission’s power to initiative, since it constantly has to justify why it is not taking any action. He even notes that “after Lisbon the claim of the Commission’s so-called monopoly over initiative is no longer a reality” (2011). Political and legislative reality is unfortunately different, and the Commission still has a hold over the legislative procedure in the European Union. From a legal point of view, one might argue that the Treaty of Lisbon confers the same right on one million European citizens as that held by the European Parliament and the Council of Ministers, that is the right to ask the Commission to submit a legislative proposal, without any legal guarantee that the Commission will comply with the request (Ponzano, 2011). However, as it will be argued later on that from the political point of view the power of 1 million EU citizens is much weaker than that of the European Parliament.

In the light of article 10.3 TEU, which provides that every citizen shall have the right to participate in the democratic life of the Union, the ECI can be seen as a tool by which European citizens can engage with the European project and strengthen the pan-European debate on European policies (Kaczyński, 2010). If one considers that the right of a significant number of citizens to put their own legislative proposal before their national parliaments exists at the national level in only 13 of the 28 Member States, one could argue that the European Union has gone one step further than most of the Member States in terms of direct participation of citizens in the legislative process (Ponzano, 2011).



As described in the previous chapter, one significant difference between the ECI and most of the national citizens' initiatives cannot be ignored. In the majority of cases, the citizens' right of legislative initiative allows to propose a legislative draft directly to the legislatures, that is to say, national parliaments. In the case of the European Citizens' Initiative things are more complicated, due to the institutional and legal structure, on which it is based. Therefore, no existing national model could simply be copied for the ECI. As mentioned before, the ECI gives one million European citizens the right to ask the European Commission, which by virtue of the European Treaties has a quasi-exclusive right of legislative initiative, to submit a legislative proposal. However, the Commission is not obliged to pass the proposal to the legislative instances of the European Union, that is to say, the European Parliament and the European Council of Ministers. Thus, this arrangement has nothing to do with the one present in the Member States, where either the legislative branch (parliament) or the executive branch (government) has the power to put forward legislative proposals. There are however two narrow exceptions to the Commission's legislative initiative exclusivity. Firstly, in matters of foreign and security policy the right of initiative belongs to Member States and the High Representative of the Union for Foreign Affairs and Security Policy. Secondly, in issues concerning justice and home affairs the Commission shares the right of legislative initiative with one-quarter of Member States (but not, in this case either, with the European legislative instances). Therefore, ECIs concerning the above-mentioned topics are difficult to imagine, as those areas are ruled almost entirely through executive acts rather than legislation as such, yet they are still possible.

It is also certainly worth mentioning that the Commission, while preparing the Green Paper published in 2009, and eventually the proposal for the regulation, used the so-called method of "reasoning by analogy". Consequently, the ECI was constructed on the basis of existing similar procedures in EU Member States. Since however, as Warleigh (2007: 64) argued, "the formal granting of such ability to citizens, acting collectively, would be unparalleled in the history of international organisations and would thus have potentially enormous significance", it was impossible and insufficient to copy a design of various national procedures and apply them at EU level. The procedure had to be adjusted to transnational democracy, where it is significantly more difficult to conduct a citizens' initiative (Berg, 2009).

### 3. The Procedure

The European Citizens' Initiative as a democratic innovation is provided for by the Regulation 211/2011 which sets concrete provisions regarding the ECI procedure. As described before, the negotiations between EU institutions and European civil society revealed different approaches towards practicalities and user-friendliness of the instrument. The procedure presented below in detail is the result of those negotiations and plays a fundamental role in the assessment of the entire tool.

#### 3.1 Who Can Launch the ECI?

The Treaty on the European Union states clearly in one of its first articles that "every citizen shall have the right to participate in the democratic life of the Union" (article 10.3). However, both the Commission's Green Paper and the TEU fail to mention who is eligible to start a European Citizens' Initiative. This has been elaborated during the negotiations. In consequence, a potentially obvious and straightforward provision created however disagreement on many levels. Can the ECI be launched only by EU citizens or also civil society organisations? What about residents, or students from outside of the EU? What should be the age requirement? Citizens from how many EU Member States should be able to start an ECI?

The European Commission, together with the Council, proposed that both natural persons and legal entities should be able to start an ECI (Szewczyk, 2012). This was however opposed by the European Parliament, which pushed for a natural person within a citizens' committee comprising at least seven members living in at least seven Member States (Kaufmann and Plottka, 2012). The EP justified its amendment via the AFCO report (European Parliament, 2010c: 10), which stated: "Excluding legal persons from the organising committee will protect the citizens' initiative from the possible abuse of existing business organisations, political parties and other organisations which are much stronger than a group of citizens and have more possibilities to act on the EU level. The citizens' initiatives should not develop into election campaigns nor should they be used as a tool for such campaigns. Politicians and especially MEPs have other tools to influence legislative decisions." Although the EP's argument was important,

practice showed that in order to succeed in collecting at least one million signatures, support from bigger NGO's is vital.

Although, in the first proposal, any single EU citizen could launch an initiative, finally the EP's proposal to register ECIs via a citizen's committee Member States prevailed. One could argue that Parliaments' proposal was slightly too restrictive and that leaving citizens the freedom to organise themselves in a less demanding manner would be a better solution (Głogowski and Maurer, 2013). The requirement of seven EU citizens from seven Member States could have been used as a non-binding recommendation to initiators, however, as a compulsory condition sanctioned by refusal of registration it might be pointed out as somewhat disproportionate. The PETI committee proposal by which citizens' committee could be formed by seven members from at least three Member States seemed to be the most user-friendly compromise (European, Parliament, 2010d). However, the intention was to use the committee as a filter, which would prevent the Commission from becoming paralyzed through a flood of applications submitted by individual citizens (de Witte et al., 2010). The European Parliament was of the opinion that the initiative should be registered by an international citizens' committee in order to facilitate the emergence of real Europe-wide issues and the collection of signatures throughout the Union. The Regulation also puts a formal requirement on the organisers who are obliged to designate one representative and one substitute ("the contact persons") responsible for liaising between the citizens' committee and the institutions of the Union throughout the procedure and who have the mandate to speak and act on behalf of the citizens' committee.

The second issue which arose during the negotiations was the minimum age of the organizers. Eventually, Article 3.4 of the Regulation requires that each member of the committee must be "of the age to be entitled to vote in elections to the European Parliament". However, having in mind the low involvement of youths in European affairs, the Regulation could have avoided the reference to the age to be entitled to vote in EP elections, which is determined by the Member States, and extended the right to support an ECI to EU citizens over sixteen years old, as the PETI committee recommended - "A lower age limit is proposed in order to encourage younger citizens' participation in the democratic life of the Union. The age limit of 16 years in case of

European election already exists in certain Member States.” This solution has not been taken into consideration, due to Council’s disagreement.

### 3.2 How to Register an Initiative?

According to Article 4 of the Regulation “prior to initiating the collection of statements of support from signatories for a proposed citizens’ initiative, the organisers shall be required to register it with the Commission”. The registration has to be conformed with conditions mentioned in Annex II to the Regulation. That means, among others, that the initiative has to contain a title, short description, and provisions of the Treaties considered relevant by the organisers for the proposed action. What is interesting, although legislative proposals generally need to be based on a *lex specialis*, the Commission is able to register ECIs which refer to non-legal bases (Cuesta-López, 2012). A “non-legal base” can be broadly defined as Treaty provision(s) that do not constitute legal bases for action at EU level *per se* but rather describe the objectives, values and principles of the European Union, or specify the exclusive, shared and supportive competences of the EU (i.e. arts 3, 4, 6 TFEU). Practice shows that ECI organizers used for that purpose such provisions as: article 2 TEU (the values of the EU), article 3 TEU (EU’s values and interests) and article 5 TFEU (co-ordination of Member States’ economic interests with the EU). There were also ECIs which link provisions from the Charter of Fundamental Rights of the EU with the objectives of their proposals. Such reliance on the non-legal basis aims to highlight the objectives of a proposed ECI and to strengthen the possibility of getting it registered. As Cuesta-López (2012) notes “this strategy is not a novelty for EU law-making; existing Commission’s legislative proposals and adopted secondary laws provide such abstract references in their Preambles.”

Another important facilitation for ECI organizers is the fact that they are not obliged to formulate its proposal as a proper draft law (Szewczyk, 2012). This is a major simplification in comparison to several national citizens’ initiatives. Certainly, a fully formulated law proposal has the advantage of having a strong basis for potential future debates, negotiations and decisions. However, the drawback is that such a precisely worded text could become an obstruction, e.g. by presenting problems with existing laws or having unforeseen consequences for certain groups (Głogowski and Maurer, 2013). Moreover, the organizers can also suggest

the form, which the adopted act should take, that is a regulation, directive or a decision. Consequently, if the initiator's goal is to achieve full harmonisation in a given area, instead of minimum harmonisation, a regulation would be more appropriate than a directive. In any respect the Commission has the last word on this matter. In some Member States, such as Italy or Austria, the agenda initiative must consist "of a bill drafted in articles" (art. 71 Italian Constitution) or "must be put forward in the form of a draft law" (art. 41.2 Austrian Constitution). However, not all popular initiatives have to be formulated as a legal act: the Swiss popular initiative can be submitted in the form of a general proposal. Only on the later stage representatives draft the final version presented to popular vote (art. 74.3 Swiss Federal Act on Political Rights). Given the fact that EU legal system is highly complicated, the formulation of the ECI in general terms seems much more approachable for the organizers, as well as the potential signatories that must clearly understand the scope of the political demand. In this regard, it is particularly helpful and important for organizers who want to register a given ECI to have the Commission's assistance through a "contact point", which is defined in article 4.1 of the Regulation (Cuesta-López, 2012).

Article 4 of the Regulation requires also from the organizers the publication of "regularly updated information on the sources of support and funding". However, the Regulation does not provide for any EU public funding for the organisers. Although this is not common among national citizens' initiatives, by contrast, Spanish legislation provides for compensation of the expenses incurred during the signature-gathering campaign if the agenda initiative reaches the legislative process. What is more, in Catalonia, the committee of the initiative can even demand an advance payment before the beginning of the signatures campaign (Cuesta-López, 2012). The current experience of five successful ECIs shows that one cannot collect 1 million signatures without any budget. So far, depending on the campaigns' strategy and civil society backup, organizers needed from 25.000 Euros ("Stop Vivisection") to even 330.000 Euros ("Ban glyphosate and protect people and the environment from toxic pesticides) in order to prepare and execute a successful campaign.

What is important, article 11.4 TEU and Regulation 211/2011 do not enlist particular issues excluded from the scope of the ECI. On the one hand, this leaves the Commission a more flexible approach towards potential refusal of registration (Bilbao Ubbillos, 2012). One might

argue, however, that a reference to the single subject requisite would be broadly welcomed, as it would guarantee the coherency and substantive unity of the proposals presented by the citizens (Cuesta-López, 2012). This would also facilitate the understanding of the initiative by citizens and allow them to express a clear standpoint on a particular issue. Furthermore, by introducing this condition one would prevent a situation where a very popular initiative is voted along with an unrelated provision that the initiators care about, but about which voters care little, are neutral or opposed. On the other hand, citizens have the possibility to campaign for a much wider scope of issues. In Member States such as Spain or Portugal, organisers cannot promote the adoption of statutes concerning fundamental matters. The Spanish Constitution defines that the bills proposed by citizens shall not proceed “in matters of constitutional law, tax law or of international character, neither in that related to the prerogative of clemency” (art. 8.2). As Cuesta-López (2012) notes “the exclusion of “matters of constitutional law” from the scope of the Spanish agenda initiative is particularly severe because it implies that citizens may not introduce bills related to fundamental rights and public liberties, to the regulation of a good number of institutions and constitutional bodies, to the Statutes of Autonomy or the general electoral system.”

The ECI Regulation has also failed to address a procedural question concerning the overlapping of similar or totally opposite initiatives. Since a legal solution for this kind of cases has not been discussed, the Commission has to deal with this eventual issue with political tools. In consequence, questions on transparency and fairness may arise. On the other hand, this normatively controversial situation may play an effective role in creating a pan-European debate with the involvement of initiators who submitted these conflicting proposals (Głogowski and Maurer, 2013). Thus, one could imagine a situation where the Commission informs all the interested parties of existing potential conflict and preferably supports a public debate among them during or after the signature collection procedure ends. Although this solution is not included in the Regulation, it may foster a genuinely deliberative policy-making process in the future (Bouza Garcia, 2012).

The ECI Regulation includes one narrowing provision, which over the years has led to several disputes between organizers and the European Commission. Article 4.2 of the ECI Regulation requires that “the proposed citizens’ initiative does not manifestly fall outside the framework

of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties". As a consequence, types of legal acts that citizens can request the European Commission to submit are primarily based on article 288 TFEU (ECAS, 2014). They are: legally binding legislative measures, adopted as a result of the EU's legislative procedures (ordinary or special) and initiated by the European Commission - such as regulations, directives and decisions; or non-legislative measures which are not legally binding, such as recommendations and opinions.

It is not clear whether the concept that the Commission can be called upon to submit "proposals" is intended to limit the scope of the ECI to legal acts which are initiated by the Commission but in the further process completed by one or more other institutions; to the exclusion of legal acts which are introduced by the Commission itself operating autonomously under decision-making powers conferred either directly under or otherwise pursuant to the Treaties (Dogan, 2011). This might be seen as the literal interpretation of the Treaty text, but the substantive arguments are more evenly balanced. One could argue that the interpretation of article 11.4 TEU —tied too strongly to European Commission proposals *stricto sensu*—would remove from the potential scope of the ECI some decisive categories of Union's public power which is exercised by the Commission directly rather than only at the Commission's initiative. For instance, this would refer to the new category of delegated acts supplementing or amending Union legislation as provided for under Article 290 TFEU. Yet, if the ECI was indeed to cover calls for the Commission to exercise any of its powers under the Treaties – either as proposals or as autonomous acts – one could imagine problematic and not necessarily desirable ECIs, asking the Commission to introduce purely administrative decisions relating to the behaviour or treatment of identified or identifiable private entities: for example, calling for the investigation of alleged competition or state aid infringements. This has not been the case so far, but it is still potentially possible (Dogan, 2011).

The word "manifestly" is also included in two other registration criteria: the proposed citizens' initiative cannot be manifestly abusive, frivolous or vexatious (article 4.2c) and the proposed citizens' initiative cannot be manifestly contrary to the values of the Union as set out in Article 2 TEU (article 4.2d). It has been suggested, mostly by civil society groups, that organisers should be obliged to demonstrate that the initiative is not "manifestly outside" the Commission's

powers rather than showing that it clearly falls inside the framework of the Commission's powers (Karatzia, 2015). The Commission, as opposed to the initiative organisers, would then have to decide, once the support thresholds had been reached, precisely what sort of legal act to propose (Organ, 2014). This approach would require from the Commission a more flexible interpretation of article 4.2 (b) of the ECI Regulation, in order not to be overly demanding when examining the Treaty provisions suggested by ECI organisers as the legal basis for action. However, the Commission argues that an initiative falls "manifestly outside" the framework of its powers if the conclusion that none of the provisions in the Treaties could serve as a legal basis does not depend on factual circumstances (ECAS, 2014). According to the ECAS report (20124), Commissions' strict interpretation of this provision means that "EU citizens will not be able to easily identify, without receiving proper legal advice, the valid legal basis for registering an initiative and will find it difficult to assess and decide on the dependence of the legal basis from factual circumstances".

The generality of the meaning of the term "manifestly" leaves the Commission with some discretion to interpret the admissibility criteria. In consequence, the Commission has a potential freedom to reject proposed ECIs on the basis of political considerations instead of legal conclusions. The case of the ECI called "STOP TTIP" (described more in-depth in the later paragraphs of this chapter) showed that the EC is keen to use the ambiguity of the legal admissibility provision in order to reject initiatives, which are not common with their political agenda. This means that the ECI, as a participatory mechanism is threatened to be directed by the Commission towards particular legislative issues or, even worse, away from certain issues. Thus, the admissibility check should take into consideration only legal factors, and political considerations should only be considered when the European Commission is deciding its course of action for a successfully submitted ECI (Karatzia, 2015). The ECAS report on ECI's legal admissibility (2014) notes that the practice of applying the ECI Regulation by the European Commission suggests that in a number of cases: "the legal admissibility test was too narrowly applied (e.g. because the proposed initiative correctly identified a legal basis in the Treaties, and the subject matter of the initiative fell within the scope of the EU's competence); the decision to refuse registration was arbitrary (e.g. because initiatives with similar characteristics were treated differently); and/or the reasons given for rejection were incomplete (e.g. because the Commission did not fully address all the Treaty provisions cited as a legal basis)."



Moreover, the Regulation does not state precisely whether an ECI can effectively ask the Commission to put forward proposals to amend the Treaties under either the ordinary revision procedure in article 48.2-5 TEU or the simplified revision procedure in article 48.6 TEU. The debate is focused on the correct interpretation of article 11.4 TEU and the Preamble to the ECI Regulation, which provide that an ECI can propose “legal acts of the Union required for the purpose of implementing the Treaties”. On the one hand, it is argued that article 11(4) TEU definitely excludes proposals for amendment of the Treaties from the scope of the ECI, yet such proposals fall into the powers of the Commission under article 48 TEU. Karatzia (2015) argues that if the Treaty drafters had intended to allow initiative proposals for Treaty modifications, they would have chosen a broader wording for article 11.4 TEU. In other words, the usage of the term “for the purpose of implementing the Treaties” in article 11.4 TEU *per se* excludes initiative proposals for Treaty amendment. This interpretation is supported by the European Commission (Organ, 2014). In fact, the Commission tried to confirm this principle by refusing the registration of the Anti-Nuclear Power ECI; ignoring at the same time the fact that the principal reason for the refusal was that the initiative based its claims on the Euratom Treaty. What is more, the ECI organizers did not intend to amend the treaties, nor did they invite the Commission to do so. Yet, the EC took this early opportunity to assert, for the first time, that an ECI cannot request a treaty change. The Commission stated in the registration refusal that “the legal bases of the TEU and TFEU cannot be interpreted as giving the Commission the possibility to propose a legal act that would have the effect of modifying or repealing provisions of primary law” (European Commission, 2012).

On the other hand, it has been argued that article 11.4 TEU does not clearly exclude article 48.2 TEU —i.e. that the Commission may submit to the Council proposals for the Treaty amendment which could serve to increase or reduce EU competences— as a legal basis for a proposed initiative. Furthermore, a legal approach suggests that in “certain perspectives on how best to further the Union’s values and objectives as laid down in Articles 2 and 3 TEU could well necessitate the amendment of existing Treaty provisions or the introduction of new ones” (Dogan, 2011: 1836). This kind of proposal would call for an amendment of the Treaties in order to implement existing Treaty provisions (i.e. to further the objectives set out in articles 2 and 3 TEU) and thus could be compatible with article 11.4 TEU. As a result, certain initiatives

that involve an amendment to the Treaties could be registered without challenging article 11.4 TEU (Karatzia, 2015). This approach is represented by majority of European civil society, which sees in the European Citizens' Initiative something more than just an agenda initiative, that is an initiative which can only set new agenda but does not require from the Commission any actions. This is why, except for the purely legal aspects of the dispute, some commentators have also raised the issue of the policy factors excluding initiative proposals for Treaty modifications from the scope of the ECI (Berg & Thomson, 2014; Organ, 2014). The narrow interpretation of the provision presented by the Commission limits citizens' perception of the ECI as a participatory instrument. The message sent to the citizens is clear - you are not able to influence critical matters regarding the EU's constitutional framework (Karatzia, 2015).

James Organ (2014) highlights Commission's inconsistency in terms of approval and refusal of ECIs that aim to change concrete Treaty provisions. He analysed the case of two initiatives – "Self-Determination Human Right", which focused on the implementation of self-determination as a human right in the EU Treaties and "Let Me Vote", whose aim was to grant EU citizens residing in another Member State the right to vote in all political elections in their country of residence, on the same conditions as the nationals of that State.. Although both of them required Treaty amendment, only the "Let Me Vote" initiative was registered with the ability to collect signatures. The refusal letter sent to the organizers of the "Self-Determination Human Right" initiative stated that, "amending the Treaties, as implicitly suggested by your reference to article 48.2 TEU (ordinary revision procedure), falls outside the scope of the citizens' initiative, as the latter may only be used to request the Commission to submit a proposal for the purpose of implementing the Treaties" (European Commission, 2013). Article 48.2 TEU states that the Commission may "submit to the Council proposals for the amendment of the treaties. These proposals may, inter alia, serve either to increase or to reduce the competences conferred on the Union in the Treaties". As the Commission rejected the use of article 48.2 TEU to support a European Citizens' Initiative proposal, the European Union is in a problematic and contradictory position where the Commission can propose changes to the treaties using article 48.2 TEU, but at the same time, over one million of EU citizens coming from "a significant number of Member States" cannot use this treaty provision to ask the Commission to make such a proposal (Organ, 2014).

Still, from a purely legal perspective it is questionable if article 48.2 TEU, as it provides a basis for an amendment rather than implementation of the treaties, should fall outside the scope of the European Citizens' Initiative. Yet, the Commission decided to register the "Let Me Vote" ECI, which challenges this position. The "Let Me Vote" initiative invited the Commission to propose that EU citizens can vote in all elections in the member state in which they are resident. The legal basis was anchored in article 25 TFEU, which is a passerelle clause that provides for strengthening or adding to the rights listed in article 20.2 TFEU. Although the initiative invited the Commission to change EU's primary law, it was registered. Organ (2014) admits that "this means that in some circumstances Treaty amendment can fall within the scope of the European Citizens' Initiative and meet the requirement that a proposal must be 'for the purpose of implementing the Treaties' and begs the question of what might exclude article 48.2 TEU from its scope but not article 25 TFEU."

The central difference between the two proposals that could explain the Commission's decision is that the legal basis for the "Let Me Vote" initiative is a passerelle clause in the treaties specifically related to the article in question, article 20.2 TFEU, whereas the "Self-Determination Human Right" initiative indicated a legal base that was not connected to a specific topic and would invite a proposal that would feed into the ordinary revision procedure instead (Organ, 2014). Furthermore, the "Let Me Vote" ECI proposal, based on article 25 TFEU, did not require a new competence to be incorporated into the treaties for the legal act to be proposed by the Commission, whereas the "Self-Determination Human Right" initiative required an amendment to the treaties that would introduce a new legal base before its objectives can be realized. Organ (2014) argues that the framework for the legal basis for Union's legislative action is not in itself amended by an article 25 TFEU action, but it would be the case if an article 48.2 TEU proposal led to a legal act of the Union. Nevertheless, neither of these differences avoid the fact that they are both treaty articles that enable the Commission to amend the treaties, albeit of a differing character.

By submitting the "Let Me Vote" ECI, the European Commission has confirmed that an amendment of the treaties is possible through the use of the European Citizens' Initiative process. It might be problematic to create new legal base in the treaties, but it is not excluded *per se* to use passerelle clauses and the special revision procedure as the legal basis for future

initiatives. According to Organ (2014, 438) “article 48.2 TEU is not clearly excluded by the wording of article 11.4. TEU that the Commission can make ‘any appropriate proposal within its powers’ or by the requirement that it not be manifestly outside the powers of the Commission, and if treaty amendment is considered to fall within the Commission’s understanding of ‘for the purpose of implementing the Treaties’ in other situations then why not for Article 48(2) TEU as well?” The fact that neither primary, nor secondary EU law explicitly state that a treaty amendment is excluded from the scope of the European Citizens’ Initiative means that any decision to reject the registration of an initiative on this basis is left open to legal challenge by the organizers (Organ, 2014).

Finally, once all the conditions are fulfilled by the organizers, the Commission receives all the relevant documents and has two months to register a proposed citizens’ initiative under a unique registration number and send a confirmation to the organisers. If any of the requirements set in the Regulation is not met, the Commission is obliged to refuse registration of any given ECI. The procedure after rejection of an initiative has been discussed during the creation of the Regulation. The Commission proposed to simply have the right to refuse registration of an initiative, without the obligation to justify its decision. The Parliament, as well as civil society, strongly opposed this solution and pushed for more transparency, obliging the Commission to publish its reasons for rejecting an initiative. One should bear in mind that every single ECI means that there is a societal issue considered by citizens to be worthy of action by a public institution (Kaczyński, 2010).

Two practical possibilities can be considered in case an ECI is not submitted by the Commission. None of them results from the Regulation and therefore should be seen rather as a good practice, and a sign the EU institutions treat their citizens seriously. Firstly, the Commission could indicate who has the power to address the particular problem, and secondly, it should also commit itself to monitoring how the process develops and then report on it (Głogowski and Maurer, 2013). The European Parliament should play an active role in this process as the only EU institution with a direct mandate from European citizens. Should the Parliament assess that the Commission did not do everything in its power to address the specific issue, it should have the right to call on a responsible Commissioner to give an explanation to the Parliament on the matter.

It is noteworthy that during the discussions on the final shape of the ECI Regulation the Commission proposed that the decision on the admissibility would be adopted after the collection of 300,000 statements of support from signatories from at least three Member States (Schnellbach, 2011). The Council has proposed the lowering of this threshold from 300,000 to 100,000 signatories and giving the Commission three months instead of two to complete the check. However, the European Parliament rejected this idea, “as this would rightfully cause great frustration to organisers” (European Parliament, 2010b: 3).

### 3.3 How to Collect Signatures?

Once the ECI is registered the second stage of the process begins: the signature gathering period. This duty belongs obviously to the organizers of the initiative who may collect statements of support in a paper form or electronically. A period of 12 months during which the initiative takers can gather signatures was a subject of lengthy discussions, with the Council and the Commission sticking to 1-year period and European Parliament together with number of civil society organizations suggesting prolonging the time span to 18, or even 24 months (Bouza Garcia, 2012). The proposed timelines were based on national citizens’ initiatives, ranging from Slovenia, where organisers have only 60 days to collect signatures to Switzerland, where the signatures collection period can last up to 18 months. The only exception is Portugal, where the organisers do not have a specific deadline to collect signatures (Cuesta-López, 2012).

Regarding the amount of statements of support needed for a given ECI, article 11 TEU sets the crossbar at a fairly low level, as one million EU citizens represent approximately 0.2% of the whole population of the European Union (Ohnmacht, 2012). If one compares it with the number of signatures required to trigger the agenda initiatives in the Member States, we see that the percentage over population is in most cases higher (Maurer and Vogel, 2009). For example, in Spain the ratio is set at 1,20%, and in Latvia even at 10%.

Although the overall number of signatures needed to be collected has not been subject to any discussions during the negotiation period, another requirement put by the Regulation ignited vivid debate. The Regulation, on top of the one-million-threshold, sets also concrete quotas

concerning the number of Member States from which the signatories have to come. Although the Commission proposed a one third of the Member States requirement, this condition has been lowered by the European Parliament to one fourth of the Member States, from which the signatories have to come. The Commission justified its proposal by referring to two treaty provisions providing for such a threshold as well as to some national provisions on popular initiatives (Šuchman, 2010). The Commission mentioned during the negotiations the enhanced cooperation procedure, which requires at least nine Member States to participate, as well as the yellow card subsidiarity procedure, which is a procedure under which the national parliaments of EU Member States can object to a draft legislative act on grounds of the principle of subsidiarity and requires one third of national parliaments to act. The Commission could have also mentioned the determination of serious (and persistent) breach of the Treaty on European Union Article 2 values on the part of a member state, which may also be made by one third of the Member States (Šuchman, 2010). Eventually, some regarded this dragging of line as a means of bringing drama into the negotiation rather than being a real position on either one side or the other (Sauron, 2011).

If one considers national initiatives, it is noteworthy that for example in Romania signatures for an initiative amending the Constitution must come from at least half of the administrative departments (counties), and statements of support for the legislative initiative must come from one quarter of the administrative departments (Cuesta-López, 2012). In some American states, the territorial distribution of signatures supporting popular initiatives is common. For instance, in Alaska the statements of support must come from at least three-quarters of the constituencies, in Arkansas from one fifth of the 75 counties, and in Florida from just over half of the 23 constituencies (Cuesta-López, 2012). As it is evident, territorial distribution of support is not solely an ECI characteristic. However, it is often introduced in popular ballot initiatives, which are in legal and political terms much stronger than a relatively weak agenda setting initiative, such as the ECI.

In order to fully ensure the transnational character of the instrument, the Regulation sets also a requirement of minimum number of citizens that are obliged to support an initiative in each of the Member States involved (Witkowska, 2013). The European Commission justified this threshold in the Green Paper by claiming that “it would be contrary to the spirit of the Treaty

if an initiative could be presented by a large group of citizens from one member state and only a purely nominal number of citizens coming from other Member States.” As a result, a formula— based on the number of the Members of the European Parliament elected in each member state multiplied by 750—has been introduced (Watson, 2013). This gives larger Member States a lower threshold relative to their population size (0.09% of the population in Germany’s case) and smaller EU countries a higher one (0.9% for Luxembourg), thus encouraging the initiators of such initiatives to give equal consideration to both big and small Member States in their efforts to meet the required thresholds (Conrad, 2013; Głogowski and Maurer, 2013). If a proportional or fixed percentage mechanism would have been adopted, ECI organizers would have had to collect substantially more signatures in larger Member States and many fewer in smaller ones (for example, just around 1,000 in Luxembourg compared with about 160,000 in Germany to reach a fixed threshold of 0.2% of the population) (Emmanouilidis and Stratulat, 2010a).

Finally, the ECI Regulation enables to collect statements of support both on paper and online. The latter method is precisely described in article 6 of the Regulation and requires from the organizers certification of the so-called online collection system in one of the Member States. Although the Commission prepared open access and free of charge software, it faced strong criticism from IT experts, claiming it is not adjusted to the requirement of usability in 21. century and can be characterized as not “user-friendly” (Rustema, 2014).

### 3.4 Who Can Sign an ECI?

Although treaty provisions regarding the ECI are very general and majority of details have been incorporated into the Regulation, article 11.4 TEU clearly reserves the right to support a given citizens’ initiative only to the citizens of the EU, that is, to the citizens who are nationals of the EU Member States. There is no other provision in the EU primary law, which would enable to extend this right to third-country nationals residing legally in the EU. At the same time, while other political rights of European citizens are enlisted in article 20.2 TFEU and in the Charter of Fundamental Rights (the right to vote and to stand as a candidate in European Parliament elections, the right of access to documents, the right to refer to the European Ombudsman,

the right to petition), the right to support an ECI is not expressly enounced as a proper subjective right (Cuesta-López, 2012).

The Regulation itself repeats the condition, adding one more – “In order to be eligible to support a proposed citizens’ initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament” (Article 3.4). Therefore, it excludes non-citizens, including third country nationals lawfully resident within the EU, even those who qualify for long-term residency status. In fact, that restriction does seem to be permitted under article 11.4 TEU, as the text refers unambiguously to “citizens who are nationals of...Member States”. Interestingly, that formulation was not incorporated in the original Convention proposals, but was only inserted into the final Constitutional Treaty, and then kept at the 2007 IGC which agreed upon the Lisbon Treaty. This could mean, that the original authors of the proposal had the idea to make the ECI usable by a wider range of citizens.

The narrow approach of total exclusion of third country nationals (TCN) from any possibility to support a proposed ECI seems difficult to square with the Union’s own longstanding aspiration and efforts to treat at least long-term resident TCNs on an equal footing with Union citizens (Dogan, 2011). At the same time, this narrow conception of political participation promoted by both article 11.4 TEU and ECI Regulation appears to represent a deliberate constitutional choice about the underlying role of the new instrument. The intention was not only to offer new and innovative channels for public participation in the exercise of the Union’s political power, but also to develop a greater sense of European identity, based on a traditional understanding of “European-ness”, as being linked simply to the possession of member state nationality (Karolewski, 2006; Dogan, 2011; Kaina, Karolewski & Kuhn, 2015).

The total exclusion of TCNs from the possibility to support ECIs raises also significant questions regarding problems of political consistency. The European Court of Justice in its ruling in *Spain v. United Kingdom* declared that certain TCNs are entitled to vote for the European Parliament elections, pursuant to the legislative choice of their member state of residence, albeit subject to certain limits imposed by the Union law.<sup>5</sup> The Court even affirmed that “while citizenship of

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<sup>5</sup> See more: Case C-145/04, *Spain v. United Kingdom*, [2006] ECR I-7917. On the sorts of limits imposed by Union law, consider Case C-300/04, *Eman and Sevinger*, [2006] ECR I-8055.



the Union is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to receive the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (Case C-184/99 Grzelczyk [2001] ECR I-6193, paragraph 31), that statement does not necessarily mean that the rights recognised by the Treaty are limited to citizens of the Union.” In consequence, there is a confusing situation: certain TCNs are entitled to participate in the “higher” democratic right of voting in elections to the Union’s representative assembly, yet at the same time no TCN is entitled to participate in the “lower” democratic right of expressing their support for a proposed ECI (Dogan, 2011).

As a matter of fact, the Regulation mixes together the various possible linking factors of nationality, residency and documentation in a rather arbitrary manner. According to article 7.4, signatories shall be considered as coming from the member state which is responsible for the verification of their statement of support in accordance with article 8.1 and 8.2. According to the Regulation organizers of the proposed ECI shall submit their statements of support to the relevant member state based on two main (alternative) possibilities. Firstly, signatures may be submitted to the signatory’s member state of residence or of nationality as stated in point 1 of Part C of Annex III. These are Member States which do not require any personal identification number and they can be divided into three distinct sub-groups. Ireland, the Netherlands and the UK receive statements of support from their own residents, whereas Estonia, Slovakia and Finland can verify statements of support from both residents and non-resident own nationals. Belgium, Denmark and Germany accept endorsements by both residents and non-resident own nationals as long as the latter have informed the national authorities of their current place of residence. In consequence, organizers of the proposed ECI have to provide a separate list of signatories for each of those nine Member States based on the “Statement of Support Form Part A”. Secondly, signatures may be submitted to the member state that issued the personal identification number indicated therein as specified in point 2 of Part C of Annex III. This applies to all of the remaining Member States and includes a closed list of the personal identification numbers (documents) required to provide in order to support an ECI: for instance, the Czech Republic accepts the individual’s national identity card or a passport; whereas Polish citizens can provide only their personal identification number called “PESEL”. In that case, ECI organizers have to provide a separate list of statements of support for each of those 18

Member States based on the “Statement of Support Form Part B” – including details of the relevant document as issued by that country. Subsequently, signatories can be assigned to a member state based on their nationality, place of residency or by reference to their documentation. Against this backdrop, preparation and verification of such diverse group of statements of support emerges as a rather complex and potentially confusing process (Dougan, 2011).

Moreover, one has to consider the possibility that some individuals are situated in the area of more than one member state. For example, a citizen included in two “Form A” Member States, such as an Estonian national living in the United Kingdom, could be associated with Estonia based on his/her nationality or with the United Kingdom based on his/her current residency. A further example could include citizen who is connected to one “Form A” and one “Form B” member state, such as an Estonian national living in Greece with a Greek residence certificate: he/she could be associated with Estonia based on nationality or with Greece based on the personal identification document. One could also imagine a citizen who straddles two “Form B” Member States, as with a French national living in Greece with a Greek residence certificate: he/she could be associated with France based on his/her French passport or with Greece based on a residence certificate. Although ECI Regulation clearly states that individuals may only sign any given proposed initiative once, the legislation gives no answers to questions on how to deal with individuals who enjoy two separate opportunities to endorse a proposed ECI under Union law itself. It appears that the conditions stated in Article 8.1 and 8.2 offer the citizen (and the organizers) a free choice about which member state their statement of support is to be associated with, provided such a choice is indeed possible (Dougan, 2011).

What is even more important is the fact that the current model of the assignment system contained in ECI Regulation opens door to penalizing certain citizens for having exercised their free movement rights within the Union. Dougan (2011) notes that in certain situations, the Regulation denies some EU citizens individual’s choices available to other categories of citizens. For example, a French national living in Spain is associated with Spanish support for the proposed ECI. However, he or she cannot sign it, as Spain recognizes only identity cards and passports which have been issued by the Spanish authorities. Whether this EU citizen likes it or not, he/she is obliged by Union law to associate himself/herself with French support for the

proposed ECI on the basis of his/her nationality. Actually, the Regulation could also actively disenfranchise EU citizens from any possibility of validly supporting a proposed ECI. Let us consider for an example a British national living in Spain. As mentioned before, since Spain only recognizes identity cards and passports issued by the Spanish authorities, the individual is not allowed to use his/her link of residency with Spain in order to be associated with Spanish support for the proposed ECI. At the same time, that citizen cannot be linked to the United Kingdom for verification and certification purposes either, as he/she is not resident in the United Kingdom and British nationality is not in itself a valid linking factor. In consequence, the attribution system introduced by Regulation 211/2011 is not only complex and confusing; it also actively penalizes and even disempowers certain Union citizens when it comes to expressing their support for a proposed ECI. Therefore, it can be argued that the ECI Regulation does not fulfil the fundamental principle of equal treatment between Union citizens, as well as the right to move freely across the Union without being subject to specific forms of legal discrimination as a consequence of exercising that right. This means that there are strong arguments for stating that the ECI Regulation is incompatible with primary Union law, as it has laid down criteria for the attribution of signatories to Member States which disadvantage certain groups of EU citizens in a way that is not objectively required for the proper functioning of a new ECI, and is thus conducive to annulment before the Court of Justice. In fact, the problems mentioned above could be at least partly resolved by the amendment of the annexes to Regulation 211/2011: for instance, by expressly obliging each of the “Form B” Member States to recognize (as a minimum requirement) not only the identity cards or passports issued to their own nationals, but also the residency documents issued to Union citizens living lawfully within its territory (Dogan, 2011).

In the light of the inconsistency issues mentioned above, the age requirement seems a straightforward challenge, which could have been solved from the day one by harmonization of the requirement. Members of the PETI Committee suggested “that in line with the right of petition, any citizen of the Union and any natural residing in a member state, regardless of age, should have the right to sign a Citizens' Initiative. This suggestion is made taking account of the number of signatures required and the fundamental wish to stimulate debate and participation. Against this background it would be inconceivable that this right should be available to fewer citizens than the right to petition; the objective is to increase participation not restrict it and

young people especially have a huge role to play in that process. Again, the experience of petitions has not shown such permissive criteria to be problematic” (European Parliament, 2010d). Parallely, members of the CIVIS Committee argued that in order to be eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be at least 16 years old (European Parliament, 2010e). They justified it by citing article 9 TUE, which states that all Union's citizens should receive equal attention. In their opinion on the Regulation they noted: “Active citizenship, social inclusion and solidarity of young people are crucial for the future of Europe. Moreover, supporting an initiative is completely different from the act of voting, therefore, it would be appropriate to involve also young people. Furthermore, linking the minimum age to national voting age would create inequality due to differences in national requirements.” Eventually, the Commission pushed for adoption of its proposal and for that reason the Regulation binds the right to sign an ECI with the entitlement to vote in elections to the European Parliament, set by each member state separately. This means that except for Austria, Malta and Greece, where the age requirement is set at 16 (in the first two) and 17 (in Greece), in all other Member States one has to be 18 to sign an ECI.

### 3.5 Data Protection

One of the subjects concerning the ECI which is often neglected by research, is the issue of data protection. As the citizens' committee organising an ECI —according to the Regulation 211/2011—is not a legal entity, members of the committee are directly and personally responsible for any breach of the EU law and national data protection laws. Given the fact that in May 2018 the General Data Protection Regulation has come into force, citizens who are responsible for organising collection of high number of important personal data face criminal charges or millions of Euros of fines in the case of breach of these laws. Unfortunately, during the ECI Regulation preparatory process the issue of data protection has not been widely discussed. Although the European Parliament and civil society pushed for harmonization of data requirements from each member state, eventually Commissions' approach prevailed. ECI organisers have to face the challenge of collecting different kind of personal data in different groups of Member States, which complicates the whole process.

The most comprehensive opinion on that subject was prepared by the European Data Protection Supervisor (EDPS) in 2010, before the ECI Regulation came into force. The key issue is the indication that personal identification numbers should not be required in order to support an initiative. As he wrote: “the EDPS does not see the added value of the personal identification for the purpose of verifying the authenticity of the statements of support. The other requested information can already be considered as sufficient for reaching that purpose.” Yet, the European Commission and the Council pushed hard to leave the matter of data requirements to Member States, which results in 18 of them asking for personal identification number. As a consequence, the lack of harmonization of data requirements has led to a bureaucratic complexity, which needs to be handled by the organizers.

In 2010, the European Citizen Action Service prepared a survey among European citizens asking them what personal data they are willing to share in order to sign an ECI. The results show that a majority of respondents could accept providing their name and place of birth (75,6%) and their personal address (66,2%) when signing an initiative, at the same time underlining that there is a strong resistance to providing their Identity Card or Passport Number (66,2% were against it). These results have been later confirmed by number of Eurobarometer surveys. More than seven in ten Internet and online platform users from the EU agree that they are concerned about the data collected about them on the Internet (72%). At least half of all respondents agree that they are concerned about the data collected about them on the Internet (55% vs. 20% who disagree): almost three in ten totally agree (29%) while 26% tend to agree. Internet and online platforms users in Italy (81%), France (80%), Ireland and Spain (both 78%) are the most likely to express concern, while those in Estonia (55%), Sweden (56%) and the Netherlands (58%) are the least likely to do so (European Commission, 2016). Another survey shows that “in most countries, a majority of respondents are concerned to some extent about the possibility of falling victim to identity theft”. This concern is particularly acute in Bulgaria (79%), the United Kingdom and Spain (both 78%), while in the Netherlands (49%), Sweden (49%) and Estonia (45%) less than half of those polled are concerned about being victims of identity theft (European Commission, 2017b). Finally, 67% of respondents (European Commission, 2016) are very concerned or somewhat concerned about the fact that personal data people leave on the Internet is used to target the political messages they see, undermining free and fair competition between all political parties.

Against this background, European citizens are not keen to share their personal data. They are aware of the dangers related to identity theft and manipulation. Requiring from them such sensitive information like personal identification number in an agenda initiative with no assurance that their support will be even formulated into a legal proposal for further debate, creates an impression that the current construction of the ECI has been designed to discourage citizens to sign an initiative (Dehousse, 2013). On the other hand, the Commission considered EDPS's comments on certification of the so-called Online Collection System, which eventually has to be provided by one of the Member States before the collection of statements of support has been started. The EDPS also welcomed article 12 of the Regulation 211/2011, which is entirely devoted to the issue of personal data protection, in particular point 3 stating that "the organisers shall ensure that personal data collected for a given citizen's initiative are not used for any purpose other than their indicated support for that initiative, and shall destroy all statements of support received for that initiative and any copies thereof at the latest one month after submitting that initiative to the Commission in accordance with Article 9 or 18 months after the date of registration of the proposed citizens' initiative, whichever is the earlier."

Although the overall assessment of the ECI Regulation by the EDPS was positive, he saw "room for further improvements", especially in terms of sensitive personal data which are required in majority of Member States to support an ECI. So far, this recommendation has not been taken into account. However, during the reform process, the EDPS issued another formal opinion on the new proposal for the ECI Regulation from the Commission, which will be analysed in-depth in the next chapter.

### 3.6 Verification, Submission, Response

The final phase of the ECI process starts either once the required number of signatures is collected, or when the 12 months deadline has ended. If the first condition is met the organizers have to submit the statements of support, in paper or electronic form, to the authorities in charge for verification and certification. According to the ECI Regulation, signatures will be always attributed and counted on the basis of the quota of each Member State that issued the

verification document of the signer. After submitting the statements of support national authorities are obliged to verify them on the basis of appropriate checks, in accordance with national law and practice, as applicable and within a period not exceeding three months from receipt of the request. At this point, the authentication of signatures is not required. As the ECI Regulation does not specify the verification technique that has to be used by national authorities, it is worth considering whether the “appropriate checks” made by the national authorities could be based on random sampling (Tomaszyk, 2012). This technique is a well-known and used method of signature verification in the USA. For instance, in California county officials choose randomly 3% of the signatures filed in their county and then verify how many of those signatures are valid (Cuesta-López, 2012). Given the complexity of data collected by ECI organisers, this method could be also used by EU Member States in order to shorten the entire process.

Next, the national authorities in charge deliver to the organisers a certificate, confirming the number of valid statements of support for the member state concerned. Once the organisers obtain all the certificates, and provided that all relevant procedures and conditions set out in the Regulation have been complied with, the organisers are able to submit the citizens’ initiative to the Commission. At this stage, any support and funding received for that initiative must be also specified. That information will be then published in the register provided by the European Commission.

The follow-up phase has to be seen as crucial as well. This is the moment where the over 1-year effort of number of citizens involved in the organization of the ECI, together with over 1 million supporters, await the official response from the European Commission. According to the Regulation, if all the conditions are met, the Commission is obliged to: (a) publish the citizens’ initiative without delay in the register; (b) receive the organisers at an appropriate level to allow them to explain in detail the matters raised by the citizens’ initiative and (c) within three months, set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking or not taking that action. In contrast to the registration process, where in the case of refusal “Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them”, in the follow-up phase the Regulation does not say anything about

possible remedies. As Vogiatzis (2017: 8) suggests “this very wide discretion is certainly remindful of (or possibly originates in) the leeway it enjoys with regard to forwarding (or not) legislative proposals to the European Parliament and the Council (when the ordinary legislative procedure applies), and thus it has been observed that the Commission's decision at the final stage of the ECI is unlikely ... [to] be amenable to judicial review”.

The fact that the European Commission has no obligation to take any action after over 1 million signatures are collected comes from the disinclination of the members of the 2003 Convention to introduce a “popular legislative initiative” (that is, an instrument which would oblige the Commission to forward the proposal to the EU legislature) without extending this right to the European Parliament. Thus, it can be argued that strong participatory instrument in the post-Lisbon configuration was neither welcomed by the Commission, nor fully by the European Parliament.

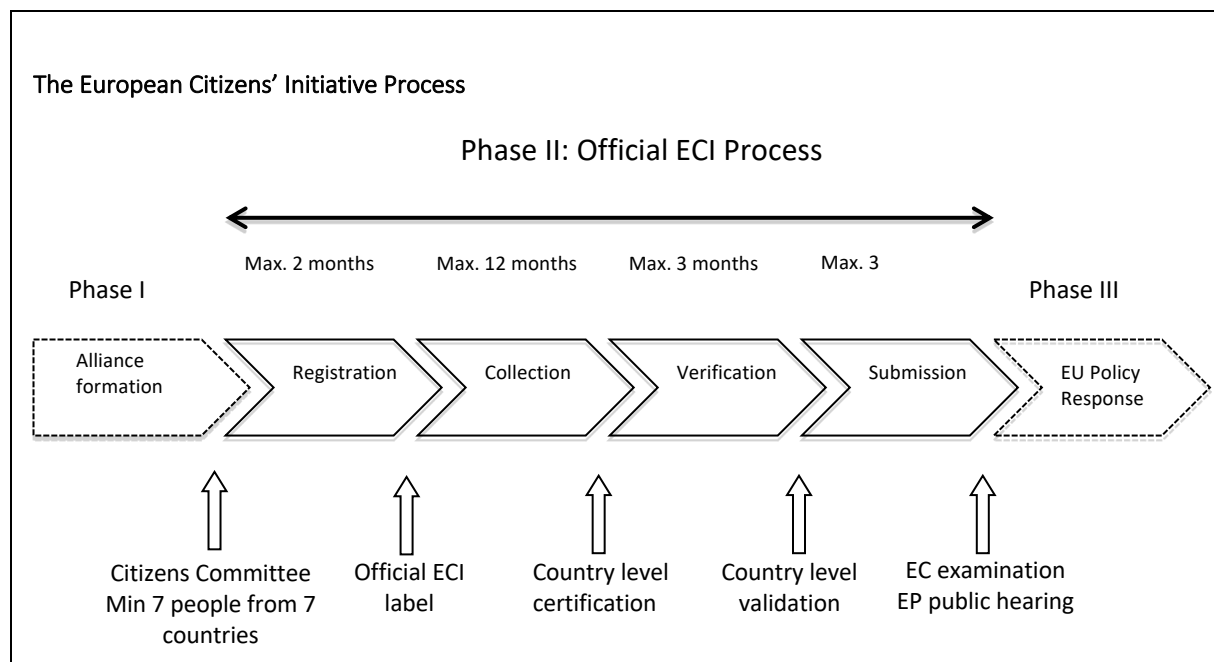
Finally, due to the European Parliament’s amendment during the negotiations process, the Commission together with the EP are obliged to organise a public hearing in order to popularize the initiative and defend its political gravity (Best and Lambermont, 2011). Therefore, the overall shape of the ECI Regulation leaves the European Parliament with a very limited role in the whole process. The Ombudsman - quite optimistically - stated that the hearing is a great opportunity for a political debate and “democracy in action” and has invited the Commission to ensure that the two pillars of the EU legislature, the Council and the European Parliament, take part therein (European Ombudsman, 2013). So far, the public hearings have been organised by the legislative committee responsible for the subject matter of the ECI, in collaboration with the Petitions' Committee. Yet, on January 31, 2019, the “Parliament's Rules of Procedure” were amended and “Parliament may decide whether to hold a plenary debate and whether to wind up this debate with a resolution.” Moreover, “Parliament may also decide to exercise the right conferred on it by Article 225 of the Treaty on the Functioning of the European Union, thereby activating the procedure laid down in Rule 46.” This means that according to the primary law of the European Union the European Parliament may, acting by a majority of its component members, request the Commission to submit any appropriate proposal on matters touched by the successful ECI. The Commissions’ obligation to follow-up is similar to the procedure laid down in the ECI Regulation, however the political burden is much



greater (Conrad, 2016). Consequently, the European Parliament strengthened the ECI, only by amending its Rules of Procedure politically and by giving a successful initiative second chance, in case the Commission is not willing to act.

Given the reluctance of the European Commission to either reform the instrument or act with regard to the successful ECIs, one possible solution would be to increase the level of political scrutiny via the involvement of the European Parliament (Emmanouilidis and Stratulat, 2010b; Vogiatzis, 2017). In its Resolution, the Parliament expressed “its concerns about a potential conflict of interest, given that the Commission itself has the exclusive responsibility to carry out the admissibility check, and asks that this situation be properly addressed in the future” (European Parliament, 2015). If the Commission would be truly devoted to strengthening the instrument, it could give successful initiatives the chance to be publicly debated as proposals for Union action, even when they are manifestly against its own political agenda. This would be a possible and relatively straightforward way to increase the ECI's politicisation and salience. Vogiatzis (2017: 20) rightly notes that “in such a scenario, the proposal itself would be subject to the laborious negotiations between the Parliament and the Council (when the ordinary legislative procedure applies), and the argument can be made that because of their increased legitimacy, these institutions are better placed than the Commission to reject an otherwise controversial proposal stemming from an ECI.” In addition, the Ombudsman's own-initiative inquiry interestingly recommended that the Commission could assess the possible support by the Council and the European Parliament on the proposed initiative before reaching a conclusion. So far, nevertheless, the Commission has not undertaken such a political commitment. It seems that it is not yet ready to “sacrifice” any legislative prerogative in the ECI process, despite the shortage of legitimacy and participation in its proceedings. Thus, it is hard to argue that the Commission enjoys too broad discretion at the final stage of the ECI (Vogiatzis, 2017). Although this may be legally comprehensible, in the current Treaty context, democratically it cannot be easily justified. It seems plausible that further political or quasi-judicial scrutiny is highly welcome in order to ensure that the Commission indeed serves the EU interest.

Fig. 1



Source: Own graph

### 3.7 Means of redress

If we return to the beginning of the ECI procedure, a crucial question arises for cases in which the Commission rejects the registration of an initiative. Do the organisers have any right to appeal? The ECI Regulations states in article 4.3 that “where it refuses to register a proposed citizens’ initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them.” It seems also plausible that the organizing committee should be able to challenge such a decision in the framework of an action for annulment under article 263 TFEU. It provides that any natural or legal person may introduce an action for judicial review of an act of the institutions (in this case – the Commission) addressed to that person. The potential review could be invoked for example in the case when the Commission fails to adequately justify its decision, which could be regarded as an infringement of an essential procedural requirement. One could also imagine a scenario where the Parliament decides to challenge the Commission refusal to register or follow-up on a proposal backed by the EP (Szeligowska and Mincheva, 2012). Organizers may also complain to the European Ombudsman, however most preferably in procedural matters such as for instance a too slow processing of an initiative on behalf of the Commission. Although such

decision would have no direct legal effect on the Commission, it would possibly create public awareness regarding possible maladministration of initiatives (de Witte et al., 2010).

So far, seven ECIs have decided to take their cases to the European Court of Justice (ECJ). Six of them on the basis of Commissions' refusal to register an initiative, and one of them with regards to "disappointing and un-founded refusal to provide an appropriate follow up" ("One of Us"). In four cases, the ECJ had decided that the Commission's decision to reject the registration of the initiative was justified. These were: One Million Signatures for a Europe of Solidarity (Anagnostakis v Commission – Case T-450/12), Cohesion Policy for the Equality of Regions and Stability of the Regional Cultures (Izsák and Dabis v Commission – Case T-529/13), Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right! (Costantini and Others v Commission – Case T-44/14) and Ethics for Animals and Kids (HB and Others v Commission – Case T-361/14).

In two cases, the ECJ annulled the Commission's decision to refuse the registration of the initiative. In *Minority SafePack and Others v Commission* – Case T-646/13, the General Court ruled that the Commission did not disclose clearly the grounds justifying the refusal and that "a citizen who has submitted a proposed ECI must be placed in a position to be able to understand the reasons for which it was not registered by the Commission, with the result that it is incumbent on the Commission, when it receives such a proposal, to appraise it and also to state the different reasons for any refusal to register it, given the effect of such a refusal on the effective exercise of the right enshrined in the Treaty." What is more, according to the Court "this follows from the very nature of this right which, as is pointed out in recital 1 of Regulation No 211/2011, is intended to reinforce citizenship of the Union and to enhance the democratic functioning of the European Union through the participation of citizens in its democratic life." Interestingly, the ECI "Minority SafePack" registered its initiative in April 2017, and managed to collect over 1.1 million verified signatures, however, the response from the Commission has been published after publication of this work.

The most thrilling case in terms of political and legal consequences of refusal of an ECI, is the "STOP TTIP" initiative. The European Commission refused to register the ECI by stating that "A citizen's initiative inviting the Commission not to propose a legal act is not admissible under

Article 2(1) of the ECI Regulation.” The main aim of the initiative was to halt the negotiations for the Transatlantic Trade and Investment Partnership agreement (TTIP) between the EU and US and to prevent the conclusion of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. Both TTIP and CETA were trade agreements between the EU and the two countries, which according to the Commission were supposed to create new investment opportunities and further liberalize the market. “STOP TTIP” asked the Commission to submit recommendations to the Council requesting for a repeal of the Council’s decision to authorise the opening of the TTIP negotiations. Moreover, the ECI demanded from the Commission to submit a proposal for a Council decision not to conclude CETA. However, the Commission refused both proposals and did not register the ECI. It justified its decision by saying that an ECI cannot invite the Commission to refrain from proposing a legal act or to propose a decision not adopting a legal act (Karatzia, 2015).

The Commission's decision to refuse the “STOP TTIP” initiative has triggered wide debates, “energising” the campaign and drawing media’s attention to the pros and cons of both TTIP and CETA. Although organisers could not collect signatures through the official channels, they decided to start an own-initiative ECI, with harmonised and less restrictive data requirements. Eventually, the campaign managed to collect over three million signatures and the organisers submitted them to the European Parliament “demanding a parliamentary hearing on the issue” (Vogiatzis, 2017). Parallel to the collection of statements of support via the “unofficial” ECI, the organizers decided to take their case to the European Court of Justice contesting Commissions refusal decision. Eventually, the General Court agreed that “that the Commission infringed Article 11(4) TEU and Article 4(2)(b), in conjunction with Article 2(1), of Regulation No 211/2011, by refusing to register the ECI proposal”, effectively adopting a broad approach to the term “legal act” as it features in Article 11(4) TEU and making an explicit link with the principle of democracy, as follows:

“[T]he principle of democracy, (...) one of the fundamental values of the European Union, as is the objective specifically pursued by the ECI mechanism, which consists in improving the democratic functioning of the European Union by granting every citizen a general right to participate in democratic life (...) requires an interpretation of the concept of legal act which covers legal acts such as a decision to open negotiations with a view to concluding an

international agreement, which manifestly seeks to modify the legal order of the European Union.

The Commission's position, according to which both the Commission and the Council have sufficient indirect democratic legitimacy in order to adopt the other legal acts which do not produce legal effects vis-à-vis third parties, has the consequence of limiting considerably the recourse to the ECI mechanism as an instrument of European citizens' participation in the European Union's normative activity as carried out by means of the conclusion of international agreements."

The example of "STOP TTIP" shows that even though the initiative was not formally registered, the organizers managed to create momentum in their campaign and mobilize over 3 million EU citizens across the whole Union. The fact that the initiative was refused by the Commission, and the negotiations between the EU and USA/Canada were not fully transparent, media started to dig deeper into the details of the agreements. As a result,, a number of Member States declared lack of support towards TTIP, stopping the negotiations at the end of 2016. In September 2017, CETA entered into force provisionally, and would enter into force fully and definitively once all EU Member States parliaments have ratified the Agreement.

It has to be noted that the "STOP TTIP" campaign was organised by a number of large and well-funded NGO's from several Member States. It is hard to define it as purely bottom-up initiative initiated by a group of EU citizens. In fact, it would probably have had much bigger difficulties in reaching over 3 million signatures without the organizational and financial support of professional civil society groups.

The seventh case decided by the ECJ with regards to the topic of the ECI, was the "One of Us" claim regarding the ECI's purpose as a participatory democracy instrument. What was different in that case, is that the ECI was registered and successfully collected over 1 million signatures, however, organisers contested the Commission's refusal to act upon the ECI's request "to end the financing of activities which destroy or presuppose the destruction of human embryos" in the areas of research, development aid and public health (Karatzia, 2015). They argued in their complaint that the ECI Regulation is incompatible with the Treaties, arguing that the

Commission should draw its legal conclusions regarding an initiative at the registration stage. They also challenged the Commissions' purely political considerations failing to act upon the ECI and suggested that a successfully submitted ECI can be refused further action by the European Commission only in cases where legal and political grounds exist for such refusal. According to the organisers of the "One of Us" initiative, the only way to ensure that the ECI is a meaningful participatory democracy instrument is to interpret article 10.1 (c) of the ECI Regulation as obliging the Commission to pass a successfully submitted ECI to the European Parliament and the Council, unless legal restrictions applies.

Although it was not even certain if the case will be admissible before the Court, it issued its decision in March 2016 and dismissed the ECI organizers claims, by stating that the Commission is not obliged to take any legal action with regards to successful ECIs. However, the Court dispelled doubts with regards to two other issues. First of all, it confirmed that Commissions' final communication on the successful ECI produces binding legal effects and on formal grounds closes the ECI procedure. Secondly, as a consequence of the previous findings, the Court admitted that Commissions' Communication can be presented to judicial review. It justified its decision by underlining that "the act of not presenting the negative of the Commission to judicial review undermines the achievement of the aim (...) to encourage the participation of citizens in the democratic life and make the Union more accessible".

Eventually, although the "One of Us" campaign did not reach their goal to force the Commission to act upon any successful ECI, they managed to confirm via ECJ ruling two other important rules of the ECI process – that the Commissions' final communication produces binding legal effects and what is even more important, that organizers are able to complain to the Court with regards to that Communication.

Finally, it is worth mentioning that one of the successful initiatives – "Stop Vivisection" – decided to complain to the European Ombudsman concerning the Commission's response to their ECI. This route gave them more of an unbiased political response, rather than a legal analysis of Commissions' proceedings. Emily O'Reilly - the European Ombudsman - claimed that the Commission's justification in the Communication was not "incoherent", even if far from what the organisers were aiming for. She also indicated a number of actions undertaken by the

Commission with regards to the ECI, which actually did not directly correspond to what the organizers wanted (an immediate end to animal testing), but did present, according to the Ombudsman, that the ECI “has had an impact on the Commission's actions in this area” (Vogiatzis, 2017).

The Ombudsman’s response did not identify any maladministration, but underlined several important obligations binding for the Commission, such as the “duty to explain, in a clear, comprehensible and detailed manner, its position and political choices regarding the objectives of the ECI”. It is certain that the Ombudsman cannot review the Commission's political choices at the follow-up stage, however, it can to carefully examine the detail of the Commission's response and the quality or coherence of its reasons (Vogiatzis, 2017). She has also rightly indicated that “the Commission coming forward with a legislative proposal should not be the only measure of success”, as “the process itself is of major significance”. In any case, while one should be aware of the limitations of the Ombudsman's possible role at the final phase of the ECI, the scrutiny of the Commission's reasons does not only leave the possibility for a more substantive assessment, but also it is possibly something that the ECI organisers might not achieve if they choose the judicial path (Vogiatzis, 2017).

#### **4. The ECI in Practice – Analysis of the Submitted and Rejected Initiatives**

The European Citizens’ Initiative became operational on the April 1, 2012. During almost nine years of its operation 76 initiatives have been submitted for registration to the European Commission. 55 of them have been accepted and 21 rejected, which gives a relatively high ratio of refusal at over 27 per cent. The fluctuation of the number of applications shows interesting trends. The instrument was very popular in the first two years of its functioning when 51% of all initiatives applied for registration. In 2013, three ECIs - out of five - managed to collect over 1 million signatures. The disappointing reaction of the Commission to all of these initiatives, the practical complexity of the instrument, as well as the review of the Regulation potentially planned for 2015 led to noticeable decrease of interest in the tool. In the next three years only 23 per cent out of all the ECIs have applied for registration. At some point, in 2016, it seemed that the tool is dead, and that a shock therapy is needed in order to bring it back to life. Although the Commission refused to improve the instrument in a manner proposed by a

number of actors, in particular civil society groups and the European Parliament, citizens and NGOs for unknown reasons came back to use the ECI and reactivated their interest in it by sending 18 applications in 2017 and 2018 (23% of all applications). In 2018, two new ECIs managed to collect over 1 million signatures, which together with the ongoing reform process indicated that the tool can regain its popularity, back to the numbers from 2012 and 2013. Moreover, from 2015 on the acceptance rate increased further, with only 3 rejected initiatives out of 28 submitted for registration (11%).

Since April 2012 around 8 million signatures of EU citizens have been collected. What is noteworthy, a vast majority of them (92%) came from the five successful ECIs. The remaining 8% came from further 6-7 initiatives, which managed to collect around a couple of hundred thousand statements of support each. The other half of submitted ECIs was not able to collect any significant number of signatures.

Also, the numbers show that the ECI is not only an online tool. During the first three, most active years in terms of the registered number of ECIs and collected statements of support, 37% of them were signed on paper and 63% via the Internet (Berg and Głogowski, 2014). When one looks at the available data of the successful ECIs it is worth noting that they collected large numbers of signatures offline: “One of Us” - 65%; “Stop Vivisection” - 44% and “Right to Water” - 18% (Berg and Głogowski, 2014). The decision on where to focus collection of signatures – online or offline - is probably one of the toughest challenges that ECI organizers have to face. While the media have often portrayed the ECI as primarily an e-participation tool, current experience shows that it is almost impossible to collect 1 million signatures without face-to-face engagement. Still, it is understandable that paper signature collection brings additional challenges with it. Given the complexity of personal data requirements and the fact that ECI supporters fail to include essential information like ID numbers, statements of support collected on paper have been declared invalid by national authorities at much higher rates than those collected online (Berg and Głogowski, 2014). Moreover, paper signature collection requires also many more campaign workers and is riskier in terms of data protection liability than online collection.



If one looks at the data showing support in each Member State, it seems that the attempt to balance the number of signatures between larger and smaller countries has not been reached. In fact, just two countries, Germany and Italy, cover almost 60% of all collected signatures. Approximately 32% of all ECIs signatures have been collected in Germany and 26% in Italy. Next come Spain, Poland and France, which altogether collected 16% of all signatures. It is obviously not surprising that five of the six largest EU states collected 74% of all ECI signatures, with the UK being without surprise an exception, as only around 1.5% of total ECI signatures have been collected from UK citizens. Support in particular Member States seems to be strongly tied to campaign presence within the country. For instance, the ECI “Right to Water” benefited from a strong German campaign team as well as national media coverage of water privatisation. On the other hand, the ECI “One of Us” found strong support in countries where Catholic organisations are strong and well-organised such as Italy, Poland, Spain and France. The ECI “Stop Vivisection” was aided by the strong involvement of Italian animal rights organisations and therefore collected the largest number of its signatures from Italian citizens.

## 5. Successful ECIs

It is difficult to understand the ECI tool without a deeper analysis of the successful initiatives. Up to now, 5 of them have managed to collect over 1 million signatures from at least 7 Member States. This means that 1 in 10 ECIs reaches the threshold. The experience of these 5 initiatives gives some answers on what can really be expected from this participatory tool.

The ECIs “Right to Water”, “One of Us”, “Stop Vivisection”, “Ban glyphosate and protect people and the environment from toxic pesticides” and “Minority SafePack – one million signatures for diversity in Europe” are the pioneers among the first of more than 50 attempts to affect the EU’s political agenda. All of them have managed to collect over 1 million statements of support. However, each one of them reached their goal in very different ways. A closer look at the growth rates of signatures offers thought-provoking insights into each individual campaign’s design and infrastructure.

In the case of the first three successful ECIs, that is “Right to Water”, “One of Us”, “Stop Vivisection”, the collection of significant numbers of signatures began relatively late in their

campaigns. This was most probably related to the dysfunctional online signature collection system software (OCS) which stopped many ECI organizers for several months and led the Commission to extend official deadlines (Berg and Głogowski, 2014). In fact, only “Right to Water” would have succeeded within its original 12-month deadline. The other two ECIs each had performed an impressive “final sprint”, collecting vast majority of signatures during their final months.

The ECI “Right to Water” invited the European Commission to propose legislation implementing the human right to water and sanitation as recognized by the United Nations, and promoting the provision of water and sanitation as essential public services for all. It was the best-prepared and equipped campaign among all of the initial ECIs. It was able to fundraise 100,000 Euros before starting the campaign and therefore developed efficient infrastructure for logistics and promotion. In total, the ECI have collected 140,000 Euros, which were used to pay staff and to fund the manifold tasks connected with an ECI, mostly practical and organisational issues such as translations, the registration, legal expertise, the development of the website, the facilitation of the online collection system, regular newsletters and volunteer and signature return management (Berg and Głogowski, 2014). Even though they were well prepared, after the first six months, only 3.5% of the necessary signatures had been collected. The “snowball effect” was triggered after a German national TV report on water privatisation was presented. Only within eight weeks after this TV report, more than one million signatures had been collected, primarily in Germany and via online form. This made this ECI the first to reach the one million signature goal and receive an official response from the Commission.

On March 19, 2014, the European Commission issued a formal communication with its response to “Right to Water” ECI. At that time the Commission affirmed the overall message that water, and sanitation are a human right, but did not offer any new policy proposals (Van den Berge, 2014). Disappointment among all ECI organizers as well as civil society was high. Only after 4 years a proposal for the revision of the Directive on drinking water was adopted by the Commission and a number of other actions were undertaken parallelly<sup>6</sup>. Although the initiative did not succeed to provoke an immediate legal proposal from the Commission, by

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<sup>6</sup> See more on Commissions’ action with regards to the “Right2Water” ECI: [https://europa.eu/citizens-initiative/initiatives/details/2012/000003\\_en](https://europa.eu/citizens-initiative/initiatives/details/2012/000003_en) ([accessed: 01.10.2020](#)).

engaging so many organizations and people, the ECI has made sure that discussions on EU water policy would never be the same again (Plottka, 2016).

The second successful ECI was registered under the name “One of Us” and asked the Commission for juridical protection of the dignity, the right to life and of the integrity of every human being from conception in the areas of EU competence in which such protection is of particular importance. It faced a similar slow start. However, the ECI was not supported by a “big bang” event that helped it to take off. Instead, the organizers worked hard to maintain a steady growth of signatures which evidenced a solid campaign team and stable infrastructure with almost 160,000 Euros fundraised during the campaign. Although, general media attention was relatively low, the ECI received prominent support from both Pope Benedict and Pope Francis, and was backed by thousands of volunteers who largely collected signatures on paper. As the organizers noted, “countries with solid pro-life movements, such as Poland and Italy, were essential to our success. The work and objectives set by strong national committees in France, Germany and Spain contributed to success in those countries. We collected the fewest number of signatures in countries where we lacked a solid national committee and where we had a very limit budget for campaign supporters” (del Pino, 2014: 27). All of these factors combined to make the ECI “One of Us” still the largest ECI in history with 1.9 million supporters.

Yet, in this case, the Commissions’ follow-up was even less elaborate than in case of the “Right to Water” initiative. Their response was seen as a “very polite justification of why the Commission does not consider any action” (Böttger and Plottka, 2016). In fact, this was Commissions’ second stroke at the instrument, which did not yet knock down the ECI, but gave another strong signal to potential organizers that the effort of collecting 1 million signatures can be easily ignored by the Commission. As mentioned before, the Commission’s lack of legal or political action after submission of the ECI provoked the organizers to send complain to the European Court of Justice.

In stark contrast to the first two successful ECIs, which had significant funding and professionalized campaigns with full-time staff, the ECI “Stop Vivisection” was the first successful ECI which was purely driven by volunteers (Berg and Głogowski, 2014). It proposed European legislative framework aimed at phasing out animal experiments and managed the

whole campaign with a tiny budget of only 23,651 Euros making this ECI even more impressive. Similarly, to “Right to Water”, few months before the end of their deadline, they had only collected 500,000 signatures with high number of signatures signed on paper. If they had intensified and expanded their initiative to stronger online collection, they would probably not have reached the 1 million threshold. Eventually, their great performance in social media brought them an impressive addition of nearly 800,000 signatures during its final months.

Although, on the basis of the first two responses advanced by the Commission, expectations towards any constructive answer were low, the organizers still believed in policy change (Varrica, 2014). Unfortunately, the only action undertaken by the Commission in response to the ECI was organization of an academic conference. The Commission has arbitrarily decided that the ECI’s proposal to ban animal experimentation was “premature” (European Commission, 2017a: 16). As mentioned before, the “Stop Vivisection” organizers were the first one to use the possibility to complain to the European Ombudsman on the grounds of lack of Commissions’ legal proposal in response to the initiative.

After three consecutive responses from the Commission, which satisfied neither the ECI organizers nor the wider supporters of the participatory instrument, its momentum started to visibly decrease. In 2018, only after 5 years the Commission received another submission of over 1 million signatures, this time from the “Ban glyphosate and protect people and the environment from toxic pesticides” ECI. In this case, the initiative was strongly supported by number of big NGOs and online platforms such as Campact or Greenpeace. The campaign managed to fundraise over 328,000 Euros making it the most expensive ECI so far. As statistics show, the majority of the signatures came from Germany (61%), however thresholds in 8 other Member States have been also met.

The ECI called on the European Commission to act in three matters: (1) to propose to the Member States a ban on glyphosate, (2) to reform the pesticide approval procedure, and (3) to set EU-wide mandatory reduction targets for pesticide use. As set in the official response to the ECI organizers, the Commission concluded that there are neither scientific nor legal grounds to justify a ban of glyphosate and decided not to make a legislative proposal to that effect. On the second proposal, the Commission committed to come forward with a legislative proposal by

May 2018 (which it did) to enhance the transparency in scientific assessments and the quality and independence of the scientific studies that are the basis of the assessments carried out by the European Food Safety Authority (EFSA). Finally, on the third aim, the Commission concluded that it intends to focus on the implementation of the Sustainable Use Directive, and will re-evaluate the situation, initially in a report to Council and the Parliament on the implementation of the Directive to be produced in 2019. This report approved the usage of glyphosate in the EU until 15 December 2022.

Although the Commission committed itself to act on two out of three issues touched upon by the ECI, it arbitrarily stated that there are neither scientific nor legal grounds to justify a ban of glyphosate and refused to act on the main proposal. No wider debate, except the obligatory public hearing organized by four EP committees (ENVI, PETI, ITRE and AGRI), was organized. The European-wide discussion on the issue was ended by the Commission, before it really started.

A few months later another ECI announced that it managed to collect over 1 million signatures in at least 7 Member States. Interestingly, it was the “Minority SafePack – one million signatures for diversity in Europe” initiative, which at first was refused to be registered by the Commission, but later had to be resubmitted due to the ruling of the European Court of Justice. The ECI called upon the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. It was organized by an umbrella NGO called Federal Union of European Nationalities and financially supported by, among others, Autonomous Province of Trento or Autonomous Province of Bozen. In January 2020 the organizers informed that over 1.1 million signatures have been validated by national authorities. The campaign managed to meet the threshold in 11 Member States with over 527.000 statements of support collected in Hungary and over 254.000 signatures gathered in Romania. They have raised almost 350 thousand Euros.

As one can see the subject-matters of the successful ECIs have been various. The organizers managed to collect over 1 million signatures both in favour of highly emotional matters such as the issue of abortion (“One of Us”), as well as very technical issues like ban of glyphosate. In four out of five cases the campaigns were highly professional with high budgets and full-time

paid staff. Even in the case of “Stop Vivisection”, although it based its success on volunteers, they were recruited and managed via civil society channels.

Actually, it is hard to clearly define success in terms of campaigning through the ECI procedure. Certainly, the process can be regarded as successful once it leads to a legislative initiative or the development of new policy by the European Commission. However, none of the five current ECIs has resulted in new legislation or policy. Yet, one could argue that the European Citizens’ Initiative is also successful when a European debate is taking place. The latter might not lead to a legislative or policy change, but it still empowers citizens and puts important issues into wide transnational debate (Geuenes, 2016). In that case, success can be measured also on ECIs that did not succeed to collect over one million signatures, but managed to create an stimulating campaign, as well as by “unofficial” ECIs such as STOP TTIP, which were able to reach some of their goals not having their initiative registered by the Commission.

## **6. Rejected Initiatives**

The majority of research regarding the ECI focuses on the registered, and especially the successful ECIs. It is however important to also analyse the initiatives which had not been submitted to the Commission. Why over 20 campaigns were not able to collect statements of support? Which topics did they want to put on the agenda? What happened to the initiatives after rejection of the Commission?

Vast majority of ECIs (85%) have been refused by the Commission in the first three years. This comes somehow naturally, as citizens and civil society was not yet sure what topics will be able to be submitted and how strict will the Commission interpret the provision saying that the ECI cannot “manifestly fall outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties”. In fact, all rejected ECIs were not submitted by the Commission precisely on these grounds. None of the initiatives was refused because it was “manifestly abusive, frivolous or vexatious” or “manifestly contrary to the EU values as set out in Article 2 of the Treaty on European Union”. 9 years of practice dispelled fears that the ECI could become an instrument of anti-European or Europhobic organizations.

Indeed, the Commission refused to register initiatives covering variety of topics. From a recommendation to sing the European Anthem in Esperanto, over demanding a future without nuclear power, to stopping Brexit. What is noteworthy in the vast majority of the cases is that the Commission justified its decision by stating “(...) the Commission considers that there is no legal basis in the Treaties which would allow the Commission to present a proposal (...) as defined in your application.”

As mentioned before, six initiatives decided to complain to the European Court of Justice with regard to the refusal of their initiative. In four cases the Court confirmed the Commission’s decision (“One Million Signatures for a Europe of Solidarity”, “Cohesion Policy for the Equality of Regions and Stability of the Regional Cultures”, “Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!”, “Ethics for Animals and Kids”) and in two cases Commissions decision has been annulled (“STOP TTIP” and “Minority SafePack”) giving organisers the chance to register and collect statements of support. In one case – “Unconditional Basic Income” ECI - organisers decided to reformulate their request, so that it met all the conditions set in the ECI Regulation and managed to register their initiative.

If one would like to categorize the rejected ECIs according to the subject matter, five groups would emerge. Paradoxically, the biggest one would be represented by initiatives which aimed to strengthen or defend European integration, such as “To hold an immediate EU Referendum on public confidence in European Government’s (EG) competence” or “Stop Brexit”. 8 out of 21 refused ECIs could have been put in such category. Second largest group would be represented by initiatives with social and economic twist, such as “Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté” or “One Million Signatures For <A Europe Of Solidarity>”. 5 refused ECIs wanted to put such topics on the EU agenda. On the third place one could classify two groups of initiatives. On the one hand, campaigns in the area of human rights, for example “Enforcing self-determination Human Right in the EU” ECI. On the other hand, ECIs fighting for animal rights, such as “Stop cruelty for animals”. In both cases, 3 of such initiatives tried to register with the Commission. Last but not least, two potential ECIs would not fit to any of the above-mentioned categories. Those were “Abolición en Europa de la tauromaquia y la

utilización de toros en fiestas de crueldad y tortura por diversión.” and “My voice against nuclear power”.

Practice of both, registered and refused ECIs shows that a number of anxieties voiced before the instrument came into life, were unnecessary. For instance, Emmanouilidis and Stratulat (2010) feared that number of ECIs could reflect specific interests lobbied by a well-organised minority rather than commanding broad public support. This could even lead to “tyranny of minorities” backed by interest groups which are better equipped to collect one million signatures. Moreover, they argued that “there is also a risk of deadlock if an initiative clashes with an existing EU policy or if the Commission faces contradictory requests in different fields”, as “ECIs could, for example, simultaneously call for, or argue against, a more ambitious reduction of CO2 emissions; for or against more liberal immigration policies; for or against the use of GMOs, etc.”

None of these anxieties turned into reality. In fact, practice proved that the nature of the ECI is solution-oriented and leads to constructive rather than destructive initiatives. EU citizens and civil society do not use the ECI to sanction rulers. They use it to engage citizens constructively in the political process, and consequently the ECI goes beyond the black and white fight for the yes or no of voters as initiators have to come up with a genuine idea to shape policies at the EU level (Schnellbach, 2011).

## **7. Conclusions**

The European Citizens’ Initiative had its ups and downs. It almost did not get into the European Constitution, yet managed to stay in the Lisbon Treaty. The adopted ECI Regulation was heavily criticized by civil society, but 44 initiatives applied for registration in the first 3 years of its functioning. After the Commission has not made any legal proposals in response to the successful ECIs, the instrument was “sentenced to death”. However, recently two new ECIs managed to reach the 1 million threshold. It seems that, although the Commission is not keen to treat the ECI seriously, EU citizens and European civil society are persistent enough to keep it alive.



The original aims of ECI's introduction were well-defined and optimistic. This new and innovative participatory tool was and still is supposed to: "(1) help to counter public disengagement with European affairs by offering citizens the possibility of pushing the EU's 'legislative button'; (2) stimulate transnational dialogue and debate on specific public concerns across Europe; (3) promote the Europeanisation of national public discourses, if the pros and cons of a proposal are discussed in national political arenas and (4) have an 'educational function', making citizens more aware of how the EU works and, especially, of the Commission's role" (Emmanouilidis and Stratulat, 2010b).

Has any of those ambitions been accomplished during last 9 years? It could be argued that the ECI is a perfect example of a potentially far-reaching primary law provision that was weakened through implementing regulation, special single-purpose rules and administrative twists (Šuchman, 2010). ECI organisers realized that even in today's so-called interconnected world, organising a transnational campaign in at least seven EU Member States is indeed a task well beyond most organisations, let alone individual citizens (Tuokko and Greenwood, 2017). Therefore in reality, the ECI turned out to be an exclusive prerogative of well-organised associations with pre-existing transnational networks (Ohnmacht, 2012).

It seems that so far, the ECI has indeed enriched the public's conventional participatory repertoire with a kind of advocacy democracy, through which citizens can indirectly influence the EU's policy process via intermediary bodies. Kaufmann (2012) lists three secondary results of ECI consequences: (1) the ECI can be used as a bargaining chip to negotiate a given issue, (2) it can be a catalyst for coalition building and (3) personal or collective canvasser for candidates or parties in the run-up to elections to the European Parliament.

However, if the Commission does not change its approach towards the ECI, it will not improve the model of representative democracy on which the EU is founded. Put simply, the ECI in itself will not contribute significantly to overcoming the EU's "democratic deficit" as long as it remains only a "legislative inspiration" for the Commission (Szewczyk, 2012). As Emmanouilidis and Stratulat (2010) point out the tool on its own, "will not lead to a more democratically accountable system or fundamentally increase the degree of politicisation in the EU or give European politics the lifeblood of a vibrant democracy, which thrives on the clash of opposing

arguments and the personalisation of political conflicts". The European Citizens' Initiative needs reform, which will enable citizens to truly and more directly participate in the political life of the European Union.

## VI. The Untapped Potential of the European Citizens' Initiative

The pursuit to include participatory democracy instrument such as the European Citizens' Initiative into the EU primary law has taken decades. Yet, the discussions on the important details of the whole procedure have been remarkably profligate. Still, before any decisions have been made, the European Commission stated optimistically that the ECI "provides a singular opportunity to bring the Union closer to the citizens and to foster greater cross-border debate about EU policy issues, by bringing citizens from a range of countries together in supporting one specific issue" (European Commission, 2010b: 2). On the wave of that enthusiasm some activists hoped that the ECI will become a "Trojan horse of direct democracy" – from the outside an instrument of participatory democracy, but with the potential to introduce institutional change below the level of treaty reform (Plottka, 2016).

As the European Citizens' Initiative is operational since 2012, it is yet too early to draw reliable conclusions on such general issues as the impact of the instrument on Europeanization or development of European public sphere. The history of European integration shows that those are processes which need much more time. However, eight years of experience is surely enough to analyse the ECI from a practical and organizational perspective. What has to be done in order to improve the tool? What are the visions of improvement presented by various stakeholders? What are the main dispute points between them? These questions have to be answered in order to fully analyse the potential reform of the ECI.

The need to revise the ECI Regulation was voiced already after two years by majority of stakeholders (Berg and Thomson, 2014). As the Regulation indicated that "by 1<sup>st</sup> April 2015, and every three years thereafter, the Commission shall present a report to the European Parliament and the Council on the application of this Regulation" some hoped that at least some improvements might be expected in 2015. Although number of reports has been produced between 2013 and 2016 by all EU institutions, the official revision procedure was launched by the Commission only in 2017, after five years the ECI was launched. In that way, the

Commission reached informally its original aim to revise the instrument each five years, instead of three years described broadly as review in the Regulation.

Eight years of experience with the ECI instrument show that its governing rules need a number of improvements if it is to have any impact on the strengthening of European democracy (Berg & Głogowski, 2014). The example of over 70 registered ECIs made it clear that no matter how well resourced is the group of citizens behind it, organizing a transnational campaign in at least seven EU Member States is a very complicated and complex procedure which requires not only a high budget but also great determination and patience. What is probably crucial for the future of the ECI is that many of the biggest problems stem from the implementing rules, which could easily be improved. Hence, the aim of this chapter is to provide an in-depth analysis of the ECI revision procedure and reform proposals.

## **1. Issues and improvement proposals**

### **1.1 Legal admissibility**

The first fundamental hurdle in the ECI process is related with the registration and admissibility procedure before an ECI can be launched. Since the launch of the European Citizens' Initiative on April 1, 2012, around 25% of all ECIs submitted to the European Commission for registration have been declared legally inadmissible. This high refusal rate raises serious questions about the Commission's application of the ECI Regulation.

As mentioned in the previous chapter, the Commission has two months to assess the legal admissibility of the proposed initiative. Article 4.2 of the Regulation states that a favourable decision of this *ex-ante* check is subject to one formal and three substantive conditions: the citizens' committee must have been formed; the proposed ECI must not "manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties"; it must not be "manifestly abusive, frivolous or vexatious" and it must not be "manifestly contrary to the values of the Union as set out in Article 2 TEU".

The fact that the admissibility test is conducted at this early stage is based on the logic that campaigning is costly and resource intensive (EPRS, 2015). It rules out situations whereby the Commission does not register an ECI after significant efforts have been invested into it and after it has gained the support of at least one million citizens. In consequence, such late rejection would lead to understandable frustration, and it could also result in negative repercussions for the public image of EU democracy.

As the Regulation fails to indicate a clear definition of the meaning of "manifestly falling outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties", experience of over 20 rejected ECIs shows that the European Commission applies a rather restrictive interpretation, which appears broadly guided by the system of Commission competences set out in the Treaties (EPRS, 2015). Similar approach applies to the identification of the correct legal basis for the legal act proposed by the way of the ECI. It has been reported that the Commission rejected some ECIs because their organizers failed to identify a suitable Treaty justification. What is more, some stakeholders observed that the Commission rejected the ECIs as a whole, when only some parts of the requests fell outside the Commission's competence. Yet, the ECI Regulation does not forbid the Commission to breakdown and analyse different aspects of the proposed ECI.

It is argued that Commissions' restrictive approach significantly weakens the ECI instrument and inhibits its future use, hence restricting the rights of EU citizens and undermining EU democracy overall (Berg & Głogowski, 2015). Although the majority of all registered ECIs did not reach the 1 million threshold, they all have created the important democratic benefits of cross-border policy debates and gave EU citizens the chance to impact the EU policy agenda. By refusing the registration of so many ECIs, the Commission has not only hampered debate on relevant topics like nuclear power and the TTIP trade agreement, but also discouraged others from even considering using the ECI. Against this background, the Commission should refrain from simple replies such as "this is beyond EU competences," or "this is contrary to the values stated in the Treaties" (Głogowski & Maurer, 2013) and take into consideration a number of serious improvements in the practice of admissibility.

Firstly, a precise definition of “legal act” should be established and/or the political actions that the European Commission can initiate or undertake via the ECI process. Secondly, a precise definition of what it means to be “manifestly outside” the Commission’s powers’ should be provided to potential organizers, so that it can be easily comprehensible and not subject to arbitrary interpretation. Thirdly, procedure for the legal admissibility test should be clarified and the transparency of the decision-making process increased. Fourthly, a position of ECI officer, similar to the Hearing Officer for competition law, could be established, with competences to conduct adequate legal advice for ECI organizers with regard to the legal basis of their initiative. Finally, the Commission should analyse each aspect of the proposed ECI separately and provide or explore alternatives for possible registration for the refused ECIs.

## 1.2 Personal data requirements and their protection

The ECI operates as a purely European democratic instrument due to its transnational character and legal basis in EU law. As a result, one of the biggest challenges faced by ECI organizers are the issues of personal data requirements in order to support an initiative and personal data protection, which rests on the informal body known as the citizens’ committee. First of all, as mentioned in the previous chapter, each EU member state requires different and non-simplified personal data from ECI supporters. This implies that the lack of harmonization in terms of data requirements has resulted in various problems for organizers and in part also for national authorities, which are obliged to verify those statements of support. Therefore, one of the first great challenges by any ECI campaign is to collect 27 different signature forms and submit signatures for verification to 27 different national authorities — instead of to a single collection point (Berg and Thomson, 2014). This results in tremendous additional bureaucratic burden for ECI organizers. Due to the fact that there are 27 different sets of personal data requirements – some based on citizenship and others on residence – numbers of EU citizens living in another member state are unable to support an ECI. Since data requirements are incoherent, European citizens from Bulgaria, the Czech Republic, France, Hungary, Austria and Portugal living in Ireland are unable to sign a European Citizens’ Initiative. Several reports indicate that around 11 million EU citizens are excluded from the ECI (EESC, 2016; REFIT, 2016).

The disenfranchisement of certain groups of EU citizens does not only rest on their citizenship and residence. Strict national regulations also exclude other groups of citizens from signing an ECI, for instance homeless people in countries where a detailed address is required on the statement of support as well as EU citizens without a (valid) passport or identity card in countries that require the provision of a personal ID number to sign an ECI, but which do not have a general duty to provide evidence of identity, e.g. Austria (EPRS, 2015).

This issues has been addressed, among others, by the European Ombudsman, who in her own-initiative inquiry “urged the Commission — in order to facilitate EU citizens wishing to sign an ECI, and irrespective of in which Member State they are currently residing - to, once again, propose to the legislature simpler and uniform requirements for all Member States in terms of the personal data to be provided when signing a statement of support” (European Ombudsman, 2015). She confirmed these recommendations in her letter to the European Commission stating that “simplifying data requirements for signing a statement of support for an ECI is a pressing matter in need of improvement” (European Ombudsman, 2017: 3).

Similar recommendations have been listed in European Parliament’s resolution on the European Citizens’ Initiative (European Parliament, 2015), calling “for the introduction of a uniform procedure for making statements of support by amending Annex III to Regulation (EU) No 211/2011 to standardise the nature of the data collected in the Member States”. The European Parliament also encouraged the Commission to negotiate with Member States with a view to reducing the number of data requirements, removing – accordingly – the requirement for personal identification numbers and making them more user-friendly. The Parliament even suggested establishing an EU digital citizenship with a view to resolving the current problems caused by multiple registration and “called on the Commission, therefore, to explore this issue in its digital agenda as a matter of urgency.”

In fact, in 2016 the Commission in its response to the European Parliaments’ resolution stated that it “fully endorses the call by the Parliament and remains committed to further negotiation with the Member States”. It also affirmed “that divergences between the conditions and personal data required from signatories by the different Member States remain an issue of great concern, welcoming the constructive approach of those Member States who so far have

responded positively to the repeated calls of the Commission to harmonise and simplify their data requirements” and promised to “continue its efforts in encouraging the Member States to simplify these requirements under Annex III of the ECI Regulation” (European Commission, 2016)

Paradoxically, even the Council of the EU in the “Summary of Discussions within the Working Party on General Affairs on The European Citizens' Initiative” noted that “divergences between the conditions and personal data required from signatories in the different Member States could result in citizens being excluded from supporting an ECI” and that “divergences between the conditions and personal data required from ECI signatories was an issue raised by some delegations” (Council, 2015: 4).

Furthermore, all the campaigns, as well as many citizens, EU officials and national authorities have complained that too much information is required from citizens to support an ECI (Berg & Thomson, 2014). It has been proven that one of the ECI organizers made use of 43 different signature forms to run the campaign and more could have been used. The most demanding form requires the signatories to indicate their name, place of residence, street, house number, postal code, city, country, date of birth, place of birth, nationality, personal identification number, i.e. passport or identity card (e.g. Austria, Italy and France) – including the name of the issuing authority in Italy (REFIT, 2016). The European Data Protection Supervisor shared this view by recommending deleting the request for the personal identification number and the non-mandatory information fields from the model form in Annex III, which determines the data to be collected in the statements of support (EDPS, 2012).

As shown in the previous chapter, sharing ID numbers or data such as birth date or birthplace raises serious privacy concerns (Berg & Thomson, 2014) and discourages citizens from signing an ECI. Data provided by ECI organizers shows that even up to 80% of potential supporters have refused to sign an ECI when asked to share ID numbers (Merz, 2014). If we take into consideration that several Member States authorities seem not to verify some of the personal data they request, it is unnecessary to expect citizens to provide this data when signing an ECI (Berg & Głogowski, 2016). Against this backdrop, the EDPS (2017: 3) suggests including in the



ECI Regulation that “the verification process be based on random sampling whenever possible under national legislation and recommends forbidding targeted verification of signatories”.

Serious issues concerning ID number requirements have been observed especially in Austria, Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Poland and Romania. However, several Member States - such as Spain and Sweden – do not face such complications as ID numbers are routinely used in daily transactions. All in all, 17 Member States require indicating ID number, whereas 10 Member States do not use the ID number to verify the statement of support, with Finland being the most user-friendly and requesting signatories only to provide their name, country of permanent residence, nationality and date of birth.

Puzzlingly, although one has to indicate personal data to support an ECI, for the first several years the Online Collection System framework did not enable the organizers to collect email addresses. Yet, in order to create a dynamic and involving European debate one has to have the chance to communicate with supporters of an ECI, particularly via email addresses (Berg & Głogowski, 2014). The example of the ECI Right to Water shows the discrepancy between the number of collected signatures and email addresses. Throughout their campaign they managed to collect over 1.8 million signatures, but gathered only 20,000 email addresses of supporters, which implies that they could inform about their success and further actions only 1% of them (Berg & Thomson, 2014). Luckily, this flaw was addressed by the Commission and currently ECI organisers are able to collect e-mail addresses within the signing form.

The issue of personal data does not only refer to the risks related to the signatories but also to the ECI organizers. The Regulation stipulates that the seven European citizens who initiate the citizens’ committee are personally liable for each step of the ECI process including the work of all volunteers across Europe at national and local level. The amount of risks linked to personal liability (be it for infringing EU or national law) raises reasonable fear of launching an ECI (REFIT, 2016; European Commission, 2017c).

In practice, it implies that for any organizational or administrative tasks, the seven members of the ECI citizens’ committee have to use their own names, e.g. for bank accounts to manage ECI donations. The lack of legal personality to the committee established in the Regulation causes

also serious uncertainties when filing complaints. For instance, two organizers who appealed to the Court of Justice of the European Union had to resubmit their request as joint appeal from all members of the committee and, in another case, all the members and the committee as such have referred their case to the CJEU (European Parliament, 2014).

What is even more important, ECI organizers are also considered to be “data controllers”, which means that sanctions for infringements of data protection rules could be imposed on them personally. This means that compliance with the ECI Regulation and the data protection Directive, as well as with the national transposing legislation, requires from the ECI organizers burdensome solutions regarding security conditions for storing the signed papers and electronic forms, as well as transportation/transfer for submission to the Member States. They are considered: burdensome (e.g. specific security features for storage rooms such as locks, fire alarms); unclear (e.g. organizers are not sure how to download and transmit online forms in a safe way to national authorities) and risky, as organizers are personally liable. In Germany, the fine is up to EUR 300.000 if data is not protected at every stage of the campaign, which illustrates the gravity of the financial risk. Moreover, under some national laws, organizers are obliged to notify the collection of statements of support to data protection authorities. In some cases, such authorities were not even aware of the existence of the ECI, which resulted in lack of certainty about organizers’ obligations and the imposition of additional unforeseen obligations (European Parliament, 2014). For instance, in Bulgaria, the data protection authority required the registration of each single ECI volunteer who was responsible for collecting paper signatures as an “operator of personal data” (Merz, 2014). This has created additional work and bureaucratic burdens, which delayed the campaign and complicated the collection of signatures.

The European Data Protection Supervisor (2017: 2) considers however “that the role of the Commission appears to be more than that of a mere processor in relation to the setting up and operation of the Central Online Collection System, and that its role would be better described as that of a joint controller in such cases.” As a result, “the absence of clear distribution of roles in the ECI Proposal may lead to a situation where the representative of a group of organizers for an ECI could be held accountable (as the controller) for matters being outside of the scope of his or her influence (i.e. the operation of the Central Online Collection System).” Therefore,

it “recommends introducing a more accurate description of the division of roles and responsibilities between the Commission and the organizers by considering, where appropriate, their designation as joint controllers.”

The European Parliament acknowledged in its resolution “the delicate problem of organisers’ personal liability with regard to data protection when collecting signatories’ personal data” and proposed “that the wording of Article 13 of Regulation (EU) No 211/2011, on liability, be changed to make it clear that personal liability is not unlimited”. The EP recommended to take inspiration from Article 3 of Directive 2008/99/EC of the European Parliament and of the Council of November 19, 2008 on the protection of the environment through criminal law, with a view to establishing that organizers are responsible only for acts which are ‘unlawful and committed intentionally or with at least serious negligence’” (European Parliament, 2015).

Additionally, a number of EU institutions (European Parliament, European Economic and Social Committee, Committee of Regions, European Ombudsman) proposed that citizens' committees should be able to acquire legal personality, or at least have the possibility, and not the obligation, to set up their citizens’ committees as legal entities under national or European law. For this, modification of the ECI Regulation would be unnecessary. Although it does not allow citizens’ committees to be legal persons, nothing seems to forbid them as natural persons to become established as legal entities – hence preserving the difference between companies and citizens (European Parliament, 2014). If the idea of a European legal entity was be implemented in the long run, serious consideration should also be given to such EU legal entities as the European Foundation Statute and the European Association.

One of the objectives of the Regulation stated in the Recital claims that “(t)he procedures and conditions required for the citizens’ initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens’ initiative so as to encourage participation by citizens and to make the Union more accessible. They should strike a judicious balance between rights and obligations” (European Parliament & the Council, 2019). The only examples of issues related to personal data requirements and their protection shows that the procedure is neither clear, simple and user-friendly, nor proportionate to the nature of the citizens’ initiative. The unsatisfactory implementation of the ECI rules has led to a bureaucratic and confusing set of

27 different national personal data requirements, which exclude millions of EU citizens living abroad from exercising their right. Against this background, the ECI needs common and harmonized forms, data requirements and data protection rules as well as a single coordinating body for signature verification and the possibility for citizens' committee to form a legal entity.

### 1.3 Online Collection System

The issue of personal data protection is directly and closely connected to the so-called Online Collection System (OCS). With regard to technical difficulties, the OCS can be viewed as the most problematic challenge faced by all ECI organizers (Berg & Głogowski, 2014). Even the former Commissioner Maroš Šefčovič (2014) responsible for the ECI noted that "the launch of the ECI has not been without its teething problems". A number of OCS weaknesses, errors and glitches have resulted in the loss of signatures, collection time, campaign momentum and resources (European Commission, 2017d). What is more, technical issues, especially related to the restrictive "captcha", have also made it difficult, or even impossible for people with disabilities to support an ECI (Berg & Thomson, 2014; Ombudsman, 2017).

It has to be noted that article 6.2 of the ECI Regulation (2011) obliged the Commission to set up and maintain an open-source software complying with the requirement of the Regulation for the online collection of signatures to be used, for free, by the organizers. After vast criticism towards the proposed software has been expressed, the Commission has tried, during the last years, to improve the look and usability of the OCS, enhance the compatibility with mobile devices, and enable signatories to share and like an ECI throughout social media. It is probably hard to imagine, but the original OCS was rather far from 21. century IT solutions (Dutoit, 2014). In fact, the first version of the Commission's OCS caused so many issues that the Commission decided to grant the organizers of the first few ECIs a considerable extension to the 12-month support collection period (European Parliament, 2015).

As mentioned above, the lack of possibility to collect email addresses within the OCS has caused communication problems between ECI organizers and signatories. Hence, stakeholders also urged for a clarification and eventually a modification of the Regulation, in order to allow collection of email addresses through the Commission's OCS, increasing the user-friendliness

of the system. The requirement of email addresses would remain optional, however, helpful for those who would like to remain informed about the initiative.

It has also been proposed (REFIT, 2016) to provide a permanent free server as a right of the ECI organizers as well as one single centralized system which should be redesigned to address the current shortcomings. This would enable saving costs and reducing burdens for the organizers, the Commission and the Member States, as the organizers would not be required to prepare complex applications for the certification of the OCS and the Commission would not need to support them and Member States in this task. Moreover, competent national authorities would not need to certify a different OCS each time as the OCS would be designed with fixed features that comply with the applicable EU law and do not need to be decertified since they do not change over time. This approach would additionally allow the introduction of a simplified single statement of support form.

#### 1.4 Minimum age to support an ECI

One of further issues related to non-harmonization of requirements is the minimum age to support an ECI. It has been defined in the Regulation as “the age to be entitled to vote in elections to the European Parliament”. Although an EU-wide age limit of 18 is applied, there are three exceptions - in Austria and Malta where the age limit is set at 16, and Greece where you can vote in EP elections once you are 17. The current ECI system, operating with different age limits, is thus perceived as confusing and excludes wide groups of young citizens. Calls for uniformly lowering the age limit to 16, to encourage the civic participation of the younger generation in EU affairs has been voiced since negotiations on the ECI Regulation started (Cuesta-López, 2012). The European Parliament in its resolution called on the Commission “to amend Article 3 of Regulation (EU) No 211/2011 and to recommend to the Member States that they lower the age for supporting and participating in an ECI from 18 to 16 and that it not to be tied to the right to vote in elections to the European Parliament, thus giving young people, in particular, the possibility of becoming actively involved in taking the European project forward”.

At this point it seems that the only institution, which is against that proposal, is the Council of the European Union. Member States prefer to stick to the age to be entitled to vote in elections to the European Parliament, as it does not require from them any additional actions with regard to potential verification of statements of support signed by 16- and 17-year old EU citizens.

### 1.5 ECI's lifecycle timeline

The ECI Regulation defined the exact period of time that campaign organizers have in order to collect statements of support, and so according to article 5.5 of the Regulation (2011), initiative organizers had 12 months to collect signatures and the starting date coincides with the registration of the specific ECI by the Commission. However, article 6.2 determined that organizers can only start collecting online signatures through OCS, once the national authorities in charge have certified the system. Practice of many ECIs shows that the launch of the online collection system starts after the initiative is registered, sometimes even a few months later. Although the competent national authority technically has one month to certify the OCS, in several cases a longer period was required. One organizer described that, in 2013, the certification of the OCS was finalized only two months after the date of the registration by the Commission – due to difficulties in the process. In consequence, online signatures could be collected in only 10 months. Thus, it seems reasonable that the 12-month signature collection period should start on the date the organizers' OCS is certified, or alternatively, at the date of the ECI organizers choosing (within a pre-set time frame) (European Ombudsman, 2017: 3).

According to the original ECI Regulation, organizers were unaware during the registration process whether the Commission will register or refuse their initiative. This caused difficulties in planning the OCS registration process. The Commission wanted to meet organizers' expectations and decided to issue replies the last day of the two-month period. This gave the organizers as much time as possible to prepare. Still, the inability to choose the starting date of the campaign appeared to be an unnecessary bureaucratic burden.

This issue has been taken into account during the 2019 reform and currently the ECI Regulation states in article 8.1 that “all statements of support shall be collected within a period not exceeding 12 months from a date chosen by the group of organisers (the ‘collection period’)”

(...). That date must be not later than six months from the registration of the initiative in accordance with Article 6.” This is an important organisational improvement, which enables ECI organisers to plan their campaign actions.

Still, number of stakeholders considered the 1-year collection time too short to run successful ECIs (Berg & Thomson, 2014). If one compares it with the Swiss ‘Popular Initiative’ (Initiative Populaire) providing an 18 months collection time for gathering 100,000 signatures, 12 months to collect ten times more in at least seven different countries, seems to be a rather serious challenge. Given the ECI is intended for citizens, not organizations, preparing and putting into life a transnational campaign without professional support in just 12 months seems impossible to achieve for most of them. The Regulation could give the possibility to optionally extend the data collection time to 18 months (Bouza Garcia, 2012). Some even considered to introduce an unlimited time - although a too long period could be counter-productive, i.e. the ECIs could lose momentum (European Parliament, 2014).

These changes would require modification of the ECI Regulation, however, they would ease the already tight procedure. If one considers the diversity of languages, cultures and distances, there is no doubt that campaigning at a transnational level is especially time-consuming. If the ECI is supposed to be used by regular citizens, not only professional NGOs, they have to have at least a realistic option to collect signatures longer than only within 12 months.

## 1.6 Supporting infrastructure and public awareness

Additionally, to the relatively short period of signature collection time, during the initial years organizers had to face problems related to the lack of an official supporting infrastructure. The Commission, from day one, acts as the main contact point for all ECI organizers. The majority of them acknowledged the Commission's efforts and tailored advice, including its designated ECI website which helps potential initiators to analyse the ECI process and provides information about all past and ongoing ECIs in a transparent manner (EPRS, 2015). The Commission also offers information and advice via its Europe Direct Contact Centre, provides a number of publications such as the “Guide to the European Citizens Initiative”, and in 2017 the Commission launched a collaborative ECI Platform with the aim to support ECI organizers.

Nevertheless, the European Ombudsman indicated in her report (2017) that “the Commission should provide as much guidance as possible to staff in the Europe Direct Contact Centre so that they can exercise reasonable judgment in striking the delicate balance between supplying helpful advice, without being seen to steer a particular ECI.”

Throughout the years, the Commission increased its involvement in supporting ECI organizers and promoting the instrument. Since 2018 it has organized the #EUTakeTheInitiative campaign, which aims to increasing citizens’ awareness across all Member States. So far, number of informational events and workshops have been organized in several countries. In fact, ECI organizers voiced the critique that the general public’s awareness of the ECI is low since the very beginning of its functioning. During their campaigns, number of ECI organisers were confronted with lack of knowledge on the ECI among citizens, but also among media professionals (Berg & Głogowski, 2014). This has been confirmed by one of the Eurobarometer surveys, which noted that “only a small number of respondents across all groups were familiar with the European Citizens’ Initiative” (Eurobarometer, 2014: 52).

Although the Commission committed itself to increase public awareness of the tool, ECI activists claim that more support should be channelled towards launching and running an initiative. Strictly bottom-up initiatives are currently on their own in terms of such basic issues like legal advice, translation or funding. As the EU law is seen as complicated, citizens often struggle with drafting their ECI proposal, as well as respecting the strict IT requirements or national data protection rules, to cite only selected examples. In response to that, the Committee of Regions in its opinion (2015) recommended to establish “an ECI help-desk providing technical know-how and advice on how to organise and run an ECI campaign, with financial support from the EU budget”. What is more, “such a help-desk should be distinct from any of the EU institutions because neutrality is a key element of the success of this initiative and can help foster trust on behalf of individuals considering initiating a citizens’ initiative”.

However, running an ECI is not only time-consuming, but also costly. It entails potential staff costs, IT-infrastructure, printing, postage, translation, and telecommunication costs, as well as possible costs linked to advice from lawyers and IT professionals. Hence, grassroots initiated



ECIs face a great challenge of collecting financial resources, leading to a connection of ECI campaign with fundraising activities.

After several years of its inception, the ECI still needs intensive popularization. It remains a broadly unknown participatory instrument. It is also somehow symbolic that up to now top EU figures have avoided the issue which has resulted in a lack of greater interest among the mainstream media that are either unaware or misinformed, often confusing the ECI with a simple petition. This puts ECI organizers in a troublesome situation, where they have to both educate the public about the ECI instrument as such and convince them of the merits of their own campaign. On top of that, they further have to overcome citizen suspicion and reluctance to share personal data for an unknown EU tool (Berg & Thomson, 2014).

In sum, the European Commission as well as other EU institutions should commit greater financial and organizational resources to both support ECI organizers and raise public awareness of the instrument (EESC, 2017). Increasing democratic legitimacy in the European Union through stronger citizen participation will not happen unless they receive more support to organize themselves and European public opinion knows much more about the opportunities, they actually have to influence the political agenda of the Union.

### 1.7 The European Commission's follow-up

Once the organizers manage to collect over one million signatures in at least seven EU Member States and all the other conditions set out in the Regulation have been ensured, the citizens committee can submit their ECI to the Commission, which will then evaluate the objective of the ECI. According to the Regulation, the Commission is required to reply within three months in the form of a Commission communication (COM document) explaining its legal and political conclusions on the ECI. The communication has to include the action it intends to take (or the reasons for not taking any action). Furthermore, within three months following submission the ECI organizers have the right to be received by the Commission "at an appropriate level" to explain their objectives in detail, as well as to present their initiative at a public hearing of the European Parliament, at which the Commission is also represented (European Parliament, 2014).

As mentioned in the previous chapter, none of the successful ECIs has so far received a proper follow-up resulting in legislative proposal initiated by the Commission. At the same time, it should be noted that it is unlikely that, in its communications in response to the successful ECIs, the Commission will commit to putting forward a legislative proposal. One has to remember that in line with the principle of proportionality and subsidiarity, and with the smart regulation policy of the EU, the Commission before launching legislative proposal prepares impact assessments and opens consultations with stakeholders in the field. A possible legislative proposal comes only after these steps are taken. Still, none of the five successful initiatives have triggered these actions, hence, frustration of the organizers can be easily understood considering that the ECI should give citizens a power of initiative similar to the right conferred on the European Parliament and the Council.

The issue of Commissions' follow-up has been raised by number of EU institutions. Including the European Parliament which "called on the Commission to revise the wording of Article 10(c) of Regulation (EU) No 211/2011 to allow proper follow-up to a successful ECI" and "urged the Commission to start preparing a legal act on successful ECIs within 12 months after issuing a positive opinion" (European Parliament, 2015). Additionally, the European Ombudsman (2017) asked the Commission to explain its political choices towards successful ECIs, so that the public can receive a detailed answer in a transparent manner.

Even if the Commission changed its attitude towards successful ECIs, it is still uncertain how organizers would be involved in the legislative process. As no strict regulations apply in that case, involvement of ECI organizers would solely depend on Commission's good will. However, uncertainty also relates to unsuccessful initiatives. As practice shows, collecting over one million signatures is a demanding challenge. However, this high threshold should not rule out the possibility of unsuccessful initiatives to explore options for possible EU follow-ups – different from the successful ECIs. Although the Commission is legally bound by the ECI Regulation, and cannot publish official communications towards unsuccessful ECIs, it can be imagined that the European Parliament could give these initiatives a platform to present their ideas and objectives. In fact, this was the case of the "End Ecocide" ECI, which eventually did

not reach the one million threshold, but managed to ignite European debate and was received by the European Parliament, where it could discuss their initiative with number of stakeholders.

The current ECI architecture implies that every successful ECI is examined twice. First, the initiative is checked for legal admissibility, and after the submission of over one million signatures, the Commission examines the initiative politically. The current “two step” procedure has been criticized to be overly bureaucratic and some stakeholders proposed to have one single and thorough legal and political check at the registration phase which would then result in an obligation of the Commission to act, should the organizers of the ECI be successful (European Parliament, 2014). This would avoid costs and organizational burdens for organizers of the ECI which might not be given a later follow-up. However, at the same time, organizers would require strong legal advice to formulate their ECIs as possible legislative proposals. A one-step registration would also be more burdensome for the Commission, as it would have to do both the registration check and formulate its legal and political conclusions in a single moment at the beginning of the ECI process. In fact, this system could pre-empt the whole ECI process and potentially discourage organizers to reach the one million threshold. If the Commission considers that the initiative is worth political action, why not act without waiting for one million signatures?

All in all, the follow-up process requires many important improvements. The Commission should clarify the specific follow-up procedures of successful initiatives. For instance, by establishing rules under the ECI Regulation would enable the organizers of successful ECIs to be part of an expert group providing advice to the Commission on the follow-up steps. The Commission could also clearly indicate alternatives to follow-up of unsuccessful initiatives, such as the possibility to have a debate instead of the presentation at the EP hearing. Last but not least, all EU institutions should be involved in raising awareness about the possibility for ECI organizers to submit their requests as petitions to the European Parliament.

## **2. Long Awaited Reform That Did (Not) Happen**

In April 2017, the Commission surprisingly announced that the ECI will be revised. First Vice-President Timmermans declared during a press conference, "I want to make the ECI more

accessible and citizen-friendly. I want the ECI to become a popular and living instrument, one that citizens are familiar with (...). There are obstacles to a more accessible and citizen friendly ECI which have their origin in provisions of the ECI Regulation itself. We should take a careful look at those too (...). This process could culminate in a proposal to revise the ECI Regulation this year." The Commission stated that the revision aims at: "making the European citizens' initiative more accessible and easier to use for organisers and signatories" and "achieving the full potential of the European citizens' initiative as a tool to foster debate and citizen participation at EU level and contribute to bringing the EU closer to its citizens" (European Commission, 2017b).

The stakeholder consultation process started already in May 2017 and lasted till August 2017. The Commission's goal was to get feedback from as many groups as possible, targeting citizens as signatories/potential signatories of ECI, former and current organisers of ECI, Member States' competent authorities, NGOs/CSOs, hosting and software providers contracted by ECI organizers to build their online collection systems, data protection authorities in the Member States, researchers as well as public authorities managing similar participatory instruments. According to the "Factual summary of the contributions received in the context of the open public consultation on the revision of Regulation (EU) No 211/2011 on the European Citizens' Initiative", in total Commission received 5323 replies; 5199 from individuals and 124 from organizations. The number of replies per country varied greatly, with more than 30% from France and 25% from Germany. There were very few replies (below 20) from 10 Member States (Slovenia, Lithuania, Estonia, Slovakia, Luxembourg, Cyprus, Bulgaria, the Czech Republic, Hungary and Malta) despite the various communication activities, including via social media. What is interesting, "37% of respondents replied that they had not heard of the ECI before. 5% of respondents had already organized an initiative or collected statements of support, 3% were preparing to launch one, and 6% indicated that they considered doing so but abandoned the idea".

The majority of the issues analysed above were addressed by respondents during the consultation process. Most of them suggested that the issue of personal responsibility and liability for damages caused in the organization of a citizens' initiative "should be tackled indirectly by reducing the amount of personal data collected from signatories (55% of

individuals and 57% of organizations) and/or transferring the responsibility for collecting statements of support from organizers to public authorities (46% of individuals and 37% of organizations)". At the same time, 44% of organizations and 28% of citizens proposed organizations should be allowed to be part of the citizens' committees. Vast majority of respondents (83%) agreed to strengthen assistance to organizers and recommended to include other types of support, such as assistance for (re)formulating and translating initiatives, as well as financial support. Almost half of the organizations and 42% of individuals supported the idea of lowering the threshold to 16, while 32% overall suggested the voting age should be maintained. 18% of organizations and 25% of individuals proposed the age threshold should be harmonized at 18. 33% of respondents found the process to support an initiative not user-friendly, mainly because it took too long to complete it. Around 50% of respondents were not willing to provide ID number to sign an ECI, and 49% of them (60% of organizations) suggested that EU citizens living outside their member state should be able to support initiatives, while 42% (34% of organizations) considered that it should be limited to citizens eligible to vote in European Parliament elections.

Almost all respondent (98%) considered that the Commission should continue to offer its own servers for free, and 67% replied "that the Commission hosting of systems should be made permanent, but it should remain optional and organizers should have the possibility to set up their own online collection systems". Yet, 87% of respondents would prefer to use the Commission system instead of developing an alternative one. As far as the usage of e-ID to support an ECI is concerned, 67% of respondents considered that using it would make the process more user-friendly, while 87% agreed that various ways for providing support online should be offered in parallel. Only 27% of individuals and 40% of organizations suggested that the ECI timeline should be revised, mostly suggesting an extension to 18 months.

Regarding the follow-up procedure, 77% of respondents suggested that the public hearings in Parliament should be more inclusive, for example by inviting experts or stakeholders representing different views. Over half of respondents (55%) considered the 3 months deadline for the Commission to prepare the public hearing and to adopt the Commission Communication in response to the initiative to be too short, preventing wide and transparent consultation. Over 2/3 of respondents (70%) indicated that both Parliament and Council should

be involved before the Commission takes a position on an initiative. Finally, a majority of respondents would like to be kept informed about the initiative they supported and its follow-up by the organizers (65%) and the Commission (52%).

All in all, the public consultation process confirmed again that citizens and NGOs ask for a more user-friendly participatory tool, which would be more inclusive and less bureaucratic. They also expect more serious treatment of successful initiatives and stronger involvement of the Commission in the whole process. On the basis of these conclusions, as well as number of previous reports and analysis, the Commission proposed in September 2017 a new Regulation on the European Citizens' Initiative.

The Commission in its proposal included number of expected and important improvements, leaving out several crucial changes. First of all, improvements in the organization of the citizens' committee have been proposed. Except more complete rules for the additional members of the group and explicit rules regarding the change in the composition of the group and relevant transparency arrangements, the Commission proposed "that in case a legal entity is specifically created for an ECI, this legal entity substitutes the group of organizers (or its members) in the different aspects of initiative management, including registration, collection of statements of support, submission to the Commission and examination of the initiative" (European Commission, 2017b: 12).

The proposal tried also to respond to the expectations regarding liability of the organizers. The Commission decided to solve the problem with indirect measures by limiting the types of data to be collected and allowing the organizers to collect signatures online via a central system managed by the Commission. In that case, the Commission would additionally be responsible for the transfer of collected data to Member States for verification and the data protection liability would be hence transferred to the Commission, given that the organizers will not request access to those data and process them. In terms of liability beyond personal data protection, the Commission proposed to introduce limitation of the liability following the model of Directive 2008/99/EC on the protection of the environment through criminal law, with a perspective to establishing that organizers are responsible for any damage caused in the

organization of an initiative by unlawful acts “committed intentionally or with serious negligence”.

The Commission also took into consideration suggestions to take a more flexible approach with regard to registration of new initiatives. In consequence, if only part or parts of an initiative meet the registration requirement, the Commission informs the organizers of its assessment and the reasons thereof. They have then the possibility of modifying their initiative or maintaining the initial proposal if they so wish. In these cases, the Commissions’ proposal provides for an extension of the time limit from 2 to 3 months to give more time to organizers to amend their initiative in light of the assessment by the Commission. What is more, according to Commissions’ proposal an initiative can be partially admissible in cases where a substantial part of the initiative, including its main objectives, does not fall manifestly outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties.

Another positive improvement proposed by the Commission focused on the harmonization of the minimum age for signatories of citizens' initiatives set at 16. The proposal was justified by examples from several Member States, including Estonia where the Parliament has to consider initiatives that have gathered at least 1000 signatures from citizens aged at least 16, or Luxembourg, where the minimum age to support "public petitions" is 15 years old (European Commission, 2017b).

As far as the online collection system the Commission proposed to set-up and operate a free of charge central online collection system. The proposal also provided that the OCS should have the necessary accessibility features in compliance with the Web Content Accessibility Guidelines (WCAG) ensuring that citizens with disabilities can provide support to the initiatives. Moreover, the possibility to support an initiative through eID remained optional (European Commission, 2017e). The proposal included also important improvement regarding the possibility to collect email addresses by the ECI organizers. This would allow them to inform the signatories on the progress of this initiative, as well as new developments and/or any follow up actions. What is particularly important, the process of collection of emails for communication purposes was designed by the Commission to be separate from the collection of statements of

support as such. There are two reasons for that. First, because the signatory shall be given the opportunity to choose whether he or she would like to be further contacted by the Commission and/or by the organizers. Second, email addresses are not sent to Member States for verification and need to be kept longer in order to keep signatories informed of the Commission response and possible follow-up given to the initiative.

The Commission also took into consideration a number of voices regarding the starting date of the campaign, giving a period of maximum three months between the date of registration and the start of the collection period. At the same time, the proposal set out that the organizers shall submit their successful initiative to the Commission within three months of obtaining the last certificate from a competent national authority. This prolongs the final stage of the ECI procedure to 9 months (3 months for submitting the statements of support; 3 months for verification by competent authorities; 3 months to submit the initiative to the Commission). In consequence, although it leaves less flexibility for organizers to choose when they want the Commission to reply to their initiative, it improves the transparency of the process and reduces uncertainty.

Regarding the follow-up procedure, the Commission presented a proposal with the aim to ensure a balanced representation of stakeholders in the public hearing at the European Parliament and reinforce the information to other EU institutions and bodies at the start and at the end of the examination phase. Additionally, in order to enhance public debate and participation as well as the exchange of views between EU institutions and organizers of successful ECIs the Commission proposed to extend the time period of this phase from three to five months.

Last but not least, it should be noted that the Commission launched an online collaborative platform for the ECI and the proposal envisaged that Member States establish in their territories a contact point providing information and assistance to help (potential) organizers setting up a European Citizens' Initiative. Additionally, the Commission decided to take full responsibility for publishing the translations in all official EU languages in the register after registration is confirmed and before the start of the collection period for the initiative at hand. During the review process some stakeholders and in particular the European Parliament



proposed to the Commission to explore the possibility of providing financial support to ECI organizers. The Commission, however, denied these suggestions as it argued against the principle of independence of citizens' initiatives. Furthermore, the EU funding would require organizers to take adequate measures to ensure respect of the obligations of the EU Financial Regulation, which would introduce additional and relatively burdensome obligations.

On the basis of this proposal, the European Parliament has engaged in debating the proposal and formulating its amendments. As during the original creation of the ECI Regulation, the Constitutional Affairs Committee (AFCO) was responsible for preparation of the Committee report and two additional Committees – CULT and PETI – drafted their own opinions. The final report was ready by June 2018 and presented number of amendments to the original proposal of the Commission.

The European Parliament, among over 150 amendments, proposed to incorporate provision by which “citizens residing in Member States other than those of their nationality shall have the right to support an initiative either in their Member State of residence or in the Member State of which they are nationals” (European Parliament, 2018: 14). Additionally, the Parliament wanted the Member States and the Commission to adopt “all the necessary provisions to facilitate the exercise by persons with disabilities of their right to support a citizens' initiative” (European Parliament, 2018: 14). Eventually, only the latter provision has been included in the final version of the new ECI Regulation.

The Parliament also managed to prolong from three to six months the period of time given to organizers from registration of an initiative by the Commission to the signatures collection period, giving them more flexibility in terms of picking the starting date of the campaign. Members of the European Parliament also pushed to incorporate in the Regulation a precise provision stating that the public hearing of a successful ECI should be held in the premises of the Parliament and that following the hearing, the EP shall assess the political support for the initiative.

The Parliament also proposed that “in the event of a successful citizens’ initiative (...) the Commission shall, within 12 months after the publication of the initiative, submit to the

European Parliament and to the Council a proposal for a legal act in response to the initiative". (European Parliament, 2018: 26). This implies that all successful ECI's would result in legal proposal drafted by the Commission, even if the issue would be outside its political agenda. Interestingly, none of the EP Committees proposed a provision which would explicitly allow to amend the Treaties via the ECI. Only the European Committee of Regions (2018) included that proposal, even though it was not introduced to the final version of the Regulation.

Evidently, the Parliament did not push for radical changes with regard to the Commission's proposal. A vast majority of amendments was of symbolic or purely technical character. Based on that conservative, the EP moved in June 2018 to interinstitutional negotiations, which resulted in another report presented by the Council of the European Union (2018). Unlike the Parliament's proceedings, the Council's work has been largely shielded from the public and eventually approved most of the Commissions' proposal with two important exceptions. First of all, the Council rejected the proposal to lower the minimum age for co-signatories of ECIs to 16 EU-wide. Eventually, the provision regarding the minimum age has not been changed, conditioning the right to support an ECI with the age to be entitled to vote in elections to the European Parliament. However, a gateway has been included, which states that "Member States may set the minimum age entitling to support an initiative at 16 years, in accordance with their national laws, and in such a case they shall inform the Commission accordingly" (European Parliament, 2019).

The other issue on which the Council deviated from the Commission's proposal regarded the online collection system. The Council proposed to withdraw the possibility to use either the Commissions' OCS, or the so called "individual online collection system" prepared by external entities, arguing it creates additional "administrative burdens". In Council's perspective online collection of signatures should be solely organized through Commission's software, which has been criticized by civil society as reducing the availability of different IT solutions. Eventually, the Council managed to introduce that provision into the final version of the Regulation, however, with the possibility to use "individual online collection system" until the end of 2022.

Beyond these two issues, the Council also took a slightly different position on the question of data requirements from citizens who would like to sign an ECI, requesting the submission of

all the digits of citizens' personal identification number for nationals of Member States that choose to be included under part B of Annex III. The Commission proposed that this requirement remains limited to the last four digits of citizens' personal identification number, however, Councils' approach prevailed.

On December 12, 2018, the European Parliament and the Council reached a political agreement on the Commission's proposal to revise the European Citizens' Initiative. Majority of Commissions' provisions have been upheld with few important changes proposed by the Council and the Parliament, as well as number of small technical and organizational improvements mostly introduced by the latter. Three months later, on March 12, 2019, the European Parliament voted on the Regulation during its plenary sitting, with majority of MEPs being in favour of the deal. The new Regulation on the ECI was published on April 17, 2019 and applied from January 1, 2020.

### **3. Conclusions**

The analysis presented above shows that in practice the ECI does not as yet live up to its potential and promises. Although some EU decision-makers had declared that the ECI would become a powerful new democratic instrument, its burdensome procedures have discouraged many potential users. In the times of ongoing economic, social and political crisis, Europe needs new solutions. The European Citizens' Initiative still has the chance to become a new democratic tool, which is already now more direct, transnational and digital than anything else we have experienced at the EU level (Kaufmann, 2011). It represents a first step in providing what can be called a "set of available opportunity structures for citizen participation" (Richardson, 1995). It also presents a potential for becoming a polity-creating instrument that will improve and increase citizens influence on the EU political agenda by reinforcing the exchange of civic competence and fostering civic inclusion at a supranational level (Hristova-Valtcheva, 2008).

However, if one considers the resources which are required to start an ECI, it appears that the "citizens" part of the concept is not as strong as previously assumed (Hrbek, 2012). In fact,

practice shows that ECI organizers have to rely on intermediaries such as NGOs, trade unions, and even political parties to voice their interests via such initiatives (Dougan, 2011). Furthermore, the ECI in today's form is definitely not a procedure providing fast results (Kaufmann, 2011). The cycle takes at least 20 months – two months to register the initiative, 12 months to collect one million signatures, three months to verify and authenticate them, and three more months for the Commission to respond, several years are needed for a successful initiative to be implemented.

The major concern, however, is whether the ECI, in its current architecture, can strongly contribute to inner European debates on the Union beyond the highly specialised circles (Hierlemann and Wohlfarth, 2010). Certainly, the ECI still has a potential to generate functional reflexive democratisation process, as it can create the preliminary requirements for a demand of further democratisation (Trenz and Eder, 2004). Nevertheless, even this first step still remains theoretical, as the Commission either did not act in response to the successful ECIs, or its actions were insufficient from the organizers point of view. Hence, in order not to kill the initiative, it can be argued from a normative point of view that the Commission should act upon all successful initiatives, even if they are incompatible with its own agenda. This would not undermine the Commission's formal right of initiative, at the same time assuring that all the successful campaigns would have an opportunity to present their initiatives to the decision-making institutions.

If the Commission presented a more open attitude towards all successful ECIs, regardless the topic they touch, and as far as they fulfil all the requirements mentioned in the Regulation, the usage of the ECI could lead to the institutionalization of the frequent opposition to the EU institutions. In consequence, this could become a more pragmatic critical voice towards the Commissions' policies. That would give the public the opportunity to make the EU institutions more accountable for their decisions and criticism could be channelled through more constructive channels (Bouza Garcia, 2012). In this sense, the ECI could be designed as a more robust version of the U.S. White House online petition platform, called "We the People". It enables any US citizen over 13-years-old with an Internet connection to easily login, support, create, and promote a petition directly on the White House web site. Petitions which manage to collect over 25,000 signatures in less than 30 days oblige the federal government to give

official response (Watson, 2013). The procedure is simple, user-friendly and does not require from citizens extensive personal data.

If at some point the ECI headed in that direction, it could become a bigger “game changer” than generally expected, as it may put the Commission, as well as other European institutions into a relatively new situation of managing agendas and proposals coming from outside their “bubble”. On the other hand, the ECI is unlikely to transform into a popular citizens’ initiative in the near future, which would allow a given number of citizens to put their own proposal on the political agenda and initiate a vote (referendum) on it. Certainly, the ECI may be regarded as an effective platform for reform proposals in the future (Pichler, 2008). However, the key issue will revolve around the attitude the Commission will take towards the ECI. So far, it seems that Commission’s approach can be described as “We have created the instrument, now it is up to the citizens to prove themselves worthy of this new right” (Buehler, 2011). Thus, if the Commission does not change its attitude towards diverse ECIs, facilitating their arrival into the legislative agenda, the result may be the opposite of what was expected, as the citizens wanting to influence EU decision making process will avoid the ECI.

The analysis presented above, which considers that the ECI is not a decision-making instrument but only a non-binding and consultative dialogue instrument, results in a number of various concluding recommendations. Several of them have been implemented during the recent reform, giving the ECI a change to become a more accessible participatory instrument and reduce the costs and burdens for ECI organizers. Time and practice will show whether the implementing regulation is “clear, simple, user-friendly and proportionate to the nature of the citizens’ initiative so as to encourage participation by citizens and to make the Union more accessible”.

## VII. The European Citizens' Initiative and the Civil Society Organizations

The current architecture of the European Citizen's Initiative, as described in-depth in previous chapters, raises important questions on who is able to initiate an ECI with a realistic perspective to collect one million signatures. It seems that the amount of organizational, logistical and financial burdens narrows down ECI organizers to civil society organizations (CSO), which are the only ones able to effectively face these challenges. If it is true, we need to ask to what extent the ECI can help develop a European democracy? In order to answer this question, this chapter aims to analyse the relationship between the ECI and CSOs in terms of strengthening the EU democracy.

### 1. The Emergency of a European Civil Society

In the first decades of European integration academic research on civil society was practically absent. Although the Treaty of Rome (1957) provided for the participation of civil society in European affairs through the European Economic and Social Committee (EESC), bottom-up activities of non-governmental organizations were until mid 1980s conceptualised mostly in terms of groups representing organized interests. The aim of civil society, hence, was to provide consultancy and feedback to policy makers in the context of a "social dialogue". The EESC's role has been enhanced by treaty changes over the years, but it still remains (only) a consultative body (Romito, 2018).

A vivid discussion on the role of civil society groups in the EU started in the beginning of the 1990s, together with broader debates on the future of European democracy (Longo and Murray, 2015; Saurugger, 2010). Some researchers (Bignami, 2005; Quittkat and Finke, 2007) distinguish three periods of relationship-formation between CSOs and European institutions. The first one focused on formation of interest group relations based on a "consultative regime" in the 1960s/70s. This contributed to creating "partnership" between civil society and

European institutions in the late 1990's, and consequently built fundamentals for "participatory democracy" that started to emerge in the beginning of the XXI century (Quittkat and Finke, 2007: 184–90). This widening of the consulted constituency resulted from deepening of consultation mechanisms through a dynamic increase of expert groups.

However, before getting deeper into the issue, we have to answer the question of how to define civil society organizations? According to the Commission's White Paper on European Governance (European Commission, 2001), "civil society organizations" include wide range of various entities: social partners; organizations representing social and economic players that are not social partners in the strict sense of the term; NGOs that bring people together for a common cause, such as environmental organizations, charitable organizations, etc.; community based organizations (CBOs), i.e. organizations set up within a society at the grassroots level to pursue member-oriented objectives (e.g. youth organizations); and religious communities. This broad definition seems to be captured by the use of the term "representative associations".

The steady, yet dynamic, development of numerous civil society actors led to the formation of a new sub-form of participatory democracy known as the associative democracy. The main idea of that concept is that it should be interest groups (i.e. membership-based organizations) rather than individual citizens that are involved in public policymaking. The main advantage of this solution is that interest groups can both act as platforms improving the efficiency of policymaking and at the same time assuring citizen participation (Hirst, 1994; Cohen and Rogers, 1995; Schmalz-Bruns, 1995). According to associative democrats, interest groups may even provide opportunities for participation in decision-making processes when political parties fail to offer adequate access.

The argument of associative democracy supporters for the inclusion of interest groups in decision-making is based on two main pillars. First, they argue that "organized civil society" is the direct consequence of the right of free association. Subsequently, CSOs are primarily perceived as bottom-up citizen-initiated phenomena, which result from a voluntary process of people coming together to govern themselves. They are a positive force, empowering democratic development and playing an important role in explaining, raising, and discussing

important issues. According to Baumgartner and Leech (1998: 89), an important aspect of determining the profit of the group system as a support for representative government is “to ascertain the degree and type of popular participation in voluntary associations”. The second crucial argument for interest group participation is that they provide lawmakers with important information and data not otherwise available (Mansbridge, 1992). Cohen and Rogers (1995) are of the opinion that the state should care about supporting interest groups, as it often lacks the resources to intervene in the policy-making process, and interest groups are the ones that can provide the necessary expertise to policymakers. This leads to classical ideas developed by Truman (1951), who believed that the representation of interests through the group system is neither perfect nor without bias, but it helps to preserve a rather equal representation of all interests. Lowery and Gray (2004) underline that the main advantage of interest groups is not only the information they possess, but also the ability to create *ad hoc* coalitions, which proves that there is a much broader range of competition and collaboration among organized interests.

As described in the previous chapters, participation in the policymaking processes tends to base itself on a limited number of delegates whose representativeness does not always meet the requirements of democratic theory. Thus, strengthening the role of interest groups in the European decision-making process would at best solve a half of the problem, but could potentially have a neutral effect, or even deepen it. The concept of associative democracy fails to ensure that citizens will more eagerly participate in policymaking processes. The main risk is that these actors, independently of their structure, “offer an accessible route into politics for the few rather than the many” (Stoker, 2006: 117). In fact, these groups are often not the bottom-up, citizen-initiated phenomena as often portrayed. They rather act as professional entities with amount of full-paid staff comparable to big, international commercial entities.

Interestingly, in the current legal structure of the Union, provisions regarding civil society are mentioned together with the European Citizens’ Initiative in article 11 of the Treaty on the European Union. Throughout the years, EU institutions supported the idea that the legitimacy of interest group participation is based on the argument that EU decisions need to take into account the views of all stakeholders (Kröger, 2016; Oleart and Bouza, 2018). As a consequence, participation of civil society groups in decision-making processes strengthens the



bargaining power and legitimacy of the European institutions, particularly the European Commission. In that sense, the most important element of involving civil society to decision-making processes is to increase the legitimacy of EU institutions, without the need to engage greater numbers of non-organized or spontaneous groups of citizens from the array of Member States. Thus, cooperation with civil society gives the Parliament or/and the Commission an important democratic leverage of wide consultation with civil society organizations, in particular vis-a-vis the Council.

Greenwood (2012) notes that as a general rule, political institutions prefer to have a dialogue with organized stakeholders rather than have them bombarded by thousands of non-categorized comments, suggestions and information. This rule particularly applies to the European Union context where the relationship with interest organizations is strongly institutionalized. Therefore, the main argument supporting the concept promoted by EU institutions is that transnational European civil society organizations play an intermediary role between the citizens and the EU institutions. Consequently, this relationship establishes mechanisms of vertical accountability that have the possibility to include citizens acting through civic organizations at the EU level. This assumption has a major influence on the ways in which civil society organizations, active at the European level, access and influence the EU policy making (Fazi and Smith 2006; Kohler-Koch and Finke 2007). The White Paper on European Governance states: "Civil society plays an important role in giving voice to the concerns of the citizens and delivering services that meet people's needs. [...] Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. [...] It is a real chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest." (European Commission, 2001: 34) Therefore, given the lack of active participation of EU citizens directly on the EU level, the organizational abilities of transnational civil society organizations become crucial for civil society to be able to play the assumed intermediary role between the EU citizens and "their" institutions (Matevz and Rek, 2008).

According to research by della Porta and Caiani (2007) civil society organizations targeting the EU use variety of strategies and instruments. They distinguished two strategies of CSOs in the process of convincing EU institutions to introduce particular political solutions. First, insider

strategies, which attempt to influence the policy process within the administrative or parliamentary arena, and second, outsider strategies intervening in the public sphere. They compared their use at the national and supranational levels. Noteworthy, the two central strategies used by CSOs at the European level are media-oriented and insider-lobbying strategies. The strategies of informing and mobilizing the public seem of lesser importance for EU actors, which might reflect the distance from Brussels of the national electorates, or a division of work with national organizations. Nevertheless, CSOs are more active than the other types of actors in mobilization (particularly in comparison to interest groups for conventional actions of mobilization, and more than parties for unconventional ones) and informing public opinion on particular issues even at the European level. At the same time, at the national level EU actors focus more on media-oriented activities and especially lobbying. Yet, civil society organizations “europeanize” themselves mainly through lobbying, but also through media-related actions, leaving informing actions the least europeanized. Hence, in the process of shifting from the national to the European level, the most desired strategy seems to be lobbying vis-à-vis decision makers.

According to research focused on the role of interest groups in the decision-making process at the EU level, one can identify three most common strategies to influence EU policy making: “access”, “voice” and “litigation” (Beyers, 2004). The first strategy is based on the exchange of access goods between the interest group or the civil society actors and the European institution. This thinking assumes that EU institutions show a demand for information, either expert knowledge or information about the distribution of preferences in the respective constituency. Therefore, organizations which offer reliable information of one or of both types are rewarded with “access” to EU policy makers. However, “access” does not mean influence, it means simply privileged information about decision-making processes or the willingness by EU decision-makers to listen to the arguments of the interest group or civil society actor. From the perspective of the EU institutions, the main aim of this strategy is to increase the quality of policy making. It is supposed to increase the policy makers’ knowledge about the policy issue and makes it potentially easier to decide on policy options which come close to the constituencies’ preferences. As a consequence, the argument is that it is easier to implement policies people agree to, rather than force people to follow rules they oppose. The “access” strategy creates a “win-win situation” for EU institutions, as well as civil society organizations,

however, excluding non-associated citizens. Although parts of the policy process take part in explicitly public spaces, for example as open hearings or online consultations, the most important exchange of access goods happens only within this space without the public necessarily observing a privileged relationship between the EU institutions and certain interest groups. Therefore, this approach does not comply with the demands for transparency in a democratic Union and has long been criticized.

The “voice” strategy focuses on presenting information in public arenas which address European policy makers indirectly. Beyers (2004) divides this strategy into “information politics” and “protest politics”. The first one aims at placing expert information or opinions at strategic points in public arenas, for example specialist media observed by the relevant decision or policy-makers. The latter can either combine the voicing of opinions with events aiming at receiving large media coverage, or is a demonstration organized for constituents of an interest group to publicly voice their views. In both cases the goal is to access policy makers via the public arena, in a one-way direction. Last but not least, the “litigation” strategy focuses on targeting EU policy via national courts through the preliminary reference mechanism of article 267 TFEU. This approach relies on challenging EU law by CSOs and hoping that the activist case law of the ECJ will bring about policy change (Bouwen and McCown, 2007).

Independently of what strategy is being used by a civil society organization, they all require stable and lasting support of members who are interested in an issue over a longer time. The best examples of that interest are labour unions and business associations. In both cases members of such organizations expect them to deal with a multitude of different issues. Thus, the involvement of such actors is much more issue oriented. Practice shows, that citizens organize themselves in order to achieve a clear-cut policy goal. However, once the policy is changed, most of them end their participation. The European Citizens’ Initiative is an instrument well designed to fulfil such participatory demands.

One has to remember that ideally democracy and self-government require equal influence of all citizens in the policy-making process. From the deliberative model perspective, it is plausible that civil society organizations can function as mediators. One of the requirements for such mediated input of stakeholders’ voices in the decision-making process is institutionalized

access to political deliberative processes for CSOs (De Clerck-Sachsse, 2012). However, as mentioned before, the sole ability to access deliberative processes is insufficient if it is not complemented by transparency and access to information for all participants. Yet, transparency is crucial to achieve equal footing for all participants. A core principle of democratic political deliberation relies on the arguments that all of stakeholders possibly affected by the decision should be included in the process of decision-making, or at least should have the chance to be included.

If one revisits to the Convention on the Future of Europe and the participation of CSO in the process, it can be stated that they struggled with mobilizing a wider public. At the same time, those organizations that concentrated on targeted lobbying were often much more successful in introducing their demands in the draft EU Treaty (Hrbek, 2011). Therefore, in the absence of broad public awareness of EU policy issues and in the context of a mainly technocratic debate dominated by experts, even those civil society organizations that aimed at getting a larger public involved faltered (De Clerck-Sachsse, 2012). This implies that the main criticism towards the existing model of participation in the EU, based mainly on consultative relations between organized civil society and European institutions, is valid and requires effective answers. The fact is that, so far, participatory democracy in the EU has been unable to implement beyond European organizations, creating a system where “Brussels talks to Brussels” (Bouza Garcia and Del Río Villar, 2012). Kohler-Koch (2010b, p. 13) considers that European civil society organizations are far from mobilizing citizens, as they are entrenched within EU institutions: “Organized civil society, however, contributes little to the formation of a grass roots based European civil society; it is instrumental to “better legislation” and in order to be efficient and effective it is becoming part of the EU elite system.”

In sum, from the democratic point of view, the dialogue between the EU institutions and civil society is undoubtedly a valuable tool as it contributes to a fairer representation of different types of interests and to better policy-making due to the provision of broader and specific expertise to EU institutions. However, it seems convincing that it privileges large European representative organizations over smaller national organizations or groups representing particular causes, and it is unlikely to facilitate contacts between ordinary supporters and members of civil society and European institutions.

## 2. The Difficult Relationship Between the ECI and CSO's

The European Citizens' Initiative would have never been included in the Treaties if it was not for civil society organizations which lobbied members of the 2003 European Convention to consider their proposals. However, the inclusion of the ECI was not pushed by CSOs which regularly take part in civil dialogue with the Commission. The most influential in this achievement were organizations focused on strengthening participation on local, national and transnational levels. The well-established European civil society organizations were from the start uninterested, both in the introduction, as well as the usage of the new instrument. They preferred civil dialogue, which gave them "access" without the need to launch costly campaigns seeking to obtain one million signatures.

The highly sceptic attitude by established European civil society organizations towards the ECI came without surprise. If one analyses the actions and advocacy of European CSOs, it appears that signature collection and initiatives are infrequent in comparison to a high degree of involvement into stable participatory systems. This does not render them unable to use the still relatively new instrument. However, it casts serious doubts about their willingness to use this tool at all, particularly if one compares it with the impact they can achieve through other less costly mechanisms.

The twenty-two organizations that were most active during the European Convention were not very interested in including new democratic instruments. In fact, only three of them asked the Convention to include principles of direct democracy in the European Constitution. The main goal of the majority of these organizations was to create a system of institutionalized access of CSO's to the European institutions. With regards to the ECI, the position of the well-established organizations could be summarized as openly neutral. The ECI was regarded as a positive evolution, however, definitely not as the main instrument of the model of participatory democracy that they were lobbying for.

If one goes back to the consultation on the Green Paper on the citizens' initiative, it is noticeable that only eight organizations out of the abovementioned twenty-two did actually contribute to

this consultation. This suggests that some six years after the Convention their priority was still civil dialogue and not the European Citizens' Initiative. A strong confirmation of this approach can be seen in the following quote from the contribution of the Social Platform, the most representative of the organizations that advocated the recognition of civil dialogue:

"Social Platform welcomes the Green Paper on the citizens' initiative. As a response, Social Platform calls on the European Commission to launch a public consultation on how to implement the first part of the Lisbon Treaty article 11 on civil dialogue. [...] This would ensure that both parts of the article are properly implemented. Social Platform would like to stress that the right to petition [sic] is not the only new instrument related to participatory democracy that the Treaty of Lisbon introduces into EU decision-making processes." (Platform of European Social NGOs, 2010: 1).

It is striking that one of leading CSOs actually confused the ECI with the right to petition. Also, quite atypically, a majority of the contributions during the consultations on the Green Paper came from organizations which are not members of the European transparency register, according to the website of the consultation. It implies that the formation of the new instrument involved many new civil society organizations and groups, which were not involved before in the civil dialogue with the Commission.

The seven years practice of using the ECI confirmed the lack of interest of well-established CSOs with regards to the new democratic tool. However, at the same time, the experience of over fifty initiatives shows that lack of support from an organized civil society basically rules out the possibility to successfully collect one million signatures in at least seven EU Member States. Evidently, the ECI does not involve spontaneous self-expression by one million citizens. It has so far been impossible due to the formalized organization and resources necessary to gather the signatures (Bouza García and Greenwood, 2012).

Although European Parliament Vice-President Diana Wallis commented before the ECI came into force that it "is not for MEPs, not for NGOs [non-governmental organisations], but for all citizens" (EurActiv, 2011), the current architecture of the ECI raises criticisms that it does not empower citizens, but well-organized and resourceful groups. The main argument, which has

been confirmed by practice, is that the ECI is not easy to launch by regular citizens and requires political organization, logistics and expertise that is only available to organizations. Still, one has to see this solution as a democratic progress. First of all, it empowers civil society organizations by giving them an institutionalized path to introduce proposals. Secondly, it encourages them to engage directly on EU topics with their grassroots members and citizens in general. This still gives CSOs possibilities to diversify their strategies and be less dependent on “access” mechanisms. However, organizations will only use this instrument if it gives chances to be successful and if the costs are likely to be inferior to the returns (Bouza García, 2012).

If one analyses the financial aspect of organizing an ECI, it is worth mentioning that the richest ECI campaign “Ban glyphosate and protect people and the environment from toxic pesticides” fundraised over 328.000 Euros, which means that every signature cost them 0,30 Euro. Interestingly, that is the only successful ECI with a strong financial and organizational support from large CSOs like Greenpeace and Campact. On the other side of the spectrum, we can find a successful “Stop Vivisection” campaign, which collected only 23.650 Euros, meaning that every signature cost them only 0,02 Euro. However, this campaign would have been unable to collect over 1.1 million signatures without a huge organizational and PR support from hundreds of smaller NGOs around the EU. Hence, CSOs support, financial or logistical, is crucial for the successful ECI process.

In fact, the European Commission envisioned the ECI as an instrument for interest groups from its very inception. In the beginning of the consultation process the Commission treated the proposal of creating citizens’ committees as too burdensome and pushing for the possibility to organize an ECI via an organization (Chalmers, 2011). This approach of EU institutions towards the civil society confirmed their stronger interest in civil dialogue comparing to such instruments as ECI, as the first one tends to exclude less organized interests and more radical groups from EU politics. This results from the fact that CSOs consist of people who are able to be constantly involved and engage with other organizations and civil servants. On the other hand, the ECI provides access to the organizations being able to use alternative resources such as public-oriented campaigns. This gives outsider organizations the chance to have greater influence on EU political agenda, despite the ECI’s weak legal rank (Bouza García, 2012).

Regardless of the difficulties that emerge during organization of an ECI campaign, over seven years of experience confirm that the instrument increased the number of organizations willing to invest resources in EU topics. The ECI has the potential to increase legitimization of EU institutions' actions. It still creates opportunities to increase both the number and the diversity of the initiatives, contributing to the emergence of a European public sphere (Balme & Chabanet, 2008). A better designed ECI would provide organized civil society with a stronger access to the policy agenda than it can be achieved by civil dialogue (Bouza García, 2012). In consequence, it would give CSOs a very strong impulse to inform, involve and mobilize their members and public opinion at large. In theory, it would lead to a situation where well-established organizations that have traditionally been influential via "access" strategies would have to compete with outsider organizations mobilizing public opinion via the ECI, which would in turn give them practical reasons to use it too and thus contribute to a wider influence of the ECI. This could also help in measuring the representativeness of civil society organizations participating in civil dialogue, with exceptions for organizations advocating minority interests or causes. What is more, an increased usage of outsider strategies relying on public opinion mobilization such as signature collection may introduce some elements of a protest regime into the European Commission and civil society relations making them less expertise-oriented and consensus prone. Yet, a radical transformation of the EU system is rather unlikely, as the very logic of competition can encourage some organizations seeking influence to suggest initiatives that can be endorsed by the European institutions (Bouza García, 2012).

This potential evolution of the Commission – CSO relationship could contribute to make the so called "outside lobbying" more popular and to strengthen a policy style more likely to interest and engage the public by promoting more cleaved political debates (Hooghe and Marks, 2009). The second possible effect is drifting away from the consensus-prone relationship between the Commission and CSOs with the possibility of the emergence of new actors and issues, which could contribute to increased contention in the field of civil society - EU relations (Liebert & Trenz, 2011).

A further important innovation within the ECI context is that CSOs have to make political claims and frame them coherently to various audiences at the same time, both to general European public, as they need to collect 1 million signatures, and the EU institutions, because they will



be addressed by the initiative. Previously, the interaction between CSOs and the European Commission focused only on the latter proposing, and the former ones answering. Therefore, the ECI enables inverting the political process and puts CSOs in a new position towards the Commission. In that sense, the ECI does not challenge democracy in the EU, but it contributes to transforming the field of civil society participation more competitive for organizations (Oleart and Bouza, 2018).

### 3. Conclusions

Although the European Commission is open to various groups, in practice the current decision-making process favors strongly institutionalized so called umbrella organizations that aggregate and represent diverse interests at the EU level (Greenwood, 2011). The overall analysis of the relationship between the ECI and CSOs confirms that the ECI is far from being a priority for these organizations. There are several reasons for that, including: the structural lack of staff, the preference for insider lobbying styles or to the structure of opportunities created by the institutional setup (Bouza García, 2012). In fact, mobilizing members at EU level is problematic *per se* and its value is relatively small in interest representation in Brussels. Hence, for some organizations close ties with institutions based on an exchange of expertise, support and trust are of greater importance, even though they have resulted in a very large independence from their principals. This resulted in EU-level civil society uninterested in organizing campaigns involving citizens' initiatives.

Civil society organizations have been involved in the creation of participatory mechanisms, as they are expected to be close to citizens and able to provide a two-way communication between them and the European institutions. Although the involvement of organized civil society in participatory mechanisms is undoubtedly a democratic improvement, it fails to contribute much to bringing the EU closer to citizens, particularly if organizations are unable to effectively integrate citizens into the process. The paradox thereof is that civil dialogue is an important contribution to better policy making as well as to the strengthening of EU institutions legitimacy, but at the same time it is a minor input to the EU public sphere. On the contrary, demonstrations and signatures collection are an important element in improving public sphere

but are much costlier and less efficient for organizations than participation in institutionalized dialogue (Bouza García, 2012).

All in all, it appears that the current design of the European Citizens' Initiative has been intentionally framed in a way that prevents spontaneous groups of EU citizens to successfully collect one million signatures. The need of CSO's support to reach that goal comes from the fact that EU institutions still focus more on civil dialogue, rather than empowerment of masses. This will not change as long as the organizational, logistical and financial burdens will hamper the usage of the ECI by non-associated citizens.

## VIII. The Future of Participatory Democracy in the European Union

The evolution of democracy in integrating Europe has taken many turns. It started as a typical top-down intergovernmental constellation of political entities. Afterwards, it opened up to representative mode by enabling direct election to the European Parliament. Due to escalating criticism towards the so-called democratic deficit, the EU democracy began including participative elements. From the point of view of democratic theory, the next step could be directed towards strengthening participatory democracy accompanied by deliberative solutions, eventually leading to some form of deliberative democracy. However, taking into consideration the political and geographical diversity of the EU, the question is: is it even possible?

### 1. The (Non)Existence of Citizens in the EU Decision-making

The EU rests on the principle of representative democracy and derives its legitimacy from two distinct sources. Firstly, the European Parliament, which represents the European voters, and is directly elected since 1970s. Secondly, the members of the Council of Ministers who are appointed by the national governments, which have been democratically appointed or elected in their Member States. Yet, in the beginnings of the European integration process the legislative power was far from representative. It rested with the European Commission and the Council of Ministers, both consisting of non-elected members. The European Parliament, although directly elected since 1979, played only an advisory role and was allowed to adopt non-binding advices on legislation in very limited areas. The real power was in the hands of the European Commission, which held the exclusive right of initiative and sent its legislative proposals to the Council of Ministers. At this stage, Member States were able to debate on the matter and either approve, amend or refuse the proposal. This procedure put Member States and the Commission on the forefront of European legislation, creating an elitist organization where politicians single-handedly and without participation of the people decided on the matter of integration and decision-making (Geuens, 2017).

The status quo would probably have remained unchanged if it was not for the bottom-up pressure to democratise the EU. As a consequence, in the recent decades the European Parliament has been subject to number of reforms, which gradually strengthened its position. The newly introduced legislative procedures eventually generated an increase in European legislation, whereby the Parliament played an active role with each new Treaty amendment (Chalmers, Davies and Monti, 2014). However, as mentioned before, one cannot forget a specific feature of European integration, which is European Commission's prerogative to initiate the legislative process. A prerogative which cannot be understood in absolute terms, as the Commission is under pressure to submit proposals by number of political actors, particularly the European Council and the Council, even to the point where the Commission is left without much room for manoeuvre. This leads often to a "Council-centric" legislative process transforming Commission's legislative prerogative into the privilege of being a "veto-player", a "gate keeper" or even an "honest broker". Eventually, even the gate-keeping thesis can be contested as the Commission rarely rejects proposals from the intergovernmental institutions. This trend is now known as the "new intergovernmentalism" and has strongly developed during last EU crises, taking a new deliberative form where "collective policy responses" are not assigned to supranational institutions, but are decided on the basis of elite-driven deliberations (Puetter, 2012).

On top of that decision-making transformation, recent developments, such as consultations involving only high-stakes players, high involvement of experts and interest groups with the Commission and the fast-track legislation (Héritier, 2012; Reh et al., 2013; Chalmers, Davies and Monti, 2014) have further weakened the democratic involvement of citizens in the European Union (Feld and Kirchgässner, 2003; Lindseth, 2012; Chalmers, Davies and Monti, 2014). Given the fact that the Council has increased bargaining within its political structure, the European Parliament in some cases is not always aware of the motives of certain decisions (Héritier, 2012). It has the power to block legislation, influence the composition of the European Commission and construct EU's budget. Yet, this seems not enough to oppose the decision-making dominance of the Council and the Commission. What is more, the increase of bargaining has a negative influence on the democratic level of the EU. In fact, citizens of the Union do not participate in any real debate on the issues decided on the supranational level.

The impact of the Member States is also all too evident – it is sometimes even initiated by the big Member States such as Germany and France, leading to exclusion of the smaller ones. As a result, citizens who could impact European policy via the Parliament become less involved and identify less with the European project.

What can be even more destructive for the EU democracy is the so-called institution of early agreements when political consensus is reached between the European Commission, the European Parliament and the Council of Ministers before the first reading of the formal decision-making process or early during the second reading of legislation (Héritier, 2012; Reh et al., 2013). In fact, in 72% of the legislative proposals made on the EU level an agreement is reached through the early agreement procedure, which means the decision-making process consists only of two phases, that is the Commission proposal and the adoption by the European Parliament and Council in the first reading (Héritier, 2012; Reh et al., 2013; Chalmers, Davies and Monti, 2014). Also, these agreements are often governed by rules usually decided *ad hoc* (Reh et al., 2013). The non-transparent negotiations take place between representatives of the European Parliament, the Council and the European Commission, which means that citizens are excluded in an almost systematic way (Lee, 2014, (Geuens, 2017).

One could counter these arguments by stating that participation is assured by means of civil dialogue (art. 11.2 TEU) and consultation (art. 11.3 TEU) enlisted in the Treaties. However, it has to be noted that both of these instruments are mainly reserved for collective actors and often depend on the possession of various resources, such as knowledge or organizational skills (Heinlet, 2007). Against this background, it has been widely argued that participatory democracy in its current shape remains mainly elitist, governed by a sort of self-appointed enlightened elite (Greven, 2007). Consultation processes and civil dialogue on a European level potentially could strengthen both social engagement and the contribution of functional interest representation to supranational governance. However, as Magnette argues, they do not guarantee a progress of enlightened understanding in the citizenry at large (Magnette, 2001). Thus, these participatory tools do not represent a final answer to the democratic challenge facing the EU.

## **2. Can the ECI Save European Union's Democracy?**

What appears to go beyond the classical public consultation processes and civil dialogue is the European Citizens' Initiative, an agenda setting instrument which gave at least 1 million EU citizens similar powers to the ones held by the European Parliament or/and the Council. Representative democracy often makes us forget that setting the political agenda is citizens' essential power of government. However, if we consider the ECI only as a simple legislative innovation, it makes sense to argue that political agendas are not directly influenced by the citizens or multinational organisations, but by political and economic elites (Ohnmacht, 2012). One of the assumptions is that citizens tend to prefer "rational ignorance" about politics because the costs of having the knowledge greatly exceeds the benefit people derive from it (Schumpeter, 1950; Downs, 1957). Ohnmacht argues that "to contrast the so-called 'cost' of knowledge only with its utility in a liberal representative setting is to misconstrue the picture" (Ohnmacht 2012: 4). Moreover, the benefits of knowledge depend on concrete socio-political configurations. He claims that in systems where participatory tools are used more often, the utility of knowledge far exceeds its appropriation costs. However, as the ECI has purely an invitational format, it does not enable to go beyond already existing representative mechanisms. Therefore, it fails to lower the perceived "appropriation costs" of knowledge (Ohnmacht, 2012).

One cannot forget that setting political agendas requires appropriate knowledge. Political and economic elites have an almost unlimited access to information. However, knowledge can be also acquired through dialogue between citizens and experts, as well as between and among citizens themselves. In the context of the ECI, forming open partnerships, forums, roundtables, seminars, and expert committees which inform citizens of relevant findings is an essential element. This reasoning between citizens and experts, sometimes known as "contextual steering", can lead to the consolidation of knowledges and ultimately facilitates populations to construct some notion of their communal needs and wishes (Ohnmacht, 2012). Without this process of social intercourse, the proliferation and accumulation of appropriate knowledge cannot be fostered. What is more, multilevel character of these information flows also prevents interest fragmentation and strengthen the decentralisation of knowledge, weakening potential knowledge monopolies.

If one looks at countries where citizens voted directly on the introduction of new European treaties, incentives for more knowledge were stronger because the lively discussions preceding the referendum changed the notion of “having a reasoned opinion” into a desirable attribute (Chambers, 2003; Button & Ryfe, 2005; Ohnmacht, 2012). Consequently, citizens living in countries with a referendum mechanism tend to be “objectively” better informed than those in countries without such a mechanism. What is more, the same people also are likely better informed “subjectively”, which motivates their quest for greater knowledge. This tendency does not apply only to the EU. Benz (2004) argues that in Switzerland’s 26 cantons citizens are and feel better informed when direct participatory opportunities are high. At the same time, the mere act of voting does not produce knowledge or make people more aware of political and social processes. There is also little evidence to support the hypothesis that citizens will have more knowledge on the EU by just signing an ECI. In fact, it is hard to imagine that in today’s political configuration ECI campaigns will address citizens concerned with European matters. They rather target citizens concerned by a specific cause or problem that must be addressed at European level (Bouza Garcia, 2012). Still, Ohnmacht (2012) argues that if the ECI succeeds at some point in triggering a sense of empowerment, that is to say, if popular opinion is thought to matter, then appropriate knowledge is likely to follow.

In any case, the ECI needs gradual, yet explicit reform. At this point, it is limited to binary answers which often lead to diametrically opposed dichotomies (yes/no). Practice shows that citizens asked whether they prefer “A” or “B”, often reply “both” or “C”. Therefore, legitimate and acceptable solutions cannot be reached only by a single vote or the initiative of a few. Public problems need resolutions which come from dialogue and open debate. This does not mean that deliberative processes can transform incompatible views into compatible or that every solution proposed through dialogue will be accepted by all. Nevertheless, deliberation helps citizens see the ethical merits of various arguments. However, these ideas are not being achieved via the ECI and its governing principle of “bargaining and exchange” by the maximisation of individual gains in zero-sum terms (Ohnmacht, 2012). In fact, this seems the most important disadvantage of the whole instrument. If we consider that knowledge is dependent on formal and informal configurations of power, then the popular “information campaigns” represent a rather ineffective tool of increasing voter knowledgeability. In

consequence, the ECI's binary architecture does not provide the necessary spectrum of potential solutions (A, B, C, D, etc.) but also leaves citizens without any real feeling of empowerment and therefore knowledge. As Thomson rightly underlines, public participation experts widely acknowledge that poorly designed or executed public participation tools can be worse than no tools. In a number of cases, a democratic tool raises many expectations which cannot be met, and this leads to passive disengagement at best and destructive protest at worst (Thomson, 2012).

The design of the ECI, an "innovative participatory instrument", clearly indicates that Europe's historically predominant liberal-representative (as opposed to deliberative) culture has rooted itself into the Treaty of Lisbon, and the ECI specifically. One of the pillars of that philosophy is the idea that elected representatives have more resources to judge a society's common interest than individuals who are too narrowly focused on their own self-interest. Yet, it seems that the ECI as an instrument which is supposed to break with certain paradigms of representative democracy, blocks citizens from exploiting direct participatory potentials (Ohnmacht, 2012). At the same time, one has to acknowledge that the responsibility of demanding "democratic" powers essentially shoulders on the people. Without the active citizens' support and engagement, the ECI will sooner or later fail. This motivation, in turn, can only grow and become cement among citizens who have the possibility and resources to mobilise, organise, and set the political agenda. As Ohnmacht (2012) argues "deliberation must always occur not only to citizens' mutual benefit but to the benefit of their mutuality" and that is why the EU's first effort of implementing a direct participatory should spur in us a desire to start reinventing our own political future and to fight for different possibilities of making popular opinion matter, that is to say to demand more from our shared polity (Ohnmacht, 2012).

Even if we take into consideration the ECI's imperfections, it can be argued that if it were used (more) frequently by various groups for different policy topics, the position of the citizen in the EU architecture would slowly begin changing on different levels (Thomson, 2012). First of all, national media which nowadays rarely cover EU issues might start reporting on EU matters in which their own citizens have had an influence. Second, ordinary citizens who signed a successful ECI would feel that they actually can impact EU policy, which could lead to further



engagement. Third, organisations focused on national issues would, through the international engagement enforced by the structure of the ECI, build or strengthen their own cross-border networks which could be used for further involvement in EU policy. Finally, one could imagine that EU leaders might slowly conclude that citizens can be valuable and effective partners for positive solutions rather than negative forces to be feared. As a result, the internal opposition to use other citizen involvement tools in policymaking could be gradually weakened (Thomson, 2012).

In that sense, the ECI could play the role of a trigger for a functional reflexive democratisation process, as it would generate the initial conditions for a demand of further democratisation. Building on the Thomson's argument, the general idea would be that the ECI could attract the attention of the national media and support greater debates attracting citizens' attention. Current practice shows, however, that it is unlikely that the mere usage of the ECI will develop debates on the EU. First, there is no empirical evidence that more successful ECIs generate more new initiatives. Data shows rather a rollercoaster of registrations and total lack of interest in the usage of the instrument. Having said that, the current design of the tool fails to substantially transform the media attitude towards EU issues, as previous democratic changes (direct EP elections, strengthening of co-decision procedure between the European Parliament and the Council or the deliberation of the European Convention) were unable to engage a substantial, let alone sustained, attention of the media for the EU. In fact, since 2003 when the Constitutional Convention decided to incorporate the ECI, not many initiatives have attracted significant and Europe-wide media attention. Second, it is not the instrument itself which has the potential to attract media's attention, but rather the topics touched by the organisers. This still raises the risk of media paying more attention to exotic initiatives, strengthening the image of bottom-up initiatives which do not bring up solutions to serious problems. If one analyses media coverage of ECIs, the greatest focus was given to "STOP TTIP", an initiative which at first was not even registered by the Commission. However, it touched on an important issue and generated extreme emotions on both ends from almost religious approval to total disagreement. Therefore, in this model the contribution of the ECI to the attention of the media may be limited or rather counterproductive from the EU institutions' point of view (Bouza Garcia, 2012).

### 3. The European Citizens' Initiative and the Notion of European Demoi-cracy

If we take into consideration that in a number of EU Member States citizens' initiatives are implemented on national, regional and local level, it seems fair to argue that the single ECI instrument is a poor participatory offer for 500 million citizens in the EU. In that sense, the ECI could be developed and improved within the concept of European demoi-cracy, described in earlier chapters. What is important, the ECI takes as its basis the acknowledgment that EU democracy rests on 29 already democratically constituted demoi. To some extent and with number of flaws, it also acknowledges EU citizenship in the sense that it gives EU citizens the possibility to exercise their rights across borders. Having in mind the formal requirements of the ECI, and particularly the fact that any successful initiative has to be supported by citizens from at least seven EU Member States, the ECI also has significance in the understanding of the "no demos" problem. In fact, it could help in the construction of a transnational demos, as citizens who initiate any ECI have to organize themselves transnationally, meaning that they have to cooperate with fellow EU citizens in at least six other Member States. Consequently, success of any ECI rests on transnational networks in civil society and, by extension, on transnational debate in the European public sphere (Conrad, 2011).

However, the current design of the ECI does not touch the hybrid character of the EU polity as a constellation of supranational and intergovernmental elements. It also does not try to solve the issue of democratic deficit by urging European demos construction. Instead, it only incorporates a transnational component into the initiation of EU legislation: it is not just a citizens' initiative, but a transnational citizens' initiative. Due to number of formal and organizational requirements its transnational character channels the instrument into the world of European civil society, which is the only player in the game with enough resources to organise a successful ECI. Yet, a large number of civil society organisations had already used their transnational networks, without the need to use the ECI.

The crucial question, especially in the context of European democratic deficit is whether, and to what extent, this transnationalisation of EU politics could also result in the emergence of one transnational European demos or the empowerment of European demoi. Conrad (2011) argues that if EU citizens began perceiving EU politics more from the perspective of specific issues and

look for partners and allies in other Member States, then they have already taken a significant step towards understanding themselves as important elements of the same political community. On top of that, if also the political groups in the European Parliament began supporting citizens' initiatives, then the ECI might be able to contribute to the birth of genuine European parties, which for some would be an essential next step in the quest for even more transnational democracy in the EU.

From the demoi-cracy point of view, one has to stress that it operates in the shadow of national representative democracies. Its focus is on indirect accountability, but only as long as modes of domestic majoritarian aggregation do not systematically bypass the interests of groups most affected by integration (Nicolaidis, 2013). This means that in the relationship between citizens and the Union pluralities across countries are understood as more valuable than aggregative methods. Moreover, Nicolaidis (2013) - one of the leading thinkers behind the concept of demoi-cracy - argues that "power-scrutinizing mechanisms at EU level can be multiplied, including through the internet, and made to trickle down to the domestic level" and "horizontal accountability mechanisms must be refined to reflect negative political externalities." The ECI seems in that vision a potential first step in real introduction of EU demoi-cracy. However, what is important to fulfil this vision, along with a complex reform of the instrument, Europeans would also need to significantly reassess the perception of citizenship in a polity of multiple demoi. In consequence, EU citizenship should base itself on Europeanised national citizenships which would expand the rights, opportunities and obligations of all its citizens, without the need to superimpose an autonomous new "citizenship granting and monitoring" authority (Nicolaidis, 2013).

The potential synergy between the ECI and the development of demoi-cracy in the EU is unlikely to occur, if the participatory tool were not radically reformed. Changes would have to affect not only small technical or logistical issues, but the whole structure of the instrument. Currently, the ECI is presented as a "democratic innovation", yet the innovative character concerns only its' transnationality. In all other aspects, the ECI is a typical popular initiative, without any strong political leverage. Hence, from a purely practical point of view, the idea of gradation in the structure of the ECI presented by Watson (2013) appears as a very noteworthy direction in demoi-cratising the ECI. His concept envisions creation of so-called checkpoints

dependent on signatory number and rate of acquisition. Each initiative would be automatically eligible for any and all of the pre-defined checkpoints, each of which will be linked to specified action and support from EU institutions. The condition of 1-year collection of statements of support would remain, and each proposal would be able to continue collecting signature, regardless of meeting the criteria for any of the checkpoints. Watson proposed four checkpoints, to which I added several new proposals:

- a. “Flash petition” – requires collection of at least 25,000 signatures, from any EU nations, within 2 weeks. Such checkpoint would warrant a timely response from the Commission or a relevant European Parliament committee. Commissions’ answer will describe its position with regard to the merits of the petition, taking into consideration the support it has gathered. It will invite the Commission to adopt new policy, change existing policy, or suggest the relevant legislature to the European Parliament. It would serve as a link between EU citizens and the Commission with regard to developing current events and/or matters that may significantly affect selected subpopulations or minorities.
- b. “Priority petition” – requires collection of at least 250,000 signatures, from any EU nations. Additionally to receiving the same consideration like “flash petitions,” “priority petitions” would put a formal requirement on the relevant EP committee to organise a debate on the issue, including organisers of the petition, as well as all relevant stakeholders.
- c. “Flash initiative” - requires collection of at least 500,000 signatures with the minimum requirement met for the number signatories in each of at least 7 countries. “Flash initiative” would not only require response from the Commission and organisation of a debate in the European Parliament, but also involve Member States’ parliaments as national platforms of deliberation.
- d. “Standard initiative” - requires collection of at least 1,000,000 signatures with the minimum requirement met for the number signatories in each of at least 7 countries. “Standard initiative” would not only trigger European-wide debate on the touched issue, but also require from the Commission initiation of legislative procedure.

What would be crucial in the new form of the ECI is its diversity directly related to the given support. Smaller initiatives (petitions) would carry less action from the EU institutions, and large initiatives engaging masses would trigger concrete and binding actions from the Commission and the Parliament. In contrast to today's homogenous ECI with high thresholds, the new tool would be much more open to strictly bottom-up initiatives and individual EU citizens without significant financial, organizational or time resources. Furthermore, the ECI would become not only a participatory tool, but also a deliberative platform engaging people to discuss the issues important for them. As Liebert (2005) states, *demoi-cracy* functions as an umbrella, a kind of "deliberative supranationalism", which enables to create a network of endless *demoi*, whether based on nationality or issue-oriented. A *demoi-cratic* ECI could play an important role of a non-domination device putting emphasis on the ability to launch deliberation which strengthens the Union as a polity of peoples. Its potential would come from the fact that European peoples can govern together rather than as one. Hence, as mentioned before, *demoi-cracy* puts emphasis on the strategy to treat the national *demoi* of the Member States as the basic building blocks and deliberative contexts of a European democratic association (Christiano, 2010).

Evidently, the concept of *demoi-cracy* rests firmly on the idea of deliberative democracy. It embodies a vision of democracy in which citizens participate actively with one another within and through a network of civil associations, groups, and organisations whose aim is to trigger political action, provide political information, and communicate collective concerns to decision makers (Parvin, 2018). Yet, civil society in the liberal and representative context, is gradually becoming a reflection of the political system it operates within. CSOs become either a transnational and professionalised group of political influence, with huge budgets and vertical structure, or remain small bottom-up groups with no political impact whatsoever. In that sense, paradoxically, civil society in Europe becomes weakened, polarises citizens and disconnects them from political life. In consequence, the declining social capital and the lack of citizens interest in political activities through traditionally structured civic associations, have resulted in the formation of a new stratum of interest groups and lobby organisations. Their aim is to serve the interests of their member constituencies not through grassroots activism but through representation at the elite level with the help of sophisticated lobbying and public relations

initiatives as well as the provision of expert policy advice to decision makers. Such organisations operate mostly at a distance from the citizens, and even from their own members, which means that policy and decision making in contemporary liberal democratic states are conducted now solely at the elite level, among political actors which have little or no direct relation with the people more generally.

In that sense, demoi-cratism of Europe would also require rethinking the place of CSOs in the political life of the Union. Civil society would have to re-open itself to grass roots activism and put more influence on deliberation and local activism, rather than on insider political influence. Demoi-cracy cannot exist without civil societies' engagement, as it serves as an important intermediate between decision-makers and the people. However, in demoi-cracy the relationship between the two should transform itself from less vertical to more horizontal. Hence, the role of CSOs should change analogically and become more of deliberative hosts, which organise deliberation processes with all relevant stakeholders. The question is to what extent CSOs might be keen to abandon their political powers and evolve in new directions where influence is flattened and control over their own political agenda is uncertain.

#### **4. Conclusions**

From a purely formal and legal point of view, the European Citizens' Initiative is a very weak participatory tool. It does not obligate EU institutions to act. Theoretically, collecting over one million signatures in over seven Member States could always result in a refusal from the European Commission. In that sense, the ECI is more of a democratic mock-up, than an innovation. However, from an institutional perspective it carries an important potential of collective action, with the ability to design and organise pan-European campaigns engaging public opinion at the national level with impact on the EU level (Bouza Garcia, 2012).

Although first nine years of the ECI did not create any special bottom-up momentum in the European democracy, the European Commission seems to stick to the opinion that the ECI "provides a singular opportunity to bring the Union closer to the citizens and to foster greater cross-border debate about EU policy issues, by bringing citizens from a range of countries together in supporting one specific issue" (European Commission, 2015). This opinion assumes

that by signing an initiative, citizens will automatically be better informed on what the EU does and will become more knowledgeable of its' structure and functioning. However, the ECI in its current design is unable to significantly contribute to the vertical Europeanisation, as it requires only a small portion of communication which anyways is likely to appeal mostly to a concrete catalogue of citizens' interests (for instance environmental or health concerns), which is a type of communication likely to touch on already well-informed citizens (Bouza Garcia, 2012).

If one empirically analyses Commissions' reactions to successful ECI's, as well as to number of reform proposals, it turns out that the Commission treats the new instrument as a danger to its political position. The ECI could challenge the output-oriented model of European democracy by politicising EU decisions. Similarly, at some point, the European Parliament could view the ECI as a risk to representative democracy, or even as a first step in the process of deparliamentarisation. If EU institutions viewed the ECI this way, one could expect that the limitation of ECI's functionalities will continue. In consequence, article 11.4 TEU would be dead. An alternative solution focuses on EU institutions' openness to solve the so-called democratic deficit, by developing and strengthening the ECI. In such case, the Parliament would take up the initiatives, debate them and trigger political process in order to put them in life. The Commission would refuse successful initiatives rarely and receive organisers on a high political level. This could result in an informal coalition of the Parliament, the Commission, and civil society actors testing the boundaries of the ECI regulation and making participative democracy work. As one can imagine, both possible options are extremes, but both might activate institutional change on the informal level.

In sum, the European Citizens' Initiative appears as a first step in a long march towards European participatory democracy. However, the experience of the first years of the instrument does not give clear answers to the questions regarding the political impact of the tool and its potential future. The first episode of the ECI, before the reform was a hard lesson for all the optimists who believed in quick and dynamic development of participatory democracy in the EU. It involved a high ratio of non-registered initiatives, only several ECIs with over one million signatures and no serious political action in response to the successful ones. This presents a situation closer to the vision where the letter of article 11.4 TUE is close to being dead.

Still, some observers see light at the end of the tunnel. The ECI has been signed by millions of EU citizens who seek to participate in the political life of the Union beyond the mere act of voting in the European elections. A number of transnational coalitions have been established with the possibility of further cooperation. The topic of participatory democracy became a constant element in the discussions on the democratic deficit. In this sense, participatory democrats have put a foot in the door of the EU. However, it is still uncertain whether they will be able to enter the political arena in full or their foot will be crashed.



## IX. Conclusions

This PhD thesis allows to draw some conclusions regarding the relationship between the European Citizens' Initiative and the development of new models of democracy in the European Union. The presented findings have shown that although the instrument faces significant amounts of justified criticism, it still presents an important step towards further development of participatory democracy in the EU. At the same time, the potential of the ECI did not affect in any significant way the development of European deliberative democracy, remaining a participatory tool which enables to set agenda, but not discuss the issues at hand.

On paper, on the basis of Regulation 211/2011 the ECI appears to be a fully inclusive and effective tool enhancing democratic participation of EU citizens. However, practice shows that there is a number of flaws and restrictions, which to some point make the ECI only an imitation of effective participatory instrument. The theoretical and historical framework presented in the first two chapters show the complexity of the idea of participatory and deliberative democracy.

I have argued that the two alternative or complementary models of democracy described in the thesis ought to play a much stronger role in the discussions on the future of local, national and European democracy. They both present inclusive features, which are of great value in today's political life. On the one hand, participatory democracy is based on the direct involvement of citizens who exercise some power and decide issues affecting their lives. On the other hand, deliberative democracy is founded on argumentative exchanges, reciprocal reason-giving, and on the public debate which precedes decisions (Florida, 2017). Although participatory and deliberative democrats disagree on how to put in life both of those models, they do agree that today's dominant model of representative democracy needs reform which will activate and include larger number of citizens in the decision-making processes.

Empirical data taken from a number of Eurobarometer surveys shows that the people, although influenced by European legislation on a daily basis, do not feel sufficiently included in the EU's legislative procedure. They feel that "European governance is governance without

government” (Haverland, 2013). Therefore, the problem of the democratic deficit in the European Union is an issue of demos construction in the sense that “democracy must now not only change its institutional form, it must also rethink its political subject” (Conrad, 2010).

## **1. The Underlying Research Questions**

The central research question of this thesis is supported by several further questions that have been addressed in order to provide an adequate answer. Bellow I summarise them in order to present an answer to the main research question.

### **1.1 Is the ECI an efficient participatory instrument in its’ current design?**

The answer is clear: no. This PhD thesis has presented empirical data showing that the ECI is in many ways ineffective, overly bureaucratic and weak. As mentioned before, the European Citizens’ Initiative has been constructed based on various designs of national citizens’ initiatives, which has been analysed in Chapter IV. If one looks at solutions from analysed countries, it can be argued that the ECI could and should take example from national initiatives which are more inclusive, simpler in usage and therefore more engaging. Although number of national solutions were considered, the fact that the ECI is a first transnational citizens’ initiative resulted in a unique architecture with number of flaws.

The original aims of ECI’s introduction were well-defined and optimistic. This new and innovative participatory tool was and still is supposed to: “(1) help to counter public disengagement with European affairs by offering citizens the possibility of pushing the EU’s ‘legislative button’; (2) stimulate transnational dialogue and debate on specific public concerns across Europe; (3) promote the Europeanisation of national public discourses, if the pros and cons of a proposal are discussed in national political arenas and (4) have an ‘educational function’, making citizens more aware of how the EU works and, especially, of the Commission’s role” (Emmanouilidis and Stratulat, 2010b).

Has any of those ambitions been accomplished during last 9 years? It could be argued that the ECI is a perfect example of a potentially far-reaching primary law provision that was weakened

through implementing regulation, special single-purpose rules and administrative twists (Šuchman, 2010). ECI organisers realized that even in today's so-called interconnected world, organising a transnational campaign in at least seven EU Member States is indeed a task well beyond most organisations, let alone individual citizens (Tuokko and Greenwood, 2017). Therefore, in reality, the ECI turned out to be an exclusive prerogative of well-organised associations with pre-existing transnational networks (Ohnmacht, 2012).

It seems that so far, the ECI has indeed enriched the public's conventional participatory repertoire with a kind of advocacy democracy, through which citizens can indirectly influence the EU's policy process via intermediary bodies. Kaufmann (2012) lists three secondary results of ECI consequences: (1) the ECI can be used as a bargaining chip to negotiate a given issue, (2) it can be a catalyst for coalition building and (3) personal or collective canvasser for candidates or parties in the run-up to elections to the European Parliament.

## 1.2 What can be done to improve it?

The European Citizens' Initiative still has the chance to become a new democratic tool, which is already now more direct, transnational and digital than anything else we have experienced at the EU level (Kaufmann, 2011). It represents a first step in providing what can be called a "set of available opportunity structures for citizen participation" (Richardson, 1995). It also presents a potential for becoming a polity-creating instrument that will improve and increase citizens influence on the EU political agenda by reinforcing the exchange of civic competence and fostering civic inclusion at a supranational level (Hristova-Valtcheva, 2008).

However, if one considers the resources which are required to start an ECI, it appears that the "citizens" part of the concept is not as strong as previously assumed (Hrbek, 2012). In fact, practice shows that ECI organizers have to rely on intermediaries such as NGOs, trade unions, and even political parties to voice their interests via such initiatives (Dougan, 2011). Furthermore, the ECI in today's form is definitely not a procedure providing fast results (Kaufmann, 2011). The cycle takes at least 20 months – two months to register the initiative, 12 months to collect one million signatures, three months to verify and authenticate them, and

three more months for the Commission to respond, several years are needed for a successful initiative to be implemented.

The major concern, however, is whether the ECI, in its current architecture, can strongly contribute to inner European debates on the Union beyond the highly specialised circles (Hierlemann and Wohlfarth, 2010). Certainly, the ECI still has a potential to generate functional reflexive democratisation process, as it can create the preliminary requirements for a demand of further democratisation (Trenz and Eder, 2004). Nevertheless, even this first step still remains theoretical, as the Commission either did not act in response to the successful ECIs, or its actions were insufficient from the organizers point of view. Hence, in order not to kill the initiative, it can be argued from a normative point of view that the Commission should act upon all successful initiatives, even if they are incompatible with its own agenda. This would not undermine the Commission's formal right of initiative, at the same time assuring that all the successful campaigns would have an opportunity to present their initiatives to the decision-making institutions.

If the Commission presented a more open attitude towards all successful ECIs, regardless the topic they touch, and as far as they fulfil all the requirements mentioned in the Regulation, the usage of the ECI could lead to the institutionalization of the frequent opposition to the EU institutions. In consequence, this could become a more pragmatic critical voice towards the Commissions' policies. That would give the public the opportunity to make the EU institutions more accountable for their decisions and criticism could be channelled through more constructive channels (Bouza Garcia, 2012). In this sense, the ECI could be designed as a more robust version of the U.S. White House online petition platform, called "We the People". It enables any US citizen over 13-years-old with an Internet connection to easily login, support, create, and promote a petition directly on the White House web site. Petitions which manage to collect over 25,000 signatures in less than 30 days oblige the federal government to give official response (Watson, 2013). The procedure is simple, user-friendly and does not require from citizens extensive personal data.

If at some point the ECI headed in that direction, it could become a bigger "game changer" than generally expected, as it may put the Commission, as well as other European institutions into a

relatively new situation of managing agendas and proposals coming from outside their “bubble”. On the other hand, the ECI is unlikely to transform into a popular citizens’ initiative in the near future, which would allow a given number of citizens to put their own proposal on the political agenda and initiate a vote (referendum) on it. Certainly, the ECI may be regarded as an effective platform for reform proposals in the future (Pichler, 2008). However, the key issue will revolve around the attitude the Commission will take towards the ECI. So far, it seems that Commission’s approach can be described as “We have created the instrument, now it is up to the citizens to prove themselves worthy of this new right” (Buehler, 2011). Thus, if the Commission does not change its attitude towards diverse ECIs, facilitating their arrival into the legislative agenda, the result may be the opposite of what was expected, as the citizens wanting to influence EU decision making process will avoid the ECI.

The analysis presented above, which considers that the ECI is not a decision-making instrument but only a non-binding and consultative dialogue instrument, results in a number of various concluding recommendations. Several of them have been implemented during the recent reform, giving the ECI a change to become a more accessible participatory instrument and reduce the costs and burdens for ECI organizers. Time and practice will show whether the implementing regulation is “clear, simple, user-friendly and proportionate to the nature of the citizens’ initiative so as to encourage participation by citizens and to make the Union more accessible”.

### 1.3 Can it become a deliberative instrument?

One has to remember that ideally democracy and self-government require equal influence of all citizens in the policy-making process. From the deliberative model perspective, it is plausible that civil society organizations can function as mediators. One of the requirements for such mediated input of stakeholders’ voices in the decision-making process is institutionalized access to political deliberative processes for CSOs (De Clerck-Sachsse, 2012). However, as mentioned before, the sole ability to access deliberative processes is insufficient if it is not complemented by transparency and access to information for all participants. Yet, transparency is crucial to achieve equal footing for all participants. A core principle of democratic political deliberation relies on the arguments that all of stakeholders possibly

affected by the decision should be included in the process of decision-making, or at least should have the chance to be included.

This does not mean that deliberative processes can transform incompatible views into compatible or that every solution proposed through dialogue will be accepted by all. Nevertheless, deliberation helps citizens see the ethical merits of various arguments. However, these ideas are not being achieved via the ECI and its governing principle of “bargaining and exchange” by the maximisation of individual gains in zero-sum terms (Ohnmacht, 2012). In fact, this seems the most important disadvantage of the whole instrument. If we consider that knowledge is dependent on formal and informal configurations of power, then the popular “information campaigns” represent a rather ineffective tool of increasing voter knowledgeability. In consequence, the ECI’s binary architecture does not provide the necessary spectrum of potential solutions (A, B, C, D, etc.) but also leaves citizens without any real feeling of empowerment and therefore knowledge. As Thomson rightly underlines, public participation experts widely acknowledge that poorly designed or executed public participation tools can be worse than no tools. In a number of cases, a democratic tool raises many expectations which cannot be met, and this leads to passive disengagement at best and destructive protest at worst (Thomson, 2012).

The design of the ECI, an “innovative participatory instrument”, clearly indicates that Europe’s historically predominant liberal-representative (as opposed to deliberative) culture has rooted itself into the Treaty of Lisbon, and the ECI specifically. One of the pillars of that philosophy is the idea that elected representatives have more resources to judge a society’s common interest than individuals who are too narrowly focused on their own self-interest. Yet, it seems that the ECI as an instrument which is supposed to break with certain paradigms of representative democracy, blocks citizens from exploiting direct participatory potentials (Ohnmacht, 2012). At the same time, one has to acknowledge that the responsibility of demanding “democratic” powers essentially shoulders on the people. Without the active citizens’ support and engagement, the ECI will sooner or later fail. This motivation, in turn, can only grow and become cement among citizens who have the possibility and resources to mobilise, organise, and set the political agenda. As Ohnmacht (2012) argues “deliberation must always occur not only to citizens’ mutual benefit but to the benefit of their mutuality” and that

is why the EU's first effort of implementing a direct participatory should spur in us a desire to start reinventing our own political future and to fight for different possibilities of making popular opinion matter, that is to say to demand more from our shared polity (Ohnmacht, 2012).

#### 1.4 What is the relationship between the ECI and the European Civil Society?

Although the European Commission is open to various groups, in practice the current decision-making process favours strongly institutionalized so called umbrella organizations that aggregate and represent diverse interests at the EU level (Greenwood, 2011). The overall analysis of the relationship between the ECI and CSOs confirms that the ECI is far from being a priority for these organizations. There are several reasons for that, including: the structural lack of staff, the preference for insider lobbying styles or to the structure of opportunities created by the institutional setup (Bouza García, 2012). In fact, mobilizing members at EU level is problematic *per se* and its value is relatively small in interest representation in Brussels. Hence, for some organizations close ties with institutions based on an exchange of expertise, support and trust are of greater importance, even though they have resulted in a very large independence from their principals. This resulted in EU-level civil society uninterested in organizing campaigns involving citizens' initiatives.

Civil society organizations have been involved in the creation of participatory mechanisms, as they are expected to be close to citizens and able to provide a two-way communication between them and the European institutions. Although the involvement of organized civil society in participatory mechanisms is undoubtedly a democratic improvement, it fails to contribute much to bringing the EU closer to citizens, particularly if organizations are unable to effectively integrate citizens into the process. The paradox thereof is that civil dialogue is an important contribution to better policy making as well as to the strengthening of EU institutions legitimacy, but at the same time it is a minor input to the EU public sphere. On the contrary, demonstrations and signatures collection are an important element in improving public sphere but are much costlier and less efficient for organizations than participation in institutionalized dialogue (Bouza García, 2012).

All in all, it appears that the current design of the European Citizens' Initiative has been intentionally framed in a way that prevents spontaneous groups of EU citizens to successfully collect one million signatures. The need of CSO's support to reach that goal comes from the fact that EU institutions still focus more on civil dialogue, rather than empowerment of masses. This will not change as long as the organizational, logistical and financial burdens will hamper the usage of the ECI by non-associated citizens.

### 1.5 How the ECI relates with the notion of demoi-cracy?

The word "demoi-cracy" was used by Philippe Van Parijs (1997, pp. 298–9) to critically express the fact that in the European Union, the demoi are the primary subjects to whom accountability is owed. Demoi-cracy cannot exist without deliberation, hence the notion of "discursive representation" (Dryzek & Niemeyer, 2008) was introduced into the scholarly debate. It defines the enrichment of EU democracy through forums of debates and deliberations among citizens (Bellamy et al., 2006; Bovens, 2007), which in parallel to the premises of audience democracy, serve the double purpose for representative institutions to observe and to propagate public opinion. This is conducted not only through the repeated measurement of aggregated individual attitudes (as for example via Eurobarometer) but in a more sophisticated manner as the "reasoned reflection" of properly selected citizens about what they perceive as the public good. The "enhanced legitimacy" of these fora is based, then, on the publicly raised claim to "represent" the collective will of the people of Europe, not only through aggregative methods but most preferably by constituting a so called "true microcosm" of deliberation and informed opinion-making that is able to speak in the name of the whole population.

It seems that from the perspective of deliberative democrats the future of European democracy can take in principle two main routes: gradualism and transformationalism. Gradualists believe that larger polities will reproduce nation-state democracy at a larger scale, of course with gradual differences. Participation will become more indirect as the distance between the individual and government increases. Communities will become larger and more diverse, hence they are unlikely to be constructed on the basis of (imagined) common origins and cultural traits. Instead, collective identities will rely more on abstract, "cosmopolitan" norms and values. Gradualist believe that European democracy requires a single demos: a



community where individuals are politically equal and deliberate about the common good in a single, transnational public sphere.

On the other hand, transformationalists reject the belief that regional or global democracy can or will reproduce nation-state democracy. Therefore, they propose a concept of “demoi-cracy”, which questions the single-demos assumption inherent in gradualist conceptions. The idea builds on the premise that national demoi will remain important for the foreseeable future rather than being replaced or outmoded by a regional or even global demos. Transformationalists stand by the opinion that national demoi will continue to create or sustain the strongest collective identities, public spheres and political infrastructures, and enjoy the strongest legitimacy and loyalty among individual citizens. They see in the consolidated demos the prerequisite of a legitimate and well-functioning democracy, as long as it is based on a resilient collective identity, a common public sphere and a developed political infrastructure. Any democratic polity beyond the state, has to use multiple demoi as bearers of negative and positive rights of protection and participation (Cheneval & Schimmelfenning, 2012).

The current design of the ECI does not touch the hybrid character of the EU polity as a constellation of supranational and intergovernmental elements. It also does not try to solve the issue of democratic deficit by urging European demos construction. Instead, it only incorporates a transnational component into the initiation of EU legislation: it is not just a citizens’ initiative, but a transnational citizens’ initiative. Due to number of formal and organizational requirements its transnational character channels the instrument into the world of European civil society, which is the only player in the game with enough resources to organise a successful ECI. Yet, a large number of civil society organisations had already used their transnational networks, without the need to use the ECI.

In that perspective, the ECI needs structural and organizational reform in order to become less centralised. In its’ current architecture, the ECI does not help in building European demoi-cracy.

## **2. Can the European Citizens' Initiative become a new and effective model of EU democracy, which will transform it into a more participative political system?**

All in all, it seems that the European Citizens' Initiative is an important, yet relatively small step, in the long process of improving European democracy. However, in order to have hope that this tool will have a long-term impact on more inclusive and effective democracy in the EU, it has to be optimized.

The first episode of the ECI, before the reform, was a hard lesson for all the optimists who believed in quick and dynamic development of participatory democracy in the EU. It involved a high ratio of non-registered initiatives, only several ECIs with over one million signatures and no serious political action in response to the successful ones. This presents a situation closer to the vision where the letter of article 11.4 TUE is close to being dead.

Still, some observers see light at the end of the tunnel. The ECI has been signed by millions of EU citizens who seek to participate in the political life of the Union beyond the mere act of voting in the European elections. A number of transnational coalitions have been established with the possibility of further cooperation. The topic of participatory democracy became a constant element in the discussions on the democratic deficit. In this sense, participatory democrats have put a foot in the door of the EU. However, it is still uncertain whether they will be able to enter the political arena in full or their foot will be crashed.

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