
Civil society participation in EU governance

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Abstract

For the longest time, the participation of civil society has not been an area of interest for neither EU researchers nor political decision-makers. This changed with a rising interest in the democratic credentials of the European Union. With the end of the initial permissive consensus on EU integration, civil society emerged as a possible remedy to bridge the gap between supranational governance and citizens. This Living Review presents the two dominant analytical perspectives on civil society participation: the notion of civil society as organized actors that contribute actively to multilevel governance, and civil society as the mold for an emerging European public sphere. Both these conceptual views are reflected in hands-on initiatives on the EU level. On the one hand, the European Commission in particular promotes the inclusion of organized societal interests in the informal decision-making procedures. On the other hand, various forms of deliberative practices have been introduced that build on the encompassing notion of constituting a trans-European public sphere. The review offers a comprehensive overview on the multiple definitions of civil society and the distinct role attributions these coexisting conceptions imply. The contribution draws a number of critical conclusions on the actual outcomes that the active promotion of civil society participation has thus achieved, and questions whether civil society participation has indeed led to a more grounded legitimacy of EU decisions or a more settled European public sphere.

Keywords: European public sphere, civil society, democracy, deliberative democracy, governance, legitimacy, participation

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1 Introduction

What meaning has *civil society* in modern democratic governance? How can civil society be conceptualized in a multilevel system such as the European Union (EU)? And what role does and ought it play in everyday EU policy-making? Using these questions, this article provides a review of recent work on civil society and participation in the European Union. The aim of this review is to present the state of the art on the varying definitions and conceptualizations and to take up the query about the normative dimensions EU-society relations bare.¹

The topic *civil society participation* has become ever more prominent due to both academic and ‘real life’ developments since the foundation of the European Union in 1993. Practically, the Treaty of Maastricht introduced for the first time the goal of a political union and formalized different modes of decision-making, namely the community method for the first pillar (former European Community) and intergovernmental decision-making for the newly established second and third pillars (Common Foreign and Security, and Justice and Home Affairs). The new integration impetus triggered by the Treaty of Maastricht gave rise to questions about a democratic deficit. Hand in glove, participation and citizens’ support gained momentum toward an increasing politicization of EU integration. Consequently, over the subsequent years and in particular since the turn of the millennium, the spectrum of policy instruments widened substantively beyond the intergovernmental and community methods to voluntary, informal, inclusive, and participatory forms of coordination.

These developments in political practice were directly mirrored in the academic turn towards governance in the EU, widening concepts of EU policy-making from the notions of alternative coordination modes to traditional hierarchical steering. While the notion of (new) governance offered a useful tool to describe policy-making in a polity such as the EU that lacks a clear centre of political authority, it was also often linked to normative and prescriptive notions of good governance in light of an increasingly perceived democratic deficit. In this context, participation in policy-making emerged as a vital concern. Short of strong public sentiments of a uniform EU identity, it was soon linked to notions of civil society and forms of inclusion beyond formal channels of participation in representative democracies. Put succinctly: the recognition of the specific features of EU multilevel governance and its peculiarities of democratic legitimacy were the main motivational factors for academia to turn to the above raised questions.

This review article aims foremost at providing a structured overview on civil society participation in the EU. Accordingly, I will only refer to a few contributions of the large body of single case studies linked to the topic. In order to illustrate the intellectual and practical evolution of the theme, I also refrain from counting or grouping existing writings. Instead, the article follows the key definitions and empirical phenomena that will be further laid out in the introduction. The following two sections will take up the understanding of civil society as collaborator of public bodies, and the notion of civil society as source for a trans-European public sphere. The juxtaposition of the academic debates and political actions in Sections 2 and 3 will indicate how academics and practitioners have mutually influenced each other in their analytical and normative views on the role of civil society and participation. Accordingly, Section 2 focuses on civil society as organized actors in EU governance. The conceptual debate is strongly linked to the so-called governance turn in EU studies that provided new avenues to describe and analyze state / society relations beyond state-centered top-down steering. This turn in academic writing was accompanied by new approaches promoted in particular by the European Commission. As empirical instances of civil society as societal actors, I will discuss the White Paper on Governance and the Commission’s

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consultation procedure. Section 3 turns to the understanding of civil society as expression of a wider public sphere, again taking first an academic and then an applied angle on civil society in this conceptual framework. The Convention that drafted the ‘Treaty on a Constitution for Europe’ has been widely celebrated as an applied attempt towards truly deliberative procedures. At the same time, it has raised serious doubts about an emergent EU-wide public sphere. This section also sheds light on the open method of coordination to illustrate how certain normative objectives were molded into a policy initiative but also to indicate that actual policy initiatives cut across the categories of civil society participation as either an activation strategy or constituting source of a European public sphere.

The remaining parts of the introduction will elaborate the main themes. First, I will review the origins and definitions of civil society and locate them in the scholarly debate. Section 1.2 focuses on the more specific definition of civil society and participation in the EU, both in academia and practice. A guiding theme underpins both theoretical conceptions and practical invocation of EU civil society: civil society participation as means to promote the democratic legitimacy of the EU institutions, the accountability of the Union’s day-to-day policy-making, and the acceptance of the integration process at large.

1.1 Definitions of civil society

The first eminent question is: what do we mean by ‘civil society’? The concept is used by different authors with different meanings and remains ambiguous. Therefore, for much writing it holds that the term “civil society is vague [...] most civil society theorists offer intuitive, ostensive, or paradigmatic accounts of it rather than something more rigorous” (Jensen 2006: 39). Defined broadly from a political sociological point of view, the concept describes a particular type of society. This type is marked by “the attitudinal capability of its members, that is, citizens, to actively organize themselves to pursue certain (common) goals, within a framework of specific formal institutions. In detailed definitions, depending on particular research goals, civil society may therefore be defined in either attitudinal or institutional terms” (Wnuk-Lipinski and Bukowska 2011). An increasing number of scholars seeks to define the concept of civil society systematically (see, e.g., Smismans 2006; Fung 2003; Klein 2001; Richter 1997). This literature has, among other things, highlighted the practical and theoretical origins of civil society and identified different conceptions according to their perception of state-society relations which, on their part, result in different democratizing functions assigned to civil society. I will first spell out different, partially competing underlying definitions of civil society and, second, outline the roles and functions of civil society that can be theoretically discerned.

Varying definitions can be traced back in the history of ideas to the very first notions of civil society by political thinkers such as John Locke, Charles de Montesquieu, Georg Friedrich Hegel and Alexis de Tocqueville. These early notions of civil society differ in how they conceptualize the relationship between society and the state as either *competing* or *cooperative*. John Locke identified autonomous and distinct spheres of state and civil society, thus locating civil society in *opposition* to the state (see Knodt 2005: 132–133; Richter 1997: 40; both invoking Taylor 1991). This notion is followed up, for instance, by neo-liberals who emphasize the autonomy of the economy from the state, whereas neo-Marxists, critical theorists, and advocates of deliberative democracy and contentious politics focus on the existence of an independent public sphere (Richter 1997: 39). Generally, authors who lean on this dichotomous conception of state-society relations are concerned with popular control of political institutions and markets, which can only be exerted by independent societal actors who remain separate and therefore outside the framework of public policy and distinct from market actors (e.g., business interests). In contrast, Charles de Montesquieu’s conception of state/society relations, further accentuated by Georg Friedrich Hegel, suggests an *integrative* perception. This view has since been elaborated and transferred to mod-

ern, democratic political systems and welfare states. Proponents of ‘associative democracy’ such as Paul Hirst (Hirst 1994; Hirst and Bader 2001) presume that state and civil society entertain an associative relationship that is constituted by formalized democratic procedures. From this point of view, the *involvement* of civil society in political decision-making assumes a legitimizing and controlling function and contributes to democratic political governance.

A common feature of these classical accounts, civil society is most generally described as a well-ordered social arrangement and stresses *civility* in contrast to ‘uncivil’ society. Put differently, civil society demarks the departure from a state of nature (see Jensen 2006; Richter 1997). Accentuating the notions of civil society in opposition or as an integral part of society from this perspective, current political philosophy explores civil society as a condition of society and seeks to identify the necessary societal infrastructure for a functioning participatory democracy. The debate is defined by a communitarian position on the one hand (see Taylor 1985; Barber 1984), and a procedural position as advocated by discursive democracy on the other (see Habermas 1996; Dryzek 1999). The *communitarian position* highlights the significance of active citizenship and political community as a necessary societal condition for democracy – which embraces both civil society as associational life and as good society. Since this notion often presupposes a historically grown sense of social cohesion and solidarity, it cannot easily be transferred to transnational political systems such as the EU. The *procedural position*, on the other hand, derives the definition of civil society from a common legislative framework that enables the individual to associate and communicate in the public sphere. Free association and communication are considered basic ingredients of civil society. Authors dealing with participatory democracy in the EU have invoked this conception building on the assumption that the societal infrastructure of democracy has two components that can be distinguished for analytical reasons: civil society and the ‘lifeworld’. The sense of community and solidarity, which communitarian approaches highlight, are located in the ‘lifeworld’. Civil society in turn is composed of a plurality of associations, organizations, and movements that transmit reactions from the ‘lifeworld’ component of society to the public sphere (Habermas 1996: 367). From a procedural point of view, EU-level democratic institutions and procedures can accordingly *induce* the formation and engagement of a European civil society composed by organizations and associations at different levels of the European multi-level system.

In sum, the general definition of civil society oscillates between a number of basic concepts. One school defines civil society as an actor whose democratic role is understood as a *counterpart* and in opposition to formal governmental power. In the second conception, civil society acts as a collaborator, *constituent element* and integrated player in political processes. A third school defines civil society differently as constituted by a *communitarian conception of civility* in contrast to uncivil social order, or in a *procedural understanding* of organized interests that are woven into the lifeworld of social entities. Linking these concepts to that of participation, “the notion of civic participation is rooted in the normative assumption that the efficiency of any economic, management, and other social system as well as the legitimacy of democratic political systems depends on the involvement and participation of the public and does not simply derive from the output dispensed by the system” (Matonyte 2011). As will emerge from this review, the analyses – and even more so the ‘real life’ appearance – of civil society participation in the EU are biased towards the notion of the EU as collaborative actor with a procedural role in EU policy-making rather than being a force of opposition or meeting the communitarian conception of civility. In parallel and partially intertwined debates, the conception of civil society as eventual carrier of a European public sphere remains a disputed topic.²

² Similarly, Edwards discerns three schools of thought that see civil society as associational life, as the good society, or as the public sphere (Edwards 2004). Scholars from the different streams use the term with decisively varying normative and descriptive concepts in mind so that “civil society is simultaneously a goal to aim for, a means to achieve it, and a framework for engaging with each-other about ends and means,” while “[i]n all three schools of thought, civil society is essentially *collective* action – in associations, across society and through the public

1.2 Civil society in the EU: Academic and practical accounts

Civil society has been widely absent from the research agenda for the first decades of EU integration. Marked as an elite-driven process which citizens accepted in a silently assumed permissive consensus, EU integration proceeded as an apparently de-politicized undertaking. In 1997, the political theorist Emanuel Richter argued that civil society is neither a point of reference in EU documents and treaties nor in European integration research (Richter 1997: 37). However, increasingly blurred boundaries between public authority and private actors across the levels of governance resulted in an ever-stronger perceived distance between ‘the EU’ and ‘its citizens’. As a result, the perspective of a permissive consensus changed radically both in academia and in administrative and political perceptions of the late 1990s (but Moravcsik 2002). With evidence for a waning permissive consensus (Hooghe 2007; Hooghe and Marks 2009), politicians, bureaucrats, and academics shifted their attention beyond an output-oriented understanding of EU policies ‘for the people’ to an input-oriented dimension of democratic legitimacy, calling for authentic participation and governance ‘by the people’ (Scharpf 1999: 1–4). While parliamentarization had long been considered the most viable path to enhance the input legitimacy of the EU (see Lord 2007; Rittberger 2005), practitioners and integration researchers shifted their attention increasingly towards civil society participation in EU governance since the turn of the millennium.

Scholarly work on civil society in the EU was accordingly decisive and motivated by the attempt to spell out alternative paths to democratize the EU. The emergence of the question of how civil society links to democratic governance in EU studies was mirrored by practitioners’ rising interest in an inclusion of civil society in order to render EU decision-making processes more legitimate and accountable. Most notably, the EU Heads of State and Government set the goal that the EU had to be “brought closer to its citizens” in their mandate for the drafting of a treaty towards an EU constitution (European Council 2001). The turn towards civil society in academia and practice was most fundamentally motivated by changed perceptions about the EU institutions’ relations with citizens.

In short, the turn towards civil society was linked to three interrelated dynamics. First, questions about the EU and its democratic legitimacy rendered the EU decision-making context substantially more politicized, which put the spotlight on civil society as a new actor in EU policy processes. Second, academics – in particular moving to mid-range theories about the functioning of the EU – shifted their attention from overarching integration dynamics to issues of governance, which raised the interest in the role of civil society to improve both the democratic and effectiveness enhancing quality of decision-making through stakeholder inclusion. Third, practitioners in Brussels ‘discovered’ civil society as a possible solution to legitimacy, accountability, and efficiency shortcomings in a constantly enlarging Union.

1.2.1 Academic concepts of civil society in the EU

The literature focusing on civil society in the EU multilevel setting builds on the varying definitions of civil society illustrated above: organized societal interests (as participant in policy-making or in opposition to the state), or more widely as a sphere of social interaction (as constitutive public sphere). Based on an online survey addressed at researchers working on EU civil society, Kohler-Koch and Quittkat show that distinct definitions compete in the academic debate (Kohler-Koch and Quittkat 2009). Scholars referring to the first conception conceive civil society as *organized groups* that represent specific interests of a particular constituency. Theoretically, this definition of civil society embodied by Civil Society Organization (CSO) is linked to approaches of governance and

sphere – and as such it provides an essential counterweight to individualism; as *creative* action, civil society provides a much-needed antidote to the cynicism that infects so much of contemporary politics; and as *value-based action*, civil society provides a balance to the otherwise-overbearing influence of state authority and the temptations and incentives of the market, even if those values are contested, as they often are” (Edwards 2005: emphasis in original).

representative democracy. The second conception, in contrast, builds on normative assumptions about the social or *public sphere* and does *not* conceptualize civil society as organized associations. This latter definition finds theoretical expression in studies on deliberation and identity research in the EU. Considering these two basic concepts of EU civil society, which role is civil society theoretically expected to have in legitimizing the EU?

Analytically, three distinct democracy-enhancing roles for civil society can be distinguished. In order to account for the particularities of democratic governance in the EU, (Kohler-Koch 2009: 53) refers to different images of the EU at large to discern the different legitimizing roles of civil society. The first image of the EU as regulatory polity attributes civil society a *policy-oriented* role. The second image of the EU as participatory system of governance operating on public-private partnership suggests a *service-oriented* role for civil society. The third account is one of an emergent polity with a social constituency in the making where civil society develops a polity-oriented and genuine *trans-national civil society* in its own right. While the first of these accounts is founded on input-legitimacy that is granted by an elected government and therefore implies inherent problems of democratic control and accountability of elite- or interest group-driven policy-making, the second notion builds strongly on the output-based legitimacy by force of the ‘better’ policy results. The third notion goes beyond this. It assumes that civil society participation complements formalized participation, granted by election, and therefore substantially enhances the input legitimacy of political processes.³

Accompanied by these underlying images of the EU, the academic shift to view the EU as a specific system of governance to overcome state-centered conceptions has furthermore served as a template to reframe the role of civil society. Scholars writing in a public-policy tradition are primarily concerned with modes of steering and hence the institutionalized relationships between the EU and civil society, as well as the conditions for successful non-hierarchical policy coordination (see, e.g., Pierre and Peters 2000; Benz 2007b; Héritier 2003; Börzel 2010b). At the same time, the increased interest in normative questions about legitimate rule in the EU has vastly contributed to the governance debate. In this tradition, approaches to deliberation have referred to governance as an expression of deliberative processes, which Neyer subdivides into normative, rationalist and functionalist schools of thought (Joerges and Neyer 2006: 5–14). Accordingly, the image of the EU as polity based on governance forms beyond the state was developed out of different guiding assumptions and against the background of varying research interests and disciplines. Although these conceptions – especially the public policy and normative schools – overlap and have mutually fertilized each other, the following sections are structured according to the different empirically identified strands in EU civil society scholarship (see above Kohler-Koch and Quittkat 2009). This grid allows us to go beyond a mere illustration of the research and, therefore, to map the basic arguments on civil society participation as distinct arguments in current research.

1.2.2 Applied approaches to civil society in the EU

Since the early 2000s, the inclusion of civil society as a way to boost democratic legitimacy has been a prominent item on the EU’s political agenda. The most evident expressions are the *White Paper on Governance* (European Commission 2001) and the *European Convention* (2001) as a

³ Although these images are not equal, they overlap with three accounts by Greenwood (2007: 338) who differentiates between “deeply reserved or hostile; neutral; and optimistic” approaches to the contribution of civil society to EU democratic legitimacy. Taking these classifications as a starting point to structure the various understandings of the mutual relationship between civil society and democratic legitimacy of the EU, we can discern three possible impacts: (1) civil society as a threat to input-legitimacy, strictly based on formally institutionalized representative democracy; (2) civil society participation as an asset to increase the quality of policies and services delivered by the EU (output legitimacy), but also as pragmatic answer to perceived shortcomings in input-legitimacy that cannot be fully overcome due to the persistent multi-level (multi-tier) system of governance; and (3) civil society as the carrier of an emerging EU order with a genuine EU public sphere thus creating – or promising to do so in future – input-legitimacy of a polity in its own right.

forum to draft a comprehensive reform treaty that culminated in the Treaty on a Constitution for Europe (2004). The Treaty of Lisbon that eventually emerged from this process introduced the most concrete new instrument to involve citizens directly. The *Citizens' Initiative*, operational since April 2012, creates, for the first time, an instrument for citizens to call on the Commission to initiate legislation.

These key initiatives all aimed at fostering participation of citizens and civil society in the EU but reflected different approaches to meet these ends. As the following sections will elucidate, the different definitions of *participation* vary as much as those of civil society. The different policy instruments that aim for an increased participation accordingly assume participation to be the active involvement of CSOs in shaping concrete policy outputs, a discursive involvement in the polity formation, or a form of direct democratic participation. While the logic of the White Paper builds on (new) governance approaches and wider expectations about legitimacy gains from stakeholder involvement in the policy processes, the logic of the convention method is strongly associated with theoretical expectations about deliberative democracy and identity formation in the EU. The third tool, the Citizens' Initiative, builds on the logic of direct democratic involvement of citizens in the policy formulation phase of EU policy-making. In contrast to the first two logics, it stands in the tradition of procedures to guarantee democratic input legitimacy even though the Commission maintains its ultimate right to initiate legislation.

All initiatives are moreover closely associated with key actors that dominate the promotion of civil society involvement and de facto participation practices. It is the specific demands and capacities of these actors that have a major impact on how participation takes shape. Among the EU institutions, the Commission sticks out as activator. Even before the turn to new governance modes, the Commission held close links to various interest groups and external experts (Quittkat and Finke 2008). Since the publication of the White Paper, the Commission has intentionally expanded the definition of participation and actively supported the formation of CSOs to participate as providers of information and input to its policy-making. On the side of civil society, due to the need for high professionalization to effectively take part in EU policy processes, there is a clear bias towards CSOs rather than less organized grass root movements (Kohler-Koch and Buth 2011; Saurugger 2006). In a nutshell, the dominant mode of participation in the EU privileges an institutionalized professional type of civil society and supports the creation of such CSOs, which creates a certain dilemma because, in turn, professionalization limits the bottom-up character of grass roots activists, including movements in opposition to public authorities, which are however essential features of civil society if it is to fulfill a legitimizing and communicative role.

A significant case in point was the attempt by the EU, and in particular the Commission, to actively promote civil society in Central and Eastern Europe. The eventual patterns of society/state/EU relations that developed in the new member states (e.g., Pleines 2005) can be interpreted as a relevant test case for the conditions and limits of enhancing national and EU democracy by activating civil society from above. It shows that along the lines of the Commission's approach, CSOs from the new member states were quite smoothly integrated in routine Brussels' practices (Pleines 2011). However, hopes for a more far-reaching democratizing effect – let alone the strengthening of a wider public sphere – in Central and Eastern European societies (Sandi 1992) were not met. Even more so, after enlargement, an “ambivalent ‘legacy of accession’” came to the fore that resulted from the interrelated effects of, on the one hand, the EU's pre-accession regime and, on the other hand, the historical legacies woven into the transformation from state socialism (Kutter and Trappmann 2010: 41; Sissenich 2010). In essence, “the domestic impact of accession has been at best differential since civil society actors differ in their willingness and capacity to exploit the opportunities offered by the EU” (Börzel 2010a: 3). In other words, those organized capacities that match the demands of the Brussels procedures could be strengthened while the previously dominant role of civil society as opposition that challenged the socialist state was marginalized. These findings match the participation patterns and practices under the

specific conditions of EU governance more broadly (on civil society in Central and Eastern Europe see Gawin and Gliński 2006; for an interdisciplinary approach linking anthropology and political science to civil society, covering in detail also Central and Eastern Europe see Aronoff and Kubik 2012).

In line with this, empirical accounts that scrutinize the actual civil society involvement in the application of so-called new modes of governance provide a mixed record. They shed a rather critical light on actual outcomes and the overall achievements in meeting the high political and theoretical expectations have been rather disappointing. In practice, as the general evaluation of a leading scholar in the field maintains, “the promise of ‘involving civil society’ has not bridged the gap between Europe and the people, but rather sponsored a Brussels-based CSO elite working in the interest of deeper integration” (Kohler-Koch 2010b: 335). But also the more encompassing expectation of an emerging public sphere has been disappointed in that “enhanced societal participation as such does not necessarily support the emergence of a larger engaged public and deliberation in the general public sphere” (Dabrowska 2007: 300).

In addition to these empirical accounts of whether participation *has* facilitated democracy, these findings bare insights on the scope conditions under which civil society *could* theoretically boost democracy in the EU and multilevel polities more generally. The EU experience highlights the clash between the logic of representative democratic principles that underpin the EU and more encompassing inclusive ideas of civil society participation. Practically, this shows in that civil society organizations which participate in EU policy-making are in an inherently contradictory situation. On the one hand, they need to be highly professionalized Brussels-activists. On the other hand, they need to remain deeply rooted in their very diverse national, regional or local stakeholder contexts. Contrasting the pessimistic assessments of the disappointing degree to which civil society participation has met the expected goals all in all, there is also empirical evidence of how CSOs can indeed successfully manage contradicting claims by developing workable strategies in the EU multilevel system (Heinelt and Meinke-Brandmaier 2006). Despite the existing strategies to bridge conflicting claims, the tension between internal organizational demands and demands for successful participation on the EU level is more than a practical challenge for the respective organizations. It illustrates conceptual tensions that are systematically implied by an institutionalized inclusion of (organized) civil society in EU policy-making, which is, on a more abstract level, a trademark of collective actors in general (Heinelt and Meinke-Brandmaier 2006: 209).

2 Civil society as organized actors in multi-level governance

The first and dominant view of and role attributed to civil society in the EU is that of an actor who contributes, or ought to contribute, to EU policy-making in order to enhance the quality and legitimacy of the substantial inputs through participation and thereby improves policy outputs. *Governance* provides the essential underpinning to the idea of civil society as organized actors. It provides the conceptual angle in which private actors emerge as valid participants in public policy, and it spells out the policy tools of how civil society actors could or should actively participate in policy processes.

Notably, the meaning of stakeholder participation or *participatory governance* differs in substance from that of “participatory democracy” that was first induced in the Treaty of Lisbon (enforced in 2009). The participatory governance approach does not invoke participatory democracy by demanding authentic governance ‘by the people’. Rather, it draws on an output-oriented tradition of investigating citizens’ involvement in the EU in terms of its contribution to effective political problem solving (see Heinelt and Smith 2003; Heinelt *et al.* 2002; Grote and Gbikpi 2002; Van den Hove 2000). Participatory governance reconciles system effectiveness and citizens’

participation by invoking Charles Lindblom's 'intelligence of democracy' thesis (Lindblom 1965). Advocates of this approach argue that participation supports system effectiveness because "it can help to overcome problems of implementation by considering motives and by fostering the willingness of policy addressees to comply as well as through the mobilization of the knowledge of those affected" (Gbikpi and Grote 2002: 23). From this functional point of view, civil society participation is a necessary condition of system effectiveness. The democratic legitimacy of a governance system is gauged in terms of the inclusion of stakeholders beyond the formal act of voting that representative democracies rest upon. Such broader participation is eventually also expected to improve the quality of the policy outputs produced since societal demands are channeled more directly into the decision-making process (Heinelt 1998).

Box 1: The European Citizens' Initiative (ECI)

As Smismans points out, EU institutions introduced the concepts of citizenship and civil society separately and at different moments in time. It was only in the constitutional convention that the two concepts were linked in the debate (Smismans 2009). A formal expression of this link of official citizenship rights granted by the EU and the more elusive notion of a European civil society is the Citizens' Initiative introduced in the Treaty of Lisbon (2009). Other than the consultation regime that offers purely informal participation options for civil society, the Citizens' Initiative provides that citizens can invite the Commission to issue legislative proposals in areas of EU competence. Once having met all requirements for submitting an initiative, the organizers of an initiative will meet the Commission representatives in person and have the opportunity to present their initiative at a public hearing in the EP. The Commission has to decide whether to act on it within three months and has to publish a reasoned response.

While the initiative thus gives a limited and indirect right to initiate legislation to citizens, the formal right for policy initiation remains in the hands of the Commission. The Citizens' Initiative has been in force since April 1, 2012. The precise rules for submitting an initiative successfully are laid down in the *Regulation on the Citizens' Initiative* (211) passed by the European Parliament and the Council on February 16, 2011 (OJ L 65/1; 11/03/2011). In order to be considered by the Commission, organizers of an initiative must form a 'citizens' committee' of at least seven members from seven different member states and need to deliver supporting signatures of at least one million EU citizens coming from at least seven member states within a year after launching an initiative. In addition, specific quotas for the number of signatures requested from each of the 27 member states apply according to the relative size of the populations. Initiatives need to cover an area of EU competence. Initiatives may not be run but be supported or promoted by organizations.

In the first three months since its enforcement, eight initiatives have been launched. They cover widely different topics ranging from mobility, water regulation, and waste management (see <http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>, last accessed August 1, 2012).

In contrast to this, *participatory democracy* is concerned with formal rights of citizens to enhance the formal input legitimacy of legislation. By introducing the terminology of participatory democracy in the Lisbon Treaty, the EU goes beyond mere informal stakeholder inclusion in policy formulation and implementation. The Citizens' Initiative offers citizens the opportunity to ask the Commission to initiate legislation. Since the Commission is not bound by such a mandate of a

Citizens' Initiative, the consultative element remains predominant even in this direct democratic instrument. Analytically, we can thus place this initiative between stakeholder participation and the deliberative democratic tools discussed in the following section: it goes beyond mere stakeholder involvement because it grants formal rights in the policy-formulation phase to civil society yet it stays behind hard legislative powers because it is still up to the Commission whether, and in which form, it reacts to an initiative launched by EU citizens (see Box 1).

From the beginning of the 1990s, EU research moved increasingly away from the 'grand integration theories' that focused on general questions about the drivers of EU integration. In connection to the Maastricht Treaty and the Delors packages that consolidated the EU's institutional architecture, research focused increasingly on the actual functioning of the EU as established polity. The "governance turn in EU studies" (Kohler-Koch and Rittberger 2006) implied furthermore a move away from the traditional understanding of hierarchically ordered states in which public actors steer in a top-down manner (Mayntz 2003: 28).⁴ Governance instead refers to various non-hierarchical coordination modes between public and private actors (Benz 2009).⁵ Accordingly, governance shifts the focus from public actors and hierarchical decision-making to the interaction of public and private actors and non-hierarchical political structures (see Jachtenfuchs and Kohler-Koch 2003; Kooiman 1993). From a public policy perspective, governance can be defined as "a process and a state whereby public and private actors engage in the intentional regulation of societal relationships and conflicts" (Kohler-Koch and Rittberger 2006: 28). It reevaluates non-state actors in political decision-making and has therefore become an important point of reference for research on EU-society relations.

⁴ Reconstructing the conceptual evolution from steering to governance theory, Mayntz highlights the two meanings of governance. According to the first, narrower definition, governance explicitly refers to non-hierarchical steering modes. According to the second use of the term, governance embraces more generally "different modes of coordinating individual actions, or basic forms of social order" (Mayntz 2003: 28). Sketching the evolution of governance theory, she distils five paradigmatic shifts or modifications: (1) the *basic paradigm* focused on policy development (by government) combined with policy implementation (by public agencies), (2) the *first extension* included a bottom-up perspective, i.e., specific sectoral structures and target groups, (3) the *second extension* included further policy development and implementation in public/private networks and self-regulating societal systems, (4) the *third extension* widened the perspective to European policy effects on domestic structures and policy making, (5) the *fourth extension* included EU-level policy making and finally, (6) the *last extension* also included also political input processes at the EU and the national level (Mayntz 2003: 30). These different stages of theory development are almost directly reflected in the practical approach the Commission has developed vis-à-vis civil society over time (see Section 2.2).

⁵ While there is an evident change in the basic forms of order that have been extended to more governance than government-like interactions, it is much harder to discern which underlying mechanisms are at work. Benz distinguishes between various modes of hierarchical interaction in EU policy making (Benz 2009). The basic mechanisms he discerns besides *hierarchy* (coordination by unilateral adjustment) are based on *network* (coordination by unilateral/mutual adjustment, trust, consent), *markets* or *competition* (coordination by mutual adjustment) and *negotiation* (coordination by agreement) (Benz 2007c: 7–8). To provide but some examples, networks would include epistemic communities in which civil society actors provide expertise or advice to the Commission; competition is inherent in all "naming and shaming" in which NGOs criticize public policies in order to adjust behavior; and negotiations are for instance promoted in the EU's social dialogue. Although these coordination mechanisms are not restricted to civil society / EU relations, the non-hierarchical governance forms are analytically significant to describe and theorize how civil society and public actors can interact beyond the traditional forms of representative democracy. The governance turn thus provided essential analytical instruments to map and/or explain how participatory governance can unfold and why civil society does, or could, improve the democratic quality of EU governance (for a recent overview on EU governance see Tömmel and Verdun 2009).

Box 2: Interest Mediation and Lobbying as Specialized Research on Civil Society

Besides the shift to governance as an alternative to hierarchical steering, the role of citizens was accentuated by the conception of ‘participatory governance’ that, along with the growing body of literature on interest groups, inspired the debate on civil society in the EU. Related to this literature is research on *interest intermediation* and *lobbying* (Coen and Richardson 2009; Bernhagen and Mitchell 2009) in the EU that investigates strategies of influence and impact by different types of societal actors and their mediation by the EU multi-level system (see in particular the respective Living Review: Eising 2008). While studies on civil society and participation focus not only on organized interests but rather questions of societal preference mediation and communication more generally, research on interest groups in the EU has since mid-1980s and gradually shifted beyond the narrower focus on “special interests” in market related policies, such as business or agriculture. In addition, the range of collective actors analyzed has expanded to lobbying activities of non-governmental organizations (NGOs) in environment, human rights, women’s rights or consumerism, but also active lobbying by states themselves (Panke 2012). The widened research agenda includes questions about the legitimate interest group participation and their actual democratic value-added (Saurugger 2008a), and how interest groups can seek access through national and supranational channels in the multilevel polity (Beyers 2002; Beyers 2004 shows some shift from national to the EU-level; partially competing results: Rasmussen 2012). The expansion of interest group research from specific to more “diffuse interests” (Ruzza 2002) and NGOs in newly integrated policy fields marks the interface of interest intermediation research and research on civil society in EU governance.

In sum, the governance turn in EU studies has refocused academic attention from questions of what drives the integration process to questions of how the EU is governed and in parallel to questions of EU / society relations. This gave rise to the concept of governance as conceptual angle that captures various public/private relationships beyond hierarchical state orders. In this academic reorientation in EU studies, questions of legitimate governance and participation have moved high up on the research agenda. To shed light on how far the principle of organized civil society inclusion has indeed been realized, we will now turn to the questions of EU-level participatory policy instruments.

2.1 The inclusion of civil society: Participants in policy-making

Increased participation of civil society was not primarily the result of a bottom-up process in which civil society pressured for access into EU decision-making. Instead, the European Commission’s progressive activation strategy was decisive in shaping the access points for civil society actors – and arguably also some CSOs whose participation depends in part on direct funding by the Commission. The *Governance White Paper* was the most important initiative laying out the Commission’s general objectives. Although elements of regional policy and the open method of coordination include clauses on stakeholder involvement in the national implementation of EU law (for critical accounts of actual participation in the OMC: de la Porte 2002; Scott and Trubek 2002; Trubek and Trubek 2005), the inclusion of civil society focuses predominantly on the supranational policy formulation. Apart from the Commission, the European Parliament (EP) in particular has regular and intensive contacts to various interest groups. However, consultations by the Commission and the EP have remained quite isolated although it is usually the same CSOs in Brussels with whom

both institutions interact. Indicative of this is that only in June 2011, the EP and the Commission have decided to merge their “transparency registers” to a single database that lists all individuals or organizations that take part in EU policy-making.⁶

The White Paper did not formulate an explicit policy program but offered a more general, normatively influential template. The most tangible impact of the principles suggested in the White Paper has been the incremental elaboration of the Commission’s consultation regime, i.e., the voluntary inclusions of organized civil society. Participation is featured as a key concept and one of five principles of ‘good governance’ in the White Paper. Magnette summarizes the new emphasis: “Participation is supposed to enhance both the efficiency and the legitimacy of European governance: it is said to respond to ‘the expectations of the Union’s citizens’ (p. 35), it should ‘connect Europe with its citizens’ (p. 3), help follow ‘a less top-down approach’ (p. 4) and make the policy-making ‘more inclusive and accountable’ (p. 8). All this, in turn, should enhance ‘the quality, relevance and effectiveness of EU policies’, ‘create more confidence in the end-result and in the institutions which deliver policies’ (p. 10) and generate ‘a sense of belonging to Europe’ (p. 11). In other words, efficiency and legitimacy do not simply derive from the output dispensed by the system, they also depend ‘on involvement and participation’ (p. 11)” (Magnette 2001). The White Paper was, however, less ambitious regarding concrete reforms. Most relevantly, it did not challenge the Commission’s legislative powers or suggest any more far-reaching changes to the institutionalized decision-making processes (for early evaluations see Joerges *et al.* 2001).

Not only did the White Paper attract a lot of scholarly attention, scholars of EU governance were invited to participate and provided input to the debate on European governance initiated by the Commission (DeS 2001), thus fertilizing the White Paper on European Governance themselves and in parallel contributing to a wider deliberative practice which will be elaborated in Section 3. In terms of policy output, the White Paper was an important component of the new EU consultation policy which had evolved throughout the 1990s (Kohler-Koch and Finke 2007; Smismans 2003). Facing an increasingly critical debate on the EU’s democratic legitimacy after the 1992 Maastricht Treaty, the European Commission started to intensify and extend existing contacts with societal groups. It changed its policy from including interests directly affected by common market policies towards also attracting societal groups in fields such as social policy or migration (Kohler-Koch and Finke 2007; Smismans 2003). Smismans highlights the leading role of the Commission Directorate General responsible for social policy (then DG V) in this process. In dealing with issues such as gender, youth, social exclusion, disability and racism, DG V sought to establish contacts with interest groups that played a more important role in these issues than the social partners. At the same time, the civil dialogue was regarded as a means to “foster a sense of solidarity and of citizenship, and provide the essential underpinnings of our democracy” (European Commission 1997; cited by Smismans 2003: 476).

Although the Commission had a long history of consulting external experts to compensate for its own limited resources, its consultation regime and the role of civil society within it changed against the background of the governance turn. In particular, the normative move to participatory democracy implied a redefinition of the Commission’s view on how to include whom in which processes. In their historical account of the Commission’s consultation regime, Quittkat and Finke show that there has been a gradual extension of the approach that was also reflected in official terminological change from notions of ‘consultation’ in the 1960s and 70s, to ‘partnership’ in the 1980s and 90s, and finally to ‘participation’ in the later 1990s and 2000s (Quittkat and Finke 2008: 184). The authors distinguish between three generations of the consultation regime: (1) the phase of European economic integration marked by intense, informal, ad hoc dialogue between the Commission and primarily economic experts and (2) from the mid 1980s the move to “partnership” in EU policies that led to a vitalization of the Social Dialogue (between social partners) that was

⁶ On the merger of the EP and Commission registers see: http://europa.eu/rapid/press-release_IP-11-773_en.htm, accessed July 20, 2012.

incrementally extended to dialogues with NGOs in certain policy areas such as the environment or human rights. From the social and policy-specific dialogues, the wider approaches to a ‘civil dialogue’ and ‘social platform’ developed. From 2001 (3), they embraced those initiatives the present article considers. In parallel, the approaches moved beyond the reference to civil society as partners for dialogue to the idea of ‘participatory democracy’, which implies the aim of increasing the democratic quality of EU policy-making.

In line with this incremental elaboration of an inclusive approach, the most important policy tool introduced in the follow-up of the White Paper was the establishment of an online consultation system. To date, the Commission advertises all ongoing consultation procedures across basically all policies on the website “Your Voice in Europe”. In its own words, “Your Voice in Europe is the European Commission’s ‘single access point’ to a wide variety of consultations, discussions and other tools which enable you to play an active role in the European policy-making process. This web-site has three sections: Consultations: give us your opinion on EU policies and influence their direction; Discussions: discuss the main issues of the day and chat on-line to EU’s leaders; Other tools: discover other ways in which you can make your voice heard in Europe”.⁷ The public provision of basically all policy proposals hence offers formally the opportunity for all interested groups – recorded in the respective EU registers – to express their views during the Commission’s policy formulation phase.

However, taking a closer look at who participates in these procedures, it shows that despite the outreach to a European civil society at large, organized, professionalized groups remain the standard representation of civil society in EU policy-making. This is mainly due to the demands for expertise and resources – ranging from language skills, access to information and time availability – needed to contribute in the procedures offered by the Commission’s traditional consultation regime. A potentially major change is the introduction of new media, which the Commission applies in its online consultation procedure (e.g., Hüller 2010). Reducing the resources insensitivity and in particular the geographical focus on Brussels, online consultations have been massively expanded and opened participation options to a much wider civil society basis. Yet the full impact of this tool is not yet fully observable. Until now, the pre-existing territorial and resource-dependent bias that privilege certain CSOs over other, less-organized, professionalized and more locally anchored civil society seem to persist also in the online consultation system.

To resume, the Governance White Paper was a landmark document in the incremental evolution of the activation of civil society in EU policy-making. Although the Commission had for a long time relied on external organized expertise of interest groups to supplement its limited own resources, the governance turn introduced a new normative element: participation as key to more democratic governance. The three generations of the consultation regime Quittkat and Finke identify shed light on changed normative claims as well as technical possibilities for civil society participation. Most remarkably, the introduction of the Commission’s online consultation instrument did – at least prospectively – induce a substantive change in public access to the EU policy-making processes. The communalities of the different generations are, however, arguably more significant than the changes for the understanding of participatory governance in the EU. In particular, the Commission sustains the exclusive right to initiate legislation, even though it has been disputed to which degree the Commission acts really fully independently from the other EU institutions (Rasmussen 2007). Whether, in which way, and to which degree the Commission incorporates inputs from the various consultation procedures is fully up to the Commission’s undisclosed appraisal; civil society has no formal decision-making role. It is therefore difficult to assess systematically the impact of the consultation regime, but agreement exists that CSOs’ impact varies between policy fields and the resources to provide expertise, information, or lobby special interests. The image of civil society in EU policy-making is that of an expert, partner, and professional organization. CSOs have

⁷ See the Commission web-site: <http://ec.europa.eu/yourvoice/>, accessed July 20, 2012.

supportive functions, mainly for the Commission but cannot effectively control accountability of the Commission. Moreover, almost all CSOs receive funding from the Commission to support their work. Although most organizations do not estimate this to limit their independence, hardly any CSOs really act in the civil society sense of ‘opposing’ public policy-making. All in all, CSOs widely fail to act as “transition belt” between the EU and citizens (Altides 2011).

2.2 Academic assessments of the inclusion of civil society in EU governance

Overall, the assessments of the inclusion of civil society range from critical empirical judgments to highly skeptical normative evaluations. Neither seem to really play out the self-set goals of the Commission’s activation strategy, nor do the analyses suggest that civil society *could* easily play the democratizing role it was initially expected to occupy.

Let us first turn to the accounts that examine the hands-on outcomes of more than a decade of participatory governance in EU policy-making practice since the publication of the White Paper. The edited volume by Christiansen and Piattoni (Christiansen and Piattoni 2003) sheds light on the design of Commission/civil society relations and aims at providing a “broader picture of the Commission’s relations with interest groups, the role of networks in the EU policy process and the implications these features have had for European governance” (Christiansen *et al.* 2003: 2). Contributions in this volume focus on the European Commission and its informal relations with citizens’ groups in different policy fields. The volume hence links up to the new governance expectation that the introduction of non-hierarchical modes of governance and the inclusion of stakeholders will enhance effectiveness, efficiency, and legitimacy of public policy. The editors argue that the involvement of interest groups and NGOs is particularly relevant in the EU’s decentralized implementation system that rests essentially on voluntary acceptance and compliance. Short of hard enforcement tools, the early involvement of CSOs therefore assists the Commission in estimating the likely reception of an intended policy initiative (Christiansen *et al.* 2003: 2). Reviewing the participation role of civil society in informal actor constellations, the volume emphasizes legitimacy problems inherent to informal governance (see Warleigh 2003). Other interest group research has broadened the view beyond private interests in market-related policies, such as competition and agriculture, by taking NGOs with diffuse interests in the field of environment, consumerism or social affairs into consideration (see Balme *et al.* 2002). Overall, empirical studies have been rather sobering with respect to the legitimacy and efficiency enhancing impact of new governance modes. In particular, it has been shown repeatedly that in contrast to the expectations expressed in the governance turn, especially under the open method of coordination dealt with below, a broad activation of civil society has largely failed (de la Porte 2002; Benz 2007a; Hatzopoulos 2007; Trubek and Trubek 2005; Scott and Trubek 2002).

More recent studies have followed the path of analyzing the design and actual interaction between the Commission and sections of civil society in specific policy fields. Overall, they produce results that can hardly be generalized since they are partially contradicting, thereby indicating the strong case specificity of civil society involvement across policy fields. For example, Carbone finds that in development policy the participation of especially Southern civil society has decreased vis-à-vis the Commission while it stayed rather intense with European Parliament (Carbone 2008). Also, studies on the impact in gender policies stress continuing constitutional constraints (Lister and Carbone 2006; Rolandsen Agustín 2008). In contrast, e-participation in the regulation of genetically modified food is, for instance, attested to indeed increase public scrutiny (Ferretti and Lener 2008).

A number of authors focus on the narrower question of how the change in policy tools used by the Commission has furthered the output of participatory policy-making. Online consultations have attained particular attention, not least because they combine new governance modes with new

technology that promised to remedy some of the biases for participation such as the availability of resources and professionalization identified in EU participatory governance (e.g., Hüller 2010: on social regulation). In a large-N study, Quittkat examines to which degree the online consultations enhance openness, transparency, and inclusiveness. The mixed record that emerges shows that involvement of interested parties and formal opportunities to give an input have increased but that online consultations fail when it comes to inclusiveness and transparency (Quittkat 2011). In other words, electronic access has not really changed the patterns of who participates and it has, to an even lesser degree, led to a wider civil society basis for participatory governance across Europe.

Further explanations for the unequal representation of different types of interests have been found at the level of interest groups' material resources (Dür and De Bievre 2007; Bouwen 2004; Persson 2007), at the level of membership, and in their cognitive capacities Fairbrass and Warleigh 2002. Focusing on interest representation in EU trade policy, Dür and De Bièvre find that NGOs with diffuse interests such as developmental, environmental and human rights groups do, in contrast to business interests, "not dispose of resources with which they can threaten or enhance political actors' chances of re-election or re-appointment". Hence, they "largely failed to shift policy outcomes in their favour" (Dür and De Bievre 2007: 79).

In a similar vein, Magonette provides a critical assessment that highlights the limits of Commission-driven civil society participation. He acknowledges that participation as a notion inherent to European governance can promote accountability through openness, transparency, consultation, communication and other tools. Yet he stresses that "this conception of governance does not *in itself* encourage citizens to become active, because the policy-making process remains complex – and is even made more complex by governance practices" (Magonette 2003: 14, in electronic version). This judgment is not merely empirical but hints to specificities of the type of participatory governance the EU has set up that may, by definition, limit the actual potential of these tools to enhance the democratic quality of EU decision-making. However, drawing a more optimistic picture based on survey research, Persson and Lindgren find evidence for positive effects on output legitimacy through raising the input legitimacy of the EU (Lindgren and Persson 2010: 449). Although the governance turn in combination with new technological capacities has triggered the introduction of new participatory tools, this has by-and-large not led to a major shift in actor constellations – but a certain issue-specific impact on the legitimacy of decisions cannot generally be denied.

This leads us to the second, more theoretical question implied by the empirical findings: *can* the EU participatory governance actually fulfill the promises both academics and practitioners initially attached to it, that is, to increase legitimacy and accountability? What are the scope conditions for participation to do so (for a comprehensive theoretical, international perspective see Steffek and Hahn 2010)? A pre-condition for legitimacy-enhancing effects is the very structure and organization of civil society organizations participating. Theoretically, legitimacy of NGOs can be created internally (by the members of the organization) or externally (by the wider public) (Halpin and McLaverty 2010). Warleigh comes to a pessimistic account concerning the socializing functions of civil society organizations. He argues that although NGOs can indeed develop a tangible impact on EU policy-making, supporters have little opportunities to really influence policies, campaigns or strategies due to the highly elitist internal governance structure of these organizations (see also Warleigh 2001; Rek 2007; Chrysochoou 2002). This finding reflects results on CSOs in supranational policy-making more generally in that "[t]ransnationally active NGOs are typically run by economically relatively well-off, Western-educated, white, heterosexual men, whereas participation by more marginalized groups is limited" (Tallberg and Uhlin 2012).

Structural challenges do not purely concern the internal organization of CSOs. They are inherent to the EU multilevel policy-making. On the one hand, the need for professionalization to be able to exert influence makes communication between the EU-level CSO actors and the grass roots level extremely difficult (Kohler-Koch and Buth 2011). On the other hand, the self-understanding

of non-governmental organizations does not really match the delegation model suggested by the EU's participatory governance model. "What links Brussels' non-profit associations from the perspective of its members down to the single citizen is the shared concern to be fighting for a 'good purpose'. This is an understanding of representation that is not compatible with a model of delegation. The European NGOs are not delegated to implement the interests of their organizational members but see themselves as executors of a mission and communicate with their member organizations and basis to fulfill this mission together" (Kohler-Koch 2011: 266; own translation). Analyzing the White Paper, Armstrong points to the same underlying contradiction between the activation of the top-down approach by the Commission and the democratizing function the EU wants civil society to play. According to the author, "the White Paper undermines the normative claims made for a civil society premised upon the voluntary nature of its associative forms and its distinctive open, communicative and deliberative rationality" (Armstrong 2002: 102). In brief, the conditions civil society has to meet to participate limit the very virtues for which the Commission pursues its normative and material activation strategy.

Putting these general estimations into perspective, it has been shown that the degree to which CSOs are affected by structural inconsistencies depends on the kind of demands raised by CSOs, and the specific policy field at stake. Moreover, Heinelt and Meinke-Brandmaier identify two strategies to mitigate contradictory demands. While in the area of consumer protection CSOs focused on an uncontested objective to overcome collective action problems, environmental organizations opted for limiting common positions to some basic objectives leaving it to the different component organizations to define concrete positions on the EU, national or sub-national level. Importantly, the second strategy was complemented by a network that ensured not only a dense flow of information but offered also the ability to act collectively at different levels if actors considered this necessary and appropriate (Heinelt and Meinke-Brandmaier 2006: 209). These findings indicate that albeit the basic tensions between Brussels and the grass-roots level cannot fully be resolved, they vary across policy areas and CSOs can develop strategies to overcome collective action problems.

In sum, the academic assessment of the White Paper's new focus on civil society is at best mixed. Scholars who take an analytical view on the White Paper argue that the Commission is trapped between opposing claims on legitimacy, namely input- and output-oriented legitimacy, which are difficult to reconcile: "One set of claims coming from the Monnet tradition of thought, where the stress is on unity, efficiency, responsibility and impartiality; and a second set of claims coming from the post-Maastricht critique of the Union, which highlight diversity, clarity and democracy" (Tsakatika 2005; Curtin 2003; Kohler-Koch 2001). Beate Kohler-Koch contends that while the White Paper proposes to strengthen civil society, structural deficiencies of societal representation in EU governance such as problems of collective action, missing yardsticks for representation, and selectivity in the interaction of EU institutions and interest groups remain unsolved (Kohler-Koch 2001). These persisting deficiencies consolidate the European Union's traditional emphasis on efficiency and effectiveness. Raising participation of organized civil society through stakeholder involvement in the policy formulation is to boost input legitimacy beyond traditional representative democratic tools and thereby also to improve legitimate quality of policy outputs.

3 Civil society as proponents of a European public sphere

The second grand image of civil society is that of an emergent trans-European public sphere. Following this logic, participation has a formative meaning. Instead of improving the democratic quality of the EU by delivering better outcomes and strengthening participation through CSO activation, participation itself generates societal integration and the Union's democratic quality is enhanced through community-building effects. Civil society is accordingly not an organized col-

lective actor that provides input for more efficient policy-making but democracy is conceptualized as discursive process in which shared understanding is created in deliberative processes.

Following Vivien Schmidt's (Schmidt 2002: chap. 5) distinction between the decision-making arenas (coordinative discourse) and the larger societal arena in which political actors interact with citizens (communicative discourse), the notion of deliberative democracy can be traced in scholarship on EU institutions and the polity at large. Though not limited to this body, the coordinative discourse has been shown as a particularly characteristic trademark of internal decision-making in the Council (see, e.g., Naurin and Wallace 2008; Lewis 2005; Heisenberg 2005); meaning that rather than hard bargaining between states, the dominant mode of decision-making is based on deliberation. Although the least likely arena for deliberation in the EU, there is consistent empirical evidence that even under conditions of qualified majority voting the Council has a strong preference for unanimous decision-making and that a deliberative mode prevails over hard bargaining practices (Novak 2010; Puetter 2012). In the inter-institutional interplay within the EU multilevel system, coordinative discourses in the preparation of legislation play a role in the Commission's interactions with social actors, including CSOs from specific policy spheres. Civil society and participation in the EU come into play differently when considering the EU's communicative discourse – or its very absence. Researchers on deliberative (or discursive) democracy have amply focused on the question of how to overcome the Union's democratic deficit by strengthening various forms of deliberation in the interaction with civil society. This perspective views civil society as a foundational element of a wider public sphere, which is expected to play a decisive role in normatively rooting the integration process. Contestation and civil society as an organ to also express opposition to EU governance has been a specific focus of the social movement literature (see Box 3).

Box 3: New Social Movement Research

Deliberative democracy and participation are key questions of research on social movements (for an overview on the research field: della Porta 2011). Social movement research focuses explicitly on political contestation as an important contribution to the politicization of EU related issues and the emergence of a European public sphere. Research on new social movement was initiated by the rise of citizens' activism on issues such as environment, abortion, and disarmament in the 1970s. It gained momentum in the 1980s through political theorists with a normative focus on democratic legitimacy (Offe 1985; Eder 1985). Throughout the 1990s new social movement researchers turned to explanatory interests in the conditions of political mobilization (Koopmans 1996; Kriesi 1987; Tarrow 1991). As proponents of this approach shifted their attention towards the international and in particular the EU level of politics at the end of the 1990s (della Porta *et al.* 1999; della Porta 2007; Imig and Tarrow 2001), new research questions such as the emergence of a European public sphere (Kriesi *et al.* 2007; Koopmans and Erbe 2004) were formulated and opened new social movement research to deliberative concepts of legitimate European governance (Fossum and Trenz 2006). While a growing number of scholars are dealing with social contestation and movements related to EU policy-making, some scholars also see a role of social movements in a more participatory sense (Ruzza 2011: 467), closer to the role of organized civil society discussed above. However, the main body of current social movement represents the mirror image of civil society as collaborative participant in EU policy making, activated by the Commission, namely organized bottom-up activism that challenges EU governance.

Alongside the governance turn in EU studies, other scholars observed a “normative turn” revolving around the legitimization of the EU polity (Bellamy and Castiglione 2003; see also Wimmel 2009). These authors argue that after the foundation of the European Union (Treaty of Maastricht 1992), the EU has been increasingly perceived as more than a mere utility-maximizing economic enterprise. This has consequences for the legitimizing underpinnings of EU integration because “once we take seriously the normative content of people’s demands and beliefs, treating them as judgments and not merely as preferences, then legitimacy cannot be either reduced to performance per se or conceived in purely ideal terms” (Bellamy and Castiglione 2003: 8). With this turn to normative questions about EU legitimacy, questions about democracy, identity, and the wider public sphere of the EU – or the lack thereof – became prominent research topics. However, definitions and interpretations of the key concepts public sphere, identity and deliberation vary substantially across studies.

Claims about a public sphere as a necessary building block for EU democracy were for long predominantly negative. Grimm argued that a public sphere was an indispensable but hardly achievable precondition for European democracy (Grimm 1995). In addition, Kilmannsegg sustained that due to the different languages, the EU could not establish a meaningful communicative community (Kilmannsegg 1996), backed by empirical studies that attested a deficit of public sphere in Europe (Gerhards 1993). Examining the Europeanization of public spheres and conceptualizing transnational public spheres, Risse contradicts this long-standing conventional wisdom that without a common language and media Europe is bound to lack a common public sphere. Instead, he argues “that neither is necessary for Europeans to be able to communicate across borders [...] a European public sphere is a social construct in the sense that it emerges in the process through which Europeans engage one another and debate issues of common European concerns across borders” (Risse 2010: 11; building on Habermas 1962; Eder and Kantner 2000). Building on the Habermasian definition, public spheres have two central functions in a democratic polity: openness to participation and challenge of public authorities. Accordingly, Eder and Kantner define empirical criteria to measure the Europeanization of public spheres based on controversy, framing, parallelism of themes (Risse 2010: 125–126; he adds cross-referencing as criterion). This definition departs from the notion of the evolution of a unitary public sphere. Instead, a European public sphere is defined as the parallel (controversial) debate about the same issues across borders, independent of the language or media outlet in which it takes place. Following this definition, an emerging public sphere does not necessitate the formation of a strong, shared European identity. Much rather, European identity occurs layered and in addition to national or sub-national identities.

If some form of a transnational public sphere is emerging, what then, is understood by deliberative democratic processes in the EU? The theory of deliberative democracy is normatively attractive when analyzing the EU system since, in contrast to the conception of pluralist interest aggregation, it offers an alternative model founded on discussion and persuasion. This means that actors are involved in communicative action in which they put forward proposals under the condition that others will accept the more convincing reasoning. Actors can accordingly change their preferences and social learning leads to the mutual adaptation of positions (Hunold 2011). Given the weak input legitimacy of the EU due to the institutional setup and low public support, deliberative democracy hence offers alternative legitimization paths to democratize the EU beyond the notion of representation. “Deliberative policy making aims for genuine preference transformation rather than mere preference aggregation by expanding in governance institutions the role of deliberation based on norms such as reason giving, publicity, joint problem solving, and inclusive participation” (Hunold 2011).

Civil society takes on a special role in deliberative democracy. In Jürgen Habermas’ definition of the public sphere, citizens deliberate openly about public policies and thus provide an answer to “the ‘hollowing-out’ of the nation-state, the emergence of multilevel governance and the disper-

sal of power to multiple agencies and sectors have all challenged the centrality of representative institutions” (Newman 2005: 121). A functioning public sphere depends on a specific societal infrastructure, which is provided by civil society and safeguarded by the individual’s civil rights. Habermas contends that the institutional core of civil society “comprises those non-governmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the ‘lifeworld’. Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that [...] distil and transmit such reactions in amplified form to the public sphere” (Habermas 1996: 367).

Other authors who are concerned with civil society and its contribution to deliberation, transparency, contestation, and the emergence of a European public sphere have amply built on theories of deliberative democracy – although they differ in some of their starting assumptions and conclusions. Olivier De Schutter addresses the “promise of participatory democracy” in his account of civil society in EU governance and maintains that interest groups and citizens’ initiatives “participate in public information and communication processes, so helping to create a general perception of the common good” (DeS 2001: 202; see also Dunkerley and Fudge 2004). Deirdre Curtin refers to the same concept when assigning civil society the function of establishing a space for the public deliberation of values and policies (Curtin 2003: 55). Erik O. Eriksen, one of the most articulate proponents of deliberative democracy, argues that democracy at the level of the EU requires a “single overarching communicative space accessible for all, in which proponents and opponents can voice and justify opinions and claims, and mobilize support in order to sluice them into decision-making units via social movements and political parties” (Eriksen 2005: 355; see also Eriksen 2006; Fossum and Trenz 2006). Menéndez, in contrast, concludes “that the Union has not only several shortcomings, but also some democratic surpluses” which lie precisely in offering deliberative forums in tackling certain democratic deficits of the member states (Menéndez 2009).

One of the most elaborated conceptualizations of deliberative practices in the EU emerged from the study of comitology. Arguing that comitology indicates that national representatives’ move from bargaining for state interests to a form of Europeanized inter-administrative discourse, Christian Joerges and Jürgen Neyer introduced the notion of *deliberative supranationalism* (Joerges and Neyer 1997a,b). At the heart of their argument stands the reflection that a compound system such as the EU *can* only function if deliberative practices are being applied. The main indicators for deliberative supranationalism they find are the extensive use of informal practices beyond the official intergovernmental rules, a strong problem-solving oriented interaction style, and extensive socializing effects on often long-term participants in comitology. Linking legal and political scientific theories with empirical findings, the approach outlines the limits of bargaining and “real-life” deliberation in the EU (Joerges and Neyer 2006; for corresponding arguments see also Risse and Kleine 2010; Puetter 2012).

In short, academic perspectives vary in their assessments of the conditions for a European public sphere and the role of deliberative democracy in enabling the civil society as an essential element of the public sphere to have a democratizing role. Common to all accounts is the conceptual or normative illustration of an alternative approach to purely representative democracy. This does not mean that deliberative processes necessarily exclude representative institutions; most authors actually propagate a combination. Yet, the legitimizing logic of deliberative processes and the role of civil society differ from that discussed in the last section. As a basic element of the public sphere, civil society has a sense-making, communicative, and discursive role in shaping the democratic legitimacy of the Union embedded in identity and society formatting processes.

3.1 Forums for a public sphere: The convention and deliberative practices

Two kinds of initiatives stick out when reviewing how civil society as a constituent element of the European public sphere may materialize in the policy-making practices of the EU: initiatives on the grand decisions regarding the polity formation and initiatives adapting ordinary policy-making practices. First, the Convention on the Future of Europe (2001–2003), which drafted the so-called Constitutional Treaty (2003) that eventually resulted in the Treaty of Lisbon (2009), was seen as a forum to indeed apply deliberative practices that allowed both the free exchange of ideas in the working groups and transparency of the process for a wider public. Second, the Commission has made use of deliberative forums on some occasions that aim at including civil society and interested citizens directly. Conceptually, the open coordination procedures have been introduced that refer explicitly to joint position formation and mutual learning as voluntary and discursive coordination mechanisms – even though the open coordination as realized in practice shares a lot of the features of activated civil society elaborated in Section 2.

Regarding the former, since the Treaty of Lisbon a genuine *convention method* is the standard procedure for the revision of European Treaties. It departs from the traditional negotiation procedure in which the heads of state and government bargain behind closed doors. The novelty lies, on the one hand, in the elaboration of a draft in specialized working groups composed of representatives of various institutions (EU, national parliaments, the Commission and member state representatives) – even though the final decision on a draft remains a prerogative of the European Council. On the other hand, the convention method aims at transparency and towards a communicative discourse that involves a wider public. It is, moreover, associated with a more substantive idea of a ‘constitutional moment’ as symbolic identity-creating manifestation. Besides these grand decisions, discursive practices have found their way into day-to-day policy-making. The most prominent initiative that builds on theoretical expectations about deliberative processes is the open method of coordination that relies on learning and mutual adaptation mechanisms.

From a community formation perspective, the *Convention on the Future of Europe* (2001–2003) was interpreted as a ‘constitutional moment’, comparing Brussels with Philadelphia, in the building of a European public sphere (Magnette and Nicolaïdis 2004; Walker 2004). In the most far-reaching sense, the draft of the so-called Constitutional Treaty was seen to advance “the construction of the EU as a norm-based entity which, a priori, may assist in creating the basis for a model of citizens’ allegiance and loyalty akin to Habermas’ constitutional patriotism” (Closa 2005: 411). The convention raised equally strong expectations in procedural terms as an alternative participatory method embracing civil society and contesting views in contrast to intergovernmental bargaining. Accordingly, Liebert and Trenz argue “that the EU-constitutional experience has sharpened the ambivalence between top down activating or ‘partnership’ approaches vs. bottom up mobilizing or ‘social constituency’ approaches to the construction of European civil society” (Liebert and Trenz 2009: 1).

The ‘convention method’ was first employed for the drafting of the European Charter of Fundamental Rights (2000). Olivier De Schutter argues that already the Charter of Fundamental Rights was drafted in a convention of “unprecedented openness” (De Schutter 2002: 199). The charter convention invited outside contributions which were published on a website and involved civil society organizations in public hearings. Both led to “an authentically European-wide debate among the organizations of the civil society” and lead Olivier De Schutter to characterize the convention as a successful “experiment in deliberative democracy”; however, the author also maintains that this success was partly owed to the simplicity of the issues raised by the drafting of a Charter of Rights (De Schutter 2002: 198–199; but see Göler 2006). After repeated difficulties to deal with reform ‘left-overs’ in the intergovernmental conferences, the European Council of Laeken decided that a convention should be set up to streamline and simplify the existing assemblage of

founding Treaties (European Council 2001). Even though the convention was not set up to draft a constitution, its president, Giscard d'Estaing, insisted on the final document to have this symbolic status although in formal terms it remained an inter-state "Treaty establishing a Constitution for Europe" (European Constitution 2004).

Turning to the second initiative type, discursive processes were also introduced in day-to-day policy-making. Providing a general definition of deliberation, Kaase cites Teorell's roundup of deliberation "as a process of opinion formation rather than a procedure for decision making" (Teorell 2006: 791). Outlining viable deliberative instruments, he highlights deliberative polls in which randomly selected representative groups of citizens participate for a certain period in deliberative settings to evaluate and prepare political decision-making (Kaase 2011). Although the Commission has also applied these methods to a limited extent, the most relevant innovation was introduced in connection to the Lisbon Strategy (European Council 2000). In order to promote cooperation in policy fields in which the member states were not willing to give up sovereignty, the open method of coordination (OMC) was introduced. Despite the fact that it is essentially an intergovernmental instrument, the logic by which it operates builds on deliberative processes and the implementation of the OMC prescribes the participation of private and civil society actors on the national and sub-national level. Thus, the open method (Armstrong 2006) was not only introduced as less legally binding coordination mode, but many scholars "viewed the OMC as a promising mechanism for promoting experimental learning and deliberative problem solving across the EU, because it systematically and continuously obliges Member States to pool information, compare themselves to one another, and reassess current policies against their relative performance" (Zeitlin 2011: 2; see also Zeitlin 2005; Zeitlin and Pochet 2005; Cohen and Sabel 2003). What links the OMC to the underlying ideas of deliberation is the foundational mechanism of learning and mutual adaptation of positions that includes civil society as essential player (for a discussion of the ideational origins of the the OMC Armstrong 2006). From this conceptual perspective, the open method is precisely an instrument for democratic deliberative processes. Concomitantly, the practical application of the OMC as policy instrument concerns a lot of the activation and inclusion tactics discussed in Section 2. The OMC has therefore been discussed by authors from both schools, and has, in turn, become a subject area that clearly breaches both perspectives which can be analytically discerned.

In essence, the convention and the thereby established convention method as well as discursive procedures in regular policy-making have been introduced. These initiatives reflect some of the highly normative expectations of the democratizing effect of civil society participation through discursive democracy as alternative to the traditional intergovernmental and community methods. The next section will take up both sets of initiatives by reviewing the academic evaluations of the actual democratizing and social formation impact.

3.2 Academic assessments of the deliberative achievements of the EU

The empirical accounts of the EU's activities linked to notions of civil society as a constituent element of a larger European public sphere evoke two interlinked expectations. First, building on the theoretical ideas about an emerging EU public and identity, one may expect a *substantive* impact, expected in particular from the 'constituent moment' offered by the Convention and the resulting constitutional treaty that would transform the scattered EU publics into a more united entity. Second, one may expect a *procedural* impact; that is, a change from formal representative democratic procedures and the contestation of interests to one based on alternative deliberative practices of interest assimilation. To which degree has either theoretical expectation been met since the early 2000s?

First, the overall balance sheet on the substantive impact in form or society and public sphere formation seems meager at best. By and large, "the Europeanization of economy, law and political

behaviour, and the expected Europeanization of the behaviour and experience of citizens, have thus far failed to translate into a commensurate emergence of a shared sense of identification with Europe” (Díez Medrano 2011: 36). Neither the constitutional process nor the constitutional treaty as ‘founding document’ (Maduro 2005) has vitally altered this situation. They have not created a public sphere in the sense once invoked by Grimm or Kilmannsegg which would be linked to a genuine and singular EU identity, with some limited exceptions. Recent sociological work shows that elites in the EU are indeed increasingly merging into a strongly interconnected community (for an exemplary account Favell 2008). But this process has not captured wider social strata and “empirical evidence clearly suggests that it is too early to speak of a European middle class in this sense” (Díez Medrano 2011: 37). Therefore, neither the constitution, creating a ‘constitutional moment’ (Castiglione and Schönlau 2006; but see Pérez-Solórzano Borragán 2007), nor deliberate procedures can be argued to have had a rapid, ground-shaking substantive impact.

However, if following Risse’s definition (2010, see above), a decisive indicator for a transnational public sphere linked to multiple identities can also be active contestation. Doubtlessly, the constitutional treaty has raised contestation. This showed most expressively in the rejection of the treaty in public referenda in two founding member states, France and the Netherlands and the subsequent rejection of the revised Treaty of Lisbon in Ireland before the reform treaty was eventually enforced in 2009. The negative referenda and wider public critique clearly indicated that the constituting effect hoped for could not be met by this very text – but that EU issues had become increasingly politicized across borders, a politicization that is likely to stay (De Wilde and Zürn 2012). This is also supported by major empirical studies on rising level of contestation in the media (Koopmans and Statham 2010; see also Strömbäck and Shehata 2010). But again, the effect is not necessarily in line with normative expectations about the role of civil society in formatting a Europe-wide public sphere. Despite the fact that the constitutional treaty raised obvious contestation, the large and decisive conflict lines that emerge are not on questions of EU policies but the polity at large, i.e., about winners and losers of EU integration (see in particular Fligstein 2008; Kriesi *et al.* 2006). These division lines as well as national markers have been observed in the debate about the EU constitutional treaty (Seidendorf 2010; Trenz 2010) but their substantive impact can be considered to be much more far-reaching. This means contestation and cross-country controversies, in which different public spheres relate to each other in a synchronized and mutually comprehensible manner, have increased but this does not imply any convergence of identity or towards a singular homogeneous and coherent public sphere.

Notably, two images of civil society and public sphere are invoked, one that is suggesting the positive constitution of a common and in the end identity-building entity, and one that focuses on increasing cross-country contention over the same issues. Whereas for the latter increasing evidence of politicization with ambiguous consequences for the EU can be put forward, proponents of the former vision have been largely disappointed by the final result of the EU’s constitutional ambitions. In light of the negative referenda on the constitutional Treaty, initial evaluations of the convention method celebrated it as “without a doubt, one of the most important innovations in the functioning of the European Union since the Maastricht Treaty”; and judging the mingling of “representatives of the Member States, the Commission, the European Parliament and national parliaments, and through the innovative involvement of ‘civil society’” (Deloche-Gaudez 2001: 1) as a major turn away from the intergovernmental method have become much more modified. Accordingly, Karlsson finds that “the convention method has contributed to a slightly more democratic process, but has not, in any fundamental way, improved the democratic status of the EU’s treaty reform process” (Karlsson 2010: 717).

Developing concepts of deliberative democratization through constitutionalization further, some authors have extended their empirical attention beyond the constitutional *moment* to the second, procedural dimension of EU initiatives; i.e., the constitutional *method* in a more embracing sense. Taking a general view on contemporary European constitutionalism, Magnusson-Hansen

and Wiener stress the access to participation as key element for affirmative relations between a polity and people and conclude “that a top-down process aiming to provide a ‘European Soul’ (De-lors) in the form of symbols or lieux de mémoire around which discrete notions of what they mean are unlikely to excel. Instead, European constitutionalism is a developing, dialogic process during which distinct horizons interact and may fuse over time. Taking myth and memory seriously offers insights into how such fusion might or might not occur” (Magnusson-Hansen and Wiener 2009: 39). Focusing more narrowly on the EU’s constitutional process, Fossum and Menéndez argue that although it did not meet the high demands of a “democratic constitution” as such, the process can be considered as a potential founding element in a constitutionalization process (Fossum and Menéndez 2005), a dynamic also captured in the related notion of “constitutional processualism” (Castiglione and Schönlau 2006: 297; see similarly Trenz 2010). These authors suggest that even though the outcome might have stayed behind the expected effect, more long-term, incremental constitutionalizing processes are actually still unfolding a more deep-rooted transformative process.

In the same vein, adding an institutionalist dimension to the procedural understanding, Eriksen and Fossum have recently argued “that the EU’s democratisation is best understood when considered from a deliberative approach, but through a special institutional version of deliberative theory that is geared to representative democratic institutional arrangements” (Eriksen and Fossum 2011: 3). Accordingly, democratization in the EU “unfolds in a context of already existing representative-democracies, but takes on a distinct shape that is in need of further theoretical elaboration and justification” (Eriksen and Fossum 2011: 21), meaning that the democratization models referred to are primarily representative ones. These are not fully copied on the EU level but complemented by deliberative practices. Equally, (Fossum and Trenz 2006) analyze EU constitution-making in terms of its contribution to the building a “social constituency” in which the European public sphere and European civil society serve “as the intermediary spaces of communication and mobilization which link institutional performance back to popular concerns and expectations” (Fossum and Trenz 2006: 58). In addition, asking “how institutional design can enhance civic participation and ultimately increase citizens’ sense of democratic ownership of governmental processes”, Skelcher and Torfing see “potential for institutionalized participatory governance to develop and its prospects for improving effective and democratic governance in the multi-layered European polity” (Skelcher and Torfing 2010: 71).

This takes us to a further question about the procedural dimension of deliberative practices in the EU: which democracy-enhancing impact can be observed in day-to-day policy-making processes? By and large, the empirical findings on the deliberative dimension of the open method support more clearly the image of civil society developed in Section 2 of this review, namely that of a participator in EU governance rather than indicating a growing unified trans-European public sphere – even though the Commission refers to terminology originating from deliberative democracy scholarship (Boucher 2009). Also, Smismans argues that the civil society discourse shaped by the Commission and the European Economic and Social Committee (EESC) favor a functional, output-oriented conception of civil society involvement. This results in a preference for contacts with Brussels-based confederations of associations and stimulates the emergence of large NGO-networks covering a broad range of issues at the EU-level (Smismans 2003: 491). This specific structure of European civil society explains, among other things, why EU-level NGOs appear regularly too elitist and hence fail to assume a Europeanizing function as conceptualized by advocates of active citizenship (Rek 2007; Warleigh 2001). Analyzing in a more encompassing study the impact of new modes of governance on normative legitimacy, Føllesdal offers a highly skeptical account of the “alleged benefits” these procedures in comparison to “democratic accountability measures [that] are less of a challenge to effectiveness and credibility, properly conceived” (Føllesdal 2011: 81; on a theoretical critique see also Idema and Kelemen 2006). Benz also finds that the application of new modes of governance in the OMC has shown that while “the dominating ‘deliberative’ mode does not improve accountability, the ‘competitive’ mode seems to be more promising” (Benz

2007a: 505; to name but a few studies that underlie this general finding: Börzel 2010b; Citi and Rhodes 2007; de la Porte 2002; Radaelli 2008; Scott and Trubek 2002; Trubek and Trubek 2005.

To sum up, academic evaluations of the democratizing impact of deliberative approaches remain overall disappointing, or at best, a still-unfulfilled objective to materialize in a more long-term, incremental transformation process. After the failure of a substantive foundational impact of a European ‘constitutional moment’, normative expectations in deliberative democracy as a path to democratize the EU rest primarily on the procedural dimension which particularly highlights the vital role of participation of civil society. The “social construction of the ‘participatory turn’” has established a legal norm at the EU level that “refers to both the discursive and strategic use of a specific notion and is largely influenced by the ‘scholarly expertise’ of academic actors that led to the integration process taking a particular direction. [...] However, this discursive agreement does not entail the existence of a homogeneous entity which one could call ‘civil society’, nor that the principle of the participative standard is universally applied” (Saurugger 2008b: 176–177). In addition, social identities continue to be layered and do not replace but combine national, sub- and supra-national dimensions. This implies the emergence of a public sphere as arena for cross-country contestation rather than a unified European civil society in the traditional state-centered meaning. In consequence, the activation of civil society is also argued to most likely occur by a process of Europeanization of national civil societies – evidence for which, however, is also still limited. These sobering empirical findings have repercussions on the theoretical debate about deliberative democracy. Bächtiger et al. highlight that deliberative democracy has rapidly developed “from a ‘theoretical statement’ into a ‘working theory’” and proclaim that we are only at “the beginning of an empirical turn, making significant gains as an empirical (or positive) political science” (Bächtiger et al. 2010: 32; see also Kaase 2011). Accordingly, an emerging public sphere in terms of increasing cross-country contestation about EU issues and a subtler, incremental polity formation along these lines offer further ground for scholars of deliberative democracy. In face of the little transformative impact the EU has empirically had in constituting a singular transnational civil society, Kohler-Koch concludes that the “future of civil society in the EU will be closely linked to Europeanization of national civil societies” (Kohler-Koch 2010b: 336).

4 Conclusion and outlook

The study of civil society participation in the EU gained relevance in response to the transition from the primarily economic European Community to the declaredly political European Union established by the Treaty of Maastricht. The turn to civil society participation in the EU is inherently preoccupied with rendering EU policy-making more democratic. The two dominant but distinct conceptualizations of civil society referred to in EU research stand for two different underlying democratizing logics and, at the same time, two discrete applied approaches developed in EU governance: the inclusion of organized and activated civil society groups in EU policy-making, and the formative role of civil society in the incremental evolution of a trans-European public sphere. Generally speaking, “in participation research there is now agreement that especially the term unconventional participation is no longer meaningful given the fact that through processes of sociopolitical change these acts have become a regular and legitimate part of citizens’ action repertoires” (Kaase 2011). Also in EU policy making, stakeholder inclusion and deliberative practices have been incorporated as standard policy instruments. But do they keep the promise of enhancing the democratic quality of the EU?

The theoretical accounts elaborated in Sections 2 and 3 raised glaring normative expectations around the beginning of the 2000s. By and large, these expectations have not been met. However, empirical evaluations vary depending on the analytical focus chosen and the policy field under perspective. In addition, outcomes may also depend on further, more affirming long-term devel-

opments. What crystallizes from the multiple studies is that EU civil society is unlikely to quickly develop into a unified and coherent entity but will for some time remain an assemblage of most Europeanized national publics. These national publics are more likely to format a joint sphere of contestation based on multiple, layered identities than a transmission belt between supranational institutions and the single citizen. In this sense, the intended democratizing effect of civil society participation has not matched the high hopes when measured along the self-declared goals of any EU initiative.

Moreover, civil society organizations have been basically absent in the decision-making processes on actions in response to the global and European financial crisis, which represents the most urgent problem the EU currently faces. A major reason for this is that the density of civil society actors in the field of monetary and financial policy is generally very low (Enderlein 2009: 7–8; Anheier 2012: 19). “Social action and strong public presence of these groups cannot be expected even in times of severe financial crisis, making a deliberative public sphere virtually impossible due to lack of actors that would be able to contribute” (Hechinger 2012: 13) – expectations that have been confirmed by the limited studies available so far (see in particular the cross-country media analysis by Hechinger 2012). Independent of the outcome of the particular initiatives discussed in this review, we cannot observe a fundamental shift to civil society participation in the “grand scheme of events” but rather an increasing pressure for democratic legitimization of the new, mainly intergovernmental instruments that have been created in an ad hoc manner to respond to market pressures on the Euro.

The systematic differentiation between academic and applied civil society conceptions and the empirical scrutiny that disappoints theorized outcomes and programmatic policy goals hint to future research agendas on civil society participation in the EU. Both the notion of civil society as active policy collaborator and as heart of an emerging public sphere attempt to provide an alternative, or complementary, legitimizing mechanism to the principle of representative democracy. However, these alternative avenues to democratic rule stand in tension to input based representative democracy that formally underlies the EU polity. This raises questions that have hardly been addressed. Dealing with this “non-issue in the EU debate”, Kohler-Koch reviews the link between civil society and democratic representatives. Research gaps remain ample, but not only because of the ambiguous role of civil society in democratic theory as either in opposition to or support of the state. In consequence, “up until now there is no academic debate addressing civil society and representation” and “the concept of ‘civil society’ is notorious for the diversity of interpretations and uses” (Kohler-Koch 2010a: 101). The author concludes that “the rhetoric of CSOs and the explicit request of EU institutions convey an image of representation that is in contrast with reality. European CSOs are distant from stakeholders, in the case of NGOs even more so than in the case of trade associations, and direct communication down to the grassroots level is – except for extraordinary events – marginal” (Kohler-Koch 2010a: 112).

In this vein, a number of recent studies deal with the question of an accurate empirical and innovative theoretical take on representation. This growing body of research promises to open new insights on civil society participation in the years to come. On the one hand, opening new conceptual avenues by departing from fixed notions of government, representation has been framed as a dynamic practice across societies. The notion of the representative claims, which multiple actors make in different places at different moments in time, offers a dynamic and flexible approach to legitimate representative practices (Saward 2010). On the other hand, scrutinizing which form representation actually takes in the particular EU polity addresses questions such as the redefined political, social, and specific collective actors’ roles in multilevel governance (Kröger and Friedrich 2012) as well as how the definition and strategic reference to interest representation has shifted in the EU (Pérez-Solórzano Borragán and Smismans 2012). After more than ten years of EU initiatives aimed at democratizing the EU via civil society participation, and in the light of a growing body of scientific accounts that modify or disappoint high-flying hypotheses, reconciling

the theoretical and empirical position of civil society within the logic of representative democracy highlights the outstanding research challenge in order to close the gap between theory, rhetoric, and reality about civil society participation in the European Union.

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