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Transnational European Public Spaces and EU Democracy

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ABSTRACT

This paper aims to develop some considerations on transnational European public spaces and their contribution to the refinement and development of democratic principles within the European supranational legal order. The notion of transnational European public space adopted in this paper, which it is distinguished from the idea of a European Public sphere, is that of a mainly virtual space (although EU Panels have been included) created by EU Commission and Parliament where citizens from all EU Member States have the opportunity to engage in activities that are mostly related to EU decision-making. These spaces are of particular interest when they give EU citizens the opportunity to make their voices heard and publicly exchange views on all areas of EU action, and when they contribute, albeit in a limited way, to strengthening principles such as transparency, participation and control that are crucial in the democratic life of a polity.

Keywords: Public Sphere, participatory democracy, European Citizens 'initiative, petitions, Conference on the Future of Europe

1. Public Sphere and the Notion of Transnational European Public Spaces and European Union Democracy

In this paper public space is defined as a space that is open to all who wish to access it and participate in the activities that take place there. In the physical sense, it is constituted, for example, by the squares and streets where young people gather to demonstrate against the lack of action on climate change, against the adoption of a law or the conclusion of an international agreement, where people assemble to affirm their identity, to demand action from public authorities, to make proposals, addressed to government bodies, understood in the broadest sense. In a virtual sense it can be a platform for online petitions.

The addition of the attributes "European" and "transnational" to the term "public space" is intended to reflect the fact that the issues discussed fall within the competence of the EU and are debated between citizens of the Member States as matters of interest that transcend the national context. The use of the plural form is due to the fact that there are a number of public spaces.

Public space and public sphere are often considered and used as synonyms, but the notion of (transnational European) public space referred to in this paper is a more limited and different concept from the well-known notion of the public sphere coined by Habermas (Habermas, 1962,1989, 1996, 2008). The latter refers to a public sphere that was conceived within the framework of a sovereign State and a public opinion embedded in a specific historical and institutional context. His deliberative model refers to a national public opinion - which plays a crucial role in democracies. Although it is difficult to synthetize Haberman's notion of public sphere (1964, 1989, 1992), this refers mainly to the creation of an open space for public debate and deliberation (Habermas, 2008, 158) created through forms of public participation and communication where all citizens can participate in a debate on issues of

common concern, and where the media play a major role in shaping public opinion and enabling the public to make more informed decisions. In synthesis, the public sphere is a space for the communicative generation of public opinion (Fraser, 2007, 6), connecting the media to democracy and legitimacy. The public sphere is therefore conceived, as a "communicative space (or spaces) where unconstrained debate takes place and where the political order is analysed and criticised" (Littoz-Monnet, 2008, 31).

As regards the formation of a European public sphere, Habermas (2001, 17) argued: "There will be no remedy for the legitimation deficit, however, without a European-wide public sphere – a network that gives citizens of all Member States an equal opportunity to take part in an encompassing process of focused political communication" (Schlesinger and Fossum, 2007, 1; Wright 2007, 1167; Fraser, 2007, 6). Indeed, the creation of a transnational public space requires a rethinking of both the forms of democracy beyond national experiences and public spaces.

The Public sphere is conceived as made up of several components, including a media system and political parties (Laude, 2021, 1151). Eriksen (2004, 5), referring to Haberman's (1996, 337) specifies that public sphere "consists of different assemblies, forums, arenas, scenes, and meeting-places where the citizens can gather. Today the public sphere is a highly complex network of various public sphere segments, which stretches across different levels, rooms, and scales".

A similar idea of the public sphere can be found in a resolution of the European Parliament (European Parliament, 2010) which used this expression to refer to a:

> space in which public policies may be better understood by, and discussed with, all EU citizens and all sections of the population, in all its diversity, with a view to meeting their expectations more effectively, and whereas it must be a venue both for the provision of information and for wide-ranging consultations transcending

national borders and fostering the development of a sense of shared
public interest throughout the EU (letter G).

For the EP, the creation of a European public sphere is "closely related to
the existence of pan-European or transnational media structures" (letter K).

The Public sphere has been defined by the Commission (European
Commission, 2020, 1) as a "public space where a plurality of views can be
expressed freely and where free media, academia and civil society can play
their role in stimulating open debate, free from malign interference, either
domestic or foreign".

The notion of Transnational European public space adopted in this paper
is not entirely unrelated to the above definition of the public sphere insofar as
the actions that take place in these physical or digital spaces contribute – albeit
still imperfectly at the moment given the small number of participants and the
limited visibility of the activities carried out - to the formation of a general
debate. Rather than a single public space, we can speak of public spaces as a
part of a broader network, in the same spirit of Habermas' (1996, 373) and
Eriksen's (2005, 341). For Van de Steeg (2010, 30) a public sphere is a
"collection of common spaces or fora in which citizens can publicly exchange
ideas, opinions and information on problems they encounter while living
together in the same polity". For this author a public sphere exists if "the same
topics are discussed at the same time with the same intensity and structure of
meaning" (Van de Steeg, 2002, 499).

There is, however, a further relevant distinction between the notion of the
public sphere in the sense described above and the public spaces referred to
in this paper. This difference lies in the fact that the transnational spaces we
consider here, are not generated by private individuals in opposition to the
power structure of the EU Polity but are created and managed by the EU
institutions, and, in particular, the Commission and the Parliament.

In order to further clarify the notion of public space(s), this paper takes as
its starting point some definitions used by the Commission and by other EU
institutional actors.

In the 2001 the Commission (2001, 12) declared that:

> Providing more information and more effective communication are
> a pre-condition for generating a sense of belonging to Europe. The
> aim should be to create a trans-national "space" where citizens from
> different countries can discuss what they perceive as being the
> important challenges for the Union. This should help policy makers
> to stay in touch with European public opinion and could guide them
> in identifying European projects which mobilise public support.

Indeed, this proposition seems to anticipate some experiments such as the recent Citizens' Panels in the context of the Conference on the Future of Europe.

It should be noted that the Commission refers to various activities that would take place in a transnational (public) space: information, communication, debate on the definition of the Union's agenda. It is also worth noting that the aim of a transnational European public space would be to forge a common identity (the sense of belonging to the EU) on the assumption that this would obviously be based on bonds different from those created by national citizenship; the definition of some common elements of identity is therefore a pre-condition for the creation of a space but at the same time the latter contributes to the formation of a horizontal link between citizens (Littoz Monnet, 2008, 31).

Another Commission communication refers to an idea of public sphere (curiously, the Italian version of the document uses the term "Piattaforma") which seems to correspond more to the concept of public space referred to in this paper than to the public sphere in the Haberman's' sense. The Commission (European Commission, 2005, 3) defines it as a space where "citizens are given the information and the tools to actively participate in the decision-making process and gain ownership of the European project". Again, the reference is to very different actions, i.e. information and participation in the decision-making. Within this space (or at least within

some of these spaces) citizens can also take initiatives and adopt a proactive approach.

More recently, Vice-President Šuica, in her speech on the Conference on the Future of Europe (COFE) stated that the Conference "provides a safe, inclusive, transparent and transnational public space for in-depth deliberation". The COFE Joint declaration also states: "The Conference on the Future of Europe will open a new space for debate with citizens to address Europe's challenges and priorities".[1] In another Communication (European Commission, 2022, 1) the Commission declared:

> the Conference and its participants reflected both the value and the need to better involve citizens in shaping the policies that affect their lives. It breathed new life into the way Europe's layered democracy works and showed the potential of a real European public space for people across the Union to engage on what matters most to them.

It further stated: "the Conference also gave a snapshot of how a European public space can flourish and how our democracy can be enriched, at European, national, regional and local level, by involving citizens" (European Commission, 2022, 5).

Irrespective of the terms used, all the above-mentioned documents refer to a concept that exists in the EU legal order and in the vocabulary of the institutions involved in the decision-making processes. It is possible to extrapolate some common structural elements of these spaces: openness and inclusiveness, transparency, and, of course, transnationality. In terms of actions, citizens participate in different activities: they receive information, are involved in agenda setting, in consultation processes and in deliberation. Although all these activities contribute to reinforcing the participatory dimension of democracy (as set out in Article 11 of the TEU) (Garcia Macho, 2013, 449) they are different in terms of creating spaces for interrelation among citizens and sharing of values.

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[1] Joint Declaration on the Conference on the Future of Europe.

On the basis of these elements, we define (and consider) the transnational European public space as a physical or virtual space created by the European institutions in which the EU citizens meet on a voluntary basis according to the principles of inclusiveness, equality, transparency (with the clarifications we will make later on representation) to take part in the activities for which these spaces have been established.

The perspective adopted in this paper intends to highlight the opportunities offered by the Platforms (and Panels) to European citizens to interact with each other, to be and feel part of a community of values. These values are those set out in initiatives or proposals made to the EU institutions (think, for example, to ECI initiatives or petitions), but also the value of democratic participation itself.

Of great value are those activities carried out in the Platforms or other physical spaces such as Panels that create or promote a form of interaction between citizens, exchange of opinions, sharing of ideas and deliberation and that introduce new issues and themes for the decision-makers.

These transnational European public spaces are linked to the value of democracy in the EU as they allow citizens to take part in the activities that implement the principle of democracy, particularly in its participatory dimension. Let us briefly recall that participatory democracy is conceived as a complement to representative democracy,[2] as it was introduced, codifying the Commission's proposal defined in the White Paper (European Commission, 2001) to overcome the structural limitations of representative democracy at the European level (accountability deficits, absence of demos, flaws in the European Parliament's elections, to name but a few) (Marxen, 2015, 151). One of the key principles, in addition to participation, is transparency, which applies to the actions of the institutions and that is clearly

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[2] Article 10(1) TEU declares representative democracy to be a principle on which the functioning of the European Union is based. The key concepts in Article 10 TEU (Porras Ramirez 2013, 417) are representation and accountability. There is no reference in Article 10 TEU to accountability mechanisms for other EU institutions and bodies, but these are provided for in the EU legal order.

related to accountability. From the citizens' point of view this means that they have the right to access to information either by contacting the institutions directly or by requesting access to documents of the institutions (reg. 1049/2001) and that institutions and bodies must explain and justify their conduct (Brandsma, Heidbreder and Manstenbroek, 2016, 621).

Transparency and accountability are crucial to the notion of transnational European public spaces, which, in their turn play a pivotal role in enhancing EU democracy in, obviously, its participatory dimension (Cafaro, 2018, 639) but also in reinforcing representation (for instance if a stronger link were to be created between the citizens' initiative mechanisms (the ECI) and the European Parliament right of indirect legislative initiative (Article 225 TFEU) (Maurer and Wolf, 2020).

2. Transnational European Public Spaces in the EU

European Citizens are offered the possibility to interact and create a community through their participation in digital Platforms created by the EU institutions (Commission and Parliament). We are considering such public Platforms to be particularly valuable as they are connected to the EU decision-making processes and provide mechanisms for institutional feedback.

The EU digital platforms discussed in this paper as transnational European public spaces also include the Multilingual Platform of the COFE, even if it is no longer active.

Although all the above-mentioned spaces are set up by EU institutions, a distinction can be made between re-active and pro-active contributions by citizens, i.e. between activities carried out in response to input from the institutions (top-down), such as consultations on "have your say" Platform, and activities where input comes directly from citizens such as petitions addressed to the European Parliament, the ECI, demands for action in the "ask the EP" Platform (bottom-up). From the perspective of participation and input legitimacy the latter category is of particular interest as citizens are free

to express their requests, proposals, needs, while in the former case they react to input from the Commission.

The three recently created Citizens' Panels, on food waste, virtual worlds and learning mobility, have been modelled on those of the COFE to deliberate or made recommendation on certain key proposals of the Commission could also be considered transnational European Public spaces. The difference with the EU Platforms is that they are not virtual but physical space.

The four COFE panels were each composed of 200 citizens from all Member States (the principle of degressive proportionality was applied), selected on the basis of criteria relating to education, gender, age (one third of participants were under 25), urban/rural background, in order to reflect the composition of the EU population (Rules of procedures of the Conference, art. 5). Therefore, the citizens interacting in a discussion room were pre-selected citizens who participated on a voluntary basis.

COFE Panels and those recently established are to be distinguished from Citizens' Dialogues, which lack transnational character as they were public debates with European Commissioners and other EU decision-makers, but also regional and local politicians organised on a national level.

2.1 The Open Nature of TEPS

A transnational European public space is defined as a place open to all citizens from all Member States who wish to participate in the activities promoted therein. All activities in the Commission's and EP's platforms are accessible to all citizens based on the principle of equality, with some further specification on barriers which will be considered later in this section.

The *European Citizens Initiative* platform of the Commission, once the ECI has been registered,[3] it is open to signature by all citizens of the EU, the

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[3] Registration can be refused by the Commission if the initiative is manifestly frivolous, abusive or vexatious, or is contrary to the values of the EU as set out in Article 2 TEU, if procedural requirements have not been met or if the proposal falls outside the Commission's power of initiative. Judicial or extrajudicial remedies are available against the Commission's decision.

same openness characterizes the *e-petition* Platform and *Ask the EP* of the European Parliament. Moreover, petitions can be addressed to the Parliament by any resident (also minors) in the EU. General consultations[4] in the "Have Your Say" Platform are open to all citizens. However, there is one significant feature: it is the Commission that decides when to make a consultation open to all citizens.

There does not seem to be any contradiction between the fact that the platforms are open to all citizens and the fact that there is a registration requirement which is usually a prerequisite for participating in the activities of any EU Platform. A user account must be created by anyone wishing to submit or support a petition to the EP. Registration is also required to send contribution in "Have your say" in Europe of the Commission, whereas previous registration is not necessary to support an ECI initiative, but the supporter leaves his/her identification data or use his/her digital identity.

A form needs to be filled with personal data when submitting a question to the Parliament. A privacy statement explains how personal data will be collected and processed by the EP and a privacy statement of the Commission is available online.[5]

In addition to registration, the signature of the Charter of the Conference was required to participate in the Multilingual Platform. A similar requirement could (and should) be included in a future similar Platform (see section 3). The Charter is a declaration of intent that recalls the European values enshrined in Article 2 TEU; it includes a commitment by participants to submit constructive proposals, to refrain from disseminating illegal content and from using the Platform for commercial purposes. The Charter also sets out the principles to be respected by participants and event organisers.

These are: inclusivity, transparency, pluralism, multilingualism. In order to prevent hate speech and false information or contributions contrary to the

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[4] Some consultations are reserved to specialized stakeholders.
[5] https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en.

principles and values set out in the Charter from being uploaded to the Platform, a team of moderators was in charge of intervening in the content, removing errors or hate speech, political, manipulative or false content, checking it on a case-by-case basis (an appeal to the Conference Secretariat was possible). Thus, the open nature of the participation seems to have been strengthened and aligned with the value of democracy in the EU by respecting the principles mentioned in the Charter. Contributors were also asked to provide information on their country of residence, educational background, age, gender and employment status, but this information was shared only on a voluntary basis (COFE, 2022, 17) and thus did not affect citizens free participation.

Clearly, the situation is different for the COFE citizens' Panels, and the three newer citizens' Panels mentioned above. These are made up of a limited number of participants, selected at random but on the basis of criteria designed to provide a faithful representation of the EU population. These include nationality, gender, age (with a deliberate and motivated choice to over-represent young people), urban/rural context, occupation, education, socio-economic background. In COFE, the panels were composed of 200 people for each of the four panels. The three newer panels were made up of 150 people.

Despite this pre-selection and the limited number of citizens participating, the panels can be considered as public spaces because they are potentially open to all European Union citizens and their selection was based on criteria aimed at representing the composition of the EU population. Thus, due to their representativeness, Panels can be said to comply with the principle of inclusiveness.

On the other hand, since participation is voluntary, the Platforms of the Commission and of the EP do not guarantee an equal representation of the components of European society: on the contrary, in prevalence these platforms are mostly accessed by educated, male, pro-European citizens, According to the data provided in the Multilingual Digital Platform final

report of May 2022, almost half of the contributors identified themselves as men (47.3%) and 15.9% as women. Those aged 55-69 were the most active age group in terms of contributions (17.7%), followed by those aged 25-39 (16.3%) and those aged 40-54 (14.9%). People with a higher level of education were the most active (41.6%) (COFE, 2022, 19).

In the EU Platform there may also be an over-representation of certain nationalities. For example, the Commission's proposal on a directive on discontinuing seasonal changes of time received an unprecedent number of 4.6 million replies in the "Have your say" Platform. In the report on the results (European Commission, 2018) while highlighting the impressive turnout, the Commission was careful to stress that this was not a representative survey (European Commission, 2018, 11). In fact, the largest number of responses (70%) came from Germany.

Even in the case of the ECI - which requires one million signatures from at least a quarter of the member States (seven), including a minimum number of signatures from each country[6] - successful initiatives register a preponderance of signatures from citizens in one or a few member States. For example, *Fur Free Europe* was signed by 518.534 German citizens; *One of Us* by 623.947 Italian citizens.[7]

It is possible to imagine a pro-European bias also among the citizens who participate in Panels since participation is voluntary, one can imagine a self-selection process when they are enrolled (Bailly, 2023, 19). On the other hand, self-selection is a feature common to all online Platforms designed for participation.

If participation is encouraged, for example by publicising the possibility of contacting the EP or responding to the Commission's consultation (e.g. through media and campaigns), it is likely that people from different backgrounds will want to participate.

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[6] The thresholds correspond to the number of the Members of the European Parliament elected in each Member State, multiplied by the total number of Members of the European Parliament.

[7] The data are available on the website of the ECI.

It should also be borne in mind that, even where access is open, there are certain factors that can inhibit or prevent participation (Hierlemann, Roch, Butcher, Janis, Emmanouilidis, Stratulat and de Groot, 2022). One is self-restraint due to the technicalities of the legislation and the complexity of legal norms in the EU. Another reason could be the lack of publicity and lack of awareness of existing participatory tools. The digital divide is another general barrier to the use of platforms.

An issue that can be considered when discussing the open character of Platform and inclusiveness is the problem of language. The multilingual nature of the European Union can be seen as an obstacle for citizens who are unable to participate in activities such as consultations because of language barriers (for example, if the documents uploaded are only in English or a few other languages they do not speak), but it is also possible to see the other side of the coin.

Although the language policy of the EU institutions is in some cases regrettable (when translation is not available), the EP and Commission Platforms often offer the citizen the possibility to select one of the 24 official Union languages. In other terms, language can be a barrier to participation (Rose, 2008, 451) if not all documents are available in all languages but if compared to private platforms the multilingual approach of the EU (although it could be improved) is an added value and makes the space more open in terms of use and possibilities for both horizontal and vertical exchange than private Platforms (dealing with EU issues with a transnational approach), which usually do not offer alternatives to English.

The EU is a multilingual polity and shall respect its rich cultural and linguistic diversity (Article 22 of the EU Charter of fundamental rights) although "there is no general principle of EU law that confers on every citizen a right to have, in all circumstances, a version of anything that might affect his or her interests drawn up in his or her language" (European Ombudsman, 2017a). The Commission has tried to justify the lack of document translation

for budget constraints, an explanation that was contested by the EU Ombudsman (European Ombudsman, 2011, 2017a).

If, on the one hand, citizens cannot expect all the documents of all the institutions to be translated, on the other hand, the institutions must ensure that multilingualism is respected. This is essential in the perspective of accountability, participation and for the creation of a public space where people can exchange ideas, proposals, etc., support petitions submitted by other citizens, support European citizens' initiatives. Thus, the institutions must at all events allow the interlocutor to contact the institutions in the language of his/her choice (among the 24 official EU languages) and receive an answer in the same language as provided in Article 24 of the TFEU; do their best to translate all documents uploaded on the platforms (preparatory documents such as roadmaps, petitions, etc.) at the citizen's request, the Commission should provide a translation of the relevant public consultation documents in one of the EU official languages; provide a summary of the consultation documents in all official EU languages, with automatic translation of all documents using electronic translation tools.

Some of these solutions are in fact being put into practice. First, in the Commission's and EP's platforms anyone can use one of the 24 official languages to address the institutions, (asking for information, submitting a petition, etc.). E-translation programmes are used in "have your say" and in the "petition web portal". For registered ECI, the Commission ensures the translation of the title, subject, objectives and background of the initiative (Annex II of Regulation EU 2019/788 of the European Parliament and of the Council of 17 April 2019).

Disabilities can also be an obstacle for access to all online platforms. In the case of EU Platforms, however, it shall be considered that the EU Charter of Human Rights forbids discrimination based on disability (Article 21) and recognises the right of participation in the public life (Article 26). Moreover, the EU is contracting party of the Convention on the rights of people with disabilities, which at Article 9 para. 1 obliges Contracting Parties "To

promote access for persons with disabilities to new information and communications technologies and systems, including the Internet"[8] (European Ombudsman 2017b). Web accessibility is about ensuring that everyone, including people with disabilities, such as visual, hearing, motor or cognitive impairments, is able to use and interact with websites and applications. The EU Web accessibility action plan 2022-2025 sets out a series of actions to bring all EU websites, including documents published on these websites and online platforms, into conformity with the harmonised standards on accessibility requirements for JTI products and services and the Web Content Accessibility Guidelines (WCAG[9]). All website and web-based application of the Commission shall comply with Dir. 2016/2102[10] on accessibility of public sector bodies' websites and mobile applications. In the case of the Multilingual platform, for example, the European Disability Forum (EDF), a non-governmental organisation (NGO) that brings together representative organisations of persons with disabilities from across Europe, signalled "complaints from persons with disabilities who experienced accessibility problems". It further explained in a letter sent to the EU (EDF, 2021):

> The accessibility audit, carried out by the Swedish accessibility company Funka, showed that persons using assistive technologies such as screen readers, or those who rely on keyboard navigation because of a motor disability cannot use the website. Besides, forms necessary to input content on the platform are not properly designed, some error messages are only conveyed with colour, making it

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[8] The Convention entered into force the 21 January 2011. Council decision 2010/48/EC of 26.11.2009, in OJ L 23 del 27.1.2010, p. 35.

[9] The Web Content Accessibility Guidelines (WCAG) are guidelines that define the technical specifications for making web content accessible to people with disabilities. These are drawn up by the WEB Accessibility Initiative which is part of the World Wide Web Consortium, whose main activity is precisely to define technical standards for the web (WWW).

[10] OJ L 327 del 2.12.2016, 1.

difficult for those with colour blindness, and some buttons do not
have enough contrast to be seen by-a person with low vision.

Another aspect related to people with disabilities concerns the
participation in Panels. As recalled by the above-mentioned organisation, the
random selection of citizens, through telephone calls, exclude many persons
with disabilities who do not have access to telephone service of live in
segregated residential settings.

In summary, it can be said that the platforms of the Commission and the
European Parliament, as well as the Panels, comply with the principle of
openness: barriers such as language and disability, although still present, must
be addressed by the EU institutions based on obligations that have their
foundation in the EU Treaties and in international law binding the EU.
Because of the obligations to recognise the principle of non-discrimination
and equal opportunities for people with disabilities at the primary level, the
EU institutions are obliged to remove these barriers; similarly, as regards
language barriers, EU platforms ensure access in all official EU languages,
albeit with some limitations and much room for improvement.

2.2 ETPS Activities: Information, Input, Consultation, Deliberation and Control

The activities that take place in the EU Platforms and within the Panels can
be summarised as follows: request for information; input for action;
participation in the first stages of the decision-making process, deliberation.

Citizens hold institutions accountable by demanding a justification of the
work that the institutions have done in the citizens' name or on the citizens'
behalf. The institutions are obliged to provide information on their actions
and on the activities of the EU.

Information for citizens is guaranteed in the EU by the right of access to
documents (Article 15 TFEU and Article 42 of the Charter of Fundamental
Rights of the European Union), with some restrictions laid down in

Regulation 1049/2001,[11] and by the possibility of direct access to the institutions. The digital platform "Ask the EP" allows citizens to submit questions on the activities of the European Parliament (general questions on the EU can be submitted by telephone or e-mail to the Europe Direct contact centre).

Although, as its name suggests, the "Ask the EP" platform is primarily designed to ask the Parliament for information on its own activities or those of the Union, it can also encourage the EP to take action, such as asking the Commission to submit a proposal to the legislator or refusing to give its assent to an international agreement and thus halting the ratification process. For example, the European Parliament was urged not to approve the conclusion of the Comprehensive Investment Agreement between the People's Republic of China and the European Union Agreement because of human rights violations in China (European Parliament, 2021).

A selection of topics and questions addressed to the European Parliament and its replies can be found on the EP Platform, accessible to all citizens. This is significant from the point of view of the creation of a TEPS: while requests for information typically create a vertical relationship between the requester and the institution, the EP Platform identifies issues (presumably on the basis of the number of requests received by the EP) that are of interest to a wider audience.

Citizens do not participate in the process of adopting EU legislation, but they can be involved in the first stages of the policy cycle, i.e. proposal and consultation. As it is well-known, the power of initiative in the EU belongs to the Commission under a quasi-monopoly regime. As mentioned above, citizens (not less than one million citizens who are nationals of a significant number of Member States) are granted – by the Treaty on European Union at its Article 11, paragraph 4 - the right to invite the Commission to submit a proposal to the EU legislators (European Citizens Initiative) (Santini, 2019;

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[11] *OJ L 145, 31.5.2001, 43.*

Damato, 2017, 39; Langlais, 2017, 495). The procedures and conditions are laid down in regulation 2019/788.[12] The ECI platform creates a virtual space where citizens can first identify an issue that they consider should be regulated by a legal act of the Union (falling within the competence of the EU and the power of initiative of the Commission). The evaluation of the ECI, in the perspective of this paper, should take into account its impact on the identification of issues of debate and interest to European citizens. In the words of AG, in the *Puppinck* case:[13]

> the added value of the ECI is present on at least four distinct levels: (i) the promotion of public debate; (ii) enhanced visibility for certain topics or concerns; (iii) privileged access to EU institutions, enabling those concerns to be tabled in a robust way; and (iv) the entitlement to a reasoned institutional response facilitating public and political scrutiny (para. 73).

The AG also argued that ECI "serves as a vehicle to bring together issues of common interest between citizens across Member States' boundaries and furthers the strengthening of the EU public space" (para. 74). In this perspective, the ECI platform creates the most interesting space, as "It gives visibility to matters of concern to citizens, which may not already be on the agenda of the institutions or even on the agenda of the political groups represented in the European Parliament". (para. 80).

The European Ombudsman took a similar view in an own-initiative inquiry into the ECI. She had emphasised how this instrument offered a platform from which a public debate could be generated in which different reasons and perspectives could be expressed, criticised or defended (European Ombudsman, 2013). In fact, the most interesting feature of the ECI for the creation of a TEPS is that it can bring out a different vision of European integration and of citizens' priorities: against the Commission's

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[12] GU UE L 130 del 17.5.2019.
[13] Opinion of AG Bobek delivered on 29 July 2019, Case C-418/18, *P Puppinck and Others v European Commission*.

model of liberalisation, and there could be an alternative model that calls for the opposite path to be followed and that enriches the political debate (Van Den Berge, Boelens, Vos, 2020, 48).

In a letter addressed to the President of the Commission the Ombudsman underlined that the ECI is a "tool to foster public debate and participation. The ECI process offers organisers a platform from which they can generate a public debate about their issue" (European Ombudsman, 2017c). In another case she argued: "Clarity about the reasons for its choices promotes constructive and open debate, thus strengthening the European public sphere and democracy at the EU level and reinforcing the importance of the debate itself," (European Ombudsman, 2013). The ECI can also contribute to strengthening the principle of information and transparency towards citizens and accountability as the Commission is required, under Regulation (EU) 2019/788, Article 15, paragraph 2, (Vogiatzis, 2017, 250) to explain how it intends to respond to the demand from European Citizens. In its report the Commission refers to the legislation in force relevant for the issue, it explains its political choices, gives an account of its position on the issue, also referring to initiatives in the pipeline, the legislation it intends to pass (or not to pass), reference (if relevant) to other past initiatives, reasons for not proposing legislation, etc. (European Commission 2023). Referring to the hearing that takes place in the Parliament's plenary on registered ECI, AG Bobeck in the cited *Puppinck* case observed "members of the committee of a successful ECI .. are given the possibility to present their initiative before the Parliament…. This opens up the possibility that their initiative will be taken up by the Parliament or some of its members" (para. 37). The hearing also contributes to the discussion and debate:

> The public hearing for initiatives in the European Parliament is an important part of ensuring inclusivity and transparency of the ECI process (.…) Involving both Parliament and Council in the follow-up should enhance the process from the citizens' point of view, also

in terms of clarifying what they as co-legislators believe is the appropriate course of action" (European Ombudsman, 2017 c).

The space created by the ECI Platform is transnational and inclusive, and although there is no relationship between the signatories, in the Platform the interests and the requests for action are shared and could help to create a sense of identity among EU citizens.

However, one should also consider that:

such actors that oppose an ECI are not given an official platform to make their views known to the public. Changing the ECI process to allow for more actors to vocalise their viewpoints on successfully submitted ECIs is in consonance with the aspiration of the Commission and the Ombudsman that the ECI should be an instrument for fostering public debate in addition to being an agenda setting tool (Karitzia, 2017, 177, 197).

The consultation of EU citizens is established in EU primary law. Article 11 TEU requires the Commission to "carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent". Due to the way consultations are structured, they are first a tool through which the Commission gathers information and views from stakeholders (European Commission, 2017, 69). According to the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making[14] "public and stakeholder consultation is integral to well-informed decision-making and to improving the quality of law-making" (para. 19). At the same time the consultation process also provides citizens for information on the Commission's initiatives contributing to ensuring transparency of the policy-making process and to promoting an accountability process. In fact, the Commission publishes, in the "Have your say" platform,

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[14] OJ L 123, 12.5.2016, 1.

road maps, inception impact assessment and provide all relevant information on the proposal: background, problem definition and subsidiarity analysis, legal basis, objectives and policy options, likely impact, consultation strategies.

As a tool of participation, consultations are mostly aimed at a particular target group, and selected stakeholders. For some consultations, however, the "Have your say" platform gives citizens the opportunity to provide its views on the initiative by giving comments and answering a questionnaire. All comments are available for reading but there is not the possibility to comment or endorse other citizens' comments. It should also be noted that in the case of consultation as well, there is an aspect of "self-selection bias of the respondents towards the views of those who choose to respond to the consultation against those who do not". (European Commission, 2018, 2). Furthermore, consultations should be more widely publicised in order to achieve greater visibility and enable more people to participate (Court of Auditors, 2019). The activity in the "Have your say" Platform has therefore a vertical structure. For this feature and objective its main value is – in fact – democratic participation - but it creates, in terms of interaction, a very limited form of TEPS.

Petitions serve different purposes (Vogiatzis, 2021, 82). One is a non-judicial control function where petitioners signal a failure by Member States or EU institutions to fulfil their obligations under EU law. In the latter case petitions can be seen as a tool, albeit a weak and imperfect one, of institutional accountability (Tiburcio, 2018, 4). Petitions also have an input or agenda-setting function, when a petitioner asks for new legislation to be introduced or for Parliament to make a proposal to the Commission, on the basis of the competence set out in Article 225 TFEU.

Petitions are initiated bottom-up (as opposed to consultations which are initiated top-down) and have a vertical structure[15] in the sense that there is no discussion forum that allows public debates on the issues raised by a petition, but there is the possibility for citizens to express their support for petitions presented by other(s) citizens (by electronically co–signing), so horizontal relationships are established in this case. As keenly observed by Böhle and Riehm (2013):

> If a petitioner or as in most cases a group of petitioners make their concern public and ask for support in the form of signatures, the petition is a means to generate public attention, to initiate a debate, to influence the public opinion and to win supporters. One further aspect which is often neglected when considering petitions is the effect of active participation on the self and consciousness of the citizens.

According to the Petition Committee Report of 2021:[16] "in 2020, Parliament received 1 573 petitions, which represents an increase of 15.9 % as compared to the 1 357 petitions submitted in 2019 and an increase of 28.9 % as compared to the 1 220 petitions submitted in 2018".

In synthesis, petitions have the potential to involve citizens. In this case, various shortcomings need to be overcome, one of which is to publicise the existence of the tool and to strengthen feedback mechanisms.

The above-mentioned COFE Multilingual platform allowed all interested citizens to engage in the Conference activities. In particular, citizens, public institutions, NGO, universities, all who intended to post an idea as regards issues included in the 8 clusters of the Conference, could make proposals on the future direction of the EU project. The Multilingual Platform - with all the limitations mentioned above, and in particular those on disabilities, self-

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[15] Court of Justice judgment of 9.12.2014, *Peter Schönberger v. European Parliament*, C-261/13, ECLI:EU:C:2014:2423: "It is one of the means of ensuring direct dialogue between citizens of the European Union and their representatives" (para. 17).
[16] https://www.europarl.europa.eu/doceo/document/A-9-2021-0323_EN.html

selection, limited numerical participation - created a community of people who were able to communicate, share, comment and support or criticize ideas and proposals. The principle of multilingualism was respected as ideas could be posted in any of the 24 official languages of the Union and be read and commented on in another language thanks to an e-translation programme provided for by the Commission.

The COFE Platform has a precedent in the *Futurum,*[17] the online forum set up in the framework of the Convention on the Future of Europe (European Council, 2001) which was, however, different in composition and function. Wright (2007, 1167) discussed on the possibility of qualifying *Futurum*, as a virtual EU public sphere. He took as reference Haberman's (revised) theory of the public sphere (1996, 373) and Eriksen's three categories of public sphere: overarching general publics, transnational segmented publics and strong publics [18] (Eriksen, 2004; 2005, 345). Wright concluded that *Futurum* provided a single European space for transnational discourse on the development of a European constitution even if it did not fit into any of Erikson's models of public sphere. This is for the following reasons: it could not be qualified as general public since it was institutionally run; it did not fit in the second category of transnational segmented publics as it did not inform policymaking, not in the third (strong publics) as it was open to anyone who had the ability and desire to participate. This analysis can be of some interest when applied to the Multilingual Platform. First, the Platform was an integral part of the structure of the COFE and was connected to its other components: in this perspective it can be considered akin to Erikson's second model as it

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[17] Citizens had access, via the *Futurum* platform, to information regarding the course of the debate at the Convention. The *Forum* of the Laeken Convention was a structured network that involve only civil society representatives who could contribute to the work of the conference.

[18] General public sphere is informal streams of communication' normally independent of the state; Strong publics have direct relations to the political system. (such as parliamentary debates or policy fora such as the Convention for the constitutional treaty; segmented publics, in the European context, are the policy networks (epistemic communities) populated by bureaucrats, experts and organized interests

was connected to decision-making process (of the COFE): the ideas expressed in the Platform were functional to the working and discussions taking place in the Panels in their turn connected to the Plenary and to the final recommendations. More precisely, the ideas posted on the Platform were gathered and organized by a group of researchers who applied a *computer-assisted clustering tool* and the technique of *text mining* (Moreno and Redondo, 2016, 57; Galba, 2022). The ensuing report constituted the basis of discussion by the Panels of the COFE. What is of interest is that emphasis was placed (Appendix II of the Final Report) on deliberative and participatory events, in order to include positions and opinions that would not have found space in the part of the analysis concerning the ideas expressed in the platform. In order to provide a broader and more articulated view of the different proposals, issues raised by a limited number of participants were also included in the analysis when they presented a different perspective than the one adopted by the majority.

The Multilingual Platform is in any case an example of a public space (as defined in this paper): not only was it open and transnational, but it also provided ideas and proposals with a bottom-up approach, and it was linked to the panels and the plenary and, indirectly, to the institutions, which had to provide feedback and follow-up, transforming recommendations into proposals (EU Council, 2022; European Parliament, 2022; European Commission, 2022). On the contrary, *Futurum* provided for a point of information, allowed contributions by civil society actors (not by citizens) to the Convention; although the platform constituted a space for interactive debate (also by citizens) the online debate was not connected to the works of the Convention (Bart, 2006, 225).

The activities that took place within the COFE Panels of the conference are also worth mentioning as the deliberative method was applied and as the Panels in fact did create a space for interaction, discussion, exchange of ideas in order to make concrete proposals to be discussed by the Plenary. Their activities can be qualified as agenda setting which includes proposals for

legislative action, based on EU conferred competences, but also proposals that would require Treaty change. In synthesis, the Platform and the Panels enabled people to interact, debate and discuss and also created a sense of belonging and common identity.

As mentioned above, a new development, in the context of the phase of the preparation of the Commission's proposal, is the setting up of panels of citizens by the Commission modelled on those of the COFE as regards participants' selection (equality being satisfied by the chance of any EU citizen to be selected), the presence of facilitators and experts. At the end of the Conference, in fact, the President of the Commission (Von der Leyen, 2022) affirmed:

> You have proven that this form of democracy works. And I believe, we should give it more room, it should become part of the way we make policy. This is why I will propose that, in the future, we give Citizens' Panels the time and resources to make recommendations before we present key legislative proposals.

This statement raises a number of questions as regards the establishment of future Panels (see also section 3). If the criterion is key proposals, the Commission needs to further clarify in which cases and at what stage of the preparation of the proposal citizens' Panels should be consulted. As in the case of consultation on Commission's proposals open to all citizens, the three Panels referred to above are required to react to a Commission's initiative and not to put forward a new issue to be regulated by the EU legislators. In other terms, Panels can be qualified as a new instrument of consultation on Commission's proposals. However, in the perspective of TEPS they are a noteworthy addition to the Commission's consultation toolkit as far as methodology is concerned. In fact, in contrast to the more traditional consultation process, Citizens' Panels adopt a deliberative approach (OECD, 2020), a process of discussion and confrontation among participants that is totally absent in the more traditional consultation process described above,

carried out through the "Have your say" Platform. The Panels consultation process is in principle more limited in terms of participants, as the open consultation process potentially allows all citizens to express their views, but it is also more representative of the component of the EU population due to the selection process and provide a model for the establishment of further spaces for debate and deliberation.

However, it is not only the organisation of the panels that is important, but also the stage at which citizens can express and debate their views on the matter. In the case of the Food Waste Directive, the panel, composed of 147 citizens, was convened for three sessions (from December 2022 to February 2023 with the adoption of 23 recommendations to reduce food waste) after the end of the consultation process, that is at a fairly advanced stage in the preparation of the Commission's initiative (Greubel, 2022, 6). Visibility is another important feature for Panel. In fact, Panellists express their wish that greater visibility be given to the Panels (Commission, 2023b, 219).

3. Perspectives and Proposals

This paper has examined some EU tools (Platforms and Panels) established by the institutions which create transnational spaces for citizens within the EU legal order. Some of these Platforms make it possible to carry out participatory activities. What counts, in the perspective of the concept of TEPS adopted in this paper, is, above all, the possibility of interaction between all EU citizens who intend to take part in these activities, and the establishment of a sense of community, identity, sharing of values.

From the point of view of interaction, the Commission's consultation platform, which has a strong vertical dimension, hardly meets this requirement, although it is important in terms of accountability, information and, of course, participation. The Platform of e-petitions allows interaction and the ECI has the potential of creating a sense of identity and of sharing common values.

The COFE experience has had the merit of reinvigorating the debate on participatory democracy and has been an experiment of enormous interest – but, unfortunately, of little visibility - for deliberative democracy and as an input for further citizen engagement.

The COFE has encouraged the setting up of other TEPS both directly (through recommendations adopted by the Plenary) and indirectly (through the experience of the Multilingual Platform and the four Panels). Indeed, among the recommendations of the Conference Plenary there is the proposal to create "a user-friendly digital platform where citizens can share ideas, put forward questions to the representatives of EU institutions and express their views on important EU matters and legislative proposals, in particular youth". In fact, this platform only partially mirrors the Multilingual Platform as it has less ambitious objectives in terms of participation and impact on the decision-making process. The aim of the proposal was:

> to improve the information provided to them by creating an official website summarizing how they can participate on the democratic decisions, a digital platform to share citizens' ideas, questions and views as well as a mobile application presenting EU policies in a clear language.

This proposed Platform seems to reproduce some of current tools such as the official website of the Commission ("contribute to decision-making"[19]) which contains links to the ECI, Have Your Say, The Fit for Future Platform and the COFE (Archived page). There is not link to the EP Platforms but this institution has a webpage that contains links to all EU "alternatives to petitions"[20], including the Commission's Platform and ECI.

The most interesting feature of a possible future Platform (which would generate a new TEPS) would be the creation of horizontal relations and space

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[19] https://commission.europa.eu/law/contribute-law-making_en.
[20]https://www.europarl.europa.eu/petitions/en/artcl/EU+Alternatives+to+petitions/det/20220906CDT10143.

for debate and discussions following the model of the Multilingual Platform, where ideas could be posted and discussed and commented on by other users. If this was not the case, the proposed Platform would risk duplicating the existing information tools without providing any real added value. It is to be considered that, as mentioned above, the activities of the Multilingual Platform were connected to the Panels of the Conference and their deliberative activities with a view of making proposals to the Plenary of the Conference. Therefore, from the perspective of creating strong publics (Fraser, 1990, 56; Eriksen, 2004) it would be of particular relevance to establish a connection between the (future) Platforms and the new forms of citizens' Assembly.

This is the object of another proposal that emerged from the COFE (Proposal 37, measure n. 7):

> Holding Citizens' assemblies periodically, on the basis of legally binding EU law. Participants must be selected randomly, with representativeness criteria, and participation should be incentivized. If needed, there will be support of experts so that assembly members have enough information for deliberation. If the outcomes are not taken on board by the institutions, this should be duly justified; Participation and prior involvement of citizens and civil society is an important basis for political decisions to be taken by elected representatives. The EU is founded on representative democracy: with European elections, citizens give a clear mandate to their representatives and indirectly express themselves on EU policies (footnotes omitted).

As one can easily see, the composition and deliberative method of these assemblies are clearly modelled on the COFE Panels. However, the recommended measure provides for an obligation on the institutions to give reasons if citizens' proposals are not accepted. The Panels created by the Commission do not match this recommendation as they are required – as seen

above - to react to proposals submitted by the Commission (a top-down input) and are not competent to propose new initiatives.

Some authors, who have designed a model for institutionalised the Citizens' Assemblies observe: "The challenge is to put forward a format and a framework for a kind of participation that could consider the multiple complexities of the EU institutional system and unique transnational character of the EU policy-making process". (Abels, Alemanno, Crum, Demidov, Hierlemann, Renkamp and Trechsel, 2023, 6). They propose the introduction of permanent assemblies through an interinstitutional agreement with a wide scope of deliberation and competent for agenda-setting and scrutiny where the whole cycle is citizen-led and integrated into the existing participatory mechanisms. This is crucial because, while debating chambers are a participatory tool, the proposed assembly should be part of the democratic and representative process that is at the heart of the EU system and not in competition with it. Apart from the feasibility of the proposal (e.g. the competence to deliberate on issues outside the competence of the EU and the difficulty of reaching an agreement by the political institutions), it is interesting that this assembly could be considered as an example of a transnational European public space. The Citizens' Assemblies are therefore an interesting proposal, but only if they are given powers similar to those of the COFE Panels. Only if a link is established between the citizens' assemblies and the (new) digital platform would an added value be created. It is true that a Platform of European Citizens can contribute to the creation of a European public space, but without a structured link with the institutions, it runs the risk of not being an attractive pole.

If these panels or assemblies were also linked to existing platforms (in particular the ECI and petitions) and through these spaces to the political institutions their relevance would be enhanced. Indeed, debate in itself is not enough and needs to be linked to decision-making processes, even if only in the form of input and feedback mechanisms.

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