

PARTICIPATORY DEMOCRACY WITHIN THE EU: A SOLUTION FOR DEMOCRATIC GAP?

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Authors in the first place reveal when and how participatory democracy entered the field of the European political debate. After that, they aim at conceptualizing its evolution and forms in the European political arena. More precisely, they focus on the period, when participatory democracy gained its attention in several papers and documents published by the main European institutions. On the basis of published documents and papers on the democratic gap between the rulers and the ruled by The Commission, the European economic and social committee, the European parliament and the Committee of the Regions, authors researched which main European institutions introduced the concept of participatory democracy as a source of their legitimacy. Because of the coincidence of several different aspects, the tendency towards participatory democracy became stronger at the time of The European Convention. During the work of The European Convention, when a new political and normative document was in an establishing phase, the participatory democracy gained its expression in the title »Democratic life of the Union«. Through the establishment of article 47 in the Constitutional Treaty and later 8b in the Lisbon Treaty, where participatory democracy gained its normative expression, authors show which forms of participatory democracy came to normative institutional design. At the end of the article authors speculate if the theory of participatory democracy could contribute to bridging the gap between the rulers and the ruled.

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1 INTRODUCTION

Over the last two decades there has been a lively political debate on democratic deficit in the EU. This politically initiated debate revolves not only around how to resolve “democratic deficit” but it has also directed attention to the (un) democratic nature of the European polity *in se*. Along with the political debate there have also been numerous academic considerations about how to bridge the gap between the rulers and the ruled and how the EU might one day transform itself into a more democratic polity.

The article begins by explaining the evolution of participatory democracy and is after that directed to the constitutional debate in the EU through the work in the Convention. During this process it reveals how the participatory democracy has entered the European constitutional debate, which European institutions have been its advocate and lights up their capacity to include non-elected actors into the European policy-making process. In the last section of the article some speculations on future of the participatory democracy in bridging the gap between the rulers and the ruled are indicated.

2 THE EVOLUTION OF (PARTICIPATORY) DEMOCRACY IN THE EU

When the integration process began in the late 1950s no one gave much thought to its democratic credentials². The legitimacy of the EC certainly did not come from its aspirations to become a democracy. The Rome Treaty did not mention the principle of democracy. It was first mentioned in the Preamble to the Single European Act in light of the enlargement to Spain, Portugal, and Greece. Consequently, the concept entered the constitutional debate as a condition of European Union membership rather than as a requirement for the Union polity³.

In the light of increased transfer of decision-making power to the European level, combined with the process of constitutionalisation pushed by the European Court of Justice, functionalist and legalistic approach appear to be unsatisfying for addressing the legitimacy of the European construction. But when political and legal discourses were contemplating the legitimacy and democracy, the idea was the representative democracy. Thus the initial concern about the “democratic deficit” of the EC focused on the need for popular involvement via the European Parliament.

² Dimitris N. Chrysoschoou, “Democracy and the European Polity,” in *European Union Politics*, ed. Michelle Cini (Oxford, Oxford University Press, 2007), 360.

³ Stijn Smismans, “The constitutional labelling of “The democratic life of the EU”: representative and participatory democracy,” in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 122.

Smismans⁴ pointed that since the end of 1980s normative discourses on the legitimacy of the European construction have stressed the need to include regional and local autonomy and to involve these actors in European policy-making and therefore the Maastricht Treaty established the Committee of Regions. Again, representative democracy and the accountability via territorially elected representatives emerged as a central normative framework. Similar concerns about representative democracy in a multi-level context emerged also concerning the role of national parliaments in European decision-making. At that time emerged the idea of giving national parliaments a direct stake in the European institutional set-up.

The debate on subsidiarity is also coloured by the framework of representative democracy. The concept emerged in the European debate on the one hand from certain regions (in particular German Länder) and on the other hand from certain member states (in particular the United Kingdom). In both cases, said Smismans⁵, subsidiarity is linked to a conceptualization of democracy in terms of electoral representation at the lowest possible territorial level.

Until the mid 1990s the discourse on participatory democracy did not enter the European institutional debate. The idea of participatory democracy has not been recognized as a potential tool for bridging the gap between the rulers and the ruled.

3 THE EUROPEAN INSTITUTIONS ON PARTICIPATORY DEMOCRACY

The European Commission

The Commission has a wide range of functions within the EU system: policy initiation, the monitoring of policy implementation, and the management of European programmes, an important external relations role and other functions which involve it as a mediator amongst the 27 member states and between the EU Council and the European Parliament, as well as asserting its own European identity. The Commission is therefore clearly involved in almost all stages of the European policy process.

The Commission has been often portrayed as a unique organization because of its mix of political and administrative functions. As an actor without the electoral mandate, the Commission has been trying to find its source of legitimacy outside the structure of the representative democracy. Thus mainly because of its position in European institutional set-up it has always linked transparency to

⁴ Ibid., 125.

⁵ Ibid., 125.

participation in the decision-making process *ex ante*.

Its first communications on transparency were adopted in 1992. It is from this focus on interest group participation that the concept of "participatory democracy"⁶ emerges at the European level, thus did not originate in the bottom-up process but was initiated by those in power.

The Commission provided an important impetus by framing the debate with the publication of the White paper on European Governance⁷ – a key document around which the administrative reform of the Commission was structured. In this document the Commission was propagating a wider involvement of civil society for the sake of efficient and democratic governance. The Commission already adhered to the principle of participatory democracy when preparing and launching the White Paper: in preparatory phase it engaged in extensive consultations with representatives of organized interests and the academic community⁸.

The fact, that the Commission actually functions according to the principle of participation through civil society organizations holds an important place which was also recognized in the White Paper, where participation is identified as one of the five principles underpinning 'good governance' (together with openness, accountability, effectiveness and coherence), but it is defined in the following way: *»The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies«*⁹.

It can be concluded that in the White Paper the participation through civil society organizations held an important place to ensure good governance, but

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⁶ In 1996 the concept of civil dialogue was coined by the Commission's DG responsible for social policy to stress the need to encourage interaction with social NGOs, in addition to the already existing "social dialogue" with the social partners. Later on the discourse on civil society involvement has broadened to include other policy sectors. It has also become part of the Commission's promises on administrative reform as a replay to the legitimacy crisis which injured the Santer Commission. See Stijn Smismans, "The constitutional labelling of "The democratic life of the EU": representative and participatory democracy", in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 127.

⁷ See Commission of the European Communities. "White paper on European Governance", 25 July 2001.

⁸ Beate Kohler-Koch, "The organization of interests and Democracy," in *Debating the Democratic Legitimacy of the European Union the European Union*, ed. Beate Kohler-Koch and Berthold Rittberger (Oxford: Oxford University Press, 2007), 255.

⁹ Stijn Smismans, "The constitutional labelling of "The democratic life of the EU": representative and participatory democracy", in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 127.

the concept of civil society organizations no longer merely refers to NGOs but is interpreted ever more broadly. This vague definition leaves on the one hand a lot of room for a wide range of (re) interpretations, on the other hand it refrains from developing explicit considerations on what participatory democracy might mean in the EU. Consecutively the Commission's good governance debate seems an efficiency-driven process and an attempt to provide a legitimating discourse for its own institutional position, without including profound reforms. As Smismans¹⁰ puts it: *"The Commission does not resist the temptation to use the discourse on civil society involvement and participation to legitimate the variety of (existing) structures of interaction with all sorts of actors, including private lobbyists."*

The European Economic and Social Committee

The European Economic and Social Committee (EESC) has been established by the Treaties of Rome in 1957 as a consultative assembly whose members represent the interests of various economic and social groups in society. Fifteen years later at the Paris Summit it obtained the right to issue self-initiative opinions, the competence that recognized the usefulness and legitimacy of the EESC. Progressively it also acquired greater autonomy with the Maastricht Treaty in 1992 but at the same time it felt itself marginalized due to the gradual increase of alternative consultative fora, the creation of the Committee of the Regions and the development of the social dialogue outside the EESC.

In reply to this marginalization and according to its auto-recognition as a bridge between Europe and organized civil society, the EESC argued in the Opinion titled "The role and contribution of civil society organizations in the building of Europe" that "strengthening non-parliamentary democratic structures is a way of giving substance and meaning to the concept of Citizens' Europe"¹¹ and defined its own role as guaranteeing "the implementation of the participatory model of civil society (enabling) civil society to participate in the decision-making process; and (helping) reduce a certain "democratic deficit" and so (underpinning) the legitimacy of democratic decision-making processes"¹². The EESC also argued that "the democratic process at European level must provide a range of participatory structures in which all citizens, with their different identities and in accordance with their different identity criteria, can be represented, and which reflect the heterogeneous nature of the European

¹⁰ European economic and social committee (1999) (CES 851/99 D/GW) "Opinion on the role and contribution of civil society organizations in the building of Europe", 22 September 1999, OJ C 329, 17/11/99, pp. 9.

¹¹ Ibid., 11.

¹² Ibid., 11.

identity'¹³. The EESC concluded that as body composed of representatives of intermediary organizations, it could act as a representation of the people's way of identifying with civil society organizations, and complement the legitimacy offered by the European Parliament as the representative of citizens' national (territorial) identity. But it also stressed that "a basic precondition and legitimising basis for participation is adequate representativeness of those speaking for organized civil society"¹⁴.

It can be argued that there is considerable conceptual difference between understanding the participatory democracy between the Commission and the EESC. The Commission's good governance debate seems an efficiency-driven process for its own institutional position and functioning, without including profound reforms. Vague rhetoric on participation fits with such a legitimating discourse, but the Commission refrains from developing explicit considerations on what 'participatory democracy' might mean in the EU. Further example of this vague rhetoric is also the term civil society which carries different connotations in the Commission's documents. Sometimes it is used to express the idea of active citizenship and the notion of organized civil society refers to associations networking to the benefit of the general interests. When the term is defined explicitly, a broader concept applies and civil society is considered to embrace voluntary associations of all kinds and not just public interest groups.¹⁵

The EESC on the other hand more explicitly claims a role for participatory democracy complementary to representative democracy. Moreover, it proposes a more horizontal and participatory interpretation of subsidiarity which 'not only concerns the distribution of powers between the various territorial levels, but is also the expression of a participatory conception of relations between public authorities and society and of the freedoms and responsibilities of citizens. When deciding who is to be involved in the preparation of decisions, account should thus be taken not only of territorial (vertical) subsidiarity but also functional (horizontal) subsidiarity, which is a major factor in "good governance"¹⁶.

The European Parliament

The European Parliament (EP) originated as an unelected, part-time institution

¹³ Stijn Smismans, "The constitutional labelling of "The democratic life of the EU": representative and participatory democracy", in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 128.

¹⁴ Beate Kohler-Koch, "The organization of interests and Democracy," in *Debating the Democratic Legitimacy of the European Union the European Union*, ed. Beate Kohler-Koch and Berthold Rittberger (Oxford: Oxford University Press, 2007), 256.

¹⁵ European economic and social committee, "Resolution Addressed to the European Convention," 19 September 2002, paragraph 3.5.

¹⁶ European parliament, "Resolution on the Commission White Paper on European Governance (COM(2001) 428 - C5-0454/2001 - 2001/2181(COS)), A5-0933/2001, paragraph K.

with limited powers that were originally restricted to the supervision and scrutiny of other institutions, apart from the ability to remove the High Authority (Commission) in exceptional circumstances. Over time, the chamber has changed its name (to the European Parliament), grown substantially in size, and become an elected institution. Over the last three decades the EP gained significant powers: over the European budget (in the 1970s), an enriched role in the appointment and supervision of the Commission (1990s), over EU legislation through new legislative procedures introduced in several treaties (in the 1980s and 1990s). Now EP as an elected institution ought to link the people and the EU, and thus build legitimacy for itself via the representative democracy.

Because of its position and functioning the EP is quite reluctant about the discourse of participatory democracy - interpreted as a civil society involvement. In its resolution on the White Paper it argued that "on the one hand, elements of participatory democracy in the political system of the Union must be introduced cautiously with a constant eye to the recognized principles and structural elements of representative democracy and the rule of law and, on the other, citizens of the Union rightly expect transparent decision-making processes and, at the same time, clear political accountability for decisions¹⁷. And furthermore in the section on principles it clearly stated that: democratic legitimacy presupposes that the political will underpinning decisions is arrived at through parliamentary deliberation; this is a substantive and not merely a formal requirement¹⁸ and »confirms that the 'parliamentarisation' of the Union's decision-making system presupposes increased transparency of the work of the Council and that the involvement of both the European and national parliaments constitutes the basis for a European system with democratic legitimacy and that only regional, national and European institutions which possess democratic legitimacy can take accountable legislative decisions¹⁹ and points out, on the basis of these considerations, with regard to participation and consultation that ...'organized civil society' as 'the sum of all organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens' whilst important, are inevitably sectoral and cannot be regarded as having its own democratic legitimacy, given that representatives are not elected by the people...«²⁰.

¹⁷ Ibid., paragraph 10b.

¹⁸ Ibid., paragraph 8.

¹⁹ Committee of the Regions (Cdr 103/2001 final), "Opinion on the White Paper on European Governance and the Communication on a new framework for cooperation on activities concerning the information and communication policy of the European Union," 13 March 2002, paragraph 3.2.

²⁰ Mareike Kleine, "Leadership in the European Convention," *Journal of European Public Policy*, 14, 8 (2007), 1231.

The Committee of the Regions

The Committee of the Regions (CoR), a consultative forum has been established in 1994 by the Maastricht Treaty, to address local and regional representatives to have a say in the development of new EU normative acts. The Treaties oblige the Commission and the Council to consult the CoR whenever new proposals are made in areas that have consequences at regional or local level.

As stated in the introduction website of the CoR, there are three main principles at the heart of the Committee's work: subsidiarity, a principle, defined in the Treaties at the same time as the creation of the CoR, means that decisions within the European Union should be taken at the closest practical level to the citizen; proximity, this principle means that all levels of government should aim to be 'close to the citizens', in particular by organizing their work in a transparent fashion, so people know who is in charge of what and how to make their views heard and partnership, which means that European, national, regional and local government work together - throughout the decision making process. Because of its structure and electoral mandate it is obvious that all of the mentioned principles are derived from representative democracy.

In this way the Committee of the Regions, rather than talking about participatory democracy (or involvement of civil society) prefers a normative discourse on subsidiarity, proximity, partnership and closeness to the people and argues that "the democratic legitimacy of representatives elected by direct universal suffrage must not be confused with the greater involvement of NGOs and other arrangements for the representation of individual interests within society"²¹.

It can be concluded that political actors with an electoral mandate claim the importance of representative democracy, whereas non-elected political actors like the Commission and the EESC may search for alternative or complementary sources of legitimacy in civil society involvement. The Commission and the EESC have emphasized the importance of civil society/ public interest groups' consultations for enhancing the legitimacy of EU policies and have also taken measures to institutionalize political participation. But despite these measures, the EU institutions do not regulate interest group activity in any comprehensive way. Owing to their different role and position the EP and the CoR take a different stance on interest group participation from that of the Commission and the EESC.

²¹ The Convention has been composed of representatives of the member states' governments, the Commission, the European Parliament and the national parliaments, The Committee of Regions and the EESC, the Convention comprised 105 Conventioneers (and their alternates) - a group that was highly heterogeneous, both in preferences and expertise.

4 THE EUROPEAN CONVENTION: PARTICIPATORY DEMOCRACY GAINED ITS NORMATIVE EXPRESSION

After the disappointing negotiation of the Nice Treaty in December 2000, the Heads of State and Government agreed that a different approach was needed and a year later, after the pragmatic compromise between sceptics and proponents at the Laeken summit the Heads of the state and government set-up a Constitutional Convention on the future of Europe. This *sui generis* body has got the task to propose consensual answers to 60 broadly formulated questions about European integration, among them also: How can the Union's democratic legitimacy be strengthened?

Although, as argued Kleine²², the Conventioneers²³ were left in the dark about the ultimate form that their collaboration would take, was the work in the Convention in contrast to IGCs transparent, it was supposed to meet in public and its documents were fully accessible on the internet.

To put forward how participatory democracy emerged in the final version of the Constitutional Treaty and nevertheless in the Lisbon Treaty, it is useful to understand how the work in the Convention untwined. Before the Convention could start work on the joint proposal, it was supposed to go through a lengthy period of attentive listening (Phase d'Écoute), which was expected to contribute to a thorough examination of all visions of the purpose of the EU. Only then would the Laeken questions and the various prescriptions of European integration be considered in a study stage (Phase de Étude), before the final text was drafted in the proposal stage (Phase de Réflexion).

In this context it was more or less surprising that in the contrary to the current Treaties, the preliminary draft, draft and the final version of the Constitutional Treaty included a separate title on "The democratic life of the Union." Even more surprisingly, the first preliminary draft of the Constitution proposed by the Presidium to the Convention on 28 October 2002 suggested an article (Article 34) that would set out the principle of participatory democracy stating that "the Institutions are to ensure a high level of openness, permitting citizens' organizations of all kinds to play a full part in the Union's affairs".

According to the way the Convention work was going on the draft of 2 April 2003²⁴ has been presented to its members and public. The article on participatory democracy has considerably changed over the preliminary draft to the following

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²² Mareike Kleine, "Leadership in the European Convention," *Journal of European Public Policy*, 14, 8 (2007), 1234.

²³ European Convention (CONV 369/02), "Preliminary Draft Constitutional Treaty", Brussels, 28 October 2002.

²⁴ European Convention (CONV 650/03), "Title VI: The democratic life of the Union", Brussels, 2 April 2003.

formulation²⁵:

Article 34: The principle of participatory democracy

1 Every citizen shall have the right to participate in the democratic life of the Union.

2 The Union institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their opinions on all areas of Union action.

3 The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

The presentation of the first 16 articles in February 2003 heralded the beginning of the proposal stage. The plenary sessions were still important and well attended, but the emphasis was clearly put on issuing articles and proposing amendments. Nonetheless, several thousand amendments were issued from February to mid May, ranging from federalist to strongly Eurosceptic ideas. Decision-making in this phase followed the following sequence: the chairman and his two vice-presidents presented draft articles, which were then discussed by and consensually passed through the Presidium. The Conventioneers could then propose amendments and changes to this text, while Secretariat suggested how the amendments should be selected and integrated into the “skeleton” of a rising document. Those modifications were again passed through the Presidium, and the new texts were then circulated for further criticism. The Conventioneers were free to criticize the drafts, but they had to take them as a working basis, and form strong coalitions if they wanted to signal their significance and amend the proposals put on the table²⁶. Sixty-three amendments altogether were proposed to the article on participatory democracy; 39 amendments were proposed by only one Conventioneer, and 24 amendments were proposed by two or more Conventioneers (see Table 1). In less than 10 proposed amendments to the participatory democracy strong coalitions among the Conventioneers were formed.

²⁵ European Convention (CONV 650/03), “Title VI: The democratic life of the Union,” Brussels, 2 April 2003.

²⁶ George Tsebelis and Sven-Oliver Proksch, “The art of political manipulation in the European Convention,” *Journal of Common Market Studies*, 45, 1 (2007), 171–177.

TABLE 1: NUMBER OF SUBSCRIBERS ON AMENDMENT ON PARTICIPATORY DEMOCRACY

Number of subscribers on the proposed amendment to article on participatory democracy	Number of proposed amendments to article on participatory democracy
1	39
2	7
3	3
4	1
5	3
7	2
11	2
12	3
23	1
34	1
69	1

Source: Data from *Proposed amendments to the text of the articles of the Treaty establishing a Constitution for Europe*, available at <http://europeanconvention.eu.int/amendments.asp?content=600&lang=en>.

According to the described work in the Convention the draft of 2 April 2003²⁷ still did not mention the principle of representative democracy. As Smismans²⁸ argued the assumption seemed to be that representative democracy did not need an explicit mention since it would result automatically from constitutional provisions on the European Parliament or the voting rights recognized under the title of citizenship. Nevertheless, a considerable number of proposed amendments asked for references to representative democracy, either in Article 34 or as a separate article under the title *The democratic life of the Union*.

According to the preliminary draft of October 2002, Article 34 had to provide a “framework for dialogue with citizens’ organizations”, and thus confirmed the Commission’s and EESC’s tendency to see participatory democracy mainly in terms of functional representation. The proposed formulation seemed to follow the participatory democracy theory addressing the individual citizen (paragraph 1 and 2), where it stated that “every citizen shall have the right to participate” and shall have (like associations) the opportunity to make known and publicly exchange his/her opinions on all areas of Union action. However, these general statements were not accompanied by direct-participatory procedures. Therefore, three proposed amendments asked for the introduction of such participatory democracy tools as European referendum and the right of petition and legislative initiative (under various forms). Four proposed amendments suggested that the article on participatory democracy should require a more proactive approach by the Union to promote and encourage the participation of its citizens.

²⁷ European Convention (CONV 650/03), “Title VI: The democratic life of the Union”, Brussels, 2 April 2003.

²⁸ Stijn Smismans, “The constitutional labelling of “The democratic life of the EU”: representative and participatory democracy”, in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 133.

In addition the terminology used to indicate the intermediary organizations is confusing. Many amendments criticized the terminology, for instance asking for deletion of the term “representativity” for associations, and for explicit inclusion of the social partners into the concept of civil society and/or participatory democracy.

The final version of the draft Constitution presented by the Convention on 18 July to the European Council of Rome included among eight articles under the title The democratic life of the Union, Article I-47: the principle of representative democracy and Article I-47: the principle of participatory democracy.

Article I-47: The principle of participatory democracy²⁹

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

This final version differs from the previous ones in several interesting characteristics. The principle of representative democracy has been introduced in the title Democratic life of the Union. It clearly states that the working of the Union shall be founded on the principle of representative democracy, but no comparable statement is made regarding participatory democracy. Smismans³⁰ suggested that combined with the priority given to the article on representative

²⁹ See European Convention (CONV 850/03), “Draft Treaty establishing a Constitution for Europe, adopted by consensus by the European Convention on 13 June and 10 July 2003, submitted to the President of the European Council in Rome 18 July 2003”, Brussels, 18 July 2003. Available at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

³⁰ Stijn Smismans, “The constitutional labelling of “The democratic life of the EU”: representative and participatory democracy”, in *Political Theory and the European Constitution*, ed. Lynn Dobson and Andreas Follesdal (London/New York, Routledge, 2004), 135.

democracy, it seems that participatory democracy is only a complementary form of democracy. But the precise interrelation between the two principles of democracy remains unclear.

Moreover the formulation that “every citizen shall have the right to participate in the democratic life of the Union” has moved from the principle of participatory democracy to that of representative democracy. This confirms the dominant tendency to confine the direct involvement of the citizen to voting in elections, leaving participatory democracy mainly for civil society organizations. Also, the phrase that “decisions shall be taken as openly as possible and as closely as possible to the citizen” is placed under the heading of representative democracy. It should therefore be seen as a request to respect subsidiarity in territorial terms, ensuring accountability through parliamentary assemblies at the lowest possible level, rather than as a request for decentralized direct citizen participation – in which case it should have been placed under the heading of participatory democracy.

While the right of every citizen to participate has been moved to representative democracy, the principle of participatory democracy is further defined in line with the dominant interpretation it had acquired in EU official discourse, namely linked to the Commission’s efficiency driven consultation practices. The new third paragraph requires the Commission to carry out “broad consultations with parties concerned”. The concept of “parties concerned” leaves further place for interpretation, adding to the confusion created by the wording of “representative association and civil society”.

But the fourth paragraph of Article I-47 introduces a surprising exception to the tendency to conceptualize participatory democracy as consultation with civil society organizations. New instrument permits “direct citizen participation through a ‘citizens’ initiative’”. Citizens, no fewer than one million, may invite the Commission to take a legislative initiative on a particular issue. This provision deviates from the dominant tendency to define participation in terms of representation through associations³¹.

It should also be noted that 286 amendments altogether have been proposed to the title Democratic life of the Union, and most of them to the article on participatory democracy (see table 2) which leads to the conclusion that participatory democracy was the most contesting issue under title The

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³¹ Participatory democracy in its broadest interpretation is used for “the direct involvement in decision-making of those that are most affected by it”. The point is not that everybody needs to co-decide on everything, but that all should be able to be involved in the decision-making by which they are most affected. In theory, such a conception could imply the decentralization of decision-making to ensure direct citizen participation as well as participation of civil society organizations. See Koen Lenaerts, “Regulating the Regulatory Process: Delegation of Powers in the European Community,” *European Law Review*, 18 (1993), 23.

democratic life of the Union.

TABLE 2: THE AMENDMENTS ON ARTICLES RELATED TO “DEMOCRATIC LIFE OF THE UNION”

Number and article name	Nr. of amendments proposed to a given article
45 – The principle of democratic equality	36
46 – The principle of representative democracy	29
47 – The principle of participatory democracy	63
48 – The social partners and autonomous social dialogue	3
49 – The European Ombudsman	34
50 – Transparency	52
51 – The protection of personal data	25
52 – The status of churches and non-confessional organizations	44
Sum	286

Source: Data from *Proposed amendments to the text of the articles of the Treaty establishing a Constitution for Europe*, available at <http://europeanconvention.eu.int/amendments.asp?content=600&lang=en>.

The Treaty establishing a Constitution for Europe was signed in Rome on 29 October 2004 by the representatives of the 27 member states of the Union and was subjected to ratification by all member states. Most of them did so, by parliamentary ratification or by referendum. In 2005 the French (29 May) and the Dutch (1 June) voters rejected the treaty by referendum. The failure of the treaty to win popular support in these two countries caused some other countries to postpone or halt their ratification procedures, and consequently the European Council called for a “period of reflection.” The rejection of the Constitutional Treaty caused the failure of the “constitutional adventure.” During the period of reflection all the European institutions expressed their views and opinions in various documents, where they addressed their views on the future of the European integration, reflected their own role and position and legitimacy for their own functioning. Following that period, the European Council meeting in June 2007 called for an intergovernmental conference to draft a new treaty that would amend the existing treaties. It was agreed that the new reform treaty should avoid constitutional references. The European Council also agreed that the democratic challenge of the supranational polity could not be avoided. Consequently, the reform Treaty (The Treaty of Lisbon) had to replicate the provisions of the Constitutional Treaty on democratic equality, representative democracy, participatory democracy, and the citizens’ initiative.

The article on participatory democracy in the Lisbon Treaty came under the title II Provisions on democratic principles in article 8b. The three first paragraphs and the first subparagraph of paragraph 4 of Article 8b have the same formulation as in the Constitutional Treaty. Article 8b(4) in the Lisbon Treaty differs from article 47(4) in the Constitutional Treaty.

TABLE 3: COMPARISON BETWEEN ARTICLE 47(4) IN THE CONSTITUTIONAL TREATY AND ARTICLE 8B(4) IN THE LISBON TREATY

The Constitutional Treaty: Article 47(4)	The Lisbon Treaty: Article 8b(4)
<p><i>Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come.</i></p>	<p><i>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.</i></p> <p><i>The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 of the Treaty on the Functioning of the European Union.</i></p>

Source: European Convention (CONV 850/03), "Draft Treaty establishing a Constitution for Europe, adopted by consensus by the European Convention on 13 June and 10 July 2003, submitted to the President of the European Council in Rome 18 July 2003", Brussels, 18 July 2003. Available at <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>. The Lisbon Treaty. Accessible at http://www.predsedovanje.si/files/lizbonska_pogodba.pdf (May 1 2008).

The citizens' initiative is one of the novelties of the Treaty of Lisbon, opening up a channel for participation. It has been hailed as an achievement in the context of participatory democracy at the EU level. Citizens' initiative could serve to encourage political debate beyond domestic affairs and to construct supranational discourses in an emerging European public space. As put Cuesta Lopez³², in order to promote a particular proposal, organized civil society would search for transnational alliances that would contribute to the development of European networks. But on the other hand the European citizens' initiative is subjected to the political will of the institutions, because it represents just a preliminary step in the law-making process which is always formally launched by the European Commission that preserves the monopoly of the legislative initiative. In addition, the European legislature would always be free to reject a legislative draft proposed by European citizens.

5 THE FUTURE OF THE PARTICIPATORY DEMOCRACY IN BRIDGING THE GAP BETWEEN THE RULERS AND THE RULED

It has become an accepted wisdom that the EU suffers from a democratic deficit. It suffers from deficiencies in representation, representativeness, participation, accountability and support. Although there is some level of agreement that the EU system is not (enough) democratic, there is no consensus on how the EU might become so. In theory there are often two quite different understandings of what the democratic deficit is. The first focuses on its institutional characteristics, arguing that the problem of EU democracy is tied to the inter-institutional relationships that characterize the EU. The second understanding

³² Victor Cuesta Lopez, "The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy", *European Public Law*, 16, 1 (2010), 136.

of the democratic deficit focuses on socio-psychological factors, arguing that it occurs because of the absence of a European demos³³. From the institutional perspective there are arguments that the non-parliamentary EU institutions need to be more open and accountable – that the EC/EU has traditionally been a technocratic body, which has valued expertise much more than representation of different views.

Since 1990s the democracy debate within the EU has been extended, so that even where it remains institutionally orientated, it has become inextricably linked with the issue of public participation in the EU policy process. Thus, as Chryssochoou³⁴ puts it: *“Democratizing the EU is not just about rejigging the institutional balance of the EU to give this or that institution more of the policy role. It is not solely reliant on the representative role of parliaments. It is also about bringing the EU closer to ordinary people, ensuring that the integration process is no longer simply an elite-driven process, distant or even irrelevant for the vast majority of European citizens.”*

In this context the (theory of) participatory democracy undoubtedly has some capacity to bridge the gap between the rulers and the ruled.

First, it challenges the myth that there is one “classical” theory of democracy – representative democracy. The basis of participatory democracy is the importance of freedom and activism and a belief that the existence of voting rights and alternation of government do not guarantee the existence of democracy.

Second, participatory democracy could open room and embrace civil society organizations and individuals in active participation in decision-making. Up to now the Commission and the EESC have highlighted the virtues of civil society participation in policy consultations. But the vague definition of participatory democracy in the EU does not turn its capacity to the best account and therefore leaves room for future conception development in theory as well as in praxis.

Third, as far as the socio-psychological perspective is concerned, the participatory democracy tries to answer the question: Who is governed? Ordinary people, European citizens, civil society organizations are active actors in communicative and decision-making process. They need to have channels of influence on the

³³ The socio-psychological perspective shifts the emphasis from the question of who governs and how? To the more demanding question who is governed? The starting point is that at the heart of the EU's democratic deficit lies the absence of European demos – that is, a sense of common identity amongst Europeans. The more the EU relies on democratic credentials, the more important it is for citizens to have feelings of belonging to an inclusive polity. See Dimitris N. Chryssochoou, “Democracy and the European Polity,” in *European Union Politics*, ed. Michelle Cini (Oxford, Oxford University Press, 2007), 363–364.

³⁴ Ibid.

work done in Brussels. If they recognize that their opinions, contributions, deliberations in all kinds of forums have influence on European decision-making, this would lead to encouragement of participation in European decision-making process not only on the basis of territorial representation.

Forth, up to now the EC/EU has evolved incrementally and mainly as a technocratic project where participation has not been given any serious considerations. But without greater public ownership of the democratic process, the gap between the rulers and the ruled remains unchanged or even widens; and doubtlessly raises another question: How little democracy can be enough for European citizens, if we put the meaning of democracy as Beetham³⁵ summarized it: *"A mode of decision making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangements [is] that where all members of the collectivity enjoy effective equal rights to take part in such decision-making directly – one, that is to say, which realizes to the greatest conceivable degree the principles of popular control and equality in its exercise"*.

6 CONCLUSION

At the end we can point out some aspects of participatory democracy within the EU. First, the article revealed the concept of participatory democracy and its evolution within the European polity-building, since the beginning of the European integration, when no one gave much attention to its democratic credentials, up to the Lisbon Treaty which labels EU democracy as both representative and participatory. Second, it shows how the "governance debate" has been initiated by Community institutional actors lacking electoral mandates. Addressing constitutional issues under the label of "governance", this debate has introduced the concept of participatory democracy. This has been defined mainly as the interaction between the Community institutions, in particular the Commission and the EESC, and civil society organizations. Third, it engages in research on how has the participatory democracy been shaped during the work of the Convention and how the Constitutional Treaty gave political participation constitutional status by including a new title VI on democratic life in the EU and under the title Provisions of democratic principles under article 8b in the Lisbon Treaty. Forth, it discussed in several aspects the capacity (of theory) of participatory democracy in bridging the gap between the rulers and the ruled underpinned by a belief that it is increasingly important for the EU to address issues of democratic governance.

Finally, is participatory democracy the solution for the democratic gap? Part of

³⁵ David Beetham, *The legitimation of power* (Atlantic Heights, NJ: Humanities Press International, 1991), 40.

the answer lies in participatory democracy that should be seen as a model of democracy to help democratize the EU. Because it is questionable whether the EP is able to effectively represent large and extremely heterogeneous polity such as the EU. The benefits of citizens' participation at the EU level could increase the quality of EU policies, making public administration accountable to society as a whole, achieving mobilization of political interest and enhancement of direct participation of citizens, creating a trans-national democratic public sphere. Nevertheless, the implementation of participatory democracy opens the space between the rulers and the ruled. Therefore the establishment of participatory democracy is a potentially important step, because it makes clear that representation can not be the sole means to a legitimate regime in the EU.

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