

## **To Whom Did Brussels Speak on Participatory Democracy? Civil Society in Debates on the European Constitutional Treaty**

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### **Abstract**

This article focuses on the role of advocacy by civil society organisations in the promotion of the principle of participatory democracy in the debates about the European Constitutional Treaty (TCE), in order to discuss these organisations ability to link the EU and the citizens and thus foster a European public sphere. The exploratory analysis points out to the key role of a coalition of civil society groups acting as experts in the construction and the advocacy of the principle of participatory democracy between 1997 and the Convention (2002-2003). It points out as well the relative non-presence of these groups from national debate and how groups which had not taken part in the specialised debates could play an increased role in framing specialised debates. The article explores ways of analysing the potential effects of this debate's structure for the legitimacy of the European Union.

### **Introduction**

The analysis of convergences and divergences between European public spheres must consider the seemingly opposing processes of Europeanisation and re-nationalisation that can be observed simultaneously in several aspects of social structures and identities. Rather than juxtaposing simple contradictions, between the lack of a public sphere and identity with the relatively important degree of legal, economic and political integration, it is important to consider the implications for our understanding of the role of the public sphere in societies and in the European Union.

Following a tradition established by Habermas' founding work,<sup>1</sup> the public sphere is considered by many political theorists as an essential "social room" for the formation of identities and for political life in societies. This article's starting point is that the existence of European public spaces depends on the interaction between European actors. In this sense, the issue is not so much the objective Europeanness of a subject, but its appropriation by politicians and cultural intermediaries. There are thus no European issues per se, but different dynamics in different social fields that make social and political actors engage in European debates or not.

The main characteristic of the EU public sphere is its fragmentation, and the strong role that institutions and specialists organised in networks and interest groups which are highly disconnected from national publics, play in it.<sup>2</sup> The fragmented and elitist nature of its strongest public spaces does undoubtedly affect the legitimacy of the European Union. In line with its interest in actors in the public space, this article explores the role of a number of European civil society organisations in the discussions about participatory democracy in the debates about the Constitutional Treaty (TCE) during the Convention on the Future of Europe, which appears as a good example of a fragmented public. More concretely, it asks whether and how the highly specialised debates on issues of participatory democracy that preceded the Convention influenced the structure of debates on this topic during the Convention

and the ratification phase. This question requires some further framework and conceptual clarifications to be made.

The first clarification concerns the preceding debates. These are the consultation processes on relevant aspects of the relation between the Commission and civil society groups held in 1997, 2000, 2001 and 2002.<sup>3</sup>

The second concerns the usage of the term civil society in this article. Although the concept of civil society has become part of the vocabulary of the EU institutions for legitimacy purposes,<sup>4</sup> the Commission only acknowledges its relation with “interested parties”<sup>5</sup> thus including particular interests’ organisations in this definition. This ambiguity causes a tension in EU policy making, as the very definition of civil society and of its boundaries is an issue of contention between different interest groups in the EU.<sup>6</sup> Moreover, the conceptual complexity of the issue is increased by the emergence of NGO groups behaving, in Maloney and van Deth’s terms, as “merchants of influence”.<sup>7</sup> This article takes rather a more general approach based on Smismans’ work and considers organised civil society as the groups created by citizens on a voluntary basis to defend a cause or interests in the public space.<sup>8</sup>

The third clarification concerns what is referred to as the structure of the debate. The article argues that the previous debates on democracy not only provided input for the content of the debate, as it would be fairly evident, but more importantly provided a framework for the problems and solutions, a series of proposals and inputs in the form of demands and support from a community of organisations. These interactions in a segmented public space contributed to the definition of a framework proposing participatory democracy as a way to address the democratic deficit of the EU as well as a body of expertise on how to put the principle in practice. This space- was characterised by specific forms of collective action by the actors involved in it, namely administrative strategies requiring good access to the relevant decision makers<sup>9</sup> and a relational activity consisting of participation in debates, despite their likely weak advocacy effect, in order to be perceived as a relevant actor and in engaging in coalitions with other actors. The article argues that the “rules of the game” existing within this public space both provided entrepreneurs with an ideal opportunity structure to include the principle in the Treaty and created the conditions for the involvement in the debate of a range of new actors that were not present in this space before the Convention.

The first part of the article criticises two academic positions on the link between the public sphere and the legitimacy of the EU and proposes to analyse specialised public spaces fora that are usually overlooked in debates on the EU public sphere through a neo-institutionalist analysis grid, as a way to grasp how the existing public spaces of the EU function and what their influence is for the legitimacy of the EU. The second section presents the contribution of specialised publics to debates on participatory democracy during the European Convention. It analyses the organisation of a coalition advocating issues of participatory democracy since the moment when they first enter the agenda in 1997 until the Convention in 2003 and analyses the framework elaborated by this coalition to advance the need for this principle. The next section of analysis presents the limited role of this coalition in general debates during the ratification process and considers why the framework elaborated by EU

civil society organisations was not successfully extrapolated beyond specialised publics. The final section reflects on the legitimacy potential of the role of EU civil society organisations as promoters of participatory democracy within specialised publics.

## **I. The functioning of the EU public sphere**

### ***A. Two opposite criticisms of debates on the EU and the public sphere***

The European public sphere is considered by several scholars to be intimately linked with the realisation of democracy. This vision establishes a direct link between the public sphere and the existence of a political community: the public sphere is a prerequisite for democracy and a locus for the formation of the will of the people.<sup>10</sup> However, there is not a European public sphere that can be compared with national ones. Two positions can be distinguished in academic literature concerning the effect of this fact on the legitimacy of the EU. The tenants of liberal intergovernmentalism assume that the EU should not become subject to public scrutiny because by its nature it is a regulatory state that would become less efficient, eventually damaging the legitimacy of the EU, which is basically output legitimacy.<sup>11</sup> On the contrary, scholars studying the EU with cosmopolitan<sup>12</sup> and deliberative<sup>13</sup> paradigms assume that the EU can become a public sphere through a process of increased communication and deliberation.

The first position is built on an assumption about the nature of legitimacy of the EU: it does not come from citizens' consent, but from the goods it can provide to the member states and its citizens. Although the refusal to acknowledge the validity of the argument of democratic deficit can be defended in academic terms by arguing that the EU does not depend on inputs but on outputs for being legitimate,<sup>14</sup> such an assumption does not take into account the end of permissive consensus<sup>15</sup> and the fact that a discourse on the democratic deficit has been influential among general publics, and on their decisions about the future of the EU.<sup>16</sup> Liberal intergovernmentalists argue that in any case, there can be nothing like an EU public space because the complexity of the EU makes it impossible or counter-productive to have any implication from general publics.<sup>17</sup>

It seems however extremely difficult to turn the back to the concerns of the publics, not least because the EU is becoming a salient subject in national politics. National and European specialised publics like political parties, institutions or civil society organisations play a role in this politicisation. The very fact that the EU is becoming a subject of political contention, demonstrates that there are no "obvious" obstacles to the emergence of a European public sphere.

The second type of position is founded on Habermas' notion of the public sphere as a communicative space with a political relevance, whose historical manifestation closest to the ideal type is the territorially bounded and linguistically homogeneous state.<sup>18</sup> In this sense, the public sphere is conceived as the social room of a "democratic sovereign capable of action".<sup>19</sup> Thus from this point of view, the emergence of a European public sphere would thus mean the emergence of a European identity. The scholars defending this consider that such identity will be

qualitatively different from national ones, because of its cosmopolitan inspiration, substantial to the construction of a supranational communicative and political sphere.

However, this notion of the public sphere is seriously unfit to account for the characteristics of the EU public space. Firstly, the logic of an evolution of the EU into a “public sphere” with the same identity formation functions as national spheres, be it more networked and cosmopolitan identities, is alien to the logics of European integration. In this sense, there is a form of functionalism that assumes that as more competences become vested in the European Union and more areas of debate will be affected by it, communication on European issues will increase, finally shaping citizens’ identities. According to Schlesinger,<sup>20</sup> cosmopolitan scholars disagree as to the mechanisms of transfer. Some of them focus on institutions of political participation and the logic of rights and duties, whereas others argue that the EU is a communicative sphere beyond any control of the state.<sup>21</sup> In any case, this approach lacks a theory of agency to analyse how the public space emerges. This is not entirely true, in that most scholars focus on the role of some agents, mainly the media, in the construction of the public space. However, their focus on general publics carries a disinterest for the thin space articulated by institutions and specialists around them. This article argues that some of the actors involved in the emergence of European publics are not to be found in the arena of general publics. Finally, these approaches have produced little empirical evidence concerning the political relevance of the emerging European public sphere. Whereas the Europeanisation of national publics is underway and European issues have increasing resonance,<sup>22</sup> there is little evidence as to the transnational dimension of this process. As Hooghe and Marks argue,<sup>23</sup> the EU becomes an issue of political contention inasmuch as it is mediated by national political parties. The emergence of a European general sphere of publics will be weak as long as there will be a “missing link” between its different sectors.<sup>24</sup> Research into the European public sphere should consider the role of social and political actors in its construction, by analysing the interaction of these actors in the actually existing European public spaces.

### ***B. The actors and institutions in the debate about democracy in the EU and existing EU public spaces***

Political theory considers that the public space is an essential “social room” for the formation of identities and for political life in societies. Culture, identity and language are key features that make it difficult for a general EU public sphere to ever come to be. However, rather than adopting a postinstitutionalist approach to the European public sphere<sup>25</sup> this article considers that a neo-institutionalist approach can be useful to focus on the interactions of actors in the public spaces and analyse the communicative and collective action of its actors. These interactions are thus European social fields whose analysis can serve to grasp the emergence of European public spaces.

Eriksen’s account of the European public sphere as a series of fragmented public spaces<sup>26</sup> is a starting point for this reflection. He analyses the different degrees of Europeanisation in different domains, and this allows a consideration that there are different types of publics with differing dynamics from a generally weak Europeanisation of general publics to the existence of strong communicative spaces in

the institutions and among the actors involved in the day to day construction of the EU. This conception of the public sphere encourages approaching each of the public spaces as fields regulated by formal and informal rules that are part of the “game” of the actors. These spaces are divided into multiple “organizational fields [which] are constituted by linkages, more or less institutionalised, between those actors and organizations that regularly interact”.<sup>27</sup> The specialised EU public space is then characterised by the existence of multiple constellations of actors around different subjects or fields, along the lines of the competences of the EU institutions.

It can be argued that under some circumstances, these organisational fields function as highly specialised though public spaces.<sup>28</sup> European specialised public spaces are mainly composed of interest groups, the officials of the institutions and members of the Parliament. A deep knowledge of the EU is thus shared by all these actors, as well as a concern with and expertise in concrete domains of EU integration. In this context, it is not surprising that the debates between these actors are characterised by a relevant degree of expertise. Despite the general consideration that interest groups base their behaviour on opaque lobbying, under certain institutional circumstances (publicity, coalition making etc) public debates subject to the principles of rationality, validity of arguments and considerations about the public good can take place in specialised publics.<sup>29</sup> The institutions systematically favour a “level playing field”, and the creation of a marketplace for ideas is just an example. Secondly, the very existence of a discourse on democratic deficit encourages actors like civil society organisations to use the logic of arguing and a discourse about their ability to get citizens interested in EU debates.

The recourse to public debate is thus a tool that some actors can use as a strategy in different social fields and governance levels with the aim of producing institutional change favourable to them, be it through endogenous change, by improving their position within the field or an exogenous one, via a transformation of the general context. Thus paying particular attention to the configuration of the actors and analysing their epistemic positions and resources provides the methodological instruments describing the construction of new ideas, discourses and frameworks about the EU in the different sectors of the public sphere.

The deductive approach presented above highlights the importance of posing the question “who deliberates in the EU?”.<sup>30</sup> Deliberative democracy theorists expect a form of democratic spillover from the spaces of strong deliberation to general publics.<sup>31</sup> However, a focus on the functioning of the institutional logics in segmented publics reveals that there is a communication gap with the general public.<sup>32</sup> The next section points out that the organisations involved in the early debates on the principle of participatory democracy constitute a narrow group using rather “insider” strategies. However, the structure of the discussions in the debate and among general publics opened up the possibility for alternative groups to join in the debate. Analysing the interactions between these groups provides a case to empirically study the emergence and the dynamics at work in a European public space.

## **II. The structure of the debate on democracy in the Convention and before it: the emergence of an organisational field?**

The debates on the TCE between 2002 and 2005 are telling about the functioning of European public spaces. On the one hand, the Convention which prepared the TCE endeavoured to raise the profile of debates on the EU among civil society and general publics via open debates on relatively salient issues. On the other hand, the work of the Convention remained embedded in the institutional logics of the EU. In this sense, specialised publics remain the key arena for communication and collective action and thus influence in the Convention.

#### ***A. An organisational field on participatory democracy: the Convention and before***

Accounts from members of the Convention<sup>33</sup> and research literature<sup>34</sup> confirm that article 47 on participatory democracy (now article 11 of the TUE as modified in Lisbon) was included in the Treaty as a result of the reiterated demands from civil society organisations during the public hearings organised in June 2002. The Presidium accepted the idea to include a form of “civil dialogue” in the first draft of the TCE in April 2003. The article was then modified in the last minute of the Convention to create the right of one million citizens to propose legislation (art. 47.4).<sup>35</sup>

What does this demonstrate about the role of specialised publics? After all, it rather seems that the Convention received an input from civil society and included it in the final document. However, not least because the listening capabilities of the Convention were rather limited<sup>36</sup> it is argued here that the inclusion of an article on participatory democracy in the Treaty was facilitated by the involvement of civil society organisations in multiple debates with the Commission before the Convention. Article 47 is not the culmination of the policy debate about civil dialogue but it is a window of opportunity for the organisations interested in this debate because the agendas of the Commission and the different groups converge with the call by the European Council to bring the EU closer to its citizens.<sup>37</sup>

The debate between the Convention and civil society, at times quite confrontational,<sup>38</sup> consisted of consultations about different policy proposals. Out of 800 organisations having submitted written contributions to the Convention,<sup>39</sup> 19 had contributed previously to policy consultations between 1997 and the Convention and can thus be approached as the actors of the emerging organisational field on the topic of participatory democracy. The number of organisations taking part in the consultations increases steadily over time, 4 in 1997, 12 in 2000, 15 in 2001 and 13 in 2002. It is possible to hypothesise that the agenda and aims of the debate, the creation of a structure for dialogue between civil society and the EU institutions<sup>40</sup> was shaped in 1996-1997 by a small number of policy entrepreneurs from civil society organisations and the Commission.<sup>41</sup> Organisations entering the debate subsequently have to assume the shared understanding and expertise which has been created previously.

The key issues of civil dialogue were defined between 1996 and 2000 in the subsequent consultations. These concern the definition of civil society, the principles and mechanisms of consultation with organisations, the kind of organisations that should take part in consultations and the methods to select them, including the eventual creation of an accreditation system and the specificity of dialogue in each



policy sector. The analysis of these points in the agenda seems to confirm that there is a deliberative or appropriateness logic deriving from the rules of participation in this specialised space in that it becomes difficult for newcomers to challenge previous agreements.

Not all organisations active in the Convention were in favour of civil dialogue. Their positions can be summarised in a tripartite typology. Firstly, the most numerous, better organised and earlier involved are those wishing to include civil dialogue in the Treaty. Secondly, some organisations contributed with arguments not to include civil dialogue in the Treaty or at least do it with several safeguards. Finally, a new set of actors emerged during the Convention to put emphasis not in civil dialogue but in other forms of participatory democracy. The coalition which stands out in this group is the European Referendum Campaign (ERC), whose role in the making of section 4 on citizens' initiative is discussed further in the next section.

The group of organisations advocating civil dialogue is the largest and most active: twelve of the nineteen organisations intensely involved in civil dialogue show a degree of support for it. Relevant features of this group are that it shows the earliest and more intense involvement, which is coherent with the agenda of the Commission since 1996. There are some differences between the organisations advocating civil dialogue, particularly concerning the need for organisations participating in dialogue to be representative and on the mode of selection of these. However, this seems not to have been an obstacle to the formation of a coalition advocating civil dialogue, whose organisational manifestation is the Civil Society Contact Group (CSCG). Eight of the organisations advocating civil dialogue joined the CSCG (as five of these organisations are members of the Social Platform, itself member of the CSCG with the European Environment Bureau and Concord). The CSCG has the most precise and ambitious demands on civil dialogue.<sup>42</sup> Data from research interviews<sup>43</sup> confirm that the organisations involved in the CSCG consider that the inclusion of civil dialogue in the TCE (article 47) was obtained as result of their advocacy. In this sense, early involvement and coalition making for strong advocacy seem to have paid off.

The group of organisations that is sceptical about civil dialogue is smaller and became involved relatively late in the dialogue. Few of their contributions ever argue against civil dialogue, but question either its ability to bring citizens closer to the EU or fear that it may introduce a risk of more regulation or imbalance social dialogue, as most of these organisations are representative of business interests. Moreover, there are no signs of the existence of a coherent coalition among them.

The next section examines the framework which results from the debates and the problems it presented when translated to general publics.

### ***B. The construction of an instable framework***

Although participatory democracy in the EU was not a new subject during the Convention as argued previously, three reasons can be identified for its inclusion in this revision of the Treaty that did not exist in the Amsterdam and Nice negotiations. Firstly, the heads of state and government recognised in the Laeken declaration that more had to be done to bring the EU closer to the citizens. This offers a framework

which is more favourable to the claims made by civil society organisations, which, secondly, were better organised during the Convention, via a Civil Society Contact Group (CSCG) and made strong use of all the access possibilities offered by the Convention. Finally, the Convention is an institutional innovation particularly fit for the usage of a framework aiming at improving the democratic legitimacy of the EU. Civil society groups could mobilise this framework among a set of sensitive actors, like the members of the European and national parliaments that took part in the Convention because of the high saliency that the Convention had assumed in front of public opinion.<sup>44</sup>

The call to democratisation of the Laeken declaration and the perspective that in many countries the Treaty would be put to public debate and referendum was a powerful device for the actors in this field to use their access to the Convention to claim their role as democratic mediators. The framework posits that since civil society possesses origin legitimacy; its association through institutionalised mechanisms can provide the EU with a form of input legitimacy that it lacks. Thus, through the advocacy of an institutional transformation such as the constitutionalisation of the principle of civil dialogue, these organisations are claiming a role in the realisation of the Laeken call to bring the citizens closer to the EU.

According to analysts of the epistemic dimension of institutional changes,<sup>45</sup> the transformation in the frame of reference among specialised publics must be included in larger frameworks for the diffusion of ideas among general publics in order to be successful and consistent. However, the actors of the emerging organisational field only partially relied on general publics' mobilisation for influencing Treaty changes on this topic, as it is confirmed by their low or inexistent use of indirect collective action strategies relying on constituency or public opinion mobilisation.<sup>46</sup> It appears thus that the framework on civil dialogue as a way to associate the citizens closer with the EU is unstable in that the organisations claiming the status of democratic mediators do not seem to rely on large constituencies but rather on their position within specialised publics.

The next section examines the role of actors of specialised publics in the framing of the Treaty during the debates in general publics, including ideas on participatory democracy.

### **III. Still a missing link: divergences in frameworks between EU civil society and the general publics during the ratification debates**

The contradiction discussed in the previous section created conditions for the redistribution of roles and influences among actors in general publics' debates on democracy in the TCE during the ratification processes. It is possible to argue that the strategies of actors within these public spaces varied according to the degree and the nature of their involvement in the Convention debates, ranging from an effort to Europeanise the debates,<sup>47</sup> to nationalisation strategies<sup>48</sup> going through different degrees of selective readings.<sup>49</sup>

Interestingly, the actors influencing general publics at the national level are not the same as those who played the role of "democratic promoters" during the Convention.



Traditionally, EU civil society groups are rather focused in their role in specialised publics, and invest most of their time and resources in making claims to the EU institutions, rather than in involving their grassroots members in their day to day work.<sup>50</sup> This can be explained by the rather consensual approach towards policy-making that these actors have, as public mobilisation and contestation are not frequent or useful collective action registers in EU policy making.<sup>51</sup> This is true with the European TCE as well. Research interviews<sup>52</sup> confirm that the organisations involved in the making of civil dialogue found it difficult to mobilise their constituencies during the debates at national level. Beyond the difficulty in explaining institutional aspects to members who are usually interested by issues of substance, these organisations expected national governments to provide for institutionalised national debates, as fora where civil society could play a strongest role.<sup>53</sup>

However, civil society organisations did play a role in the ratification debates. An insider/outsider<sup>54</sup> analysis is telling in this respect. The civil society organisations that influenced debates on participatory democracy can be considered as insiders in that they possess resources like the knowledge of the EU and access to institutions and debates. It is interesting to note that their common advocacy group, the CSCG did not play any role in debates beyond the Convention.<sup>55</sup> On the other hand, the European Referendum Campaign (ERC), which influenced the making of article 47.4 on citizen's initiative,<sup>56</sup> organised a transnational mobilisation campaign aiming to promote referenda in as many countries as possible. Despite the compatibility of this campaign with the framework on participatory democracy, only one member of the organisational field described previously, the Active Citizenship Network, took part in it and withdrew its support after a short period because of differences in the vision of participatory democracy.<sup>57</sup>

So, when analysing the configuration of actors within general publics the categories of insiders and outsiders could almost be reversed. The rarity of referenda in most European political systems, together with the novelty of the Treaty itself made it possible for minority organisations to play an important role in the framing of the debates during the referenda.<sup>58</sup> The case of the French debates on the ratification of the Treaty is particularly telling, as some left anti-globalisation organisations like ATTAC played a key role in portraying the Treaty as blatantly anti-social and a compromise between insiders. This discourse was important for the creation of a united "left no" in France. It is most interesting to note, however, that organisations like ATTAC did generally not take part in the specialised debates between 1997 and 2002 and only marginally during the Convention. This can be understood as a chosen non-involvement. For anti-globalisation groups participation in these kinds of fora is a form of compromise typical of insider organisations, not compatible with a position of global rejection of the EU. In this sense, some organisations could build on their outsider position at EU level as "certificate" of the authenticity of their claims to be "real civil society". As was said in the introduction, the notion of civil society could create tensions, in that the "missing link" between the segmented EU public spaces made it possible for organisations claiming to be "real civil society" to ignore or dismiss article 47 as an achievement for democracy and civil society in the EU.

The interest of outsider organisations for the EU TCE as an opportunity to raise their profile in general publics<sup>59</sup> comes from the European Social Forum in 2003. Although this forum was supposedly organised in order to debate the future of

Europe, the substance of the debates and the interest of the militants was not mainly focused on the EU, which led some observers to conclude that reference to the EU was rather a way to construct a common frame of protest by organisations' leaders.<sup>60</sup> This confirms that several organisations had an instrumental approach to these debates, in that it appeared that there was a real vacuum in general publics about the EU, which these organisations could occupy because of the lack of early involvement of the supporters of the Treaty.

A debate on participatory democracy could hardly arise given the difficulty of civil society groups to participate in framing the Treaty in a way that would favour discussions on this principle. The role of mobilising public opinion at national level was rather assumed by civil society organisations that did not participate in the discussions on article 47 and that could thus ignore it in the way in which they framed the Treaty.<sup>61</sup>

It can thus be said that although civil society groups played an important role as promoters of democracy<sup>62</sup> by action in specialised publics, resulting in article 47 of the Constitution, their role was far less important in the debates in national publics during the ratification debates. This permitted organisations who were not involved in the making of the Treaty to play a decisive role in its ratification debate. The next section reflects on the legitimacy effects of this configuration of the specialised publics of the EU.

#### **IV. Legitimacy through debate? The importance of the links between the different publics**

The debate about the European public sphere tends to consider it as a device influencing the legitimacy of the European Union. In this sense, an EU public sphere would be a precondition for the realisation of democracy at EU level,<sup>63</sup> in that it would create the conditions for legitimate decision making and identity building that prevent it today from relying on input legitimacy.<sup>64</sup> However, an analysis of the functioning of the different spaces of this public sphere invites a cautious reflection on this topic.

On the one hand, specialised publics appear as democratic mediators who can contribute to the existence of a more democratic EU through the institutionalisation of democratic practices such as article 47. On the other hand, the previous analysis does not provide evidence of the link between on the one hand the democratisation of the institutions and the specialised debates that this implies and on the other hand the extension of the debate to the general public, as it is expected by "democratic functionalism" hypotheses.<sup>65</sup> It rather appears that it is the institutional set-up of specialised publics that makes actors engage or not take part in public spaces, and which sets conditions and either permits or hinders debates to be translated from one space to another one. In this sense, specialised publics are also at the origin of forms of "cognitive dissonance" and divergences that strongly hinder the possibilities for the EU to become a public sphere as expected by cosmopolitan scholars.<sup>66</sup> Firstly, the terms of EU debates are usually difficult to frame for national publics. Participatory democracy is just an example of this. And secondly, EU specialised publics are rather thin and have strong institutional limitations on extending beyond Brussels. That

combined with the novelty associated with many discussions on the EU, including the rules for debates on the EU at the national level, including an increasing usage of referenda,<sup>67</sup> makes it relatively easy for outsiders at national and EU level to increase their resonance by a more successful framing of the debates.

None of this implies that there are “natural reasons” hindering specialised publics from fostering general public debates. In this sense, a way to further consider the issue of “democratic functionalism” is to ask whether any debate, irrespective of its results, can serve to foster an EU public space and to legitimise the EU. Two reflection paths can be considered. The first one, building on Hooghe and Marks,<sup>68</sup> points out the impact that EU topics can have in the reorganisation of national public spaces. The rising importance of EU subjects provides an opportunity structure for actors dissenting from the convergent discourses on the EU of majority parties. This can be interpreted as a “disrupting effect” that could cause parties and other actors of segmented publics trying to lower the profile of debates on the EU and go back to a permissive consensus situation. Indeed, Hooghe and Marks expectations for the Europeanisation of political parties could be counterbalanced by the role of national parties as “gatekeepers” for careers and organisation.<sup>69</sup> A second reading is proposed by della Porta,<sup>70</sup> who points out that indeed the emergence of contestation through the articulation of European protest movements can create a European public space where EU decisions are discussed, although not necessarily accepted. Traditional interpretations of the French debate on the TCE are that it confirms the inexistence of an EU public space.<sup>71</sup> However, by fostering debates among the public to reject the Treaty, organisations protesting against the current form of European integration may be operating in favour, albeit unintentionally, of the Europeanisation of national general publics. However, whether “protest can stimulate citizens’ integration”<sup>72</sup> as della Porta argues and contribute to democratic spillover will depend as well on the ability of protest movements to take part and be heard in specialised debates.

## **Conclusion**

Analysing the role of civil society organisations in the debates about participatory democracy in the TCE has been useful to evaluate the functioning of specialised EU publics and their relation with general publics.

This article has called for a fragmented analysis of the emergent European public sphere. It has argued that the legitimising potential of the public spaces has to be examined in detail. An analysis of collective action and of agency of the actors of specialised publics is essential to understand the role that debates on the EU play in the existing EU public space. In this sense, the institutions and the interest groups around them can be understood as *loci* of debates that can be analysed as part of an additional resource for actors attempting institutional change. Debates and public spaces exist inasmuch as actors create them and any consideration about the legitimacy that the EU can eventually derive from the emergence of an EU public sphere cannot be decoupled from an analysis of the role and the motivations of the actors of specialised publics when they frame debates on the EU.

By pointing out at how the principle of participatory democracy was elaborated and framed by a narrow coalition, the article has explored ways to analyse to what extent

this framework could be extended to general publics and contribute to citizens' empowerment. Even considering article 47 as an institutional advancement for a more democratic EU, as it sought to transform mechanisms of consultation that pertain to a form of governance *with* the people into a form of governance *by* the people,<sup>73</sup> this article pointed out reasons why it did not make the role of civil society more visible and thus influenced perceptions on democratic deficit in general debates. These reasons are the limited implication of EU civil society organisations in general debates, both because of organisational reasons and self-limitation attitudes, and the lack of implication of nationally rooted protest movements in the specialised debates, leaving general publics as the only *locus* of contestation.

The exploratory nature of a good part of this analysis is worth recalling in the conclusion. Whether the role of civil society organisations behaving as experts to influence institutional agendas on civil dialogue can be supported from the existing analysis, further research is necessary in order to grasp both the extent of the activity of the coalition members at national level and the articulation of participatory democracy as a framework in discourses among general publics.

1. Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press, 2006).
2. Erik Oddvar Eriksen 'Conceptualising European public spheres. General, segmented and strong publics, in ' John Erik Fossum and Philip Schlesinger (eds), *The European Union and the Public Sphere. A Communicative Space in the Making?* (London: Routledge, 2007), pp. 23-43.
3. European Commission (1997, 2000, 2001, 2002), respectively on promoting the role of voluntary organisations and foundations in Europe, building a stronger partnership with non-governmental organisation, European Governance and reinforcing the culture of dialogue and consultation.
4. Justin Greenwood 'Review Article: Organized Civil Society and Democratic Legitimacy in the European Union', *British Journal of Political Science*, 37 (2007), pp.333-357.
5. See the following website on the relations with civil society  
[http://ec.europa.eu/civil\\_society/apgen\\_en.htm#5](http://ec.europa.eu/civil_society/apgen_en.htm#5)
6. For an example of how citizen interest groups try to exclude "profit optimising actors" from the field of civil society, see Elodie Fazi and Jeremy Smith, *Civil dialogue: making it work better*. Commissioned by the Civil Society Contact Group, 2006: 16 Available at:  
<http://act4europe.horus.be/module/FileLib/Civildialogue,makingitworkbetter.pdf>
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40. Alhadeff and Wilson, 'European civil society'.
41. The organisations involved earlier are the Social Platform, the European Foundation Centre, CEDAG and the European Volunteer Centre. In the Commission it is DG Social Affairs and DG Enterprise, although the issue was then taken over by the general secretariat from 2000 (interviews with Commission officials, 17/02/09 and 28-05-09).
42. In its view civil dialogue must encompass all EU institutions (not only the Commission), it is not to be confined to the European Economic and Social Committee, the representativeness of the organisations should not be the main aspect when deciding on who is associated to dialogue but rather their track record of expertise and ability to raise important causes. Finally, the CSCG organisations defend the creation of a transparent accreditation system.
43. Interview with a member of the Social Platform, Brussels, 06-03-2009.
44. On the dramatisation of the general debates see Antonin Cohen and Antoine Vauchez « Back to the 'Future of Europe: A Political Sociology of the EU Constitutional Saga » in *EUI Working Papers*, RSCAS 2008/33, (p 8) as well as the different contributions in the third part of Antonin Cohen and Antoine Vauchez (eds), *La Constitution Européenne. Elites, mobilisations et votes* (Bruxelles : Editions de l'Université de Bruxelles, 2007).
45. Pierre Muller, *Les politiques publiques* (Paris: Presses Universitaires de France 7ème édition, 2008), pp. 59-61.
46. Bindekrantz, 'Interest Group Strategies', p. 696.
47. See Carlos Closa Montero 'La ratificación de la Constitución Europea: procesos y actores' in Ana M. Carmona Contreras (ed) *La Unión Europea en Perspectiva Constitucional*, (Pamplona: Aranzadi, 2008) pp. 207-227.
48. See Gemma Mateo Gonzalez, 'La política nacional y los referendos para ratificar el Tratado Constitucional Europeo', *Revista Española de Ciencia Política*, (18) (April 2008), pp.121-147.
49. See Stefan Seidendorf, 'Europeanization through Contestation? Civil Society in Referenda Campaigns in France and Ireland' paper prepared for the conference 'Bringing Civil Society In: the European Union and the Rise of

- Representative Democracy’, European University Institute: Florence, 2009.
50. See Imogen Sudbery, ‘Bridging the Legitimacy Gap in the EU: Can Civil Society Help to Bring the Union Closer to its Citizens?’, *Collegium*, 26 (Spring 2003), pp.75-97.
  51. Richard Balme, Didier Chabanet and Vincent Wright, *L’action collective en Europe / Collective action in Europe* (Paris : Presses de Sciences Po, 2002).
  52. Interviews with members of the Social Platform, Brussels (06-03-09 and 03-05-09) and of COFACE (03-05-09).
  53. See Will et al. *Challenges of Translation* for an analysis of the input from national “Conventions” to the European Convention.
  54. See Bindekrantz, ‘Interest Group Strategies’ for a discussion on the choice of registers of collective action by civil society groups.
  55. Interview with a member of the organisation on 29th July 2009.
  56. Lamassoure ‘Histoire secrète’ and Initiative and Referendum Institute Europe, *Transnational Democracy in the Making. IRI Handbook 2004* (IRI: Amsterdam, 2004).
  57. Interview with a member of the organisation on 8th July 2009.
  58. Seidendorf, ‘Europeanization through Contestation?’
  59. Ibid.
  60. Eric Agrikoliansky, ‘Une autre Europe est-elle possible? Les altermondialistes français et la Constitution : les conditions d’une mobilisation ambiguë’ in Antonin Cohen and Antoine Vauchez, *La Constitution Européenne*, pp. 209-236.
  61. Interview with a member of ATTAC in Madrid, 22nd April 2009.
  62. See Susana del Río Villar, *Ciudadanía activa en Europa. Proceso participativo y nuevos espacios para la comunicación* (Madrid: Difusión Jurídica, 2da edición, 2008), pp. 441-447.
  63. Eder and Trenz ‘Prerequisites’, pp. 168-169.
  64. See Scharpf, *Governing in the EU*.
  65. Eder and Trenz, ‘Prerequisites’, p. 166.

66. Vivien Schmidt, 'Re-Envisioning the European Union: Identity, Democracy, Economy, *Journal of Common Market Studies*, 47 (Annual Review 2009), pp.17-42 (p. 20) provides a very good example of one such cognitive dissonance during the French debate on the ratification of the Lisbon Treaty, with the emergence of the fear of the "Polish plumber".
67. Closa Montero, 'La ratificación de la Constitución', pp. 221-226.
68. Marks and Hooghe, 'A Postfunctionalist Theory'.
69. Philippe Schmitter, 'On the Way to a Post-Functionalist Theory of European Integration', *British Journal of Political Science*, 39 (1) (2009), pp.211-215 (p. 214).
70. Donatella della Porta 'The Europeanization of Protest: A Typology and Empirical Evidence' in Kohler-Koch and Rittberger, *Debating the Democratic Legitimacy*, pp. 189-208 (p. 206).
71. Jürgen Habermas "The illusionary 'Leftist no'" in *signandsight.com - Let's talk European*, 13 May 2005. Available at <http://www.signandsight.com/features/163.html>
72. Donatella della Porta, 'The Europeanization of Protest', p. 206.
73. Schmidt, 'Re-Envisioning the European Union', p. 21.

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