

The European Citizens' Initiative. Transnational Democracy in the EU at last?

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Abstract

The European Union's Lisbon Treaty, in force since December 2009, introduced the European Citizens' Initiative (ECI) as a means of strengthening citizen involvement in EU decision making. A minimum of one million citizens from at least seven of the EU's current 27 member states can request that the European Commission submit a legislative proposal on the issue of the initiative. But the ECI is not only a means of strengthening 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. Starting with a short introduction to how the ECI will work in practice as well as a brief history of participatory democracy in the EU, this article therefore examines the ECI from the perspective of democratic theory. How profound an impact will the ECI have on democracy in the European Union?

Introduction¹

At long last, the Lisbon Treaty introduced the *European Citizens' Initiative* (ECI) as a means of strengthening citizen participation in the EU's legislative process.² Formally, the European Commission has the exclusive right of legislative initiative in the EU, although both the European Parliament and the Council of the European Union (previously the Council of Ministers) also have the right to *request* legislative proposals from the Commission.³ The European Citizens' Initiative now gives citizens a similar right to influence the initiation of the EU legislative process: provided that certain formal requirements are met, EU citizens "may invite" the Commission to submit a legislative proposal (European Commission 2010a: 2). The most basic of these formal requirements include that any given citizens' initiative has to be supported by at least one million EU citizens from at least one fourth (i.e. seven) of the union's 27 member states. Furthermore, a minimum number of signatures have to be collected in each of these seven states. The initiative also needs to be drawn up by a citizens' committee made up of at least seven individuals residing in at least seven member states. Finally, the Lisbon Treaty specifies that the proposed legislation has to be within the scope of the EU's competences and that it cannot amount to a treaty change.

The ECI is not just an intriguing innovation in relation to increased *participatory* democracy in EU decision making. It also has the potential to contribute to a more fundamental transformation of our understanding of democracy in the EU. The ECI is the



world's first *transnational* citizens' initiative. From the perspective of democratic theory, this is relevant because it is often claimed that the EU suffers from a democratic deficit which is said to be rooted both in a *community deficit* and in a *demos deficit*. For communitarians like Amitai Etzioni, the root cause of the EU's democratic deficit is a lack of "normative-affective community": despite an ongoing process of deepening integration, no attempts have been made at creating stronger communitarian "architecture" (Etzioni 2007: 27). Europe has to become an object of emotional attachment before we can hope for further democratization.⁴ At the same time, scholars in the field of constitutional law persistently point out that the prospect for democratization is hindered by the absence of a unified collective political subject in the European Union, i.e. a European *demos* (cf. Weiler 1995). This has been a conundrum not least in the wake of Euroscepticism and opposition to deeper supranational integration. A strengthening of the union's supranational institutions is often rejected by reference to the perception of an *already* existing democratic deficit. But provided that there is a commitment to European-level decision making, the only way to solve the democratic deficit is through the construction of a European *demos*, i.e. through the emergence of a European legal community that also recognizes itself as such, namely as the collective subject of European democracy. But this begs the question of how a European *demos* can emerge in the face of the union's already existing 27 democratically constituted national *demos*? In other words: if we build a European *demos*, what role will be left for the already existing ones?

The transformationalist democratic theorist James Bohman proposes a transnational democracy of multiple *demos* as the solution to this conundrum. European democracy is in crisis because globalization brings about *as profound* a transformation of democracy as the emergence of modern representative democracy did in the 18th and 19th century (cf. Dahl 1991). For Bohman, the only way to reconstitute democracy is to transform the democratic ideal fundamentally: away from the *centered* understanding of democracy as popular sovereignty of a single *demos*, towards a *decentered* understanding of democracy in the sense of a transnational democracy of *multiple demos* (Bohman 2007a).

As an instrument of participatory democracy, the ECI offers an intriguing interpretation along the lines of Bohman's transnational democracy of *demos*. Also the ECI takes as its starting point the acknowledgment that EU democracy rests on 27 already democratically constituted *demos*. But it also acknowledges EU citizenship in the sense that it gives EU citizens the tools to exercise their rights *across* borders. Considering the formal requirements of the ECI, and in particular the requirement that any initiative will have to be supported by citizens from at least seven member states, the ECI also has implications for our understanding of the "no *demos*" problem: it could facilitate transnational *demos* construction along Bohman's lines. This is so because in order for any citizens' initiative to be successful, the citizens who initiate it have to organize support transnationally, i.e. they have to cooperate with citizens in at least six other member states. The success of European citizens' initiatives therefore hinges on transnational networks in civil society and, by extension, on transnational debate in the European public sphere.

This article has three purposes. First, it seeks to introduce the European Citizens' Initiative and explain what it is, how it will work in practice and how it has come about.

Second, the article considers the ECI as part of broader developments in the area of representative and participatory democracy in the EU. As we will see, the ECI is only the most recent (and arguably the most decisive) step in a longer process of strengthening the involvement of citizens and citizen representatives in the EU legislative process. In the final part, the article offers an interpretation of the possible implications of the ECI not only for the way decisions are made in the EU but, and more importantly, also for our conceptual understanding of democracy beyond the nation state. Does the ECI pave the way towards a transformation of democracy in the EU from *supranational, delegated* democracy to *transnational participatory democracy*?

Introducing the European Citizens' Initiative

The European Citizens' Initiative is based on two legal documents. The decision to introduce a transnational citizens' initiative was made in the Lisbon Treaty, which has been in force since December 2009. At the same time, the Lisbon Treaty leaves the specifics of the citizens' initiative to be determined in a regulation to be proposed by the European Commission and to be adopted jointly by the European Parliament and the Council of Ministers. Following the *ordinary legislative procedure*⁵, this regulation (Regulation (EU) No 211/2011 on the European Citizens' Initiative, henceforth referred to as the ECI regulation) was formally adopted by the European Parliament and the Council of the European Union on February 16, 2011, marking the endpoint of turning the treaty provision on the ECI into legislative reality. The ECI regulation has been in force since 1 April 2011, and EU citizens will be able to use this new tool as from 1 April 2012. In the following paragraphs, this process is reconstructed with a view to the roles and preferences of the different legislative institutions, and also with a special focus on the role of civil society in the agenda-setting phase of the regulation. This is done primarily because the ECI regulation is a useful illustration of a key element of participatory democracy in EU legislative decision making: the Commission's consultation with civil society in the agenda-setting phase of the legislative process.⁶

How the ECI came about: from Lisbon to the ECI regulation

The fact that the Lisbon Treaty only establishes the most fundamental requirements of the European Citizens' initiative highlights why it will have taken close to two and a half years to transform the ECI from its more or less abstract treaty basis (December 2009) into practical legislative reality (April 2012). Article 8B of the Lisbon Treaty (article 11.4 of the Treaty on European Union) merely states that

“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*” (Treaty of Lisbon, author's italics).

The process from the entry of force of the Lisbon Treaty to the adoption and subsequent entry into force of the ECI regulation highlights a number of the peculiarities of the legislative process in a *polity sui generis* such as the EU. The European Commission

holds the formal right of legislative initiative, but legislative decisions are in the end made jointly by the Council of the European Union (the representation of member state *governments*) and the European Parliament (the representation of European *citizens*). The EU legislative process is therefore most often a search for compromise between often contending interests held by the three legislative institutions. In our present context, it is relevant not only to look at the formal process (i.e. from the presentation of the Commission's proposal to the adoption of the regulation by the Council and the Parliament), but also to look at the informal agenda-setting process prior to the Commission's proposal. More specifically, it is relevant to look at the Commission's consultation with civil society in the agenda-setting phase.

It has become standard practice that the European Commission involves civil society (i.e. the so-called "stakeholders") in the agenda-setting phase (cf. Lelieveldt & Princen 2011: 217). This consultation process is usually initiated by the dissemination of *Green Papers* in combination with an invitation to all "stakeholders" to participate in the ensuing consultation process⁷ and usually takes the form of interested parties submitting, in written form, their views and specific preferences on a number of concrete questions raised by the Commission. At a later stage, the Commission can also invite participants of the consultation process to a "stakeholder hearing" for further discussion on the issues raised. The process leading up to the ECI initiative followed this practice.

The Commission's Green Paper on the European Citizens' Initiative was published shortly prior to the entry into force of the Lisbon Treaty (on 11 November 2009), and listed a total of ten issues for consultation, including, most notably, the question of how to define the minimum "significant number of member states" (Lisbon Treaty, article 8B) and the minimum number of signatures that a citizens' initiative would have to receive in each of those states (European Commission 2009). The consultation process ended on 31 January 2010 and was followed by a stakeholder hearing in Brussels on 22 February 2010. On the basis of these consultations, the Commission published its proposal on 31 March 2010 (European Commission 2010a).

Table 1. Timeline of the ECI regulation

11 November 2009	Publication on the Commission's Green Paper Start of the consultation period with civil society
1 December 2009	Entry into force of the Lisbon Treaty
31 January 2010	End of consultation period
22 February 2010	Commission's "stakeholder hearing" in Brussels
31 March 2010	Publication of the Commission's proposal for the ECI regulation Submission of the proposal to the European Parliament and the Council
15 December 2010	Agreement reached between the EP and the Council
16 February 2011	Formal adoption of the ECI regulation by the EP and the Council
1 April 2011	Entry into force of the ECI regulation (regulation to apply from 1 April 2012)

The Commission's proposal reflected and adopted many of the points raised in the consultation process. One of the points of discussion during the consultation phase was how the Lisbon Treaty's formulation of a "significant number of member states" should be defined in the regulation. Organizations such as the German pro-democracy movement "Mehr Demokratie" had long urged as user-friendly a regulation as possible and consequently wanted to limit the number to between one sixth and one fifth of the union's member states, i.e. between five and six (Mehr Demokratie e.V. 2010).⁸ At the same time, the consultation process also contained voices urging that the threshold should be higher so as to avoid overburdening the Commission with too many citizens' initiatives. The Commission's proposal ended up suggesting a minimum of one third of all member states, based on the argument that citizens' initiatives have to represent a *Union interest*. The Commission furthermore argued that also other provisions of the Treaty use the same threshold, notably the provisions on *enhanced cooperation*⁹ and the so-called *yellow card procedure* regarding the subsidiarity principle¹⁰. However, the European Parliament – the most ECI-friendly among the EU's legislative institutions (Maurer & Vogel 2010: 20) – did not find this argumentation convincing and argued for a lower and more "user-friendly" (Stratulat & Emmanouilidis 2010) threshold of one fourth of all member states.

A second major point in the consultation process revolved around the minimum number of signatures that a citizens' initiative would have to be supported by in each of the *minimum of* seven member states supporting the initiative. In this regard, the Commission followed the consultation process and proposed a system of digressive proportionality similar to the one used in determining the number of representatives that each member state has in the European Parliament.¹¹ Following this system, the number of signatures in support of any given initiative would be significantly lower than 0.2% of the country's population in the case of larger member states and significantly higher than 0.2% in the case of smaller member states (European Commission 2009: 5; cf. Hierlemann & Wohlfarth 2010: 3).¹²

The Commission was also driven by concerns voiced during that the ECI might end up being abused by groups that are not serious about their initiatives. The Commission's initial response was to strive for a registration phase and an admissibility test at a later stage in the process. In practice, the Commission proposed to begin the collection of signatures prior to the admissibility test, and only to admit initiatives once a "significant number of statements of support" had been reached, so as to avoid the risk of abuse (European Commission 2010: 14).¹³ Also this part of the Commission's proposal was modified in the end, based on the European Parliament's proposal that a more user-friendly approach in the form of a transnationally organized *citizens' committee* would serve the same purpose.

How the ECI works in practice

The final ECI regulation adopted many of the aspects advocated by the European Parliament that had already been voiced by pro-democracy movements in the consultation

phase. According to the final regulation, the launching of a European citizens' initiative starts with the setting up of a *citizen committee* in charge of the initiative. This committee must consist of at least seven individuals who are EU citizens and who reside in at least seven different member states. This citizen committee then formally registers the initiative with the European Commission. The Commission has the power to reject an initiative already at this point if the initiative fails to meet the formal requirements or is "manifestly abusive, frivolous or vexatious" or "manifestly contrary to EU values as set out in Article 2 TEU" (Article 4.2 (b) and (c) of the ECI regulation). After the formal registration, the initiators have a maximum of twelve months to collect one million signatures in support of their initiative. These signatures then have to be verified by the respective national authorities within a period of three months. When the signatures are verified, the initiative is formally submitted to the European Commission. This is when the Commission is also required to meet the organizers. The organizers are also invited to a public hearing in the European Parliament, upon which the Commission examines the initiative and adopts a communication on it.

Table 2. Time frame of a European Citizens' Initiative

Time frame	Steps taken
	Setting up of a citizen committee
	Registration of the initiative with the European Commission
max. 2 months	Publication of the initiative on the Commission's website
max. 12 months	Collection of signatures
max. 3 months	Verification of signatures by national authorities
	Submission of the initiative to the European Commission
max. 3 months	Commission meets organizers
	Public hearing in the EP
	Commission examines initiative, adopts communication

Source: European Commission, ECI flowchart

A point that needs to be stressed concerns the relationship between the ECI and the formal right of legislative initiative in the EU. The ECI *does not* affect the *exclusive* right of legislative initiative that is exercised by the European Commission. In this sense, the ECI should by no means be confused with a Swiss-style popular initiative. A popular initiative is "an appeal *by* the people *to* the people," whereas the ECI provides the tool for a popular appeal to the Commission to initiate legislation (Auer 2005: 80, italics added). As a consequence, the European Commission *cannot* be forced to adopt an ECI in the form in which it is submitted, or to adopt it at all. However, the ECI regulation does force the Commission to give serious consideration to each ECI that fulfills the formal requirements. If the Commission decides not to act on a given ECI, it will have to explain its reasons for not doing so. It is furthermore worth noting that the legal grounds on which the Commission bases its decision not to register any particular ECI *can* be contested.

What the ECI *cannot* do

Although the Lisbon Treaty only specifies the most basic formal requirements for European citizens' initiatives, it makes clear that citizen initiatives have to be within the competences of the union (i.e. legislative acts have to be "required for the purpose of implementing the Treaties") and that they have to be within areas where the Commission actually enjoys the right of initiative (i.e. the Commission can initiate legislation "within the framework of its powers"). These aspects were not subject to the ECI regulation, but were determined in the intergovernmental negotiations leading up to the Lisbon Treaty. Consequently, no European citizens' initiative would be able to change e.g. the number of votes that must be collected for a citizens' initiative, or the very fact that there is a European Citizens' Initiative. As the ECI is *legislative* and not *constitutional* (Auer 2005: 82), a European citizens' initiative *cannot* change the existing treaties, i.e. it cannot make fundamental changes to the EU political system, including the *treaty provisions* on the ECI. On the other hand, the ECI could be used to change the ECI regulation itself, for instance to lower (or raise) the "significant number of member states" in which signatures have to be collected.

The "one seat campaign", an initiative launched during the "period of reflection" following the French and Dutch referenda on the Constitutional Treaty, is a good example of a European citizens' initiative that would have to be rejected on formal grounds (Maurer & Vogel 2009: 19). The initiative urged an end to the practice of holding part of the European Parliament's plenary sessions in Brussels and others in Strasbourg.¹⁴ Since the location of the institutions – as part of the EU's fundamental institutional architecture – is laid down in the treaties, changes to this architecture can only be made by member state governments collectively. By the same logic, the European Commission would not be able to use its own formal right of legislative initiative to bring about a change to this effect.

The second requirement is that European citizens' initiatives can only be requested in areas in which the Commission has the right to propose legislation. In other words, citizens' initiatives cannot propose legislation in areas that are member state competences. For instance, the EU cannot set European-wide minimum wages, at least not unless member states decide to change the treaties accordingly. Education is another example: also in this area, there is no treaty basis e.g. for legislating that all European children should learn English from the first grade.

A brief history of participatory democracy in the EU

In order to understand the European Citizens' Initiative, we need to contextualize it as part of, and the latest and most decisive step in, a much longer history of citizen participation in the EU. Two aspects are relevant to consider in the context: the gradual strengthening of representative democracy in the EU from the first direct elections to the European Parliament in 1979 and the ECI in relation to other elements of participatory democracy at the EU level. These processes are not seen as distinct from one another, but can both be viewed as responses to a growing concern about a lack of citizen involvement in the project of European integration and, more recently, concerns about a democratic deficit in EU decision making.

The development of European-level representative democracy

From the perspective of representative democracy, the European Parliament has undergone a noteworthy development since the end of the 1970s, not only in its internal organization, but most importantly in relation to the Union's two other legislative institutions, most of all the Council. This development has taken place as a more or less incremental process, stretching from the first direct elections in 1979 all the way to the entry into force of the Lisbon Treaty in December 2009.

Until 1979, members of the European Parliamentary Assembly (as it was called at the time) were primarily members of their in their respective national parliaments. The European Parliamentary Assembly (EPA) also played a rather weak role in relation to the Commission and the Council, reflecting the strong intergovernmental imprint in European-level decision making at the time. The so-called "consultation procedure" was the only legislative procedure at the time, and the Parliament was merely a consultative body with very little leverage to influence the Council's decisions. It is important to bear in mind that while the Council has had the right to request legislation from the Commission ever since the entry into force of the Rome Treaties in 1958, the European Parliament did not receive the same right until the Maastricht Treaty in 1993. Under the consultation procedure, legislative proposals get one reading in the Parliament, but the Parliament has no say in the final decision.

The role of the Parliament – and thereby European-level representative democracy – in EU decision making was then strengthened in a series of treaty changes since the mid-1980s. The *Single European Act* and the *Maastricht Treaty* are important stepping stones in this respect. As with so many other developments in European integration, the strengthening of the Parliament's legislative role did not occur overnight. As a matter of fact, the Single European Act and its introduction of the so-called "cooperation procedure" was a disappointment to those who wanted to see a more decisive strengthening of the Parliament, preferably even a procedure that would put the EP on par with the Council of Ministers. Those who wanted the right of co-decision for the EP had to wait until the Maastricht Treaty, but the introduction of the cooperation procedure in the Single European Act nonetheless prepared the ground for the introduction of the co-decision procedure at Maastricht. In practice, the cooperation procedure was important because it introduced a second reading for the European Parliament. In addition, in cases in which the Parliament rejects a Commission proposal under the cooperation procedure, the Council can only adopt it *by unanimity*.

The Maastricht Treaty then introduced the co-decision procedure in 1993. In areas where the co-decision procedure applies, the Council and the Parliament both have to give their consent to the Commission's proposals. In the Maastricht Treaty, the number of areas in which co-decision applied was still rather limited, but the procedure was revised (at Amsterdam in 1997) and extended to further areas in subsequent treaty reforms (Amsterdam, Nice in 2001 and finally Lisbon in 2007). Where co-decision applies, the Council cannot under any circumstances go against the position of the Parliament as it could under the consultation and even under the cooperation procedures. In order for legislation to be adopted, the Council and the Parliament have to agree or find a mutually

acceptable compromise; otherwise, the Commission's proposal is rejected. From the perspective of representative democracy, it is therefore important to note that co-decision gives equal weight to the representatives of the *European citizens* and to the representatives of the *European governments*. Since the entry into force of the Lisbon Treaty in December 2009, co-decision has been the norm in the EU's legislative process.

Participatory democracy in the EU

These developments still only relate to *representative* democracy in the EU. In order to fully contextualize the European Citizens' Initiative, we also need to consider the perspective of *participatory* democracy. Strictly speaking, the co-decision procedure strengthens the role of citizens' *representatives*, not of *citizens as such*. We therefore need to look further at the contribution that the ECI makes to participatory democracy, specifically in relation to already existing "opportunity structures for citizen participation" (Nentwich 1996). Discussions of this kind tend to focus on the right to petition the European Parliament and the right to direct complaints to the European ombudsman (*cf.* Maurer & Vogel 2009). But one of the most interesting developments in participatory democracy in the EU is also the Commission's practice of consultation with civil society in the agenda-setting phase, i.e. before the Commission launches the *formal* legislative process. The example of the coming into being of the ECI regulation has shown that participatory democracy in the EU can take the form of consultation between the European Commission and civil society. This consultation process takes place prior to the formal legislative process and is testimony to the role of civil society in the agenda-setting phase of the legislative process, i.e. in shaping the Commission's legislative proposals.

A second form of participatory democracy consists of the right to petition the European Parliament. EU citizens can turn to their elected representatives to suggest improvements or changes that might address existing problems. Such problems could include perceived violations of citizens' individual rights in their respective member states (Maurer & Vogel 2009: 12). Petitions frequently also aim at showing that new laws are necessary. An important difference from the ECI is that a petition can be submitted by one citizen acting alone. At the same time, the European Parliament is not obliged to act on any given petition. Any given European citizens' initiative will obviously draw much more public and particularly media attention than a petition submitted by only one individual. Also, the right to petition is much more indirect as a form of citizen participation: it can be used only to call on the Parliament to *request* a proposal from the Commission, while a successful citizens' initiative directly *obliges* the Commission to act.

Finally, EU citizens also have the option of directing a complaint to the *European ombudsman*. While this option is usually regarded as one of the elements of participatory democracy in the EU (Maurer & Vogel 2009), it is at best a very indirect opportunity for influencing EU legislation. This is so because the purpose of the European ombudsman is to investigate perceived cases of maladministration in the union's institutions.¹⁵ Even if the ombudsman's investigation determines that maladministration has

taken place or is taking place, the office's ultimate instrument is to submit a report to the European Parliament. And even this measure is only taken if other attempts at resolving a given situation have failed, i.e. if the involved institution or body rejects the recommendations made by the ombudsman to find a mutually agreeable solution.

This suggests that previous elements of participatory democracy at the European level have so far been rather limited (*cf.* Nentwich 1996), although the recent trend towards consultation with civil society in the agenda-setting phase of the legislative process is certainly a step in the direction of more participatory democracy. What is clear from the above discussion is that none of the three participatory instruments discussed here – consultation with civil society, the right to petition the European Parliament and the right to direct a complaint to the European ombudsman – conflicts with the newly introduced European Citizens' Initiative. All three are important elements in participatory democracy in the EU, but none of them gives citizens the opportunity to play a *direct* role in initiating EU legislation. While even the ECI does not put citizens in the position of *formal* legislative initiative, it goes far beyond previous participatory instruments in the sense that it establishes a direct and formally institutionalized channel between the union's citizens and the European Commission. It also goes far beyond the previous process of consultation on the basis of Green Papers. After all, in the case of Green Papers, the European Commission has already set the agenda by determining an area in which legislation will be proposed. In the case of the ECI, by contrast, it is the citizens themselves who set the agenda. From the perspective of participatory democracy, it is therefore appropriate to consider the ECI an important innovation in providing citizens with the opportunity to influence the initiation of the EU legislative process.

Transnational democracy at last?

Once the ECI is in use in April 2012, it will be possible to consider a number of intriguing empirical questions that this new tool raises. Most of all, it will be relevant to study whether the ECI actually fulfills its promise of enhancing citizens' opportunities for influence in the agenda-setting phase, i.e. whether it will be used by "average citizens" at all, or be primarily a tool for already well-networked transnational organizations and interest groups. Also, it will be relevant to study the success and failure rates of citizens' initiatives. One of the presumed and welcomed side effects of the ECI is that it will raise awareness for the competences of the union and not least for the intergovernmental character of treaty reform in the EU, allowing EU citizens to exercise their citizenship rights "more competently" (Maurer & Vogel 2009: 10). Yet the other side of this coin is that if too many initiatives have to be rejected for formal reasons, the ECI may lead to increased frustration with, rather than to an enlightened understanding of, the EU as a political system (Trzaskowski 2010).

Arguably, however, the most fundamental question that the ECI raises is how this new tool will affect our very understanding of democracy in the EU. This question is closely connected to the question of whether the ECI can pave the way to *transnational* democracy. This final part of the article attempts to develop an interpretation of the

European Citizens' Initiative on the basis of recent debates in transformationalist democratic theory, foremost in relation to Jürgen Habermas's notion of postnational democracy (Habermas 1998) and James Bohman's ideas on transnational democracy (Bohman 2007a, 2007b).

Debates on the democratic shortcomings of the EU are a relatively recent phenomenon, although concern over a lack of citizen attachment to, and involvement in, the European project has a much longer history. The discourse on the democratic deficit has largely emerged since the early 1990s, but already the famous Tindemans Report from 1975 pointed out the need for raising citizens' awareness of, and identification with, European integration.¹⁶ Despite years of academic debate on what is by now broadly and often ambiguously referred to as the EU's democratic deficit, there is still very little agreement on what constitutes this democratic deficit, and much less on what can be done to fix it – or even if there is any real interest in fixing it to begin with. From the vantage point of liberal intergovernmentalist integration theory, Andrew Moravcsik famously declared that the democratic deficit is a myth (Moravcsik 2008). Moravcsik views European integration foremost as a process driven by and serving the interests of *sovereign* nation states that have – for *instrumentally* rational reasons – decided to pool parts of their sovereignty at the European level (*cf.* Moravcsik 1998). Erik Oddvar Eriksen and John Erik Fossum have described Moravcsik's take on EU democracy as “delegated democracy”: in its democratic legitimacy, European integration depends on democratic processes and procedures that are institutionalized at the domestic level, making further democratization at the supranational level unnecessary (Eriksen & Fossum 2007; *cf.* Eriksen & Fossum 2004; Eriksen 2009). For scholars in the postnational tradition, however, this is a highly incomplete image of European integration, as the process has proceeded far beyond the form of intergovernmentalism that Moravcsik describes (Eriksen & Fossum 2007; Eriksen 2009).

The view that delegated democracy *sufficiently legitimates* supranational decision making constitutes a mismatch that, at least in the eyes of communitarians, is rooted in a more fundamental European *community deficit*: delegated democracy does not have to be a problem, provided that the EU has sufficient communitarian resources as a basis of (non-democratic) legitimacy. But as Amitai Etzioni claims, such a thick sense of collective identity based on shared cultural or moral values is absent at the European level. Etzioni describes a fundamental mismatch between the “level and scope” of the EU's “integration activities” and the communitarian “architecture” legitimating those integration activities (Etzioni 2007: 27). In other words, European integration has proceeded much further than the currently existing sense of community among Europeans would allow. Etzioni believes that a stronger sense of community could be fostered in European-level moral dialogues, but fails to consider that a European community of values can at best provide non-democratic legitimacy. Habermasian discourse theorists have therefore pointed out the democratic shortcomings of community building as a “strategy for legitimation” in the EU (*e.g.* Eriksen & Fossum 2004).

However, Etzioni's argument could also be read as a communitarian twist to a much more substantial objection, namely that the EU suffers from a demos deficit. From the

perspective of the *no demos thesis*, the democratic deficit is rooted in the notion that the ideal of popular sovereignty requires a demos, that is: a unified collective subject in the form of a European people that recognizes itself as such and that would rule itself in much the same way as we imagine self-rule of the people within the nation state. Yet also the *no demos thesis* rests on at best *implicit* political-philosophical foundations in that it takes the link between democracy and popular sovereignty for granted. This is maybe unsurprising, considering that this is the historically contingent understanding of democracy that we are accustomed to in the context of the Westphalian nation state. But transformationalist (as opposed to gradualist) democratic theorists have for a long time asked questions regarding just how profound a transformation the democratic ideal is currently undergoing. One of the most prominent accounts of transformationalism is Jürgen Habermas's idea of the postnational constellation. Habermas famously argued that globalization undermines the problem-solving capacity and by extension the legitimacy and even sovereignty of the nation state, and that it therefore prompts a fundamental transformation and reconstitution of democracy beyond the nation state (Habermas 1998). Habermas has since then been highly optimistic about the potential of such a reconstitution of democracy at the level of the European Union and has consequently been one of the most outspoken advocates of European constitution making (Habermas 2001).

But Habermas has also been criticized for essentially proposing a mere reconstitution of *the same kind of democracy* at another level. For James Bohman, such a reconstitution of popular sovereignty at the European level does not in itself constitute a fundamental transformation of the very idea of democracy. For Bohman, the main problem with Habermas's transformationalism is therefore that it adheres to the idea of democracy as conceptually inseparable from the ideal of popular sovereignty (Bohman 2007). As an alternative, Bohman proposes a much more profound transformation of democracy, namely one that transforms the democratic ideal from *popular sovereignty*, i.e. the self-rule of a people that recognizes itself as such, to *non-domination* in a decentered polity based on multiple demoi. This is what makes Bohman's transformationalism *transnational* as opposed to Habermas's *postnational* account. Bohman's transnational democracy is decentered in the sense that it does not take the existence or construction of a unified demos as a precondition for democracy.

Habermas's postnational democracy, by comparison, can be said to promote European demos construction as a way of recentering democracy at the European level. In the EU, the equation of democracy with popular sovereignty obviously presents us with some fairly fundamental challenges. If democracy can only be realized as popular sovereignty, as Habermas appears to imply, then the "unfinished democratization of Europe" (Eriksen 2009) would depend on European demos construction, i.e. on the forging of a European collective of citizens out of the member states' 500 million inhabitants. Otherwise, Europeans would have to accept the notion that since the EU is divided into currently 27 separate demoi, the EU as a *polity sui generis* based on a mix of intergovernmental and supranational elements is as democratic as it is likely to become in terms of popular sovereignty.

Bohman urges us to think much harder about how the democratic ideal has to be adjusted to the current situation. Bohman clearly believes that there must be more creative solutions to the demos deficit than a mere reconstitution of the same idea of popular sovereignty *beyond* the nation state. Bohman's problem with the idea of European demos construction is connected to his – arguably somewhat overstated – view that such a process would automatically result in a hierarchy of authority in which a European demos would have priority over the already existing national demoi in the member states. This is what Bohman describes as the “demoi problem”: there is a clear potential for conflict whenever there is more than one political unit that is already democratically constituted. In other words: European demos construction bears in it an inherent potential for domination of some groups over others. The key to democracy in polities made up of multiple demoi is therefore to reformulate the democratic ideal in terms of non-domination, not in terms of popular sovereignty.

What is interesting to us from a theoretical perspective is that the European Citizens' Initiative can be interpreted as a concrete measure along the lines of Bohman's transnational democracy of multiple demoi. The ECI does not touch the hybrid character of the EU polity as a mix of supranational and intergovernmental elements. Neither does it try to solve the democratic deficit by urging European demos construction. Instead, it introduces a transnational element into the initiation of EU legislation: it is not just a citizens' initiative, but a *transnational* citizens' initiative. Any European citizens' initiative will have to be drawn up and supported by citizens from at least seven member states. This means that in order to use the ECI, citizens and civil society have to organize themselves transnationally: not *above* national borders, but across them. A large number of civil society organizations had already done so long before the ECI even came up as an idea. Amnesty International is one example. It has also been argued that the European Trade Union Confederation is already well-organized transnationally and will be able to use the ECI to its advantage. What the ECI will do will be, finally, to give an institutional tool to transnational civil society. In doing so, it will provide an incentive for transnational networks in European civil society (Maurer & Vogel 2009: 30).

At the same time, it has to be noted that the ECI is not a tool for organized civil society *per se*, but for citizens as such. Consequently, the ECI regulation makes it clear that citizens' initiatives can only be launched by citizen committees made up of individual citizens – organizations cannot launch citizens' initiatives. In this context, it may also be worth noting that Members of the European Parliament are not admitted as members of citizen committees aiming at launching a citizens' initiative. These aspects are relevant to note because they underline the commitment to increasing participation of citizens as such, not of organized civil society or the party groups of the European Parliament. In practice, these distinctions will in all likelihood be blurred by the fact that members of civil society organizations are also individual citizens who can launch citizens' initiatives. In this sense, it will be easier for civil society organizations to launch initiatives than for non-organized individual citizens. At the same time, it also should be noted that the European Commission, while not offering any financial assistance to citizen committees, does facilitate the process by publishing all registered (and admitted!)

initiatives on its website and not least by providing information on the areas in which citizens' initiatives are admissible.

The ECI is also relevant from the perspective of Bohman's idea of democracy as non-domination. Non-domination refers not only to the risk that European-level popular sovereignty might lead to a hierarchy of authority in which national democracy would come second to any form of European *volonté générale*. It only refers to the risk – which exists equally in the nation state and at the European level or in other international arenas – that the will and interests of minorities will come second to those of majority populations. This is why Bohman emphasizes the effective capacity of individual citizens to initiate deliberation as a crucial precondition for the realization of democracy as non-domination (Bohman 2005: 299). In this respect, the ECI provides an important tool to minorities that promote their interests in many (or all) member states, but have no decisive influence on governmental policy (Maurer & Vogel 2009: 10).

Finally, there is hope that the ECI will lead to an increased politicization of EU politics. Previously, hopes for such an increased politicization rested mostly on the European Parliament and particularly on the party groups within it. But the experience of constitution making in the EU has also been interpreted as the “belated politicization of the EU” (Fossum & Trenz 2006). More recently, the *orange card procedure* in the Lisbon Treaty has also shifted attention to the possible role of national parliaments in politicizing EU politics (e.g. de Wilde 2009). But while there might be a point in arguing that increased involvement of national parliaments in EU decisions increases politicization at the domestic level, it does not leave much room for politicization at the level of transnational opinion and will formation. In other words, we would still be stuck in the seemingly perpetual conundrum of the European public sphere: decisions are increasingly taken at the supranational level, but public opinion and will formation is left behind in the arenas of the nation state (Conrad 2010). From this angle, the outlook for transnational democracy is much more promising with regard to the European Citizens' Initiative. This is so because the ECI offers an institutionalized incentive not only to look at EU politics from an ideological and/or party political angle, but also to build transnational citizens' alliances in support of particular issues. If this does in fact happen – and to what extent this will happen is an empirical question that will need to be answered when the ECI is in use – this might very well amount to the birth of transnational democracy in Europe. If the ECI turns out to be a widely used instrument for policy initiation, it may shift our focus on EU politics away from the preferences and achievements of national governments in the EU decision-making process and towards the preferences that we hold as European citizens, whether as liberals, socialists, conservatives, nationalists, feminists, environmentalists, pacifists, or anything else.

The one aspect that Bohman does not address is whether, and to what extent, this transnationalization of EU politics could also lead to the emergence of *one* transnational European demos. He does not appear to consider the question of whether transforming the democratic ideal – from *popular sovereignty* to *non-domination* – could also have the effect of transforming Europe's multiple demoi into one decentered, transnational, plural demos of demoi, so to speak. Following the Habermasian notion of the social integra-

tive effect of deliberation – and Bohman's approach does after all hinge on the central role of deliberation in democracy – we could conclude by arguing that if EU citizens began looking at EU politics more from the angle of specific issues and look for partners and allies in other member states, then they have already taken an important step towards understanding themselves as parts of the same political community – all the more so if also the political groups in the European Parliament begin supporting citizens' initiatives. If this happens, then the ECI may very well lead to the birth of genuine European parties, which is what some believe would be a crucial next step in the quest for even more transnational democracy in the EU.

Conclusions

The formal adoption of the regulation on the European Citizens' Initiative is not the endpoint of the long quest for more participatory democracy in the European Union, but it is an important step in this direction. Its importance lies primarily in the fact that it provides a tool for *transnational* participatory democracy. It remains to be seen how successful the regulation will be in allowing participatory democracy to transcend national borders. This article has argued that the European Citizens' Initiative certainly has the potential for bringing about a fundamental change in the way democracy works in the European institutions. Perhaps more importantly, the article has argued that the ECI may change the way we think about democracy in Europe and, by extension, also how we think about the shortcomings of democracy in the European Union. While the question of the implications of the ECI in this regard can only be answered empirically, a compelling theoretical argument can be made as to why the introduction of the ECI creates an institutional incentive for the transnationalization of citizen participation in EU politics and for an increased politicization of EU politics. Whether the ECI can contribute to such developments will depend on the way citizens use this institutional tool. But it already appears clear that the ECI is more than a mere "marketing trick" (Trzaskowski 2010), as some observers were inclined to fear during the preparations for the regulation. This latter perspective tends to forget the fact that the introduction of the ECI into the Lisbon Treaty was not – at least not primarily – driven by the European institutions, let alone by the member states. Instead, the ECI is truly a bottom-up process, stemming from the times of the Convention on the Future of Europe. While the European Parliament has been the most favorable of the EU's three legislative institutions towards the ECI initiative, it is highly questionable whether the ECI would have been included in the Lisbon Treaty had it not been for the efforts of civil society movements in the drafting of the Constitutional Treaty in the Convention. By the same token, it is also clear that the ECI regulation would have looked very different had it not been for the efforts of the same organizations in the consultation process in the agenda-setting phase. In this context, we need to point out the role of the European Parliament as an advocate of a "user-friendly" ECI regulation, and thus as an ally of organizations such as *Mehr Demokratie*, which urged low thresholds for aspects such as the minimum number of states from which the one million collected signatures must

come. In such crucial respects, we have to remind ourselves that the European Parliament – thanks to its power of co-decision with the Council – actually forced the Commission to adjust the provisions it had originally proposed. What this shows is that while the European Parliament certainly played key role in the drafting of a relatively simple and accessible ECI regulation, the impetus came not least from grass-roots civil society movements. This underlines the observation that there is a demand for transnational participatory democracy in the EU, and there is thus hope that the ECI will turn out to be useful tool in enhancing democracy in the EU.

Endnotes

- ¹ The author would like to thank Alyson Bailes, Þorgerður Einarsdóttir, two anonymous reviewers and the participants of the research seminar of the Faculty of Political Science for their constructive comments on the first draft of this article.
- ² In this article, we will use upper case letters when referring to the European Citizens' Initiative as an institutional tool and lower case letters when referring to individual European citizens' initiatives.
- ³ Although the European Commission is said to "jealously guard its right to propose legislation where legislation is warranted" (Dinan 2010: 193), the Council of Ministers has had this right to request a legislative proposal from the Commission ever since the entry into force of the Treaty of Rome (1958). The European Parliament, on the other hand, only received this right under the Maastricht Treaty on European Union in 1993 (Maurer & Vogel 2009: 8).
- ⁴ Etzioni believes that "normative-affective community" can be established in "moral dialogues" on contentious issues. He argues that previous attempts to hold moral dialogues at the European level have failed, but offers no explanation as to why this has been the case.
- ⁵ Since the entry into force of the Lisbon Treaty, the "ordinary legislative procedure" is the new name for what was previously known as the "co-decision procedure".
- ⁶ It should be pointed out that virtually no literature has been published on the ECI *since* the adoption of the ECI regulation by the Council and the Parliament. The ECI attracted considerable attention in the wake of the Constitutional Treaty and the Lisbon Treaty, mostly in the form of policy briefs and/or recommendations for the implementation of the respective treaty provisions. Most of the existing literature was therefore published in the years 2009 and 2010 and does not take the full legislative process of the ECI regulation into account.
- ⁷ Green Papers have been described as strategic plans and as a basis for discussion on upcoming legislative proposals (e.g. Tallberg 2010: Chap. 5).
- ⁸ The organization's main argument was that European civil society is not yet sufficiently networked transnationally in order to pass the high threshold of one third of the union's member states. Such a high threshold, according to Mehr Demokratie, creates the risk of turning the ECI into a tool only for already well-networked organizations rather than for citizens as such (Mehr Demokratie e.V. 2010).
- ⁹ "Enhanced cooperation" is the official term for what is also referred to as "differentiated integration", which has been established practice in European integration since the 1970s (Bache et al. 2011: 250). This practice received formal treaty status in the Amsterdam Treaty, due to the "obstructionist European diplomacy" of the British government of John Major at the time (*ibid.*). Enhanced cooperation allows *groups* of member states to deepen integration while others abstain. Under the Lisbon Treaty, enhanced cooperation *within the structures of the EU* is possible if *at least one third* of all member states participate. The Schengen Agreement is often described as an example both of the practice of "differentiated integration" (outside the framework of the EU) and of "enhanced cooperation" (within the framework of the EU): the Schengen Agreement was created as a form of differentiated integration, but was subsequently (in the Treaty of Amsterdam) incorporated into the EU.
- ¹⁰ Article 5.2 of the Treaty on European Union (Maastricht) lays down that "under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States." Until the Lisbon Treaty, surveillance of the subsidiarity principle was the responsibility of the European Parliament. The Lisbon Treaty then shifted this responsibility to national parliaments, giving the latter the instrument of the so-called "yellow

- card procedure”, through which they can urge the Commission to review its proposal if one third of the 27 member states’ national parliaments raise subsidiarity concerns (cf. Bache et al. 2011: 240f).
- ¹¹ The number of member states’ Members of the European Parliament is determined by a system of digressive proportionality, although the exact numbers have been determined in intergovernmental negotiations. The number of MEPs is in part determined by the different member states’ population size, but that smaller member states are strongly overrepresented. To put it differently, the smaller a state’s population, the greater its over-representation in the European Parliament.
- ¹² In the Commission’s proposal, the exact number of signatures needed in each country is determined in relation to the number of the country’s MEPs. A citizens’ initiative has to be supported by the number of citizens equivalent to the number of the country’s MEPs *multiplied by 750*. In Germany, for instance, a citizens’ initiative would currently have to be supported by 74,250 citizens (99 x 750). If Iceland were to become a member of the EU, by comparison, a citizens’ initiative would have to be supported by 4,500 citizens, assuming that Iceland would have the minimum number of six MEPs (6 x 750 = 4,500).
- ¹³ Article 8 of the Commission’s proposal contained the formulation that “*after having collected 300,000 statements of support [...] from signatories coming from at least three Member States, the organiser shall submit to the Commission a request for a decision on the admissibility of the proposed citizens’ initiative* (European Commission 2010b: 14; author’s italics).”
- ¹⁴ The “one seat campaign” was in fact launched from within the European Parliament. Prompted by Commission Vice President Margot Wallström’s announcement of a period of reflection and a “Plan D” for dialogue, democracy and debate (European Commission 2005), Cecilia Malmström, at the time a liberal Member of the European Parliament, used the opportunity to launch the campaign in May 2006, including a website collecting signatures in support of the initiative. By September 2006, more than one million people had signed the petition, enabling Malmström to submit 16,000 pages of signatures to the Commission.
- ¹⁵ In the first fifteen years of its existence, the office of the European ombudsman responded to more than 36,000 complaints and completed more than 3,800 inquiries into alleged cases of maladministration (European Ombudsman 2010).
- ¹⁶ In 1974, the Belgian Prime Minister Leo Tindemans was originally instructed by the nine member state governments of the time to draft a report on how the term “European Union” could be interpreted. The 1975 Tindemans *Report on European Union* then proposed “institutional reform and a modest extension of Community competence” (Dinan 2010: 58), but also included a call for launching a “people’s Europe”, which in turn paved the way to what Cris Shore has described as “consciousness-raising as a strategy for bringing Europe ‘closer to the citizens’” (Shore 2000: 45).

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