

# DELIBERATIVE DEMOCRACY IN THE EU

Countering Populism with Participation  
and Debate



EDITED BY  
STEVEN BLOCKMANS  
AND SOPHIA RUSSACK

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# ABBREVIATIONS

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AFSJ	Area of freedom, security and justice
AI	Artificial Intelligence
ALDE	Alliance of Liberals and Democrats for Europe – renamed in 2019 to ‘RENEW’
CFSP	Common Foreign and Security Policy
COREPER	Committee of Permanent Representatives of Member States to the EU
COSAC	Conference of Parliamentary Committees for Union Affairs
CPI	Corruption Perception Index
CSO	Civil Society Organisations
CVM	Cooperation and Verification of Progress Mechanism
EAC	European Affairs Committee
ECB	European Central Bank
ECI	European Citizens’ Initiative
ECJ	Court of Justice of the European Union
EEAS	European External Action Service
EFD	Europe of Freedom and Direct Democracy
EFJ	European Federation of Journalists
ENF	Europe of Nations and Freedom
EU	European Union
EP	European Parliament
EPP	European People's Party
EPIN	European Policy Institutes Network
EPPO	European Public Prosecutor's Office
EWS	Early Warning System
EUCO	European Council
FRA	Fundamental Rights Agency
GDPR	General Data Protection Regulation

GUE/NGL	Confederal Group of the European United Left/Nordic Green Left
IPEX	The Interparliamentary EU information exchange
MEP	Member of the European Parliament
MPF	Multiannual Financial Framework
MP	Member of Parliament
NP	National parliaments
OLAF	Anti-Fraud Office
OMT	Outright Monetary Transactions
PES	Party of European Socialists
PSM	Public service media
QMV	Qualified Majority Voting
S&D	Progressive Alliance of Socialist & Democrats

# 1. DEMOCRACY AS AN ECOSYSTEM

STEVEN BLOCKMANS

---

*Immersed in Greek history, and a bit later also in Greek tragedy and philosophy, I had to, sooner or later, come across that cursed word: politics. Cursed today, since for the ancient Greeks, politikon had many positive meanings: public, civic, daily, ordinary, sociable, even polite! The spelling of the word polite is not a coincidence.*

Donald Tusk

Athens Democracy Forum, 9 October 2019

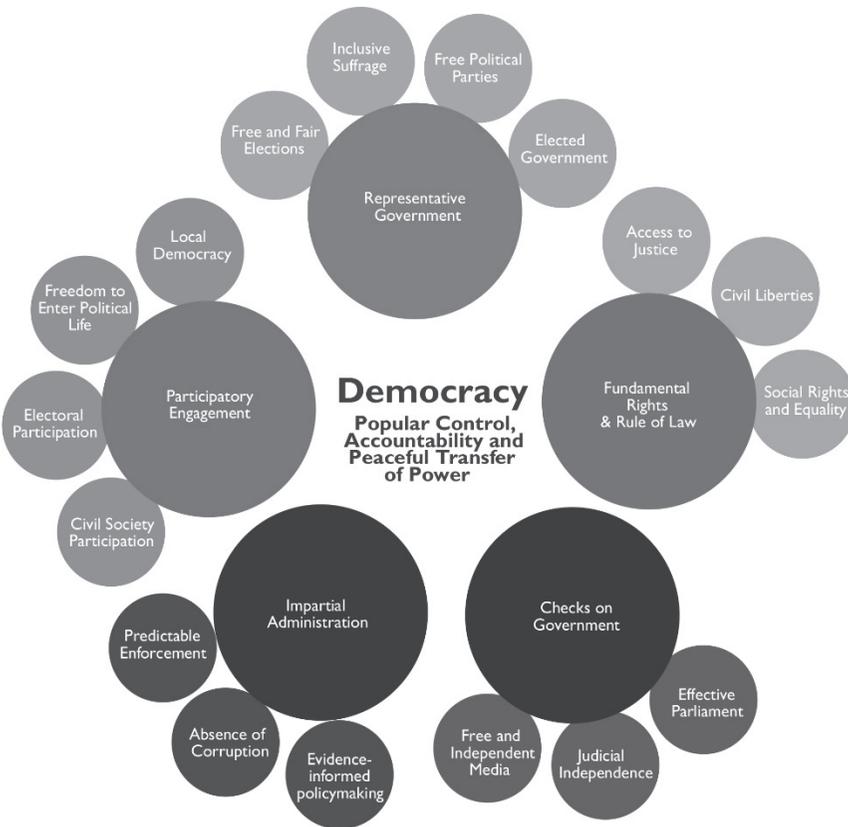
## 1.1 Democracy means more than just holding elections

Elections are the preferred way to freely transfer power from one term to the next and from one political party or coalition to another. They are an essential element of democracy. But if the process of power transfer is corrupted, democracy risks collapse. Reliance on voters, civil society organisations and neutral observers to fully exercise their freedoms as laid down in international human rights conventions is an integral part of holding democratic elections. Without free, fair and regular elections, liberal democracy is inconceivable.

Elections are no guarantee that democracy will take root and hold, however. If the history of political participation in Europe over the past 800 years is anything to go by, successful attempts at gaining voice have been patchy, while leaders' attempts to silence these voices and consolidate their own power have been almost constant (Blockmans, 2020).

Recent developments in certain EU member states have again shown us that democratically elected leaders will try and use majoritarian rule to curb freedoms, overstep the constitutional limits of their powers, protect the interests of their cronies and recycle themselves through seemingly free and fair elections. In their recent book *How Democracies Die*, two Harvard professors of politics write: “Since the end of the Cold War, most democratic breakdowns have been caused not by generals and soldiers but by elected governments themselves” (Levitsky and Ziblatt, 2018).

Figure 1.1 Key elements of a democratic ecosystem



Source: EPRS, *10 Trends Shaping Democracy in a Volatile World*, 31 October 2019, adapted from IDEA, the global state of democracy initiative.

“Democracy is not just an election, it is our daily life” (Tsai Ing-wen 1956). It means being involved in between elections, throughout the whole political process – from agenda-setting to the definition of policies and deciding how they are funded, to making sure that money reaches the designated communities. Democracy requires fact-based deliberation, must protect and promote the rights of all interest groups, in particular minorities, and hold corrupt elements to account.

Democracy is an entire ecosystem defined by the following key principles: representative government and impartial administration; respect for fundamental rights, including those of minorities, and the rule of law; a vibrant parliament with strong opposition; free media; and participatory engagement. Each of these elements form an integral and crucial part of a functioning democracy. There is thus no such thing as an ‘illiberal democracy’; it is a contradiction in terms.

Unfortunately, democracy is in retreat in many parts of world. Reports by Freedom House and others show the decline of democratic freedoms for 13 straight years, and the emergence of an increasing number of elected authoritarians. In Europe too we are witnessing the rise of anti-democratic leaders, including some who have consolidated power beyond constitutional limits, undermining institutions that protect freedoms of expression and association and the rule of law. Intolerance for due process, deliberative rationality and political patience poses a crisis for representative democracy in Europe (Appadurai, 2017). We should therefore ask ourselves how we ‘do’ democracy and how we might strengthen it. But first we need to understand the underlying causes of democracy fatigue.

*Intolerance for due process, deliberative rationality and political patience poses a crisis for representative democracy in Europe. We should therefore ask ourselves how we ‘do’ democracy and how we might strengthen it.*

## 1.2 Understanding what causes democracy fatigue

Observers have identified at least three challenges to democracy across Europe, indeed the world. First, the extension of the internet and social media exposes growing inequalities within and between countries. Differences in human rights protection and the uneven benefits of globalisation are dividing societies into winners and losers

on an unprecedented scale. Global markets are creating billionaires who can park their profits in tax havens. At the same time, the

*Observers have identified at least three challenges to democracy across Europe, indeed the world. First, the extension of the internet and social media exposes growing inequalities within and between countries.*

incomes of the middle and working classes have stagnated, their tax burden has increased and their livelihoods are more vulnerable to technological change (Rendueles, 2017). The democratisation of access to information is driving migrants to seek a freer and more prosperous life, even if they face an increasingly hostile welcome in several member states.

Second, governments are looking increasingly powerless in the face of global economy imperatives and the international commitments they signed up to (Krastev, 2017). Taking the Greek crisis as a case in point, this loss of economic sovereignty and the ensuing inability of the Greek government led by the (initially

*Second, governments are looking increasingly powerless in the face of imperatives and the international commitments they signed up to.*

extreme) left-wing Syriza to overturn the EU's austerity policies, despite the party's popular mandate to do so, created a sense of frustration. The management of the Eurozone debt crisis has fuelled conspiracy theories that democratic government has been captured by special interests and suspicions that the EU prioritised big banks over the Greek population, whose incomes fell by about a third (Varoufakis, 2017).

Finally, there is a crisis of efficiency that erodes the legitimacy of democratic institutions even further. Every political system must strike a balance between two fundamental criteria: efficiency, i.e. the

*Finally, there is a crisis of efficiency that erodes the legitimacy of democratic institutions even further.*

speed with which institutions can find effective solutions to problems, and legitimacy, as in the degree to which people support the solution (Manin, 1995). Most parliaments seem to take months over

long-term strategic decisions, from investment in emerging technologies to choosing the right energy mix to combat climate change. Many member state governments appear powerless in the face of acute crises, as the spike in arrivals of refugees and migrants in 2015 revealed.

The combination of these and other factors has set the scene for the resurgence of populism: the promise by political upstarts of simplistic solutions to people's grievances through radical policies that dismiss existing institutions and laws as either irrelevant or inconvenient (Müller, 2016). The rise of 'cultural sovereignty' lies at the heart of the most popular of protest movements, that of the nativist far right (Mudde and Kaltwasser, 2017). Myths, lies, hate speech, and violence are the tools to deal with opponents, competitors, 'misfits' or foreigners. To paraphrase former European Council President Donald Tusk in his speech to the 2019 Democracy Forum in Athens: "It is politics understood as war". Even if no shots are fired, some part of the populist playbook aims to destroy, invalidate or totally subordinate the others. "Emotions have replaced reason, while in political mathematics, dividing and subtracting have displaced multiplying and adding" (Tusk, 2019).

With a focus on what divides the people rather than on what could and should unite them, populists give a bad name to the term *Politeia*, which Cicero translated into Latin as *Res Publica*, the public affair. In the year we commemorate the centennial of Max Weber's death, this is perhaps the greatest challenge of

*In the year we commemorate the centennial of Max Weber's death, this is perhaps the greatest challenge of today: how to overcome the forces of growing polarisation and restore politics to the art of deliberating and acting in the common good, guided by the ethics of conviction and responsibility.*

today: how to overcome the forces of growing polarisation and restore politics to the art of deliberating and acting in the common good, guided by the ethics of conviction and responsibility.

### 1.3 Drivers of positive change

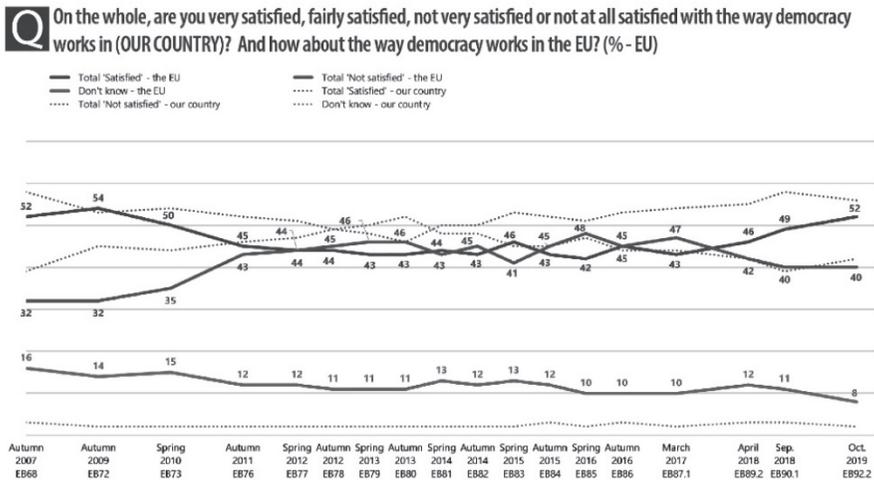
Despite the recurrence of populist victories at the ballot box and prevailing uncertainties around Brexit and the future of Europe, the proportion of citizens with a confident outlook towards the European Union has remained steady, with 59% support for membership (Parlemeter, October 2019). One in two Europeans in 20 member states also agreed that their voice counts in the EU. This figure had been rising since the 2016 Brexit referendum and spiked immediately after the European Parliament elections of May 2019. The share of those who believe that their voice counts in the EU is back to the level

registered at the beginning of 2019 (49%, -7). The flipside is that a worrying 46% of Europeans still disagreed with this statement, while 5% did not know.

The 2019 post-electoral Eurobarometer survey highlighted the increase in satisfaction with a range of aspects of democracy in the EU, strengthening the impression of strong democratic values associated with citizen engagement in Europe. Europeans particularly appreciated free and fair elections (75%), freedom of speech (74%) and respect of fundamental rights (73%), with clear improvements registering for the fight against disinformation in the media (48%, +8) and against corruption (43%, +7).

Fifty-two percent of Europeans were satisfied with the way democracy works in the Union and 56% shared this opinion concerning their own country (see Figure 1.2). This feeling had improved over the previous 12 months with regards to the EU democratic process, while changes were less significant on the functioning of democracy at the national level.

Figure 1.2 Satisfaction with how democracy works

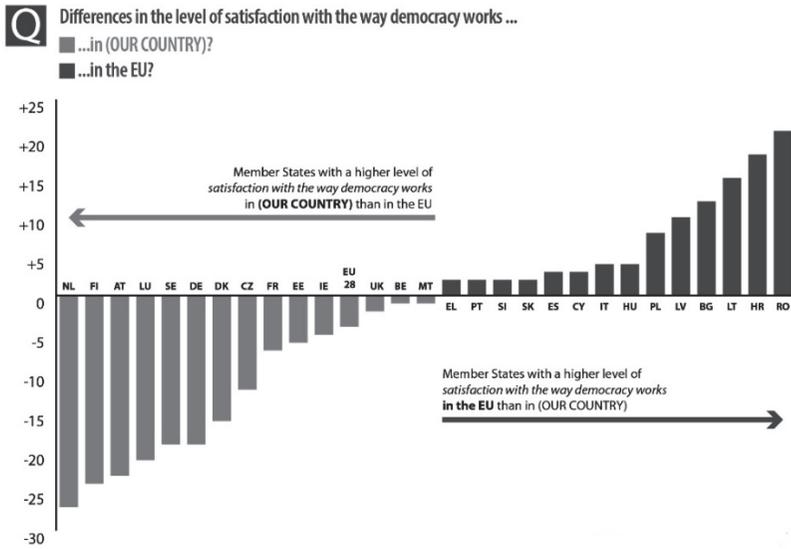


Source: Parlemeter 2019 (92.2), QB13.

The October 2019 Parlemeter nevertheless revealed a significant weakening of the perception that their voice counted among young people (48%, -12) and students (52%, -10) These drops in numbers might point towards signs of a more rapid

disengagement within the youth demographic, marked by an unprecedented level of mobilisation at the last European ballot.<sup>1</sup>

Figure 1.3 Satisfaction with EU versus national democracy



Source: Parlemeter 2019 (92.2), QB13a-QB13b.

Beyond these top-line figures, a wide spectrum of national situations becomes apparent, particularly a pronounced divide in assessing the functioning of the domestic political system. Figure 1.3 shows that in October 2019, the overall degree of satisfaction with European democracy in 14 member states was greater than that expressed for the national one. These differences were particularly striking for Bulgaria, Croatia, Latvia, Lithuania, Poland and Romania. Hungary, Poland, the Czech Republic and Spain showed the highest increases in support for EU democracy. These endorsements should be seen in context and take account of specific political developments such as the EU institutions’ position on compliance with the rule of law in Hungary and Poland and the uncertain political climate in Spain.

<sup>1</sup> Eurobarometer Survey 91.5, *Have the European elections entered a new dimension?* September 2019.

Table 1.1 Satisfaction with level of political participation

QB8.4 How satisfied or not are you with the following aspects of democracy in the European Union? Possibility for individual citizens to participate in political life (e.g. as candidates in elections, members of political parties) (%) (SENSITIVE QUESTION)

	Very satisfied	Fairly satisfied	Not very satisfied	Not at all satisfied	Refusal (SPONTANEOUS)	Don't know	Total "Satisfied"	Total "Not Satisfied"
EU 28	14	49	22	7	2	6	63	29
BE	12	58	22	6	1	1	70	28
BG	9	36	30	14	1	10	45	44
CZ	11	53	20	7	2	7	64	27
DK	29	49	12	2	1	7	78	14
DE	20	49	21	4	2	4	69	25
EE	18	53	14	4	0	11	71	18
IE	20	56	14	2	1	7	76	16
EL	11	44	32	9	0	4	55	41
ES	14	42	29	11	1	3	56	40
FR	9	51	25	7	1	7	60	32
HR	15	38	29	16	1	1	53	45
IT	9	45	27	11	2	6	54	38
CY	15	47	27	6	0	5	62	33
LV	17	51	17	7	1	7	68	24
LT	12	44	28	6	1	9	56	34
LU	16	51	18	5	3	7	67	23
HU	17	47	24	8	1	3	64	32
MT	15	54	17	3	0	11	69	20
NL	19	54	14	4	1	8	73	18
AT	20	49	22	5	1	3	69	27
PL	16	58	16	4	4	2	74	20
PT	5	64	19	4	1	7	69	23
RO	10	37	29	16	4	4	47	45
SI	13	44	27	10	1	5	57	37
SK	9	51	22	7	2	9	60	29
FI	18	52	19	4	1	6	70	23
SE	15	50	16	4	2	13	65	20
UK	13	50	17	7	3	10	63	24

Source: Eurobarometer, 2018.

Table 1.2 Satisfaction with respect for the rule of law

QB8.5 How satisfied or not are you with the following aspects of democracy in the European Union? Rule of law (e.g. respect for independence of the judiciary, the integrity and impartiality of the electoral system) (%) (SENSITIVE QUESTION)

	Very satisfied	Fairly satisfied	Not very satisfied	Not at all satisfied	Refusal (SPONTANEOUS)	Don't know	Total "Satisfied"	Total "Not Satisfied"
EU-28	12	45	27	9	2	5	57	36
BE	12	60	20	6	1	1	72	26
BG	6	26	34	24	1	9	32	58
CZ	8	40	32	14	2	4	48	46
DK	29	47	13	2	1	8	76	15
DE	15	48	27	5	1	4	63	32
EE	13	57	17	3	0	10	70	20
IE	21	56	13	2	1	7	77	15
EL	9	39	37	12	0	3	48	49
ES	13	37	32	14	1	3	50	46
FR	9	44	29	10	1	7	53	39
HR	7	33	34	23	1	2	40	57
IT	10	38	33	12	1	6	48	45
CY	19	45	25	7	0	4	64	32
LV	8	40	29	9	1	13	48	38
LT	11	43	32	6	1	7	54	38
LU	16	49	15	7	4	9	65	22
HU	13	44	26	12	1	4	57	38
MT	12	50	20	5	1	12	62	25
NL	15	54	21	4	1	5	69	25
AT	22	50	20	4	1	3	72	24
PL	13	49	25	8	3	2	62	33
PT	5	53	27	6	1	8	58	33
RO	9	37	31	16	3	4	46	47
SI	4	30	36	26	1	3	34	62
SK	6	35	34	15	2	8	41	49
FI	17	50	23	4	0	6	67	27
SE	13	51	20	3	1	12	64	23
UK	13	49	18	8	3	9	62	26

Source: Eurobarometer, 2018.

These findings confirm those of previous Eurobarometer surveys that citizens' expectations of the EU and European democracy are strong, in particular the possibility for individuals to participate in political life (see Figure 1.4) and for respect for the rule of law (see Figure 1.5).

*Citizens aspire to more freedom, a greater say in politics, and higher levels of accountability in 'their' (multi-layered) European Union.*

*Rather than looking for alternatives to democracy, one should instead seek to reform Europe's faltering political systems through concrete measures that enhance their functioning.*

While barely three years ago less than half of young Europeans believed that living in a democracy was essential (Foa and Mounk, 2017), the above-mentioned figures and other polls (see Chapter 3) show that most citizens aspire to more freedom, a greater say in politics, and higher levels of accountability in 'their' (multi-layered) European Union (see Chapter 4). Arguably, liberal democracy remains an aspiration because it delivers.<sup>2</sup>

This is an important finding. It means that rather than looking for alternatives to democracy (autocracy or technocracy), one should instead seek to reform Europe's faltering political systems through concrete measures that enhance their functioning.

## 1.4 Which liberal democracy model?

James S. Fishkin, a professor at Stanford University and a leading political theorist, has compared four models of democracy: competitive democracy, elite deliberation, participatory democracy and deliberative democracy - in light of four democratic principles: political equality, participation, deliberation and 'non-tyranny' (Fishkin, 2018). Ideally, a democracy would embody all of these principles.

'Competitive democracy', the model upon which all EU member states' choice for representation relies, supposedly guarantees political equality through universal suffrage and non-tyranny thanks to political parties and their candidates being able to

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<sup>2</sup> See <http://hdr.undp.org/en/content/human-development-index-hdi>.

compete for the popular vote in free and fair elections. It can, however, fall short of the ideals of participation (due to low and unequally distributed levels of voter turnout) and deliberation. As the case of Hungary under Viktor Orbán's Fidesz Party shows, political inequality and streaks of tyranny are not excluded either. Where populism has translated into the power of government this erodes the fundamentals on which democratic systems are built: the rule of law, free press, parliamentary oversight, and more. Yet, 'meritocratic authoritarianism', a model in which regimes with flawed democratic processes provide efficient and effective governance, may nevertheless garner domestic and international support (Fishkin, 2018).

In a similar vein, 'elite deliberation' should guarantee a system with thoughtful weighing of arguments and resultant non-tyranny. But such a system would contravene political equality and undermine mass participation.

The theory of 'participatory democracy', on the other hand, advocates for a greater participation by citizens in the political process. It would guarantee both political equality and mass participation, but might fail in terms of deliberation (the theory is built on the general assumption that citizens have the potential for political learning) and staving off tyranny (Schiller, 2007). The label is a very broad one though. In the early stages of development, leading theorists placed democratic participation within the frame of an overall transformation of society (Bachrach, 1970; Pateman, 1970). Later contributions to the debate elaborated on direct democracy as a form of extended participation, a mechanism for a popular decisive vote with a majoritarian character. They differentiated between the concepts of 'associative democracy', concentrating on the participative dynamics of social and political movements; 'cooperative democracy' elaborated on bargaining models; and a conceptual group formed around applied models of participation such as problem-solving schemes and alternative conflict resolution (cf. Held, 1987).

With a focus on communicative rationality, 'deliberative democracy' can be considered both as a sub-set of 'participatory democracy' and as a stand-alone category that attempts to reconcile deliberation by citizens with an equal consideration of diverse views. The focus is on dialogue, argumentation and reflection (Gutmann

and Thompson, 2004; Dryzek and Niemeyer, 2008). In the search for practical solutions, Fishkin has been a pioneer in backing up normative theories of deliberative democracy with ample empirical research<sup>3</sup> on face-to-face deliberations of adults whose selection is based on the logic of random sampling, guaranteeing political

*Most political theorists are now in favour of participatory/deliberative democracy.*

equality by giving all citizens the same chance of selection by lot. Better known 'deliberating microcosms' are citizens' juries (12-26 participants), consensus conferences (10-50 participants), citizen assemblies (50-160 participants) and deliberative polling (100-500 participants) (Breckon et al., 2019). Even if this 'folk theory of democracy' has been criticised by some political scientists for being empirically naïve (cf. Achen and Bartels, 2016), most political theorists are now in favour of participatory/deliberative democracy (Chambers, 2019).

Of the four above-mentioned models, deliberative democracy does, indeed, maximum justice and minimum violence to all four above-mentioned principles. Yet the design settings under which public deliberation can take place do not allow for mass participation. Neither do the group dynamics fully exclude tyranny by the rhetorically more advantaged (Grönlund et al., 2014). This branch of deliberative democracy may work well at the local level, as early experiences in the German-speaking eastern cantons of Belgium reveal (Van Reybroeck, 2018), but to zoom this model out to the macro level creates problems in political communication outside the controlled settings. Even when trying to maximise demographic and attitudinal representativeness, most 'mini-publics' fail to capture the full variety of public opinion and none of them are representative in the electoral sense (Goodin and Dryzek, 2006). In large countries and in supranational cases such as the European Union, random sampling remains segmented across geographical areas.

The emphasis on discursive methods to strengthen existing forms of representative democracy is nevertheless an attractive and potentially powerful one in the European context (Dryzek, 1990). According to Jürgen Habermas, one should leave the

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<sup>3</sup> See <https://cdd.stanford.edu>. Deliberative polls have been conducted in well over 100 countries and twice across all member states of the EU.

institutionalisation of discourse wide open because democratic legitimacy is tied to what citizens would agree to under discursive conditions: “only those statutes can claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted” (Habermas, 1996: 110). Habermas is not saying that we need to institute a discursive process of legislation in order to achieve true democratic legitimacy, but rather that the only way to make sense of liberal democratic claims to legitimacy is to understand them in discourse-theoretic terms. If we look at democracy this way, then our constitutions, rights and freedoms, our equal opportunities to participate and speak, the fair regulation of the public sphere, and the accountability of our representatives, and so on, are all to be understood as a legally constituted discursive process of legislation (Chambers, 2019).

This way of looking at liberal democratic constitutional orders then highlights certain normative priorities and evaluative standards. The circulation of information becomes central to maintaining democratic legitimacy. Equal access to information and to the public debates that articulate policy priorities is also key. Creating channels of communication between citizens and the centres of decision-making becomes an imperative mission in enhancing democracy in addressing real world problems, claims and needs (Contiades and Fotiadou, 2018; Chambers, 2019), especially in an era when new media and e-democracy techniques like petition platforms and crowdsourcing have become important participatory tools.

## 1.5 How to strengthen representative democracy

Since the ‘Great Recession’ (Geiselberger, 2017) has many different origins, it will inevitably require many different remedies. It requires action in at least three areas. First, inequality, both economic and political, must be tackled. Governments must respond by redistributing fairly the benefits of globalisation by restricting tax avoidance and evasion schemes, and most importantly, discouraging tax havens. Fortunately, democracy is one of the only systems in which the concerns of the majority can overturn the interests of the wealthy and prevent self-serving and self-perpetuating political classes from forming and disconnecting from

*First, inequality, both economic and political, must be tackled.*

*This demands more participation, not less.*

their electorates. This demands more participation, not less. Making choices is the foundation of democracy. Those who do not choose themselves become the object of others' choices. They lose the ability to shape their future, they lose power. You're either at the table or on the menu, as the saying goes. The majority should therefore harness the mechanisms at their disposal.

Second, representative democracies must be made more efficient. Much of the debate in our democracies turns on the politics of redistribution and public spending (output legitimacy), but not enough on efficiency (throughput legitimacy). We are trying to solve today's problems with yesterday's solutions. We must harness new technologies

*Second, representative democracies must be made more efficient.*

and management techniques to overhaul the administration of the state to make our democracies less bureaucratic and more responsive to citizens, especially those who cannot afford high-priced lawyers and lobbyists.

Third and finally, democracy must be championed. Yet many of the tools in support of democracy have been abandoned or are underfunded. Democracy's enemies are spending billions to undermine it, both in practice and through misinformation. Democracy is a work in progress. Athenian democracy shows that practice never meets

*Third, deliberative democracy must be championed.*

the ideal: women could not vote, slavery was a given and the body politic could be captured by oligarchic interests. Victory over nazism, fascism and communism were all ideological struggles won on the battlefield of ideas as well. Democracies must reclaim the lost ground by defending and promoting liberal ideas, just as they did against democracy's past ideological enemies.

## 1.6 Our contribution to the debate

In our 'Towards a Citizens' Union (2CU)' project, we have focused on one dimension: the way we do democracy in Europe. We have zoomed in on the constitutional and institutional frameworks, practical procedures and mundane interfaces that citizens and

*In our project, the underlying rationale has been that instruments can shape results.*

politicians use to make democracy happen. The underlying rationale for this approach has been that instruments can shape results in generating greater efficiency, accountability and thus authority for the democratic model (see Chapter 2).

Building on the notion of increasing social, economic and political interdependence in a multi-layered European Union, we devoted the first book to the question whether a sense of solidarity and European identity could be rescued from the bottom up by empowering citizens to ‘take back control’ of their Union. Our research revealed, among other things, that people’s interest in exploring ‘direct democracy’ has increased as a result of the EU’s polycrisis of recent years – although this trend is far from overwhelming and is even absent in some member states. Yet, to move beyond being “a heavily instrumentalised wrecking-ball”, the various (new) instruments of direct democracy need to meet certain participatory preconditions in order to contribute to the quality of democracy overall (Youngs, 2018).

*The first book revealed that people’s interest in exploring ‘direct democracy’ has increased as a result of the EU’s polycrisis of recent years.*

As citizens make what experts consider to be ‘wrong’ populist-fuelled choices, sympathy has resurged for the classical concept of elite-mediated governance. In the second volume, we investigated how the relationship between democratic institutions of the member states and the EU has changed as a result of a decade of crisis. Rather than assess the state of collective government (Van Middelaar, 2019), we focused primarily on the role of parliaments. As in the first book, the national level lent itself best to a broad investigation of the health of representative democracy in Europe. Our research found that the practice of voting and decision-shaping mechanisms differ considerably between member states, and that there is hardly any momentum towards greater convergence. Except in moments of crisis, EU issues and European elections are of a second order. The ‘Europeanisation’ of representative democracy is rather uneven across the continent. This is not an east-west or a north-south divide. It is a divide between those who feel politically represented and those who do not.

*In the second volume, we found that the ‘Europeanisation’ of representative democracy is rather uneven across the continent.*

Against the backdrop of shifting political ecosystems we uncovered the deliberative disconnections within and between them, described the limitations of the instruments we use to conduct direct and representative democracy in Europe, and the inherent limitations and even outright refusal to change procedures.

In our attempt to contribute ideas to strengthen the ecosystem of democracy, the next step (the present volume 3) in the 2CU research is to use the empirical findings collected in the previous two volumes to draw up a prescriptive agenda aimed at improving political participation, efficiency and accountability in Europe.

*This book aims to find ways to strengthen voting-centric competition by placing 'deliberative' elements in the broader landscape of representative democracy in Europe.*

Following in the footsteps of Habermas and others, this book aims to find ways to strengthen voting-centric competition by placing 'deliberative' elements in the

broader landscape of representative democracy in Europe. Rather than trying to plug an ideal-type instrument of 'direct democracy' or one favoured institutional form of deliberation into existing systems of democracy, we ask which institutions, instruments, procedures and mechanisms (innovative or not) could enhance representative

democracy in Europe, at both the national and EU levels and between them. In our search for ways to generate participatory fusion, the focus will again be on polity. Our focus will be on assorted varieties of citizen

*We ask which institutions, instruments, procedures and mechanisms (innovative or not) could enhance representative democracy in Europe, at both the national and EU levels and between them.*

engagement that complement, not threaten representative democracy. It is by gearing up, not dumbing down that we find the antidote to the threats of entitlement, complacency and populism.

To unpack these issues, we have identified the mechanisms that would require a deeper prescriptive analysis.

## References

- Achen, C. and L.M. Bartels (2016), *Democracy for Realists: Why Elections Do Not Produce Responsive Government*, Princeton: Princeton University Press.
- Appadurai, A. (2017), "Democracy Fatigue", in H. Geiselberger (ed), *The Great Regression*, London: Polity Press, 1-12.
- Bachrach, P. (1967), *The Politics of Democratic Elitism. A Critique*, Boston: Little, Brown Co.
- Blockmans, S. and S. Russack (eds) (2018), *Direct Democracy in the European Union: The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Blockmans, S. and S. Russack (eds) (2019), *Representative Democracy in the European Union: Recovering Legitimacy*, London: Rowman & Littlefield International.
- Blockmans, W. (2020), *Medezeggenschap*, Amsterdam: Prometheus.
- Breckon, J., A. Hopkins and B. Rickley (2019), *Evidence vs Democracy: How Mini-publics' Can Traverse the Gap between Citizens, Experts, and Evidence*, Nesta: Alliance for Useful Evidence.
- Chambers, S. (2019), "Democracy in the Open", *The Good Society*, Vol. 27, No. 1-2.
- Contiades, X. and A. Fotiadou (2018), *Participatory Constitutional Change: The People as Amenders of the Constitution*, London: Routledge.
- Dahl, R. (1989), *Democracy and Its Critics*, New Haven: Yale University Press.
- Dryzek, J. (1990), *Discursive Democracy. Politics, Policy, and Political Science*, Cambridge: Cambridge University Press.
- Dryzek, J. and S. Niemeyer (2008), "Discursive Representation", *American Political Science Review*, Vol. 102, No. 4
- Foa, R.S. and Y. Mounk (2016), "The Democratic Disconnect", *Journal of Democracy*, Volume 27, Issue No. 3, 5-17.
- Fishkin, J.S. (2018), *Democracy When the People Are Thinking: Revitalizing Our Politics Through Public Deliberation*, Oxford: Oxford University Press.
- Fishkin, J.S. and J. Mansbridge (2017), "Introduction", in J.S. Fishkin and J. Mansbridge (eds), *The Prospects & Limits of Deliberative Democracy*, *Dædalus*, Special Issue.

- Freedom House (2019), "Democracy in Decline: Freedom in the World 2019".
- Geiselberger, H. (ed.) (2017), *The Great Recession*, London: Polity Press.
- Goodin, R. and J. Dryzek (2006), "Deliberative Impacts: The Macro-Political Uptake of Mini-Publics", *Politics & Society* 34, No. 2, 219-44.
- Grönlund, K., A. Bächtiger and M. Setälä (2014), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process*, Colchester: ECPR Press.
- Gutmann, A. and D. Thompson (2004), *Why Deliberative Democracy?*, Princeton, N.J.: Princeton University Press.
- Habermas, J. (1996), *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, translated by William Rehg. Cambridge, MA: MIT Press.
- Held, D. (1987), *Models of Democracy*, Cambridge, Polity Press.
- Krastev, I. (2017), 'Majoritarian Futures', in H. Geiselberger (ed.), *The Great Recession*, London: Polity Press, 65-77.
- Levitsky, S. and D. Ziblatt (2018), *How Democracies Die: What History Reveals about our Future*, London: Penguin.
- Manin, B. (1995), *The Principles of Representative Government*, Cambridge: Cambridge University Press.
- Mansbridge, J., J. Bohman, S. Chambers, T. Christiano, A. Fung, J. Parkinson, D. Thompson and M.E. Warren (2012), "A Systemic Approach to Deliberative Democracy", in J. Parkinson and J. Mansbridge (eds.), *Deliberative Systems*, Cambridge: Cambridge University Press, 1-26.
- Mudde, C. and C. Rovira Kaltwasser (2017), *Populism: A Very Short Introduction*, Oxford: Oxford University Press.
- Müller, J.W. (2016), *What is Populism?*, University of Pennsylvania Press.
- Parkinson, J. (2018), "Ideas of Constitutions and Deliberative Democracy and How They Interact", in R. Levy, Hoi Kong, G. Orr and J. Kin (eds), *The Cambridge Handbook of Deliberative Constitutionalism*, Cambridge: Cambridge University Press, 246-255.
- Parlemeter (2019), *Heeding the Call Beyond the Vote: A Stronger Parliament to Listen to Citizens Voices*, Brussels: European Parliament.
- Pateman, C. (1977), *Participation and Democratic Theory*, Cambridge: Cambridge University Press.

- Rendueles, C. (2017), "From Global Recession to Post-Capitalist Counter-Movements", in H. Geiselberger (ed.), *The Great Recession*, London: Polity Press, 143-156.
- Schiller, T. (2007), "Direct Democracy and Theories of Participatory Democracy: Some Observations", in Z.T. Pállinger, B. Kaufmann, W. Marxer and T. Schiller (eds.), *Direct Democracy in Europe*, Wiesbaden: VS Verlag für Sozialwissenschaften
- Standard Eurobarometer 89 (2018), *Public Opinion in the European Union*, Brussels: European Commission.
- Van Middelaar, L. (2019), *Alarums and Excursions: Improvising Politics on the European Stage*, Newcastle upon Tyne: Agenda Publishing.
- Van Reybrouck, D. (2018), *Against Elections*, New York: Seven Stories Press.
- Varoufakis, Y. (2017), *Adults in the Room: My Battle with Europe's Deep Establishment*, London: Vintage Press.
- Youngs, R. (2018), "Getting Europe's Direct Democracy Right", in S. Blockmans and S. Russack (eds.), *Direct Democracy in the European Union: The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 443-452.



## 2. EFFICIENCY, AUTHORITY AND REPRESENTATION

DANIEL SMILOV

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*This chapter looks at the conceptual differences between two approaches that might be called the ‘transmission paradigm’ and the ‘political education paradigm’, and applies them to recent political developments in Europe and Eastern EU member states in particular.*

*From a policy perspective, it argues that the dominance of the ‘transmission paradigm’ should be checked by attempting to restore the educational and filtering potential of political parties, mass media and other instruments of democratic education. Restoring the authority of these instruments is no easy task but it must be faced to counter the increasingly unfiltered transmission of the public’s wishes, which has already produced major political deadlocks and irrationalities – the painful process of Brexit being just one illustration of this.*

### 2.1 Introduction: Two paradigms for efficiency

What is efficient political representation? There could be at least two competing conceptions of this issue. First, representation could be deemed efficient if a political party translated people’s preferences directly and swiftly into political decisions. From this point of view, an efficient vehicle of representation would reflect the popular will, avoid distorting it, and would feed it, as it is, into the decision-making mechanisms of state. Second, political representation could be considered efficient if it educated the public and helped it to reach better decisions, all things considered. The first conceptual approach could be called the ‘transmission paradigm’, and the second approach ‘the political education paradigm’.

Both these approaches have their roots in the history of ideas and the political processes of European democracies. Both are rooted in the Enlightenment. The transmission paradigm is an emanation of anti-paternalistic Enlightenment ideology. People should be treated as mature citizens who know their interests and values best. Equally grounded in Enlightenment ideology is the 'education' paradigm, however. It argues that the political process should be led by reason and provide incentives to bring the best out of rational individuals.

Over the last decade, however, the transmission paradigm has come to prevail, with the rise of populist parties and politicians. Populist parties and politicians could be seen as a democratic "innovation" (Smilov, 2017) that provides an almost instant transmission of popular wishes and preferences to the public sphere and the institutions of state. Technological, informational and communicational advances underpin this innovation: with social networks, Big Data and AI it is now possible to aggregate information

about public preferences cheaply. At the same time, social networks and telecommunication allow for direct targeting of voters. The mutual feedback between voters and

*The mutual feedback between voters and politicians is much more intensive today.*

politicians is much more intensive today. Deliberative polling, voting-aid devices are other advances in democratic representation that improve the transmission of public preferences.

Yet increased efficiency in terms of speed and immediacy of transmission comes at a cost, namely the increasing inability of political parties and politicians to filter out specific preferences, which is potentially dangerous for the public good. Also, political

*Yet transmission comes at a cost, namely the increasing inability of political parties and politicians to filter out specific preferences to educate the public and to take responsibility for unpopular but necessary decisions.*

parties are losing their capacity to educate the public and to take responsibility for unpopular but necessary decisions. Indeed, contemporary political parties are thin on ideology and usually lack their own expertise in policymaking; most of these activities are outsourced to PR-companies, independent think

tanks, commercial IT companies, or even media programmes. By losing their educational potential, (some) political parties have

gradually become functionally identical to the media – both are vehicles for the transmission of popular wishes and preferences in the public sphere. It is not surprising that in many countries there are party-media hybrids: political parties that have sprung from popular TV shows.

This chapter defines the conceptual difference between the two above-mentioned approaches to efficient representation in more detail, and applies them to recent political developments in Europe and Eastern EU member states in particular.

It argues that the dominance of the transmission paradigm should be checked by attempting to restore the educational and filtering potential of political parties, the mass media and other instruments of democratic education. Restoring the authority of these instruments is no easy task but it must be faced to prevent the rapid and unfiltered transmission of the public's wishes – a phenomenon that has already produced significant political deadlocks and irrationalities.

*The dominance of the transmission paradigm should be checked by attempting to restore the educational and filtering potential of political parties, the mass media and other instruments of democratic education.*

## **2.2 Populism and the ascendancy of the transmission paradigm**

The 'rise of populism' has become a dominant interpretative theory in the understanding of contemporary politics. Populism is a basic (if not *the* basic) democratic ideology, according to which politicians should follow the will of the people, no matter what. From this point of view populism is the opposite to paternalism: it is a minimalistic democratic ideology that argues that people are mature enough to make up their own minds and take their own decisions.

In terms of representation, populism is the embodiment of the transmission paradigm. Populist politicians offer to transmit the preferences of the electorate to the public sphere. They are not 'educating' the electorate, they are merely humble servants of the people. This may be a manipulative strategy, but much of the appeal of populist politics is due to the appeal of such anti-paternalistic messages.

There may be many explanations of the rise of such anti-paternalism. One obvious candidate is disappointment with the grand narratives of more sophisticated ideologies such as social democracy or Christian democracy, for instance. The growing self-confidence of post-war generations, which are gradually forgetting the lessons of the anti-liberal turn of the 1930s in Europe, is another explanatory factor.

In general, two types of theories have been advanced to capture populist developments. The first group stresses economic hardship and discontent with rising inequality as the main drivers of populism. The second group points to cultural factors, notably the increased fear for the collective identity of large groups. Both theories rely on the widespread fears among majorities that they are losing status – either economic or cultural.

Fear is an excuse for a more egoistic type of behaviour and for the (temporal) suspension of empathy and solidarity. Anti-paternalism serves precisely such majorities (or near majorities) rather well in liberal democracies, which have grown to become self-centred and egoistic.

From this perspective, the populist majorities have internalised the *homo economicus* mindset and have started to view politics as a game of maximising their own interest *without regard for the interest of others*. The *homo economicus* mindset has always been a theoretical model designed to explain behaviour rather than to justify it. Rational egoism has its philosophical defenders as a moral stance, but most people are still ashamed of themselves if they openly act in an egoistic manner.

Populism as anti-paternalism serves both as an antidote to and a therapy for such shame. At the psychological level populism ‘normalises’ egoistic behaviour. At the moral level it argues that such behaviour is not inferior to others.

The rise of the populist anti-paternalistic party could be interpreted as the response of the political class to the above-mentioned egoistic attitudes and circumstances. The anti-paternalistic party thrives on and nurtures such attitudes by having two general purposes. The first is therapeutic and psychological. It has to heal *homo economicus* from residual feelings of shame, guilt and indebtedness to others. For this purpose, it often presents these

others, not as fellow citizens, but as enemies or at least as people of inferior moral status. Commonly, populist politicians rail against 'political correctness' and use language that denigrates and politically assassinates the opponent.

The therapeutic function of the anti-paternalistic party is also served by its attack on educational authorities of any type. Most commonly it positions itself against established *expert* institutions and individuals: from the mainstream media to academia. Populists portray these institutions as self-interested and corrupt, with the aim of depriving them of authority. Thus, society is left without a neutral critical vantage point – everything becomes a clash of self-interested groups, and the majority can be relieved that its egoism is not a deplorable aberration – it is actually the norm.

This attack on political education is in essence the populist rejection of the 'education paradigm' in terms of political representation.

The second function of the anti-paternalistic party is ideological. It gives arguments to the majority that its behaviour is not only normal (in the sense of widespread) but is also morally justified. This ideological function of the anti-paternalistic party has been generally neglected in the literature: rather, it has been argued that its central message is the representation of the people as a homogeneous group against the corrupt elite. Things are more subtle than this, however. The main message is that the majority is *right* to pursue its self-interest as much as possible. In a situation where we have only clashing self-interests, what is *right* is the will of the majority.

This ideological message goes against deeply entrenched political attitudes in Western (and not only) history. From as early as Aristotle it is known that genuine politics exists only in power relationships, which are mutually beneficial – both for the ruling and the ruled. In this sense politics is non-definable without the notion of a common, public interest; otherwise it descends into master-slave or familial relationships.

The Aristotelian difficulty of the ideological task of the anti-paternalistic party is dealt with in two ways. On the one hand, populists sometimes take on board libertarianism as an extreme form of justification for the pursuit of self-interest in politics. On the other

hand, populists discourage people from believing that public authorities could defend *common* societal interests in principle. In this sense the anti-paternalist party rides the waves of distrust in politics that characterise the West. Populists rarely try to convince the people that politics is something good and morally justified: on the contrary, their argument is that politics is a 'dirty business', in which the more unscrupulous and devious individual outsmarts the rest. The conscious undermining of the very notion of public authority by populists makes the 'political education paradigm' of representation hardly applicable in contemporary politics.

### 2.3 The populist party and identity

The most important instrument for achieving the ideological goals of anti-paternalistic populism has proved to be identity politics, however. Multiculturalism has turned ethnic and cultural difference into grounds for a moral claim to equality. Populist anti-paternalism is the identity politics of the majority. It argues that the majority has a right to be authentic – to express itself as it is. Not equality, but the right to authenticity is the major ideological tool of the anti-paternalist party. In multiculturalism, difference is just a precondition and a mobilisational means for the achievement of the goal – equality. In populist anti-paternalism *authenticity* is the goal – the difference of the majority is what is to be cherished and preserved. Majorities are not only allowed to believe in the superiority of their culture, but are required to do so. Eastern Europe is again the champion in this regard: Russians, Bulgarians, Romanians and Greeks all have this superiority complex.<sup>1</sup> While this may be the cultural legacy of Orthodox countries, majorities in other regions are also adopting this pride in their ethnic, cultural and racial identity as a justification for prioritising themselves over others.

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<sup>1</sup> See the Pew Research Study of 2018 (Albert Kim, 2018), according to which majorities or near majorities in many European countries believe that their culture is superior to others: Greece 89%; Russia 69%; Norway 58%; Poland 55%; Finland 49%; Portugal 47%; Italy 47%; UK 46%; Germany 45%; France 36%. See also Michael Lipka, (2018), <http://www.pewresearch.org/fact-tank/2018/10/31/greek-attitudes-toward-religion-minorities-align-more-with-central-and-eastern-europe-than-west/>

## 2.4 The populist party and the evolution of party systems

Populist anti-paternalist parties are the latest phase of development in Western party systems and systems of political representation. While the post-war catch-all party was paternalistic and compromise-oriented, the populist anti-paternalist party is a vehicle for self-centred and self-interested groups. It has dropped most claims to an educational role. On the contrary, it claims that people are good as they are, and that their authenticity should be expressed in the public arena.

The west-European phenomenon of the ‘cartel’ party of the 1980s and 1990s was the first to openly abandon political education. The cartel party is parliament-based, thinly ideological, increasingly memberless and dependent on the state through public funding and other privileges. But the cartel party was animated by the search for compromise and solidaristic visions of politics. It was part of a team (albeit a cartel) and pretended to offer something to everyone in society: in this sense, the cartel party preserved the ‘catch-all’ element from its predecessors, while abandoning its educational and paternalistic role.

The anti-paternalistic populists reject the social compromises and the appeal to society as a whole of the catch-all party. They thrive on social polarisation and promise to protect the interests of specific groups without altruism towards others.

The anti-paternalistic populist party resembles the cartel party in another respect: it does not lessen public distrust in party politics but rather increases it. The goal of the anti-paternalistic party is not to prove that it has *authority* and deserves the trust of the public. As argued, it is predominantly negatively oriented and tries to convince the public that there are in principle no reliable authorities beyond the people themselves.

This is the manipulative part of anti-paternalistic populism. It is in fact a utopian view, according to which people do not need authority to guide their decisions, but only vehicles to transmit their preferences and beliefs. For various conceptual and practical reasons this is untrue and impossible in any complex society. After all, the anti-paternalist populist party is an *authority*, that claims not to be

one. It derives power and the ability to guide people's behaviour by claiming that they do not need to be guided.

This type of manipulation is bound to be noticed by the electorate at some point. Anti-paternalist populists therefore come with an expiry date that rarely goes beyond a few electoral cycles. This may be one of the reasons for the increased voter volatility and instability of contemporary party systems.

## 2.5 Populist politics and homogeneity

As mentioned, theories of contemporary populism exaggerate the communal homogeneity that this political phenomenon presupposes (Jan-Werner Müller, 2018). In fact, populist majorities have been far from homogeneous – on the contrary, they often appear as temporary and unlikely coalitions of disparate sections of society. The populist party reflects this heterogeneity (Eatwell and Goodwin, 2018: 17-25). Although it often speaks of the nation and reveres its history, this rarely translates into committed party membership or any type of intense and integrated political community. Nationalistic populist rallies in Poland and Hungary do appear as actions of a communitarian nature. The rallies of Donald Trump, Syriza and Podemos had a similar air. But in fact contemporary populism could not function and operate without deep communitarian mobilisation and without the creation of homogenous communities. Political interaction in the populist era is often close to anonymous internet and social networks, and the constructed communities are a collection of individuals sharing a common interest, almost

*The populist anti-paternalist party is a paradoxical organisation: it is an authority that claims to have little authority, and it creates communities with very weak communal obligations, held together by the temporary coincidence of individual self-interests.*

accidentally. In this way the mobilisation of voters through psychological (rather than political and ideological) profiling has proved vital, as the incidents with Cambridge Analytica have demonstrated.<sup>2</sup>

To sum up, the populist anti-paternalist party is a

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<sup>2</sup> See the Cambridge Analytica Files: a project by the Guardian newspaper <https://www.theguardian.com/news/series/cambridge-analytica-files>

paradoxical organisation: it is an authority that claims to have little authority, and it creates communities with very weak communal obligations, held together by the temporary coincidence of individual self-interests. For this reason, the populist party is very close in nature to the mass media: it attracts diverse publics by trying to keep their interest and attention without a serious attempt to educate them.

## 2.6 The accountability of populist parties

An important question which the dominance of the transmission paradigm raises is the transformation of the notion of political accountability brought by the advent of populist politics. The question is that so far there have been few populist parties and actors in power, which prevents the drawing of definitive conclusions. On the basis of existing evidence, the following could be said. There have been cases in which populist players have been transformed into mainstream political parties under the burdens of government. They have gradually dropped their populist appeal and have started to impose 'filters' on public preferences and wishes. The transformation of Berlusconi's Forza Italia into a centre-right formation is maybe the paradigmatic example of this category. In Bulgaria, the movement of the former Tzar Simeon II also gradually transformed itself into a mainstream liberal party. Arguably, the burdens of government also had similar effect on Syriza in Greece, which by the end of its term in office (2018) had dropped many of its more radical ideas about the Eurozone and identity politics vis-à-vis North Macedonia. Under this model, the transmission paradigm is used to bring a party to power, but after that the paradigm is moderated by requirements of economic rationality and expedience.

President Trump's term of office shows that the transmission paradigm may not be moderated, however, but continues to be used for the mobilisation of political majorities. Trump has insisted on the implementation of policies (such as the Mexican wall) that run contrary to economic rationality. As promised, he has initiated trade wars with virtually all of America's trade partners. His foreign policy has also shaken existing alliances and created possibilities with new relations with countries such as Russia, North Korea, etc. It is difficult to assess how these policies are going to develop in the future, but it is safe to conclude that up to now there has been little in the way of 'moderating' policies or deviation from the transmission paradigm.

This example, like the realisation of Brexit, suggests that it is much too simplistic to assume that the transmission paradigm is just a tool for the mobilisation of votes *before* elections, which is quickly forgotten once the populist actor has been elected to office.

And there is also the central European experience. In countries such as Poland, Hungary, Bulgaria, and the Czech Republic, populist actors have dominated the political landscape for the last ten years. In some countries their attempt to entrench themselves has led to deformations of liberal democracy. Victor Orbán has effectively kicked out a university (and many NGOs) from Hungary. In Poland

*The transmission paradigm is not a tool of pre-election demagoguery that is swiftly forgotten after elections.*

there is an ongoing battle for the political takeover of the judiciary. All this demonstrates that the transmission paradigm is not a tool of pre-election demagoguery that is swiftly forgotten after

elections. On the contrary, once they are in office, the transmission paradigm could again serve as justification for their policies. They may argue that they are justified in removing the shackles of constitutional constraints at the will of the people. Of course, ‘reality’ checks, as in the case of Syriza, may demonstrate to the public the limits of the transmission paradigm. But for the time being this has been an exception rather than the rule.

## 2.7 The twin dangers to liberal democracy

Thus far, liberals have been mostly worried that the ‘rise of populism’ could lead to the subversion of liberal democracy into autocracy. The Hungarian example, mentioned above, has been the major scare, where the rule of the many has gradually eroded into oligarchy, with tyrannical elements. Aristotle’s classical analysis offers another path to an even more fundamental corruption of democracy, however. In his view, a government by a self-centred majority transforms democracy into the rule of the mob, a tyranny of the majority. Jean-Jacques Rousseau and John Stuart Mill had similar worries: when self-centred and egoistic majorities take government control, democracy could easily be transformed into a political nightmare.

Not all liberals share this concern, and this is the reason why ‘the rise of populism’ has effectively split the liberal community into

warring factions. Adam Smith's view that the unbridled competition of self-interested actors is beneficial to society as a whole is often transplanted from economics to politics. Many liberals – not necessarily fully fledged libertarians – share such trust in the positive effect of competition among political players. Such liberals reject the Aristotelian wisdom that a well-governed *politeia* needs public, well-intentioned majoritarian decision-making.<sup>3</sup>

Who is right: Aristotle or contemporary pluralists? This may seem an abstract question, but it has effectively split the liberal community in many countries. Some see the rise of populism as a gross corruption of politics, while others are willing to view it as a mere extension of what they have always preached: the primacy of the markets, competition and self-interested political behaviour.<sup>4</sup>

There is reason to believe that the Aristotelian camp has the better argument, however. Thus far, liberal democracy has survived and thrived due to public-centred and public-minded majorities. Post-war Europe and post-New Deal America were societies characterised by considerable levels of solidarity, sensitivity to the needs of vulnerable groups and a desire for compromise. More importantly, these were societies based on unwritten conventions about self-restraint by politicians. This ethos has gradually been eroded and the 'rise of populism' denotes the advent of its replacement – self-centredness and political egoism.

Those who believe that institutions can function and shape behaviour, even in the absence of a corresponding ethos among the main political players, should take the Hungarian case seriously into account. Indeed, institutions could serve a constraining function, but for a limited amount of time. In Hungary, this was until Viktor Orbán's party Fidesz gained a two-thirds constitutional majority;

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<sup>3</sup> There has always been a tension between public choice accounts and the justification of democracy, starting from the puzzling consequences of Kenneth Arrow's Impossibility Theorem. More recently, concerns about the empirical validity of rationalistic accounts of politics have been powerfully raised by Christopher H. Achen and Larry M. Bartels (2016).

<sup>4</sup> Committed liberals have been willing to admit that the 'rise of populism' is a political response to real failures of liberal democracy (as the rising inequality) or its inadequate answer to novel developments, such as the so-called migration revolution. See Ivan Krastev (2017) and Jan Zielonka (2018).

after that the constitution itself became an instrument for self-entrenchment in power.

The constitutive ambiguity about the extent to which populists are willing and able to change the institutional set-up of liberal democracy is only exacerbating the situation. Where is the breaking point of liberal democracy? When the government forces a university out of the country? Or when it imposes a 20% tax on NGOs engaged in activities it does not approve? Or when it interferes with the judicial system by retiring overnight most of the senior judges?

It is a pity that in today's Europe public opinion is divided on such matters and many think that such government actions are fair game. If anything, this shows that the public ethos in liberal democracies has changed dramatically.

*The public ethos in liberal democracies has changed dramatically. The politea is in danger of becoming a rule of the partisan mob.*

The *politea* is in danger of becoming a rule of the partisan mob.

The rationale of representation has also been strongly affected by these developments. Actors who attempt to 'educate' the public and rationalise their preferences and beliefs have faced strong competition from the anti-paternalistic camp of the populists: the 'transmitters' of the wishes of the public. The problem is that the transmitters do not differentiate between majorities that rule in the interest of all and majorities that rule exclusively in their own interest. For the transmitter, the majority is always right.

## 2.8 Conclusions: are democracy and liberalism still possible?

The predicament in which liberal democracy finds itself at present is the following: it has constructed 'authentic', self-centred and self-interested majorities that reject most forms of political education. Simultaneously, institutions that educate the people in the spirit of solidarity and the public good have been systematically eroded. The advent of the populist anti-paternalist party is only one side of the phenomenon. Similar developments have taken place in the media and NGOs, and to a lesser extent in schools and the academia. To put it crudely, we have societies that have started to reject political education, and political education institutions. All of these have suffered a vast erosion of their authority.

The greatest danger to liberal democracy therefore may not be that it slides into autocracy or oligarchy, but that it gets a bad name as a corrupt and defective form of government. For long centuries people thought of democracy as the rule of the mob and the uneducated; therefore it was considered inferior to more enlightened options. Contemporary democracy risks portraying itself exactly along these lines. Here we could be reminded of Churchill's important caveat that democracy is the worst form of government, except for all the others. However, this optimism underestimates technological advancements, which could vastly improve the attractiveness of autocracy. In the brave new world of Big Data, AI, biometric information, and physical and moral enhancements of the human being, powerful governments or corporations will be able to:

*The greatest danger to liberal democracy may not be that it slides into autocracy or oligarchy, but that it gets a bad name as a corrupt and defective form of government.*

- know better what the real preferences of individuals are. Machines could model human preferences better than humans themselves;
- take decisions in the interest of society as a whole by avoiding the traps into which short-sighted egoistically-minded *homo economicus* habitually falls (Prisoners' Dilemmas and other problems of collective action, for instance);
- take decisions by which individuals themselves will be better off if they followed them, compared to situations where they take these decisions themselves.

In such technological circumstances, which are not so far off in the future, democracy as the rule of self-centred and egoistic political majorities will appear infinitely inferior to technologically advanced autocracies.

Philosophers dealing with the ethical issues of post-humans have already raised similar concerns while arguing in favour of human beings' moral duty to accept moral enhancements, if they are technologically available (Persson and Savulescu, 2017). It is an intriguing question whether this moral duty would entail the

endorsement of technologically advanced enlightened autocracy over democracy functioning as the rule of egoistic majorities.

These questions have no easy answers. Thus far, liberal democracy has been repaired in two ways: more procedural democracy (including instruments of direct democracy as referendums and initiatives) and/or more accountability - 'counter-democracy' in Rosanvallon's sense (Rosanvallon, 2008): more supervisory bodies ensuring transparency and the following of uncontroversial standards. The first path

leads to the transfer of more and more decisions directly to the people. It tries to decrease the costs of social coordination and association. The second path attempts to limit the possibilities for democratic majorities to make mistakes, by enforcing common standards of transparency, economic efficiency, and informed decision-making, etc. For these purposes the second strategy creates expert bodies that are relatively insulated from democratic power, such as independent central banks, fiscal councils, judiciaries, media councils, etc.

Both these strategies, however, work when there is a public-minded majority interested in the protection of the common good. If there is no such majority, democratic instruments could be used to tyrannise the majority, while the idea of uncontroversial common standards dissipates. All benchmarks, checklists and the accompanying NGOs or independent bodies become involved in a partisan game between self-interested players.

*Both these strategies, however, work when there is a public-minded majority interested in the protection of the common good. If there is no such majority, democratic instruments could be used to tyrannise the majority.*

So, if the traditional paths of more democracy or counter-democracy are problematic, is there a way forward for liberal democracy? One option would be an attempt to sanitise the idea of political perfectionism and political education with the goal of constructing public-minded majorities. This may be more difficult than it sounds because it would require major reforms of the media, the political parties, the NGO sector and academia. These are the instruments that have to regain their authority in shaping the public imagination in a

more solidaristic and empathic direction. Education does not necessarily mean paternalism, dogmatism and a forceful imposition of views. But it may involve nudging (Thaler and Sunstein, 2009). the public towards valuable options, or at least providing the public with a set of valuable options to choose from (Raz, 1988). As far as anti-paternalistic populism is moving in precisely the opposite direction, it is a most serious danger to the future of democracy and liberalism.

*One option would be an attempt to sanitise the idea of political perfectionism and political education with the goal of constructing public-minded majorities.*

## References

- Achen, Christopher H. and Larry M. Bartels (2016), *Democracy for Realists: Why Elections Do Not Produce Responsive Government*, Princeton University Press.
- Eatwell, Roger and Matthew Goodwin (2018), *National Populism: The Revolt against Liberal Democracy*, Pelican, London.
- Fishkin, James and Robert Luskin (2005), "Experimenting with a Democratic Ideal: Deliberative Polling and Public Opinion", *Acta Politica*, 40 (284-298).
- Kim, Albert (2018), "Eastern Europeans More Inclined to See Their Culture as Superior", Survey (<https://theglobepost.com/2018/10/29/eastern-europe-culture-superior/>).
- Krastev, Ivan (2017), *After Europe*, Pennsylvania University Press.
- Lipka, Michael (2018), "Greek attitudes toward religion, minorities align more with Central and Eastern Europe than West" (<http://www.pewresearch.org/fact-tank/2018/10/31/greek-attitudes-toward-religion-minorities-align-more-with-central-and-eastern-europe-than-west/>).
- Mudde, Cas and Cristobal Rovira Kaltwasser (2017), *Populism: A Very Short Introduction*, Oxford.
- Muller, Jan-Werner (2016), *What Is Populism*, University of Pennsylvania Press.
- Persson, Ingmar and Julian Savulescu (2017), "The Duty to Be Morally Enhanced", *Topoi*, April (<https://link.springer.com/article/10.1007/s11245-017-9475-7>).
- Raz, Joseph (1988), *The Morality of Freedom*, Oxford University Press.
- Rosanvallon, Pierre (2008), *Counter-Democracy: Politics in an Age of Distrust*, Cambridge.
- Smilov, Daniel (2017), "Democratic Innovation and the Politics of Fear: Lessons from Eastern Europe", in *Governance Report 2017*, Oxford university Press.
- Thaler, Richard H. and Cass R. Sunstein (2009), *Nudge: Improving Decisions About Health, Wealth, and Happiness*, Penguin Books.
- Zielonka, Jan (2018), *Counter-Revolution: Liberal Europe in Retreat*, Oxford University Press.

### **3. DEMOCRACY AND ITS DISCONTENTS: EUROPEAN ATTITUDES TO REPRESENTATIVE DEMOCRACY AND ITS ALTERNATIVES**

**JACEK KUCHARCZYK AND FILIP PAZDERSKI**

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*While representative democracy remains the preferable form of government for a vast majority of Europeans, the satisfaction with the way democracy is practised varies greatly across Europe's regions (east and west, north and south) and among the citizens of different member states. Likewise, different aspects of democratic governance are differently evaluated by European publics, with the fight against corruption and low resilience to disinformation perceived as key weaknesses. The data from a number of studies of European and global public opinion also indicate that commitment to democracy varies across Europe and that, in some countries, significant majorities find non-democratic models as desirable alternatives. Public opinion remains rather critical and distrustful of political elites; hence many Europeans tend to support direct democracy mechanisms as a way to keep their elites more accountable. This chapter suggests that increasing Europeans' commitment to democracy requires twin changes. First, European democratic elites should adopt a different language and develop political narratives that would counteract (and not imitate) the populists' divisive narratives. Second, new policies addressing genuine citizens' concerns need to be developed and implemented, while EU institutions should more consistently ensure that democratic standards are observed in all member states.*

### 3.1 Introduction: Democracy in Europe 30 years after the fall of the wall

Recent celebrations of the 30<sup>th</sup> anniversary of the fall of communism in central and eastern Europe and the 15<sup>th</sup> anniversary of the 2004 EU big bang enlargement have generated an intense debate about the state of democracy in Europe and the commitment of its citizenry to democracy as a European value and as a political practice across the member states. Thirty years after the triumph of democracy over dictatorship and the peaceful reunification of the continent, the mood of the celebrations was sober, if not gloomy. The old certainties about the inevitability of democratic progress have been replaced by warnings that democracy's global future is being challenged by the

*The old certainties about the inevitability of democratic progress have been replaced by warnings that democracy's global future is being challenged by the growing influence of authoritarian states and by the rise of authoritarian populist parties.*

growing influence of authoritarian states such as China and Russia and by the rise of authoritarian populist parties in new and established democracies. As authors analysing results of the World Values Survey aptly observe "In a world where most citizens fervently support democracy, where anti-system

parties are marginal or non-existent, and where major political forces respect the rules of the political game, democratic breakdown is extremely unlikely". But as the same authors add: "It is no longer certain, however, that this is the world we live in" (Foa and Mounk, 2016: 16).

There seems to be solid empirical evidence of democratic reversals in many parts of the world, including the European Union. The recent report of the reputable Swedish research organisation IDEA claims that three EU member states (Hungary, Poland and Romania) have experienced "severe democratic backsliding" in recent years (IDEA, 2019: 215). The same report also points out to "general malaise within mainstream political parties across most of Europe and particularly in Western European countries", which creates fertile grounds for the rise of "non-traditional parties, such as populist, extremist and anti-establishment parties" (IDEA, 2019: 212).

At the same time, the evidence from a number of studies of public opinion attitudes across Europe indicates that most EU citizens are still committed to the value of democracy and yet are not fully satisfied with the current democratic practice in their country. A significant minority is willing to contemplate alternatives to democratic governance, while a large part of the public wants democracy to be renewed rather than abandoned. (Reynié, 2019: 46). This chapter looks at these attitudes in more detail, including differences and similarities across different parts of the EU (east-west, north-south) and across different member states.

*Most EU citizens are still committed to the value of democracy and yet are not fully satisfied with the current democratic practice in their country.*

### **3.2 What do Europeans think about democracy and its alternatives?**

There are various ways to evaluate what people think about democracy, the most basic one being to ask their opinion about the best political system. This overall opinion on democracy can be further explored by applying other measurements, such as satisfaction with the state of democracy in their country and the evaluation of some specific aspects of democracy as it is practised here and now. Thus, we can evaluate how procedural requirements are fulfilled (related to electoral processes, the representativeness of the system or observance of political rights and civic freedoms), what is the level of inclusiveness and sense of having influence on the course of events in the country (including direct democracy mechanisms), as well as the system's efficiency (to what extent it delivers solutions to the most important social challenges and helps in counteracting social inequalities).

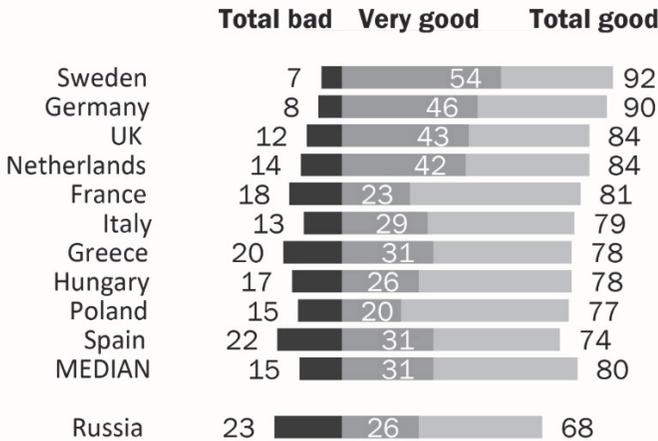
*Large majorities of people across Europe have a positive view of representative democracy.*

On the most general level, large majorities of people across Europe have a positive view of representative democracy. In this 2017 study by Pew Research Centre as many as 80% of Europeans agree that such a political system is either good or very good.

However, the same study concludes that this overall support for democracy differs between various age groups and is significantly

lower among younger citizens. Moreover, the strength of support for representative democracy differs from country to country, with Sweden being the only country in this survey where an absolute majority agreed that representative democracy is a very good system. The same survey also indicated relatively low satisfaction with the way democracy works in a particular country, which indicates a gap between the general appreciation of democracy as a political system and the way it is seen to function here and now.

Figure 3.1 The evaluation of representative democracy as a political system in selected EU countries and beyond



Note: Question: Would a democratic system where representatives elected by citizens decide what becomes law be a good or bad way of governing this country?

Source: Wike, Simmons, Stokes, Fetterolf, Pew Research Center, 2017: 20.

The data show large cross-national differences in how people view the current state of democracy in their country. In Sweden, the Netherlands, Germany, UK and Poland, majorities are satisfied with the way democracy is working, while in Greece, Bulgaria, the UK,

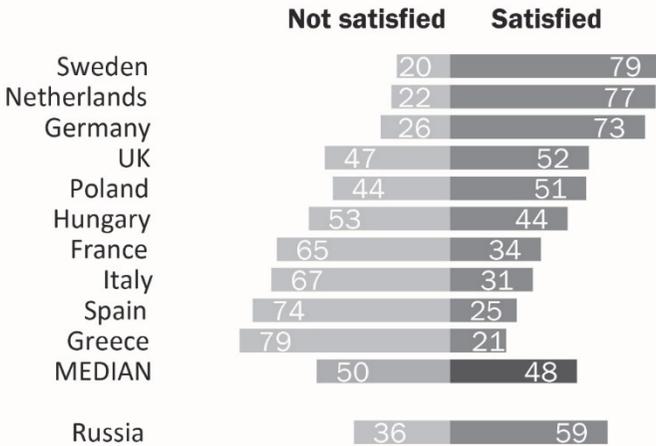
*The data show large cross-national differences in how people view the current state of democracy in their country.*

Italy and Spain, two-thirds or more are dissatisfied. One could add that the level of satisfaction with the operation of democracy in a given country is not always related to the way democracy is

evaluated by external observers. The two illustrations are Poland, which has suffered a severe democratic reversal in recent years, and

even more so Russia, where a large part of the public seems to be satisfied with its democratic performance, in spite of the authoritarian turn this country has taken since 2011.

Figure 3.2 Satisfaction with the way democracy works in particular countries



Note: Question: How satisfied are you with the way democracy is working in our country?

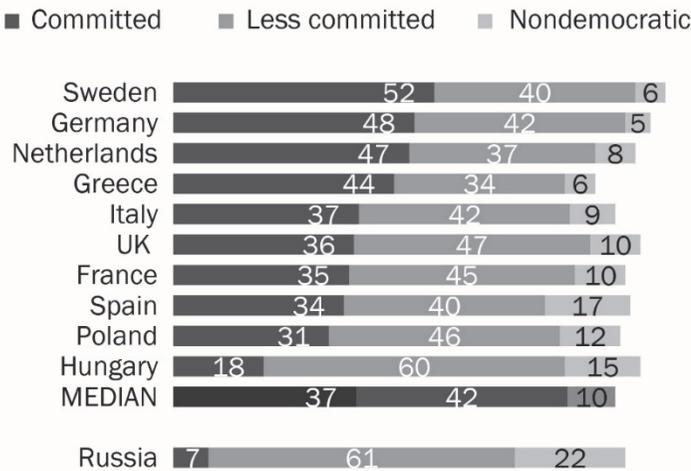
Source: Wike, Simmons, Stokes, Fetterolf, Pew Research Center, 2017: 13.

A more recent study by Pew indicates some interesting changes in respect to satisfaction with democracy in the EU. We can observe a growth of dissatisfaction in several western and northern EU member states with a relatively high level of satisfaction (e.g. in Sweden to 28%, Netherlands to 31%, and Germany to 36%). In the UK, the already relatively high dissatisfaction with the way democracy works has further increased (from 52% to 69%) as the citizens witnessed the British Parliament struggling to “get Brexit done”. At the same time, there has been some improvement in a number of southern European countries as the high levels of dissatisfaction with democracy have decreased in France (falling from 65% to 58%), Spain (from 74% to 68%) and Greece (from 79% to 74%). Notably, the dissatisfaction with democracy has also fallen in the countries of central-eastern Europe, including Poland and Hungary. (Pew Research Center, 2019: 43).

On the other hand, this generally low level of satisfaction with democracy can be also related to prevalent awareness that democracy

is under threat in one’s own country indicated by the Open Society Foundation study (Bui-Wrzosińska, 2019: 6). This study shows that concerns about the future of democracy are shared by the majorities of all seven surveyed publics (in Bulgaria, Germany, Hungary, Poland, Romania, Slovakia and to a lesser extent in the Czech Republic). However, understanding the detailed reasons for this situation would require more in-depth studies within each of the countries.

Figure 3.3 Levels of commitment to democracy in various European countries



Source: Commitment to representative democracy index - Wike, Simmons, Stokes, Fetterolf, Pew Research Center, 2017: 5.

The Pew Research 2017 report also provides some insight into this paradox of the considerable satisfaction among citizens with democracy in their country and its negative evaluation by external entities basing their judgements on various objective criteria. It reveals that the commitment to democracy differs across Europe and in many countries small but significant minorities are willing to consider non-democratic options. The countries experiencing democratic backsliding (Hungary and Poland) as well as Russia stand out on both counts: a relatively low overall commitment to

*Commitment to democracy differs across Europe and in many countries, small but significant minorities are willing to consider non-democratic options.*

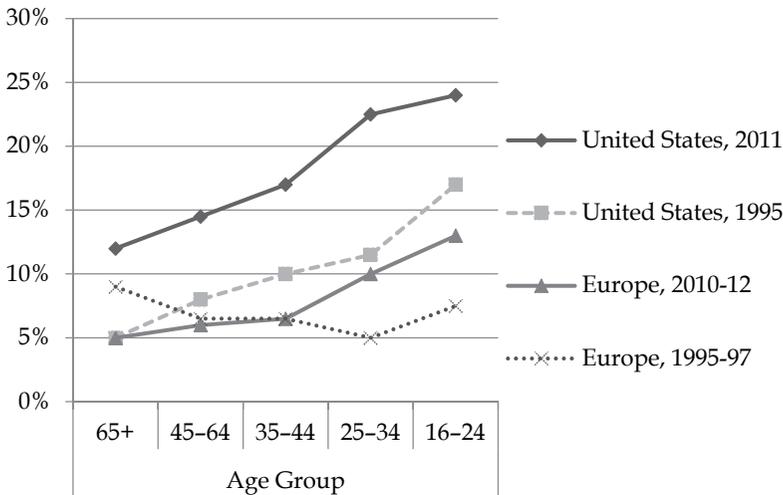
democracy as well as significant support for authoritarian alternatives.

The survey indicates that people living in more democratic, wealthier nations are more committed to representative democracy, but it also shows that some in high-income countries would be willing to consider non-democratic alternatives.

*People living in more democratic, wealthier nations are more committed to representative democracy, but some in high-income countries would be willing to consider non-democratic alternatives.*

It is also important that the dissatisfaction with how democracies work and deliver is growing over time in Europe and in the US. The analysis of data from the World Values Survey also reveals that younger citizens are significantly more susceptible to ‘democratic fatigue’.

Figure 3.4 Change in the levels of negative evaluation of democracy



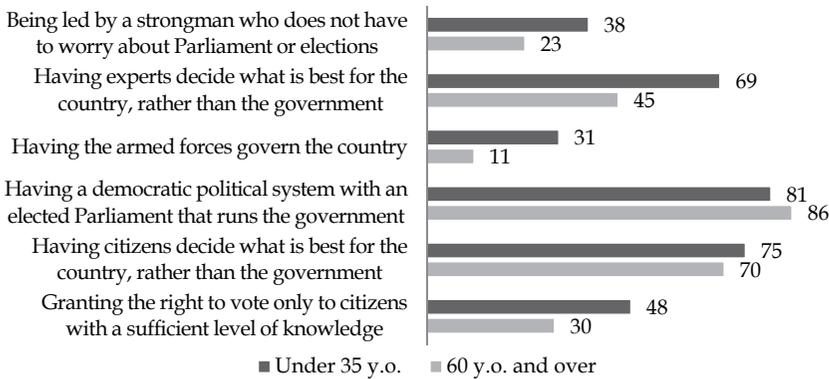
Note: Answers to “Having a democratic political system” is a “bad” or “very bad” “way to run this country”.

Source: World Values Surveys, Waves 3 to 6 (1995–2014). Data for Europe includes a constant country sample in both waves: Germany, Sweden, Spain, the Netherlands, Romania, Poland, and the United Kingdom. Valid responses: United States, 1995: 1,452; United States, 2011: 2,164; European countries, 1995–97: 6,052; European countries, 2010–12: 8,197. –Foa, Mounk, 2016: 9.

The conclusion that younger cohorts of citizens are less committed to representative democracy is further corroborated by an international survey conducted in 2019 in 42 countries around the world (including 27 EU member states). It indicates significant support for some alternatives to representative democracy, some of them with clear authoritarian implications (see Figure 3.5).

*Younger cohorts of citizens are less committed to representative democracy.*

Figure 3.5 Age gap in attitudes towards non-democratic ways of governing the country



Note: Question: Indicate whether this way of governing a country is/would be very good, good, bad, or very bad; Total responses: “very good” and “good”.

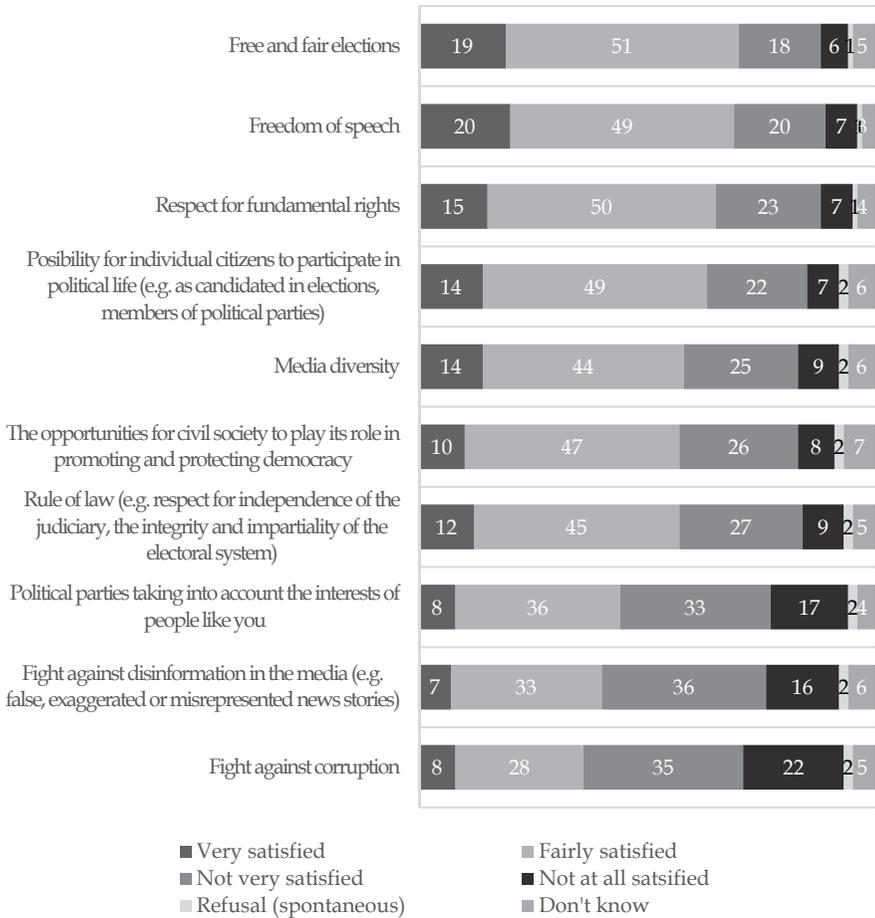
Source: Muxel, 2019, Fondation pour l’innovation politique/International Republican Institute: 45.

Furthermore, studies focusing on central Europe show that the youngest citizens there tend to value higher living standards and access to goods more than democratic values in their country (Gyárfášova, Molnár, Krekó, Pazderski, Wessenauer, NDI 2018: 6; Pazderski, 2019: 25-26).

The data thus reveal that Europeans remain broadly supportive of representative democracy but their commitment to democratic governance and satisfaction with the way democracy works varies across Europe and - in some countries - paves the way to non-democratic alternatives. The wavering commitment to democratic values seems to affect younger voters in particular. In

what follows we will look more closely at how EU citizens evaluate particular aspects of democratic practices in their respective countries and whether being a citizen in a democracy gives them a sense of control and influence on how the country is governed.

Figure 3.6 Level of satisfaction with various aspects of democracy in Europe



Note: Question: How satisfied or not are you with the following aspects of democracy in the European Union?; % - EU; n=24,808. Source: Eurobarometer, 2018: 73.

High levels of overall support for representative democracy in Europe do not imply that EU citizens are highly satisfied with

concrete aspects of democracy as it is practised in their countries. One set of findings that provides a more detailed evaluation of democratic practices comes from the Eurobarometer.

Thus, people in Europe tend to be relatively critical regarding how democracy works in particular areas. Not only are various dimensions in which we can evaluate democracy being differently graded, but some dimensions are evaluated positively by only a minority of Europeans. This low evaluation especially concerns the fight against corruption and disinformation, as well as political parties' connection (or rather disconnection) with ordinary people and their interests.

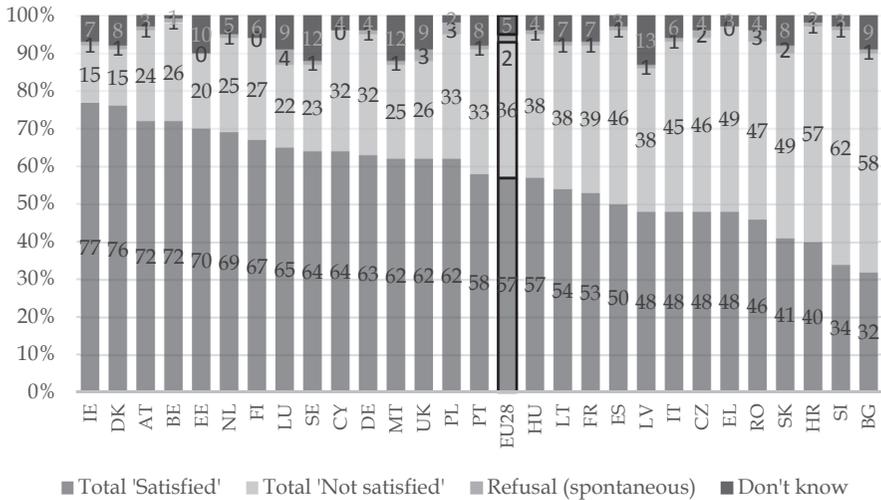
*People in Europe tend to be relatively critical regarding how democracy works.*

One should also notice that large portions (not majorities) of public opinion of many EU countries are dissatisfied with the implementation of some important aspects of democracy, such as the rule of law, possibilities for civil society to play its role and media diversity. Moreover, there are also some significant differences in evaluating particular aspects of democracy between the citizens of different EU member states.

An important example of different levels of satisfaction with aspects of democratic governance in the European Union is the issue of rule of law. The alleged backsliding in this area was the reason why the proceedings under Article 7 of the TEU were initiated against two member states (Poland in 2018 and Hungary in 2019) (cf. Chapter 14). Interestingly, the data below indicates that dissatisfaction with rule of law is relatively strong in some countries, particularly in southern and eastern member states, but neither the public in Poland nor in Hungary seems to be particularly dissatisfied or aware of the problems in this area. Just one-third of all respondents in Poland and 38% of Hungarians are dissatisfied with the rule of law in their countries, compared with 46% of Spaniards as well as 62% of Slovaks. There might be two possible (not mutually exclusive) explanations for this fact. Firstly, the Eurobarometer question concerns both the independent judiciary and integrity of the electoral system. It can be presumed that elections are still perceived by both supporters and opponents of the ruling parties in Poland and Hungary as a relatively open process, with opposition parties able to score significant victories, as was the case in the municipal elections in Poland in 2018 as well as in Hungary in 2019. Secondly, the supporters of the ruling parties and

many undecided voters tend not to believe the allegations of democratic deconsolidation and instead trust national institutions more than their fellow citizens voting for the parties in opposition (Penno Hartlová, Bútorová, Wessenauer, Pazderski, 2019: 25). In Poland, the supporters of the ruling party subscribe to a majoritarian definition of democracy and tend to believe the official version that the dismantling of the independent judiciary is an attempt to bring the judicial system closer to the needs and interests of ‘the people’ (Pazderski, 2019: 21-22). This is a part of a broader phenomenon of “asymmetric political polarisation”, where the supporters of the ruling party remain “ideologically cohesive, tightly knit, and politically mobilised”, while the opposition is “fragmented and mobilises primarily in reaction to the government’s policies and rhetoric” (Fomina, 2019: 126).

Figure 3.7 Level of satisfaction with a rule of law in Europe



Note: Question: How satisfied or not are you with the following aspects of democracy in the European Union? Rule of law, e.g. respect for independence of the judiciary, the integrity and impartiality of the electoral system; in %; n=24,808].

Source: Eurobarometer, 2018: 82.

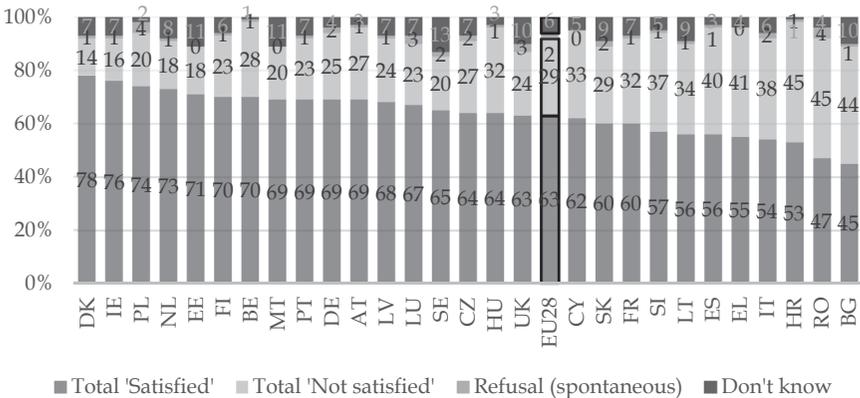
*The sense that democratic institutions are not representing people's interests is not limited to those countries experiencing democratic backsliding.*

As we shall see, the sense that democratic institutions are not representing people's interests is fairly pervasive in Europe, and not limited to those countries experiencing democratic backsliding.

### 3.3 Europeans' sense of democratic empowerment

One of the most important ways of evaluating democracy is related to whether the people feel empowered (or not), that is, whether they see themselves as having a voice and influence in political life. In this respect, once again, we can observe important differences between individual EU member states. The recent Eurobarometer data indicate relatively high levels of empowerment, with two-thirds of all Europeans declaring their satisfaction with their ability to take part in the political process.

*Figure 3.8 Level of satisfaction with a regular citizen's possibility for political participation in Europe*



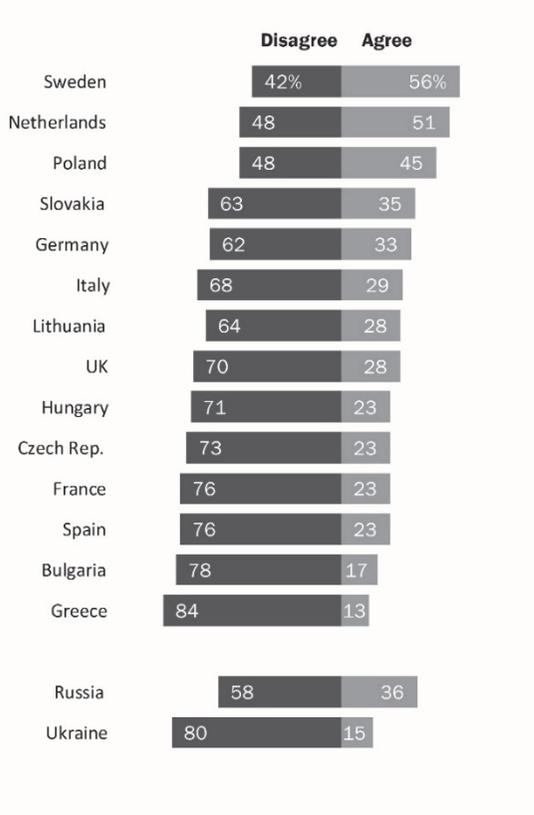
*Note:* Question: How satisfied or not are you with the following aspects of democracy in the European Union? Possibility for individual citizens to participate in political life, e.g. as candidates in elections, members of political parties; in %; n=24,808.

*Source:* Eurobarometer, 2018: 77.

The authors of a recent study on attitudes to democracy on the 30<sup>th</sup> anniversary of democratic transitions in Europe come to a similar conclusion:

“Despite the misgivings many Europeans have about the way democracy is working, most still believe they can have an influence on the direction of their country. In every nation surveyed, roughly half or more agree that voting gives people like them some say about how the government runs things. And about seven-in-ten or more express this view in Spain, Sweden, Slovakia, Ukraine, the Czech Republic and Poland, as well as in the U.S.” (Pew Research Center, 2019: 10).

Figure 3.9 *Belief that politicians tend to hear the needs of the people*



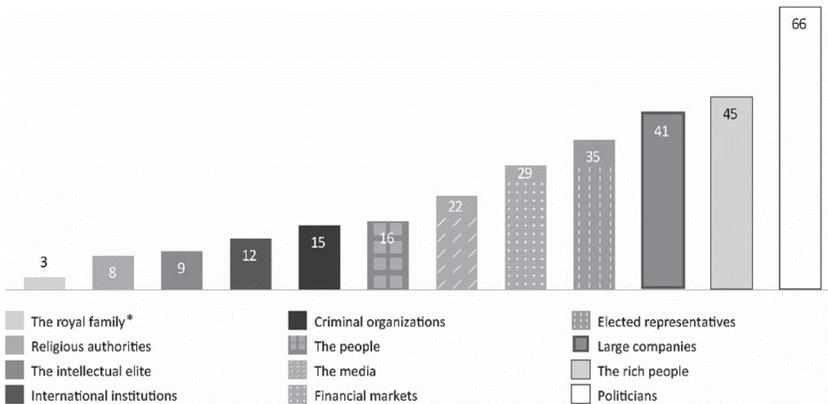
Note: Percentage of people who disagree/agree that most elected officials care about what people like them think; “Don’t know” responses not shown.

Source: Pew Research Center, 2019:10.

However, the above-quoted study also indicates high levels of frustration with the democratic elites in Europe. Relatively few Europeans believe that elected officials care about what citizens feel.

A powerful sense of disconnection between the people and the ruling elite can be seen in the results of another study conducted in 42 countries (including 27 EU member states). Importantly, only a little more than one in three respondents believe that their country is run by ‘elected officials’, whereas ‘politicians’ are indicated by two-thirds of respondents, followed by ‘rich people’ and ‘large companies’.<sup>1</sup>

Figure 3.10 Entities perceived as holding the most power in the country



Note: Results for 42 states. \* Option proposed in parliamentary monarchies only.  
 Source: Reynié, Fondation pour l’innovation politique/International Republican Institute, 2019: 26.

On average, opinion in European Union democracies varies little when it comes to these results. On the other hand, country by country, there are major divergences within the democracies evaluated (Reynié, 2019: 26-27). Elected representatives, cited as holding power by an average of 35% of respondents, are most frequently selected by inhabitants of rather more established democracies - Luxembourgers (54%), Swedes (51%) and Estonians (50%; this last country being only ‘new’ EU member state in this

<sup>1</sup> Respondents were given a possibility to answer with three options: “first”, then “second” and “third”. The total of the mentions, for a designated entity, is therefore the sum of all mentions in the positions: “first”, “second” or “third”.

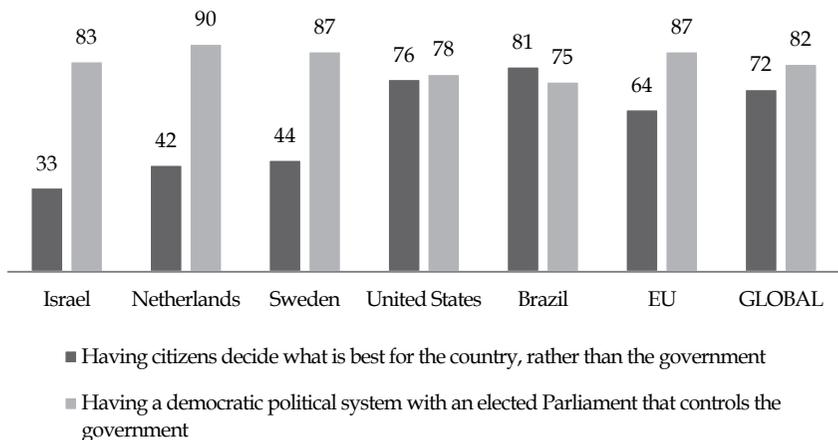
group). Respondents in the countries known for large corruption scandals, connections between politicians and big business or seriously affected by the last economic recession select this option least frequently. This latter group includes Cypriots (16%), Italians and Greeks (20%). Moreover, elected representatives are even less likely to be selected by younger respondents. Politicians, cited on average by 66% of respondents, are instead most commonly chosen by citizens in relatively younger democracies. Likewise, a significant percentage of respondents selected rich people, including 71% of Bulgarians, 62% of Hungarians and 60% of Slovaks.

Looking at public opinion in Europe, we can conclude that while people appear to be fairly satisfied by their opportunities to take part in the democratic process, they are less appreciative of the political outcome. Only a minority believes that they are really governed by their elected representatives.

### 3.4 Attitudes towards direct forms of democracy

Probably because of its perceived deficiencies, representative democracy seems to compete for popular support (in various parts of Europe and the world to different degrees) with its more direct version.

Figure 3.11 Attitudes towards representative and direct democracy



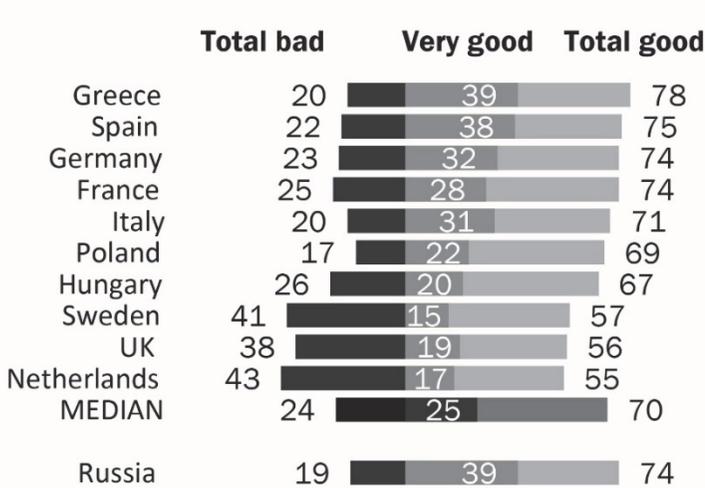
Note: Question: For each one, indicate whether this way of governing a country is/would be very good, good, bad, or very bad; Total responses: “very good” and “good”.

Source: Reynié, Fondation pour l’innovation politique/International Republican Institute, 2019: 25.

As this global survey indicates, while citizens of EU countries are strongly committed to a system of parliamentary control over the government, a large majority also agrees that ‘citizens’ and not a ‘government’ should decide what is best for the country. This can be interpreted as desire for more direct forms of democratic control than representative democracy. Indeed, such is the conclusion that can be drawn from the following data.

*While citizens of EU countries are strongly committed to parliamentary control, a large majority also agrees that ‘citizens’ and not a ‘government’ should decide what is best for the country.*

Figure 3.12 Differences in evaluating direct democracy between various countries



Note: Question: Would a democratic system where citizens, not elected officials, vote directly on major national issues to decide what becomes law be a good or bad way of governing this country?

Source: Wike, Simmons, Stokes, Fetterolf, Pew Research Center, 2017: 22.

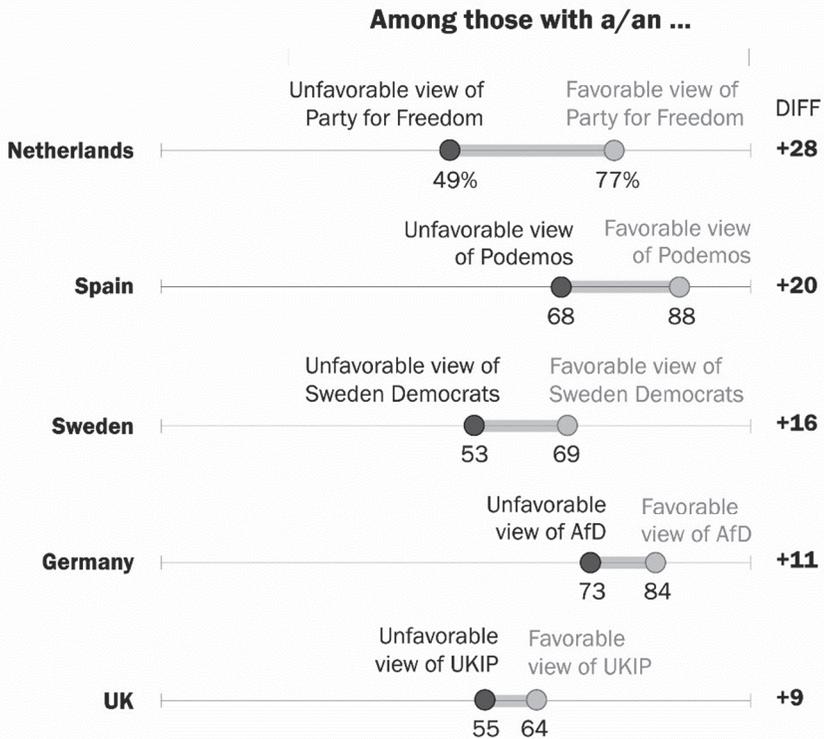
Interestingly, while a significant majority of Europeans appear positively inclined towards direct democracy, the average percentage of Europeans who think that it is ‘very good’ way of governing their county is equal to the percentage of those who think it is a bad idea. As one could expect, relatively low support for direct democracy

comes from those countries with high satisfaction regarding the functioning of representative democracy.

The same study indicates that direct democracy seems to be particularly popular among the supporters of populist or far-right parties. This can be explained by pointing out that the ideas of direct democracy and populism both appeal to the sense of disenchantment with political elites.

*Direct democracy seems to be particularly popular among the supporters of populist or far-right parties.*

Figure 3.13 Populist party supporters' attitudes to direct democracy



Note: Question: A democratic system where citizens, not elected officials, vote directly on major national issues to decide what becomes law would be a good way of governing this country.

Source: Wike, Simmons, Stokes, Fetterolf, Pew Research Center, 2017: 23.

### 3.5 Conclusions and recommendations

The evidence reviewed in this chapter reveals that 30 years after the fall of communist dictatorships in Europe, a vast majority of Europeans remain committed to democracy as a political system and support its ‘building blocks’ such as free and fair elections, free speech or an independent judiciary. There are persistent divisions between western and eastern as well as northern and southern parts of the EU in terms of the satisfaction with the way democracy functions in different member states, but, at the same time, citizens generally feel empowered by the democratic process, even if they resent some of its outcomes. While different publics may prioritise some aspects of representative democracy over others, e.g. free speech over the rights of opposition parties, in each case there are majorities endorsing such democratic values.<sup>2</sup> In short, people want democratic values to be upheld rather than replaced by some alternative value system, for example what Mr Orbán calls “illiberal democracy”.

At the same time, Europeans expect democracy to work for the benefit of ordinary people, not just the political or economic elites. Their biggest discontent concerns political elites, which are often perceived (rightly or wrongly) as disconnected with their citizenry, often selfish if not corrupt. This sense of alienated elites makes direct democracy appealing for many Europeans, although in the context of the overall support for representative democracy, the mechanisms of

*The negative assessment of the European political and opinion-making elites clearly contributes to the upsurge in support for populist parties and movements.*

direct democracy should perhaps be seen as augmenting rather than replacing existing democratic institutions and practices.

The negative assessment of the European political and opinion-making elites clearly contributes to the upsurge in support for populist parties and movements, which denounce the

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<sup>2</sup> As shown by the Voices of Values study, in most of six surveyed European societies (excluding Italy) there are significant majorities that are broad supporters of open society values (related to liberal democracy and cultural diversity). But part of this group are people with significant economic, political and cultural concerns (Eichorn, Mohr, 2018: 23).

existing elites and promise to create a more direct relation between the rulers and the ruled, often in disregard of ‘formal’ democratic procedures. While we can observe a parallel between negative views on democratic elites among many Europeans and populist narratives, we should beware of taking these narratives at face value, as a plausible explanation of what is wrong with democracy in Europe.

In response to the above-mentioned challenges, the following activities could be beneficial:

- Political elites in Europe (including Brussels elites) should change their language and communicate better. It is crucial for European political leaders to listen to and acknowledge citizens’ concerns. At the same time, it needs to be stressed that adopting softer versions of populist narratives, for example on migrants or sexual majorities, should not be seen as an effective way of closing the gap between the citizens and their elected representatives. On the contrary, it may make more extreme forms of exclusionary language used by populists more credible and attractive for broader publics.
- Moreover, the same democratic political elites should re-invent the language they use to speak about democracy. Referring to legal norms and rule of law may be not engaging enough and too ‘cold’ to generate positive responses among wider publics within European societies. Instead, politicians, experts and opinion makers should start speaking about democracy and rule of law using the language of peoples’ interests and try to show that direct benefits come from fulfilling legal standards and securing rule of law mechanisms for individuals and communities. All these activities should be dedicated to building stronger emotional bonds between individual citizens and the democratic system and its standards.
- However, changing the language of democratic politics would not be enough. We also need new policies. Therefore, in order to regain credibility, established political actors on national and European levels should propose some concrete, realistic solutions to the most important concerns of citizens. The latter include implementing social and economic rights and

*Democratic political elites should re-invent the language they use to speak about democracy.*

responding to the dramatically accelerating climate crisis (Dennison, Leonard, Lury, 2019: 16-17). Various studies indicate that these issues are also crucial for the youngest generation, (Gyárfášova, Molnár, Krekó, Pazderski, Wessenauer, NDI 2018: ...6, Pazderski, 2019: 17, 23 and 29). Thus, by addressing these concerns, elected officials would have a chance to rekindle interest and belief in democracy among the youth as well as channel their energies towards democratic forms of participation.

- Decision-makers within the European institutions as well as member states should recognise significant differences in the way the citizens of EU member states evaluate the state of democracy in their respective countries as many studies that informed this paper reveal. This uneven democratic performance should be seen as a challenge for European institutions and decision-makers, as it often implies infringement of European values as defined in Article 2 of TEU and the European *acquis communautaire*. Enforcing democratic standards and rule of law across the EU should therefore take priority over concerns with a possible Eurosceptic backlash in some member states. The publics in Poland and Hungary have remained strongly pro-European despite the steps taken against their governments' policies and their respective governments' rejections of "Brussels interventions".
- Studies indicate that the failure to tackle corruption and the spread of disinformation are some of the most important sources of discontent with the state of democracy in Europe. The EU already has institutions in place that could support national governments effectively in tackling these issues.
- These institutions include the East StratCom Task Force, which is currently part of the EEAS with the mandate to fight disinformation in the EU's neighbourhood. This unit should be promptly provided with greater resources and increase its scope of activities to counter disinformation in EU member states.
- Likewise, the newly established office of the European Public Prosecutor's Office, an independent Union body competent to fight crimes regarding the Union budget, could address cases of corruption throughout the EU. The office should especially focus

on cases where populist governments direct EU funds to their political cronies, who reciprocate by providing political support to these governments, e.g. by buying independent media and turning them into propaganda tools for the governments.

- The proposed mechanism linking the distribution of EU funds to respect of the rule of law should be implemented within the new financial perspective. Its effective implementation would go a long way to prevent backsliding governments from buying political support with EU funds.
- Last but not least, the European Commission and other actors should ensure that infringements of European values, such as democracy and rule of law, are addressed equally across the Union. Different speeds of actions under Article 7 of the TEU (largely due to the reluctance of the EPP faction to censure Mr Orbán) has been used by Poland's PiS party to claim that their government is singled out unfairly. While the actions under Article 7 should be vigorously pursued during the current Commission's term of office, they should be followed up by regular audits of the state of democracy within each member state.

## References

- Bui-Wrzosińska, L. (2019), "States of Change: Attitudes in Central and Eastern Europe 30 Years after the Fall of the Berlin Wall", Open Society Foundations ([www.opensocietyfoundations.org/publications/states-of-change-attitudes-in-central-and-eastern-europe-30-years-after-the-fall-of-the-berlin-wall](http://www.opensocietyfoundations.org/publications/states-of-change-attitudes-in-central-and-eastern-europe-30-years-after-the-fall-of-the-berlin-wall)).
- Dennison, S., M. Leonard and A. Lury (2019), "What Europeans Really Feel: The Battle for the Political System", Policy Brief No. 285, European Council on Foreign Relations, ECFR, May ([www.ecfr.eu/page/-/what\\_europeans\\_really\\_feel\\_the\\_battle\\_for\\_the\\_political\\_system\\_eu\\_election.pdf](http://www.ecfr.eu/page/-/what_europeans_really_feel_the_battle_for_the_political_system_eu_election.pdf)).
- Eichorn, J. and M. Mohr (2018), "The Hidden majority: How Most Europeans Care about Open Society Values", Brussels-Berlin: Open Society Foundations (<http://voicesonvalues.dpart.org/index.php/final-reports/hidden-majority-report>).
- Eurobarometer (2018), "Democracy and elections", No. 477/September, Wave EB90.1, European Union (<https://coinform.eu/wp-content/uploads/2019/02/Euro-Barometer.pdf>).
- Foa, S. R. and Y. Mounk (2016), "The Danger of Deconsolidation. The Democratic Disconnect", *Journal of Democracy*, Vol. 27, No. 3, 5-17 ([www.journalofdemocracy.org/articles/the-danger-of-deconsolidation-the-democratic-disconnect/](http://www.journalofdemocracy.org/articles/the-danger-of-deconsolidation-the-democratic-disconnect/)).
- Fomina, J. (2019), "Of "Patriots" and Citizens: Asymmetric Populist Polarization in Poland", in: *Democracies Divided the Global Challenge of Political Polarization*, Carothers, Th. and A. O'Donohue (eds.), Washington DC: Brookings Institution Press, 126-150.
- Gyárfásova, O., C. Molnár, P. Krekó, F. Pazderski and V. Wessenauer (2018), "Youth, Politics, Democracy: Public Opinion Research in Hungary Poland and Slovakia", Washington DC: The National Democratic Institute (<https://www.ndi.org/publications/youth-politics-democracy-public-opinion-research-hungary-poland-and-slovakia>).
- International IDEA (2019), "The Global State of Democracy 2019. Addressing the Ills, Reviving the Promise", Stockholm (<https://www.idea.int/sites/default/files/publications/the-global-state-of-democracy-2019.pdf>).
- Muxel, A. (2019), "Generational Renewal: Democratic Deconsolidation or Restructuring?", in: Reynié, D. (ed.), *Democracies under Pressure. A Global Survey*, Paris: International Republican Institute/

Fondation pour l'innovation politique ([www.fondapol.org/en/etudes-en/new-global-survey-democracies-under-pressure-volume-i-the-issues/](http://www.fondapol.org/en/etudes-en/new-global-survey-democracies-under-pressure-volume-i-the-issues/)).

- Pazderski, F. (2019), "In the Grip of Authoritarian Populism: Polish attitudes to an Open Society", Brussels-Berlin: Open Society Foundations (<http://voicesonvalues.dpart.org/index.php/final-reports/in-the-grip-of-authoritarian-populism>).
- Penno Hartlová, H., Z. Bútorová, V. Wessenauer and F. Pazderski (2018), "Citizenship empowerment: potential for civic participation in the Visegrad countries, 2017 & 2018", Prague: STEM/IVO/Political Capital/IPA (<http://www.isp.org.pl/publikacje,1,955.html>).
- Pew Research Center (2019), "European Public Opinion Three Decades After the Fall of Communism", Washington DC, October ([www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/](http://www.pewresearch.org/global/2019/10/15/european-public-opinion-three-decades-after-the-fall-of-communism/)).
- Reynié, D. (2019), "Democracies under Pressure. A Global Survey", Paris: International Republican Institute/Fondation pour l'innovation politique ([www.fondapol.org/en/etudes-en/new-global-survey-democracies-under-pressure-volume-i-the-issues/](http://www.fondapol.org/en/etudes-en/new-global-survey-democracies-under-pressure-volume-i-the-issues/)).
- Wike, R., K. Simmons, B. Stokes and J. Fetterolf (2017), "Globally, Broad Support for Representative and Direct Democracy", Washington DC: Pew Research Center ([www.pewresearch.org/global/wp-content/uploads/sites/2/2017/10/Pew-Research-Center\\_Democracy-Report\\_2017.10.16.pdf](http://www.pewresearch.org/global/wp-content/uploads/sites/2/2017/10/Pew-Research-Center_Democracy-Report_2017.10.16.pdf)).



## 4. THE EMOTIONAL LANDSCAPE OF EUROPEAN VOTERS

CATHARINA SØRENSEN AND  
WILLIAM ROHDE MADSEN

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*Examining public opinion towards the EU as detected across the Union's member states around the time of the 2019 European Parliament elections makes it possible to analyse the underlying sentiments of European voters as the EU enters the post-Brexit era. The election results, as well as concomitant opinion surveys, portray a divided citizenry. On the one hand, support for EU membership, and feelings of benefit from, and of being heard in, the EU, are at historically high levels – and voter turnout was at its highest level since 1994. On the other hand, support for populist, Eurosceptic parties is high and growing in several countries, and a majority of European citizens today doubt their children face better prospects than did their parents. A staggering 28% of Europeans believe it is realistic to expect a war between EU member states within the next 10 years. This duality shows that the oft-assumed inference that populist voters reject European integration is empirically weak, but, simultaneously, that there seems to be a consistent disconnect in many voters' minds between national and European politics.*

### 4.1 Introduction: One election. Two conclusions.

Have European elections entered a new dimension? This question was the title of the official post-electoral survey from the European Parliament, published in September 2019 (European Parliament, 2019). The report does not provide a direct answer to its own question, but the subheadings and tone of its various chapters are affirmative. The results across member states from the May vote are interpreted as an indication that, among citizens, there is today 'an enhanced sense of importance in these elections', which are now

viewed as ‘a central part of democratic life’ (ibid). Findings of the highest turnout levels since 1994, and historically high levels of support on key indicators of EU attitudes, back the idea of a positive momentum in EU public opinion. 51% of the electorate voted in the 2019-elections, while 59% thought that their country’s membership of the EU was a ‘good thing’. Both figures represent an increase in popular support of eight percentage points since 2014.

*The highest turnout levels since 1994, and historically high levels of support on key indicators of EU attitudes, back the idea of a positive momentum in EU public opinion.*

In this chapter we assess these optimistic findings from the European Parliament’s post-electoral study against the concomitant signals from recent surveys that European citizens today feel disillusioned by politics and even with democracy as such (De Vries and Hoffmann, 2016). According to Brussels media outlet Politico, populist, Eurosceptic parties<sup>1</sup> won more than one-third of the vote in the EU elections in eight member states, including in four of the six biggest countries: France, Italy, Poland and the United Kingdom (Pawelec and Piccinelli, 2019).

How to make sense of these parallel findings of political optimism and pessimism among Europeans today? In the following, we first examine public opinion towards the EU as evidenced through recent surveys in order to establish commonalities and differences in voter sentiment across the member states. We then look at the actual European Parliament results. We question the common expectation that populist and/or dissatisfied voters also reject European integration, but, simultaneously, we suggest that for many voters, national and European politics remain two disconnected spheres.

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<sup>1</sup> The terms ‘Eurosceptic’ and ‘populist’ are used in a vast variety of ways, leading to uneven classifications. This chapter builds on the classification by the media Politico. For an academic definition and conceptualisation of Euroscepticism, see Sørensen, 2007. For the 2CU’s take on ‘populist’, see Blockmans and Russack, 2018.

## 4.2 The good news

In the still lingering aftermath of the Eurozone financial crisis and a migration crisis that hit many EU countries hard, and just after a decision by the EU's third-largest member state - the United Kingdom - to leave, the fact that public support for the Union is at an historic high represents a piece of remarkably good news for supporters of European integration.

*The fact that public support for the Union is at an historic high represents a piece of remarkably good news for supporters of European integration.*

The European Parliament's post-electoral survey includes three main indicators of EU attitudes: membership support, feeling of benefit from membership and perception of one's voice being heard in the EU.

As to perceptions of membership, the 59% of the population across the EU-28 which thinks that their country's membership of the EU is a 'good thing' is just three percentage points short of a high point of 62% in 2018. It is not since 1992, when the Union consisted of just 12 member states, that appreciation of membership has been at these high levels.

Almost seven out of 10 citizens, 68%, think that their country has 'benefitted from membership', which is the joint highest level recorded since the Eurobarometer surveys started to include this question in 1983. And with 56% who agree that their 'voice counts in the EU', a question which was first asked in 2002, this is also the most positive result ever recorded.

Turnout was a piece of equally good news for EU supporters, with the highest level of voter participation in European elections in 20 years. The post-electoral survey found that the high media coverage and discussions on Brexit had had an encouraging impact on citizens' decisions to vote, rather than to abstain, with just under a quarter of Europeans (22%) saying that Brexit had played a role, at least to some extent, in encouraging them to turn up at the polling booth. Nonetheless, the survey report also links the higher turnout to a combination of a growing sense of civic duty among Europeans and a stronger sense that voting matters and can make things change, which suggests that this is a development that could continue in future elections.

For a European Union that has been marred by perpetual crises over the past decade, it is difficult to overestimate the importance of this double positive message of increasing voter turnout, on the one hand, and historically high EU approval rates on the other hand. It is exactly this kind of message that can give the EU's new leadership in the European Commission the boost of optimism it needs to create momentum around its evolving strategy for the coming five years.

### 4.3 The bad news

That optimism boost is much needed, as there are plenty of alarm bells about the health of contemporary public opinion from other surveys. Around the time of the EU elections, a poll published by the European Council on Foreign Relations (ECFR) showed that in two of the EU's biggest countries, the predominant feeling about life among citizens was a negative one: fear about life in France, and stress about life in Italy (Dennison, 2019). The survey also found that three-quarters of Europeans felt that either their national political system, the European political system, or both, were broken, and that a staggering 28% of Europeans believed it was realistic to expect a war between EU member states within the next 10 years (ibid). Also in 2019, a survey by eupinions showed that 51% of the population in the EU are 'worried about the state of society' while 49% are not. This societal worry is not primarily about economics, as much fewer, 35%, claim that they feel 'economically anxious' (De Vries and Hoffmann, 2019). Moreover, trust in key national institutions has been worryingly low for a while. Eurobarometer data from June 2019, for instance, shows that just over one-third of Europeans (34%) have trust in their own national parliament. Since the onset of the economic and financial crisis in 2008, across the Union, the feeling of distrust in the national parliament has often come out more than 30 percentage points higher than feelings of trust in this institution (Eurobarometer Interactive Search System, question: 'Trust in the [national] parliament'). Trust in the European Union, at 44% across the EU-28 in June 2019, has improved somewhat after a low period in the early to mid-2010s, where it polled at just 31%, but the level of trust is still nowhere near its former high level of 58% in 2007 (ibid).

*Optimism is much needed, as there are plenty of alarm bells about the health of contemporary public opinion.*

These findings of public disillusionment provide a disconcerting backdrop to recent reports about a gathering process of ‘autocratisation’ across many parts of the globe, including Europe, where actual falls in democracy levels have been noted in some European countries during the last decade (Godfrey and Youngs, 2019, Youngs, 2019). Indeed, if democratic backsliding is occurring at the will of, or indifference of, a growing number of people, there is reason for concern about the state of democracy.

A Pew Research survey from 2017 showed that substantial percentages across the EU are today willing to consider non-democratic options as possible alternatives to representative democracy (Wike et al., 2017). The survey asked respondents in ten EU countries to declare their openness to various forms of government. Even in Sweden, where there was the largest share of the population (62%) committed to democratic government, 40% of the respondents were listed as ‘less committed’, meaning that while they did support representative democracy, they declared at the same time their openness to a non-democratic form of government (rule by experts, a strong leader, or the military). In Hungary, the share of ‘less committed’ was 60%.

*If democratic backsliding is occurring at the will of, or indifference of, a growing number of people, there is reason for concern about the state of democracy.*

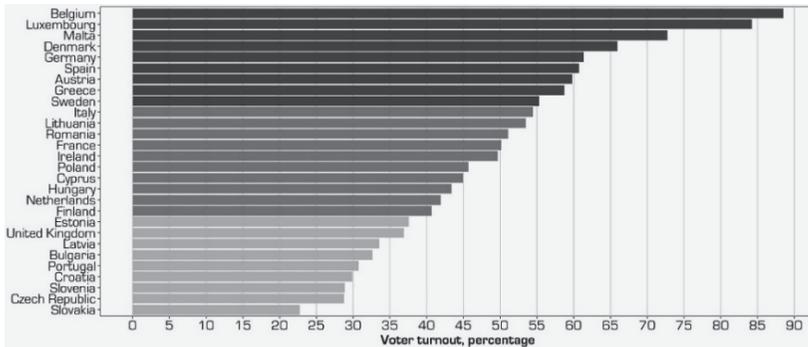
#### 4.4 The nuanced view

With respect to both turnout at the European Parliament elections, and the state of public opinion, the complete story is one of large differences between individual member states.

Among those countries, where voting is not compulsory (i.e. the EU-28 with the exception of Belgium, Bulgaria, Cyprus, Greece and Luxembourg), turnout ranged from 73% in Malta and 66% in Denmark, to 23% in Slovakia and 29% in the Czech Republic. It is a sign of the persistent democratic challenge that in a quarter of the Union’s member states, only one-third, or less, of the electorate bothered to vote. Table 4.1 lists turnout levels across the EU.

*In a quarter of the Union’s member states, only one third, or less, of the electorate bothered to vote.*

Table 4.1 Turnout by country at the 2019 European elections



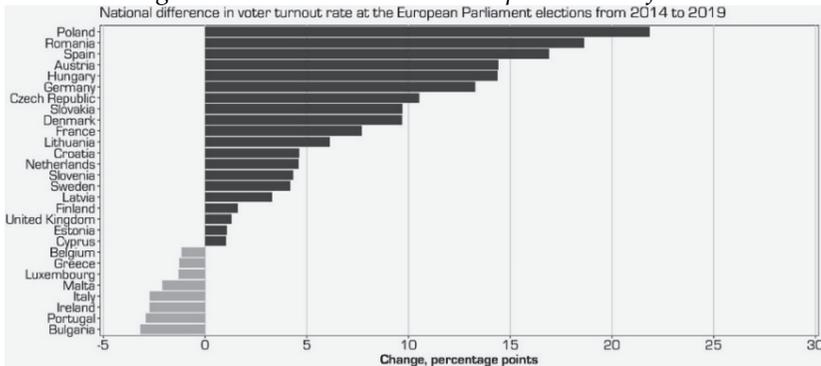
Source: European Parliament.

Among the bottom ten turnout performers, seven are central or east European countries. At first sight, this considerable overrepresentation of the ‘newer’ member states confirms the persistence of an east/west gap in the EU; however, if we look at the development in turnout since 2014, it is precisely in central and eastern Europe where there is the greatest positive change in voter participation rates. As Table 4.2 shows,

*The east/west divide in voter participation may be becoming less relevant.*

across the EU-28, Poland saw the most pronounced increase (22 points) in turnout, followed by Romania (18 points). In fact, among the ten countries, where turnout rose the most, half are from central and eastern Europe. The takeaway, thus, is one of cautious optimism that the east/west divide in voter participation may be becoming less relevant.

Table 4.2 Change in voter turnout rate at the European elections from 2014 to 2019



Source: European Parliament.

As to the various indicators of contemporary public opinion cited in this chapter, Table 4.3 below gives an overview of the five highest and lowest scoring member states. As neither the survey from the ECFR, Pew Research, nor eupinions, provide a breakdown of figures for all 28 member states of the EU (they focus on, respectively, 14, 10 and 6 member states), we only include data from the EU-wide Eurobarometer.

*Table 4.3 EU support: Top- and bottom-scoring member states*

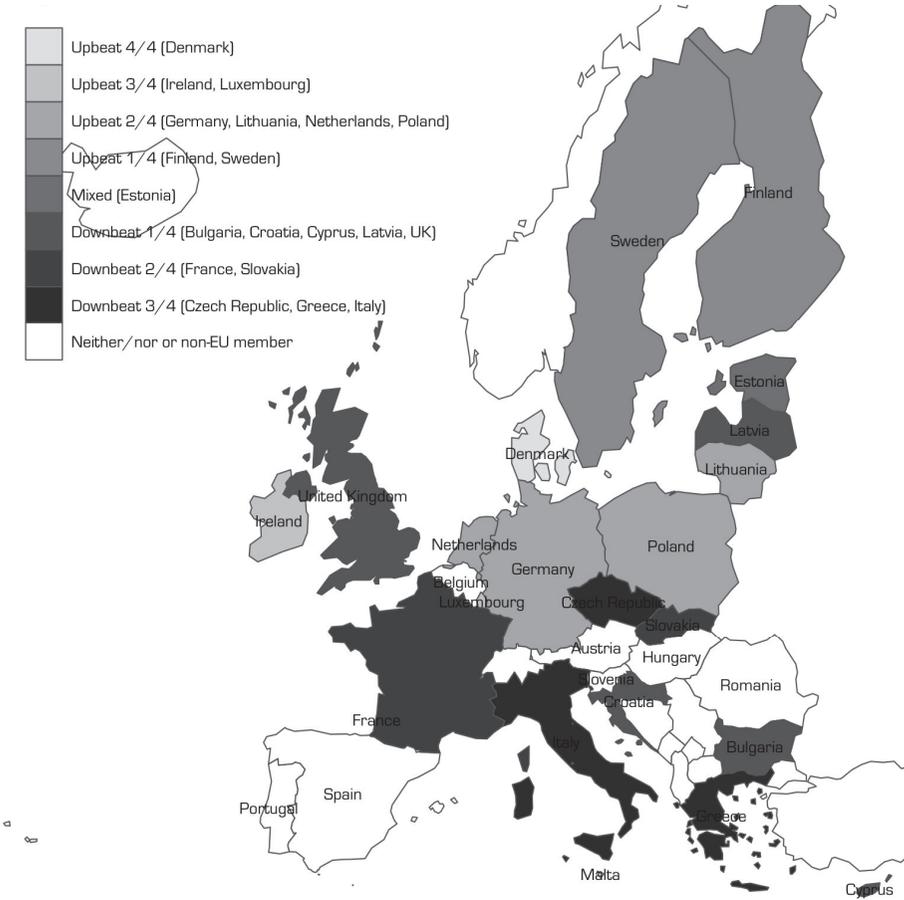
	<b>Most positive</b>	<b>Least positive</b>
Membership 'a good thing'	LU - IE - DE - NL - DK	CZ - IT - EL - HR - SK
Membership 'beneficial'	LT - IE - EE - PL - DK/LU	IT - BG - UK - EL - FR
My voice counts in EU	SE - DK - NL - DE - IE/PL	LV - EL - EE - CY - CZ
Trust EU	LT - DK - EE - LU - FI	EL - FR - CZ - IT - SK
Trust national parliament	SE - DK - FI - NL - LU	HR - BG - LT - LV - CZ

Interestingly, there is a tendency for the same countries to recur several times within the 'most positive' or 'least positive' columns, suggesting that it is possible to speak of a generally upbeat versus downbeat mood about the EU across the various member state populations. In the map below, we use the four EU-specific indicators to illustrate the geographical distribution of these sentiments, by giving the member states points according to how many times they appear at the extreme ends of the opinion spectrum.

There is evidence of a particularly upbeat mood about the EU in the Union's more affluent member states – especially in Denmark, Ireland and Luxembourg. That such strong EU support exists in the very two member states with the strongest record of having voted 'no' to European integration in referendums, Denmark and Ireland, may provide some comfort to those who worry after the British Brexit referendum that 'no votes' leave a lasting sense of negativity surrounding European integration in the country. As there is also an upbeat EU sentiment in Finland, Germany, Lithuania, the Netherlands, Poland and Sweden, and to some extent in Estonia, it is

noteworthy that this group of countries largely corresponds to the member states mentioned in connection with recent ideas of a Hanseatic League II (for instance Arak, 2018).

Figure 4.1 Upbeat or downbeat about the EU?



In contrast, there are consistent, downbeat signals from several central and southern European countries, especially the Czech Republic, Greece and Italy. Interestingly, despite the long-standing

reputation of the British as the EU's most Eurosceptic population, the United Kingdom is only among the five most critical member states with respect to one of the indicators, namely that about perceptions of benefit from the EU.

With the exception of one country, Lithuania, the Eurobarometer indicator gauging sentiments about the national political climate – that of trust in the national parliament – does not add any country to these lists of top- and bottom-scoring member states in terms of EU support. In other words, the populations with the lowest degree of trust in their own parliament also figure among the populations with the lowest degree of EU support, and the populations with the highest degree of trust in their own parliament also figure among the populations with highest degree of EU support. The high degree of overlap suggests that EU support and general political outlook is strongly correlated. As mentioned, Lithuania is the exception, as its population has low trust in the national parliament, while at the same time figuring among the member states where there is the highest trust in the European Union and the highest sense of benefit from membership.

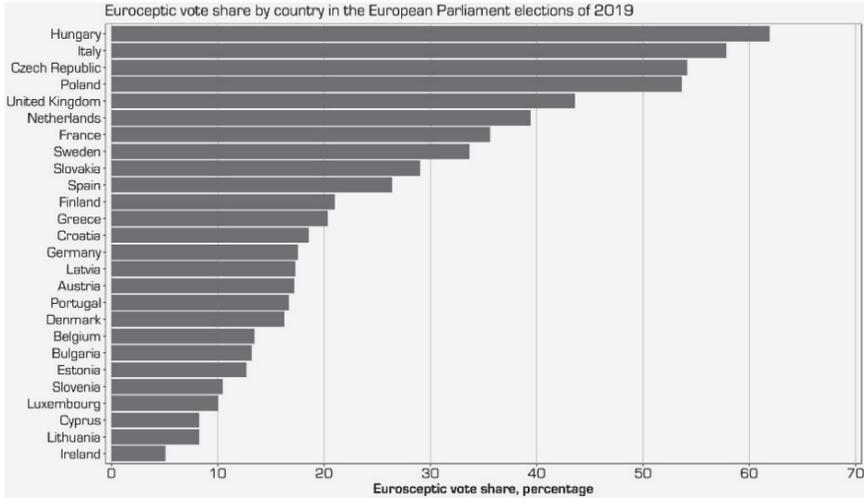
#### **4.5 Euroscepticism and the 2019 European Parliament results**

While it is largely recognised that populist, Eurosceptic parties did not make enough gains at the May 2019 elections to seize control of the European Parliament, they nonetheless improved their already strong standing in the previous parliament (Pawelec and Piccinelli, 2019). And, as mentioned above, they came first in France, Italy, Poland and the United Kingdom – four of the EU's six biggest member states. In terms of vote share, support for populist, Eurosceptic parties ranged from 62% in Hungary to 5% in Ireland (*ibid.*). Table 2.4 gives an overview of the performance of Eurosceptic parties.

Comparing these election results with the findings on public EU attitudes listed above leads to an interesting observation: support for parties classified as Eurosceptic appears much higher than individual Eurosceptic attitudes. The Hungarians, for instance, voted to the greatest extent in the EU-28 for a Eurosceptic party, yet they are not among the five most Eurosceptic populations on any of the classic indicators of EU attitudes used in this chapter. The Poles voted

fourth-most for a Eurosceptic party, yet they actually feature among the Union’s most EU-supportive populations.

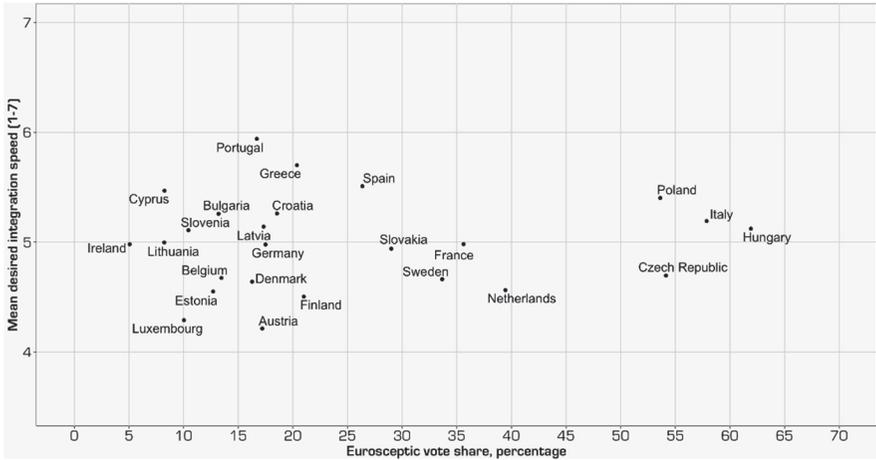
Figure 4.2 Euroscepticism in the 2019 European elections



Note: Data for Malta and Romania were unavailable.  
 Source: Politico, European Parliament.

To explore this observation further, we created a scatterplot (Figure 4.2) where member states are positioned according to their Eurosceptic vote share and their mean position on a question about desired speed of European integration (European Commission, 2019; Annex 1 lists the mean values). This latter indicator asks respondents whether European integration in their view should slow down or speed up, where 1 is ‘standing still’ and 7 is ‘running as fast as possible’.

Figure 4.3 Euroscepticism and the desired speed of European integration



Note: National Eurosceptic vote share at the 2019 European elections plotted against citizens' mean desired speed of EU integration (scale of 1-7). Data for Malta and Romania were unavailable.

Source: Think Tank Europa, Politico, European Parliament.

The results show that in Hungary and Italy, where the populations voted to the greatest extent for a Eurosceptic party, there is a mean desired integration speed of above 5. Looking at the position of the countries in Figure 4.2, it is clear that there is in fact no pattern between voting for Eurosceptic parties and wishing to bring the integration process to a halt. Put crudely, when citizens vote for these parties, it is more likely to be in spite of (or with indifference to) their Eurosceptic stance, rather than because of it. In this light, caution should be used when interpreting recent support for populist parties as a concomitant sign of strongly Eurosceptic public sentiment. The oft-assumed inference that populist voters reject European integration seems empirically weak.

*Caution should be used when interpreting recent support for populist parties as a concomitant sign of strongly Eurosceptic public sentiment.*

While this finding may appear comforting to supporters of European integration, it is at the same time a sign of concern for the ambition and prospect of establishing a Citizens' Union (Blockmans and Russack, 2018), which assumes a bottom-up engagement in European affairs. Indeed, it points to a likely disconnect in many

voters' minds between national and European politics, where the European dimension does not weigh heavily in the decision-making process ahead of an election to the European Parliament.

## **Recommendation**

National parliaments should intensify efforts to bridge the disconnect in many voters' minds between national and European politics. This chapter shows that there is no pattern between voting for Eurosceptic parties in the 2019 European Parliament elections and wishing to bring the EU integration process to a halt. Put crudely, when citizens vote for these parties, it is more likely to be in spite of (or with indifference to) their Eurosceptic stance, rather than because of it. This finding suggests a disconnect in the eyes of many citizens between national and European politics, which it is important to address in between elections, in order to maximise the relevance of the European elections. More focus on the European dimension in day-to-day discussions of national policies – for instance policies on climate change, migration or cyber security – is recommended.

## References

- Arak, P. (2018), "Why it's time for the Hanseatic League 2.0, EUobserver", Nov. 8 (<https://euobserver.com/opinion/143315>, accessed 5 OCT 2019).
- Blockmans, S. and S. Russack (2018), "Introduction", in S. Blockmans and S. Russack (eds.), *Direct democracy in the EU. The myth of a Citizens' Union*, London: Rowman & Littlefield International.
- De Vries, C. and I. Hoffmann (2016), "Fear not Values, Eupinions" survey (<https://eupinions.eu/de/text/fear-not-values/>, accessed 5 OCT 2019).
- De Vries, C. and I. Hoffmann (2019), "The Hopeful, the Fearful and the Furious", Eupinions survey ([https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/eupinions\\_EP\\_elections.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/eupinions_EP_elections.pdf), accessed 5 OCT 2019).
- Dennison, S. (2019), "Give the people what they want: Popular demand for a strong European foreign policy", Policy Brief, European Council on Foreign Relations, September 8 ([https://www.ecfr.eu/publications/summary/popular\\_demand\\_for\\_strong\\_european\\_foreign\\_policy\\_what\\_people\\_want#](https://www.ecfr.eu/publications/summary/popular_demand_for_strong_european_foreign_policy_what_people_want#), accessed 5 OCT 2019).
- Eurobarometer Interactive Search System (<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/index>, accessed 5 OCT 2019).
- European Commission (2019), "Standard Eurobarometer", 91 (<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2253>, accessed 5 OCT 2019).
- European Parliament (2019), "The 2019 Post-Electoral Survey: Have European Elections Entered A New Dimension?", Eurobarometer Survey 91.5 (<https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2019/post-election-survey-2019-complete-results/report/en-post-election-survey-2019-report.pdf>, accessed 5 OCT 2019).
- Godfrey, K. and R. Youngs (2019), "Will a New EU Democracy Strategy Make Any Difference?", Carnegie Europe, October 3, (<https://carnegieeurope.eu/strategieurope/79980>, accessed 5 OCT 2019).

- Pawelec, H. and F. Piccinelli (2019), "In graphics: How Europe voted", *Politico* (<https://www.politico.eu/article/how-europe-voted-election-2019-parliament-results/>, accessed 5 OCT 2019).
- Sørensen, C. (2007), *Euroscepticism. A Conceptual Analysis and a Longitudinal, Cross-Country Examination of Public Opinion towards the European Union*, University of Copenhagen Press.
- Wike, R., K. Simmons, B. Stokes and J. Fetterolf (2017), "Globally, Broad Support for Representative and Direct Democracy. But many also endorse nondemocratic alternatives", Pew Research Center (<https://www.pewresearch.org/global/2017/10/16/globally-broad-support-for-representative-and-direct-democracy/>, accessed 5 OCT 2019).
- Youngs, R. (ed) (2019), *Reshaping European Democracy: A Year in Review*, Carnegie Europe (<https://carnegieeurope.eu/2019/05/16/reshaping-european-democracy-year-in-review-pub-79111>, accessed 5 OCT 2019).

**PART I.**  
**REPRESENTATIVE DEMOCRACY**



# 5. IMPROVING REPRESENTATIVENESS IN EUROPE: A STORY OF MISSED AND FUTURE OPPORTUNITIES

*DÍDAC GUTIÉRREZ-PERIS AND  
HÉCTOR SÁNCHEZ MARGALEF*

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*There have been attempts to improve representativeness in Europe since the very inception of the European project. This chapter explores the history and also analyses recent initiatives that have proven insufficient by themselves to improve representativeness, but that appear to have potential. Finally, it also provides policy recommendations that seek to make democracy function better in Europe by learning from missed opportunities and considering future opportunities.*

## 5.1 Introduction: Revisiting assumptions

The 2005 rejection of the Treaty establishing a Constitution for Europe represented a wake-up call that fifteen years later is still very much relevant at the European level (Hix, 2008; Follesdal and Hix, 2006; Castiglione, 2007; Hennette, 2019). From a neo-functionalism perspective, the initial Danish rejection of the Maastricht Treaty was the beginning of the end of the permissive consensus (Hooghe and Marks, 2009) and the failure of the Constitution was the final nail in the coffin, signalling the advent of a new period where notions such as ‘democratic deficit’ and ‘crisis of legitimacy’ have become increasingly central (Schweiger, 2016; Longo and Murray, 2015). A new period, where the result of (perceived) lack of accountability – and consequently of representativeness has become central. From a

more political standpoint, the failed Constitution was also perceived as the tip of a much bigger iceberg regarding the way policymaking worked when dealing with European affairs.

Such an understanding of the recent history of European integration is built on, at least, two major assumptions. The first portrays the failed referendums in France and Netherlands as something ‘unexpected’, often described as a shock and as a surprise for European policymakers (García-Valdecasas, 2005; Segurado, 2015). Such an assumption presupposes that the European Union, prior to the 2000s, overlooked the issue of representativeness. It presupposes that the European Union did not really engage and did not attempt to pass the necessary reforms that could have improved the way representativeness worked at the European level, and in particular regarding the functioning of the European Parliament.

The second major assumption is that the crisis of legitimacy and the waves of criticism regarding the lack of accountability at the European level could be sorted out with a top-down approach. In other words, the belief that by proposing some institutional changes and some bold policy options regarding the European elections, thus putting the focus on input legitimacy, greater explicit citizen support for the European Union could be achieved (Gheyle, 2019).

This chapter aims to offer alternative views regarding both assumptions. We argue that the European Union has attempted since its inception to implement many ground-breaking innovations regarding representativeness in Europe but that these have been

*The most promising alternatives can flourish in a mature European public space where proposals find their way in areas such as educational policy, media Europeanisation and sociological bonds.*

blocked by an inter-institutional fight over competency. An institutional battle that has only amplified since the Lisbon Treaty and the financial crisis between 2009 and 2014. We also argue that a top-down approach regarding the challenge of post-national representativeness can only partially succeed, while the most promising alternatives can flourish in a

mature European public space where proposals find their way in areas such as educational policy, media Europeanisation and sociological bonds. Finally, we argue that the focus should be put on both input and output legitimacy because one alone is not enough to

tackle both the lack of a European demos and the need for greater representativeness.

The final section presents policy recommendations regarding representativeness in Europe: some options that have already been proposed over the years but remain blocked by the European Council or the European Parliament, as well as some original proposals.

## 5.2 Old and new institutional reforms

One possible approach when studying the current state of representativeness in Europe is to assess institutional improvements that could take place within each of the four main European institutions – the Commission, the European Parliament, the Council of the European Union and the European Council. It is worth noting that this ‘case-by-case’ method would undoubtedly need to include the European Council, an institution that despite not being traditionally considered part of the ‘institutional triangle’ has, over the last twenty years, undergone the most radical transformation of all. From an informal gathering of heads of government in the 80s, the European Council has become a plenipotentiary structure formally acknowledged by the Lisbon Treaty where the political direction of the European Union is decided and sometimes directly implemented. The institutional rise of the European Council means in practice that intergovernmentalism has overtaken in times of crises some of the executive powers that are supposed to be devolved to the European Commission. This new institutional balance represents in itself a major challenge regarding representativeness. Indeed, it is commonly acknowledged that the most legitimate body to represent the European public interest is the European Parliament since it is the only European institution elected directly by European citizens.

Regarding the other institutions, some sensitive reforms have already been proposed by academics and policymakers to improve accountability and representativeness at the EU level. To name only a few:

- To increase supervision of the role played by delegated committees within the European Commission (i.e. a specific practice known as comitology) (Bergström, 2005);
- To extend Qualified Majority Voting (QMV) as the normal procedure for all policy areas discussed within the two

intergovernmental bodies of the European Union (Cosandey, 2007);

- To end the monopoly of the legislative initiative currently enjoyed almost exclusively by the European Commission (JEF, 2016);
- To revamp the European Commission in order to hierarchise political priorities emerging from the European elections by including some sort of ‘senior and junior’ Commissioners – an idea that was first mentioned in the Constitutional Treaty in 2005, then left out of the Lisbon Treaty, and finally is making its way back in after the experience of creating vice-presidencies within the Colleges presided by Jean-Claude Juncker and Ursula von der Leyen.

Unsurprisingly, the main challenge regarding this case-by-case approach is that many of those options are ambiguous regarding the principles they intend to improve. For example, many of those improvements are intended to encourage a more transparent and accountable praxis regarding decision-making, and by that effect, they are deemed to also have a positive impact regarding the perception of representativeness at the European level. Even if such a virtuous circle exists, we believe it is not exactly the same to debate how to improve representativeness at the European level and to debate how to improve transparency more generally within the European Union. Thus, the aim of the following section is to focus on those policy improvements that could be more easily associated with our understanding of how representative democracy usually works. For that purpose, we intend to focus on two ideas that echo the most recurrent traits of parliamentary democracy and that could potentially be implemented at the continental level.

### *A common and harmonised electoral system*

Even if we acknowledge that the European Union is a unique political system that has its own specificities and cannot be automatically compared or defined simply as a parliamentary democracy (Corbett et al., 2018), the structure draws one part of its legitimacy by means of organising democratic elections that determine the composition of one of the two legislative branches of the Union since 1979.

Interestingly, this parliamentary inspiration was in line with the will of the founding fathers, which wanted to bring a solid democratic and political basis to the European project. This chapter of European history is sometimes forgotten because such intentions were quickly buried with the failures in the early 50s of the *Communauté Européenne de Défense* (CED) and the weakened powers given to the *Assemblée Commune* (1952-1957) and the *Assemblée parlementaire européenne* (1957-1962).

Yet, an historical assessment of how representation in Europe has evolved allows us to dismiss the argument that European policymakers have disdained the issue of representativeness for forty years. On the contrary, the decade of 1950 was an extremely promising period regarding European parliamentary innovations. The *Assemblée Commune* (the first version of the European Parliament) had, indeed, sanction powers over the *Hauté Autorité* of the *Communauté Européenne du Charbon et de l'Acier* (the predecessor of the European Commission). Those powers were lost and were changed into mere 'consultative prerogatives' with the advent of the EEC and the definitive consolidation of the 'small-step doctrine' cherished by functionalism as the only effective way to build European cooperation.

An illustration of the importance given to representativeness in Europe in those early years can be found for example in the Treaty of Rome signed in 1957. In its Article 138 the Treaty proclaimed that the *Assemblée Commune* had to be elected through direct universal suffrage by means

*The Treaty of Rome proclaimed that the Assemblée Commune had to be elected through direct universal suffrage by means of a common electoral system.*

of a common electoral system applicable to all member states. It was, precisely, this legal basis that triggered the first proposals to create a system that would establish a direct link between European citizens and European representatives (see for example the Dehousse Rapport in 1961 and the following proposals in 1963 and 1969 as quoted in Corbett et al., 2018).

Despite this legal basis being formulated in the founding Treaties, it was only in 1975 that the proposal of the Dutch MEP Schelto Patijn was accepted by the Council (European Parliament, 1975). The proposal, only four pages long, set up a roadmap divided into two phases (ibid.). The first phase was to grant direct universal

suffrage for the elections of 1979. The second phase called for the establishment of a common electoral reform with a common set of rules to improve representativeness across all member states for the European elections.

Such harmonisation, which was supposed to be applied immediately after 1979, was blocked once more by the Council for more than twenty-two years. As a consequence, the proposals sent by the European Parliament to the Council started to pile up again, such as in 1983 the Seitlinger rapport (European Parliament, 1983) or ten years later, the 1993 De Gucht rapport (European Community, 1993). It was only in 2002 that member states agreed to implement the proposals included in the rapport of Greek MEP Anastassapoulos (European Parliament, 1998). The common set of rules decided in 2002 were limited in fact to only three criteria and those three principles are still the sole common basis underpinning the legitimacy of European representativeness to this day. Those principles are well known and they include: i) the use of a proportional electoral scheme for European elections; ii) the incompatibility between being an MEP and a national MP; iii) and finally, the right of Europeans to vote in the European elections irrespective of their country of residence.

In sum, the idea of a common electoral system at the European level is in fact a long-standing demand of the European Parliament. An idea that despite having the initial support of member states and the European Commission was then rapidly blocked and watered down by the Council and the European Council over the years. We can speculate about the reasons, yet the most plausible hypothesis is that member states have been keen to maintain a monopoly, or at least the dominant position, as the main source of democratic legitimacy and representativeness in Europe.

### *From Spitzenkandidaten to transnational lists*

A similar situation has occurred with more recent initiatives such as the *Spitzenkandidaten* (see Chapter 8) and transnational lists. The former, an ambitious formula approved by the European Parliament in 2012, was intended to increase the sentiment of representativeness by creating a more direct link between European citizens' preferences during the elections and the choice about who should be heading the

executive branch of the European Union (European Parliament, 2012). The formula implied that the European Parliament and the European Commission were in need of an enhanced level of representativeness and that this objective could be reached by increasing input legitimacy. Yet, the most recent experience of 2019 seems to indicate clearly that the European Council is still not entirely comfortable with losing its symbolic upper hand. At least that is one of the potential readings of its decision to circumvent the *Spitzenkandidaten* initiative altogether by choosing Ursula von der Leyen as European Commission President.

Again, it might be argued that inter-institutional fighting prevented a development that, even though it followed a top-down approach, had been designed to improve the legitimacy, representativeness and accountability of the Union towards its citizens. In this case the reluctance is even more significant considering that the *Spitzenkandidaten* formula was not exactly a Copernican revolution. The mechanism included a legal 'safeguard' in favour of the status quo in that, while creating a link between the results in the elections and the political configuration of the Commission, the European Council retained the last word. In that sense, this innovation merely went some way to providing an enhanced input legitimacy connection between citizens and institutions (Sánchez Margalef, 2019).

*Inter-institutional fighting prevented a development that, even though it followed a top-down approach, had been designed to improve the legitimacy, representativeness and accountability of the Union.*

Transnational lists have also been a long-standing federalist dream, as they could be seen as confirming the existence of a European demos, thereby granting legitimacy to the Union and bridging the gap between voters and representatives. In this case it was the two main groups in the European Parliament who rejected a proposal that originated inside the chamber itself but was also championed by some member states, especially France. Transnational lists could have been a bold idea to improve the feeling of *Europeanness* and the idea of a certain European identity (Verger, 2018). However, the system would directly undermine the accountability of a member of the European Parliament towards their constituency because it would not be clear where and to whom

exactly the MEP would be accountable. Moreover, they would also challenge the current power structure set up in the European Parliament and controlled by the biggest groups, Christian Democrats and Social Democrats. As pointed out by Verger (*ibid.*), it is neither clear how those new MEPs were going to be financed, nor how they could claim an exclusive or better representativeness of a given ‘European demos’. The two-speed parliament that Verger warns about looks a very plausible future scenario. The European vision these MEPs would theoretically embrace lacks clarity and definition; and there are MEPs that already embrace such a vision without the need of transnational lists.

There again, transnational lists were conceived as a top-down reform aimed at increasing the legitimacy of the European Parliament and thus, that of the EU. In any case, it is also not clear whether the implementation of the lists would translate into an increase in turnout. What we do know is that the *Spitzenkandidaten* process in 2014 did not lead to a significant change in participation rates and the increase in the elections of 2019 cannot be attributed solely to the *Spitzenkandidaten* formula. One hypothesis at this stage is that input legitimacy has a limited impact in terms of electoral turnout at the European scale. It might even be argued that these two top-down reforms were stopped by the institution that is still perceived by many EU citizens as one of the main sources of legitimacy.

### 5.3 Beyond the top-down approach

In fact, the debate about representativeness in Europe rests on the assumption that European citizens want or need a better and more advanced system of representation at the European level. Nevertheless, some findings seem to point in the exactly opposite direction.

First of all, the majority of European integration theories often overlook the role of socialisation over institutional structures. Neo-

*The majority of European integration theories often overlook the role of socialisation over institutional structures.*

functionalism, for example, is understood as a ratchet mechanism where the delegation of a political competency will call for another competency, and this sequence will supposedly consolidate over the years the political powers of the European Union.

Curiously, even the current theories, which are more interested in sociological notions such as ‘legitimacy crisis’ or ‘democratic deficit’ are still proposing institutional responses, such as the ones observed and analysed in the first section of this chapter. In that sense, despite the fact that the main literature has detected that there is a challenge emanating directly from what citizens think or perceive about the European Union (Follesdal and Hix, *op. cit.*), the response is still based in an institutional or political reform calling for more institutional transparency or for more ‘Europeanised’ elections.

The more complex and sociological solutions are overlooked because they cannot be implemented in one day or decided at one summit. Among those reforms, we could mention an educational policy that included a common European curriculum, the Europeanisation of some of the processes that influence our identity construction such as the way we inform ourselves, or the impact of certain life experiences such as working or living in another member state. All of those policies are considered by the literature to have an equally beneficial impact regarding the consolidation of a European demos. More importantly, they are considered to be efficient tools to improve participation, involvement and the feeling of ownership among citizens of European matters – three notions that are of paramount importance to representativeness.

*The broad question should be asked in reverse: can the citizens reconnect with the European Union without a proper sociological European bond?*

In this perspective, the broad question about how to reconnect the European Union with its citizens should be asked in reverse: can the citizens reconnect with the European Union without a proper sociological European bond?

### *Closeness, recurrence and technologically savviness*

Following this bottom-up approach, it is interesting to recall the findings of comprehensive quantitative fieldworks across Europe such as the report co-presented by Notre Europe and CIDOB in 2014 (Notre Europe and CIDOB, 2014), which points out that citizens tend to agree when identifying the best ways to improve representativeness at the continental level.

First, citizens want European policymakers, and in particular their MEPs, to be more informed and closer to their needs, as well as more accessible. Surprisingly, the initiative that gathers most support among interviewees from eighteen countries in the report (ibid.) is “the possibility to see in person the politicians and the professionals that work in the EU”. The desire extends to civil servants, Commissioners and middle administrators. Interestingly, such an initiative is not entirely new in Europe since it has already been tested nationally, in particular in the United Kingdom, where MPs hold ‘political surgeries’ with their local constituents. Surgeries in the United Kingdom are institutionalised to the point that MPs have specific locations for holding these particular one-to-one conversations. Research shows that those surgeries create a strong accountability as the MP is compelled to follow up many of the issues brought to them (Parliament of the United Kingdom, 2019).

In fact, there is a clear similarity between the British idea of ‘surgery’ and the Citizens’ Dialogues initiated by the former Vice-President of the European Commission, Viviane Reding, in 2013 and 2014. The Dialogues have been institutionalised and made permanent, and they are considered as the most efficient way to create a link between Commissioners (who otherwise would not confront national audiences very often) and citizens across the

*Findings from comparative research across Europe suggest that representativeness could be improved by extending the practice of local surgeries to all MEPs.*

continent. When the Dialogues started, there were few expectations for the initiative – it was supposed to be another technical town-hall meeting to explain one of the policies implemented by the European Commission. Nevertheless, public interest was

sparked by simply making policymakers visible (Morillas et al., 2018). The relative success of the Dialogues combined with the findings from comparative research across Europe suggest that representativeness could be improved by extending the practice of local surgeries to all MEPs.

The second main finding regarding improved representativeness is the importance accorded to recurrence by citizens. The general perception among respondents from the same report (ibid.) is that the most efficient way to gain credibility as a public representative is to create channels of communication and

accountability that extend beyond election day. This calls for a continuum, also, in terms of political communication. Usually communication strategies end the day after winning or losing an election. Instead, communication policies could extend over time and be tailored for representatives holding responsibilities.

The third improvement quoted largely by citizens regarding representativeness is directly linked with the use of new technologies to keep better track of voting patterns and parliamentary activity. It is worth noting that on that issue the European Union, and in particular the European Parliament, has often been a pioneer regarding transparency and accountability, with higher standards than many of the national parliaments. Since 2010, the website of the European Parliament has offered information thanks to a partnership with VoteWatch, a specialised platform where every vote is recorded and published. Similarly, there has been a very substantial effort regarding how the information is not only made available to the user, but also hierarchised and curated in order to be more understandable. With that aim, the European Parliament has published Press Releases explaining the significance and the stakes of every major plenary vote since 2010, as well as video clips of the main interventions during the plenary debates.

To sum up, improving representativeness is a challenge that can also be led by civil society and individuals. The generalisation of local surgeries, the consolidation of tools to consult with citizens on a recurrent basis, and the use of new technologies to follow parliamentary activity are some of the ideas explored in this chapter. There are many other initiatives that depend on the level of willingness of the citizen to play their part, such as for example using the network of agencies known as Europe Direct or obtaining information about European affairs through channels such as Euronews or specialised newspapers and magazines.

In all cases, our argument is that the challenge of improving the perception of representativeness in Europe should be both a top-down and bottom-up task. It seems that beyond those not-so-new institutional changes, what is also needed is time and long-term policy programmes to develop a common sense of 'us'. Or in a Habermasian

*Beyond those not-so-new institutional changes, what is also needed is time and long-term policy programmes to develop a common sense of 'us'.*

wording, both institutions and demos need to be consolidated at the same time in order to obtain a representative political union at the European level. There is a virtuous circle where institutional reforms such as transnational lists or a common electoral system have a limited but still positive impact in terms of representativeness, the same way that there is a virtuous circle and a better perception of representativeness when citizens are involved in making those in power accountable. In order to improve representativeness, the assessment of previous attempts needs to be combined and taken into account together with the following policy recommendations.

## 5.4 Recommendations

As we have seen, securing more legitimacy for the EU by increasing representativeness, participation and legitimacy is a conundrum that EU leaders and pro-EU democratisation movements and associations have not been able to solve in the last thirty years; although the problem can be traced to very nearly the inception of the European project.

Yet, the long-diagnosed ‘disease’ of the lack of a European demos will at some point come to an end. Stefan Lehne (2019) points

*Top-down and bottom-up solutions, innovations and developments have been reinforcing the European demos.*

in that direction when he claims that the nationalisation of European politics and the Europeanisation of national politics are leading irremediably to the emergence of a European political space. In fact, every decision that has been taken in the last 60 years has contributed to the creation and expansion of the European political space and the European demos. The growing talk of the politicisation of the EU bears witness to such phenomena (Morillas, 2019). Therefore, not only politicians and institutions have contributed to it, but so have citizens; in other words, top-down and bottom-up solutions, innovations and developments have been reinforcing the European demos.

If the goal of some political leaders of the EU, the institutions, and engaged European citizens is to create a European political space that grants the EU more legitimacy more rapidly, these policy recommendations could be followed:

- In the first place, reviving the *Spitzenkandidaten* system and implementing a reformed transnational lists system (that still needs to be debated further to garner greater support from all relevant actors) could reinforce representative democracy for the Commission and the Parliament. Linking the results of the elections with the composition of the Commission could also help, but this is something to keep in mind for the future as the conditions are not yet fulfilled. The Commission should aim to make EU democratic credentials a top priority for the next decade (Youngs et al., 2019); and to re-evaluate some mechanisms of its decision-making process. Finally, adopting a more comprehensive electoral system applicable to all member states for the elections to the European Parliament; a demand that has been on the table since 1957.
- Secondly, inter-institutional fights over legitimacy cannot be solved solely by stressing representative democracy, especially if the College of Commissioners will not see its composition reflecting the results of the elections to the European Parliament. Thus, representative democracy needs to be complemented by elements of direct, participatory and deliberative democracy; even if it means opening up traditional representative institutions like the European Parliament. As an example, it would be a start to randomly select EU citizens to participate in national citizens' assemblies in the agenda-setting phase. This would also make participants comfortable by using their own language, for example. For the decision-making phase, this could be done at the European level with the different participants of the national assemblies, making sure all the voices from member states are heard (Gerwin, 2019).
- Finally, building on the last point and acknowledging the difficulties the different bodies of the European Union have to become more democratic on account of representativeness; it is time for the EU to recognise itself as a *hybrid* democracy whose sources of legitimacy do not come only from representative democracy but from introducing elements of direct and deliberative democracy to the decision-making processes.

Those are policy recommendations that could tackle input legitimacy. Regarding output legitimacy, it is well known that public attitudes are influenced and are often shaped by how the European Union and its member states handle socio-economic challenges (Debomy, 2016; Nancy, 2016). In that sense, the EU is facing not only a challenge about issues of representativeness and accountability but also a challenge regarding its social effectiveness as one of the main policy powerhouses in Europe.

Even if top-down initiatives have a limited impact not everything can rest in the hands of citizens. We have argued throughout the chapter that this kind of institutional reforms are often subjected to the will of all member states, which may make implementation difficult. One can nevertheless imagine a 'coalition of the willing' in a vast array of areas, from creating a harmonised electoral system to allow the European Union to have a shared competency over educational and civic policies (i.e. school curriculum, European Solidarity Corps...). Indeed, a precondition for improving representativeness in Europe is improving inter-European solidarity (Habermas, 2013). It might be useful to keep in mind that institutional bonding is only a potential way to achieve a higher sense of 'us', which still appears as the main challenge after 60 years of representativeness in Europe.

## References

- Bergström, C. F. (2005), *Comitology: delegation of powers in the European Union and the committee system*, Oxford: Oxford University Press.
- Castiglione, D., J. Schönlau, C. Longman, E. Lombardo, N. Pérez-Solórzano Borragán and M. Aziz (2007), *Constitutional politics in the European Union: the Convention moment and its aftermath*, Basingstoke: Palgrave MacMillan.
- Corbett, R., J. Peterson. and J. Kenealy (2018), *The European Union: how does it work?*, Oxford: Oxford University Press.
- Cosandey, A-C. (2007), "Divergence or convergence? From ever-growing to ever-slowng European legislative decision-making", *European Journal of Political Research*, Vol. 46, No. 3, 25-38.
- Debomy, D. (2016), "The EU, despite everything? European public opinion in the face of the crisis", *Studies & Reports 111*, Notre Europe - Institute Jacques Delors, June (<http://www.institutdelors.eu/wp-content/uploads/2018/01/eupublicopinionandcrisis-debomy-jdi-june16.pdf?pdf=ok>).
- European Community (1993), *Journal Officiel*, C 115, 26.4.1993, 59.
- European Parliament (1975), "Rapport fait au nom de la commission politique, du 13 janvier 1975, relatif à l'adoption d'un projet de convention instituant l'élection des membres du Parlement européen au suffrage universel direct (Rapporteur : M. Schelto Patijn) ", Document n° 368/74, 13.01.1975.
- European Parliament (1982), "Projet de procédure électorale uniforme suivant le rapport de M. Seitlinger", Document n° PE1-28192.
- European Parliament (1998), "Resolution on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament (Rapporteur: Mr Georgios Anastassopoulos)", Document n° PE 224.331, 02.06.1998.
- European Parliament (2012), "Resolution on the elections to the European Parliament in 2014 (2012/2829(RSP)", 22 November (<https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0462+0+DOC+XML+V0//EN>).
- Follesdal, A. and S. Hix (2006), "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik", *Journal of Common Market Studies*, Vol. 44, No. 09, 533-562.

- García-Valdecasas, I. (2005), "El rechazo al proyecto de Constitución Europea: un análisis retrospectivo", Real Instituto Elcano, ARI N° 159-2005.
- Gerwin, M. (2019), "A new kind of democracy is needed to change the EU for the better", *Euronews*, 13<sup>th</sup> April (<https://www.euronews.com/2019/04/13/a-new-kind-of-democracy-is-needed-to-change-the-eu-for-the-better-view>).
- Gheyle, N. (2019), "Conceptualizing the Parliamentarization and Politicization of European Policies", *Politics and Governance*, Vol. 7, No. 3, 227-236.
- Gutiérrez-Peris, D., P. Morillas and H. Sánchez Margalef (2018), "Europe's Conventions Démocratiques", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Habermas, J. (2013), *The Crisis of the European Union: A Response*, Cambridge: Polity.
- Hennette, S., T. Piketty, G. Sacriste and A. Vauchez (2019), *How to Democratize Europe*, Cambridge, Massachusetts: Harvard University Press.
- Hix, S. (2008), *What's Wrong with the European Union and How to Fix It*, Cambridge: Polity Press.
- Hooghe, L. and G. Marks (2009), "A postfunctionalist theory of European integration: from permissive consensus to constraining dissensus", *British Journal of Political Science*, Vol. 39, No. 1, 1-23.
- JEF - Jeunes Européés Fédéralistes (2016), "The Structure of a Federal European Parliament", Democracy Elections Institutional Affairs Working Group, Resolutions Autumn 2016.
- Lehne, S. (2019), "The Emergence of a European Political Space", Mercator European Dialogue, German Marshall Fund of the United States (<https://www.mercatoreuropeandialogue.org/download-file/783/>).
- Longo, M. and P. Murray (2015), *Europe's Legitimacy Crisis: From Causes to Solutions*, Basingstoke: Palgrave Macmillan.
- Morillas, P. (2019), "Grappling with Dissent: How Can Think Tanks Cope with Politicisation?", CIDOB, Opinió CIDOB 577 ([https://www.cidob.org/es/publicaciones/serie\\_de\\_publicacion/opinion/seguridad\\_y\\_politica\\_mundial/grappling\\_with\\_dissent\\_how\\_can\\_think\\_tanks\\_cope\\_with\\_politicisation](https://www.cidob.org/es/publicaciones/serie_de_publicacion/opinion/seguridad_y_politica_mundial/grappling_with_dissent_how_can_think_tanks_cope_with_politicisation)).

- Nancy, J. (2016), "Major changes in European public opinion regarding the European Union", European Parliamentary Research Service. European Parliament, November 2016 (<https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2016/major-changes-in-european-public-opinion-2016/report/en-report-exploratory-study-201611.pdf>).
- Notre Europe and CIDOB (2014), "European citizens' involvement in the EU - Report of a qualitative study - national results", Project 'Horizon EU: European citizenship, an horizontal pattern', February.
- Parliament of the United Kingdom (2019), "Political Surgeries", (<https://www.parliament.uk/site-information/glossary/surgeries/>).
- Sánchez Margalef, H. (2019), "¿Quién quiere matar a los Spitzenkandidaten?", CIDOB, Opinió CIDOB 570 ([https://www.cidob.org/es/publicaciones/serie\\_de\\_publicacion/opinion/europa/quien\\_quiere\\_matar\\_a\\_los\\_spitzenkandidaten](https://www.cidob.org/es/publicaciones/serie_de_publicacion/opinion/europa/quien_quiere_matar_a_los_spitzenkandidaten)).
- Schweiger, C. (2016), *Exploring the EU's legitimacy crisis: the dark heart of Europe*, Cheltenham: Edward Elgar Publishing.
- Segurado, N. (2015), "Diez años de la no Constitución: el fracaso que inauguró una década convulsa para la construcción europea", 20 Minutos, 2<sup>nd</sup> June (<https://blogs.20minutos.es/europa-inquieta/2015/06/02/diez-anos-de-la-no-constitucion-el-fracaso-que-inauguro-una-decada-convulsa-para-la-construccion-europea/>).
- Verger, C. (2018), "Transnational lists: a political opportunity for Europe with obstacles to overcome", Notre Europe - Institute Jacques Delors, Policy Paper no. 126 (<https://institutdelors.eu/wp-content/uploads/2018/02/Transnationallists-Verger-Feb18.pdf>).
- Youngs, R., S. Boucher, I. Butler, M. de Groot, E. Lironi, S. Russack, C. Stratulat and A. Zacharzewski (2019), "Six Ideas for Rejuvenating European Democracy", Working Paper, Carnegie Europe, (<https://carnegieeurope.eu/2019/11/06/six-ideas-for-rejuvenating-european-democracy-pub-80279>).



## **6. TRANSPARENCY IN EU DECISION-MAKING: UNDER GROWING PRESSURE, MORE IMPORTANT THAN EVER TUOMAS ISO-MARKKU**

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*Transparency is widely seen as a crucial component of democratic governance, ideally allowing for greater accountability and building public trust. Within the EU, transparency started gaining wider attention in the 1990s and quickly established itself as an important objective in EU decision-making. However, there continue to be different views on transparency among EU institutions and member states, which has led to varying degrees of openness across the EU. Moreover, it has made it difficult to reform or rethink existing transparency rules and practices of the EU institutions. Such a process would be urgent, as several trends currently challenge the EU's already limited transparency regime. Some of these challenges are specific to the EU, whereas others apply to other actors as well. The former comprise the increased role of the EU's persistently secluded intergovernmental bodies, the emergence of new actors and agencies and the prevalent use of closed trilogues in legislative decision-making, whereas the latter consist of the general blurring of the boundaries between internal and external policies as well as the prospect of increasing geo-economic competition. These challenges call for a rethinking, and reappraisal, of the role of transparency in today's complex political environment, both within the EU and vis-à-vis other actors. However, transparency is not a panacea for generating political legitimacy in the eyes of the EU citizens or a quick fix for the lack thereof. Instead, it is better to understand it as part of the basis on which these can be built.*

## 6.1 Introduction: Shades of transparency

There is no universal definition for transparency in academia or politics. However, generally speaking, transparency refers to the openness of a (public) body with regard to how it acts (for a general definition, see Johnston, 2014). While different understandings of transparency may emphasise different aspects of the concept and put forward differing practical demands, transparency is broadly seen as a crucial component of democratic governance and of a functioning relationship between citizens and public authority. Ideally, it both allows for greater accountability of decision-makers and builds public trust (Abazi and Tauschinsky, 2015).

Within the EU, transparency issues started gaining growing attention in the 1990s, with a strong focus on the citizens' access to the documents of the EU institutions. By the early 2000s, increasing the transparency of EU decision-making had become a widely accepted objective, promoted as a means for the EU institutions to connect with EU citizens. That said, no generally agreed definition of transparency exists in the EU either (for discussions on the use and understanding of the concept of transparency in the EU context, see e.g. Curtin and Meijer, 2006; Hillebrandt et al., 2014; Naurin, 2017). The Treaty on the Functioning of the European Union states that 'the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible' (Consolidated version of the Treaty on the Functioning of the European Union), and the Charter of Fundamental Rights of the European Union includes the right of access to documents (Charter of Fundamental Rights of the European

*Due to the different (and sometimes conflicting) preferences, efforts to develop and reform the Union's central rules on transparency have repeatedly petered out.*

Union). However, in practice different EU actors advocate, and allow for, varying degree of access and openness. This reflects, at least in part, the differing views of the EU member states on transparency. Due to the different (and sometimes conflicting) preferences regarding transparency in the EU, efforts to develop and reform the

Union's central rules on transparency have repeatedly petered out. This is all the more unfortunate, as several trends – both within the EU itself and in global politics more broadly – are currently putting the existing rules and practices under increasing pressure. There is

thus a growing need to discuss how the EU's approach to transparency could be adjusted to live up to current (and future) challenges.

The dynamics and needs guiding the EU's approach to transparency lie at the heart of this chapter, which will proceed as follows: first, it will provide a succinct overview of how the transparency discourse has evolved in the EU and what the Union's current transparency rules and practices look like. After that, it will turn to the different developments both in the EU and in global politics more broadly, which increasingly challenge existing rules and practices. It discusses five trends that strain the EU's already limited transparency regime. Finally, it explores how the EU could (and should) address these challenges, concluding with a short summary of the main findings and a separate section presenting some practical policy recommendations and suggestions.

## 6.2 Transparency in the EU

Tracking the evolution of the transparency discourse and practices in the EU, Curtin and Meijer (2006) distinguish between two different periods. During the first period, which began in the early 1990s, transparency was seen primarily from a legal point of view. The focus was on the rights of EU citizens to access different types of documents held by the Council of the European Union, the European Commission and the European Parliament.

The start of the transparency discourse coincided with the negotiations on, and adoption of, the Maastricht Treaty, which included a separate declaration on the right of access to information. The declaration stated that 'transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration', recommending the Council of the European Union to submit a report on how public access to information could be improved. On this basis, the Council and the European Commission adopted a Code of Conduct on Access to Documents, promising to provide the 'widest possible access to documents' (Augustyn and Monda, 2011: 17). With the adoption of the Treaty of Amsterdam, both the general principle of transparency and the citizens' right of access to documents were anchored in the EU Treaties. An important role in this first phase was also played by

the EU Courts, which built up a body of case law on access to information, putting pressure on EU institutions to work more openly and disclose documents (Curtin and Meijer, 2006).

The pinnacle of this first period was the adoption of Regulation 1049/2001 regarding public access to European Parliament, Commission and Council documents (Ibid.: 113). The regulation defines the “principles, conditions and limits” that govern the right of access to EU documents, which is guaranteed to “[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State”. While the regulation established the right of access to documents as an important principle in the work of all EU institutions, it also codified the exceptions to this general principle, based on which the EU institutions can refuse access to documents. These concern cases in which the publication of a document would:

- 1) Undermine the protection of public interest regarding public security; defence and military matters; international relations; the financial, monetary or economic policy of the Community or an individual member state; or the protection of personal data;
- 2) Undermine the protection of commercial interests of a natural or legal person; court proceeding and legal advice; or the purpose of inspections, investigations and audits;
- 3) Undermine the institution’s decision-making process.

The second period in the evolution of transparency in the EU started in the early 2000s, more or less at the time Regulation 1049/2001 was adopted (Curtin and Meijer, 2006), and was closely related to the process that led to the adoption of the Treaty establishing a Constitution for Europe. In this second period, the debate about transparency gained a more explicit political dimension. Transparency was no longer seen merely as a goal in itself, but increasingly also as part of a broader effort to strengthen the EU’s legitimacy and narrow the alleged gap between the EU and its citizens (Ibid.). European courts continued to be central actors in this second period as well, as Regulation 1049/2001 generated new legal cases that served to clarify the practical implications, and limits, of its provisions (Hillebrandt et al., 2014: 14-15). However, other important actors appeared on the stage as well. Above all the

European Commission, with its white paper on European governance, took a prominent role in the transparency discourse. In the white paper, the Commission identified “better involvement and more openness” as one of its four broad proposals on how to reform EU decision-making in a way that would bring the EU closer to its citizens (Commission of the European Communities, 2001). The European Council, in its 2001 Laeken Declaration, continued in this vein, paying considerable attention to the role of transparency in EU decision-making (European Council, 2001).

The debates and milestones of the 1990s and 2000s continue to form a point of reference in the EU’s approach to transparency and have guided the steps taken since then. Notably, openness, transparency and the right to access documents were also touched upon in some of the reforms introduced by the Lisbon Treaty. Most importantly, Article 15(3) TFEU extended the right of access to all EU institutions, bodies, offices and agencies (Curtin and Leino-Sandberg, 2016). However, in practice, the evolution of the EU’s transparency rules and practices has not followed a linear course towards increasing openness (see Ibid.). Thus, a process to reform Regulation 1049/2001, initially launched in 2008, ended up in legislative limbo, as did a more limited proposal from 2011 to adapt the regulation to the new legal basis provided for under Article 15(3) TFEU. The Commission of President Ursula von der Leyen has now decided to withdraw both proposals altogether, arguing that agreement is not foreseeable and that both proposals have anyway become largely outdated (European Commission, 2020).

*In practice, the evolution of the EU’s transparency rules and practices has not followed a linear course towards increasing openness.*

At the same time, the preferences and track record of the different EU institutions with regard to transparency have continued to vary substantially. Particularly the institutions that represent the EU’s member states, i.e. the European Council, consisting of the member states’ heads of state and government, and the Council of the European Union, formed by sectoral ministers of the member states and – in the case of its sub-bodies – national civil servants, remain reluctant to commit themselves to a higher degree of transparency.

While the incorporation of the European Council as an official EU institution by the Lisbon Treaty made it formally subject to the

EU's transparency rules, in practice it has remained a very secluded body, its practices driven more by the exceptions than the obligations deriving from the right of public access to documents (Hillebrandt and Novak, 2016: 531-532). In the case of the Council of the European Union, the development of the general transparency framework in the EU, the efforts of a small group of pro-transparency member states – consisting mainly of the three Nordic EU members and the Netherlands –, and new possibilities of information technology led to a gradual increase in the level of openness of the Council between 1992 and 2006, including the establishment of a digital register providing access to a growing number of Council documents (Hillebrandt et al., 2014). However, this process stalled in the late 2000s (Ibid., 2014).

Overall, the Council's practical commitment to transparency is characterised by strong variance across different legislative processes (Cross, 2014; Omtzigt and Leijten, 2017). Tellingly, a strategic inquiry into the transparency of the Council's legislative process, launched by the European Ombudsman Emily O'Reilly, concluded that "legislative documents of the Council are not, to any significant extent, being made directly and proactively accessible to the public while the process is ongoing" (European Ombudsman, 2017). According to O'Reilly, the Council's restrictive transparency practice constitutes maladministration (Ibid.). The Council's hesitancy or outright reluctance reflects the continuing differences in the preferences of the EU member states with regard to transparency.

The European Parliament, for its part, is the primary representative of EU citizens and the Union's major oversight institution. As such, it is subject to more stringent transparency requirements than the Council or the European Council. Moreover, due to its oversight role, it has a vested interest in advancing at least some forms of transparency, especially vis-à-vis the other EU institutions (see Hillebrandt et al., 2014). However, it neither has uniform preferences nor is it equally active in all dimensions of transparency (see e.g. Abazi and Adriaensen, 2017, on the preferences of the European Parliament and other EU institutions with regard to the transparency of international negotiations).

Finally, while the European Commission broadly acknowledges the importance of transparency, its engagement depends both on the preferences within the College of Commissioners and the broader political context in which the Commission operates. It is worth noting that the Commission of President Ursula von der Leyen has raised some expectations in this regard, as it includes a designated vice-presidency for values and transparency, held by Věra Jourová. However, her mission letter does not spell out any concrete new actions to be undertaken to increase the transparency of the Commission or the EU more broadly (Hofmann and Leino-Sandberg, 2019), simply calling on her to “bring more transparency to the legislative process” and “lead the negotiations on behalf of the Commission for a Transparency Register for the Parliament, Council and Commission” (European Commission, 2019).

Overall, the different views on transparency among the key EU institutions as well as among the EU member states have led to varying degrees of openness across the EU.

Moreover, they have made it very difficult to amend, reform or rethink the Union’s transparency rules and practices. However, such a rethinking is becoming more and more urgent due to developments both within the EU and in global politics more broadly, which will be discussed in the next section.

*Different views on transparency have led to varying degrees of openness. Moreover, they have made it very difficult to amend, reform or rethink the Union’s transparency rules and practices.*

### **6.3 Transparency under pressure – growing challenges**

As described above, experience has shown that EU’s current transparency rules and practices have their limits. At the same time, rethinking and reforming these rules and practices is becoming even more urgent, as the conditions under which the EU and its institutions operate continue to change. This is due to developments both within the EU itself and within global politics more broadly. This section identifies five major developments and trends that strain the EU’s already limited transparency regime. The list presented here is not exhaustive, but rather intends to serve as a starting point for discussing the kind of pressures the EU’s transparency rules and

practices are facing, and will be facing, in the near future. The first three trends are related to recent and ongoing changes in the institutional roles and relations in the EU and thus EU-specific, whereas the last two are broader and concern other actors – including EU member states – as well.

First, strong evidence suggests that the contribution of the EU's intergovernmental bodies, and above all the European Council, to initiating and guiding EU policymaking has grown. As formulated by Fabbrini and Puetter (2016: 482), "intergovernmental forums and notably the European Council take lead roles at all stages of the policy process, including agenda-setting, decision-making and, finally, the adoption and implementation of EU policies at all relevant levels of governance". This is evident particularly in newer areas of EU policymaking, "such as economic governance, foreign and security policy, crucial sub-fields of justice and home affairs and social and employment matters", many of which fall largely or entirely outside the scope of the traditional community method of EU decision-making (Ibid.). Concurrently, the European Council and other intergovernmental bodies have also had a highly prominent role during the different crises that the EU has faced over the course of the last decade, and especially in the context of the Eurozone crisis, which saw the European Council, the Euro Summit and the Eurogroup all play a significant part.

From the point of view of transparency, the increased concentration of decision-making activities in the EU's intergovernmental bodies and, above all the European Council, is a significant challenge. As described in the previous section, the European Council remains the most insulated of the EU's major institutions. The Euro Summit and the Eurogroup also work broadly outside the framework of the EU's transparency regime. The Council of Ministers, on its part, operates under more extensive transparency provisions than the other intergovernmental bodies. However, this mainly concerns legislative decision-making and even here, the Council has developed institutional practices that highlight its need for a 'space to think' and thereby seek to justify a more limited degree of transparency (Hillebrandt and Novak, 2016). Moreover, the importance of non-legislative decision-making has increased in recent years. In the context of non-legislative decision-making, the

Council can allow itself an even more selective approach to the openness of its deliberations and documents (Ibid.).

Second, while the intergovernmental actors have gained in importance, so have some supranational actors. This does not only, or even primarily, apply to the most significant supranational institutions, most notably the Commission, but above all to the different '*de novo*' bodies that have often been created at the initiative of the intergovernmental actors (Bickerton et al., 2015; Schmidt, 2016). These include the European Central Bank, the European External Action Service as well as different regulatory bodies and executive agencies (Bickerton et al., 2015). Their increasing role often further complicates the EU's already complex policymaking system, thus making it less transparent by definition. Moreover, due to the failure to amend Regulation 1049/2001, the EU agencies continue to operate outside the Union's transparency regime, meaning that their commitment to the right of access to information varies.

Third, the extension of the ordinary legislative procedure, with the European Parliament acting as a co-legislator alongside the Council, has arguably opened and democratised EU decision-making. However, a very high percentage of legislative processes is now settled in informal trilogues between the EU's three main institutions, the Council, the European Parliament and the European Commission. The trilogues take place behind closed door and are only insufficiently reported on even to the committees of the European Parliament (Brandsma, 2019). Thus, the ordinary legislative process, which is in theory subject to the most stringent transparency provisions, is shielded both from broader parliamentary oversight and, above all, from the public eye (see also European Ombudsman, 2015). In its ruling on the case *De Capitani v. European Parliament* of March 2018, the General Court pushed for more transparency in trilogues, but whether the ruling is enough to trigger substantial changes in institutional practices remains to be seen (see Martines, 2018).

Fourth, and moving on to broader trends that go beyond the specific context of the EU, there is a general agreement that many key policy issues increasingly transcend the traditional dichotomy based on a division between internal and external policies. While this is a topic that has been discussed for some time already, many recent developments have shed light on the practical implications of this

trend. The challenge that this trend poses for the EU's existing transparency regime is that the realm of international affairs has traditionally been dominated by the secretive nature of diplomatic culture. Accordingly, the protection of the public interest regarding international affairs is one of the exemptions that the EU institutions can raise to refuse public access to their documents. However, the issue becomes much more complicated and controversial with the intermeshing of internal and external issues, which breaks down the neat conceptual separation between them (see e.g. Leino, 2017).

In the EU, such dynamics are particularly relevant, for example, in the case of international trade negotiations, which increasingly tend to be mixed agreements with considerable potential implications for the EU's and the member states' own legislation, standards and practices and therefore for EU citizens. Against this background, following the traditional diplomatic culture, which often still dominates trade negotiations, hardly seems reasonable or justifiable. Thus, striking the right balance between the need for confidentiality and the necessities of oversight emerges as a key task in international negotiations (Abazi and Adriaensen, 2017). Conflicts revolving openness were particularly visible during the negotiations on the Transatlantic Trade and Investment Partnership. Different civil society organisations were highly vocal in their criticism of the negotiations, prompting the European Commission to undertake several transparency initiatives with varying degrees of success (Gheyle and De Ville, 2017).

Another area where the interplay between internal and external actors and issues and the resulting need for bringing the EU's transparency rules up to date concerns security matters. Here, actors and agencies traditionally associated with justice and home affairs, or internal security, are also increasingly active outside EU borders (see e.g. Bendiek and Bossong, 2019). A case in point is the newly revamped and significantly expanded European Coast and Border Guard (Frontex), which is to have greater power and resources to act both within and outside the EU (see e. g. Tammikko, 2019). In view of transparency, it is of great importance to ensure that by encroaching into the area of foreign policy and external relations, these actors and the related policymaking processes do not move into the traditionally more closed sphere of international affairs and diplomacy. An additional, and equally important, transparency

challenge in this particular area is related to the openness of the new (or revamped) agencies and bodies discussed above.

Finally, there is a growing perception that we are entering a new era of geopolitical and/or geo-economic rivalry among the world's pre-eminent powers – including the EU. This discourse could challenge any new transparency initiatives and even trigger demands for increasing secrecy, as openness could be argued to provide a strategic advantage for the EU's potential competitors and, even worse, expose the EU to different forms of hybrid influencing (see Wigell, 2019). Such arguments could have a considerable impact on the already limited transparency rules and practices of the EU institutions.

In addition to these five trends, it is important to note that technological development will have wide-ranging implications for transparency, presenting both challenges and opportunities. The challenges are related, *inter alia*, to the increasing use of complex algorithms at different stages of the EU's policymaking cycle (Hofmann and Leino-Sandberg, 2019). At the same time, technology also allows for new ways of communicating with citizens and new possibilities for enhancing the transparency of EU decision-making.

## **6.4 A new approach to transparency**

The previous section has presented some of the key trends, which make rethinking the EU's approach to transparency important and urgent. Such rethinking should not only be considered as a compulsory technical exercise, a 'necessary evil', or concentrate merely on small adjustments to the existing transparency rules and practices – even though these are an important part of the process as well. Instead, the process should start with a broader attempt to rethink – and reappraise – the role of transparency in the complex political environment of today, both within and outside the EU.

For example, instead of considering transparency as a potential vulnerability of or even an outright security risk for the EU and its member states in the heightening geo-economic competition, transparency could be understood as an essential part of a broader democratic deterrence strategy against hybrid interference (Wigell, 2019). After all, it is much more difficult to conduct covert operations in a political environment characterised by a high degree of

transparency than it is in a secluded setting (Ibid.). Similarly, transparency could play an increasingly important part in conscious – and, ideally, proactive – communication efforts on the part of the EU institutions to counter different post-factual narratives and arguments. This dimension of transparency was already highlighted in the communication strategy of the Finnish presidency of the Council of the European Union in the latter half of 2019, in line with Finland’s broader efforts to increase the openness of the EU (Kojo and Leppävirta, 2020, forthcoming).

As far as the EU-specific trends discussed in this chapter are concerned, it is clearly important to think more thoroughly about the link between efficiency of decision-making and transparency. At the moment, safeguarding the efficiency of decision-making is one of the key arguments raised against more extensive transparency rules and practices, especially with regard to the Council and the European Council. However, research has so far not unequivocally shown that increased transparency would reduce efficiency or that secrecy would actually guarantee a higher degree of efficiency (Novak and Hillebrandt, 2020).

However, the aim here is not to pre-empt a debate on the significance of transparency for the EU or point out specific needs in terms of the EU’s transparency regime. Instead, this chapter is primarily a call to acknowledge the pressures currently facing transparency in the EU and use them as a starting point to think about the meaning of transparency in the EU context. This approach could help to break the deadlock on transparency reform in the Union.

*Transparency is no panacea for generating political legitimacy in the eyes of the EU citizens. It is better to understand it as part of the basis on which this can be built.*

The above-mentioned examples notwithstanding, it is important to point out that transparency is no panacea for generating political legitimacy in the eyes of the EU citizens or a quick fix for the lack thereof (see also Curtin and Meijer, 2006). Instead, it is better to understand it as part of the basis on which this can be built.

Ideally, transparency enhances both the citizens’ possibilities to control public authority and the citizens’ trust in public authority (Abazi and Tauschinsky, 2015). However, achieving these two goals may require catering for different actors and widely differing practical needs. In practice, only a small part of the public participates

in controlling public authority, which is primarily done by means of parliamentary oversight, civil society engagement as well as journalism and research. The citizens involved in these activities have a strong interest in gaining as much information as possible about individual decision-making processes. On the other hand, the grand majority of the public is not interested nor has the required (expert) knowledge to study a vast amount of detailed information about decision-making processes. From their point of view, it is more important that the authorities convey the sense that they are acting in citizens' best interests. Both of these dimensions need to be considered when moving into more detailed discussions about the nature of transparency and the ways to increase it in the EU.

## 6.5 Conclusion

Transparency is now a well-established objective in EU decision-making, codified in Regulation 1049/2001 and the EU Treaties. At the same time, the commitment of different EU institutions and other EU bodies or the member states to transparency is by no means equal. This has resulted in clear deficiencies in the EU's transparency practices. Moreover, attempts to rethink or reform the EU's transparency rules and practices have met with reluctance or outright resistance. Rethinking the EU's approach to transparency is necessary, as several ongoing developments in the EU and more broadly challenge the Union's existing transparency rules and practices. This chapter has identified, and discussed, five such developments: 1) the increased role of the EU's persistently secluded intergovernmental bodies; 2) the emergence of new supranational actors and agencies, which complicate the EU's already byzantine policymaking system and whose commitment to transparency varies; 3) the prevalent use of closed informal trilogues in the EU's ordinary legislative procedures, 4) the general blurring of the boundaries between internal and external policies, with the risk of new policy areas falling under the traditionally very secretive culture of international affairs; and 5) the growing perception of a geopolitical or geo-economic rivalry, which could trigger new demands for secrecy. In view of both the importance attached to transparency in the EU and the urgency of the challenges facing the existing transparency rules and practices in the EU, it is indispensable to

rethink and reappraise the role of transparency in today's complex political environment both within and outside the EU.

## 6.6 Recommendations

- Transparency is no panacea for generating political legitimacy in the eyes of the EU citizens or a quick fix for the lack thereof. However, in line with the ethos of the early 2000s, EU institutions, bodies and agencies as well as the member states should acknowledge transparency as a fundamental right and a crucial component of democracy in the EU and of a functioning relationship between the EU and its citizens.
- Transparency is already a generally established objective in EU decision-making. However, the inconsistent implementation of the Union's transparency rules across the different EU institutions, bodies and agencies shows that its significance is not shared or understood by all. Thus, it would be high time to discuss the meaning of transparency for EU governance. This would be in line with the European Council's strategic agenda 2019-2024, which highlights the respect of the EU institutions for "the principles of democracy, rule of law, transparency and equality between citizens and between Member States" (European Council, 2019).
- The European Parliament, as the primary representative of the EU citizens and the Union's major oversight institution, should act as a frontrunner in promoting transparency. Similarly, the European Commission, not least through the newly created vice-presidency for values and transparency, should play a more proactive role. However, it is crucial that the efforts of the supranational institutions be supported and complemented by the EU member states, whose role as constituent parts of the European Council and the Council is key.
- Transparency should be a fundamental aspect of the upcoming Conference on the Future of Europe, both informing the set-up of the Conference and featuring as a major item on its agenda. Any discussion on transparency in this context should take the different kinds of pressures facing transparency in the EU and more broadly – some of which were discussed in this chapter – as a starting point.

- In the terms of specific measures to be taken in view of the present challenges, the recommendations of the European Ombudsman following her strategic inquiries into trilogues (European Ombudsman, 2015) and Council decision-making (European Ombudsman, 2017) as well as the ruling of the General Court on the transparency of trilogues from 2018 already put forward several practical proposals, the implementation of which would form an important first step in increasing the openness of the EU's legislative process.
- Another crucial issue relates to EU agencies and other '*de novo*' bodies. As their significance continues to grow, there is an increasing need to shed light on their exact roles in EU policymaking as well as to assess and review their transparency rules and practices. This effort should involve a wide variety of actors, including the agencies themselves, the EU Courts, the European Parliament, the European Commission and, the European Ombudsman as well as civil society, journalists and researchers.
- At the same time, the discussion on transparency should not only focus on the gaps in the EU's current transparency regime. Instead, it should pay attention to what the transparency rules and practices need to look like in the future and especially what kind of added value transparency may have for EU governance in the changing political environment within and outside the EU.
- Recognising the role of transparency as part of a democratic deterrence strategy against hybrid influencing and as a tool against post-factual narratives provides one example. In this sense, the efforts and experiences of the Finnish presidency of the Council of the European Union in the latter part of 2019 could give some guidance to other member states and EU institutions alike.

## References

- Abazi, V. and J. Adriaensen (2017), "Allies in Transparency? Parliamentary, Judicial and Administrative Interplays in the EU's International Negotiations", *Politics and Governance*, Vol 5, No. 3, 75–86.
- Abazi, V. and E. Tauschinsky (2015), "Reasons of Control and Trust: Grounding the Public Need for Transparency in the European Union", *Utrecht Law Review*, Vol. 11, No. 2, 78–90.
- Augustyn, M. and C. Monda (2011), "Transparency and Access to Documents in the EU: Ten Years on from the Adoption of Regulation 1049/2001", *EIPAscope* 01/2011, 17–20.
- Bendiek, A. and R. Bossong (2019), "Shifting Boundaries of the EU's Foreign and Security Policy: A Challenge to the Rule of Law", SWP Research Paper 12, SWP, Berlin, September.
- Bickerton, C., D. Hodson and U. Puetter (2015), "The new intergovernmentalism: European integration in the post-Maastricht era", *Journal of Common Market Studies*, Vol. 53, No. 4, 703–722.
- Brandsma, G. (2019), "Transparency of EU informal trilogues through public feedback in the European Parliament: promise unfulfilled", *Journal of European Public Policy*, Vol. 26, No. 10, 1464–1483.
- Charter of Fundamental Rights of the European Union, *Official Journal C* 326/391, 26 October 2012.
- Commission of the European Communities (2011), European governance: A White Paper, COM(2011) 428 final, Brussels, 25.7.2011.
- Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal C* 202, 7 June 2016.
- Consolidated version of the Treaty on the Functioning of the European Union Part One - Principles Title II - Provisions Having General Application Article 15 (ex. Article 255 TEC).
- Cross, J.P. (2014), "The seen and the unseen in legislative politics: explaining censorship in the Council of Ministers of the European Union", *Journal of European Public Policy*, Vol. 21, No. 2, 268–285.
- Curtin, D. and P. Leino-Sandberg (2016), "Openness, Transparency and the Right of Access to Documents in the EU. In-Depth Analysis", *EUI Working Paper RSCAS 2016/63*, European University Institute, November.

- Curtin, D. and A. Meijer (2006), "Does transparency strengthen legitimacy? A critical analysis of European Union policy documents", *Information Polity*, Vol. 11, 109–122.
- European Commission (2019), Ursula von der Leyen, President-elect of the European Commission, Mission letter: Věra Jourová, Brussels, 10.9.2019.
- European Commission (2020), Annexes to the Commission Work Programme 2020: A Union that strives for more, COM(2020) 37 Final, Brussels, 29.1.2020.
- European Council (2001), Annexes to Presidency Conclusions: European Council Meeting in Laeken 14 and 15 December 2001, SN 300/1/01 REV 1.
- European Council (2019), A New Strategic Agenda, 2019–2024.
- European Ombudsman (2015), Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues.
- European Ombudsman (2017), Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process.
- Fabbrini, S. and U. Puetter (2016), "Integration without supranationalisation: studying the lead roles of the European Council and the Council in post-Lisbon EU politics", *Journal of European Integration*, Vol. 38, No. 5, 481–495.
- Gheyle, N. and F. De Ville (2017), "How Much Is Enough? Explaining the Continuous Transparency Conflict in TTIP", *Politics and Governance*, Vol. 5, No. 3, 16–28.
- Hillebrandt, M., D. Curtin and A. Meijer and (2014), "Transparency in the EU Council of Ministers: An Institutional Analysis", *European Law Journal*, Vol. 20, No. 1, 1–20.
- Hillebrandt, M. and S. Novak (2016), "Integration without transparency? Reliance on the space to think in the European Council and Council", *Journal of European Integration*, Vol. 38, No. 5, 527–540.
- Hofmann, H. and P. Leino-Sandberg (2019), "An Agenda for transparency in the EU", *European Law Blog*, 23 October (<https://europeanlawblog.eu/2019/10/23/an-agenda-for-transparency-in-the-eu/>).

- Johnston, M. (2014), "Transparency: Social Science", Encyclopædia Britannica, (<https://www.britannica.com/topic/transparency-government>).
- Kojo, V. and L. Leppävirta (2020, forthcoming), "Euroopan unionin avoimuuden edistäminen Suomen-puheenjohtajakaudella", *Defensor Legis* No. 1/2020, 98–105.
- Leino, P. (2017), "Secrecy, Efficiency, Transparency in EU Negotiations: Conflicting Paradigms?", *Politics and Governance*, Vol. 5, No. 3, 6–15.
- Martines, F. (2018), "Transparency of Legislative Procedures and Access to Acts of Trilogues: Case T-540/15, De Capitani v. European Parliament", *European Papers*, Vol. 3, No. 2, 947–959.
- Naurin, D. (2017), "The Puzzle of Transparency Reforms in the Council of the EU", *Politics and Governance*, Vol. 5, No. 3, 87–90.
- Novak, S. and M. Hillebrandt (2020), "Analysing the trade-off between transparency and efficiency in the Council of the European Union", *Journal of European Public Policy*, Vol. 27, No. 1, 141–159.
- Omtzigt, P. and R. Leijten (2017), "Opening up closed doors: Making the EU more transparent for its citizens", Paper from the Dutch COSAC delegation on EU transparency to be presented at the COSAC panel "Bringing Europe closer to its citizens", November.
- Schmidt, V. (2016), "The New EU Governance: New Intergovernmentalism, New Supranationalism, and New Parliamentarism", IAI Working Papers 16/11, May.
- Tammikko, T. (2019), "Proposed Frontex Reform and Its Impact: Border Politics and the External Security Nexus in the EU", FIIA Briefing Paper 255, January.
- Wigell, M. (2019), "Democratic Deterrence: How to Dissuade Hybrid Interference", FIIA Working Paper 110, September.

## 7. ALIGNMENT OF NATIONAL PARTIES AND EUROPEAN PARTY FEDERATIONS

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*European party federations (Europarties) are only slightly aligned with national political parties and their low visibility at the national political level undermines their ability to perform their role in EU politics and to contribute to generating European awareness and a European party landscape. This chapter discusses the concept of Europarties, including their relationship with the political groups in the European Parliament. It then presents a number of specific policy proposals to improve the alignment of Europarties to national political parties and improve their visibility at the national level.*

### 7.1 Introduction: Europarties, a conceptual analysis

In order to understand what role Europarties fulfil and what is the main purpose of their existence, we first have to shed more light on their connection with national policymaking. Similarly, the link between democratic legitimisation at the national level and that at the level of the Europarties needs to be explored. Only then can we start thinking about the reforms the system of Europarties should undergo.

There are three basic approaches to understanding the role the Europarties play in the EU-wide political system, with each of these three approaches also having a distinctly different impact on the relationship between the national and EU levels of policymaking.

The first of these is the understanding of Europarties as simple expressions of national political preferences at the European level. Europarties are in this context simple aggregates of the national positions of EU member states and their respective political parties. Consequently, the activities of Europarties, even in a formally strictly supranational setting (such as that of the European Parliament), remain strictly intergovernmental.

The second approach conceptualises Europarties as actors that are active on a specific level of EU multi-level governance. The Europarties are thus part of the same broad political system as national political parties, with which they frequently interact, but the Europarties remain largely independent. At times, Europarties may even become the senior partners for their national counterparts, taking the initiative in those areas where the European Parliament has a substantial say (such as in the debates about the European financial framework).

Finally, the Europarties can also be seen as an integral part of the emerging EU-wide political sphere. In this sense, they do not simply represent an additional level of decision-making next to the national level. Instead, European policymaking is poised to become the key political locus, relegating national politics to a secondary place. This argument is then linked to the broader discussions about the European public sphere and the possibility of establishing one European demos (i.e. politically conceived “people”).

Interestingly, while an intense scholarly debate is going on about these three ideal types, it is the third interpretation that the EU legal texts prioritise. For instance, the Treaty of Maastricht argues that Europarties “contribute to forming a European awareness and to expressing the political will of the citizens”. Hence, Europarties have, from the very start, been seen not just as a simple means of collecting and expressing national political preferences, but they have been endowed with a heavily normative dimension: their contribution to the creation of the EU-wide political sphere.

*Europarties have, from the very start, been seen as a contribution to the creation of the EU-wide political sphere.*

*But it is exactly this point that has been recently turned into an issue of contention.*

But it is exactly this point that has been recently turned into an issue of contention. The emerging Eurosceptic parties argue that the aim of transcending

the narrow national political sphere also implies the aim of destroying national democracy. Therefore, Europarties have recently become more visible in a negative sense, as the focus of the Eurosceptic critique of supranational policymaking. Paradoxically, while Europarties are seen as weak, they are simultaneously perceived as dangerous, and this perception thus replicates the general Eurosceptic attitude towards the EU as a whole.

Hence, the once technical discussions about Europarties are now part of the intense and at times heated political debates about the possibility of democratic governance on the supranational level as well as the contentious relationship between EU decision-making and the national obligation to comply with these decisions, even if they are passed by qualified majority (an ordinary legislative procedure).

The choice of one of the three answers is not merely theoretical as it pre-determines whether we should discuss Europarties as dependent on national policymaking and thus largely connected to the evolution of the national party systems, or whether, while acknowledging the genealogy of European integration, Europarties are autonomous political actors that interact with the national arenas, but increasingly formulate their own positions and policies.

Irrespective of the starting theoretical position, it cannot be disputed that Europarties have gradually become stronger. In the last twenty years, developments have taken place rendering Europarties less dependent on national politics and national political templates.

Among these developments, some are rather obvious and straightforward, but by no means unimportant. For instance, the increasing politicisation of the European Commission translates into an increased importance of the ideological cleavages in the Parliament, and thus also of the Europarties. Even though it is not a novelty that Europarties (as well as European Parliament groups) are organised on the principle of ideological affinity, the politicisation makes the differences among Members of European Parliament from the same country much more

*The increasing politicisation of the European Commission translates into an increased importance of the ideological cleavages in the Parliament.*

pertinent. The introduction of the *Spitzenkandidaten*<sup>1</sup> has had a similar effect as it also underlines both the supranational support for the candidates and the different views within individual countries (see Chapter 8).

Equally importantly, a similar development towards strengthening Europarties has taken place as far as their financial autonomy is concerned. Indeed, the financial weakness of Europarties had been long identified as one of the major hurdles to their increased visibility within EU politics (Wolfs, 2017). Hence, a Regulation was adopted in 2003 whose aim was to deal with exactly this conundrum. It has been amended several times since with the most recent version adopted in 2018.<sup>2</sup>

The result of all these factors is the fact that the established Europarties exhibit a surprisingly high level of ideological cohesion, which is then also reflected in the high degree of voting cohesion of most European Parliament political groups (Tilindyte, 2019). This ideological cohesiveness is again a consequence of the intentional stress on the formation of European Parliament groups based on political affinity (i.e. primarily, but not exclusively, on their membership of a particular Europarty). At the same time, research also shows that this cohesion is heavily dependent on the composition of the Europarty (Klüver and Rodon, 2013). If, for instance, a high number of the party members come from a particular national political party, then there is a high probability that the Europarty's policies will be a result of a policy upload from that national party. In this sense, Europarties continue to exhibit a strong dependence on the national political parties of which they are composed (Hix, 2002).

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<sup>1</sup> It needs to be noted that the system has not been permanently established and is not part of the formal treaty or legislative framework for European elections.

<sup>2</sup> Official Journal of the European Union (2018), Regulation (EU, Euratom) No 2018/673 of the European Parliament and of the Council of 3 May 2018 amending Regulation (EU, Euratom) No 1141/2014 on the statute and funding of European political parties and European political foundations.

## 7.2 European Party federations and their relationship with the political groups

The catalyst for the formation of Europarties was the decision to hold direct elections to the European Parliament in 1979. As a result, the first Europarties were established in the mid-1970s, followed by others in the mid-1980s and the most recent wave between 2004 and 2015, which included in particular Eurosceptic formations. Europarties are usually composed of national member parties; European Parliament groups or individual MEPs; secretariats, associations and political foundations; and some form of individual membership. Currently, there are 16 registered Europarties as of 2018.

Europarties are thus not identical with the political groups and they are legally separate entities, although they closely cooperate with each other. They can be understood as umbrella organisations and coordinating structures that bring together the party organisations within the national and European institutions. Initially, the main role of Europarties was to coordinate European election campaigns and adopt common manifestos for these elections.

*Initially, the main role of Europarties was to coordinate European election campaigns and adopt common manifestos.*

Groups in the European Parliament, on the other hand, were first established in 1953, when MEPs decided to sit according to political ideology rather than nationality. Nonetheless, they have only commanded significant importance and financial resources since the first direct European elections. In day-to-day EU politics, the groups operate independently of the Europarties. Having said this, there are still relations between Europarties and groups. In fact, the only real linkage of Europarties to EU institutions in the early years of their development was through the political groups.

In the early years, there was a symmetrical relationship between them. Each Europarty was linked to its group. Today this symmetry is no longer the case: only about half of the current Europarties have their own political group. The distinction between Europarties and groups became more explicit after the EU party regulation of 2003, which required a separation of the two types of organisations and the establishment of Europarties as separate legal

entities. Until that time, Europarties were in fact subordinate to their group, reliant on it for staff, accommodation (groups allowed Europarties to use their European Parliament premises) and resources. This dependence only changed after the adoption of the 2003 party regulation that paved the way for Europarties to be funded from an European Parliament budget.

As a result, the Europarty leaders' meetings are usually required to approve decisions on which parties and individuals will sit in their political groups. The leaders of each Europarty's group participate in the so-called Party Leaders' Meetings if the given Europarty organises one. Delegates from the groups participate in the Executive Committees and Congresses of individual Europarties, in which they usually have full voting rights. Policy resolutions of the Congresses as well as other recommendations of Europarties provide a non-enforceable agenda for their MEPs. In the adoption of medium- and long-term EU policy goals, policy is developed through an interaction between the national parties and the groups through Europarty coordination. Some Europarties, for instance the Party of European Socialists (PES), organise bi-annual meetings between the party and its group to coordinate issues and strategies.

### 7.3 Steps to align national and Europarties

#### *Visibility of Europarties at the national level*

For many years, it has been clear that the low visibility of Europarties and their overshadowing by national political parties are closely linked to the absence of a European party system. Not only the member states, but also political parties try to maintain their autonomy in as many areas as possible.

*The low visibility of Europarties and their overshadowing by national political parties are closely linked to the absence of a European party system.*

This 'sovereignty' of national parties, which are directly involved in several processes at the institutional level of the EU (especially the European Council and the Council of the EU, and the *ex ante* Early Warning System should also be

mentioned),<sup>3</sup> has always been prioritised over the strengthening of the Europarties. These are instead used rather as simple umbrella organisations at the EU level. Moreover, the low attention to European topics in national policymaking further reinforces the invisibility of the Europarties for the general public. As a result, the public often confuses and conflates the Europarties with the political groups and is often even unaware of their existence. There is a correlation between the emphasis the national political elites place on the European agenda and the media focus on the EU, and, subsequently, public attention. The media coverage of European issues is therefore an essential 'transmission' factor for the promotion of Europarties. Only the gradual formation of a European public sphere can lead to a genuine Europeanisation of political parties in terms of fulfilling all the functions that their counterparts perform at national level.

*Only the gradual formation of a European public sphere can lead to a genuine Europeanisation of political parties.*

The visibility of the Europarties, however, deserves a deeper exploration as there are several issues that could improve the way the Europarties are treated by the media and the public. For instance, one clearly identifiable problem is whether political parties that are not members of one of the Europarties should be allowed to participate in European elections. The system of European electoral lead candidates (*Spitzenkandidaten*) is then another interesting, albeit not fully functional element (see Chapter 8) that can enhance this connection. In terms of the visibility of the interconnection of national and Europarties, this concept makes sense, but only in the period around the European elections. One wonders why the positions of electoral leaders should not be merged with those of the Europarties' chairpersons, thus creating a permanent link between the leaders and the political parties.

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<sup>3</sup> This is a procedure that involves the national parliaments in controlling the principle of subsidiarity in the EU (also known as the orange or yellow card).

There are many other elements that should be a part of a wider debate on how to link the national and European levels more effectively and thus gradually create a real European party system. The visibility of Europarties is, for example, undermined by the unwillingness of many national member parties as well as candidates for European elections to make use of the Europarty logo and slogan on their (campaign) materials and ballots. Mandatory requirements for the use of the Europarty logo on campaign materials should be considered anew (this has been under discussion previously). Unless national parties begin to mention their Europarty links, not much can be expected to change regarding the low visibility and recognition of Europarties among the public. On the other hand, discussion of mandatory requirements to use the Europarty logo and slogans in campaign literature can backfire so far as national parties have been mostly reluctant.

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It is thus unlikely they will approve such a measure either via Europarty regulations or national electoral legislation. Even if the national parties, by and large, prefer to keep Europarties at a distance with limited roles, a system of incentives to use Europarty logos, symbols and/or common manifestos could be established via EU party regulations. They can allow national parties, for instance, to use funds from the EU budget for European election campaigns if they agreed to cooperate with Europarties in terms of using their campaign literature and symbols and emphasising their transnational links in general.

An interesting point in the discussion is the surprisingly low activity of the Europarties in using the European Citizens' Initiative, for example when collecting signatures or when financially supporting an initiative's organisers (Bressanelli, 2014). Using this mechanism more could promote greater use of this instrument in the EU, while at the same time raising the profile of Europarties among the wider public. In order to improve their accessibility, Europarties

*Another option is giving Europarties the right to participate in national referendums on EU issues, and to run campaigns for such referendums.*

should also consider running their websites in multiple languages (so far, they are mostly run in English, French and/or German). Another option that can be considered is giving Europarties the right to participate in national referendums on EU issues, and to run campaigns for such referendums. This would likely require changes in the (national) legislative framework(s) and even if EU-related referendums are not held that often, it would increase the visibility of Europarties for electorates.

### *A unified electoral system for European elections*

The direct elections to the European Parliament are still conducted in separate national electoral systems. This is one of the fundamental obstacles to the full establishment of European political parties at EU level, which would in turn strengthen the link of the European public to the EU political system. This obstacle persists even though the electoral system, based on “direct universal suffrage in accordance with a uniform procedure in all Member States”, has for many years been envisaged in primary law (currently in Article 223 (1) of the Treaty on Functioning of the EU). None of the European Parliament’s previous proposals leading in this direction have ever been accepted. However, without the existence of a unified electoral system, which can be further developed, for example, through the single European candidate (see below), the Europarties will forever remain secondary political actors of European integration. What is at stake is not only the fundamental question of equality of votes and size of constituencies (the number of voters per each MEP), but also the question of a uniform minimum age, a minimum election threshold, the reimbursement of electoral costs and other related aspects, all of which are fundamental. The supra-nationalisation of the electoral model, the variants of which were presented and discussed several times in the past during the Intergovernmental Conference, is thus a prerequisite not only for enhancing the role of the Europarties, but also for the adherence to the principle of an equal vote. To put it bluntly, this elementary democratic principle is grossly violated by the existing imbalance and diverging national regulations.

*Without the existence of a unified electoral system, the Europarties will forever remain secondary political actors of European integration.*

### *Common manifestos and EU-wide ballots*

National political parties have a *de facto* monopoly in the selection of the candidates for European elections and in conducting election campaigns. This proves to be incompatible with the effort to bridge the gap between the European and national levels in the European elections (second-order elections). The practice of national political parties making these decisions is so deeply embedded that despite the efforts of the Europarties to become more involved in election activities (including through the Spitzenkandidaten system), no change is in sight.

Common manifestos, on the other hand, are already a standard element of European elections. The question, however, is the extent to which they are really used by national parties during the campaign. Clearly, the level to which the electoral campaigns of the Europarties truly reach the national political arenas is limited. The effectiveness of common manifestos is further reduced by national parties' own electoral programmes. On the other hand, Euromanifestos make sense in indirectly

forcing national actors to transpose the main common positions to the national level. Since the 2009 elections, some national parties have in fact copied the European political party manifestos and have used the Europarties' support in many areas, including the financial one (Kosowska-Gąstoł, 2017). The trend of linking electoral programmes as closely as possible should therefore continue.

A broad debate on the single transnational list is another example of how to strengthen the link between the Europarties and the electoral process more fundamentally. The focus on much more visible political groups in the European Parliament should be replaced in this debate by a focus on Europarties. Additionally, the election of MEPs from national ballot lists has led to the absence of Europarties in terms of interest representation, thereby *de facto* losing their direct connection with the European public and undermining their legitimacy (Van Hecke, 2010). While the direct replacement of national candidates with a single pan-European list would be an effective solution, in this pure form it is perceived as too radical, politically risky, and therefore counterproductive. But gradual and

partial steps in the same direction could lead to a more effective interconnection of the two groups of political party actors, while not weakening the political legitimacy of the EU in the eyes of the public.

Therefore, a more sensible, though technically complicated solution is a combination of a transnational ballot list (for Europarties) and a national ballot list (for national political parties), meaning that each voter would have two votes for two different constituencies. Indeed, such a proposal was already put forward unsuccessfully by the European Parliament in the past – as early as in 1997. To offer a politically acceptable proposal, it was supplemented by the obligation to have at least one candidate per member state on the European ballot list, but even in this form, it was rejected. One of the reasons behind this idea was the potential elevation of the role of Europarties. The composition of the ballot lists, the conduct of the campaign and coordination of efforts regarding the pan-European constituency, and the adoption of a common manifesto for candidates would all be in the hands of Europarties, and they would thus become important electoral players, in contrast to their current limited electoral role.

Allowing citizens to vote through pan-European lists, next to their national ballot, for Europarties and common EU-wide candidates would likely Europeanise the elections through the centralised campaign strategy, conduct of campaigns, candidate selection and manifestos, and would give national media incentives to cover Europarties more intensively. This would, in turn, lead to a greater focus on EU themes, and provide room for direct competition with other Europarties. While national parties would continue to run their own campaigns for national seats, they would be pressured to emphasise their transnational affiliations more.

*Allowing citizens to vote through pan-European lists, next to their national ballot would give national media incentives to cover Europarties more intensively.*

Even in a case where there is no common campaign of Europarties for transnational seats while national parties run decentralised campaign for these seats, this would elevate the role of Europarties by providing them a more important role in terms of putting forward a list of common themes, slogans, and tools that could be used by national parties. Even if Europarties remained primarily service providers for national parties, and campaigns for

transnational seats had a national bearing, this would still elevate the current electoral role of Europarties. As one of the possible ways for Europarties to establish their legitimacy is through their electoral role in European elections, Europeanising these contests and elevating Europarties' role would improve their visibility and connection to citizens. In other words, it is not necessary for the Europarties to become completely independent from the national member parties. If a more important electoral role for Europarties is to be established, it can still involve to some extent the engagement of national parties.

### *Individual membership*

The development of Europarties should be stimulated by broadening direct individual membership and individuals' direct or indirect participation in the internal activities and decision-making processes

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of Europarties beyond the existing scope. While all major Europarties have introduced some form of individual membership scheme there are still important limitations as to who can

become a member and, in particular, to the roles played by individual members.<sup>4</sup> If Europarties want to get closer to being 'true' (individual) members.

There is a clear added value in a strengthened individual Europarty membership. As has already partially happened in the lead up to the previous elections, individual members can help organise transnational campaigns on cross-border issues and other types of campaign exchanges for European elections, since even the current individual members have well-established transnational linkages. They can also add value to campaign exchanges between sister parties and help the parties to support each other in a national election campaign. Given their usually above-average knowledge of EU affairs and familiarity with their party's EU policy positions,

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<sup>4</sup> There are currently three types of Europarty membership. The first is a direct individual membership scheme which allows anyone to join a Europarty even if they are not a member of an affiliated national member party. The second type derives from being a member of an affiliated national member party while the third is a loose type of membership connected to social media platforms. As of 2018, the majority of Europarties currently allow natural persons to join.

individual members can also engage in EU debates with rank and file national party members and voters – and not only during election campaigns.

While individual membership schemes have already been introduced by several Europarties, the restrictions on the roles of individual members mean that their roles are too small to make a difference. To attract more individual members in the light of declining party membership across Europe, Europarties would need to give them more participatory rights in terms of policymaking and decision-making powers. Individual members should be given more rights to participate in the writing of the Euromanifestos. Individual party members' participation in policy-formulations should also be strengthened. To give them agenda-setting powers, they should be allowed, for instance on a group basis, to submit resolutions to the Europarty leadership and decision-making organs, which would have to take these into consideration.<sup>5</sup>

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They should also be able to make amendments to policy documents drafted by the Europarty leadership, and to attend working group meetings alongside members of national parties. Europarties should also invite individual members (or delegates from their ranks) to attend Congress meetings which make/approve the most important decisions. Europarties should allow individual members to vote in the Europarties' policymaking bodies, including the Congress, so that they are given rights to influence policymaking as well as leadership elections. Europarties should also organise and financially support the holding of regular forums of individual members to provide them with an opportunity to meet and exchange ideas and positions. Europarties should also consider the opportunity to let the individual members participate in the selection of the Europarty leadership. Most radically, if transnational lists for European Parliament elections are ever established, Europarties should consider the opportunity for individual members to stand for these elections.

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<sup>5</sup> The European Green Party as well as the PES already allow for this.

To increase the attractiveness of individual membership, national political parties would also need to do their part. They would need to promote Europarty individual membership and at the same time they could aspire to integrate their Europarty's individual members into their parties in order to build on their expertise and improve their visibility. Strengthening individual membership should not mean that national parties no longer play an important role within Europarties although resistance to giving more rights to individual members can be expected from some national parties. In sum, the existing schemes of individual party membership are insufficient to make it attractive. While some Europarties already give their members some of the above-mentioned rights and opportunities, individual membership schemes should be making use of the full spectrum of these rights and opportunities. In particular, the most recently established Europarties do not allow individuals to join and/or severely limit their participatory rights. Europarty regulations do not set limits on the rights of individual members, and the strengthening of the existing schemes is thus up to Europarties and their affiliated national parties.

### *Supplementary measures*

When analysing existing Europarties' deficits, it is also necessary to investigate the discussion about genuine and functioning integration in terms of the transnationalisation of party cooperation, instead of the *de facto* associations of national political parties or mere umbrella organisations of today. In fact, such a shift would correspond to the emerging ideological cleavages at the EU level: Quite a few issues have been strongly Europeanised in the recent past and ceased to be purely national themes (migration, internal security, foreign policy, climate protection, economic union). Hence, the transnationalisation of European parties would not be empty social engineering, but a reflection of the emerging transnational preferences of the European public. This change should also involve a stronger presence in the public discourse, which would in turn help to strengthen the legitimacy of the Union.

It also turns out that a greater activity of Europarties regarding their members can increase their relevance as a distinctive type of actor. The EPP's steps towards Hungary's Fidesz in relation to democratic backsliding in Hungary, and the efforts of Europarties to

prevent the formation of coalition governments of their members with nationalist or extremist parties (such as those in Austria, Slovakia or Italy) are good examples. In this regard, there is paradoxically a need to strengthen political conflict within the Union, which would in turn promote the perception of the transnational political parties as more than just secondary actors. At present, conflict in the EU is most visible at institutional level (between the Parliament and the Commission, or the Parliament and the Council), but not at the party level, i.e. as a clearly expressed ideological disagreement. A greater responsiveness of the Europarties and their closer connection to voters would also go hand in hand with the growing powers of the European Parliament. At the same time, the escalation of political conflict within the EU could 'force' national political parties to pay much more attention to European integration and European parties than before.

#### **7.4 Conclusion: How to create a fully transnational EU party landscape?**

Overall, the activities of Europarties are closely linked to the EU political system and its weaknesses. The EU as a hybrid form clearly limits the extent to which the Europarties can play a decisive role in EU politics. The parties are logically concentrated in the European Parliament, while the influence of national political parties through governments is evident in other institutions (the Council of the EU, the European Council, and partly the Commission). Without a more systematic change at the level of the EU political system (such as a gradual federalisation), many proposals for a stronger interconnection of the transnational and national party levels are

*Europarties should, while remaining distinct, be well connected to national political parties, and not just depend on them one-sidedly.*

rather bold ideas. While the EU is addressing many problems of a transnational nature, correcting these deficits by rapidly enforcing federal elements would certainly lead to a Eurosceptic backlash.

Nonetheless, the EU's multi-level system requires that the Europarties should have strong structures at all levels and that, while remaining distinct, they should be well connected to national political parties, and not just depend on them one-sidedly. Although national

politics leads to aggregation of important political interests, these cannot be communicated effectively without strong Europarties at the EU level. No matter how much national political parties are involved in EU policymaking, they fulfil different roles in the EU's multi-level political system, both in terms of policies and in terms of institutions. In other words, the interactions between national politics and Europarties should not be seen as a zero-sum game. Instead, due to several factors, such as the two-way Europeanisation (the bottom-up and top-down effect of Europeanisation), the currently asymmetrical relationship between the national and the transnational level needs to be redressed.

## Summary

- The only slight alignment of Europarties with national political parties, the little knowledge of them and their low visibility at the national political level as well as the equally low public awareness of them mean that a real European party system is still non-existent, and Europarties find it difficult to play a role in expressing national political preferences at the EU level, articulating the political will of EU citizens, or contributing to the forming of a European awareness.
- There is a correlation between the emphasis placed by national political elites on the European agenda and the media focus on the EU, and, subsequently, public attention. The media coverage of European issues is therefore an essential 'transmission' factor for the promotion of Europarties.
- In order to improve their accessibility, Europarties should consider operating their websites in multiple languages. Another option that could be considered is giving Europarties the right to participate in EU-related national referendums and run campaigns for them.
- The supra-nationalisation of the electoral model, the variants of which were presented and discussed several times in the past, is a prerequisite not only for enhancing the role of the Europarties, but also in terms of adherence to the principle of an equal vote.
- Allowing citizens to vote for transnational lists, next to their national ballot in elections to the European Parliament, and for Europarties and common EU-wide candidates would likely

Europeanise these elections through centralised campaign strategies, conduct of campaigns, candidate selection and manifestos and would give national media incentives to cover Europarties more intensively.

- The development of Europarties should be stimulated by broadening direct individual membership and individuals' direct or indirect participation in the internal activities and decision-making processes of Europarties beyond the existing scope.
- There is a need to strengthen political conflict within the Union, which will promote the perception of the transnational political parties as more than just secondary actors. At present, conflict in the EU is most visible at institutional level (between individual EU institutions), but not at the party level.

## References

- Bressanelli, E. (2014), *Europarties after Enlargement: Organization, Ideology and Competition*, London: Palgrave Macmillan.
- Day, S. (2014), "Between 'Containment' and 'Transnationalization' – Where Next for the Europarties?", *Acta Politica*, Vol. 49, No. 1, 5-29.
- Gagatek, W. (2011), "The Treaty of Lisbon, the European Parliament Elections, and Europarties: A New Playing Field for 2014?", *Yearbook of Polish European Studies*, Vol. 14, 201-18.
- Hertner, I. (2018), "United in Diversity? Europarties and Their Individual Members' Rights", *Journal of European Integration*, 1-19.
- Hix, S. (2002), "Parliamentary Behavior with Two Principals: Preferences, Parties, and Voting in the European Parliament", *American Journal of Political Science*, Vol. 46, No. 3, 688-98.
- Klüver, H. and T. Rodon (2013), "Explaining Policy Position Choice of Europarties: The Effect of Legislative Resources", *British Journal of Political Science*, Vol. 43, No. 3, 629-50.
- Kosowska-Gąstoł, B. (2017), "Are the Europarties Real Political Parties? National Parties' Involvement in Multi-level Structures of European Political Parties", *Historia i Polityka*, Vol. 20, No. 27, 9-29.
- Külahci, E. and S. Lightfoot (2014), "Governance, Europarties and the Challenge of Democratic Representation in the EU: A Case Study of the Party of European Socialists", *Acta Politica*, Vol. 49, No. 1, 71-85.
- Tilindyte, L. (2019), "Rules on Political Groups in the EP", Brussels: European Parliamentary Research Service.
- Timuş, N. and S. Lightfoot (2014), "Europarties: Between the Processes of 'Deepening' and 'Widening'", *Acta Politica*, Vol. 49, No. 1, 1-4.
- Van Hecke, S. (2010), "Do Transnational Party Federations Matter? (... and Why Should We Care?)", *Journal of Contemporary European Research*, Vol. 6, 395-411.
- Wolfs, W. (2017), "EU Party Funding: a Pro-European Instrument to Support Euroscepticism?", *Global Anti-Corruption & Integrity Forum*.

## 8. HOW TO APPOINT A COMMISSION PRESIDENT

SOPHIA RUSSACK

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*The rise and fall of the lead candidate procedure has shown the need for fresh ideas. The EU's reputation among citizens was damaged when the European Parliament 'grabbed' power from the European Council, selected one candidate and demanded their appointment in 2014. And also when the European Council simply appointed a non-lead candidate as a continuation of its usual practice in 2019. What must be prevented for 2024 is another jostling for position between the institutions. A revised Commission president appointment procedure is therefore needed that reflects the dual legitimacy on which the EU is built and that ends institutional turf-battles between the European Council and the Parliament by setting out clear rules and creating certainty. This chapter proposes five crucial elements: a transnational list; earlier campaign kick-off; sufficient involvement of both responsible institutions; joint selection of candidates; a two-step procedure that might include a hearing for the president-designate.*

### 8.1 Introduction: A tricky balance

The EU's unique institutional setup reflects a complex balancing act of different interests: those of sovereign member states, the political will of the citizens, and the general interest of the Union. The EU does not apply a strict separation of powers; as the core executive body, the European Commission also has legislative functions (initiating new legal acts) and shares executive competences with the Council (and national authorities). Neither is the EU a genuine parliamentary system, due to the

*The EU's unique institutional setup reflects a complex balancing act of different interests.*

missing link between the legislature and executive. At national level, the power balance in parliament determines the composition of the government. At EU level, what is at stake at elections is who will sit in the European Parliament (EP), not who will govern. Up until 2014 (and the launch of the so-called *Spitzenkandidaten* – or lead candidate – procedure) there was no connection between the outcome of the EP elections and the composition of the executive, the European Commission.

The lead candidate procedure was copied from national parliamentary systems (in particular the German model), whereby citizens do not directly elect the head of state but do elect the members of parliament – who in turn elect the head of the executive. To give electoral certainty, the respective parties announce the candidates to head their respective lists, with the expectation that this person would be chosen as head of government in the event of electoral victory. The EU’s lead candidate procedure was similarly an attempt to close the gap between the legislative and executive branch and thereby between the EU institutions and its citizens. It failed, however, to deliver on that promise and instead caused institutional turf battles.

Following the lead candidate debut in 2014 and its demise in 2019, there is now much confusion about how to proceed in 2024.

This chapter will consider the appointment procedure of the president of the European Commission. First, it will sketch out the institutional history and run-up to the so-called lead candidate procedure. Second, the chapter will make a suggestion for a future procedure to appoint the Commission president.

## 8.2 The story behind the failed lead candidate system

Who appoints the head of the EU’s quasi executive? Traditionally, it was the Heads of State and Government in their capacity as members of the European Council (EUCO) to simply appoint this person, following consultations behind closed doors. From the very early days of European integration, this was the procedure; the Treaty of Rome did not set out any involvement of the Parliament but did stipulate that “the members of the Commission shall be *appointed* by the Governments of Member States acting in *common agreement*”

(Article 158) and “The President [...] shall be *appointed* [...] with the *same procedure*.” (Article 161). Throughout the integration process, there were alternations to this system: the Treaty of Maastricht (1990) for the first time involved the EP by prescribing that the member state governments nominate *by common accord*, and after *consulting* the *European Parliament*, the person they intended to appoint as Commission president (Article 199(2)). The Treaty of Amsterdam (1999) then expanded on this wording by determining that the EP did not only need to be *consulted*, but that the whole College and its president needed to be *approved* and receive the assent of the EP (Article 40). The Treaty of Nice only the voting rule of the Council was modified. As of then the president-designate was appointed by qualified majority rather than by unanimity (Article 22).<sup>1</sup>

This Lisbon Treaty revision changed the wording that the EUCO has to “*take into account the elections* to the European Parliament and [...] shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be *elected* by the European Parliament by a majority of its component members.” (Article 17(7) TEU). The Lisbon Treaty therefore made two important changes: i) for the first time, there was a link between the result of the EP elections and the head of the EU’s executive; and ii) instead of consulting or approving, the EP was now to *elect* the president of the Commission. Despite the fact that the Lisbon changes were more significant than previous ones, they can be seen as the continuation of a trend to involve the EP in the appointment procedure and thereby as a bolstering of its democratic control function over the main executive body of the EU.

## 2014

The role that the Lisbon Treaty set out for the EP was not in fact a proactive one. In the run-up to the elections 2014 (the first to be held under the Lisbon Treaty) it was the EP itself that exploited the new phrasing of the treaties and upgraded its role through the instigation of the *lead candidate* procedure. This meant that most party groups appointed *lead candidates on the understanding* that the candidate of the party group with the most seats in the elections would become

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<sup>1</sup> Italics added by author.

president of the European Commission. Hence, citizens' votes translated (indirectly) into the selection of the next Commission president of the Commission. Executive power was at stake for the first time in EP elections.

*Citizens' votes translated (indirectly) into the selection of the next Commission president of the Commission.*

The EP was able to win an interinstitutional battle with the European Council by demonstrating internal cohesion and unity right after the elections and by exposing divisions within the European Council. It acted with astonishing speed to support Jean-Claude Juncker and to present him as the common EP candidate. Institutional power seemed to trump party interest; there was still the grand coalition between the EPP and S&D, and competitors Jean-Claude Juncker and Martin Schulz agreed that whoever ranked second would become the EP president. On this basis Juncker had solid support in the chamber. For its part, the EUCO underestimated the lead candidate device and was unprepared for its clout.

By aiming to make executive power the prize in EP elections, the lead candidate procedure sought to raise awareness of those elections and European issues in general. The idea was that the different candidates would launch a pan-European election campaign to introduce themselves to citizens in all member states and present the position of their EU-level political groups (Schulze, 2016: 24). The personalisation of candidates can generally (that is, at national level) enhance elections by informing and mobilising voters. This was also expected to happen with the EP election: the nomination of lead candidate would personalise the election

*The aim was to raise the stakes of the European elections and personalise European politics, thereby increasing voter turnout and ultimately strengthening democratic (input) legitimacy.*

campaign and in turn boost voter turnout (Schulze, 2016: 24). It had been suggested that open and rival candidacies for the position of Commission president would liven up the electoral competition and allow a greater connection between voters' references and the EU institutions (Follesdal and Hix, 2006: 553). In short,

the aim was to raise the stakes of the European elections and personalise European politics, thereby increasing voter turnout and ultimately strengthening democratic (input) legitimacy.

However, this system had no tangible effect. Voter turnout hit an all-time low in 2014 and research has shown that voters were largely unaware of a) the lead candidate system as such (i.e. that their vote indirectly translated into the choice of Commission president) and b) the individual candidates, particularly outside their own home countries. The awareness of indirect support for one candidate was highest in Luxembourg, France and Germany (74.8%, 63.3% and 60% respectively). Awareness was significantly lower in northern and eastern countries (35.2% on average), with the lowest level of knowledge in the UK, at 13.9%. Unsurprisingly, this study shows that knowledge of specific candidates was highest in the home countries of the (key) candidates: about 55% of voters in Luxembourg and 25% in Germany and Belgium could name one or more candidates. However, in the other member states the average was 8.2%. In the UK, only 1.1%<sup>2</sup> of voters were able to recognise a candidate (Hobolt, 2014).<sup>3</sup>

As it turned out, the debates around key policy issues (such as migration) were not shaped by the lead candidates, but rather by anti-establishment and Eurosceptic parties (Hobolt, 2014: 1536–1537). “Neither pre-election campaigning nor post-election decision-making delivered greater party-political competition or a genuine choice between rival political programmes” (Christiansen, 2016: 1007). Instead, the 2014 elections perpetuated the long-term trend of close cooperation between pro-integrationist parties at the centre of the political spectrum.

Candidates were more prone to campaign in countries where they were already known and where it was hoped their appearance would have a positive effect on the electorate (Schmitt et al., 2015). The bigger member states, i.e. Germany and France, were favoured as campaign venues because the larger the population, the more seats in the EP up for grabs. Germany by far, and France were therefore the

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<sup>2</sup> These low numbers for the UK can partly be explained by the opposition of all three main British parties to the lead candidate system and their refusal to let the candidates campaign (Christiansen, 2016).

<sup>3</sup> Based on an AECR-commissioned post-election survey in 15 member states, where voters and non-voters were asked directly after the elections about the degree of awareness of the political parties and candidates at the European level (see Hobolt, 2014, 1536).

*Studies on visibility and media coverage for the candidates have shown that the media did not promote the system.*

most attractive countries to campaign in (Christiansen, 2016). Furthermore, studies on visibility and media coverage for the candidates have shown that the media did not promote the system: the EP elections were in

general not very present and the lead candidate appeared more as a “side issue” (Schulze, 2016).

So, the lead candidate system had no positive effect on turnout, or on the second-order nature of the EP elections. It therefore failed to improve the representativeness and the accountability of the EP. The only effect it did have was institutional in nature, as the EP successfully enhanced its own influence in selecting the Commission president, thereby slightly altering the EU’s interinstitutional dynamic (Hobolt, 2014).

## 2019

Proponents of the lead candidate procedure had hoped to see it firmly established in 2019. In the election campaign, most political groups selected a candidate to campaign across Europe but the system lost further momentum. It was significantly weakened institutionally compared to 2014, especially because one of the most important political groups, ALDE, which was afraid of losing Emmanuel Macron as a potential political group partner, did not participate. At the same time, President Macron – one of Europe’s most important leaders, did not support it. Clearly, and somewhat ironically, both are closely linked.

The increased turnout of almost 8% at the European elections could have strengthened the Parliament’s hand. But despite the higher turnout, the EP found itself in a weaker position. As this institution is more pluralistic (as a general trend there is more support for fringe parties and less for established ones) it was unable to build a majority in favour of one or the other candidate. The EPP (narrowly) obtained the most votes, but the other parties did not agree to back its lead candidate (Manfred Weber). The major political groups in the EP were simply unwilling to rally behind one common candidate. As a result, there was a very different institutional power play in 2019 compared to 2014 Without internal institutional unity, it was much

easier for the EUCO to keep a firm grip on its prerogative to appoint. In other words: greater pluralism and the end of the duopoly hitherto enjoyed by the EPP and S&D parliamentary groups has a price for the EP in terms of institutional power.

*Many in the newly composed EP felt they had been robbed by the European Council riding roughshod over the lead candidate procedure.*

Ursula von der Leyen, then President-elect of the European Commission, did not run through the lead candidate procedure but was instead nominated by the European Council and eventually elected by the EP, by only a paper-thin margin. Many in the newly composed EP felt they had been robbed by the European Council riding roughshod over the lead candidate procedure. By excluding the EP, this 'backroom' appointment did not give any say on this personnel decision to the citizens. Furthermore, it ridiculed those who had engaged in the lead candidate campaigns by simply ignoring them.

### *The EU as a parliamentary system?*

The failure of the lead candidate system is partly due to systemic reasons. The procedure implicitly promotes the 'parliamentarisation' of the EU and a federal model of European democracy, in which the EP receives a democratic mandate from the electorate to select the executive and then ultimately hold the executive accountable (Hobolt, 2015, 1537). However, the EU is not a genuine parliamentary system.

*However, the EU is not a genuine parliamentary system.*

Certainly, the policy and legislative procedures provide a link between the EP and the Commission. However, the democratic control that the EP exercises over the Commission (including the appointment and removal procedure) plays a crucial role. Parliamentary democracy has been defined as:

1. "A democratic form of government in which the party (or a coalition of parties) with the greatest representation in the parliament (legislature) forms the government, its leader becoming prime minister or chancellor."

2. Executive functions are exercised by members of the parliament appointed by the prime minister to the cabinet.
3. The parties in the minority serve in opposition to the majority and have the duty to challenge it regularly.
4. Prime ministers may be removed from power whenever they lose the confidence of a majority of the ruling party or of the parliament.”<sup>4</sup>

When applied to the institutional setup of the EU, it is obvious that the Commission president is not the leader of the strongest political party in the EP elections; that Commissioners are not members of the EP<sup>5</sup>; and that there is no classical government-opposition divide within the EP. Only the last criterion is met, as the European Parliament has the power to issue a no-confidence vote against the Commission and thereby force it to step down collectively (Article 17 TEU and Article 234 TFEU).

Despite the EP having other control mechanisms before<sup>6</sup> and during<sup>7</sup> the mandate at its disposal, the institutional setup of the EU as a hybrid polity goes in the direction of but misses the crucial criteria for a parliamentary democracy. Further structural limitations arise from the fact that key areas of decision-making remain in the hands of national governments as “constituent actors” (Fabbrini, 2015, 573).

Therefore, the Commission is in no way the ‘parliamentary government’ that advocates of the lead candidate process had wished for.

That leads to institutional flaws in the application of the lead candidate procedure. For instance, the procedure only extends to the Commission president, not to the whole executive – the appointment of the other members of the college follows a different logic. Even if

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<sup>4</sup> From <https://www.britannica.com/topic/parliamentary-system>

<sup>5</sup> Some Commissioners run for election and are elected, the EU Treaties however don’t allow members of the college to hold any other offices (Art. 245 TFEU),

<sup>6</sup> Approval of the College of Commissioners as a whole (Article 17(7) TEU).

<sup>7</sup> Posing of parliamentary questions (oral, written and ‘question time’) (Article 230 TFEU).

the president attributes their portfolios and can refuse individual candidates, they are ultimately selected by their respective national governments. This arrangement does justice to the existence and importance of the Council and EUCO as the fora of the voice of the member states. This third forum will always require a unique setting. Therefore, one should not measure the EU's democratic quality against national standards.

*This arrangement does justice to the existence and importance of the Council and EUCO as the fora of the voice of the member states.*

### 8.3 New concept

The 2014 rise and 2019 fall of the lead candidate procedure damaged the reputation of the institutions and that of EU-level democracy as such. Certainty and stability around an appointment is needed now. 2024 seems to be far on the horizon, but it is necessary to start working on this now to use the momentum created around the debate on the Conference on the Future of Europe, where a debate on this is envisaged. The following improvements could be made within the possibilities of the EU's unique institutional framework.

#### *I. Transnational list*

The transnational list is the intuitive counterpart to the lead candidate procedure. Such a list would contain candidates to be elected in a single constituency formed of the whole territory of the European Union. This would facilitate voting for candidates across member states and give citizens two votes: one for their national or regional constituency, and the other for the entire EU. Each party group's lead candidate would be put on the transnational list and citizens from all member states could vote for all candidates, not just for their respective compatriots. A revised lead candidate procedure could in theory stand on its own, but it would strengthen the legitimacy of the procedure if all EU citizens could vote for each of the candidates running, not only those of the same nationality.

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Opponents argue that the proposal is ahead of the political and social reality, as there is no European *demos* and therefore no true unified European will that can be expressed in European elections. The construction of a true European political space is indeed a long way off and it will be a challenge to familiarise voters with the new system (the second vote) and the individual candidates. For this reason, it will face similar problems to those of the lead candidate procedure. Nonetheless, a transnational list could contribute to overcoming the ‘second-order national election’ problem. In their campaign, MEPs from this list cannot focus their campaigns only on one single small area (as ‘regular MEPs do with their constituencies’). As the whole EU territory is their constituency they will be motivated to campaign and travel across the EU. In this way they can increase their transnational visibility and trigger cross-national debate around EU-related policy choices. It would be the transnational MEPs (especially the lead candidates among them), that have the chance to develop into something like European public figures. This would require considerable effort to implement and might not be a great success in the first round, but it is an inevitable next step for EU democracy. Hence, a transnational list would not be a sufficient, but a necessary condition for the cross-border visibility of Commission president candidates.

French President Emanuel Macron and German Chancellor Merkel committed to “put in place transnational lists for European elections as of 2024”<sup>8</sup> and Commission President von der Leyen sees the list as “as a complementary tool of European democracy”. The Commission (despite having no competences in this field) is facilitating the debate around it in the context of the Conference on the Future of Europe.<sup>9</sup> It remains to be seen how the EP itself will decide in the future, after having voted down the introduction of a transnational list in 2018.<sup>10</sup> The institutional design of such a list still needs to be debated and defined. The 25 seats that became vacant and

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<sup>8</sup> In the Meseberg Declaration of 2018: <https://archiv.bundesregierung.de/archiv-de/meta/startseite/meseberg-declaration-1140806>

<sup>9</sup> [https://ec.europa.eu/info/sites/info/files/communication-conference-future-of-europe-january-2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-conference-future-of-europe-january-2020_en.pdf)

<sup>10</sup> The EPP, ECR, EFDD and GUE voted against.

have not been reallocated since the UK's departure would be a good place to start.

## *II. Kick off the campaigns earlier*

One of the arguments used to justify the poor performance of the first *Spitzenkandidaten* round in 2014 was that the (then) new procedure had teething troubles; as it was implemented hastily and spontaneously, there was little time to prepare and campaign. Hence, one of the obvious reform ideas was that Europarties should select their lead candidates earlier to allow time for intensive campaigning across the EU and to give voters the chance to familiarise themselves with the a) process as such and b) the candidates running for the office of president. This is not what happened, however. Only the EPP (2014: March; 2019: November) and the Greens (2014: January; 2019: November) nominated and therefore presented their candidates earlier. Even later than before were the Left in December 2014 and February 2019, and the Social Democrats (2014: November; 2019: December, with a formal campaign kick-off only in March). ALDE only declared in February 2019 that it wouldn't participate in the *Spitzen* race, instead inventing its own 'Team Europe' game and bringing even more confusion to the whole situation. Lead candidates, but also other potential MEPs from the transnational list, need time to make themselves known across the EU and to create space for genuine debate and deliberation on policies. Europarties must acknowledge that and nominate their respective candidates at least six months before elections.

## *III. Involve both institutions: EP and EUCO*

A fully-fledged lead candidate system under which the EP would nominate the candidate in any event is not only difficult to implement (as it is not guaranteed that majorities can be found, as we have seen in the past) but also not desirable.

What is needed is a system that reflects both the will of citizens and governments, because the EU is a Union of citizens *and* states. The EU

*The EU is a Union of citizens and states – this must be respected and reflected in a new procedure.*

treaties gave the prerogative to both institutions – this must be respected and reflected in a new procedure.

The EP's involvement is crucial to translate the majority vote and citizens' policy preferences into the appointment of the president. But equally important is a formal role of the EUCO in this: the Council and EUCO as member states' fora not only bring more complexity but also a second strand of legitimacy. The EU is legitimised in two ways: through the usual parliamentary channel, and through the member states' governments and their national parliaments.

Furthermore, the EUCO's involvement is important to ensure that national and party interests are respected and that the political equilibrium among EU government is reflected, as are the balances between big and small member states, geography and gender.

By getting national leaders and governments on board, EU actors also increase the chances that they will make a positive case for the elections at home vis-a-vis their parties and parliaments, which in turn might have a positive effect on awareness and visibility towards citizens.

Hence, the Commission president appointment procedure must reflect the need for consensus between the European Council and the European Parliament as the two main institutions involved, rather than one institution attempting to impose its candidate on the other.

#### *IV. Joint selection of candidates*

The proper functioning of a revised lead candidate procedure depends in the first instance on the European Parliament. The process of providing 'political programmes with a face' should not be

*The process of providing 'political programmes with a face' should not be abandoned.*

abandoned. In an attempt to involve the EU citizens in this decision as much as possible and to create space for genuine debate and deliberation

on policies, the European political groups should continue to identify their leaders. This has to happen in close collaboration with the respective Head of States and Governments from the same party. The MEPs and the members of the EUCO belong to two different EU institutions, but they are members of the same party groups. This should not necessarily be organised as primaries (as organised by the EPP group), but rather a small grouped format to allow for those

leaders' voices to be heard, not drowned out by massive delegations. Europarties would have a crucial role in this as they are in the best position to bring together their members: MEPs and leaders from different national parties, united under the same party family roof.<sup>11</sup>

If this proves unacceptable for the European Council, an alternative scenario would be to allow the EU Council to draft a list of potential candidates. The Europarties could then each nominate one of them as their candidate. This idea is not new: in the run-up to the Nice Treaty, the EP suggested that the European President should be selected by the European Parliament from a pool of candidates approved by the Council (Yataganas, 2001, 259).

### *V. Two-step procedure*

If one of the candidates can rally a solid (absolute) EP majority behind this candidate, the European Council would have to nominate this person. If Parliament is not able to find such a majority, the European Council should be allowed to propose its own candidate – also someone who did not participate in the lead candidate procedure.

The downside of this second option of the two-step proposal is that it cannot establish a direct link between citizens' preferences and the president-designate's agenda. Citizens would not be able to debate the policies put forward by the candidate (as it is also a traditional backroom deal). However, their representatives in the European Parliament would be able to because this Commission president-designate should be required to undergo a parliamentary hearing, similar to those the Commissioners-designate have to face. So far, the president (like von der Leyen in July 2019) has met the different political groups informally.

*A cross-party hearing could be organised either as one plenary session or be split into different committee sessions.*

A cross-party hearing could be organised either as one plenary session or be split into different committee sessions.

That way, the competitive element of the lead candidate procedure remains, while the EU leaders are involved twice: first at the very beginning of the process when nominating the candidates,

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<sup>11</sup> For more details on Europarties and how to strengthen their role, see Kovář, Sychra and Kratochvíl in this volume.

here in their capacity as party members, and second at the end of the process if the EP is not able to build a majority, this time in their capacity as members of the EUCO.

### *Timeframe*

After the election in May, the Parliament would have the month of June to find a majority. The nomination by the European Council would follow in early July and the candidate should have until early September to prepare the hearing before the EP. The hearings of the Commissioners-designate could then follow later that month. It should then be possible to still hold the inauguration of the new Commission in November.

The Commission president-designate coming from outside the lead candidate process would be allowed time over the summer to properly prepare her/himself for the EP hearing and confirmation and to put together a detailed agenda for the upcoming legislative term.

### *Treaty revision?*

The lead candidate procedure is based on Article 17(7) TEU.<sup>12</sup> To legally manifest a new procedure to appoint the Commission president an interinstitutional agreement between the European Council and the European Parliament can be adopted. No amendment of the EU Treaties would be necessary.

The introduction of transnational lists would not require treaty change either, just the adaptation of EU electoral law.<sup>13</sup> Article 223 TFEU of this act stipulates that this process is initiated by an EP proposal, which is then adopted in the Council by unanimity and

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<sup>12</sup>“Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members.”

<sup>13</sup> Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage, last amended by Council Decision (EU, Euratom) 2018/994 of 13 July 2018.

approved by member states in accordance with their respective constitutional requirements.

Article 14(2) TEU sets out the criteria for the composition of the European Parliament. It remains broad, only determining the minimum and maximum threshold per member state, the maximum number of MEPs, and that representation is to be degressively proportional. A Council Decision lays down the details of the composition (which member state has how many seats).<sup>14</sup> Hence, this Decision might have to be adapted if the allocation of seats would be affected.

### *Added value*

An agreement along the lines proposed here would guarantee both institutions a fair share in the decision-making process and eliminate the waste of energy on institutional muscle-flexing. That way, EU institutions as well as political parties/Europarties would not be distracted from what is actually at stake: identifying the best suitable candidate for the office.

*An agreement along the lines proposed here would guarantee both institutions a fair share in the decision-making process and eliminate the waste of energy on institutional muscle-flexing.*

However, institutional reform is never end in itself. To rethink the Commission president appointment procedure goes beyond institutional peace and smooth workflow. This is about bolstering democracy and representativeness. This new procedure would make the process more democratic by involving both EU citizens and their governments in the decision, thereby exploiting both strands of EU legitimacy. A revised procedure and the introduction of a transnational list are certainly no silver bullets for European democracy, but they have the potential to narrow the gap between the EU legislative and executive branch as well as EU institutions and EU citizens

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<sup>14</sup> Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

## 8.4 Recommendations

- The current system(s) has failed. New rules must do justice to the EU's unique institutional framework and reflect the dual legitimacy on which the EU is built: coming from the member states' governments (represented by the EUCO) *and* the European citizens (represented by the members of the EP).
- The ground rules need to be agreed by the two institutions with the treaty mandate to jointly find a president of the Commission: the European Council and the European Parliament. These rules must be set down and be legally binding to avoid institutional (and party) turf battles. This should be done via an interinstitutional agreement.
- A new procedure would include five crucial elements: 1. the candidates run for election in the EP elections via a transnational list, and can therefore be elected by voters across the EU; 2. the campaigns are kicked off by the Europarties much earlier to give voters time to familiarise themselves with the process and the candidates; 3. both the EP and the EUCO are involved equally; 4. EU leaders have a say in selecting the respective lead candidates; and 5. a two-step procedure would allow the EP to try to build a majority and giving the EUCO the right to appoint in case of failure, which is then preceded by a formal EP hearing of the Commission president-designate.
- The term *Spitzenkandidaten* should be dropped. It only speaks to those who understand German and recalls the previous failed attempts.

## References

- Christiansen, T. (2016), "After the Spitzenkandidaten: Fundamental change in the EU's political system?", *West European Politics*, Vol. 39, No. 5, 992–1010.
- Fabbrini, S. (2015), "The European Union and the Puzzle of Parliamentary Government", *Journal of European Integration*, Vol. 37, No. 5, 571–586.
- Follesdal, A. and S. Hix (2006), "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik", *JCMS: Journal of Common Market Studies*, Vol. 44, No. 3, 533–562.
- Hobolt, S. B. (2014), "A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections", *Journal of European Public Policy*, Vol. 21, No. 10, 1528–1540.
- Schmitt, H., S. Hobolt and S.A. Popa (2015), "Does personalization increase turnout? *Spitzenkandidaten* in the 2014 European Parliament elections", *European Union Politics*, Vol. 16, No. 3, 347–368.
- Schulze, H. (2016), "The Spitzenkandidaten in the European Parliament Election Campaign Coverage 2014 in Germany, France, and the United Kingdom", *Politics and Governance*, Vol. 4, No. 1, 23–36.
- Yataganas, X. A. (2001), "The Treaty of Nice: The Sharing of Power and the Institutional Balance in the European Union—A Continental Perspective", *European Law Journal*, Vol. 7, No. 3, 242–291.



## 9. HOW CAN EUROPEAN AFFAIRS COMMITTEES BE STRENGTHENED?

IVETA KAZOKA AND SINTIJA TARASOVA

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*This chapter examines the general trends and best practices in national parliaments of the European Union for engaging in EU affairs. It analyses the position of European Affairs Committees, ex ante and ex post parliamentary scrutiny of governments, direct communication with EU institutions, and how a broader public is involved in EU issues. The position and weight of an EAC and indeed of the parliament differ from one member state to another, but nevertheless there are a certain number of common approaches that would help a national parliament to increase its power relative to other national and EU institutions involved in EU policymaking.*

### 9.1 Introduction: Roles of national parliaments

This chapter is dedicated to identifying general trends and best practices relating to the role in EU affairs of national parliaments (NPs) and, more particularly, parliamentary European Affairs' Committees (EACs). Its three sub-sections are linked to the roles NPs play in respect to EU affairs: providing scrutiny of their own governments, engaging directly with EU institutions, and with the broader public regarding EU matters.

According to a survey conducted by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) in 2016, all of the NPs surveyed have an ambition to be active players at the EU level (COSAC, 2016a: 9). Being active does not mean that an NP needs to be engaged in every single matter related to Brussels. On the contrary, in order to be influential,

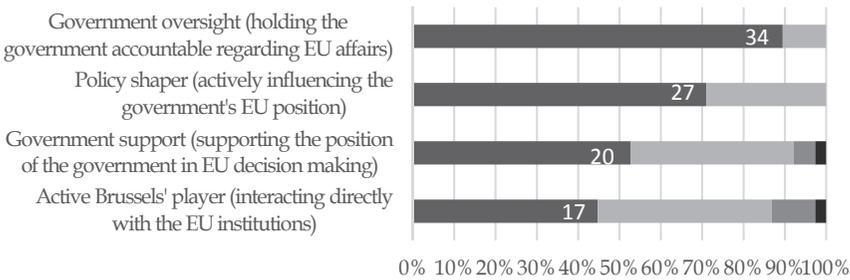
the NP needs to “select the matters that are worth parliament’s time” (De Wilde, 2018, cited by Winzen, 2013: 153).

*For national parliaments it is more important to provide scrutiny of their own governments than to be a frequent and independent actor on the EU scene.*

So, what are the most important matters that are worth NPs time? According to their self-evaluation: for national parliaments it is more important to provide scrutiny of their own governments than to be a frequent and independent actor on the EU scene (see Figure 9.1).

Figure 9.1 Importance of scrutiny activities

Question: How important are the following EU parliamentary scrutiny activities for your Parliament/Chamber?



What percentage of EU National Parliaments/Chambers gave this response?

■ Important   ■ Moderately important   ■ Not important   ■ No answer

Source: Survey responses of 38 EU NPs/Chambers. Annex to the 25th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

At the current stage of the EU’s institutional development, NPs still tend to perceive their own governments as being the lead players in negotiating in Brussels, and it is relatively rare that an NP would see for itself a role independent of their government. As evidenced by Figure 9.1, NPs currently prefer to try to shape their government’s position rather than actively engage with EU institutions. Nevertheless, in recent years, NPs have started to explore more direct means of engagement in EU decision-making, as well as ways of engaging a broader public (especially experts).

This article is based on a presumption that an active NP would want to play all three key roles well, namely, (1) to provide scrutiny of their own government related to EU affairs, (2) to engage in EU decision-making directly and (3) to educate and engage a broader public in EU matters. The prioritisation of these different roles might differ from one NP to another, but it is important for an NP to have sufficient capacity in each function.

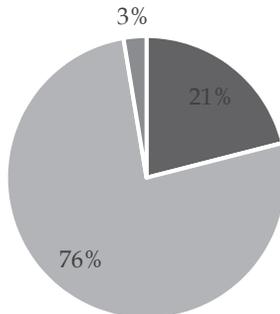
There have been several attempts to rank the institutional strength of NPs in EU affairs (Auel, 2016: 268). These attempts do not provide a clear-cut answer to the question on whether the institutional strength of NPs is dependent on concentrating EU expertise in a specific European Affairs Committee or dispersing it throughout the parliament. The general tendency seems to be in favour of mainstreaming EU expertise across the parliament and not keeping it within the bounds of European Affairs Committees (see Figure 9.2).

*The general tendency seems to be in favour of mainstreaming EU expertise across the parliament and not keeping it within the bounds of European Affairs Committees.*

Figure 9.2 Sole responsibility of European Affairs Committee

Question: Is the European Affairs Committee the only Committee responsible for the scrutiny of EU proposals?

■ Yes ■ No ■ No answer



Source: Survey responses of 38 EU NPs/Chambers. Annex to the 27th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

Even though EACs have been formed in every NP of EU member states, there is a different extent to the involvement of those members of parliament who are not sitting on an EAC. For the majority of NPs, not only the European Affairs Committee, but also sectoral committees are involved in scrutiny of the EU proposals (COSAC, 2017a: 9). In some parliaments, EU-related debates frequently take place not only in EACs, but also in plenary settings.

On the one hand, the benefits of concentrating EU expertise in an EAC is clear: it provides for swifter and more streamlined decision-making. On the other hand, with the increased range of policy areas related to the EU, it makes sense to involve sectoral committees in EU-related scrutiny and to spread EU-related expertise across the NP. Some of the strongest NPs have at least some ways of engaging sectoral committees in EU affairs – for example, in Germany and Ireland each EU proposal is addressed by sectoral committees (Munro et al., 2016: 19). In Sweden, the EAC retains the lead role as it has been entrusted with mandating rights, but scrutiny of the proposals is decentralised to sectoral committees (Auel, 2018: 36).

## 9.2 Scrutinising one’s own parliament: *ex ante, ex post or both?*

According to the NPs, governmental oversight is the most important function for an NP in relation to the EU affairs (see Figure 9.1). Each government produces its national positions before the Council and

*Each government produces its national positions before the Council and European Council meetings and NPs have become important players in providing scrutiny.*

European Council meetings, and – over the years – NPs have become important players in providing scrutiny for these positions.

Overall, NPs prioritise prior control over accountability: more NPs debate and provide scrutiny over their government’s plans before the Council meeting (*ex ante* control) than demand accountability after the meeting (*ex post* control) (Auel, 2018: 21).

The strongest form of *ex ante* control is a mandate – a government is required to obtain a parliamentary mandate before taking a position in the Council (COSAC, 2017a: 12). A less strong form of parliamentary oversight would be discretionary mandates – namely, NPs can decide to issue mandates, but are not required to do so by law

(Auel, 2018: 17). The strongest expression of parliamentary oversight has been observed in Denmark, which was the first country to establish parliamentary mandates on EU issues and where, due to the frequent occurrence of minority governments, the government cannot be certain of obtaining a parliamentary mandate, so it needs to work harder to convince the different parties represented in parliament (Kluger Dionigi, 2019: 129-131).

Usually, it is ministers who are obliged to appear before the relevant parliamentary committee on the EU issues under scrutiny;<sup>1</sup> in some cases the government position is presented by the prime minister.

It is relatively rare that an NP provides scrutiny for all EU-level proposals. The general tendency for most NPs is to select the most important EU proposals for examination (COSAC, 2017a: 11). Among notable exceptions, the German Bundestag and Swedish Riksdag scrutinise the government's position on all EU proposals throughout the EU legislative process.

Even though it might seem strange to provide prior control without later making certain that the government has, in fact, followed parliamentary prescriptions, there are many parliaments that do not demand their governments report back from Council and European Council meetings (Auel, 2018: 17).

*There are many parliaments that do not demand their governments report back from Council and European Council meetings.*

Among the strongest NPs, two in particular can be recognised as having quality *ex post* control: Finland and the Netherlands. In Finland, *ex ante* parliamentary scrutiny and a mandate for government is obligatory, but the mandate is intentionally elaborated in a manner that clearly relates to the preferred outcome, but leaves the government sufficient room for manoeuvre to negotiate as they see fit. Nevertheless, if the outcome is not achieved, the government needs to justify itself (Munro et al., 2016: 17). Moreover, the government also needs to inform the

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<sup>1</sup> According to NP/Chambers' responses to a survey conducted by COSAC, in 21 NP/Chambers a minister is obliged to appear before the relevant committee on issues related to scrutiny of the government position on EU proposals. See Annex to the 27th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

Parliament of Finland in cases where EU proposals change or where the government needs to amend its position (Ibid.: 23).

In the Netherlands, ministers are also required to send a written report to parliament of each Council meeting, and – in the case of the European Council – there might be a follow-up debate in the plenary (Ibid.: 22).

The importance of parliamentary oversight exercised by NPs relating to EU affairs is affirmed by the presence of prime ministers during the scrutiny. In seven EU member states, the presence of prime minister is expected for *ex ante* and *ex post* parliamentary scrutiny (Auel, 2018: 21).

### **9.3 Becoming active players on the EU stage: priority areas for engagement**

Compared to the oversight of their own government, being a direct Brussels' policy shaper is a second-order priority for most NPs (see Figure 9.1).

There are three main ways in which an NP can gain in importance at the EU level: 1) by communicating directly with the European Commission; 2) by communicating directly with the European Parliament; 3) by forming networks with NPs in other EU member states.

It is relatively rare for an NP to choose a different method of engagement. For example, in 2016, 33 out of 38 parliamentary chambers admitted during a survey that they had not participated in a consultation on the transparency of trilogues organised by the European Ombudsman (COSAC, 2016a: 4).

#### ***Direct communication with the European Commission***

Despite the initial promise of strengthening NPs through the introduction of the Early Warning System (EWS) or the so-called yellow and red cards, many NPs chose not to issue warnings to the European Commission regarding risks to the principle of subsidiarity. Participation rates among member states vary

significantly, and only the Swedish and French parliaments can be considered active users of this opportunity.<sup>2</sup>

Among the reasons for the scepticism and low uptake of the procedure are the following: 1) members of national parliaments are not the greatest experts on subsidiarity (Rozenberg, 2017: 28), which is perceived as a narrow and specific subject matter; 2) there is little faith in the effectiveness of subsidiarity checks – the European Commission is accused of responding slowly and inattentively (Mastenbroek, 2014: 19). In fact, in a survey of NPs conducted in 2019, less than one-third of all parliaments considered that participation in Political Dialogue with the European Commission had affected outcomes at EU level (see Figure 9.3) During Jean-Claude Juncker’s Commission, there was an unprecedented decline in EU legislative activity as part of the Commission’s Better Regulation policy,<sup>3</sup> which made the subsidiarity check partly redundant (Rozenberg, 2017: 7)

*There is little faith in the effectiveness of subsidiarity checks – less than one third of all parliaments considered that participation in political dialogue with the European Commission had affected outcomes at EU level.*

There have even been accusations levelled against the EWS stating that the procedure redirects NPs’ attention away from more important duties – such as controlling their governments and communicating with citizens (De Wilde, 2018: 3). Some parliaments from across EU, such as Germany’s Bundestag (Brandes, 2019: 167-168) or Slovakia’s Národná rada (Világi, 2019: 304) prefer to control their own governments rather than to check subsidiarity. There might even be a case where the “strength of parliamentary control over the government and thus its negotiation position in the Council seems inversely related to the use of EU-level procedures” (Blockmans, 2019: 368).

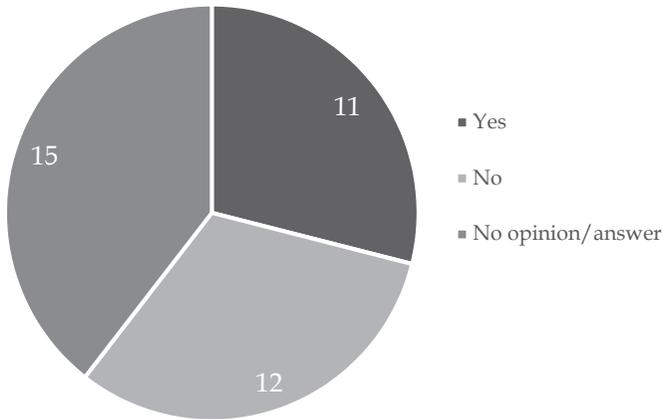
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<sup>2</sup> For detailed analysis of the successes and failures of the Early Warning System, please see Chapter 10.

<sup>3</sup> See “Two decades of Better Regulation in the EU Commission – Towards evidence-based policymaking?”, Clingendael Policy brief, December 2018, p. 15 ([https://www.clingendael.org/sites/default/files/2018-12/PB\\_Better\\_regulation.pdf](https://www.clingendael.org/sites/default/files/2018-12/PB_Better_regulation.pdf)).

*Figure 9.3 Ability to affect outcomes at EU level*

Question: Does your Parliament/Chamber consider that its reasoned opinions or its participation in political dialogue with the European Commission has affected outcomes at EU level?

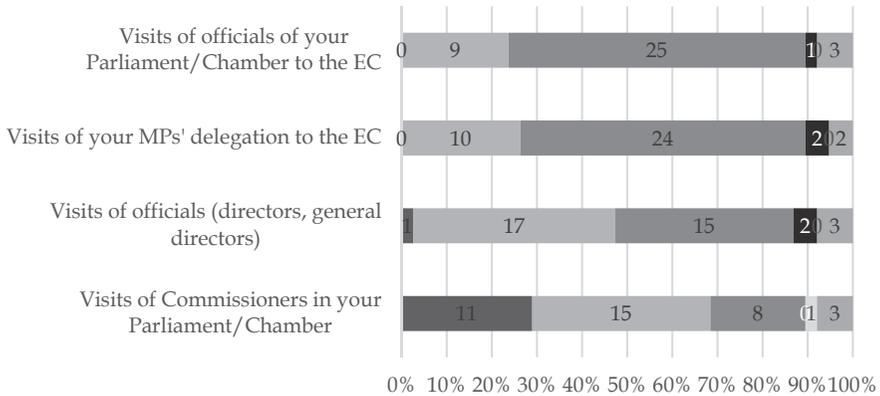


Source: Survey responses of 38 EU NPs/Chambers. Annex to the 32th Bi-annual Report of COSAC ([https://secure.ipex.eu/IPEXL-WEB/conference/get\\_conference.do?id=8a8629a86bc08c43016bd61f04da09fb/](https://secure.ipex.eu/IPEXL-WEB/conference/get_conference.do?id=8a8629a86bc08c43016bd61f04da09fb/)).

In a similar manner to Political Dialogue – an institutional mechanism between an NP and the European Commission to exchange information and opinions on policy issues, legislative and non-legislative initiatives – NPs may hold contradictory opinions during EWS and their opinions are just one item of information among many. There are even fears that an overly active NP might see its credibility with the European Commission damaged (Mastenbroek, 2014: 19, 27-28). In spite of this, for several NPs, both the EWS and Political Dialogue are important mechanisms both to generate their own position on a subject matter, and to communicate it to the European Commission and other NPs.

Figure 9.4 Parliament visits by European Commission representatives

Question: Within the mandate of the current European Commission, how have the number of visits of the its representatives to your Parliament/Chamber as well as number of official visits of parliamentarians/committees evolved?



Number and percentage of answers from 38 NPs/Chambers

- Significantly increased
- Somewhat increased
- Not changed
- Somewhat decreased
- Significantly decreased
- No opinion

Source: Annex to the 26th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

Some parliaments prefer other methods for direct engagement with the European Commission. For example, the parliaments of the Netherlands and Germany try to invite European Commissioners at a very early stage during the elaboration of a new EU policy (Munro et al., 2016: 26). The number of visits of European Commissioners and Commission officials to NPs visibly increased during Jean-Claude Juncker’s Commission. There was also some increase in visits of NPs to the European Commission (see Figure 9.4).

Overall, the European Commission tends to appreciate a timely involvement in EU decision-making (Mastenbroek, 2014: 19), and the EWS is intended for a relatively late stage in the legislative process, when the legislative proposal has already been developed. That is why it is worrying to see a recent trend in NPs paying less attention to the Commission’s green and white papers (Ibid.: 19-20) where –

prior to elaborating a legislative proposal – it proposes issues for discussion or policy options. Sweden is among the few exceptions: its committees still scrutinise Commission green and white papers (Munro et al., 2016: 24).

### *Direct communication with the European Parliament*

It is relatively rare that an NP prioritises establishing good contacts with the European Parliament. Germany’s Bundestag is an exception: it tries to meet with European Parliament rapporteurs on important topics, and to send its sectoral committees to Brussels (Munro et al., 2016: 26).

The European Parliament cannot be expected to be interested in communications to the European Commission produced by NPs. The primary reason for this lack of interest is information overload, though there is also some institutional rivalry (Mastenbroek, 2014: 20 & 28).

Nevertheless, it is likely that MEPs from the member state concerned would be more interested in regular communication between their NP and EU institutions. Currently, there is a lack of involvement of MEPs in their respective NPs: less than half of all NPs organise regular meetings with their MEPs (COSAC, 2016a: 1). Nevertheless, MEPs from some countries are simultaneously members of European Affairs Committees, can be rapporteurs for the NP on the most significant EU matters, and even have the right to participate in the NP’s debates.

### *Cooperation with other NPs.*

*For most parliaments, an active exchange with parliaments in other EU member states is an important part of their job.*

For most parliaments, an active exchange with parliaments in other EU member states is an important part of their job (see Figure 9.1). There are several main ways an active NP can actively network with other NPs in order to raise support for some EU

policy or to block it:

- Networking during parliamentary conferences, such as COSAC (The Conference of Parliamentary Committees for Union Affairs) or some policy-specific forums, for example, on defence. It is such networking that can play a key role in amassing support for yellow or red cards during EWS (Auel, 2018: 29).

- Networking with other NPs via parliamentary liaisons from each NP in Brussels – they are useful to gather and exchange information. In fact, a survey of NPs indicates that this is the most frequently used method for an NP to gather and exchange information on EU-related matters with other parliaments/Chambers.<sup>4</sup>
- To share information with other NPs using The Interparliamentary EU information exchange (IPEX). It should be taken into account, though, that NPs would prioritise just certain types of information to share with others, such as their input to the Political Dialogue or subsidiarity checks. Rarely, if ever, will they be prepared to share more sensitive information relating to trilogue negotiations (COSAC, 2016a: 18).

#### 9.4 What else is important for a well-functioning European Affairs Committee?

In order to be able to control their own governments regarding EU affairs and to engage more directly in EU decision-making, members of parliaments need assistance as well as expertise. It is usually the administrative staff of the NP that helps to draft NP's communications with the European Commission that selects and summarises the relevant EU documentation. Germany's Bundestag not only provides the largest administrative staff related to the EU policy, but also organises training classes for MPs both on the EU and thematic subjects, as well as on using EU-related databases (Munro et al., 2016: 28).

*In order to be able to control their own governments regarding EU affairs and to engage more directly in EU decision-making, members of parliaments need assistance as well as expertise.*

An NP and/or an EAC might also consider additional powers and considerations to help them achieve more in the scrutiny of their governments, involvement with the EU and communication with the public.

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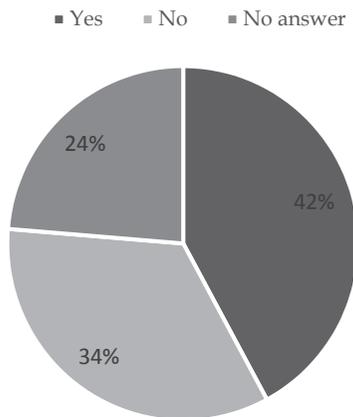
<sup>4</sup> 34 out of 38 NPs/Chambers admitted that they use this method very often. See Annex to the 25th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

### *Additional powers/considerations related to the scrutiny of government*

In order to ascertain that a government is following the basic outlines of the national position during the Council and European Council, an NP needs access to more information than is available to a broader public. Actual negotiations in the Council, especially during the working groups and COREPER, are not well documented, so the NP is reliant on its own government to either share this information with parliament. There are two countries that provide very extensive information to their NPs: Germany (Auel, 2018: 32) and Italy. Italy's permanent representation in Brussels is required to provide its parliament with comprehensive information, including information relating to negotiations during trilogues and minutes of Council working groups and COREPER (Ibid.).

Figure 9.5 Monitoring role of parliaments

Question: Should national parliaments have a greater role in better monitoring the implementation and transposition of EU law?



Source: Survey responses of 38 EU NPs/Chambers. Annex to the 27th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

One area of EU-related scrutiny that is frequently overlooked by both the EACs and NPs in general: scrutiny of their governments related to the implementation or non-implementation of EU legislation. Even though it is possible to raise this issue in almost all the parliamentary chambers across the EU (COSAC, 2017a: 15), it is relatively rare that an NP asks its government to explain whether it has managed to implement an EU law. Nevertheless, granting a greater role to parliaments in monitoring the implementation of EU law is controversial even among parliaments themselves (see Figure 9.5).

In order to increase the importance that both the government and the broader public gives to EU affairs, it might be useful to have an obligation or an option to organise plenary debates on EU policy. For example, Portuguese prime minister has participated since 2012 in such debates before European Councils (Auel, 2018: 20). Also France's Assemblée Nationale convenes for a public debate before each meeting of the European Council. Regular plenary debates on the EU are relatively rare in NPs, but the majority of NPs do find an appropriate way to discuss issues of high EU importance, such as, for example, Brexit (COSAC, 2017a: 18). From 2010 to 2018, there were more than thirty debates in the Austrian Parliament on EU policies (Schaller, 2019: 70-72).

*Granting a greater role to parliaments in monitoring the implementation of EU law is controversial even among parliaments themselves.*

Even though the workload of NPs is already substantive with their involvement in scrutiny over governmental positions and with direct communication on EU legislation, NPs nevertheless need to allocate some time to participate in EU-level policy coordination activities, among which the European Semester is currently the most important. In 2016, only around a half of all NPs scrutinised both the Stability or Convergence Programmes and National Reform Programmes (Rozenberg, 2017: 43-46). It is not yet common to give NPs voting powers on these documents and/or to amend them – only some NPs have such powers (Ibid.: 43-46).

### ***Additional powers/considerations related to NPs becoming active players on the EU stage***

NPs that are not tasked to provide mandates for their government on every single EU-related issue need the ability to prioritise different

EU dossiers. The prioritisation may be based on different considerations. For example, for many parliamentary chambers the key document is the European Commission's work programme (Auel, 2018: 35). Croatia obliges its government to come up with a list of items of draft legislation expected to be discussed at the EU level, and picks its priorities from the list. Ireland prioritises those documents that need attention at an early stage (Munro et al., 2016: 19).

To provide for early engagement, the Netherlands looks at the European Commission's work programme and sends it to sectoral committees that might express interest in more scrutiny. In 2014, around half of all European Commission's initiatives were deemed worthy of further scrutiny (Ibid.: 24). A similarly decentralised early engagement system is in place in Sweden.

The Parliament of Finland prefers to be engaged at a very early stage, so it tends to respond to green and white papers issued by the European Commission (Ibid.: 24). Germany's Bundestag has 20 staff members in its liaison office in Brussels who check for new legislative developments of interest to the Parliament (Ibid.: 27).

Sometimes NPs – in EACs or in sectoral committees – appoint their own rapporteurs on some EU subject area of specific interest. This person would collect more information on the issue and draft an NP's position. Rapporteurs in NPs on EU issues are becoming increasingly common.<sup>5</sup>

It is quite uncommon for NPs to evaluate existing EU-level legislation: only the French Sénat regularly produces its own evaluation reports about EU legislation (COSAC, 2017a: 14). NPs tend to be more active scrutinising their own government's position on the evaluation reports produced by the European Commission (COSAC, 2017a).

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<sup>5</sup> In a survey conducted in 2016, 16 out of 38 NPs/Chambers admitted already having rapporteurs on EU issues, with Portugal intending to introduce rapporteurs in the near future. See Annex to the 25th Bi-annual Report of COSAC (<http://www.cosac.eu/documents/bi-annual-reports-of-cosac/>).

### *Powers/considerations related to informing and engaging the public on the EU issues*

Fewer than half of all NP chambers have developed a communication strategy on EU policy (COSAC, 2016b: 26). The most frequently used channels for informing the public about the EU are parliamentary or committee websites, specific meetings, social media, newsletters and even dedicated TV channels. In general, NPs tend to inform the public about the agenda and discussions during EAC and plenary meetings, as well as about proposed EU legislation. Some NPs adapt their communication to their audience, for example, school students.

It is relatively uncommon for NPs to develop specific citizen engagement procedures for EU affairs. Nevertheless, around half of all parliamentary chambers admit that they share their information with NGOs, and some even actively seek contact with NGOs to scrutinise governmental positions and EU documentation (COSAC, 2017b: 20-21). Finland has even developed an EU expert database, naming people who can provide useful guidance for different thematic areas related to EU policymaking (Munro et al., 2016: 29).

## **9.5 Recommendations**

The position and weight of an NP and an EAC differ from one member state to the other, so the following recommendations have been generated on the assumption that an NP or an EAC would seek good ideas, based on best practices in other EU member states, to increase their strength relative to other national and EU institutions involved in EU policymaking.

In addition, it would make sense for an NP or EAC to commission regular assessments of the effectiveness of its engagement relating to EU issues. According to a 2019 survey,<sup>6</sup> almost half of all NPs have not had such assessments since 2010.

- It would be preferable to involve in EU affairs not just the members of parliament on EACs, but also those on sectoral committees and the plenary sessions. That would help to

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<sup>6</sup> Survey responses of 38 EU NPs/Chambers. Annex to the 32nd COSAC Bi-annual Report (<https://secure.ipex.eu/IPEXL-WEB/conference/getconference.do?id=8a8629a86bc08c43016bd61f04da09fb/>).

strengthen the weight of NPs' positions, spread EU-related interest and expertise across each NP and help to contribute more extensively to EU policymaking.

- If an NP wants to improve its *ex ante* scrutiny powers over national positions, it should consider: (1) making it obligatory for the government to obtain a mandate from the NP; (2) requiring ministers and the prime minister to appear in parliament before Council and European Council meetings;
- If an NP wants to improve its *ex post* scrutiny powers over national positions, it should consider: (1) making it obligatory for the government to report back to the parliament after each Council or European Council meeting; (2) making it obligatory for the government to report all information relating to the changes in the original proposal of the European Commission or changes in the position of the government.
- The best and most effective way for the NP to communicate with European Commission: direct meetings with Commissioners and top officials, as well as responses to green and white papers at an early stage of the legislative process. The Early Warning System and Political Dialogue may also be used, but an NP should be careful with not overvaluing the importance of these communication channels and they also should be mindful that subsidiarity checks arrive quite late in the legislative process.
- The best and most effective way for the NP to communicate with the European Parliament: finding ways to communicate regularly with MEPs from their own countries; meeting with European Parliament rapporteurs on dossiers of interest; participating in small-scale events organised by the European Parliament on specific topics of interest.
- The best and most effective way for the NP to communicate with other national parliaments: taking part in common networking events, especially COSACs, and using the NP's Brussels liaison as its eyes and ears regarding legislative developments of interest.
- The NP and/or EAC needs sufficient administrative assistance to summarise and draft its EU-related communication, as well as to provide advice to MPs on EU policy.

- Additional powers/considerations relating to the scrutiny of the government:
  - a. In order to ascertain that government is following the basic outlines of the national position in the Council and European Council, an NP needs access to more information than is available to a broader public, particularly regarding negotiations during trilogues and Council working groups, as well as COREPER.
  - b. NPs and/or EACs might benefit from receiving regular updates from their governments on the implementation of EU law.
  - c. The importance of EU-related policy would increase if there were additional debates on EU affairs in plenary sittings of NPs.
  - d. NPs need to allocate some time for participation in EU-level policy coordination activities, among which the European Semester is currently the most important.
- Additional powers/considerations relating to NPs becoming active players on the EU stage:
  - a. The NPs and/or EACs need to find a way to prioritise those EU policy dossiers that require extra attention.
  - b. The NPs and/or EACs need to strive for involvement in EU policymaking at the earliest of all possible stages – when the European Commission’s proposal has not yet been developed, but exists as an idea expressed during a conference, a green/white paper or has just appeared in the work programme.
  - c. It would make sense for an NP and/or EAC to appoint their own rapporteurs on EU-related policy issues of high importance to their country.
  - d. NPs should consider producing their own evaluation reports regarding legislation currently in force across the EU or, at least, provide feedback to their government when it states its position to the European Commission regarding those evaluation reports.
- Powers/considerations relating to informing and engaging the public on the EU issues:

- a. EACs should consider having their own sections on the NP's website, where at least the following information can be easily found: agenda and discussions during EAC and plenary meetings, as well as about proposed EU legislation.
- b. EACs and sectoral committees (during their discussions on EU policy) should strive to involve NGOs and experts who would be able to provide guidance on EU policy and national interests.

## References

- Auel, K. and T. Christiansen (2015), After Lisbon: National Parliaments in the European Union, *West European Politics*, 38:2, 261-281.
- Auel, K (2018), "Europeanisation' of National Parliaments in European Union Member States: Experiences and Best Practices", study for the European Parliament's Greens/EFA Group ([https://reinhardbuetikofer.eu/wp-content/uploads/2018/07/Study\\_Europeanisation\\_June-2018.pdf](https://reinhardbuetikofer.eu/wp-content/uploads/2018/07/Study_Europeanisation_June-2018.pdf)).
- Blockmans, S. (2019), "Conclusion", in S. Blockmans and S. Russack (eds), *Representative Democracy in the EU: Recovering Legitimacy*, London: Rowman & Littlefield International, 359-373.
- Brandes, E. et al. (2019), "The Bundestag in the multilevel system: representing German citizens in the EU", in S. Blockmans and S. Russack (eds), *Representative Democracy in the EU: Recovering Legitimacy*, London: Rowman & Littlefield International, 161-176.
- COSAC (2016a), Twenty-fifth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny and its Annex. Prepared by the COSAC Secretariat and presented to: LV Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
- COSAC (2016b), Twenty-sixth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny and its Annex. Prepared by the COSAC Secretariat and presented to: LVI Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
- COSAC (2017a), Twenty-seventh Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny and its Annex. Prepared by the COSAC Secretariat and presented to: LVII Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
- COSAC (2017b), Twenty-eighth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny and its Annex. Prepared by the COSAC Secretariat and presented to: LVIII Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
- COSAC (2019), Thirty-second Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny and its Annex. Prepared by the COSAC Secretariat and presented to:

- LXII Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.
- De Wilde P. and T. Raunio (2018), "Redirecting national parliaments: Setting priorities for involvement in EU affairs", *Comparative European Politics* 16(2), 310-329.
- Kluger Dionigi, M. (2019), "How functional is the Danish representative model and does it interact with EU dynamics?", in S. Blockmans and S. Russack (eds), *Representative Democracy in the EU: Recovering Legitimacy*, London: Rowman & Littlefield International, 129-144.
- Mastenbroek, E. (2014), "Engaging with Europe: Evaluating national parliamentary control of EU decision-making after the Lisbon Treaty", Part II: Management Report, Institute for management Research, Radboud University.
- Munro et al (2016), "Parliamentary scrutiny of European Union legislation: Lessons from other European countries", Institute for Government, London (<https://www.instituteforgovernment.org/publications/parliamentary-scrutiny-european-legislation>).
- Rozenberg, O. (2017), "The Role of National Parliaments in the EU after Lisbon: Potentialities and Challenges", Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Constitutional Affairs of the European Parliament.
- Schaller, S. et al (2019) The untapped potential of EU Affairs in Austria's Parliament, in in S. Blockmans and S. Russack (eds), *Representative Democracy in the EU: Recovering Legitimacy*, London: Rowman & Littlefield International, 65-88.
- Schout, A. and C. Schwieter (2018), "Two decades of Better Regulation—Towards evidence-based policymaking?", Clingendael Policy Brief, Netherlands Institute of International Relations ([https://www.clingendael.org/sites/default/files/2018-12/PB\\_Better\\_regulation.pdf](https://www.clingendael.org/sites/default/files/2018-12/PB_Better_regulation.pdf)).
- Világi, A. and P. Baboš (2019), "Representative democracy in Slovakia: party politics dominates", in S. Blockmans and S. Russack (eds), *Representative Democracy in the EU: Recovering Legitimacy*, London: Rowman & Littlefield International, 299-316.
- Winzen, T. (2013), *Beyond the Decline of Parliament: European Integration and National Parliamentary Democracy*. PhD dissertation, ETH Zürich, Switzerland.

# 10. REVISING THE EARLY WARNING SYSTEM TO REINFORCE THE 'THIRD CHAMBER' OF EU MULTI-LEVEL LAW-MAKING

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*This chapter explores a potentially effective improvement of the role of national parliaments as the 'third chamber' in the EU's multi-level governance system. The latter is characterised by a de facto transfer of competences within a new generation of EU policies, which requires a rethink of how to improve the lines of delegation and accountability.*

*The generalisation of the Early Warning System (EWS) – through the establishment of new 'blue' and 'green' card procedures – would make it possible to extend multi-level parliamentary scrutiny in a more flexible way while rendering this control mechanism legally binding for the Commission, the Council and the European Parliament, not only on subsidiarity issues but throughout the whole policy cycle. In this way, conferral-focused scrutiny within a new mechanism could first assuage national anxieties that generate Euroscepticism; and second, it could transform the reactive and negative EWS involvement into an active and constructive one.*

## 10.1 Introduction: A confusing creep of competence?

EU institutions exercise their functions under the fundamental principle of voluntary conferral of powers by member states. The loose and incomplete horizontal separation of powers has been based on this principle ensuring the proper functioning of the EU's traditional institutional triangle. The Lisbon Treaty changes set out in

Art. 12 TEU, Art. 5(3) TEU, the Protocol (No. 1) on the role of national parliaments (NPs) in the European Union and the Protocol (No. 2) on the application of the principles of subsidiarity and proportionality placed emphasis on reshaping and strengthening the European supportive role of national assemblies.

NPs' first duty is to control national governments, thus ensuring (indirect) democratic legitimacy for one of the two representative bodies of European bicameralism. The subsidiarity control mechanism, the Early Warning System (EWS) established in 2009, confuses this principal-agent relationship between NPs and governments, by also making NPs 'agents' at the EU level (Raunio, 2007). Since then, NPs have been described, quite rightly, as a civil society actor of the third sector (Cooper, 2013); it has even been argued that the introduction of the EWS suggested a 'tricameral' system of representative democracy in the EU by empowering NPs' collective and formal intervention (Cooper, 2013).

Assessing the ten years of experience with the EWS, this paper challenges the status quo of political and institutional power within the EU and outlines a means of effective improvement in NPs' role as the 'third chamber' in a multi-level governance system fit for the 21st century. By putting the accent on the problem of competence creep, it underlines the need to establish a real balance between preserving domestic socio-economic and politico-legal idiosyncrasies, and developing European public policies for convergence and inclusion.

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## **10.2 What policy capacity for national parliaments within the EU?**

Subsidiarity is a regulation and legitimation principle on the vertical distribution of competences according to which the EU must not intervene in any area of shared competence unless such an action is deemed necessary and presents a clear added value. The EWS, in the sense of monitoring the compliance of EU legislation, only comes into play when competence in a certain policy field is shared with the member states. In principle, national competences (such as national

security, the maintenance of law and order), or exclusive EU competences (such as competition law, common commercial policy and monetary policy) or non-legislative documents such as communications or green papers are excluded.

However, successive crises created a great deal of pressure for action at the EU level leading to the widening of policy initiatives beyond old-fashioned classifications and subsequently the erosion of individual national competences. For example, the question of oversight powers of NPs over the ECB,<sup>1</sup> the Banking Union and the OMT programme, as well as the controversial question of 'technical assistance' provided on the basis of structural reform support programmes<sup>2</sup> are issues that go well beyond scrutinising the Commission's subsidiarity compliance. The phenomenon of 'de-parliamentarisation' of European integration refers to the transfer of policymaking (mainly regulatory) powers to the European level; it is illustrated in two ways. First, the increased use of co-decision and qualified majority voting in the Council and the bargaining in the Council and the European Council make it difficult for national parliaments. They find themselves in a situation of informational asymmetry making it effective scrutiny of their governments' activities difficult and are thus losing direct influence and becoming unable to force governments to make detailed *ex ante* commitments before taking decisions at the European level (Raunio, 2009). New powers for the European Parliament cannot fully compensate for the NPs' loss of authority; the only way to address the democratic deficit is to better (re-)involve NPs directly at the EU level (Cooper, 2013).

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<sup>1</sup> This does not refer to the latter's monetary policy but merely its supervisory tasks.

<sup>2</sup> The opinion of the Committee of Regions of 2018 on the structural reform support programme for the period 2017 to 2020 concluded that the proposal complied "with the principle of subsidiarity if technical assistance is provided in areas of shared competence between the Union and the Member States" adding that "as the proposal is based on a voluntary mechanism, the question of proportionality does not arise". In fact, in principle these programmes are not voluntary and technical assistance also covers areas of national competence.

Second, policy developments in the early 21<sup>st</sup> century clearly show that there is a *de facto* transfer of new competences to the intergovernmental institutions and *de novo* bodies of the EU. This transfer ‘breaks’ the bicameral logic of the system, since the European Parliament cannot carry out its (direct) scrutiny role of the newly Europeanised core state policy areas (i.e. budgetary and economic policy, migration, asylum and borders policy, defence policy, etc.). Added to this, the long-term empowering of executives as the main policy shapers, which further undermines – depending on the national political systems – the scrutiny role of NPs within the domestic arena of public policy.

Co-decision and forced Europeanisation of ‘new’ EU policies are taking place while only a handful of MPs involved with European Affairs Committees keep track of the Brussels agenda, the remainder appear to live on another planet called ‘domestic’, unaffected by the constant stream of new EU legislation (Borońska-Hryniewiecka, 2015).

These developments show that the traditional categorisations of competences do not correspond to the political and legal post-crisis realities. The need for impact assessments of each proposal before publication will increase. With the new generation of EU policies, we need to think how to redesign the lines of delegation and accountability.

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The EWS as it currently operates does not assess the transfer of powers to the EU, but whether those that have already been transferred are correctly classified according to the distinction between exclusive, shared and supporting EU competences. However, recurrent serious transgressions of the competence boundaries might raise questions as to whether the EU should continue to exercise powers in a given field (Jančić, 2015). So, the crucial question today is how to achieve a successful distribution of competences in a system of multi-level governance and multi-layer as well as multi-tier architecture by taking decisions at the most appropriate level.

### 10.3 The Early Warning System: an assessment

According to the EWS (post-Brexit), each of the 15 unicameral parliaments is allotted two votes, while each of the 12 bicameral chambers counts as a single vote. With 27 EU member states and 39 national parliamentary chambers, there are 54 votes in all; in the yellow card procedure one-third (one-quarter in the AFSJ) are needed to raise objections, while a simple majority is needed in the orange card procedure. *Regional parliaments with legislative powers can also be consulted.* The orange card procedure, that has never been used, gives the right to force the Commission or other EU legislative initiators (European Parliament, Council, a (group of) member state(s), etc.) to take NPs' opinion directly into account and deal with their concerns.

The *acquis* of this 'game of cards' is that NPs protested in their reasoned opinions on matters well beyond the issue of subsidiarity, for instance on the political choices made in Commission documents or policy areas in a draft legislative act, i.e. the legislative substance and the added value of the proposal, its legal basis, or on the compliance with the principle of proportionality and policy efficiency (Jančić, 2015). These submissions that are not raising concerns related to compliance with subsidiarity are referred to as 'contributions'.

No doubt, the fact that the yellow card procedure has been triggered three times (see Table 10.1) proves that NPs are quite willing to influence and participate in policy shaping in the pre-legislative phase of EU decision-making, rather than merely being policy commentators expressing their views on EU law-making.

In the policy debate one of the main questions is what triggers NPs to be proactive at the European level. The binding nature of the national parliamentary scrutiny procedure as far as it concerns governments' negotiating mandates in the Council differs significantly from one member state to another; this also applies regarding the heterogeneity of national parliamentary traditions and perceptions of parliamentary roles in EU governance.<sup>3</sup>

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<sup>3</sup> Two forms of representation may be distinguished from one another: in 'dyadic representation', the individual MP represents his or her constituency; in 'collective representation', the entire parliamentary chamber represents the electorate as a whole, and individual parliamentarians may represent interests or persons outside their own constituency.

Table 10.1 *The three yellow cards*

May 2016	<b>14 parliamentary chambers from 11 member states totalling 22 votes</b> → Proposal for a Directive concerning the posting of workers in the framework of the provision of services. <sup>4</sup>	Romanian Chamber of Deputies (1), Romanian Senate (1), Czech Chamber of Deputies (1), Czech Senate (1), Polish Sejm (1), Polish Senate (1), Seimas of Republic of Lithuania (2), Danish Parliament (2), Croatian Parliament (2), Latvian Saeima (2), Bulgarian National Assembly (2), Hungarian National Assembly (2), Estonian Parliament (2) and the National Council of the Slovak Republic (2).
October 2013	<b>13 parliamentary chambers from 11 member states totalling 19 votes</b> → Proposal for European Public Prosecutor's Office (EPPO). <sup>5</sup>	Cypriot Parliament (2), Czech Senate (1), House of Commons (1), House of Lords (1), Swedish Parliament (2), Slovenian National Assembly (2), Romanian Chamber of Deputies (1), Maltese Parliament (2), Irish Parliament (2), Hungarian National Assembly (2), French Senate (1), Dutch Parliament (1), Dutch Senate (1).
May 2012	<b>12 parliamentary chambers from 12 member states totalling 19 votes</b> → "Monti II" Proposal Regulation in order to ensure the free movement of goods in the EU, while acknowledging	Dutch House of Representatives (1), Portuguese Assembly (2), Latvian Parliament (2), French Senate (1), Belgian House of Representatives (1), Luxembourgian Chamber of Deputies (2), House of Commons (1), Swedish Parliament (2), Polish Parliament (1), Maltese Parliament (2), Finish Parliament (2), Danish

<sup>4</sup> The opinion of the Committee of Regions on the Revision of the Posting of Workers Directive did not raise any issue and agreed with the Commission proposal.

<sup>5</sup> The task of prosecuting crimes affecting the EU budget had been within the exclusive competences of the member states. However, the Commission considered that they are not adequately equipped and motivated to counteract such offences (Brady, 2013).

	the right and freedom to take strike action. <sup>6</sup>	Parliament (2). The Danish Folketing played the role of 'initiator', acting rapidly to adopt the first reasoned opinion.
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Scholars often conclude that there is no blanket weakening of legislatures due to the intergovernmental nature of crisis management, but rather the exacerbation of existing strengths and weaknesses. Nevertheless, they admit that NPs encounter many common obstacles related to the lack of resources (Paskalev, 2009), the central role of the European Affairs Committee vis-à-vis sectoral committees (Winzen, 2012), but also the short time period of eight weeks and the difficult while indispensable coordination between parliaments in order to meet the threshold of a yellow card (Cooper, 2012). Furthermore, the lack of compatibility and coordination in the field of European affairs between the houses in many member states naturally weakens national parliaments' ability to exert influence on the EU.

Scholars have explained that MPs are more likely to vote for a reasoned opinion under certain conditions, i.e. when there are high levels of contestation between parties over EU integration, presence of a minority government, strong public Euroscepticism, institutionally strong (upper) chambers, economic growth or an adverse macro-economic context, or new, urgent or salient legislation debated in the Council and voted in the European Parliament before the scrutiny period (Gattermann and Heffler, 2015; Williams, 2016). Yet, disappointing experiences may also be a reason for the partly reluctant use. Strong parliaments are not invariably the most active. Beyond formal power and institutional capacity, motivational factors are significant in

*The lack of compatibility and coordination in the field of European affairs between the houses in many member states naturally weakens national parliaments' ability to exert influence on the EU.*

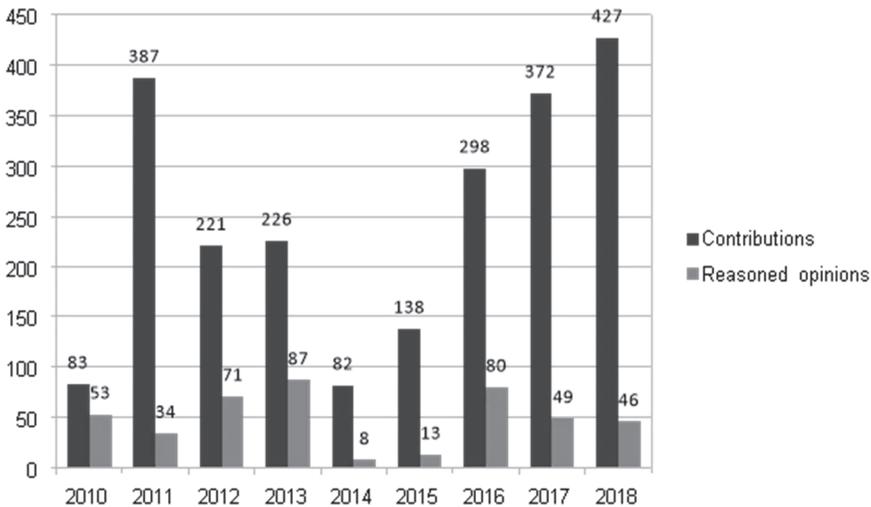
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<sup>6</sup> Subsequent to several decisions by the CJEU, concerns were raised that in the internal market, economic freedoms might prevail over fundamental freedoms, such as the right to strike. Hence, the Commission decided to draft a proposal addressing these concerns and clarifying the relationship between these freedoms (European Commission, 2013, 7).

explaining parliamentary involvement in the EWS (Auel, Rozenberg and Tacea, 2015).

The EWS does not seem to live up to the expectation of establishing of a constructive and meaningful exchange of arguments between NPs and the Commission. A large number of parliaments have repeatedly criticised the fairly late, vague and generally inconsequential replies by the European Commission to both reasoned and Political Dialogue opinions<sup>7</sup> (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union [COSAC], 2012, 2014, 2015). Whether and to what extent this also explains fluctuations in the number of submitted opinions is difficult to gauge, given that the number of new legislative initiatives by the Commission has also decreased (see Figure 10.1).

Figure 10.1 Total of submissions by NPs under Protocol N° 2, 2010-2018

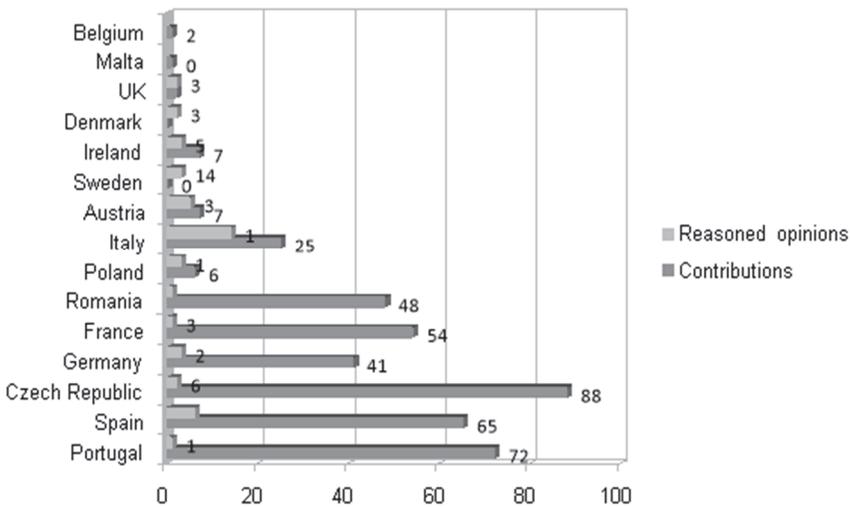


Source: Annual Reports 2010-2018, Relations between European Parliament & EU National Parliaments under the Treaty of Lisbon, European Parliament.

<sup>7</sup> National parliaments can also submit opinions, contributions or statements in the framework of the Informal political dialogue, which is an individual procedure, non-binding in its entirety, and wholly dependent on the Commission both for its existence and for its impact.

Each parliament has different procedures for adopting a reasoned opinion, with its own combination of competent bodies – European Affairs Committee, sectoral committee and/or plenary session – involved in the process. Some NPs take a more active part in the EWS procedure than others, having made very frequent use of the instrument, but overall participation varies (Williams, 2016) (see Figure 10. 2).

Figure 10.2 Submissions by NPs under Protocol N° 2, 2018<sup>8</sup>



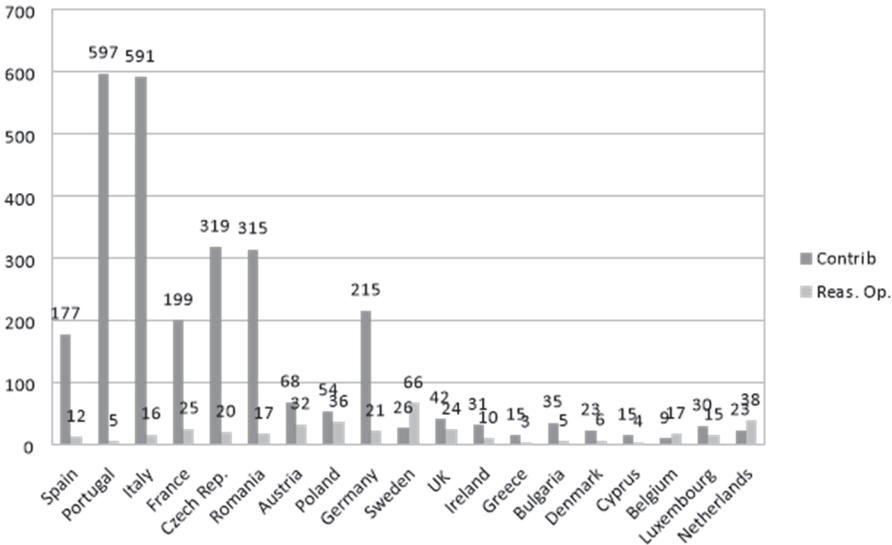
Source: Annual Report 2018, Relations between European Parliament & EU National Parliaments under the Treaty of Lisbon, European Parliament.

In a long-term perspective, the absolute frontrunner in the EWS is the Swedish Riksdag, followed by the Polish and Austrian parliaments (see Figure 10.3). Other parliaments, however, have been more reluctant in their use of the instrument. While the Dutch Tweede Kamer seeks to be an active player in the EU, there is consensus between the Swedish, Finnish and German chambers that the EWS should remain a complementary tool since parliaments should not be granted a more independent role at the EU level. The Portuguese parliament is, along with the Italian parliament, by far the

<sup>8</sup> Bulgaria, Cyprus, Slovakia, Slovenia, Luxembourg, Latvia, Greece, Hungary, Estonia, Finland and Lithuania made no submissions in 2018.

most prolific parliament in submitting contributions. The former has a similar performance in informal political dialogue, since it has sent literally hundreds of letters to the Commission, but it is relatively reticent in using the EWS (See Figure 10.3).

Figure 10.3 Total of submissions by NPs under Protocol N° 2, country by country, 2010-2018<sup>9</sup>



Source: Annual Reports 2010-2018, Relations between European Parliament & EU National Parliaments under the Treaty of Lisbon, European Parliament.

A parliament is not a homogeneous bloc, but a *lieu* of political antagonism where big or small majorities have the last say on formulating parliamentary positions. In fact, some studies show that the common majority-opposition divide represents a problem for the EWS (Cooper, 2012; Raunio, 2009). Further, the EWS has also been accused of having the potential to put powers into the hands of a ‘minority’, while it is far from being a system allowing minority rule.

<sup>9</sup> The Parliaments of Malta, Hungary, Latvia, Lithuania, Croatia, Slovenia, Estonia, Finland and Slovakia have made less than 10 submissions per country for the whole period 2010-2018.

National parliaments are the weakest link in the EU policy game for two reasons. First, the EWS is in effect a very demanding system requiring supermajority approval (Cooper, 2013). Second, other players, much more internally cohesive, dominate the policy agenda. For these two reasons, the 'veto players' (Tsebelis, 2004), i.e. the Commission, the Council and the European Parliament, provide 'high policy stability', thus preventing a shift from the legislative status quo, since the number of individual and collective national parliamentary actors that have to agree to a proposed change is very high. In this sense, it is rightly observed that there is a lack of a unified parliamentary approach to EU affairs and strained relations with the European Parliament, preventing NPs from becoming 'multi-arena players' (Auel and Neuhold, 2017).

Individual national legislators are institutional and partisan players, which together are a collective actor but with no pre-defined preferences. They act as individual players exercising traditional scrutiny within the domestic arena and participating within the EU arena where possible (e.g., Political Dialogue, CJEU action, treaty revisions); they also act as collective parliamentary players together with other NPs submitting opinions (EWS, formal IPC) or as being formal members of future Conventions.<sup>10</sup> National parliaments operate more and more at both levels, oscillating between the two poles of internal antagonism and external cooperation. Unless we consider that the yellow card is at most advisory and the orange card is not a veto, the experience of the three yellow cards could constitute a good counter-argument, bringing us to consider ways to reconfigure the EWS.

*National parliaments operate more and more at both levels, oscillating between the two poles of internal antagonism and external cooperation.*

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<sup>10</sup> In the framework of the formalisation of the Convention method as part of the ordinary Treaty revision procedure (Art. 48 TEU).

## 10.4 New policy options

As noted above, national parliaments view subsidiarity as a broad political principle rather than as a narrow legal or technical principle. The generalisation of the use of the EWS would allow politics to infuse EU policymaking. Under an 'enlarged' EWS, a parliament could become a mere tool of its government, who will instruct it to pass reasoned opinions against draft legislative proposals that the government opposes (Cooper, 2015).<sup>11</sup> The generalisation of the EWS would mean that this mechanism is not only the first phase of what happens later in the Council. It would make it possible to extend multi-level parliamentary scrutiny in a more flexible way while

*The generalisation of the EWS would make it possible to extend multi-level parliamentary scrutiny while rendering this control mechanism legally binding for the Commission, the Council and the European Parliament, throughout the whole policy cycle.*

rendering this control mechanism legally binding for the Commission, the Council and the European Parliament, not only on subsidiarity issues but throughout the whole policy cycle.<sup>12</sup> In that perspective, it would be judicious to refocus NP's European scrutiny on the question of the existence of

EU competence and the principle of (a dynamic) conferral, also amenable to the repatriation of powers from the EU, and thereby endow parliaments with a more positive role as regards the substance of EU legislation (Jančić, 2015). NPs' role has already been extended to two further types of Treaty change, the simplified Treaty revision procedure as well as two 'passerelles' (Art. 48 para. 7 TEU and 81 TFEU). While the former also requires ratification within each member state, NPs have been given a direct and individual veto right

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<sup>11</sup> Art. 8 of the Protocol 2 stipulates that member states may bring actions for annulment before the Court against a legislative act on grounds of infringement of the principle of subsidiarity on behalf of their national parliament or a chamber thereof, in accordance with their legal system. The Committee of the Regions may also bring such actions against legislative acts if the TFEU provides that it must be consulted.

<sup>12</sup> In the conceptual phase when policies and legislation are being designed, as well as in the implementation and evaluation phases after the measures have entered into force.

regarding the two ‘passerelles’ that can be exercised within six months of the notification of the change. It could be interesting to duplicate the right to veto (by adopting some elements from the red card proposal)<sup>13</sup> on policy grounds in the application of a new multi-level law-making mechanism while initiating reasonable voting rules for the essentially ‘positive’ cast of the EWS. In this framework, the logic of the system should be changed. The yellow card should not anymore be ‘advisory’, leaving it up to the Commission to decide whether to maintain, amend or withdraw the proposal, while, in the case of the orange card, if the Commission maintains the proposal, then the final decision is in the hands of the European Parliament and the Council. The merging of the yellow and orange card could make a single ‘blue card’ procedure possible, where NPs work in tandem with the European Parliament by reviewing legislative proposals (mixed parliamentary scrutiny, following the example of Europol) where the Commission and the Council would be obliged to take into account (see Table 10.2).<sup>14</sup> Another step could be to re-frame the green card allowing ‘positive voting’ to make it a proposal to be issued together with the European Parliament (Borońska-Hryniewiecka, 2015).

*The merging of the yellow and orange card could make a single ‘blue card’ procedure possible, where NPs work in tandem with the European Parliament.*

Table 10.2 Towards a multi-level law-making mechanism

Current system	Deadlines for submission and rules for triggering	Proposed system	New deadlines for submission and rules for triggering	
Yellow card	Eight weeks / one-third of total votes	<b>Blue card</b> (a multi-criteria	15 weeks / 35% of total votes of NPs	The Commission (or other institution-legislative initiator)

<sup>13</sup> Initially, the red card veto was a democratic reform contained within the 2016 EU-UK renegotiated settlement according to which if in the first 12 weeks 55% of national parliaments raise objections to a new EU legislative proposal (on the grounds of non-compliance with the principle of subsidiarity), then it must be either amended or discarded, and will be ‘comprehensively discussed’ in the Council.

<sup>14</sup> The review of the proposal means withdraw or substantially amend the proposal.

Orange card	Over half of total votes	scrutiny procedure)	and one-third of EP total votes (with MEPs from at least 3 political groups)	<p>along with the Council must review the proposal in any policy area &amp; votes of 55% of member states in the European Council.</p> <p>A national parliament or/and one-third of EP with MEPs from at least 3 political groups may bring a complaint before the European Ombudsman and a case before the ECJ in case of non-compliance with the procedure.</p>
		<b>Green card</b>	36 weeks / 40 % of total votes of NPs and one-third of EP total votes (with MEPs from at least 3 political groups)	<p>NPs and EP right to initiate legislation in all policy areas except in areas of exclusive competence.</p> <p>The Commission along with the Council must examine the proposal &amp; votes of 55% of member states in the European Council.</p> <p>A national parliament or/and one-third of EP with MEPs from at least 3 political groups may bring a complaint before the European Ombudsman and a case before the ECJ in case of non-compliance with the procedure.</p>

This could be facilitated through a gentleman’s agreement with the purpose of initiating, repealing legislation or proposing amendments to existing legislation or non-legislative initiatives, thus transforming the reactive and negative EWS involvement into an

active and constructive one (see Table 10.2). The assessment of a multi-level law-making mechanism should be undertaken not by the Commission, but by the European Ombudsman – whose role needs to be strongly reinforced. The Mediator would be competent to submit an informed assessment of the overall functioning of the system and the degree of compliance.

It will no doubt not be easy for member states acting together in the Council, in cooperation with the European Commission, to agree this package of improvements. There is a real challenge to overcome governments' fears that they will no longer hold a hierarchical gatekeeper position, in addition to the reluctance of the Commission and European Parliament, which already stipulated that any reform in that direction raises concerns about treaty incompatibility while cultivating legislative and parliamentary competition by confronting one level with the other.

For that reason, there is a need for preliminary work with NPs to equip them domestically with specific institutional competences. Reinforcing the presence of NPs in Brussels is also important, since NPs' Representatives (NPRs) are quite weak in comparison to those employed by national governments, who have representatives meeting on a continuous and permanent basis in the Council and the COREPER (Cooper, 2015).

In order to strengthen the follow-up of legislative activity within the new mechanism and also include regional parliaments and assemblies, new initiatives should be promoted, i.e. the regularisation of monthly meetings of NPRs in cooperation with the European Parliament, the establishment of a rotation system with a NPs' leader for six months, along the lines of the presidency trio logic, and the development of sector-oriented joint parliamentary sessions under the auspices of a COSAC reinforced with real decision-making power (cf. Chapter 11).

Up to now, competences conferred on the Union are moulded by ECJ case law and by the Commission's extensive legislative reach. NPs could be the new actor to do so, endeavouring to strengthen, not to compete with the European Parliament's legislative function. Conferral-focused scrutiny within a

*Conferral-focused scrutiny within a new mechanism could assuage national anxieties that generate Euroscepticism, and restore a sense of control over transfer of competence to the EU.*

new mechanism could assuage national anxieties that generate Euroscepticism, and restore a sense of control over transfer of competence to the EU. Effective national parliamentary oversight of the quality of EU legislative output and the distribution of competences (Jančić, 2015) is an excellent way to alleviate the (national and European) democratic deficit and boost EU legitimacy. It should also be an integral part of national parliamentarians' role in EU affairs.

## References

- Auel, K., O. Rozenberg and A. Tacea (2015), "Fighting Back? And, If So, How? Measuring Parliamentary Strength and Activity in EU Affairs", in Heffttler, C., et al (eds), *The Palgrave Handbook of National Parliaments and the European Union*, Basingstoke: Palgrave Macmillan, 60–93.
- Auel, K. and C. Neuhold (2017), "Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty", *Journal of European Public Policy*, 24 (10): 1547-1561.
- Borońska-Hryniewiecka, K (2015), "The Green Card Opportunity: Time to Rethink Parliamentary Engagement in EU Affairs", *Bulletin No. 41*, The Polish Institute of International Affairs.
- Brady, H. (2013), "The EU's yellow card comes of Age: Subsidiarity Unbound", CER Insight, Centre for European Reform, November.
- Cooper, I. (2012), "A "virtual third chamber" for the European Union? National parliaments after the Treaty of Lisbon", *West European Politics*, 35(3): 441–65.
- Cooper, I. (2013), "Bicameral or Tricameral? National Parliaments and Representative Democracy in the European Union", *Journal of European Integration*, 35 (5): 531-546.
- Cooper, I. (2015), "A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike", *Journal of European Public Policy*, 22 (10): 1406-1425.
- European Commission (2013), COM(2013)566 final: Annual Report 2012 on Subsidiarity and Proportionality.
- Gattermann, K. and C. Heffttler (2015), "Beyond Institutional Capacity: Political Motivation and Parliamentary Behaviour in the Early Warning System", *West European Politics*, 38 (2): 305-334
- Jančić, D. (2015), "The Game of Cards: National Parliaments in the EU and the Future of the Early Warning Mechanism and the Political Dialogue", *Common Market Law Review*, 52: 939-976
- Paskalev, V. (2009), "Lisbon Treaty and the Possibility of a European Network Demoi-Cracy", European University Institute Working Paper, LAW 2009/20, European University Institute.
- Raunio, T. (2007), "National legislatures in the EU constitutional treaty", in J. O'Brennan and T. Raunio (eds), *National parliaments within the enlarged European Union: from 'victims' of integration to competitive actors?*, Abingdon: Routledge, 79–92.

- Raunio, T. (2009), "National parliaments and European integration: what we know and for future research", *Journal of Legislative Studies*, 15(4): 317-34.
- Tsebelis, G. (2002), *Veto players: How political institutions work*, New York: Russell Sage Foundation and Princeton University Press.
- Winzen, T., R. De Ruyter and J. Rocabert (2018), "Is parliamentary attention to the EU strongest when it is needed the most? National parliaments and the selective debate of EU policies", *Journal of European Union Politics*, 19 (3): 481-501.
- Williams, Ch. (2016), "Issuing reasoned opinions: The effect of public attitudes towards the European Union on the usage of the 'Early Warning System'", *Journal of European Union Politics*, 17 (3): 504-521.

# 11. COSAC'S (UNTAPPED)

## POTENTIAL

PAULA LAMOSO GONZÁLEZ

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*Although the European Parliament has gained new powers through the various Treaties signed over the years, the EU's democratic deficit has been a constant when talking about its decision-making processes. The solution is not easy as there is a split between those who think the situation should be solved by reinforcing the European Parliament and those who believe that national parliaments should play a more significant role. The Lisbon Treaty aimed to improve the problem by reinforcing the role of both the European Parliament and its national counterparts, while stressing the benefits of inter-parliamentary cooperation. The main aim of this chapter is to analyse the concept of inter-parliamentary cooperation. Specifically, it examines the potential of the Conference of Community and European Affairs Committees of the parliaments of the European Union (COSAC) as a highly useful tool for members of national parliaments and the European Parliament to cooperate in improving the legitimacy of EU affairs by directly scrutinising its day-to-day work and also by influencing EU policymaking. Finally, it focuses on some recommendations for strengthening COSAC in the future.*

### **11.1 Introduction: National parliaments and EU legitimacy**

The democratic deficit of the European Union has been, since the Treaty of Maastricht, very prominent in debates regarding its process of decision-making. Although the European Parliament has been successful in gaining new powers through the various Treaties, the debate about the democratic deficit continues. One of the key objectives of the Convention on the Future of Europe was, precisely, to amend this situation. There are many different ideas about how the

democratic deficit can be improved. Over the years, member states have basically been divided into two main groups: those who think that the legitimisation of the EU's decision-making process requires a stronger role for the European Parliament and those who consider that legitimacy should be achieved by strengthening the role of national parliaments (NPs) (Shackleton, 2017).

Throughout the debates of the Convention on the Future of Europe,<sup>1</sup> the participants considered formally recognising the participation of NPs in EU policymaking. Finally, the Treaty of Lisbon recognised the capacity of NPs to contribute to the EU's democratic legitimacy by highlighting that NPs actively contribute to the proper functioning of the Union (Article 12 TEU; see also TFEU Protocol 1). The first permanent president of the European Council said that "Maybe not formally speaking, but at least politically speaking, all national parliaments have become, in a way, European institutions" (Van Rompuy, 2012). At the same time, the Treaty of Lisbon provided the European Parliament with co-decision power and it now has the same law-making powers as the Council.<sup>2</sup>

In addition, the Lisbon Treaty identifies the advantages of cooperation between parliaments (TFEU Protocol 1, Title II) in order to facilitate the task of the European Parliament and the NPs in ensuring the EU's democratic legitimacy. In short, it highlights that inter-parliamentary cooperation is important because it can help both NPs and the European Parliament better carry out their duties and, as a result, address the EU's democratic deficit (Pokki, 2016). The EU has different instruments for inter-parliamentary cooperation. Nevertheless, this chapter pays particular attention to the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), as it is the only institutional inter-parliamentary framework recognised by the Treaties. COSAC has proved to be a useful framework to bring the members of NPs and

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<sup>1</sup> It consisted of a broad debate composed mainly of member state representatives and EU institutions about the Future of the European Union leading to a Constitution for Europe (which failed in its process of ratification) and after that to the Treaty of Lisbon.

<sup>2</sup> This occurs when the Ordinary Legislative Procedure is applied, which is in the majority of cases, as it is considered the main legislative procedure in the EU's decision-making process.

the European Parliament together in order to cooperate with each other and it also has an enormous potential as a tool for parliamentary scrutiny (Ruiz de Garibay, 2011). However, it lacks effectiveness when it comes to influencing the EU's decision-making process. The main purpose of this chapter is precisely to suggest a few recommendations for its improvement.

## 11.2 Inter-parliamentary cooperation: what does it mean?

Inter-parliamentary cooperation refers to the dialogue (the exchange of information and best practices) between NPs and between them and the European Parliament without binding effects for the parliaments themselves or for national and EU institutions (Fasone, 2012). According to Peters (2009), "Inter-parliamentary cooperation can be considered as one of the most visible parliamentary reactions towards the transfer of decision-making powers to international and supranational organisations in which democratic representation is somewhat lacking". Within the EU, inter-parliamentary cooperation serves as an important instrument for NPs to coordinate themselves and to influence the EU's decision-making process. The cooperation between NPs and the European Parliament can be seen as essential in bringing the EU closer to its citizens (Croatian Parliament). This cooperation is also of great importance in sharing best practices to scrutinise EU affairs, even though it has not been thought to give rise to scrutiny itself (Ruiz de Garibay, 2011).

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The Treaty of Lisbon marks the turning point as it focuses on inter-parliamentary cooperation in the European process of decision-making. Its Art. 12 is the first formal recognition of NPs' active contribution to the proper functioning of the EU (Auel and Neuhold, 2018). In addition, in its Protocol no. 1 on the role of NPs in the EU, a title is specifically devoted to inter-parliamentary cooperation, stressing that "the European Parliament and national Parliaments shall together determine the organisation and promotion of *effective* and *regular* inter-parliamentary cooperation within the Union"

(Protocol on the Role of National Parliaments in the European Union, Title II, Art.9). COSAC is the first and only recognised inter-parliamentary conference in the Treaties. However, inter-parliamentary conferences and permanent formal forums of inter-

*COSAC is the first and only recognised inter-parliamentary conference in the Treaties.*

parliamentary cooperation have flourished since the entry into force of the Lisbon Treaty. A least two new conferences and one joint parliamentary group have been

created since 2012: the Inter-parliamentary Conference on Common Foreign and Security Policy and Common Security and Defence Policy (CFSP Conference) in 2012; the Conference on Economic Stability, Coordination and Governance (SECG Conference) in 2013; and the Joint Parliamentary Scrutiny Group for Europol (JPSG), established in 2016 but which adopted its rules of procedure in March 2018 (Fromage, 2018).

According to the guidelines of inter-parliamentary cooperation in the EU, its major objectives are: the exchange of information and best practices between the European Parliament and NPs in all policy fields included in the Treaties with the aim of reinforcing parliamentary control, influence and scrutiny of EU matters; and to supervise the principles of subsidiarity (which emphasises that decisions should be taken as close as possible to the citizens) and proportionality (which stresses that the EU's actions should be limited to what is necessary regarding the objectives of the Treaties). In this respect, the NPs are called upon to exchange information on EU draft legislation in order to check whether it complies with the principles of subsidiarity and proportionality (Assembleia da República Portuguesa). Inter-parliamentary cooperation is also an important tool for boosting cooperation with parliaments in third countries (Ruiz de Garibay, 2011).

### **11.3 Inter-parliamentary cooperation to improve scrutiny**

The reinforcement of inter-parliamentary cooperation can improve scrutiny of EU affairs and, therefore, reduce the democratic deficit. The main instruments that NPs and the European Parliament use to accomplish scrutiny of EU affairs through inter-parliamentary

cooperation are: COSAC, the network of administrative liaisons in Brussels, and IPEX (Auel and Neuhold, 2018). Thus, as just highlighted, one of the major purposes of inter-parliamentary cooperation is monitoring the principles of subsidiarity and proportionality<sup>3</sup> to ensure the democratic legitimacy of the EU policies (Hefftlar-Gattermann, 2015).

Assuming that ensuring parliamentary scrutiny helps reduce the perception of a democratic deficit, the Lisbon Treaty introduced a more rigorous subsidiarity review process, identifying a new role for NPs as ‘watch dogs’ of the subsidiarity principle (Raunio, 2007; Kiiver, 2011; Barrett, 2008; Neuhold, 2011). One purpose of the Lisbon Treaty is to guarantee that decisions are taken as closely as possible to the citizens. To do so, the Treaty of Lisbon formally enshrined the Early Warning Mechanism (EWM), which is a procedure that enables NPs to carry out subsidiarity checks on draft EU legislative acts and, possibly, to object to them. The instrument assigns NPs the duty of ensuring that the Commission’s legislative proposals are in accordance with the principle of subsidiarity. In cases where NPs detect a breach of the principle, they can issue a yellow card if numbering up to a third, or an orange card if up to 50%, in order to vet and temporarily block the proposal (Pintz, 2015). Analysts consider that it is absolutely necessary to achieve a major breakthrough in cooperation between parliaments for their new task to function (Raunio, 2010; Matarazzo, 2011). Thus, inter-parliamentary cooperation is understood as an essential requirement for the EWM to work. This allows the exchange of opinions between the NPs of the various member states.

Furthermore, the initiative of launching a ‘green card’ has been one of the most interesting (and controversial) proposals regarding inter-parliamentary cooperation in recent years. It allows the participation of NPs in EU policymaking by means of proposing legislative initiatives to the Commission. In brief, its main aim is to enrich the Political Dialogue between parliaments and the

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<sup>3</sup> According to Article 5 TEU, the principle of subsidiarity means that in areas of non-exclusive competence of the EU the action will only be pursued at the EU level if it cannot be undertaken at sub-national or at national level. On the other hand, the principle of proportionality means that the action taken by the EU should not exceed what is necessary to achieve the objectives set by the Treaty.

Commission at the same time as allowing the supervision by NPs of the Commission's compliance with the principles of subsidiarity, proportionality, conferral and political accountability (Jančić, 2012). In addition to the existing forms of parliamentary scrutiny and involvement, the initiative offers NPs an opportunity to play a proactive role in the EU agenda-setting process and encourages their contribution to the Union's proper functioning.

However, there is no common view about the pertinence of introducing such an instrument. NPs were concerned about its legal status and they also had doubts about its viability as this procedure might be superfluous or incompatible with the Treaty and/or with the national constitutions. In addition, some NPs are contrary to this idea, ex: Finland, Italy or Romania, while some others remain sceptical, ex: Belgium, Estonia or Poland. This controversy responds to the different views about the role that NPs understand they should play in the EU decision-making process. While some NPs, like those in the UK or Denmark think they should play an active role in the EU legislative system, others such as that in Germany consider they should restrict themselves to controlling their national governments (Borońska- Hryniewiecka, 2017).

Finally, the Political Dialogue has been considered by both the Commission and the EU Parliament as an enormous success (Margot Wallström, EC, 2008 and Diane Fromage for EP, 2017). It has been used much more frequently than the EWM as it is far more open. Within the Political Dialogue framework, the NPs can present their contributions to the Commission at any time, not being restricted by the eight-week limit. Furthermore, their contributions can deal with any issue, whereas the reasoned opinions addressed within the framework of the EWM are strictly limited to violations of the subsidiarity principle (Fromage, 2017).

## **11.4 COSAC, more than an information exchange forum?**

COSAC was established in November 1989 in Paris at the Conference of Speakers of the Parliaments of the EU's member states. It is the only institutional framework of inter-parliamentary cooperation directly recognised by the Treaties. Through COSAC, the NPs and the European Parliament hold bi-annual meetings that take place in the

member state occupying the rotating Council presidency: once in the format of the meeting of the chairs of the committees for Union affairs, where each EU member state is represented by one or two members, generally at the chair or vice-chair level; and once in the plenary meeting, where the committees of all member states are represented by a maximum of six members (Croatian Parliament).

COSAC's main aim is to strengthen the role of the committees for EU affairs of the NPs through regular meetings between their members and those of the EP. It also has a great potential to be a very useful tool for parliamentary scrutiny. Since 2003, COSAC has had the capacity to adopt contributions voted under majority rule. This allows it to express views and develop opinions which enable it to perform a better role of democratic scrutiny (Ruiz de Garibay, 2011). Moreover, COSAC is the only inter-parliamentary forum that has a permanent secretariat, with a permanent member and members delegated by the presidency parliaments for 18 months. It is hosted by the European Parliament and, among other things, contributes to the appropriate circulation of information between the conference and the NPs via their representatives in Brussels (Fromage, 2018).

The Treaty of Lisbon has clarified the role of COSAC, stressing that it has a supporting role between NPs (Auel and Neuhold, 2018) and underlining that its contributions will neither bind EU institutions nor prejudge or compel NPs to take positions (Rules of Procedure of the Conference of Community and European Affairs Committees of Parliaments of the European Union). As Hofmann highlights, COSAC is a valuable forum for the exchange of information, ideas and experiences that has the potential to help NPs to increase their influence on EU policymaking. COSAC's best added value is to enhance the personal contact between parliamentarians, thus contributing to a rising awareness of EU affairs (Pernice, 2001). At the same time, the participation of members of national parliaments in inter-parliamentary forums such as COSAC could also contribute to the creation of a European public opinion by replacing the lenses through which members of NPs see EU policies, from the purely national to the truly European. In addition, COSAC can also be a very useful tool for better conducting Political Dialogue.

The main distinction between COSAC and the other inter-parliamentary conferences is that the former is the only one to have been formally recognised and also the only one to have a permanent

secretariat. However, it could be said that it has not evolved significantly over the years, particularly taking into account that inter-parliamentary cooperation has become increasingly important over time, while a significant number of inter-parliamentary forums have recently been created (Capuano, 2016). COSAC faces significant challenges in terms of being more relevant and effective. It lacks effective tools to intervene in the EU's policymaking process as its contributions are binding for neither EU institutions nor NPs (Cancela, 2007). In addition, its work is becoming more technical and bureaucratic, mostly dealing with procedural matters rather than political issues. Members of NPs and the European Parliament spend most of their time at the plenary meetings debating its structure and rules of procedure rather than on EU policies. Another point that further weakens its effectiveness is that NPs have different perceptions about the purpose of inter-parliamentary cooperation. Some consider inter-parliamentary cooperation only suitable for debates on general issues, or 'discussion forums', whereas others consider it a useful way to scrutinise EU affairs, a 'supervisory body' (Esposito, 2014) in (Fromage, 2018).

## 11.5 COSAC: recommendations for improvement

Even though the Treaty of Lisbon greatly upgraded their level of participation, there is still significant room for manoeuvre in terms of ensuring the effective participation of NPs and their contribution to EU policy, particularly regarding the achievement of the full potential

*There is still significant room for manoeuvre in terms of ensuring the effective participation of NPs and their contribution to EU policy.*

of an inter-parliamentary cooperation forum such as COSAC. Despite being in a superior institutional position relative to the other inter-parliamentary conferences that

have recently appeared, it is mainly perceived as a forum for the exchange of information and best practices instead of as a useful way to improve EU legitimacy by influencing its decision-making processes. Therefore, the following ten points are some recommendations for reforming COSAC in the future in order to make it more effective in contributing to the EU's day-to-day policymaking discussions.

- It would be convenient to change the timing of COSAC sessions in order to let them coincide with important EU Council meetings. This would improve its impact by contributing suggestions to the meeting's agendas, favouring their active participation in day-to-day discussions (Closa, 2018).
- It would be more useful to contribute COSAC reports upon request from the presidency, rather than offering them on a six-monthly basis. Its reports, contrary to what is now the case, should require a response from the EU institutions involved (Europapress.es/Navarra, interview MP Moscoso, 2016).
- It would be practical to organise COSAC meetings around well-focused and specific topics for debate. This simple change would help members of the NPs obtain a better idea about the main points under debate, the lessons learned during the meetings and, last but not least, the most important positions and trends regarding a particular dossier or policy field (Dias Pinheiro, 2018).
- The conferences would be more valuable with a greater focus on the topics for discussion and if the sessions were split into smaller groups of parliamentarians in order to facilitate closer and more informal discussions (Parliament.uk). This is the trend in the new inter-parliamentary conferences, which tend to be far more specific. Therefore, the more specific the meeting, the more useful they can be to members of NPs and the European Parliament.
- Increasing the frequency of the appearance of representatives of EU institutions at COSAC meetings would reinforce Political Dialogue. For example, it would be very helpful for the President of the Commission to present their political strategy or similar documents annually to the NPs (Europapress.es/Navarra, interview MP Moscoso, 2016). The President of the European Council could do the same (Parliament.uk).
- Raising the level of cooperation between NPs through COSAC would enhance the dialogue between EU institutions and the NPs. This would help improve the coordination

among them and, as a consequence, ease the introduction of common standards to control *ex ante* and *ex post* EU decision-making.

- COSAC is in the best position to coordinate the work of the different inter-parliamentary forums. It could regularly invite the representatives of other inter-parliamentary conferences in order to avoid duplications, reinforce mutual trust and facilitate the exchange of information (Dias Pinheiro, 2016).
- COSAC's role as a forum for coordinating the priorities of the NPs – in order to act more effectively towards achieving a common scrutiny – should also be reinforced. Despite widespread criticism for being excessively oriented towards blocking rather than fostering more positive approaches, this could help to promote the simultaneous checking of global EU issues (Dias Pinheiro, 2018).
- COSAC might also benefit from updating its working methods. For instance, introducing videoconferences and live-streaming would help increase the frequency of meetings and foster closer cooperation (Fromage, 2018). If travelling is not always required, it could increase the participation of NP members and might also ensure that the same person attends all meetings. The use of new technologies might also help to arrange ad hoc working groups without increasing the budget, in order to hold preparatory discussions or contributions (Parliament.uk). Another possible change would be to appoint a longer-term chair for COSAC to ensure coherence and continuity.
- COSAC should share its secretariat support with the other inter-parliamentary conferences, such as the CFSP/CSDP and SECG (Fryda, 2016). This would help to improve their impact on the decision-making process as they would be able to adopt deeper analyses of different policy questions (Cooper, 2019).

## References

- Auel, K. and Ch. Neuhold (2018), "'Europeanisation' of National Parliaments in European Union Member States: Experiences and Best Practices", Study for the European Parliament's Greens/EFA Group, 11-12 (<https://cutt.ly/NekBd4F>).
- Borońska- Hryniewiecka, K. (2017), "From the Early Warning System to a 'Green Card' for National Parliaments Hindering or Accelerating EU Policy- making?", in Davor Jančić (ed.), *National Parliaments after the Lisbon Treaty and the Euro Crisis. Resilience or Resignation?*, Oxford Studies in European Law, 247 – 261.
- Cancela, C. (2007), "Los parlamentos nacionales y el déficit democrático de la Unión Europea", *Revista de Derecho Universidad de Piura*, Vol. 8, 203-226.
- Capuano, D. (2016), "The role of COSAC in the Europeanisation of national parliaments and in the Evolution of Interparliamentary Cooperation", in N. Lupo and C. Fasone (eds), *Interparliamentary Cooperation in the Composite European Constitution*, Bloomsbury.
- Closa, C. (2018) "El futuro de la Unión Europea", *Informe Elcano* 23, 113.
- Croatian Parliament, *Interparliamentary cooperation in the European Union* (<https://cutt.ly/AekBsYW>).
- Cooper, I. (2019), "The Inter-Parliamentary Conferences of the European Union: discussion forums or oversight bodies?", in K. Raube, M. Müftüer-Baç and J. Wouters (eds), *Parliamentary Cooperation and Diplomacy in EU External Relations. An Essential Companion*, Edward Elgar Publishing, 139-157.
- Dias Pinheiro, B. (2018), "The Contribution of COSAC to Joint Parliamentary Scrutiny in the EU: A Practitioner's View", *Centro Studi sul Federalismo. Perspectives on Federalism*, Vol. 10, No. 3, 121 - 123.
- Dias Pinheiro, B. (2016), "The role of COSAC in the changing environment of national parliaments in the EU: an identity crisis?", in L. Nicola and F. Cristina (eds), *Interparliamentary cooperation in the composite European constitution*, Oxford: Hart Publishing, 303-310.
- Europapress.es/navarra (2016), "Moscoso defiende los "logros" de la Presidencia española de la UE con la adopción de medidas contra la crisis", 1 de junio (<https://cutt.ly/dekNh86>).
- Fasone, C. (2012), "Interparliamentary Cooperation and Democratic Representation in the European Union", in S. Kröger et al. (eds), *The Challenge of Democratic Representation in the European Union*, Basingstoke: Palgrave Mcmillan, 41-58.

- Fromage, D. (2018), "A comparison of existing forums for interparliamentary cooperation in the EU and some lessons for the future", *Centro Studi sul Federalismo, Perspectives on Federalism*, Vol. 10, No.3, 1-27.
- Fromage, D. (2017), "Subsidiarity as a means to enhance cooperation between EU Institutions and National Parliaments", *European Parliament, Constitutional Affairs, Briefing*.
- Fryda, C. (2016), "The role of the COSAC Secretariat within the Evolving Landscape of Interparliamentary Cooperation: Challenges for the Future", in N. Lupo and C. Fasone (eds), *Interparliamentary Cooperation in the Composite European Constitution*, 311- 317, Oxford: Hart Publishing.
- Heffttler, C. and K. Gattermann (2015), "Interparliamentary cooperation in the European Union: Patterns, problems and potential", in Hettler Claudia et al. (eds), *The Palgrave Handbook on national parliaments and the European Union*, Basingstoke: Palgrave Macmillan, 94-115.
- Jančić, D. (2012), "The Barroso Initiative: Window Dressing or Democracy Boost?", *Utrecht Law Review*, Vol. 8, No. 1, 78-91.
- Parliament.uk "Chapter 5: Inter-parliamentary co-operation", in *The Role of the National Parliaments in the European Union*, European Union Committee - Ninth Report (<https://cutt.ly/CekNbnb>).
- Pernice, I. (2001), "The Role of National Parliaments in the European Union", WHI-Paper 5/01.
- Pintz, A. (2015), "Parliamentary Collective Action under the Early Warning Mechanism, The Cases of Monti II and EPP0", *Politique européenne*, 2015/3, No. 49, 84-114.
- Pokki, S. (2016), "Interparliamentary cooperation in the European Union – differences across policy areas", *Jean Monnet Network PACO*, Working Paper No. 2.
- Protocol on the Role of National Parliaments in the European Union, Title II, Art.9.
- Ruiz de Garibay, D. (2011), "Relations between national parliaments and the European Parliament: opportunities and challenges", *ARI*, No. 153, Real Instituto Elcano.
- Wallström, M. (2008), "Working in Partnership – relations between the European Commission and the Spanish Parliament", Meeting with the Joint Committee of the Spanish Parliament, Madrid, 1 December - Speech/08/666 (<https://cutt.ly/lrohNM8>).

## 12. EU DEMOCRACY IN AN ERA OF A CHANGING MEDIA ENVIRONMENT AND DISINFORMATION

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AND SUSAN MILFORD-FABER

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*The 2019 European elections took place against the background of an increasingly changing media environment. The relevance of 'traditional' media is diminishing, while social media gains in importance. A new media culture facilitates access to information for everyone. The plethora of news and the development of sophisticated technologies makes it more and more difficult to distinguish between news and fake news. Social media do not only complement classic sources of information, but might completely replace them – adding to 'bubble' mentalities and the polarisation of views. In addition, targeted online disinformation has the potential to weaken the democratic system and influence democratic elections. This chapter examines the role of social media during the EU election campaign, depicts EU measures to fight disinformation, and reflects on what needs to be done to reinforce factuality and strengthen resilience of the EU public space.*

### 12.1 Introduction: A growing challenge

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The freedom and pluralism of the media shall be respected.” – Charter of Fundamental Rights of the European Union, 2010.

Today these principles are increasingly tested as the corner stones of liberal democracy itself are questioned by political actors worldwide – including EU member states.

The 2019 World Press Freedom Index registers the second biggest deterioration (1.7%) in its regional score measuring the level of constraints and violations in the EU and the Balkans. “The decline in press freedom has gone hand in hand with an erosion of the region’s institutions by increasingly authoritarian governments”, the report notes. The murders of journalists in Malta, Bulgaria and Slovakia, intimidation of media reporting, for instance “during the yellow vest protests in France”, serve as examples alongside the stigmatisation of journalists in Hungary or Poland.

Already in March 2015, the European Council identified “ongoing Russian disinformation campaigns” and called for an action plan on strategic communication, which in the end led to the establishment of the East StratCom Task Force in the European External Action Service (EEAS). In January 2018, the European Commission set up a high-level group of experts (HLEG) to advise on policy initiatives to counter fake news and disinformation spread online (European Commission, 2018).

In the run-up to the 2019 European elections, Commission President Jean-Claude Juncker felt compelled to propose new rules “to better protect our democratic processes from manipulation by third countries and private interests” as “recent cases have shown the risks for citizens to be targeted by mass online disinformation campaigns with the aim to discredit and delegitimise elections” (European Commission, 2018). At the same time, 72% of EU citizens say that they “often come across news or information that they believe misrepresent reality or are even false”. Three out of four consider this is a problem in their country,

and eight out of ten for democracy in general (European Commission 2019: Eurobarometer 91).

*Access to news and information has never been so easy. While it is becoming increasingly difficult to distinguish between facts and deliberately distorted reality.*

It seems paradoxical that access to news and information has never been so easy. While at the same time, it is becoming increasingly difficult to

distinguish between facts and deliberately distorted reality (‘alternative facts’) – especially in the online world. In recent years,

the EU, its open societies and values have become major targets for attempts to destabilise their fundamentals and to sow mistrust regarding the substance of its achievements.

‘Traditional’ media<sup>1</sup> are called upon to take up the challenge of rapidly growing digital media.<sup>2</sup> This is especially true for the press: in Germany, for example, daily newspapers’ total circulation has decreased from 27.3 million sold copies in 1991 to 14.1 million in 2018.<sup>3</sup> Loss of revenue from advertising, which is moving to online platforms, curtails their ability to finance quality journalism. The AdEx Benchmark study 2018 shows that the European digital advertising market (28 markets covered) “grew 13.9 percent in 2018 to € 55.1 bn, driven by strong growth in video, mobile and social spending” – the fastest growth since 2011.

To react to the challenges ahead, the European Federation of Journalists (EFJ) in March 2019 called on all candidates for the European elections to commit to its manifesto “for the revival of a free and pluralistic media in Europe” and recommended the promotion of self-regulatory measures or bodies such as ethical codes and press councils to reinforce high standards in journalism also in “online and social media” as well as “a clear policy and legal framework [...] to ensure the transparency and accountability of dominant platforms.”<sup>4</sup>

The EU has already taken the first steps towards fighting disinformation. However, more needs to be done – also by EU member states – to raise overall awareness, increase media literacy and pressure major online platforms for more scrutiny and transparency.

## 12.2 A changing media landscape

In recent years, the European media landscape has been subject to profound changes that are still underway.

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<sup>1</sup> See: [www.igi-global.com/dictionary/traditional-media/47688](http://www.igi-global.com/dictionary/traditional-media/47688)

<sup>2</sup> See: [www.igi-global.com/dictionary/digital-media/7668](http://www.igi-global.com/dictionary/digital-media/7668)

<sup>3</sup> See: <https://de.statista.com/statistik/daten/studie/72084/umfrage/verkauf-te-auflage-von-tageszeitungen-in-deutschland/>

<sup>4</sup> See: <https://europeanjournalists.org/wp-content/uploads/2019/03/manifestoEN-3.pdf>

A look at media use in the EU in 2018 reveals that television remains the unchallenged frontrunner with 92% of EU citizens turning on their TV set at least once a week. In second place, however, follows the internet (78%) – a rise of 15 percentage points since 2010 – relegating radio use to the third place with 73% (79% in 2010). The number of those active on social media platforms even grew by 26 percentage points and is now at 59%. More people connect to social media platforms than consult printed media, which are only read by 56% once a week – a decrease of 17 percentage points since 2010.

Regarding news on European matters, television (72%) is still the main source of information for EU citizens, while just over a third name the written press, radio or websites. Online social networks currently only account for 16% – though their importance is likely to increase given the media habits of younger generations. 37% of those aged 15 to 24 use social media platforms to receive news on the EU, while only 4% among those 55 years and older do so. 44% in the latter group receive information on EU matters via the written press, as it is the case for only 18% of the young.

In search for information on the EU, its policies and institutions, 48% of respondents name television, while 42% refer to the internet (including social media). Since 2005 the number of those who use TV as source of information has nevertheless decreased by 22 percentage points, while the internet has increased by 20 percentage points (European Commission, 2018: Eurobarometer 90.3).

### 12.3 Trust in media

Although social media is becoming more important, the trust placed in it is (still) very low. While 59% of Europeans have trust in the radio, 50% in television and 47% in the printed media, only 32% trust the internet and 19% social media networks.

*Although social media is becoming more important, the trust placed in it is (still) very low.*

While print media in particular has been able to regain some confidence since 2016, trust in the internet and social media platforms is tending to decrease further. 32 out of 33 countries surveyed have no or low trust in social media, Bulgaria being the only

exception, showing at least medium trust levels (European Broadcasting Union, 2019).

The ambivalence towards social media is even more visible when people access them as political information/communication tools. A majority of social media users agree that “online social media networks can get people interested in political affairs” (76%), that these are “a modern way to keep abreast of political affairs” (72%) and that such networks “are a good way to have your say on political issues” (69%). At the same time, 64% say that “information on political affairs from online social media cannot be trusted” (28% “can be trusted”) (European Commission, 2018: Eurobarometer 90.3).

## 12.4 Public service media

Television still serves as the major source for information for EU citizens. It is therefore all the more important that people can rely on the news provided. Thus, the role of European public service media (PSM) is paramount. Citizens’ trust in PSM is fairly high: in 16 out of 26 European markets, PSM is the most trusted news brand, while in an additional five markets, they are among the top five most trusted news brands, according to the 2018 Reuters Digital Report (European Broadcasting Union, 2019).

Nevertheless, PSM have been exposed to increasing pressure by politics often questioning traditional public funding and accusing them of biased reporting. Financial resources vary remarkably between EU member states – from €27 million in Latvia to €9.8 billion in Germany. 77.7% of PSM revenue is based on public funding (licence fees, national budget), while the remainder is from advertising, a comparative analysis of 17 European countries finds (Saurwein, Eberwein, Karmasin, 2019). The study also concludes that broadcasters funded directly via national budgets are perceived as more politically independent by citizens than their counterparts funded via broadcasting fees.

Eurobarometer data also show a correlation between the level of trustworthiness of information provided by national media and satisfaction with national democracy. Low political pressure on PSM

*Data also show a correlation between the level of trustworthiness of information provided by national media and satisfaction with national democracy.*

correlates with a higher level of press freedom in a country (European Broadcasting Union, 2019).

## 12.5 Pan-European media

A European public space, fundamental to strengthening European cohesion, is only beginning to emerge. The role of pan-European media remains limited. The market share of the German-French cultural broadcaster ARTE in 2018 was just 1.1% in Germany and 2.4% in France. The EU-funded channel Euronews has the largest audience outside of Europe, while in Europe it only reaches an estimated 5 million viewers daily (Hillje, 2019). The availability of robust data on Euronews TV audiences “is however limited mainly due to the high cost of obtaining them”.<sup>5</sup> The fact that European lead candidates gathered to discuss their political priorities in one Eurovision presidential debate is a drop in the ocean. There are therefore calls to create a European public space via an online platform, namely a “social network” for Europe that is funded by public service broadcasting and also includes European entertainment and cultural programmes (Hillje, 2019). Others argue, though, that such a project would only make sense if EU political structures were further developed and gave citizens a reason to become informed on such a common platform (Guérot, 2019).<sup>6</sup>

## 12.6 The 2019 European elections and social media

Social media is both a blessing and a curse. Undoubtedly, it has become an indispensable communication tool for political actors, who invest in professionally-managed social media accounts to pass tailor-made messages directly to potential voters, bypassing critical reporting by ‘traditional’ media and sharing external content. This is especially the case for those who feel neglected by public news coverage.

The 2019 EU elections provide a telling insight into the growing importance of social media – despite the low trust placed in it.

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<sup>5</sup> See: [https://www.eca.europa.eu/Lists/ECADocuments/RCR\\_EURONEWS/RCR\\_EURONEWS\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/RCR_EURONEWS/RCR_EURONEWS_EN.pdf), p. 5.

<sup>6</sup> See: [www.deutschlandfunkkultur.de/digitale-oeffentlichkeit-eine-medien-plattform-fuer-europa.1264.de.html?dram:article\\_id=442491](http://www.deutschlandfunkkultur.de/digitale-oeffentlichkeit-eine-medien-plattform-fuer-europa.1264.de.html?dram:article_id=442491)

## 12.7 The EU's action to fight disinformation

Fearing the potential of social media being used to spread disinformation and influence the EU election process, the EU set up an election package (September 2018) (European Commission, 2018) as well as an action plan against disinformation (December 2018) (European Commission, 2018). The Commission established a Code of Practice that was signed in October 2018 by Facebook, Google, Twitter as well as software companies and bodies representing the advertising industry (Microsoft joined in May 2019) who “voluntarily committed to improve the transparency, accountability and trustworthiness of their services”.

## 12.8 Political advertising on social media

In the three months prior to the European elections, from March 1 until May 26 2019, the total amount spent on political advertisements on Facebook in the 28 EU member states was approximately €23.5 million. Advertisers in Germany spent the most (€3.5 million), followed by those in the UK (€3.3 million), Spain (€2.7 million), Belgium (€2.4 million) and Italy (€1.8 million) (Babiroglio, 2019).

*In the three months prior to the European elections, the total amount spent on political advertisements on Facebook in the 28 EU member states was approximately €23.5 million.*

The European Commission spent €105,000 in this period on promoted Facebook posts while the European Parliament was a comparatively ‘big spender’ investing €3.3 million. European political parties only accounted for €449,000 – “a figure close to that spent over the same time by individual national parties, such as Podemos in Spain and Vlaams Belang in Belgium, [...] a clear sign that genuine pan-European parties still don’t exist for voters, even if a common political space is emerging” (Ferrari, Gjergji 2019).

From March 1 to May 12, national parties that constitute two explicitly Eurosceptic political groups in the Parliament – the ENF (Europe of Nations and Freedom) and the EFD (Europe of Freedom and Direct Democracy) – showed the fastest growth of followers on Facebook, a development mainly due to the performance of ENF members Vlaams Belang, Lega Nord and the Brexit Party (EFD) (Socialbakers, 2019).

On the other hand, the parties of the European Social Democrats (PES), the Greens (Greens-EFA) and Liberals (ALDE) were in the lead in growth of followers on Twitter.

Regarding political advertising on Facebook, political parties that are members of the European People's Party (EPP) "promoted more posts than any other group" (11.95% of their overall posts) while the ENF group ranked last with only 1.77% of their posts promoted.

In most cases, political advertising and promotion of candidates is not limited to the official social media accounts of political parties alone; also regional sub-party groups, like-minded organisations and others place sponsored ads, which makes it difficult to obtain a concrete picture of the extent and total expenditures of political advertising.

## 12.9 Evaluation of disinformation activities

In-depth social media mapping regarding sponsored content nevertheless remains tricky. The same holds true for an evaluation of the extent of tentative online disinformation activities.

Thus, the EU report on the implementation of the action plan against disinformation concludes that "at this point in time, available evidence has not allowed to identify a distinct cross-border disinformation campaign from external sources specifically targeting the European elections". However, disinformation campaigns deployed by state and non-state actors still pose a hybrid threat to the EU, as "the evidence collected revealed a continued and sustained disinformation activity by Russian sources aiming to suppress turnout and influence over voter preferences" (European Commission HR/VP, 2019).

*Between January and June 2019, the East StratCom Task Force detected and exposed 1,000 cases of disinformation - compared to 434 in the same period in 2018.*

Between January and June 2019, the East StratCom Task Force detected and exposed 1,000 cases of disinformation - compared to 434 in the same period in 2018.<sup>7</sup>

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<sup>7</sup> See: [https://ec.europa.eu/commission/sites/beta-political/files/factsheet\\_disinfo\\_elex\\_140619\\_final.pdf](https://ec.europa.eu/commission/sites/beta-political/files/factsheet_disinfo_elex_140619_final.pdf)

According to the report, “in the days preceding the elections, online platforms identified and took down additional accounts spreading disinformation and hate speech following alerts from independent investigators and journalists. More than 600 groups and Facebook pages operating across France, Germany, Italy, the United Kingdom, Poland and Spain were reported to have spread disinformation and hate speech or have used false profiles to artificially boost the content of parties or sites they reported. These pages generated 763 million user views”. Additionally, “large-scale attempts to manipulate voting behaviour across at least nine Member States” were identified.

Online platforms enhanced their scrutiny of ad placements, stepped up their efforts to improve transparency for political ads and took actions to support the integrity of their services focusing on manipulative behaviour. Regarding the abusive use of bots and fake accounts, the report concludes that more has to be done, especially regarding the effectiveness of the transparency measures taken or the transparency of websites hosting ads. Platforms should enforce cooperation with fact checker networks, empower users to better detect disinformation and should give meaningful access to data to the research community.

“The field of social media analysis needs to become more professional and transparent to avoid becoming a feature of disinformation itself and to weed out superficial, headline-hunting reports”, finds Michael Meyer-Resende (Democracy Reporting International).<sup>8</sup> He detects a “wide spectrum of opinions” among experts dealing with the topic ranging from rather minor impacts (Oxford Internet Institute, 2019) up to disinformation content that was viewed “hundreds of million times across the EU” (Avaaz, 2019).

Regarding the EU’s efforts to tackle disinformation, the Romanian EU presidency concludes that a more holistic approach is needed, as member states were affected to different extents by disinformation attacks, methods to fight disinformation varied and depended “on the human resources deployed and the technology used” (Presidency of the Council of the EU, 2019).

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<sup>8</sup> See: <https://euobserver.com/opinion/145062>

## 12.10 Conclusion

Dealing with a fundamentally changing information and media environment in an era of increased importance of the internet and social media is one of the key challenges for the EU and its member states as the spread of intentional and targeted disinformation and fake news endanger liberal democracies and European values. In recent years, the EU has taken several steps to counter these trends, but more has to be done. Social media platforms in particular are in many ways still uncharted territory.

Public awareness that disinformation represents a serious threat to democracy and cohesion in the EU remains underdeveloped. The fight against disinformation and fake news is a task for the whole of society, with especially national education systems needing to adapt to the new realities.

In a changing media landscape where “everybody” can create and spread news globally, the role and status of serious journalism is particularly challenged. Media literacy becomes even more important. This may especially be the case for the young, who are more prone than older generations to look for information online. In 2019, the European Commission initiated a European Media Literacy Week to promote media literacy skills and projects across the EU. Such efforts should be increased and supplemented by the media. National school systems should be encouraged to integrate media literacy into their curricula in order to teach students how to deal with the plethora of online information and news and how social media operates.

The new conditions require an adaptation of the fundamental conditions of ethical journalism to the new challenges of online and social media. It seems vital for ‘traditional’ media to innovate and reach out to new target groups, focus on quality journalism, establish emotional bonds with their audience and ‘simply’ point out why they are indispensable for citizens. Maybe this could have also a positive impact in mobilising more financial support and consequently the expansion of their own resources. It would be worth investing in quality by creating original content and promoting investigative journalism. Young journalists should be given more opportunities to bridge the gap in reaching out to youth. ‘Traditional’ and quality media in general should be more alert to new online trends and

proactive when exploiting the potential of social media. PSM, as they enjoy relatively high trust, should try to use this comparative advantage, invest in new media formats and grasp the opportunity to strengthen exchanges with their audience. PSM should depict what would be at stake if they could no longer fulfil their public service remit due to financial cuts or political attacks.

The perceived distance between EU policy and individuals' own lives is one of the main challenges in communicating European issues. What happens at the local and regional levels is felt to be more important. For this reason, regional media has a vital role to play in communicating how the EU influences the lives of citizens.

In recent years, political parties at the national level have invested heavily in social media activities. European political parties still lag

*Political parties at the national level have invested heavily in social media activities. European political parties still lag behind.*

behind. To foster a European public space, it would be worth promoting their engagement and visibility further via social media. However, social media is only one way to address citizens and potential voters. It might even gain more in importance, but cannot substitute for direct contact in the 'real world' and the credibility of political representatives.

Freedom of the media needs to be valued and defended. Attacks on critical media, observed in recent years in some EU member states, must be firmly opposed. The EU needs to take a clearer stance and also make more efforts to oblige online platforms to combat disinformation. This is a prerequisite in the permanent fight for the principles of liberal democracy, European values, freedom of the press and in the reestablishment of trust in democratic institutions. An integrated approach by EU institutions and member states is required – leading to increased overall public awareness, strengthened European cohesion and, in the end, to the creation of a European public space.

## 12.11 Recommendations

The European Commission should oblige social media platforms to step up their transparency regulations and intensify their efforts to counter fake news content and – if these prove not to be sufficient – also propose measures of a regulatory nature. More transparent political advertising on all relevant online and social media platforms would be welcome. Access to data, especially on sponsored content, should be facilitated for the public, journalists and the scientific community to allow in-depth analysis, comparison and long-term research.

The European Commission's financial and technical support of fact-checking networks is an important element in helping factuality regain ground, especially in the era of new media. Nevertheless, these efforts could be intensified: increased investment is needed as well as better promotion of fact-checkers' activities and findings that up to now rarely reach a broad public. The funding for the East StratCom Taskforce should be stepped up.

The inclusion of "communication" as part of the European Commission's I.D.E.A. in-house think tank in the framework of the third cluster "Digital, Technology, and Innovation" would be a meaningful investment. The research should focus on the communication behaviour of younger generations and provide concrete policy recommendations, communication strategies, development and offer special training methods. It is essential to keep up-to-date with the ever faster changing online world and better understand the ways and needs of young people looking for information and their tools of communication.

It might be overly optimistic to expect a "Fridays for Future"-effect for freedom of the media, but why not reach out to the young by investing in digital games that broach European issues, as they are not just an entertainment product of our time, but have become a mass medium in themselves. Younger generations nowadays are also socialised via digital games. It would be worth bringing game developers together to draft ideas on how to depict information challenges in an attractive and exciting way and support the development of new tools via EU funding (Pfister, 2019).

To help a European public space emerge, PSM should pool forces and work on the establishment of a common (online) European

media platform comprising content appealing to a broad European public. Such an effort would be very much worth funding and support by EU institutions (Hillje, 2019).

The European Commission should propose the proclamation of a European Year<sup>9</sup> of media literacy. A strong emphasis on this topic would help considerably in strengthening the resilience of EU democracy, further constructing a European public sphere, promoting mutual understanding between EU member states and fostering European civil society. Finally, it would constitute a firm statement regarding the importance of media freedom in the EU.

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<sup>9</sup> European Years were established in 1983 to address specific subjects to encourage debate and dialogue within and between countries and are intended to “send a strong commitment and political signal from the EU institutions and member governments that the subject will be taken into consideration in future policy-making”. See: [https://europa.eu/european-union/about-eu/european-years\\_en](https://europa.eu/european-union/about-eu/european-years_en)

## References

- AdEx (2018), Benchmark Study (<https://iabeurope.eu/all-news/european-digital-advertising-market-exceeds-e55bn-in-2018/>).
- Avaaz (2019), “Far Right Networks of Deception” (<https://s3.eu-central-1.amazonaws.com/euobs-media/67331f1c2887dd62181aa00845299ee9.pdf>).
- Babiroglio, E. (2019), “Facebook has become political parties’ main advertiser”, 8 June ([www.europeandatajournalism.eu/eng/News/Data-news/Facebook-has-become-political-parties-main-advertiser](http://www.europeandatajournalism.eu/eng/News/Data-news/Facebook-has-become-political-parties-main-advertiser)).
- European Broadcasting Union (2019), “Markets insight, Trust in Media 2019”, May ([www.ebu.ch/publications/mis/login\\_only/trust-in-media](http://www.ebu.ch/publications/mis/login_only/trust-in-media)).
- European Council (2015), European Council Conclusions (19-20 March 2015), EUCO 11/15.
- European Commission (2018), “A multi-dimensional approach to disinformation”, March 2018.
- European Commission (2018), “State of the Union 2018: European Commission proposes measures for securing free and fair European elections”, Press release, 12.09.2018.
- European Commission (2018), Press release “State of the Union 2018: European Commission proposes measures for securing free and fair European Elections”, 12.09.2018.
- European Commission (2018), “A Europe that protects: The EU steps up action against disinformation”, Press release, 5.12.18.
- European Commission (2018), Eurobarometer 90.3, December.
- European Commission (2019), Standard Eurobarometer 91, August.
- European Commission HR/VP (High Representative of the Union for Foreign Affairs and Security Policy) (2019), “Report on the implementation of the Action Plan against Disinformation”, 14.06.2019, JOIN, 12 final.
- European External Action Service (2018), *Questions and Answers about the East StratCom*, Task Force, 5 December.
- European Union (2019), “Charter of Fundamental Rights of the European Union”, Official Journal C 83/391, 30.03.19.
- Ferrari, L., Gjergji, O. (2019), “How much did the European Institutions and parties pay for ads on Facebook?”, 17 June

- ([www.europeandatajournalism.eu/eng/News/Data-news/How-much-did-the-European-institutions-and-parties-pay-for-ads-on-Facebook](http://www.europeandatajournalism.eu/eng/News/Data-news/How-much-did-the-European-institutions-and-parties-pay-for-ads-on-Facebook)).
- Guérot, U. (2016), *Warum Europa eine Republik werden muss!* [Why Europe should become a republic!], Bonn, J.H.W. Dietz Nachf.
- Hillje, J. (2019), "Warum wir schlecht über die EU reden und wie wir den Nationalismus mit einem neuen digitalen Netzwerk überwinden können" [Why we talk bad about the EU and how we can overcome nationalism with a new digital network, Platform Europe], Plattform Europa, Bonn, J.H.W. Dietz Nachf.
- Marchal, N., B. Kollanyi, L. Neudert and P. Howard (2019), "Junk News During the EU Parliamentary Elections: Lessons from a Seven-Language Study of Twitter and Facebook", Oxford Internet Institute, Data Memo 2019.3.
- Pfister, E. (2019), "Press X to Unify Europe: Digitale Spiele und ihr Potenzial für eine kollektive europäische Identität" [Press X to Unify Europe: Digital games and their potential for a collective European identity], ÖGfE Policy Brief 13'2019, 29 May.
- Presidency of the Council of the European Union (2019), "Report on Countering disinformation and the lessons learned from the European elections", 10415/19, 19 June.
- Reporters without borders (2019), "2019 World Press Freedom Index – A cycle of fear" (<https://rsf.org/en/2019-world-press-freedom-index-cycle-fear>).
- Reuters Institute (2018), "Digital News Report 2018" (<http://media.digitalnewsreport.org/wp-content/uploads/2018/06/digital-news-report-2018.pdf>).
- Saurwein, F., T. Eberwein and M. Karmasin (2019), "Public Service Media in Europe: Exploring the Relationship between Funding and Audience Performance", *Javnost – The Public*, 27 (3) 2019.
- Socialbakers (2019), "European Parliament Elections. The Full Social Media Report" ([www.socialbakers.com/social-media-content/studies/european-parliament-elections-the-full-social-media-report/](http://www.socialbakers.com/social-media-content/studies/european-parliament-elections-the-full-social-media-report/)).



# 13. DEMOCRATIC BACKSLIDING: THE ROLE OF POLITICAL CORRUPTION

ANETA VILÁGI AND PAVOL BABOŠ

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*The survival of any political system is dependent on its legitimacy. In a democratic society, trust is key to the regime's legitimacy and political corruption breaks the link between citizens and the system and undermines political trust. This chapter details four areas of social and political life are vulnerable to political corruption: i) financing of political parties; ii) lobbying; iii) public procurement; and iv) European funds.*

## 13.1 Introduction: Political corruption and representative democracy

There are several conditions necessary for representative democracy to function, whether on the level of the nation state or that of the European Union. One of these is that the state and political elites that act on behalf of the state are seen as legitimate by citizens. Political legitimacy is crucial to political stability. Only when citizens see the state as legitimate are they willing to accept its decisions and take part in the political process, such as voting in elections.

Academic literature points out that long-term problems with political legitimacy may not only destabilise political systems (Booth and Seligson, 2009), but also predict violent forms of discontent such as revolution or civil war (Dalton, 2004). However, the effects of a legitimacy crisis may vary in less developed states, newly democratised countries and developed, capitalist democracies. A possible explanation is that developed democracies can accumulate legitimacy and create a so-called reservoir of support (Easton 1965, 1975; Lipset, 1961).

A well-established indicator of political legitimacy is the degree of trust among citizens. Eurobarometer surveys show that trust in the European Union underwent a substantial decrease during the global economic crisis.<sup>1</sup> This is possibly because citizens blamed the EU for not being able to protect its members from the economic consequences of the crisis. Despite a moderate increase in trust towards the EU in recent years, the overall figures are still below the pre-crisis level.

The picture becomes even murkier when looking at national political parties. Although there is no sharp decline at any specific point in time, the overall level of trust is very low. Eurobarometer shows that the EU citizens' trust in national political parties has been consistently below 20% since 2001 (except in Spring 2006 when it was over 22%). Low trust in national political parties may be behind the declining support for mainstream political parties and the emergence of various types of extreme, anti-establishment and anti-system political parties in a majority of member states.

Academic literature indicates a connection between corruption (both experience and perception) and loss of trust (Anderson and Tverdova, 2003; Seligson, 2002; Chang and Chu, 2006; and others). The main argument is that people are supportive of the political system so long as they perceive they have an opportunity to influence decision-making processes, i.e. the decisions of elected officials.

*Corruption violates the political equality assumption by providing a privileged access to a small group of people.*

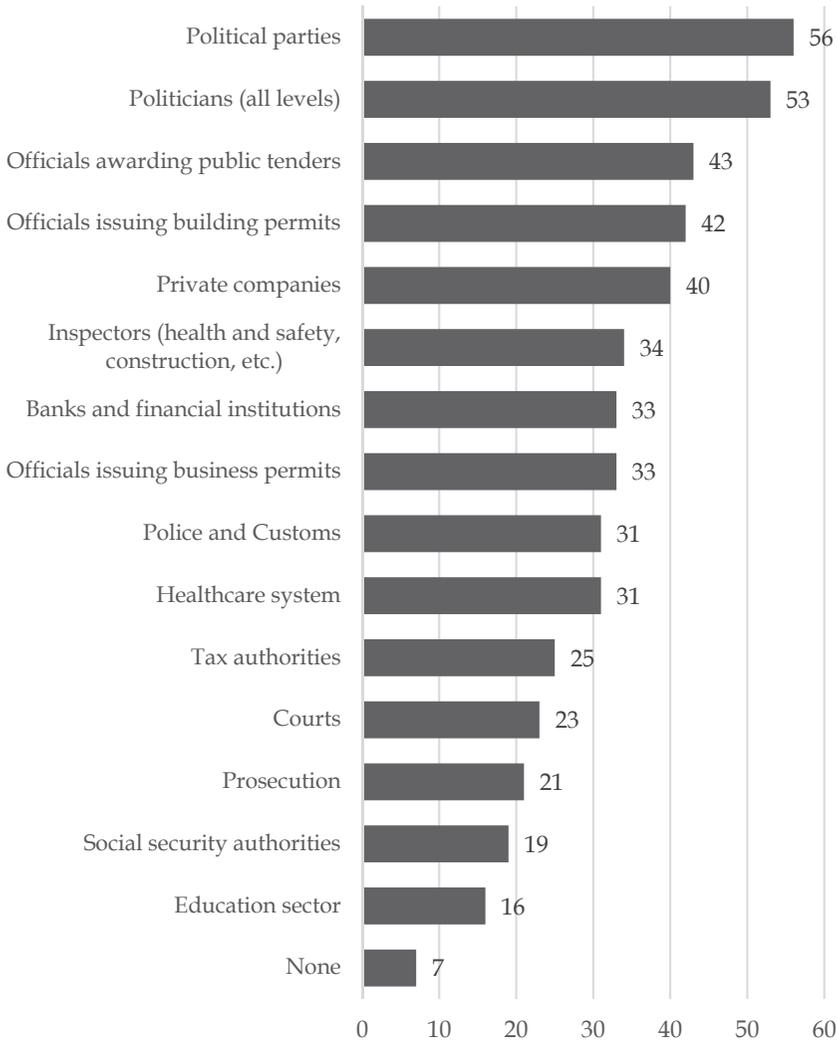
However, corruption breaks the link between citizens' power to influence the political elites and collective decision-making on the one hand, and voting on the other hand. In a democracy, the control of the people over decision-making, as well

as political equality among the people is crucial. Corruption violates the political equality assumption by excluding large masses of people, while providing a privileged access to a small group of people to the decision-making process. Corruption "shrinks the domain of democracy [and] undermines democratic capacities of association within civil society by generalising suspicion and eroding trust and reciprocity" (Warren, 2004: 329).

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<sup>1</sup> The level of trust in the EU was at 58% in April 2007 and dropped to 34% in November 2011.

*Figure 13.1 Perceptions of corruption among citizens of the European Union, by sectors*



Source: Eurobarometer 470.

Official statistics from Eurostat confirm this trend. Political corruption is, by far, the most perceived form of corruption in the EU. According to the 2017 Eurobarometer, more than half of EU-28 citizens mentioned political parties or politicians (at national,

regional or local level) as the areas of public life where the giving and taking of bribes is widespread – and only these two spheres scored more than 50%. Officials awarding public tenders were perceived as the third most corrupted actors, with 43% (see Figure 13.1 for details). There are only two countries where this form of political corruption is not in the top three: Bulgaria and the Netherlands.

*Political corruption is, by far, the most perceived form of corruption in the EU.*

The remainder of this chapter looks at specific areas of political life that are the most vulnerable to corruption. These are party financing, lobbying, public procurements and abuse of European funds, particularly in central European countries. We will briefly explain why the selected area of public life is problematic, and propose measures that could contribute to greater transparency and/or accountability.

## 13.2 Political parties financing

Political parties need financial resources to operate, just like any other organisation, whether during an election campaign, or daily operation throughout the electoral cycle. Although there seems to be no consensus in the academic literature on the most appropriate sources of political party financing, there seems to be one regarding the increasing demands of political parties (Nassmacher, 2009; Smirnova, 2018).

The problem with party financing is twofold. First, unequal access to financial resources may affect the fairness of political competition. Second, the lack of transparency may create space for corrupt behaviour. If a party accepts donations from domestic or international actors that are not openly admitted to public, there is a very limited opportunity for civil society (including media) to monitor their effects on the decision-making of the political party and its motivations for specific decisions, particularly when in office. Therefore, three broad measures are proposed.

### ***Continuous online publication of financial transactions in accessible form***

This measure is aimed at increasing the transparency of party financing. Reporting all relevant income and expenses would allow voters and civil society to know exactly how the party is financed and how it spends its financial resources. This is important for effective monitoring of political parties so as to check that all the legal limits to spending are respected.

*Reporting should be timely and in a readable format so journalists, researchers and citizens in general can understand the flow of financial resources.*

In order for this measure to be effective, the reporting should be timely and in a readable format so journalists, researchers and citizens in general can understand the flow of financial resources that a political party accepts and uses. Untimely and difficult to access information should be considered as an avoidance of transparent reporting.

### ***Allow a truly independent body to audit the financing***

According to OECD (2016) only about half of the countries under study allow external, independent authorities to oversee financing of political parties. In many countries, oversight is in the hands of parliamentary commissions, which raises the question of independent control. A few countries may serve as an example of how to set up an independent authority; however, several key attributes are recommended by Casal Bertoa and Teruel (2019). Members of the oversight body should be appointed independently from political parties, and it should benefit from an independent budget with sufficient resources. The oversight body staff should be specialised and proficient in the relevant fields, and not be selected in a more or less random way (for instance for being members of a parliamentary committee).

### ***Regulate third party financing***

Once oversight of the internal political party financing is sufficiently independent and transparent, the state should also regulate third party financial involvement in political campaigns. In many European countries, this is a common way of circumventing

otherwise strict campaign rules. Whether they are a non-governmental organisation affiliated with the party, a private company or a physical person acting as a donor, the rules for their involvement should contribute to transparent financing. The aim is to eliminate any suspicion that would further feed distrust towards political parties based on the possibilities for corruption that a lack of transparency can generate.

### *Sanctions*

According to EuroPAM (2017) and IDEA (2014) the most common sanction for violating party financing rules is financial, with the EU-wide average being around €20,000. Most member states also allow the suspension of public funding for a political party under certain circumstances (one month in Belgium, or up to 12 months in France, Germany or Greece). We argue that these sanctions are rather low to work as an effective deterrent. On the one hand, financial sanctions should be higher so as to represent a real risk. On the other hand, forfeiture of the party's property or even criminal prosecution of the persons responsible could be an appropriate response, as is common in tax fraud cases.

## **13.3 Lobbying**

One way of looking at the functioning of a political system is to consider it as an equilibrium between inputs and outputs (demands and policies). Lobbying is one of the approaches for transforming the preferences of the private sector into specific political demands.

EU lobbying *per se* is usually a legal endeavour undertaken by professional lobbyists with the objective of influencing policy formulation and the decision-making processes of the European institutions and it is even regulated at some levels as, for example, the European parliament or European Commission. Various lobbying actions are not harmful to democracy or the public interest and advocate for, for instance, ecological issues. On the other hand, corporations, in particular, have a disproportionately larger amount of resources to ensure political influence. They are able to enjoy more frequent meetings with politicians, commission more research supporting their interests or run complex lobby campaigns across several member states.

The EU's reputation has been harmed by portraying the EU institutions as working for the interests of elites, including financial and corporate elites rather than the public interest. Populists and Eurosceptic forces seek to exploit this, while overlooking the fact that member states play an important role in all key decision-making processes in the EU. Unlike the European parliament or

*The EU's reputation has been harmed by portraying the EU institutions as working for the interests of elites rather than the public interest.*

Commission, the Council of the European Union is not hampered by any restrictions regarding relations with interest representatives. To obtain a permanent access pass to the European Parliament buildings or to lobby the European Commissioners, a lobbyist has to be a member of the EU transparency register. The pass permits them to move freely around the buildings and contact any politician or other staff member. On the other hand, the register is publicly available and provides data not only on registered organisations/individuals, but also on lobbying expenses. In this way, the influence is under public scrutiny. In November 2018, there were 11,912 organisations on the register, of which 7,246 people are accredited to the Parliament.<sup>2</sup> At the Commission level, over 24,000 meetings of EC officials with lobbyists were taken over the last 5 years.<sup>3</sup> As there is no register for the Council, we can only assume that being regularly the co-legislator with the Parliament under the EU Treaties, it attracts a similar attention from lobbyists as other two EU institutions.

Not only the Council but also many member states fail to regulate lobbying: whether at national (e.g. ministerial) or EU level (COREPER), they provide no data on lobbying of their permanent representations. If operating in a regulatory-free environment, corporate influence could well extend into member states positions on EU decision-making and endanger both democracy as well as generate wider public concern, since other actors (watchdogs) would not have the opportunity to uncover the impact of private interests.

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<sup>2</sup> <https://www.europarl.europa.eu/news/en/faq/25/accredited-lobbyists>

<sup>3</sup> <https://www.integritywatch.eu/>

*Table 13.1 Rules of the game for interest representatives*

Country	Regulation on lobbying	Register of lobbyists	Code of conduct for lobbyists
Austria	Legislation	Mandatory	Legislation
Croatia	Not regulated	Voluntary	Self-regulation by lobbyists' organisations (LO)
Czech Republic	Not regulated	Not regulated	Self-regulation by LO
Finland	Not regulated	Not regulated	Self-regulation by LO
France	Legislation	Mandatory	Legislation
Germany	Soft regulation	Voluntary	Not regulated
Ireland	Legislation	Mandatory	Legislation
Italy	Not regulated	Voluntary	Self-regulation by LO
Latvia	Not regulated	Not regulated	Self-regulation by LO
Lithuania	Legislation	Mandatory	Legislation
Netherlands	Soft regulation	Mandatory	Not regulated
Poland	Legislation	Mandatory	Self-regulation by LO
Romania	Not regulated	Voluntary	Self-regulation by LO
Slovenia	Legislation	Mandatory	Legislation
Spain	Not regulated	Not regulated	Self-regulation by LO
Great Britain	Legislation	Mandatory	Not regulated

*Source:* Grosek and Claros, 2016.

There are differences in the way EU member states approach lobbying. Different levels of regulation and registration as well as guidance for interest representatives vary across the EU as Table 13.1 indicates. Only 25% of EU member states regulates the representation of interests through specific legislation on lobbying activities and another 7% (2 countries) uses soft regulation that requires lobbyist registration in the parliamentary rules of procedures. Member states such as Belgium, Bulgaria, Cyprus, Denmark, Estonia, Greece, Hungary, Luxemburg, Malta, Portugal, Slovakia and Sweden do not have any direct provisions for lobbying. Some of them may have internal ethics codes at various ministries; others refer to different provisions as principles of neutrality and impartiality of public officers, but not lobbying regulations in particular.

### *Transparency and accountability on the 'Brussels route'*

Based on the Green Paper of 3 May 2006 on the "European Transparency Initiative", the European Parliament and the European Commission agreed on the establishment of a transparency register of interest representatives and a Code of Conduct. The registration is not mandatory; however, it is a precondition to accreditation and physical access to the buildings of the above-mentioned institutions. The information required for registration helps to increase transparency of the EU lobbying system by enabling public inspection of the lobbyists and the lobbying process itself. The transparency register should be improved and expanded to include the Council of the European Union. The ability of the public to hold EU officials accountable would then cover all EU institutions key to the decision-making process and the 'Brussels route' (Greenwood, 2011) and actions taken by lobbyists at European level in Brussels would be even more transparency-friendly.

*The transparency register should be improved and expanded to include the Council.*

### *Transparency and accountability on the 'national route'*

There is also a problem with the way in which member states participate in EU affairs with regard to interest representation. While there was a serious attempt to increase the transparency of Council of Ministers' meetings (sometimes livestreamed), the role of member state officials in the Council's topic-based working parties is still covered by a veil of secrecy. The staff of permanent representations participate in Council working parties or other meetings where detailed work on new policies and laws is carried out. Lobbyists are able to approach them with the aim of blocking new legislation or delaying or substantially weakening proposed new rules. Therefore, some amount of transparency and public availability of information on lobbyists approaching permanent representation staff would be needed. According to *Corporate Europe Observatory* (2019), only 4 out of 19 permanent representations (Finland, Ireland, the Netherlands, Romania) offer some transparency regarding their meetings with lobbyists.

Complementary efforts should be made at member state level with the adoption of national rules to reduce the risk of corporate

influence capturing EU decision-making. Comprehensive frameworks for the legal regulation of lobbying activities in the context of public decision-making should be adopted. Such legal frameworks should be in accordance with the principle that recognises the legitimacy of lobbying but also reduce the risk of these activities taking place ‘behind closed doors’.

### **13.4 Public procurement**

Public procurement is the process by which national, regional and local public authorities purchase products, services and public works. Private undertakings are also subject to public procurement rules whenever they carry out procurements that are predominantly publically funded or when such requirements are included in the grant agreement. (European Court of Auditors, 2015).

Within the EU, public procurement is regulated by the EU public procurement directives, establishing common rules and procedures with which public authorities contracting works or services must conform in high-value procurements. The EU has established such rules to ensure the efficient use of public funds within the single market. They are essential for maintaining fair competition and awarding contracts to the best bidders. The rules are intended to allow companies from across the single market the opportunity to compete for public contracts. These EU-wide rules apply regardless of whether the funds are purely national or whether EU funds are involved. Public procurement regulation is directly relevant to the fundamental principles of the internal market and at the same time, it is a policy instrument in the hands of member states. (Bovis, 2012)

Significant problems arise when, due to the breaches of the rules, competition is impeded or contracts are awarded to those who were not the best bidders. According to the OECD (2005), “public procurement is the government activity most vulnerable to waste, fraud and corruption due to its complexity, the size of the financial flows it generates and the close interaction between the public and the private sectors”. Such undertakings go against well-embedded principles such as accountability for public expenditure, avoidance of corruption and/or political manipulation. Thus, they have a

significant impact on public trust towards national governments, but also, in the end, towards the EU.

### *Improve first-level checks*

If public procurement is conducted within EU-funded projects, the EU should encourage greater responsibility at the national level. The errors occurring at the beneficiary level should be detected and corrected by member state authorities before they submit claims for payment to the Commission. The audits targeted at public procurement processes (e.g. OLAF, 2017) noted that member states' first-level checks are still inadequate. The Commission should impose financial corrections wherever it finds that member states' checks are insufficiently effective and, where necessary, pursue infringement procedures for breaches of public procurement directives.

*If public procurement is conducted within EU-funded projects, the EU should encourage greater responsibility at the national level.*

### *Fight against corruption*

Corruption in the procurement process can take many forms, including the allocation of government contracts to friends at the expense of a competitive process. Public officials or politicians might use their insider knowledge of procurement plans, or their influence over procurement decision-making to their private benefit. Another significant source of corruption is the 'revolving door' phenomenon, which consists of movements of personnel from jobs at various levels of an administration to jobs in the private sector, often to companies involved in public procurement. Civil servants or politicians can take advantage of their insider information or shape policy contracts while they are in office in order to benefit from it later when they work for a private contractor. There are a number of practical steps that authorities can take to reduce their exposure to such corruption, such as, for example, supporting the transparency of public procurement processes, moving to e-procurement systems or introducing codes of conduct that would prohibit, at least for certain time period, the possibility to move from a procurement administrator post to a position at a beneficiary.

## *Reporting*

A new package of legislation on public procurement was put in place in 2014, which had to be implemented by member states by April 2016. This also introduced new reporting requirements for the Commission and member states. Some member states had not yet fulfilled these conditions. For example, Austria along with the UK, Lichtenstein and Iceland did not submit a national report on public procurement in 2018. Publicly available reports contribute to strengthening the transparency and accountability of state administrations and therefore may lead to the punishment of rogue operators and greater trust in the political system.

## *E-procurement*

EU institutions and member states should take greater advantage of the opportunities provided by e-procurement and data-mining tools. They should enhance transparency by publishing data and procurement details in order to encourage public scrutiny and involve civil society. E-procurement systems have been demonstrated as having a significant effect on reducing corruption risks in procurement (Ionescu, 2013; Neupane et al. 2014).

## **13.5 European Funds**

There are many funding programmes that support EU policies.<sup>4</sup> However, when referring to EU funds, we usually mean EU structural and investment funds (ERDF, ESF and CF). Especially in central and eastern Europe, EU funds were used as a clear case of how the country could benefit from EU membership. For example, one of the main topics of the information campaign led by the Government of the Slovak Republic on its accession to the EU (1999-2004) was the use of pre-accession assistance from EU funds (Phare, ISPA, Sapard)

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<sup>4</sup> For more details see, for example: [https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes\\_en](https://ec.europa.eu/info/funding-tenders/funding-opportunities/funding-programmes/overview-funding-programmes_en)

and the possibility of co-financing projects following accession.<sup>5</sup> However, over the years, EU funds, once perceived as one of the most valuable benefits of EU membership, have nourished Eurosceptic tendencies in many, mostly eastern European countries. They became to be perceived<sup>6</sup> as the epitome of corruption and abuse of public resources. And the perception of this dysfunction is attached not only to management of the funds at the national level, but also to the EU itself.

*EU funds, once perceived as one of the most valuable benefits of EU membership, have nourished Eurosceptic tendencies in many, mostly eastern European countries.*

### ***Push for more accountability at national level***

The EU funds' reputation as tools supporting corrupted behaviour and misconduct of public finances is closely connected with the performance of the national elites and administration. Various affairs of companies connected with politicians and political parties (as donors) being most successful in public procurement in projects funded by the EU funds are well known in countries benefiting from EU funds. Recently, even direct profiting from the EU-funded projects by acting politicians came to the attention of the media and public (e.g. Čapí hnízdo farm of Czech prime minister Andrej Babiš). A push for better control of conflicts of interest is needed.

### ***Improve the EU control mechanism***

Even if the actors and motivations of corrupt behaviour arise within the national arena, the EU can still be blamed for failing to control its own resources. First, the EU should request that national states report a detailed list of the EU-funded projects, including the beneficiaries and subsequently publish the list. Second, the vague regulatory framework within which OLAF is supposed to operate, and with its

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<sup>5</sup> For more details, see the Report on the Implementation of the Conception of the Communication Strategy of the Government of the Slovak Republic for the Preparation of Population for Membership of the SR in the EU.

<sup>6</sup> Such perception has some merits. According to the European Court of Auditors, errors relating to public procurement were detected in around 40% of all projects co-financed from the EU budget through the ERDF, CF and ES during 2009-2013 period (European Court of Auditors, 2015, 19).

competencies limited to carrying out administrative investigations, has left this main EU body for combatting fraud and corruption rather toothless while investigating member states (Bratu, 2017; Xanthaki, 2010). A new European Public Prosecutor's Office (EPPO) with competencies to carry out judicial investigations, prosecute and bring to judgment would improve EU control. An important task would be to include abuse of EU funds on the EPPO's agenda. Nevertheless, several member states decided not to participate in the EPPO initiative.

*A new European Public Prosecutor's Office with competencies to carry out judicial investigations would improve EU control.*

### ***Revise the EU enforcement mechanism***

Another problem connected with the EU funds is the misconduct of projects. Some mistakes performed during project assessments as well as during the implementation phase could cause the country concerned to refund money to Brussels. Consequently, the national government has to refinance such projects from its own budget. From the perspective of EU citizens in such a country, the damage is twofold as it is not only the loss of the EU money but also their taxpayer money. However, the government and administration responsible for such malfunctioning of EU funds only suffer to a limited extent. A more rigorous approach towards national governments responsible for EU funds implementation should be considered. The EU should execute net corrections if expenditure which has been declared as legal and regular by member state authorities is subsequently found to be flawed.

## **Conclusion**

Despite the fact that the processes and problems mentioned in this chapter are not the sole generators of political legitimacy, they do significantly contribute to it. In democracy, the control of the people over decision-making, as well as political equality among the people is crucial. However, the current institutional framework favours private, economically strong interests at the expense of the general public, be it participation in decision-making (where economic interests are better positioned for lobbying), public investments (EU

funds), or political representation (where the financing of political parties presents an advantage for strong business interests). These all contribute to the citizens' perception that the political system is not there for them, and thus leads to the erosion of political legitimacy. The corrosion of the legitimacy of the political system is equally valid at both national and European levels. The suggested measures should contribute to preventing this deterioration.

## Recommendations

European Union:

- Improve lobbying register to show more details, and include all decision-making bodies
- Enforce greater responsibility in public procurement in EU-funded projects
- Provide OLAF as well as EPPO with ample human and financial resources to investigate and prosecute abuse of EU funding
- Ensure data on EU-funded projects (structural, agricultural, social, cohesion funds) are published in readable format to allow public scrutiny

Member states:

- Enforce timely reporting of political campaign financing in readable format to allow public scrutiny
- Allow external, independent authorities to oversee financing of political parties
- Depoliticise police and judicial processes in order to foster independence
- Foster protection of media reporting about political corruption

## References

- Anderson, C.J. and Y.V. Tverdova (2003), "Corruption, political allegiances, and attitudes toward government in contemporary democracies", *American Journal of Political Science*, Vol. 47, No. 1, 91-109.
- Booth, J.A. and M.A. Seligson (2009), *The legitimacy puzzle in Latin America: Political support and democracy in eight nations*, Cambridge: Cambridge University Press.
- Bovis, C.H. (2012), *EU Public Procurement Law*, Cheltenham: Edward Elgar Publishing.
- Bratu, R. (2017), *Corruption, informality and entrepreneurship in Romania*, London: Palgrave MacMillan.
- Casal B., F. and J. Rodriguez Teruel (2019), "Political Party Funding Regulation in Europe, East and West: A Comparative Analysis", Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, 28 January (<https://www.osce.org/odihr/410201>).
- Corporate Europe Observatory (2019), *Captured states. When EU governments are a channel for corporate interests*, Brussels: CEO, February (<https://corporateeurope.org/en/2019/02/captured-states>).
- Chang, E. and Y. Chu (2006), "Corruption and trust: exceptionalism in Asian democracies?", *The Journal of Politics*, Vol. 68, No. 2, 259-271.
- Dalton, R.J. (2004), *Democratic Challenges, Democratic Choices: The Erosion of Political Support in Advanced Industrial Democracies*, Oxford: Oxford University Press.
- Dix, S., K. Hussmann, and G. Walton (2012), "Risks of corruption to state legitimacy and stability in fragile situations", *Norway, Anti-Corruption Resource Centre*, (<http://hdl.handle.net/11250/2474815>).
- Easton, D. (1975), "A Re-Assessment of the Concept of Political Support", *British Journal of Political Science* 5, 435-57.
- Easton, D. (1965), *A Systems Analysis of Political Life*, New York: Wiley.
- European Court of Auditors (2015), *Efforts to address problems with public procurement in EU cohesion expenditure should be intensified*, Special report No. 10.
- Greenwood, J. (2011), *Interest Representation in the European Union*, New York: Palgrave Macmillan.

- Grosek, K. and E. Claros (2016), *Regulation of lobbying across the EU*, December ([http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS\\_ATA%282016%29595830\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA%282016%29595830_EN.pdf)).
- Ionescu, L. (2013), "The impact that e-government can have on reducing corruption and enhancing transparency", *Economics, Management and Financial Markets*, Vol. 8, No. 2, 210-215.
- Lipset, S.M. (1961), *Political Man: The Social Bases of Politics*, Expanded ed. Baltimore, Md.: Johns Hopkins University Press.
- Nassmacher, K-H. (2009), *The Funding of Party Competition: Political Finance in 25 Democracies*, Baden-Baden: Nomos.
- Neupane, A., J. Soar and K. Vaidya (2014), "An Empirical Evaluation of The Potential of Public E-Procurement to Reduce Corruption", *Australasian Journal of Information Systems*, Vol. 18, No. 2.
- OECD (2005), *Fighting Corruption and Promoting Integrity in Public Procurement*, 7 December.
- OLAF (2017), *Fraud in Public Procurement, A collection of Red Flags and Best Practices*, 20 December.
- Smirnova, V. (2018), "Why make political finance transparent? Explaining the Group of States against Corruption (GRECO)'s success in reforming national political finance regulation", *European Political Science Review* Vol. 10, No. 4, 565-588.
- Xanthaki, H. (2010), "What is EU fraud? And can OLAF really combat it?", *Journal of Financial Crime*, Vol. 17 No. 1, 133-151.
- Warren, M.E. (2004), "What Does Corruption Mean in a Democracy?", *American Journal of Political Science* Vol. 48, No. 2, 328 - 343.



## **14. THE RULE OF LAW: BASTION OF DEMOCRACY, OR BARRIER TO IT? AGATA GOSTYŃSKA-JAKUBOWSKA AND IAN BOND<sup>1</sup>**

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*Respect for the rule of law is one of the founding values of the European Union, but the EU has been unsuccessful in addressing democratic backsliding in its own member states. This is despite the fact that lack of respect for the rule of law threatens the mutual trust that underpins some of the EU's most important policy areas, such as the single market and justice and home affairs. The new EU institutional cycle is an opportunity to intensify efforts to ensure that all member states comply with the rule of law, and to narrow the divisions that have emerged between member states as a result of disagreements over the rule of law. Progress in restoring the rule of law, however, will require greater collaboration between the European Commission and the Council of the EU. Among other steps to be taken, the EU institutions should carry out an objective annual review of the state of democracy in all member states; and they should invest in activities to raise public awareness of the negative implications of violations of the rule of law for their everyday life, as well as for the European project. The institutions should try to establish a stronger legal link between respect for fundamental values and sound EU financial management. The Commission should be quicker to refer problematic national laws to the ECJ if they seem to threaten the rule of law.*

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## 14.1 Introduction: What is the rule of law and why does it matter?

In 427 BC, the Greek city of Mytilene surrendered to Athens after an unsuccessful revolt. In democratic Athens, the citizens were angry, and voted to send a ship to the commanders in Mytilene, ordering them to kill the male population and enslave the women and children (Thucydides, 5<sup>th</sup> century BC). A day later, they repented, and sent a second ship, with orders to spare everyone except the ring-leaders of the revolt. Fortunately, the second ship overtook the first.

In most modern democratic states, the rule of law, overseen by independent courts, has replaced the second vote and the second ship. According to the Council of Europe's Commission for Democracy through Law (the Venice Commission), the rule of law has six elements:

- legality, including a transparent, accountable and democratic process for enacting law;
- legal certainty (people know what the law is and how the courts interpret it, and neither will change unpredictably);
- prohibition of arbitrariness (the exercise of power cannot be unlimited);
- access to justice before independent and impartial courts, including judicial review of administrative acts;
- respect for human rights;
- non-discrimination and equality before the law.

The rule of law ensures that governments administer laws accurately and impartially, but it also prevents the majority, or their elected representatives, from imposing laws that violate natural justice (in other words, that are inherently biased or procedurally unfair to one party in a case), including those that affect minority groups disproportionately.

Unless the executive and the legislature respect the independence of the courts and comply with their rulings, democracy is at risk: the government can muzzle critical voices in the media with repressive libel laws; civil society organisations and whistle-blowers cannot hold governments or parliaments to account when they uncover corruption; voters cannot get redress if elections are rigged;

and minorities cannot assert their rights in the face of discriminatory laws or government actions.

Respect for the rule of law is also one of the founding values of the European Union, set out in Article 2 of the Treaty on European Union (TEU, 2012), and one of the essential requirements for countries seeking to join the EU. It ensures the consistent application and execution of EU law across the member states, and contributes to the mutual trust that underpins European cooperation.

But in recent years, the rule of law in the EU has been challenged. Some governments have argued that the 'will of the people' is supreme, regardless of domestic or international legal constraints, and the views of those who voted for the government have been interpreted as the will of the people, even if they are not an absolute majority of the population. In some cases, when the courts attempt to defend either principles such as the rights of members of minorities, or external obligations such as EU law, they and those who defend them are accused of obstructing the will of the people. In other cases, public security is used to justify infringing the rights of citizens. Media and civil society organisations which investigate possible violations of the rule of law are under financial and/or political pressure in a number of member states. The masterminds behind the high-profile murders of investigative journalists in Malta in 2017 and Slovakia in 2018 have yet to be brought to justice.

*Some governments have argued that the 'will of the people' is supreme, regardless of domestic or international legal constraints.*

Governments criticised by the EU institutions or by other member states for failing to respect the rule of law often complain that the critics are interfering in their internal affairs. But key Union policies (the single market, the area of freedom, security and justice, and the single currency) rely on all member states implementing and enforcing EU rules to similar standards in similar circumstances. An EU member state that does not respect the rule of law, even if it does not overtly breach EU legislation, undermines that mutual trust and cooperation. It thereby threatens the rights of its own and other EU citizens on its territory. Then the common legal space on which the EU is founded starts to fragment.

Commission President Ursula von der Leyen says that she wants to be a bridge builder. She might therefore be more sensitive than her predecessor, Jean-Claude Juncker, to claims that the EU's mechanisms for addressing alleged breaches of the rule of law stigmatise central European countries. She has asked Commission Vice-President for Values and Transparency, Věra Jourová, a Czech who understands the complexities of central Europe, to supervise the work on rule of law of the Commissioner for Justice, Didier Reynders. The Czech Commissioner's predecessor was Dutchman Frans Timmermans – now the Executive Vice-President with responsibility for the green deal – who was vilified by the Polish and Hungarian governments and media sympathetic to them for interfering in areas outside the Commission's competence.

Jourová promised MEPs that she would be “a resolute defender of the European Union's fundamental values, including the rule of law”, and that she would take “prompt and proportionate action when the rule of law is in danger” (European Parliament 2019a). Reynders told MEPs: “My first core task is to lead the Commission work to uphold the rule of law and to preserve it in each and every Member State” (European Parliament 2019b). The task facing the two Commissioners is daunting.

*Rows over the rule of law have deepened rifts between western and central European member states.*

Rows over the rule of law have deepened rifts between western and central European member states. They have contributed to a perception in western Europe that violations of the rule of law are a ‘central

European problem’. But as this chapter will show, other member states also have their own issues with the rule of law.

## 14.2 The state of the rule of law in the EU

The World Justice Project's annual Rule of law Index highlights a number of trends that should be of concern to EU citizens and institutions. It evaluates the situation in 126 countries and territories, including 20 EU member states, examining how the general public perceive the rule of law (World Justice Project, 2015-2019).

The index shows that the rule of law in four of the 20 member states covered (Bulgaria, France, Hungary and Poland) is worse overall in 2019 than in 2015 (see charts 1-4). Some countries have

suffered big drops in performance in relation to specific indicators: Bulgaria has slipped from 56<sup>th</sup> place (out of 102) for constraints on government powers to 91<sup>st</sup> place (out of 126); Hungary from 66<sup>th</sup> place to 103<sup>rd</sup>. France went from 30<sup>th</sup> place in 2015 to 56<sup>th</sup> place in 2019 in relation to order and security, presumably as a result of a number of terrorist attacks; its ranking for constraints on government power, protection of fundamental rights and the effectiveness of its criminal justice system also slipped, though by fewer than five places in each case.

More broadly, the data shows that government powers in 10 EU member states (including Austria, France, the Netherlands and Poland) were less constrained (by the judiciary, legislature, audit agencies or civil society) in 2019 than 2015; protection of fundamental rights worsened in 15 countries; and the administration of criminal justice (including speed, impartiality, effectiveness in reducing criminal behaviour, and due process including protection of the rights of the accused) deteriorated in 10 member states.

In many cases, the decline was slight and the situation might improve without any need for EU involvement: Austria's score for 'constraints on government power' was 0.85 in 2015 and 0.84 in 2019 – not a statistically significant change. But in some cases the decline was more worrying. In relation to equal treatment and non-discrimination Bulgaria's score fell from 0.67 in 2015 to 0.58 in 2019; France's from 0.69 to 0.63; Greece's from 0.62 to 0.54; Hungary's from 0.61 to 0.44 (putting it on a par with China and Iran); and Slovenia's from 0.79 to 0.68. Countries including Croatia and Portugal saw noticeable deterioration in the performance of their criminal justice systems – from 0.58 to 0.51 and from 0.67 to 0.60 respectively.

Other surveys show a similar picture: the World Bank's Worldwide Governance Indicators (WGI) assessed that the rule of law deteriorated in 16 EU member states between 2009 and 2018 (World Bank, 1996-2018).

Adding to the evidence that declining respect for the rule of law is not only a central European problem, the Economist Intelligence Unit's (EIU) Democracy Index judged that 15 member

*The World Bank's  
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member states between  
2009 and 2018.*

states in western Europe were less democratic in 2018 than they were in 2008 (of those, only Finland and France managed to get back to the 2008 level in 2019, while Belgium, Italy and Malta deteriorated further). Italy, for example, suffers both from institutional problems, such as a shortage of judges leading to long delays in trials, and political issues. In its report on the situation in 2018, the EIU highlighted growing support in Italy for ‘strongmen’ who bypass political institutions, and noted that then interior minister Matteo Salvini, from the right-wing populist Lega party, had supported the eviction of members of the Roma community from a camp in Rome, even after the European Court of Human Rights had ordered that the action be halted. In France, the authorities have responded to terrorist attacks in recent years with laws permitting extensive surveillance, not only of suspects but of all communications in specified areas, with little judicial oversight. The EIU categorised six EU member states in western Europe (Belgium, Cyprus, France, Greece, Italy and Portugal) as ‘flawed’ rather than ‘full’ democracies in 2018; France and Portugal ‘graduated’ to full democracy status in 2019, but Malta was downgraded to ‘flawed’ (Economist Intelligence Unit, 2019; Economist Intelligence Unit 2020). Across the EU as a whole, the EIU currently identifies 16 member states as flawed democracies.<sup>2</sup>

In the 2019 ‘World Press Freedom Index’ produced by the international NGO Reporters Without Borders, media freedom was judged ‘good’ in only 9 EU member states, ‘fairly good’ in 12, ‘problematic’ in six (in increasing order of concern: Romania, Poland, Croatia, Greece, Malta and Hungary) and ‘bad’ in Bulgaria. Croatian law does little, for instance, to prevent political interference in the appointment and dismissal of editors-in-chief, while Maltese political parties own and control media enterprises (Nenadic, 2018; Bilić and others, 2018).

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<sup>2</sup> The 16 are Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, , Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, , Romania, Slovakia and Slovenia.

In recent years, the European Commission has focused on judicial independence issues in Bulgaria, Romania, Hungary and Poland, but has paid less attention to rule of law problems elsewhere. In the case of Bulgaria, the Commission set up the Cooperation and Verification Mechanism (CVM) – a transitional measure introduced when Bulgaria and Romania joined the EU in 2007 – to monitor progress on issues such as the effectiveness of the judiciary, and tackling corruption and organised crime. But the most recent (and presumably final) CVM report says: “The Commission considers that the progress made by Bulgaria under the CVM is sufficient to meet Bulgaria’s commitments made at the time of its accession to the EU” (European Commission, 2019). If the Council of the EU and the European Parliament agree, the rule of law in Bulgaria will no longer be under the Commission’s microscope. But the Commission’s conclusions are in sharp contrast with the evidence from other sources: on the WGI’s scale, which ranges from -2.5 (very bad) to 2.5 (very good), Bulgaria’s latest rule of law score, for 2018, was -0.03 – the only negative score in the EU, and barely changed from the -0.05 it scored in 2007. By comparison, Finland was the EU’s best performer in 2018, with a score of 2.05.

*The European Commission has focused on judicial independence issues in Bulgaria, Romania, Hungary and Poland, but has paid less attention to rule of law problems elsewhere.*

In summary, commentators in western Europe are wrong to equate the recent increase in rule of law problems in the EU only with rising authoritarianism in Hungary and Poland. The governments of those two countries have certainly undermined traditional democratic checks and balances, but independent assessments show that they are not the only offenders in the EU, and that the rule of law faces challenges throughout Europe.

### **14.3 The EU’s current instruments**

In theory, the EU has a wide range of tools to monitor respect for the rule of law in its member states and respond to any backsliding.

#### ***Monitoring***

The Commission monitors public administration in all member states as part of the European Semester, which provides a framework for

coordination of national economic policies; meanwhile, the Commission's EU Justice Scoreboard compares member states' judicial systems, aiming to encourage a business- and investment-friendly environment. In addition, Bulgaria and Romania have both been subject to CVMs since their EU accession, to encourage their efforts to fight corruption and improve their judicial systems. The EU can also draw on reviews conducted by other organisations such as the Council of Europe or the United Nations. Efficient monitoring should in principle enable the Commission to nip any rule of law problems in the bud, before they reach the level of a "serious and persistent breach" of EU values, and put European cooperation at risk (TEU Article 7, 2012).

### *Early intervention and problem solving*

When the EU concludes that a member state is undermining the rule of law, it has a number of tools to respond. The Commission can investigate threats to the rule of law and recommend policy changes, using the so-called rule of law framework (European Commission, 2014). If dialogue with a recalcitrant member state does not resolve the issue, the Commission can recommend that the Council determine that "there is a clear risk of a serious breach of the EU values referred to in Article 2 of the Treaty on European Union (TEU)" and activate Article 7 TEU, potentially leading to a member state's voting rights being suspended.

The Commission can also open an infringement procedure against a member state when it believes that illiberal reforms violate EU law. But populist governments have often undermined EU values without breaking EU law as such. The Polish government, for example, has attempted to use this flexibility to limit the independence of the country's Supreme Court (among other things), without violating any specific EU directive or regulation in the process (Gostyńska-Jakubowska, 2018a). The Polish government has claimed that it is up to member states rather than the EU to decide how their judiciary should be organised.

The Court of Justice of the European Union (ECJ) has countered, however, by declaring itself competent to assess the judicial independence of national courts that apply and interpret EU law ('EU courts') (ECJ, 2018). And in the case against the Polish

government, the court first suspended the controversial reforms while it decided on the matter, before eventually ruling in 2019 that the reform of the Supreme Court violated EU law, in particular the principles of judicial independence and the irremovability of judges (ECJ, 2019). Thanks to such expansive judgements from the ECJ, the Commission might become more confident that the court will be its ally in tackling breaches of EU values and fundamental principles, even if no specific EU legislation has been breached.

Despite this advance, however, the EU's toolbox for assessing respect for the rule of law and addressing any backsliding has many flaws. The EU's monitoring mechanisms do not give a full picture of the state of democracy across the Union. The justice scoreboard relies, for example, on data submitted voluntarily by member states. In 2014, the UK refused to submit any data, seeing it as an example of Commission overreach

*The EU's toolbox for assessing respect for the rule of law and addressing any backsliding has many flaws.*

(Euobserver, 2014). The EU's own surveys are also often too narrow in scope. The rule of law is in danger not only when a government directly undermines judicial independence, but also when it makes it impossible for media and civil society organisations to scrutinise its actions – issues that EU surveys have so far neglected (Brogi and others, 2018). The EU co-funds the Media Pluralism Monitor, a tool designed by the Centre for Media Pluralism and Media Freedom (CMPF) to assess the risks to media pluralism in a given country, but has yet to make much use of it. Von der Leyen has asked Jourová to use the Monitor to identify threats to media plurality in the EU.

*The EU's inconsistent response to alleged rule of law violations in Hungary and Poland has also opened it up to accusations of bias.*

The EU's inconsistent response to alleged rule of law violations in Hungary and Poland has also opened it up to accusations of bias. Although the Hungarian government started undermining the country's democratic checks and balances to a significant extent in 2010, the Commission refused for several years to invoke Article 7. Instead, it launched infringement procedures against specific Hungarian government actions, relying on the ECJ to keep Prime Minister Viktor Orbán in check. It took until September 2018 before the European Parliament (rather than the Commission) finally

launched the Article 7 procedure against Hungary. By contrast, when the Polish government started following Hungary's playbook just months after it took power in 2015, the Commission was quick to take action under the rule of law framework. When negotiations between the Polish government and the Commission eventually broke down two years later, the latter recommended in December 2017 that the Council trigger Article 7. The Commission's different approaches to similar violations in the two countries has made it easier for PiS, Poland's governing party, to claim that it is being singled out.

One significant difference between the Polish and Hungarian governing parties (which may explain the difference in how they have been treated) is that PiS does not belong to any of the mainstream European political families. At the time of writing Orbán's Fidesz party still belonged to the European People's Party (EPP), made up primarily of Christian Democrat parties including German Chancellor Angela Merkel's CDU. PiS, by contrast, is a member of the European Conservatives and Reformists with a number of other parties, most of them with limited political influence. Although the EPP has formally suspended Fidesz's membership, it has shied away from expelling Hungarian MEPs from its ranks or excluding them from high-profile positions in the European Parliament. Tamás Deutsch and Kinga Gál have been elected vice-chairs of the Parliament's budgetary control committee and security and defence sub-committee respectively.

Questions of alleged bias aside, Article 7 TEU has also proved an ineffective way to exert pressure. It is a multi-stage process that relies ultimately on member states' willingness to vote unanimously (minus the state in question) to determine the existence of a serious and persistent breach of EU values, resulting in punishment for one of their own – something EU member states have been reluctant to do. They have struggled even to muster the votes of four-fifths of the member states needed to determine that there is a serious risk of EU values being violated in Poland – the first step towards punishing an uncooperative member state.

Another problem with the EU's response to democratic backsliding is that so far it has focused on deploying punitive measures – either via the Article 7 mechanism, infringement procedures or financial pressure. In May 2018, the Commission put forward a proposal to enable it reduce or suspend EU funding if a

member state did not respect the rule of law. But there are concerns among independent experts (backed by the Council Legal Service) that the draft regulation fails to make a solid connection between the objective of protecting the EU's financial interests and deficiencies in the rule of law in a member state (Bachmaier, 2019). There is no evidence so far that the Polish government's judicial reforms have led to mismanagement of EU funds. Despite the politicisation of its judiciary, Poland is in 41<sup>st</sup> place in Transparency International's Corruption Perception Index (CPI), far above Bulgaria (74<sup>th</sup>), Romania and Hungary (joint 70<sup>th</sup>), Croatia (63<sup>rd</sup>) and Greece (60<sup>th</sup>) (Transparency International, 2020).

Even if legal objections to rule of law conditionality can be overcome, the Commission will need to ensure that only those responsible for violations of the rule of law are deprived of funding, and not worthy recipients in deprived regions of the EU. The Commission's proposal stipulates that if EU funds are suspended to a country, the government of that member state would still have a legal obligation to fulfil their contractual obligations to the beneficiaries of financial assistance. The member states should ensure that this provision is maintained in the final text of the regulation.

The lack of a clear link between the independence of the judiciary and sound management of EU funding has allowed central European states to claim that in its efforts to discipline member states that stand up to it the Commission is bending EU law and/or applying double standards. The counter-argument is that if the national courts are under government influence, they may not reach independent judgements on the conduct of any government officials suspected of embezzling EU funds. That would obstruct the work of the EU's anti-fraud office, which relies on national authorities to prosecute cases where it uncovers criminal behaviour.

While the Commission has various sticks to punish those that flout the rule of law, it has yet to develop any carrots to help encourage public support, and to increase understanding of why it cannot turn a blind eye to rule of law violations. Sadly, the EU has not given enough support to civil society organisations (CSOs) that try to increase public awareness of the implications for citizens' rights and for the European project

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of breaching the rule of law. According to Israel Butler of the Civil Liberties Union for Europe, an organisation which promotes civil liberties throughout the EU, current EU programmes do not focus on capacity building or public education, and are not available to local or national organisations that promote EU values (Butler, 2018). But the Commission has long argued that education policy is in the hands of member states, and the EU has only a supporting role in efforts to increase awareness of the EU and its values.

The good news is that the Commission is aware that it has not yet found an effective response to democratic backsliding, and it is willing to listen to the views of outside experts on how to improve. In April 2019, the Commission encouraged various stakeholders to come up with ideas for preventing and responding to breaches of the rule of law, and for promoting EU values. CSOs responded with proposals to make the public more resilient to governments' illiberal actions and to restore society's appreciation of the importance of the rule of law. The Commission promised in July that it would consider organising an annual rule of law dialogue between civil society and EU policymakers (European Commission, 2019b).

The Commission has also pledged to "make full use of funding possibilities for civil society and academia supporting the strengthening of a rule of law culture, in particular among the general public". In May 2018, the Commission put forward a proposal to establish a Rights and Values Programme, an initiative to promote equality, rights and democracy, and to combat violence, with a budget of around €642 million over the next seven years. The European Parliament, however, amended the proposal to make it easier for local and national civil society organisations working on the rule of law to apply for funding. It also increased the overall funding to over €1.6 billion in 2018 prices and allocated over €750 million to a strand dedicated to promoting respect for EU values. The problem is that the European Parliament does not have the final word on the size of this programme. The proposal still needs to be approved by member states, which are generally reluctant to spend more money on promoting democracy than is absolutely necessary. The compromise proposal for the next Multiannual Financial Framework, put forward by the then Finnish presidency, suggests that the higher figure preferred by the Parliament offer will not feature in the final deal.

At his confirmation hearing in the European Parliament, Reynders promised that the Commission would examine the rule of law situation in all member states and draft an annual report. He also pledged that the Commission would widen the scope of its analysis and take issues of media pluralism into account. In its analysis, the Commission wants to draw on the expertise of the other international organisations, the Fundamental Rights Agency and the EU's own monitoring mechanisms. It also wants member states to set up national contact points to facilitate the exchange of information about the rule of law. But despite calls from various civil society organisations for the Commission to delegate the assessment of the situation in member states to experts or a new agency, the Commission wants to control the content of its own annual rule of law report. The risk is that the Commission's analysis is seen as being politically motivated in some member states. Proponents of keeping the review in the Commission's hands will say, however, that since the assessment could form the basis for legal action, the Commission, as the guardian of the treaties, should conduct it; that way it would certainly be admissible evidence at the ECJ. The Commission could also offset such criticism with a public information campaign explaining the factual basis for its assessment.

The Commission itself also hopes that such a report will create a basis for greater cooperation with the Council and the European Parliament on democratic backsliding. The Council has discussed rule of law-related themes such as disinformation or trust in public institutions (the so-called Council rule of law dialogue) since 2014, but it has shied away from debating democratic backsliding at the member state level, or putting forward any country-specific recommendations. As a result, the exercise has been an "unhelpful" waste of the Council's time (Pech and Kochenov, 2019). Finland, which held the Council's rotating presidency in the second half of 2019, was keen to reform the rule of law dialogue in the Council, so that the Council could use the Commission's proposed report in its discussions on the rule of law (Council of the European Union, 2019). Poland and Hungary oppose the Finnish ideas, making them hard to implement. But Germany (which will hold the rotating presidency in the second half of 2020, when the next rule of law dialogue should take place) may, like Finland, be willing to push for a more coordinated approach to declining respect for the rule of law.

## 14.4 Conclusion and recommendations

- The European Commission needs to address east/west tensions which, in the longer term, could undermine the EU's integrity. The Commission should not turn a blind eye to negative developments in central Europe; rather it should treat all member states equally strictly.
- Von der Leyen has made a small step in the right direction by promising an assessment of the rule of law in all member states. It is, however, not entirely clear how the Commission intends to collect data for such an annual report. If it wants a balanced picture, it cannot rely exclusively on data provided by member states' governments. It should make better use of the Fundamental Rights Agency (FRA) in collecting information about the rule of law. There is nothing to stop the EU institutions asking the agency to collect data about the rule of law in individual member states. The FRA draws on the expertise of local contact points that could help it gather useful insights, for instance about judicial independence, and thereby contribute to the Commission's annual rule of law report. The Commission should also seek information from international organisations such as the Council of Europe and from civil society organisations.
- If the Commission's report shows serious democratic deficiencies in a member state, the Commission should offer the government concerned the opportunity to comment on the findings. If the explanation provided is not satisfactory and the prospects for addressing the problems identified in the report are not promising, the Commission should not hesitate to ask the ECJ to weigh in. As in the Polish case, the Commission should ask the ECJ to order the suspension of controversial reforms until it issues a final verdict.
- The Commission should prepare its report in time for the Council to use it in its own deliberations on the rule of law. The Commission should convince Poland and Hungary (opponents of this idea) that a report that looked objectively at the situation in all member states could spark a more honest debate in the Council about the state of democracy in the EU and improve the atmosphere among the member states. Some member states have expressed reservations about such a report, because the

Commission has given little indication of the sources it would draw on. The sooner the new Commission puts forward a detailed proposal answering these doubts the better.

- EU political ‘families’ like the centre-right EPP and the centre left S&D have a responsibility to assist in upholding the rule of law throughout the EU, rather than protecting national parties that are undermining it at home. It would be in the interest of the EU and all the member states if serious violations of the rule of law led to political isolation.
- The EU institutions should make greater use of civil society organisations, both as a source of information and as a means of increasing popular understanding of the rule of law; they can offer the EU useful recommendations on how to make the public more resilient to populists and their authoritarian actions. At the same time, in order to avoid being accused of political bias by hostile governments, the Commission should engage in a dialogue with civil society organisations with different opinions, including those sceptical about the Commission’s role as a guardian of the rule of law.
- The member states should accept the European Parliament’s proposal to increase EU funding for rule of law promotion. This will be a hard sell for parliaments and publics who do not want to contribute more to the EU’s budget than they currently do. But they should understand that when a member state gets away with violating the rule of law, the cost to others may be more than the extra funding for rule of law promotion. In the end, any attempt to undermine judicial independence, infringe the rights of criminal suspects or restrict media freedom constitutes an existential threat to the integrity of the single market, a project which has contributed to member states’ prosperity, and to the common legal space, based on mutual trust, which contributes to the security of the EU’s citizens.
- In the MFF negotiations, EU member states should establish a stronger link between respect for fundamental values and sound EU finances, regardless of pressure to compromise in order to reach a deal on the budget for the next seven years. Making the instrument legally watertight would help to see off accusations that the EU is prepared to bend its own laws to punish defiant member states.

Critics often accuse the EU of being an elite project, imposed on unwilling populations. But those populations benefit from the EU's great achievements – the single market, and the borderless area of freedom, security and justice – which can only work if the rule of law prevails throughout the EU. Democratically elected governments in individual member states have to be prevented from taking decisions that suit them and boost their ratings, but undermine the rule of law throughout the EU. There is a difficult balance to be struck between the absolute 'will of the people' and the paternalistic 'we know best' rule by judges and other unelected institutions. But the alternative to a system in which the will of the people is constrained by the rule of law is to go back to hoping that the second ship will always arrive in time. A modern democracy needs a more reliable way to stop itself – or its leaders – from making terrible mistakes.

## References

- Bachmaier, L., (2019), "Compliance with the Rule of Law in the EU and the Protection of the Union's Budget", *The European Criminal Law Associations Forum*, issue 2.
- Bilić, P., A. Petričušić and R. Eterović (2018), "Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey", Country Report: Croatia, Centre for Media Pluralism and Media Freedom, European University Institute.
- Brogi, E., I. Nenadic, P. Parcu and M. Viola de Azevedo Cunha (2018), "Monitoring media pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey", 2018 Policy Report, Centre for Media Pluralism and Media Freedom, European University Institute.
- Butler, I. (2018), "Two proposals to promote and protect European values through the Multiannual Financial Framework: Conditionality of EU funds and a financial instrument to support NGOs", Civil Liberties Union for Europe, 7 March.
- Consolidated version of the Treaty on European Union (2012), Official Journal C 326, 26 October.
- Council of the European Union (2019), "Presidency conclusions – evaluation of the annual rule of law dialogue", 19 November.
- Court of Justice of the European Union (2018), Judgement of the Court of Justice in the case Associação Sindical dos Juizes Portugueses v. Tribunal de Contas (case C-64/16), 27 February.
- Court of Justice of the European Union (2019), Judgement of the Court of Justice in the case European Commission v. Republic of Poland (case C-619/18), 24 June.
- European Commission (2014), Communication to the European Parliament and the Council, "A new EU framework to strengthen the rule of law", COM/2014/0158 final, 11 March
- European Commission (2019a), "Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism", SWD(2019) 392 final, 22 October.
- European Commission (2019b), "Strengthening the rule of law within the Union: A blueprint for action", 17 July.
- European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007, Strasbourg, 18 March 2016.

- European Parliament (2019a), “Answers to the European Parliament questionnaire to the Commissioner-designate Věra Jourová, Vice-President-designate for Values and Transparency”, September (<https://www.europarl.europa.eu/resources/library/media/20190927RES62431/20190927RES62431.pdf>).
- European Parliament (2019b), “Answers to the European Parliament questionnaire to the Commissioner-designate Didier Reynders, Commissioner-designate for Justice”, September (<https://www.europarl.europa.eu/resources/library/media/20190927RES62432/20190927RES62432.pdf>).
- Gostyńska-Jakubowska, A. (2018a), “Time to let the rule of law have its day in court”, Centre for European Reform, 19 July.
- Nenadic, I. (2018), “Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey”, Country Report: Malta, Centre for Media Pluralism and Media Freedom, European University Institute.
- Nikolaj Nielsen (2014), “EU justice scoreboard upsets some member states”, *EUObserver*, 17 March.
- Pech, L. and D. Kochenov (2019), “Strengthening the Rule of Law Within the European Union: Diagnoses, Recommendations, and What to Avoid”, RECONNECT policy brief, June.
- The Economist Intelligence Unit (2019), “Democracy Index 2018: Me too? Political participation, protest and democracy”, January.
- The Economist Intelligence Unit (2020), “Democracy Index 2019: A year of democratic setbacks and popular protest”, January.
- Thucydides, *History of the Peloponnesian War*, Book 3.
- Transparency International (2020), “Corruption Perceptions Index 2019”, ([transparency.org/cpi2019](https://transparency.org/cpi2019)).
- Von der Leyen, U. (2019), “Mission statement to Věra Jourová, Vice-president-designate for values and transparency”, 10 September, ([https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-vera-jourova-2019\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-vera-jourova-2019_en.pdf)).
- World Bank, *Worldwide Governance Indicators, 1996-2018* (<http://info.worldbank.org/governance/wgi/#home>).
- World Justice Project, *WJP rule of law index and accompanying data tables, 2015-2019* (<https://worldjusticeproject.org/>).

**PART II.**  
**DIRECT DEMOCRACY**



# 15. NATIONAL REFERENDUMS: BETWEEN LEGITIMATE POPULAR DECISION-MAKING AND POPULIST TAKEOVER ATANAS SLAVOV

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*Different forms, procedures and practices of using national referendums exist in EU member states, varying from fuller (Italy, France, Romania, Hungary, Bulgaria, Slovenia, Croatia), to more restrictive regimes (Germany, Netherlands). This chapter formulates important distinctions between facultative and mandatory referendums, popular votes on specific issues and legislative referendums, top-down governmentally controlled plebiscites and bottom-up popular initiatives, consultative and binding referendums as well as highlighting common European standards and good practices (Venice Commission). It finds that existing shortcomings could be addressed by enabling procedures for citizen-initiated referendums, introducing e-forms for signature collection, ensuring sufficient public space and time for deliberation and abolishing quorums or maintaining them at the legal minimum.*

## 15.1 Introduction: Political context of national referendums in EU member states

The use of national referendums in European countries has increased over the last three decades, as a number of studies suggest (Renwick, 2017; The Constitution Unit Report, 2018). Central and eastern European countries have used national referendums more often than older EU members (with the exception of Italy and Ireland).

The issues decided in national referendums vary significantly – from constitutional and legislative questions, international

agreements and EU issues to more general political or specific policy issues (social and labour policy, privatisation, refugees, etc.).

Constitutional referendums have attracted specific attention by scholars, due to their role in enhancing or potential to weaken existing systems of governing. Four different types of constitutional referendum could be outlined: on founding of new states; creation and amendment of new constitutions; recognition of sub-state autonomy; and European Union issues (Tierney, 2012). The increased use of referendums and popular expectations for more direct inclusion in the decision-making process reveals a tendency towards a more citizen-centred political and policy process, which is complementary and sometimes challenging to representative models of democracy. Tierney also observes that “the UK is a good example of how the referendum has evolved from a highly exotic constitutional option to one that is increasingly normalised within constitutional practice” (Tierney, 2013).

Taking into account the process of creating “an ever closer union” that increasingly poses challenges to the traditional notions of statehood and national sovereignty – many states have decided the question of their EU accession by means of a referendum in order to provide political and popular legitimacy for the integration process (Schiller, 2009). With only three exceptions (Cyprus, Bulgaria and Romania), all newer member states organised referendums on EU accession along with amending their constitutions in order to provide for supranational forms of integration. Thus, national referendums on EU issues could be

*With only three exceptions (Cyprus, Bulgaria and Romania), all newer member states organised referendums on EU accession.*

interpreted in at least two positive ways: first, they provide much needed direct involvement of the citizens in the EU integration process, thereby contributing to narrowing the ‘legitimacy gap’ in the EU; second, through referendums, member states exercise their sovereign decision-making, in both a politically and symbolically significant way. In that respect, as a general impression, national referendums on EU issues tend to mobilise wider public support for the cause of integration, and to engage citizens in a debate over the future and the strategic goals of the EU.

In the last decade, national referendums have often become an arena for populist forces trying to use direct democracy to advance their political agenda by eroding institutions of constitutional democracy. It is true that the current wave of Eurosceptic populism questions the process of EU integration and consolidation. However, this rather opportunistic approach to direct democracy should not be used as a counter-argument against the use of national referendums to decide key issues. To the contrary, as Blockmans and Russack suggest, “instruments of direct democracy are no silver bullets but may be valuable supplements to representative democracy” (Blockmans and Russack, 2018). Moreover, in his empirically informed observation, Richard Youngs has got it right:

*In the last decade, national referendums have often become an arena for populist forces trying to use direct democracy to advance their political agenda by eroding institutions of constitutional democracy.*

It is worth remembering that populist forces have not arisen due to any excess of direct democracy, but in a context where it remains relatively rare. For all the fears of direct democracy giving nativist-populists more sway, indirect democracy has itself done a rather good job in nurturing these forces. (Youngs, 2018)

## 15.2 National referendums: forms and practices

For the purpose of this overview, *national referendum* will be understood in its wider sense as including a *direct popular vote* on a substantive political issue in different forms (popular referendum/government-initiated referendum, constitutional/legislative referendum, mandatory/optional referendum, binding/consultative referendum) (Altman, 2014; IDEA Handbook, 2008). Further, distinctions could be drawn between *citizens' initiative*, *referendum* and *plebiscite*, based on differentiation between the *authorship* of the policy/legislative proposal, authority/political subject *taking the initiative* and the *deciding authority/electorate* (Kaufmann et al, 2010).

*National referendum* as a direct democratic instrument is usually practised in the EU countries in several different forms:

- *Mandatory referendum* – this type of referendum is automatically triggered by law (the constitution) when certain conditions are in place and the voters have to decide either on approval or rejection of the proposal (e.g. when amendments to the constitution are proposed and voted by the parliament, they should be ratified by a popular vote; when a full constitutional revision is in place or fundamental constitutional provisions are amended; when a sovereign state agrees to transfer competences to a supranational authority or an international organisation; when the country decides to join the EU or to agree to new EU treaties) (IDEA Handbook, 2008). Among EU member states, mandatory referendums are practised in Ireland (for constitutional amendments, international organisations and the EU), Denmark (for EU issues) (Sørensen, 2018), Lithuania (changing fundamental constitutional provisions and joining international organisations in the case of a transfer of powers), Latvia (changing fundamental constitutional provisions and accession to the EU) (Bukovskis and Vizgunova, 2018), Estonia (changing fundamental constitutional provisions) (Venice Commission, 2005). After the fall of the communist regime in Central and Eastern Europe in some countries (Estonia, Lithuania, Poland, Romania), constitutional referendums were held for approval of the new democratic constitutions (Schiller, 2009).
- *Government-initiated referendum* – is a type of *optional referendum* initiated top-down and often having a plebiscitary character. The electorate does not have a say on the questions, issues or provisions placed on the ballot but only has the final word of approval or rejection. In *presidential or semi-presidential systems*, this type of referendum can be initiated by the president who could submit laws to the people in a referendum with the *advice and consent of the cabinet* but with no subsequent approval by the parliament (France), or initiating a referendum after consulting the parliament (Romania, Poland). In *parliamentary republics*, the final decision for holding a referendum is usually made by the parliament (Bulgaria, Lithuania, Estonia).
- *Popular referendum* – is a type of referendum initiated by the citizens themselves that triggers a popular vote on a decision

(usually legislative act) adopted by the parliament. It either provides popular legitimacy to the decision already made by the legislative authority or creates an opportunity for repealing the act (*veto /abrogative referendum*). This type of citizens' controlled referendum exists in some constitutional models (Denmark, Italy, Latvia, Lithuania). For example, in Italy at least 500,000 signatures are required to organise a national referendum to repeal a law adopted by parliament.<sup>1</sup> In the Netherlands, 10,000 signatures are needed to initiate the process and then a further 300,000 signatures must be collected for the referendum to go ahead.<sup>2</sup>

- *Citizens' (popular) initiative* – is a type of referendum initiated bottom-up by a group of citizens formulating the proposal and gathering popular support behind it (in the form of collecting a legally defined number of signatures). After submitting the initiative proposal to the parliament, the latter has to take the formal decision to call a popular vote on the proposal. In some models, the parliament has the authority to adopt the initiative's proposal without calling a popular vote (Switzerland), to make a counter-proposal, or is obliged to schedule the vote if all legal requirements are completed (Bulgaria). Citizens' initiatives are used to propose and decide both constitutional (Italy, Latvia) and legislative (Bulgaria, Lithuania, Slovakia, Croatia) issues, as well as more general questions on policy. Being initiated and controlled by the electorate itself, citizens' initiatives are considered a form of direct empowerment of the electorate. Comparatively, full citizens' initiatives leading to a popular vote are a relatively rare instrument of direct democracy in EU countries (Schiller, 2009).<sup>3</sup>

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<sup>1</sup> The Constitution of the Italian Republic 1947 (rev. 2012), articles 75 and 138.

<sup>2</sup> Consultative Referendum Act (Netherlands) 2014.

<sup>3</sup> On different forms of direct democracy, see the e-tool developed by IRI Europe: <https://www.direct-democracy-navigator.org/countries/lithuania/national>.

Assessing existing practices in the EU, it is worth comparing them to the most developed direct democracy model of Switzerland. In the Swiss model, forms of national popular votes can be classified using either the *source of the proposal* or the *right of initiative*:

*The source of the proposition describes who controls the issues which are subject to a popular vote, or in other words who sets the political agenda. In the Swiss case, this can be either the government or the parliament or the citizens. The other dimension relates to who can call for a vote. This can be either through a constitutional requirement or it can be through collecting signatures (Lutz, 2012).*

Thus, on the federal level, three forms of direct democracy exist leading to nationwide popular votes: obligatory referendum, citizens' initiative and referendum. The *obligatory referendum* is organised when the federal parliament passes a constitutional amendment and the final decision on its adoption is made by a national referendum vote. The most prominent forms of Swiss direct democracy, however, are those triggered by popular initiative. The *citizens' initiative* is aimed at constitutional change (proposes a specific constitutional amendment) and requires at least 100,000 signatures to be collected in a period of 18 months. The *referendum* is aimed at the final approval or rejection of legislative act, adopted by the federal parliament, requiring at least 50,000 signatures collected in a period of 100 days.<sup>4</sup> It is usually said that the former allows the citizens to step on the accelerator pedal, whereas the latter provides people with the possibility to step on the brakes of the democratic decision-making process (Kaufmann et. al., 2010). In other words, the popular referendum is clearly a 'decision-controlling' mechanism, while the popular initiative is a 'decision-promoting' mechanism (Podolnjak, 2015).

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<sup>4</sup> Federal Constitution of the Swiss Confederation 1999 (rev. 2002), articles 138, 139 and 141.

## 15.3 Organising national referendums: procedural and substantive challenges

### *Quorums*

According to the Code of Good Practice on Referendums, adopted by the Venice Commission of the Council of Europe (Venice Commission, 2006), it is advisable not to apply quorums. Most often two types of quorums are applied that have different negative effects on voting behaviour. First, in the case of a *turnout quorum* (threshold, minimum percentage of voters required for the validity of a referendum), its use is problematic because it assimilates voters who abstain to those who vote no, thus electorally benefiting the “no” side (Venice Commission, 2006). This approach is considered not healthy for a democracy, because it discourages civic participation and allows the minority viewpoint to prevail in a popular vote by just boycotting the vote, without running a substantive campaign or winning legitimate public support for its positions.

The legal requirement for the second type of quorum – an *approval quorum* (approval by a minimum percentage of registered voters) – is also viewed as problematic as far as its use may lead to a difficult political situation in cases when the referendum proposal is adopted by a majority of voters lower than the necessary approval threshold. This may often lead to a situation in which the result might be viewed as legitimate and decisive by the majority of participating voters, while it would not be implemented due to procedural reasons. Yet another weak side of applying the approval quorum is that in some instances (if it is defined as too high a percentage of voters) it may hinder necessary changes in certain policies or legislation.

For both types of quorums there is a risk of manipulating the turnout rate and thus negatively affecting the final result of the popular vote (its validity and the binding effect). For example, in countries that practice centralised *ex officio* registration of eligible voters (Bulgaria), regardless of whether they have suitable access to the polling stations or not, the number of votes cast inside/outside the country differs significantly. In the Bulgarian system, a specific

turnout quorum applies,<sup>5</sup> while the total number of registered eligible voters includes both citizens situated in the country as well as those situated abroad (Slavov, 2010). Though all are allowed to vote, only those in the country have a proper and easy access to the polling stations. Without a system of electronic online voting or early postal voting, this has led to invalid results in the three national referendums undertaken over the last six years. The last two national referendums (on e-voting; compulsory voting, introduction of a majoritarian electoral system and reduction of budget subsidies for political parties) would have been valid and binding if there had been no specific turnout quorum required by the law.

✓ **Recommendation:** Not to apply validity quorums/turnout quorums or maintain existing quorums at the legal minimum in order not to hinder democratic decision-making.

### *Collecting signatures for popular initiatives*

Specific challenges to the organisation of referendums triggered by popular initiatives arise from the procedures used for collection of signatures, as well as from the number of signatures required.

First, most of national systems allowing for popular initiatives do not facilitate the process by providing an opportunity for online signature collection systems (as is the case with the European Citizens' Initiative) (Longo, 2019). Traditional paper-based collection systems, requiring extensive personal data entry (names, full address, date of birth or ID/personal identification number, signature), often collected in open public spaces (on the street, large shopping malls), offer no protection against manipulation of personal data, or incorrect entries that may affect the validity of the initiative. For example, in the case of popular initiatives for national referendums

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<sup>5</sup> The Bulgarian law on referenda and citizens' initiatives, Art. 23. (1) stipulates: "The proposal, subject to the referendum thereof, shall be considered accepted if the number of voters, who have participated in the balloting, is not less than the voters who participated in the last National Assembly elections and if more than half of the voters in the referendum have cast a 'Yes' vote."

in Bulgaria, the amount of invalid entries exceeded 20% of the total collected signatures in all three cases.

Second, the process of collecting signatures on paper is difficult and costly, which hampers genuine but not well organised civic engagement, while in fact empowering strong party machines or organised interest groups (including big corporate actors) to use the popular initiative to achieve narrowly defined and situational gains. For instance, the popular initiative model in Croatia requires at least 10% of the total electorate to support the initiative in order for a national referendum to be held, while, at the same time, only allows 15 days to collect signatures (Podolnjak, 2015). The Bulgarian model also only allows collection on paper, while requiring at least 400,000 signatures to be collected in 3 months to trigger a national referendum (albeit not constitutional). In comparison, the popular referendum provided for by the Italian Constitution (Art. 138) may be triggered by a popular initiative collecting at least 500,000 signatures on paper within 3 months.

It should be noted, that short periods for collecting signatures along with the higher number of required entries, though being publicly justified as necessary for ensuring validity and legitimacy of the process, in fact often create incentives to abuse the very same initiative process. Negative practices, such as buying voters to support certain initiatives, or misusing personal data from public registries proliferate in some countries (Bulgaria).

<p>✓ <b>Recommendation:</b> Introduce e-tools for collecting signatures; lower the number of required signatures; require less personal data; provide longer periods for collection.</p>
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## 15.4 Conformity with the rule of law and halting the growth of populism

One of the major requirements of referendum initiatives is substantive conformity with the rule of law. First, this means conformity with the *hierarchy of legal norms* in force in a given country (in a descending order starting with the constitution, the EU and

international law at the apex of the national legal system). The principle of the rule of law requires that questions or legislative proposals to be voted on in a referendum should not violate the established rules and norms of a higher order. In this respect, the rule of law should be safeguarded by the country's highest court dealing with constitutional issues (Venice Commission, 2006).

Second, the protection and preservation of the rule of law requires that no referendum proposal violates or erodes *substantive constitutional values* (human dignity, fundamental human rights and freedoms, rights of minorities, the principle of equality before the law). It is important to note that for the proper functioning of direct

*The protection and preservation of the rule of law requires that no referendum proposal violates or erodes substantive constitutional values (human dignity, fundamental human rights and freedoms, rights of minorities, the principle of equality before the law).*

democracy, the system of constitutional democracy should be well established and protected. The contemporary understanding of constitutional democracy adds the dimension of civic engagement and participation in the decision-making (Murphy, 2007) to the classical liberal notion of limited government (Friedrich, 1974).

Some referendums organised in several EU countries in recent years were often presented as advancing a specific populist agenda undermining the rule of law and the principles of constitutional democracy. For instance, the popular initiative for the 2016 national referendum in Bulgaria was organised by the team of a popular TV show, employing very strong populist and anti-elitist rhetoric. Three of the initially proposed questions were annulled by the Constitutional Court as they affected the constitutional framework (the Bulgarian model does not provide for a constitutional referendum). As scholars assessing the Bulgarian practice observe, the increased public demand for referendums "is accompanied by significant levels of distrust in politicians, political parties and the parliament - the key institutions of representative democracy" (Smilov, Primatarova, 2018). The populist trend in using initiatives and referendums to counter-balance or even bypass the institutions of representative democracy could be empirically tested. A great number of popular initiatives in Bulgaria (most of them never completed) focused on questions that were high on the agenda of

national-populist movements (to name just a few: against the membership of Turkey in the EU; adoption of a new constitution; nationalisation of ownership of energy companies; to stop ratification of the CoE Istanbul Convention).<sup>6</sup>

Likewise, the growing populism in central and eastern Europe and the use of referendums to achieve specific political goals often challenges the rule of law and democratic constitutional values. For example, the 2018 Romanian citizens-initiated referendum on changing the constitution to expressly ban same-sex marriage, thereby exploiting populist rhetoric against LGBT people, was supported by a rather odd coalition of socialists, national-populist and right-wing parties, conservative NGOs, as well as by major religious groups. The initiative failed due to insufficient participation in the popular vote – 21%, while the required turnout was 30% of eligible voters (Sebe, Vas, 2018).

*The growing populism in central and eastern Europe and the use of referendums to achieve specific political goals often challenges the rule of law and democratic constitutional values.*

A similar issue arose in a 2013 citizen-initiated referendum in Croatia. The proposed constitutional amendment defined marriage as being a union between a man and a woman, thus establishing a constitutional prohibition against same-sex marriage. There was a clear preference to the ‘yes’ answer (65.87%), but only 37.9% of eligible voters participated, rendering the vote invalid due to the lack of a turnout quorum. The referendum was called after a conservative organisation gathered more than 700,000 signatures in May 2013 and was supported by conservative populist and right-wing political parties, the Catholic Church as well as by several other religious groups. The ruling left-wing coalition opposed the amendment along with numerous human rights organisations and the majority of the Croatian media.<sup>7</sup>

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<sup>6</sup> Register of National Assembly on national referendum initiatives: <http://parliament.bg/referendum/?page=reg&lng=>.

<sup>7</sup> The 2013 same-sex marriage referendum in Croatia: [https://www.direct-democracy-navigator.org/legal\\_designs/croatia-national-to-call-a-referendum/cases/same-sex-marriage-referendum](https://www.direct-democracy-navigator.org/legal_designs/croatia-national-to-call-a-referendum/cases/same-sex-marriage-referendum).

The 2016 referendum in Hungary on the EU migrant relocation quota plans, proposed by the national-populist Orbán government, also exploited populist sentiments while undermining the application of EU law by attacking the value of European solidarity and the duty of sincere cooperation (Art. 4 (3) TEU). Without achieving the required turnout quorum of 50 % the referendum failed. The proposal, however, was criticised by the European Commission and the broader human rights NGO community as violating both constitutional standards and the principle of primacy of the EU law.<sup>8</sup>

✓ **Recommendation:** Ensure preliminary and *ex post* constitutional review of referendum proposals and decisions, depending on their legal form (questions or legislative amendments) and legal effect (binding or consultative) in order to uphold the rule of law and fundamental constitutional /EU values.

## 15.5 Conclusion and recommendations

Intensified use of national referendums on constitutional and policy issues appears to be a long-term trend. The fact that some of the popular votes dealing with very contested social and political themes were easily harnessed by populists should not be used as an argument against this form of direct democracy. It remains up to the national constitutional systems to create safeguards (including constitutional/judicial review) and to design a sufficiently inclusive and deliberative referendum process (open and free access to public media) to allow citizens to engage and participate actively and to debate freely, while remaining true to fundamental constitutional and European values. Moreover, referendums should be one of many direct and participatory instruments – public consultations, agenda initiatives, citizens’ assemblies, to name just a few – enabling citizens to take part in public deliberation and political decision-making. Excluding citizens from direct participation, on the grounds of

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<sup>8</sup> EU Commission questions legality of Hungary's migrant referendum, *Euronews* (25.02.2016): <https://www.euronews.com/2016/02/25/eu-commission-questions-legality-of-hungary-s-migrant-referendum>.

incompetence, populism or radicalism, runs contrary to the values enshrined in both national constitutions and the founding EU Treaties. The question, therefore, is not *if*, but *how* to practice referendums in a way to strengthen, not weaken our constitutional democracies, and our Union. Moreover, the question is surely how to deepen and expand democratic practices both nationally and EU-wide (including in a foreseeable future, a common EU-wide referendum).<sup>9</sup>

Elaborating common European standards and rules may be a necessary step to strengthening civic engagement and participation in decision-making.

Cooperation among different stakeholders (national parliaments, EU institutions, Council of Europe bodies and civil society) will be needed to develop and strengthen direct democracy and referendum standards. Alongside the existing standards, some new dimensions could be introduced:

*Excluding citizens from direct participation, on the grounds of incompetence, populism or radicalism, runs contrary to the values enshrined in both national constitutions and the founding EU treaties. The question, therefore, is not if, but how to practice referendums in a way to strengthen, not weaken our constitutional democracies, and our Union.*

- Enhancing procedures for citizen-initiated referendums (lower the specific number or percentage of signatures required; require less personal data; provide longer periods for collection);
- Introducing e-tools for collecting signatures;
- Ensuring public space and time for deliberation before and during official information campaigns (equal access to media of both sides);
- Making objective and politically neutral expert statements on referendum issues accessible to a wider public;

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<sup>9</sup> The latter has strong support from active civil society groups, such as Democracy International: <https://www.democracy-international.org/eu-convention>.

- Abolishing validity/turnout quorums or maintaining existing quorums at the legal minimum;
- Ensuring judicial/constitutional review of referendum initiatives and decisions.

## References

- Altman, D. (2014), *Direct Democracy Worldwide*, New York: Cambridge University Press
- Blockmans, S. and S. Russack, (eds.) (2018), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Bukovskis, K. and E. Vizgunova (2018), "The Europeanisation Of Latvia's Direct Democracy: Not There Yet", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Beramendi, V., A. Ellis, B. Kaufmann, M. Kornblith, L. LeDuc, P. McGuire, Th. Shiller and P. Svensson (2008), *Direct Democracy: The International IDEA Handbook*, Stockholm: International Institute for Democracy and Electoral Assistance.
- Friedrich, C. J. (1974), *Limited Government*, Prentice-Hall, N.J.: Englewood Cliffs.
- Kaufmann, B., R. Buchi and N. Braun (2010), *Guidebook to Direct Democracy in Switzerland and Beyond*, The Initiative & Referendum Institute Europe.
- Lutz, G. (2012), "Switzerland: Citizens' Initiatives as a Measure to Control the Political Agenda", in M. Setälä and T. Schiller (eds), *Citizens' Initiatives in Europe: Procedures and Consequences of Agenda-Setting by Citizens*, Basingstoke: Palgrave Macmillan.
- Longo, E. (2019), "The European Citizens' initiative: too much democracy for EU polity?", *German Law Journal*, Vol. 20, 181-200.
- Murphy, W. F. (2007), *Constitutional Democracy. Creating and Maintaining a Just Political Order*, Baltimore: The Johns Hopkins University Press.
- Podolnjak, R. (2015), "Constitutional Reforms of Citizen-Initiated Referendum Causes of Different Outcomes in Slovenia and Croatia", *Revus*, Vol. 26, 129-149 (<https://journals.openedition.org/revus/3337#text>).

- Renwick, A. (2017), "Referendums", in K. Arzheimer, J. Evans and Lewis-Beck, M. (eds), *The Sage Handbook of Electoral Behaviour*, London: Sage.
- Report of the Independent Commission on Referendums (2018), The Constitution Unit, London: UCL, July.
- Schiller, T. (2009), "Modern Direct Democracy in Europe", in Jung-Ok Lee and B. Kaufmann (eds) *Global Citizens in Charge*, Seoul: Korea Democracy Foundation and IRI Europe.
- Sebe, M. and E. Vaş (2018), "The Untapped Potential of Direct Democracy in Romania", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Slavov, A. (2010), "Direct democracy in Bulgaria: constitutional and legal parameters", in A. Slavov, P. Kabakchieva, D. Mikhailov and I. Hristov, *Direct democracy in Bulgaria – challenges and possibilities*, Sofia: Institute for Direct Democracy, 35-67.
- Smilov, D. and A. Primatarova (2018), "Direct Democracy and the Populist Zeitgeist: Bulgaria", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Sørensen, C. (2018), "Denmark and Direct Democracy: Frontrunner and Laggard", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Tierney, S. (2013), "Whose Political Constitution? Citizens and Referendums", *German Law Review*, Vol. 14, No. 12, 2185-2196.
- Tierney, S. (2012), *Constitutional Referendums: The Theory and Practice of Republican Deliberation* Oxford: OUP.
- Venice Commission (2004), *Referendums in Europe – An Analysis of the Legal Rules in European States*, Study No. 28, Strasbourg, CDL-AD (2005)034.
- Venice Commission (2006), *Code of Good Practice on Referendums*, Study No. 371, Strasbourg, CDL-AD(2007)008rev-cor.
- Youngs, R. (2018), "Getting Europe's Direct Democracy Right", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.



## 16. AN EU-WIDE REFERENDUM: POTENTIAL THREAT OR TOOL OF EMPOWERMENT? *ELEONORA POLI*

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*In recent years, the permissive consensus, which once allowed the EU to pursue its integration process without directly consulting its citizens, has eroded in parallel with rising criticism of its democratic deficit. The introduction of the European Citizens' Initiative as a tool of transnational direct democracy has done little to alter the EU's technocratic reputation. This chapter explores whether the institutionalisation of an EU-wide referendum could be of use in reinvigorating integration and conferring democratic legitimacy on the Union.*

### **16.1 Introduction: An effective antidote to scepticism?**

Once regarded as an inspiring example of joint political endeavour, the EU has been losing its appeal in recent decades. Beyond the multiple economic, social and security reasons for this loss of attractiveness, there is also increasing scepticism about the EU's democratic legitimacy. Although 44% of Europeans tend to trust the EU and its institutions (European Commission, 2019), increasing allegations that European institutions consider EU citizens as a passive public, and promote specific policies through 'obfuscation' rather than via direct engagement, have been undermining the Union's legitimacy (Mac Amhlaigh, Cormac, 2009: 552).

The introduction of EU-wide referendums on burning issues and key political decisions on the future of the EU could possibly challenge this negative perspective. Public plebiscites of all European citizens living in EU member states and enjoying the right to vote in

their own country could be a way to enhance democratic legitimacy and secure popular political backing.

Despite widespread doubts about the capacity of ordinary citizens to make long-term decisions for the common good, the idea that policies can be more democratically legitimate if supported by a popular vote is even shared by detractors of direct democracy (Cheneval, Francis, and Mónica Ferrín, 2018: 1178-1194). Yet, a popular referendum across the EU is seen as a double-edged sword: it could be manipulated by anti-European political parties or used by citizens to manifest a general discontent regardless of the specific content of the plebiscite - extremely risky and potentially life threatening for the European integration process.

However, when it comes to boosting the legitimacy of the Union, at a time when it needs a stronger mandate to face unprecedented internal and external challenges, putting citizens on an equal footing across all member states could be crucial. To date, although 56% of Europeans on average believe their voice already counts in the EU, citizens' perceptions of their capacity to influence the European decision-making process vary considerably. According to Eurobarometer data, while the highest scores were observed in Sweden (86%), Denmark (81%) and Netherlands (76%), there are countries like Spain, Greece, Italy, the Czech Republic and Cyprus where only a small percentage of citizens believe they have a say on EU matters (European Commission, 2019b).

Also, the EU should be able to perform better than member states when it comes to respecting the outcome of referendums (Hollander, 2019: 27-56), though the use of referendums would need to be limited and targeted at soliciting citizens' opinions on fundamental issues that directly affect their lives.

## 16.2 EU-wide referendum: the status quo

Since its creation, the EU has never directly consulted its more than 500 million citizens on concrete policy issues. To date, European

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decisions are made accountable via the elections of members of the European Parliament every five years and national governments, which participate at the European Council

and Council of the European Union. Citizens have very limited direct democracy tools to express their ideas when it comes to the numerous policies and decisions made by the EU in between elections, and there are no procedures for holding a referendum at the EU level (European Parliament, 2017, 13). The European Citizens' Initiative may have generated a burst of bottom-up activities, but it is non-binding (Blockmans and Russack, 2018: 4).

The first intimation of a binding EU-wide referendum emerged during the drafting of the European Constitution, presented in July 2003 by the Convention on the Future of Europe.<sup>1</sup> At the time, 97 members of the Convention together with Liberal and Green members of the European Parliament called for a binding EU-wide referendum on the Constitutional Treaty to be launched on the same day across all member states. However, the body that led the work at the Convention, the Praesidium, considered this option too federal and left the decision to the discretion of member states (Mendez at al., 2014: 195). The latter, in turn, acting as trustees "for the collective good of Europe" believed that a public plebiscite, organised at the EU level, would have provided legitimacy to EU institutions to act beyond national governments (Habermas, Jürgen, 2001: 5-26; Rose, Richard, 2013: 4; Schmitter, Philippe, 2000). Moreover, the requirements of the Irish Constitution made a national referendum on the European Constitution inevitable and other member countries planned to follow suit. The ratification process was derailed when the attempt to approve the Constitution via a popular vote failed in France and the Netherlands. This led to the impression that public consultations were a source of disruption to the integration process.

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<sup>1</sup> Established by the Laeken European Council of 14 and 15 December 2001 the European Convention was inspired by the in 1787 Philadelphia Convention, which resulted in the adoption of the United States Federal Constitution. The European Convention brought together 15 representatives of the member states' heads of state or government, 30 members of the national parliaments (two per member state), 16 MEPs, two members of the Commission, a chair (Valéry Giscard D'Estaing) and two vice-chairs (Giuliano Amato and Jean-Luc Dehaene) to produce a Draft Treaty establishing a Constitution for Europe to be then adopted and finalised by the Council.

To date, although a general crisis of contemporary representative democracy has contributed to a rising number of referendums, from 1982 to 2015 only 8% of Europeans have been given the right to call directly for a referendum on European issues (Hollander, 2019: 2; Cheneval and Ferrín, 2018: 1178-1194). National

*From 1982 to 2015 only 8% of Europeans have been given the right to call directly for a referendum on European issues.*

governments tend to decide whether to call a public consultation on European affairs and, with the exception of Ireland where plebiscites on Treaty revisions are mandatory,

referendums on the European Union, being on membership, Treaty revision or other policy issues, as exemplified in the tables below, are far from being a systemic practice. Moreover, even when held, referendum results are not always taken properly into consideration by national governments. For instance, while French and the Dutch citizens rejected the Constitutional Treaty, the same articles were then embodied in the Lisbon Treaty, which was directly ratified by the two countries, thereby nullifying the result of their referendums. Similarly, despite 61% of Greeks voting against the bailout deal with the Eurogroup, in the referendum held in July 2015, the Greek government, under pressure from the Troika, accepted even harsher austerity conditions than the ones already rejected.

From 1972 to 2016, 44 referendums on EU issues were held in an EU member state. Yet, not all EU countries have called a national referendum relating to the EU and not on the same issue. For instance, out of the 44 referendums, 18 were accession referendums, which were never called in any of the funding countries and 2 were membership referendums, both organised in the UK.

**Membership referendums**

	Year	Country	Subject	Required/ Advisory	% Yes	Turnout	Result
1	1972	Denmark	Accession	Required	63.3	90.1%	Yes
2	1972	Ireland	Accession	Required	83.1	70.9%	Yes
3	1975	United Kingdom	Accession Treaty (remain in)	Advisory	67.2	64%	Yes
4	1994	Austria	Accession	Required	66.6	82%	Yes
5	1994	Sweden	Accession	Advisory	52.3	70%	Yes
6	1994	Finland	Accession	Advisory	56.9	83%	Yes
7	2003	Czech Republic	Accession	Required	77.3	55%	Yes
8	2003	Estonia	Accession	Required	66.8	64%	Yes
9	2003	Hungary	Accession	Required	83.7	46%	Yes
10	2003	Latvia	Accession	Required	67.0	73%	Yes
11	2003	Lithuania	Accession	Required	91.1	63%	Yes
12	2003	Malta	Accession	Advisory	53.6	91%	Yes
13	2003	Poland	Accession	Required	77.5	59%	Yes
14	2003	Romania	Accession (change to constitution to join later)	Required	89.7	56%	Yes
15	2003	Slovakia	Accession	Required	92	52%	Yes
16	2003	Slovenia	Accession	Required	89.6	60%	Yes
17	2012	Croatia	Accession	Required	66.7	43%	Yes
18	2016	United Kingdom	EU membership	Advisory	48.1	72.2%	No

Source: European Parliament.

As far as Treaty revision is concerned, since 1972 there have been 16 referendums – mostly called in Ireland, where it is mandatory, and in Denmark. Seven out of these 16 plebiscites were advisory referendums, with no formal obligation by the governments to take the results into consideration.

**Treaty revision referendums**

	Year	Country	Subject	Required/ Advisory	% Yes	Turnout	Result
1	1986	Denmark	Single European Act	Advisory	56.2	75.4%	Yes
2	1987	Ireland	Single European Act	Required	69.9	44%	Yes
3	1992	Denmark	Maastricht Treaty I	Required	49.3	83.1%	No
4	1992	Ireland	Maastricht Treaty	Required	68.7	57%	Yes
5	1992	France	Maastricht Treaty	Advisory	51.1	70%	Yes
6	1993	Denmark	Maastricht Treaty II	Advisory	56.7	86.5%	Yes
7	1998	Ireland	Amsterdam Treaty	Required	61.7	56%	Yes
8	1998	Denmark	Amsterdam Treaty	Required	55.1	76.2%	Yes
9	2001	Ireland	Treaty of Nice I	Required	46.1	35%	No
10	2002	Ireland	Treaty of Nice II	Required	62.9	49%	Yes
11	2005	Spain	Constitutional Treaty	Advisory	76.7	42%	Yes
12	2005	Luxembourg	Constitutional Treaty	Advisory	56.5	89%	Yes
13	2005	France	Constitutional Treaty	Advisory	45.3	69%	No
14	2005	Netherlands	Constitutional Treaty	Advisory	38.2	63%	No
15	2008	Ireland	Treaty of Lisbon I	Required	46.6	53%	No
16	2009	Ireland	Treaty of Lisbon II	Required	67.1	59%	Yes

Source: European Parliament.

Out of the above 44 referendums, 10 were mostly advisory and policy-oriented (European Parliament, 2017: 20-23).

**Policy referendums**

	Year	Country	Subject	Required/ Advisory	% Yes	Turnout	Result
1	1972	France	Enlargement of the European Community	Advisory	68.3	60.3%	Yes
2	1989	Italy	Mandate for MEPs	Advisory	88.1	85%	Yes
3	2000	Denmark	Euro membership	Required	46.8	87.6%	No
4	2003	Sweden	Euro membership	Advisory	42	83%	No
5	2012	Ireland	Extra EU Treaty (Fiscal Compact)	Required	60.3	50%	Yes
6	2014	Denmark	European Patent Court	Required	62.5	55.9%	Yes
7	2015	Denmark	JHA opt-out	Required	46.9	72.0%	No
8	2015	Greece	Bailout terms	Advisory	38.7	59%	No
9	2016	Netherlands	EU-Ukraine Association	Advisory	38.2	32.3%	No
10	2016	Hungary	EU refugee quotas	Advisory	98	40.4%	Rejected

Source: European Parliament.

Thus, despite the fact that some European citizens have been directly consulted on EU matters through national plebiscites, not all referendums were binding, not all countries held a vote on the same issue or at the same moment and not all citizens were consulted. In this respect, national referendums on the EU end up being discriminatory as they contributed to creating political inequalities between EU citizens, which delegitimised the European Union even more

*National referendums on the EU end up being discriminatory as they cannot substitute for an EU-wide plebiscite.*

(Cheneval, 2007). When it comes to fostering citizens' participation in the EU decision-making process, national referendums on EU issues cannot substitute for an EU-wide plebiscite. This reason lies behind much support for the introduction of an EU-wide referendum to bridge the gap between EU institutions and citizens and promote positive perceptions of the EU decision-making process. Yet, an EU-wide referendum remains, in effect, off the table.

### 16.3 Member state reluctance

There are several reasons for reticence about holding an EU-wide referendum at both European and national levels. There is a general lack of political will, which to date remains the main obstacle. Member states are not willing to sacrifice national sovereignty by

*Member states are not willing to sacrifice national sovereignty by accepting an EU-wide referendum.*

accepting an EU-wide referendum, which, to be effective and credible, should be binding as well as multi-national (Leininger, 2015: 17-27; Altman, 2010; Hug, 2004: 321-356;

LeDuc, 2003). An EU-wide referendum would empower EU institutions with a direct democracy tool to use 'against' governments.

It would also have an institutional cost: to be meaningful, an EU-wide referendum would require member states to harmonise their national laws on direct democracy, whereas, to date, they have different regulations on plebiscites. In some countries, specific referendums are mandatory, while in others they are non-binding; referendums can be initiated by citizens, called by the parliament or the government or even triggered by a constitutional disposition. Hence, if all EU member states were to adopt the same laws when it comes to public consultations this could imply a wide set of reforms at national level - even possibly modifying their national constitution, which inevitably highlights another issue: the massive cost that the institutionalisation of a EU referendum as well as its organisation would entail.

In the end, it does not matter if one consultation at European level would probably be less expensive than the aggregate cost of having single national referendums on EU issues, or whether the harmonisation costs would be compensated by a smoother

integration process. Inevitably, the costs entailed by an EU-wide referendum would be a good argument in the hands of Eurosceptic forces in support of the idea that the EU is a costly bureaucratic apparatus stealing national sovereignty and independence from member states. It has to be noted that the majority of EU leaders and national governments opposing the development and institutionalisation of a European plebiscite also use the arguments of Euroscepticism. In their view, since large numbers of citizens are dissatisfied with the EU and do not trust EU institutions, calling a European popular consultation could block any further advances in the EU integration process. At the same time, only 47% of citizens believe that an EU-wide referendum could make European democracy any stronger (Mendez et al., 2014).

## Conclusion

Part of rising Euroscepticism is related to a lack of effective engagement with citizens, which has widened the gap between the EU institutions or the so-called Brussels bubble and ordinary Europeans (Schuck, Andreas RT, and Claes H. De Vrees, 2015: 149-158). If citizens' distrust towards the EU can no longer be addressed through a top-down approach, the arguments against EU-wide referendums need to be counter-balanced by their potential beneficial effects in terms of democratic legitimacy: the development of tools to directly consult citizens could trigger their mobilisation, going beyond national boundaries and contributing to sparking a shared debate on the future of the EU (De Clerck-Sachsse, 2012: 299-311). According to Habermas (2001: 7), the development of a European public sphere could result in a better construction of EU democracy, advancing a sense of European political identity.

As rightly noted by Cheneval and Ferrín (2018), it is not possible to test the potential benefit of EU referendums empirically, yet, with more than two-thirds of EU citizens currently believing their country benefits from the EU, the institutionalisation of public consultations at European level can be recommended as it would certainly foster a sense of belonging to a common project. This does not mean that direct democracy should become a

*With more than two-thirds of EU citizens currently believing their country benefits from the EU, public consultations at European level can be recommended.*

substitute for representative democracy. It means that citizens should be informed and then consulted through binding European plebiscites organised by EU institutions and not by single member states. Referendums should be held in all countries at the same time to avoid the chain effect that characterised the referendum on the Constitution and allow all European citizens to vote, even in countries where they are not resident.

Moreover, an EU-wide referendum is only desirable if European institutions set their standards higher than national governments when it comes to respecting citizens' decisions (Hollander, 2019: 27-56). For that it is necessary for the EU and its member countries to harmonise national legislation on public plebiscites, and make such consultations binding. Moreover, they should only be called for relevant Treaty changes or policy issues affecting citizens' lives.

In a time of global uncertainty, a multipolar world and shifting power, a stronger EU needs to provide for its citizens better. But to do that, it has to be able to understand what is best for them. If EU-wide referendums were to be developed according to the above principles, they would at least confer new legitimacy on the European Union.

## References

- Alemanno A. (2018), "Beyond Consultations: Reimagining EU Participatory Politics", Carnegie Europe, December.
- Altman, D. (2010), *Direct Democracy Worldwide*, Cambridge: Cambridge University Press.
- Blockmans, S. and S. Russack (2018), "Introduction", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 1-7.
- Cheneval, F. (2007), "'Caminante, no hay camino, se hace camino al andar': EU Citizenship, Direct Democracy and Treaty Ratification", *European Law Journal*, Vol. 13, No. 5, 647-663.
- Cheneval, F. and M. Ferrín (2018), "Referendums in the European Union: Defective by Birth?", *Journal of Common Market Studies*, Vol. 56, No. 5, 1178-1194.
- De Clerck-Sachsse, J. (2012), "Civil society and democracy in the EU: The paradox of the European citizens' initiative", *Perspectives on European Politics and Society*, Vol. 13, No. 3, 299-311.
- European Commission (2019), Spring 2019 Standard Eurobarometer: Europeans upbeat about the state of the European Union - best results in 5 years, Brussels, 5 August.
- European Parliament, Directorate General for Internal Policies, Policy Department and Constitutional Affairs, 2017, Referendum on EU Matters ([http://www.europarl.europa.eu/RegData/etudes/STUD/2017/571402/IPOL\\_STU\(2017\)571402\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/571402/IPOL_STU(2017)571402_EN.pdf)).
- Glencross, A. and A. Trechsel (2011), "First or second order referendums? Understanding the votes on the EU Constitutional Treaty in four EU Member States", *West European Politics*, Vol. 34, No. 4, 755-772.
- Habermas, J. (2001), "A Constitution for Europe?", *New Left Review*, Vol. 11, No. 5.
- Hollander, S. (2019), "Introduction: The Politics of Referendum Use in Europe", in S. Hollander (ed), *The Politics of Referendum Use in European Democracies*, Basingstoke: Palgrave Macmillan.
- Hollander S. (2019), "Referendums and Democratic Theory", in S. Hollander (ed), *The Politics of Referendum Use in European Democracies*, Basingstoke: Palgrave Macmillan, 27-56.

- Hug, S. and T. Schulz (2007), "Referendums in the EU's constitution building process", *The Review of International Organizations* Vol. 2, No. 2, 177-218.
- Hug, S. (2004), "Occurrence and Policy Consequences of Referendums: A Theoretical Model and Empirical Evidence." *Journal of Theoretical Politics*, Vol. 16, No. 3, 321-356.
- Hussain, N., G. Maitland Hudson and R.G. Whitman (2005), *Referendums on the EU Constitutional Treaty: the state of play*, Royal Institute of International Affairs.
- LeDuc, L. (2003), *The politics of direct democracy: referendums in global perspective*, Peterborough: Broadview Press.
- Leininger, A. (2015), "Direct democracy in europe: Potentials and pitfalls", *Global Policy*, Vol. 6, 17-27.
- Mac Amhlaigh, C. (2009), "Revolt by Referendum in Search of a European Constitutional Narrative", *European Law Journal*, Vol. 15, 552.
- Mendez, F., M. Mendez and V. Triga (2014), *Referendums and the European Union: A comparative inquiry*. Cambridge: Cambridge University Press.
- Rose, R. (2013), *Representing Europeans: a pragmatic approach*. Oxford: Oxford University Press.
- Rose, R. and G. Borz (2013), "What determines demand for European Union referendums?", *Journal of European Integration*, Vol. 35, No. 5, 619-633.
- Schmitter, P. (2000), *How to democratize the European Union... and why bother?*, London: Rowman & Littlefield Publishers.
- Schuck, A. and C. De Vreese (2015), "Public support for referendums in Europe: A cross-national comparison in 21 countries", *Electoral Studies*, Vol. 38, 149-158.
- The European Citizens Initiative, "EU wide referendum whether the European Citizens want the United Kingdom to remain or to leave!", Date of refusal: 28/11/2018 (<https://ec.europa.eu/citizens-initiative/public/initiatives/non-registered/details/4501>).

# 17. THE EUROPEAN CITIZENS' INITIATIVE AND ITS REFORM TRULY UNIQUE OR THE SAME OLD STORY? MINNA ÅLANDER AND NICOLAI VON ONDARZA

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*The perceived crisis of representative democracy has prompted several EU member states to introduce elements of direct democracy in order to increase citizens' participation. The European Union followed suit with the European Citizens' Initiative (ECI) in 2012. However, the expectation that the new tool would significantly alleviate the EU's democratic deficit has been disappointed by the low legislative impact of the initiatives. The instrument has therefore undergone a reform process and a new regulation came into effect in January 2020. While improvement in the practicability of the ECI is to be expected, the reform has been mostly technical in nature and leaves questions about the fundamental political value of the tool unanswered.*

## **17.1 Introduction: The aims and design of the ECI**

The European Citizens' Initiative (ECI) was introduced in the Treaty of Lisbon and entered into force in April 2012. The tool was intended to bridge the perceived distance between the EU institutions and citizens, and to reduce the infamous democratic deficit of the European Union (EU) by allowing citizens to submit legislative initiatives to the European Commission.

Eight years after its launch, however, several shortcomings in the ECI procedure and the instrument's assumed functions have become evident. The ECI's impact has remained lower than expected: only five of the 70 registered initiatives have succeeded in collecting the required one million signatures of support and 23 were rejected by the Commission at registration, amounting to 25% of all initiatives.

Four of the five successful initiatives have undergone the follow-up process and in two cases the Commission decided to make some changes in the legislation concerned. However, in neither case were all the requests of the initiatives fulfilled, while in the other two cases the Commission found the existing legislation adequate and stated that no action was needed. The disappointment caused by the Commission's reluctance to act, combined with the numerous practical obstacles encountered by the initiators, led to a revision process and a new regulation which became effective in January 2020.

Article 11 paragraph 4 of the Treaty on European Union (TEU) provides that at least one million citizens who are nationals of "a significant number of member states" can invite the European Commission "within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties" (European Union, 2008). The idea of introducing direct democracy into EU primary law was first raised in the Convention on the Future of Europe, which proposed it as part of the Draft Constitutional Treaty (Dehousse, 2013: 5). After the Constitutional Treaty was rejected by national referendums in two member states, the instrument was nevertheless included in the Treaty of Lisbon and implemented as Regulation 211/2011.

The ECI is indeed unique, being the first instrument in EU law to enable citizens to proactively contribute to the Union's policymaking process. The ECI differs from other participatory elements on the EU level, such as parliamentary petitions or the

*The ECI is indeed unique, being the first instrument in EU law to enable citizens to proactively contribute to the Union's policymaking process.*

Commission's consultation procedures, as citizens can address their own initiatives directly to the Commission, which holds the monopoly of initiative. In contrast, petitions to the European Parliament

only allow citizens to express their preferences (in the form of a request or complaint) to the Committee of Petitions, which then proceeds as it sees fit. The ECI also goes beyond the public consultations on the Commission's proposals, as the topic of an ECI is chosen by the citizens themselves. Furthermore, the ECI's transnational reach differentiates it from the national referendums that have been held both on accession and EU treaty reform in

individual member states. The ECI is thus also the first instrument of transnational direct democracy (e.g. Conrad, 2013; Organ, 2014). Nevertheless, it suffers from many restrictions similar to those for national participatory tools, in addition to the obvious, specific challenges that stem from the ECI's transnational character.

The practical issues are, however, more a consequence of a general lack of agreement on the ECI's purpose than the actual reason for its meagre success. Notably, while Article 11(4) TEU on the right of a citizens' initiative is broadly formulated and allows for the suggestion of "any appropriate proposal", regulation 211/2011 is much more restrictive.<sup>1</sup> Each initiative is assessed by the Commission and must pass a four-part admissibility test, including:

1. that the initiative committee is established appropriately
2. that the proposed initiative is not "manifestly abusive, frivolous or vexatious",
3. is "not manifestly contrary to the values of the Union as set out in Article 2 TEU",
4. and does not "manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties" (Organ, 2014: 427).

These restrictions laid upon the ECI by regulation 211/2011 – and, on top of that, the Commission's narrow interpretation – have allowed the Commission to refuse the registration of a considerable number of initiatives and to remain largely inactive even in the case of successful ECIs. Especially the fourth criterion is so broadly formulated that it has given the Commission an easy way out of dealing with several ECIs.

*This has led to significant frustration among initiators and raised doubts about the sincerity of the Commission's will to take ECIs seriously.*

In fact, so far the Commission has justified all rejections with the fourth criterion. This has led to significant frustration among initiators and raised doubts about the sincerity of the Commission's will to take ECIs seriously. As has been noted by Organ (2014: 245),

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<sup>1</sup> For a detailed account on the Commission's reasons for its restrictive approach, see Russack 2018: 16-18.

“the extent to which the European Citizens’ Initiative increases the direct influence of citizens over the EU’s policy and legislative agenda is therefore a key measure of its democratic impact”, and in the case of the ECI the impact has so far remained close to zero.

## 17.2 The ECI in practice

Since April 2012, 93 citizens’ initiatives have been submitted to the Commission.<sup>2</sup> After the initial enthusiasm, resulting in 23 initiatives in the first year, the number of initiatives reached its lowest point in 2016, when only three new initiatives were started. Since then, the number has risen again to 19 initiatives in 2019. Of the total number of initiatives, 21 are currently ongoing, 5 have been successful in collecting the required one million signatures of support, 30 failed to reach the threshold, 15 were withdrawn, and 23 were rejected by the Commission due to alleged failure in the legal admissibility test.

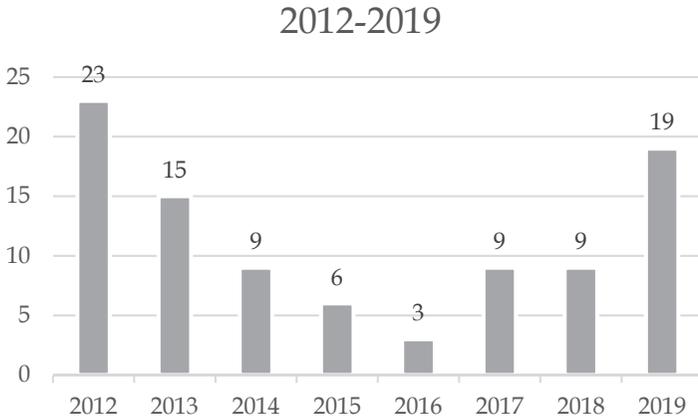
Thematically, the most popular topics have been social issues, employment and education (22 initiatives), while climate and environment have also mobilised an increasing number of initiatives (14). Notably, the Brexit vote in 2016 inspired several EU citizenship-related initiatives. The successful ECIs were “Water and sanitation are a human right! Water is a public good, not a commodity!” (2012, in short Right2Water), “One of us” (2012), “Stop vivisection” (2012), “Ban glyphosate and protect people and the environment from toxic pesticides” (2017, in short Ban Glyphosate), and “Minority SafePack – one million signatures for diversity in Europe” (2017, in short Minority SafePack). Furthermore, the “Stop TTIP” initiative would have been a successful ECI, had its registration not been refused by the Commission on the grounds that stopping a trade agreement allegedly fell outside the framework of the Commission’s powers to submit a proposal for a legal act (criterion four of the admissibility test). The rejection of “Stop TTIP” caused a political controversy, as the organisers claimed that the Commission’s decision was politically motivated (Weisskircher, 2017). This view was confirmed by the General Court of the EU, rejecting the Commission’s refusal to register the ECI (General Court of the EU 2017). Instead of re-

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<sup>2</sup> As of December 2019. Four initiatives were initially withdrawn and subsequently resubmitted.

registration, the initiative was resumed as an unofficial citizens' initiative against the free trade agreements TTIP and CETA and collected more than three million signatures (Barbière, 2017).

Figure 17.1 Number of ECIs since April 2012



Source: Authors' own elaboration based on data from the official ECI website.

Of the successful initiatives, the demands of “One of us”, namely to “ban and end the financing of activities which presuppose the destruction of human embryos” (European Commission, 2012), were rejected by the Commission without further follow-up. It argued that the issues raised by the initiative – human dignity, the right to life, and the right to the integrity of the person – are already satisfactorily enshrined in and protected by the current legal framework of the EU (ibid., 2014a). The initiators challenged the Commission’s decision in the General Court of the EU but lost the case (European Parliament, 2017).

In the case of “Stop Vivisection”, the Commission’s response was similar: while sharing the initiators’ concern to strive for the phasing out of animal testing, the Commission nevertheless stated that it is still needed in the transition period and thus the directive currently in place will not be repealed, as demanded by the ECI (European Commission 2015). The Commission did, however, commit itself to accelerating the process of phasing out animal testing (albeit in rather vague terms). Although the “Stop Vivisection” initiators challenged the Commission’s response, the European

Ombudsman found no maladministration on the Commission's part (European Ombudsman, 2017).

The "Ban Glyphosate" initiative was somewhat more successful, and the Commission adopted a legislative proposal regarding the ECI's second aim - ensuring that "the scientific evaluation of pesticides for EU regulatory approval is based only on published studies, which are commissioned by competent public authorities instead of the pesticide industry" (European Commission, 2017a). However, with regard to the first aim of the ECI, namely to ban glyphosate-based herbicides, the Commission stated that "there are neither scientific nor legal grounds to justify a ban of glyphosate" (ibid., 2017b). Additionally, for its third aim, to "set EU-wide mandatory reduction targets for pesticide use, with a view to achieving a pesticide-free future" (ibid., 2017a), the Commission merely stated that it will focus on the existing Sustainable Use Directive and review the situation over the course of 2019.

The very first ECI that managed to collect the required one million signatures, "Right2Water", can also be considered as the most successful one. It resulted in a proposal for an amendment to the Drinking Water Directive, several public consultations, and seven further general points regarding, among others, water quality and transparency in water management that the Commission intends to pursue (ibid., 2014b). However, the pace of the directive's review and amendment process has been slow, even compared to other EU legislation processes. The Commission finally adopted its proposal for the revision of the Drinking Water Directive on 1 February 2018, five years after the ECI's submission, and the inter-institutional proceedings are still ongoing at the time of writing.

Minority SafePack is the latest ECI that reached the threshold, after having been initially rejected by the Commission and subsequently re-registered following a decision by the General Court against the Commission's refusal.<sup>3</sup> The ECI demands the Commission "to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union" (European Commission, 2017c). Judging by the experience of the "Right2Water"

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<sup>3</sup> <http://www.minority-safepack.eu/>

initiative, it is no surprise that there has been no progress so far, although the signatures were already submitted for validation in April 2018.

### 17.3 Criticism and reform

The remarkably small share of successful initiatives indicates that the ECI procedure has stayed far below the initial expectations and confirms that “collecting one million signatures in 27 Member States, 23 languages, and twelve months cannot, by definition, be so simple” (Dehousse, 2013: 8). Democracy International criticised a “[l]ack of clarity in the initiative registration stage, complexity in collecting transnational signatures, and lack of public knowledge of the ECI itself [that] holds it back from realising its true potential” and further stressed an even greater source of frustration, namely that “there is no guarantee that a successful ECI will have an impact on EU policy”.<sup>4</sup>

*There is no guarantee that a successful ECI will have an impact on EU policy.*

The weaknesses of the current regulation can be divided into two categories: firstly, practical problems related to the registration and conduct of an ECI, and secondly, more fundamental questions about the purpose of the ECI instrument. The first category is related to the five consecutive steps of launching an ECI:

Table 17.1 Practical problems related to the ECI procedure

Five consecutive steps:	Related problems:
1. Establishment of a citizens' committee	No legal status for the ECI citizens' committee and high barrier of transnational, cross-language organisation for individuals without connections to civil society organisations
2. Registration of an ECI	A rigid and non-transparent admissibility check leading to a high number of rejections
3. Collection of	Difficult conditions for the collection of

<sup>4</sup> <https://www.democracy-international.org/european-citizens-initiative-reform> emphases added (accessed on 25.7.2019).

statements of support	signatures, including technical problems with the collection software and the unavoidable costs of running transnational, multilingual campaign <sup>5</sup>
4. Verification of the statements of support	A high number of invalid signatures due to inconsistent personal data requirements for validating signatures with national authorities
5. Submission and follow-up procedure	The European Commission's weak follow-up provisions for successful ECIs, lack of structure and purpose of the EP hearing

Source: Authors' own elaboration based on Salm, 2018: 4 and Moraru, 2016:149-156.

Some of these technical hurdles have been removed in the latest reform of the ECI. According to an official factsheet about the changes in the procedure (European Commission, 2019), the need for assistance and information in the registration phase has been taken into consideration and the ECI's organisers will have the option to set up a legal entity. The possibility of partial registration and revision of the proposal are also enshrined in the new regulation, for the case when an initiative does not initially pass the legal admissibility test. Furthermore, the start date of signature collection can be set flexibly by the organisers within a time frame of six months following registration. The Commission now provides a central online collection system, while leaving the option open for the organisers to use their own software. Two major points of confusion regarding personal data and residence have also been addressed: the data requirements will be simplified and all EU citizens regardless of place of residence can sign an ECI.<sup>6</sup> For the verification process, the Commission promises enhanced IT support. Last but not least, after a three-month examination period granted to the Commission, six months are foreseen for a more inclusive public hearing in the

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<sup>5</sup> Moraru (2016: 152) further points out that "[t]he minimum amount of money required for a successful initiative was 23.000 EUR while the maximum was 160.000 EUR. However, an initiative which spent the equivalent of 75.000 EUR did not manage to gather the necessary signatures. Furthermore, the initiative which spent 23.000 EUR had extraordinary support from a well-known politician, who financed an independent awareness campaign."

<sup>6</sup> EU citizens residing in a different member state than their nationality were excluded by some national regulations from signing an ECI.

European Parliament and more time for the Commission to prepare its response, if needed.

Nevertheless, the conclusion for the second category of challenges – the fundamental political limitations – is that the reforms still do not “clarify the function and direction the ECI shall ultimately take” (Salm, 2018: 101). Indeed, as Moraru (2016: 156) points out, “[s]uccessfully collecting signatures is not the same thing as a successful ECI”. There is a discrepancy between what organisers and the Commission expect and how they perceive the tool’s purpose. Most organisers expect to generate political change, while the Commission sees the ECI as an agenda-setting tool that is meant to draw attention to certain issues (Russack, 2018: 21). The main problem is therefore the ‘expectations-delivery gap’, as the ECI “is designed as a direct democratic tool but has the effect of an agenda-setting tool” (ibid.: 21-22). Furthermore, the assumption that the ECI would increase the EU’s democratic legitimacy by encouraging citizen participation and generating transnational debate reveals a superficial interpretation, as input and throughput legitimacy would require some sort of output. Hence, as long as there is no proper follow-up by the Commission and the other EU institutions, it is of little use to theorise about a potential legitimating function of the ECI. Moraru’s crushing conclusion is thus that the ECI “represents the diluted version of an overall weak instrument” (ibid.: 160).

It is safe to say that expectations of the ECI’s contribution to mitigate the legitimacy crisis and democratic deficit have been exaggerated. Generally, direct democratic instruments often fail to attract the attention of large segments of the population with diverse views and political positions, and in the

ECI’s case, the citizens who already perceive the EU as a legitimate political system are the most likely to participate (Kandyła and Gherghina, 2018: 1224, 1227). Thus the expectation that the ECI

*The expectation that the ECI would encourage ‘ordinary’ citizens to participate in the EU’s political processes has not materialised.*

would encourage ‘ordinary’ citizens to participate in the EU’s political processes has not materialised. Also the lack of public knowledge of the ECI proves that it has failed to achieve the aim of broadening civic engagement with EU affairs. It is doubtful that the current reform can effectively alleviate this major shortcoming, which fundamentally challenges the purpose of the tool.

## 17.4 Citizens' initiatives in the member states

The trend to introduce direct democratic tools as an antidote to the perceived crisis of representative democracy is a common phenomenon in EU member states. The examination of participatory instruments in 14 EU member states<sup>7</sup> conducted in the previous EPIN volume reveals that experiences on the national level have hardly been any better than with the ECI. All but two of the 14 member states have introduced some form of citizens' initiative tools, albeit with technical differences.

In comparison to the ECI, four aspects are noteworthy. First, as with the ECI, most national citizens' initiatives are non-binding and the follow-up depends on the political decisions of the relevant national institutions. The most common requirement to follow up a successful initiative is at least a debate in parliament, but not necessarily a full-fledged initiative or the necessity for a vote in parliament. These national examples are therefore in line with the ECI, which is equally non-binding and only requires a statement from the Commission. In practice, though, the European Parliament has at least conducted hearings of successful ECIs.

Exceptions to this general principle of non-binding initiatives can be found in Slovakia or Germany on a regional level, where successful initiatives can lead to referendums (Bilčík, 2018; Brandes et al., 2018). These referendums are then also legally non-binding, but may have a stronger political impact. This two-stage approach of citizens' initiatives leading to a referendum is, however, not applicable to the EU as long as there is no possibility for EU-wide referendums. Overall, none of the national examples have a stronger impact on political institutions than the ECI and remain essentially non-binding in nature.

The second notable aspect concerns the thresholds for a successful initiative. At first sight, the ECI's threshold of one million signatures from at least a quarter of the member states is a higher threshold than in any of the national citizens' initiatives. In comparison to the overall population of the EU and the individual member states, however, the threshold for the ECI is smaller. For a

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<sup>7</sup> These are Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Greece, Italy, Latvia, Poland, Romania, Slovakia, Spain and the UK.

member state to count towards the 'quarter of the member states' threshold, the ECI regulation has assigned a threshold for each member state in relation to its number of MEPs. Here the contrast is particularly strong. For instance, for Austria to count in an ECI, organisers need to collect 13,500 Austrian signatures while a successful national citizen initiative requires 100,000 signatures (Schaller et al., 2018). The comparative ratio is 9,750 to 50,000 in Denmark, 6,000 to 10,000 in Latvia and stretches as far as 9,750 to 350,000 in Slovakia (Sørensen, 2018; Bukovskis and Vizgunova, 2018; Bilčík, 2018). The only country with a higher threshold for the ECI than for national citizens' initiatives is Italy, though only by a small margin: 54,750 to 50,000 (Poli, 2018). It can thus be concluded that the threshold itself for the ECI in comparison to the overall population is actually smaller than for most national citizens' initiatives. This does not alleviate, however, the natural organisational threshold of coordinating a bottom-up initiative across several European countries and in many languages.

The third aspect is the additional limits placed upon citizen initiatives. Some national examples are limited to very specific cases (for instance constitutional amendments in Romania, though with a very high threshold of 500,000) or exclude certain areas such as taxation or international agreements (Sebe and Vaş, 2018; Jokela and Iso-Markku, 2018; Lorente, 2018). In comparison, although there are good arguments why the ECI should be limited to the competences of the EU, the very strict registration practice of the Commission for excluding ECIs, even those with regard to clear EU competences such as TTIP, have hampered its legitimacy.

The strongest commonality of all national citizen initiatives and the ECI is, however, a sober assessment of the practice. High expectations for citizens' increased participation most often clash with the reality of the non-binding nature of the instrument and weak follow-up. In addition, in some countries, low thresholds have prompted political interest groups to use citizens' initiatives more than average citizens, contributing to an increase in social and political polarisation rather than resolving controversial socio-political issues.

*The strongest commonality of all national citizen initiatives and the ECI is a sober assessment of the practice. High expectations most often clash with weak follow-up.*

Only the Finnish experience with the citizens' initiative, introduced in 2012, seems to present a positive example. Although non-binding, the initiatives have had a constructive impact, activating and politicising citizens and even contributing to the solution of a political blockade (Jokela and Iso-Markku, 2018: 231-4). Italy is an interesting case in point, too, as Italians are among the most active ECI participants, with a significantly higher participation rate in ECIs than in national initiatives (Poli, 2018: 285). The evidence from the national level thus suggests two conclusions: firstly, that the ECI's weaknesses are common to all instruments of the type; and secondly, that expectations of what such tools can contribute should be adjusted to the reality on all political levels.

## 17.5 Recommendations

Several improvements to the user-friendliness of the ECI have been introduced with the reform that came into force in January 2020. However, the most crucial question will be the new Commission's take on the ECI. Since the instrument has proved to be a "toothless tiger" (Russack, 2018: 17), it is up to the von der Leyen Commission to show it is taking the instrument more seriously. Interest in the tool has been on the rise again (19 new initiatives in 2019, compared to 9 in the previous year), which suggests that European citizens have not entirely given up on the instrument. In this spirit, Ursula von der Leyen has mandated a specific Commissioner, Věra Jourová (Vice-President for Values and Transparency), with further improving the ECI. Every new ECI is to be discussed in the Commission College when registered – not only when successful – and the reasoning of the Commission to be explained better.

Beyond the declaratory approach, the new Commission would be well advised to show more commitment in its responses to successful initiatives. If it continues with the reluctant approach of the previous Commissions, all the well-meant practical reforms will be of no use. The ECI topics paint a clear picture of issues that concern European citizens, giving the EU an opportunity to show that the Union is also its citizens' project and not only a technocratic one. While it is a valid argument that average citizens are hardly the best judges of extremely complex EU matters, their expressed concerns should nevertheless be taken more seriously, if the EU does not want

the negative experiences with the ECI to backfire and decrease citizens' trust in the EU.

Secondly, the comparison with citizens' initiatives at the member state level reveals that the most important challenge for the ECI is not in the technicalities of registration. On the contrary, apart from the natural obstacles in transnational politics (language barrier, higher organisational requirements, and geographical distance) the ECI has neither a comparably higher threshold nor much stronger restrictions than its national counterparts. Experience points to the necessity of balancing expectations with the potential political impact of citizens' initiatives and the need for the addressed institutions to engage in public discussions on the merits of the proposals rather than burying them in a technical follow-up process.

Finally, the von der Leyen Commission has announced the establishment of a "Conference on the Future of Europe", to be set up in early 2020. The first task of this new conference is to discuss how to improve the democratic functioning of the EU, with particular focus on the election of the EU's leadership and transnational lists after the difficult process that followed the 2019 European elections (see relevant articles in this volume). This discussion should be extended to the whole spectrum of democratic legitimacy, including an honest assessment of the use of direct democracy on the European level. The experience with the ECI and the comparison with the national level suggest that such tools can only ever be complementary. But if established, they should be taken seriously and properly integrated into the policymaking process instead of remaining a mere gesture.

## References

- Barbrière, C. (2017), "'Stop TTIP' petition is legitimate, top EU court rules", *EurActiv*, 11 May (translated by Samuel White).
- Bilčík, V. (2018), "Direct Democracy and the EU in Slovakia: Looking Beyond the Referendum", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 373-388.
- Brandes, E., N. von Ondarza and F. Schenuit (2018), "Direct Democracy in Germany", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 237-252.
- Bukovskis, K. and E. Vizgunova (2018), "The Europeanisation of Latvia's Direct Democracy: Not There Yet", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 303-327.
- Dehousse, F. (2013), "The European Citizens' Initiative: Next Big Thing or New False Good Idea?", *Egmont Paper 59*, Brussels: Royal Institute for International Relations.
- European Commission (2012), "One of us", ECI(201)000005, *The European Citizens' Initiative Official register*, (<https://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000005> accessed on 27 December 2019).
- European Commission (2014a), *Communication from the Commission on the European Citizens' Initiative "One of us"*, COM(2014) 355 final, Brussels, 28 May.
- European Commission (2014b), "Water and sanitation are a human right! Water is a public good, not a commodity!", Commission's answer and follow-up (<https://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/follow-up/2012/000003/en?lg=en> accessed on 27 September 2019).
- European Commission (2015), *Communication from the Commission on the European Citizens' Initiative "Stop Vivisection"*, C(2015) 3773 final, Brussels, 3 June.
- European Commission (2017a), "Ban glyphosate and protect people and the environment from toxic pesticides", Commission's answer and follow-up, (<https://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/follow-up/2017/000002/en?lg=en> accessed on 27 September 2019).

- European Commission (2017b), *Communication from the Commission on the European Citizens' Initiative "Ban glyphosate and protect people and the environment from toxic pesticides"*, C(2017) 8414 final, Strasbourg, 12 December.
- European Commission (2017c), "Minority SafePack – one million signatures for diversity in Europe", ECI(2017)000004, *The European Citizens' Initiative Official register* (<https://ec.europa.eu/citizens-initiative/public/initiatives/open/details/2017/000004?lg=en> accessed on 27 September 2019).
- European Commission (2019), "European Citizens' Initiative", *factsheet*, 17 May, (<https://ec.europa.eu/citizens-initiative/public/regulation-review> accessed on 2 December 2019).
- European Ombudsman (2017), *Decision in case 1609/2016/JAS on the European Commission's response and follow-up to the European Citizens' Initiative "Stop Vivisection"*, (<https://www.ombudsman.europa.eu/en/decision/en/78182> accessed on 24 September 2019).
- European Parliament (2017), *JD – Review of the European Citizens' Initiative Regulation* (<http://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-jd-review-of-the-european-citizens-initiative-regulation/07-2019> accessed on 24 September 2019).
- General Court of the European Union (2017), "The General Court annuls the Commission decision refusing the registration of the proposed European citizens' initiative 'Stop TTIP'", Press Release No 49/17, Judgment in Case T-754/14 Michael Efler and Others v Commission, Luxembourg, 10 May (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170049en.pdf> accessed 20 November 2019).
- Jokela, J. and T. Iso-Markku (2018), "Finland: Direct Democracy and the Representational System", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 215-236
- Kandyla, A. and S. Gherghina (2018), "What Triggers the Intention to use the European Citizens' Initiative? The Role of Benefits, Values and Efficacy", *Journal of Common Market Studies*, Vol. 56, No. 6, 1223-1239.
- Lorente, J. (2018), "Spain: No Country for Direct Democracy?", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 389-409.

- Organ, J. (2014), "Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens Initiative Proposals", *European Constitutional Law Review*, Vol. 10, 422-443.
- Poli, E. (2018), "Engaged but Disempowered: Italians Experience Direct Democracy", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 285-301.
- Moraru, A. (2016), "European Union democratic governance: a case study of the European Citizens' Initiative", *Europolity*, Vol. 10, No. 2, 137-168.
- Russack, S. (2018), "Pathways for Citizens to Engage in EU Policymaking", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 9-41.
- Salm, C. (2018), "The added value of the European Citizens' Initiative, and its revision", *Study for EPRS (European Parliamentary Research Service), European Added Value Unit*, Brussels: European Union.
- Schaller, S., P. Schmidt and C. Breinschmid (2018), "Direct Democracy in Austria: just a tool for the opposition?", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 121-144.
- Sebe, M. and E. Vaş (2018), "The untapped Potential of Direct Democracy in Romania", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 349-371.
- Sørensen, C. (2018), "Denmark and Direct Democracy: Frontrunner and Laggard", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International, 195-213.

# 18. MODERN PETITIONS FOR MODERN EUROPEAN DEMOCRACIES

ELIZABETE VIZGUNOVA

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*Petitions are instruments that strengthen democracy, narrowing the distance between the popular and the political. Whereas petitions historically have not been the most effective tool to push for policy change, they promote transparency, ensure greater information flows and can impact the agenda of legislators, executives or other addressees. In addition, petitions improve the system of governmental checks and balances. In EU member states nowadays, a particularly important role is played by official e-petitions, that have the potential of further narrowing the democratic deficit, especially among marginalised groups with limited access to political power. This chapter reviews two examples of petition systems – one in Scotland, and the other in Latvia – and points to differences between a state-owned model and a model run by a non-governmental organisation, as well as suggesting the possible impact of petition systems on policymaking.<sup>1</sup>*

## 18.1 Introduction

Petitions are agenda-setting tools and hence a form of participatory democratic process, which enables the organisation of the public in an action with potential political consequences. At the very least, the objective of petition systems is to achieve a reaction from the institution addressed; even if a negative one. This means, unlike referendums in many countries, petitions are a non-binding form of

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<sup>1</sup> The author would like to thank Dr. Karlis Bukovskis for his assistance in the preparation of this chapter.

participatory democracy. Petitions do not guarantee that governments will be held accountable for popular dissatisfaction; instead, the purpose of petitions is often to generate discussion in the broader society and attract the attention of politicians to a certain problem. Böhle and Riehm (2013) even compare their effectiveness to public opinion polling and public hearings, in that they are also an attempt to offer people a chance to make their voices heard.

Petitions share similar characteristics: they are bottom-up; they do not need to meet various thresholds and criteria and they are free of cost; they often address ‘intermediary’ institutions that stand between the person submitting the petition and the body addressed in the petition. Importantly, bodies such as the parliamentary petition committee often lack the actual power of sanctioning, repealing or imposition, and therefore rely only on convincing arguments and reputation in their work (Linder and Riehm, 2011: 3).

*Petitions strengthen democracy, narrowing the distance between the popular and the political in EU member states.*

Petitions strengthen democracy, narrowing the distance between the popular and the political in EU member states. Petitions are not always considered to be the shortest path to decision-making and policy change, but they are often more transparent and more broadly engaging than other democratic processes. The emergence and use of modern information technologies is serving as one of the most important instruments towards the transformation of petition systems. Various online forums discuss the petitions, provide information to the public and have the potential to reduce the democratic deficit and integrate marginalised or passive societal groups in the policymaking process.

*Properly set-up petition systems are a cornerstone of the democratic process and especially of direct democratic participation in the future.*

In times of growing complexity of policymaking, petitions are a necessary and useful instrument for greater participation of citizens. Whereas petitions are most often non-binding policy instruments, their most valuable contribution is providing a channel of upwards communication, which significantly increases the ability of the public to address specific concerns relating to any public institution, without intermediaries in the form of political parties and politicians. Properly set-up petition systems are a cornerstone of the

democratic process and especially of direct democratic participation in the future. Should European democracies seek to be modern they need to embrace new technological solutions for direct democracy.

Continuing the previous research in the series (Russack, 2018), this chapter addresses modern petitions in the context of digital technologies and as part of the parliamentary systems. It then looks at two distinct examples of government-owned and non-governmental petitioning systems in Scotland and Latvia respectively in view of the future of direct democracy. The Scottish government-owned system, dating back to 1999, is selected as a contrast to the Latvian version, which was launched and developed by a non-governmental organisation and is also becoming part of Latvia's public diplomacy abroad (Melkis, 2020). The chapter closes with conceptual recommendations regarding the future of petition systems in modern European democracies.

## 18.2 The age of digitalisation and petitions

As a result of the development of internet and communications technologies, the introduction of e-petitions has radically changed the dynamics of petitions. In broad terms, according to Linder and Riehm (2011: 3-4) e-petitions can be classified as follows: petitions submitted via e-mail or web interface; public e-petitions where the text of the petition is published online; and public e-petitions, with additional elements (e.g. submitting a signature). Nowadays, online petitioning tools are considered not only pioneering new ways of petitioning, but also as enabling petitioners to freely access all levels of government (and even businesses and corporations). As a result, new, loosely affiliated groups with traits of collective identity are rallying around certain online petitions, creating a dynamic which has sometimes been termed "Protest 2.0" (Dumas and LaManna, 2015: 2-3).

Various web-based solutions have created a new toolkit attracting more attention to the petition and making parliaments switch to more transparent practices (Linder and Riehm, 2011: 3). The best-known examples of this are *avaaz.org* (55 million users worldwide) or *change.org* (337 million users worldwide and growing). Such transnational advocacy groups are

*Transnational advocacy groups are now at the forefront of contesting global political choices and suggesting alternative routes.*

now at the forefront of contesting global political choices and suggesting alternative routes, for instance appeals to US and EU member state governments for suspension of arms exports to Turkey due to latter's invasion of Syrian territory (Avaaz.com, 2019). Often, these loosely linked networks are referred to as a "world society", developing global social norms (Strange, 2011: 1236).

The groups behind global petitions are often characterised by a set narrative shared among the supporters of the petition; by consisting of small, numerous and interlinked groups across borders; and the fact that their survival is only ensured by the online environment (Strange, 2011: 1236). Yet, a distinction must be made: global petition platforms are not bound by national law as opposed to nationally-based platforms run by either parliaments or governments, or alternatively the non-governmental sector. The e-petitioning systems tied to established governments serve an entirely different purpose: they are created to enhance communication between the public and the state, without interference from 'third' forces (mass media, political parties or corporations) (Dumas and LaManna, 2015: 3).

Petitions are a tool to address the 'democratic deficit' that exists between the people and the government (e.g. as in Scotland, replacing the 'Westminster model' and introducing a new model of downward accountability in 1999) (Cavanagh, 2000: 67). The Scottish e-petition system was the first one to be introduced in Europe;

*The rationale behind the modernisation of participation tools is the inherent unfairness of representative democracy.*

following its example, the *Deutscher Bundestag* put in place their e-petitioning system (Linder and Riehm, 2011: 2). The rationale behind the modernisation of participation tools is the inherent unfairness of representative democracy:

studies often argue that democratic participation is dependent on factors such as education, socio-economic status, and even physical distance from the political centres of the country (Lee, Chen, Huang, 2014: 34).

Thus, solutions like e-petitioning are seen as reducing the costs of participation and engaging passive parts of societies. Some authors even argue that "Fully fledged systems of e-democracy have the potential to reduce the problem of unequal political influence, thereby reducing the problem of unequal participation and making

democratic politics more representative and equitable” (Lee, Chen, Huang, 2014: 34). On the other hand, scholars are not united in this optimistic view of internet and communications technologies: e.g. a survey in Germany of 2007 showed that those most keen on participating in e-democracy were already highly active and had a long-standing presence online.

Users of e-petition systems are younger, mostly male and with higher education than ‘traditional’ petitioners. Thus, there is some indication that e-petitions do not serve as a democratisation tool, but rather as another way of exacerbating already-existing differences in societies. Thus, e-petitions seem to amplify existing inequalities in participation patterns (Linder and Riehm, 2011: 2). Petitions are considered to have a significant agenda-setting influence on policymakers, especially on moving away from traditional forms of political participation such as demonstrations, boycotting and replacing them with online solutions (Durso and Jenkins, 2018: 207).

### **18.3 Parliamentary petitioning in EU countries**

The right to petition in the EU is usually ensured by constitutions, in addition to specific laws that regulate the right to petition. The other important characteristic is that the petitioner has official legal protection from prosecution as a result of petitioning. Overall, the political systems of the EU member states allow direct access to all levels of state administration, including heads of state, ministries and parliaments. However, there are often special ‘intermediary’ institutions (such as parliamentary petition committees) put in place in order to manage the flow of petitions and ensure their efficiency. It is interesting to note that it is also a commonality across EU member states that the right to petition parliament is foreseen (Dumas and LaManna, 2015: 4).

All petitioning systems also share a certain number of steps that need to be completed for the petition to proceed through the process. Whereas the characteristics of each stage vary from country to country, they entail: firstly, the preparatory phase, when all activities, related to the submission of the petition are carried out; and the submission phase, when, according to the means (on paper or online) of handing the petition in are chosen and its requirements are filled out (e.g. personal information submitted). These two phases are

up to the petitioner. The following phases are, on the other hand, dependent on the receiving end: the consideration of the petition by checking the content and the requested annexed information; the termination phase, when the responsible body formulates a decision that is communicated to the petitioner and the broader public; the implementation phase and, finally, the follow-up phase where some control is given back to the petitioner (Böhle and Riehm, 2013). Böhle and Riehm (2013) also set out the qualifying factors for responsiveness that need to be ensured: a website of the parliamentary petitions system; submission of petitions via e-mail or an online submission form; publication of the petition on the web, plus consistent communication on the decision on the petition and other information; interaction between the petitioner and the petition body, in particular, implying the ability to acquire information on the status of the petition's review or add information throughout the reviewing process; eventually, the involvement of the public, related to signing the petition and discussion of the petition in various, often state-mediated forums.

## 18.4 The ascent of e-petitioning?

Petition systems differ across EU member states. National governments have pursued different routes towards enabling e-petitions. For instance, the Netherlands, Estonia, Finland have separate online portals that enable citizens to hand in petitions and are run by the national governments or outsourced to the non-governmental sector. Latvia's case on the other hand is different and provides a unique example where an online tool "manabalss.lv" is developed, run and fully 'owned' by a non-governmental institution. Both these governmental and non-governmental approaches provide a basis for conceiving the future of e-petitioning systems.

In spite of Scotland not being part of the European Union after Brexit, its more than two decades of experience with managing and aggregating online petitions is an important source of information. The Scottish government-owned model can be easily contrasted with the Latvian approach. In the first case the use of emerging online technologies became a twofold attempt to both engage wider audiences in democratic process and gather additional ideas and articulations of interest from within the society. Hence, this system became the flagship for government-owned online petitions. The

Latvian case differs as it was the national parliament that embraced a system originally developed by non-governmental actors. Amendments to the Constitution (*Satversme*) facilitated the opportunity for an alternative and the alternative came from a private initiative.

Therefore, Scotland is known as a pioneer of government-owned e-petition systems where a particularly interesting trait – the gathering of oral evidence – is introduced to the system, offering an additional route for the petitioners to become involved. In Latvia, on the other hand, a non-governmental initiative, *manabalss.lv*, filled in the vacuum as a petitioning system did not exist before and has become a major (if not the main) tool of upwards political communication and public participation in political processes and decision-shaping. Both cases make it possible to draw broader conclusions on the potential impact of e-petitions and make recommendations for the future. The two different approaches each offer possibilities.

### *The Petition System in Scotland*

The Scottish system is government-owned and curiously, is primarily concerned with issues like agriculture, forestry and fishing; education and training; environment; Gaelic; health; housing; law and home affairs; local government; natural and built heritage; planning; police and fire services; social work; sport and the arts; statistics and public records; tourism and economic development; transport (Scottish Parliament, 2020). For reserved matters, the petitions can turn to the UK Government's petition system (e.g. foreign policy, defence and national security, employment legislation and social security).

The Scottish Parliament has a Public Petitions Commission dealing with the admissibility of petitions. The tasks of the Commission include discussion on new petitions and decisions on the desirable direction each petition should take. Importantly, the Commission also has workers devoted to helping and guiding petitioners in the process of drafting and submitting a petition (Cotton, 2011: 34). The Scottish Public Petitions Committee may also call the submitter of the initiative to provide oral evidence (Linder and Riehm, 2011: 4).

Petitions can be submitted through the online “e-petitioner” system or a template. Importantly, Scotland has presented a blueprint for the rest of the world as it was the first country in the world to launch its “e-petitioner” in 1999. The platform enables petitioners to add a petition personally or support one as a signatory; to discuss petitions in a specially designated forum and add background information to petitions (Cotton, 2011: 34). The “e-petitioner” is now used to collect signatures for petitions in almost 100% of petition cases; and some 90% of the petitions are submitted to the Scottish Parliament via e-mail (Cotton, [2011], 21). Petitions can also be posted to the parliament free of charge by handing them in at the post-office. However, electronic submissions are encouraged.

The petitioning process in Scotland is characterised by “intensive efforts to involve petitioners in the petition process and the make all of its stages transparent” (Cotton, 2011: 20). For instance, the “e-petitioner” accepts petitions in any language, including Braille. Furthermore, no limitations – neither a quorum, nor a “member of parliament filter” – are applied. The petition system is transparent and public, as the citizens can follow the Committee meetings online. Furthermore, all background information – including documentation, minutes of the Committee meetings, details of the petitioner etc. – can be accessed online (Scottish Parliament, 2020).

This has, clearly, played out in the parliament’s favour, as a large percentage of petitioners (90%) “seem to believe that their petitions will be handled fairly” (Carman, 2007). Surveys also show that the public sees the Scottish petition system as easy to understand (58.82%) and that the petition system is doing a good job overall of

*The public largely believes that the petition system is a useful tool to develop a closer link between the public and the parliament.*

keeping the public informed on the process (64%) (Carman, 2007). This is also why the public largely believes that the petition system is a useful tool to develop a closer link between the public and the parliament and are satisfied with the outcome of the petitioning system (55% in

both cases) (Cotton, 2011: 34). A closer analysis of the Scottish e-petition system also seems to support this perception, as 84.9% of all petitions submitted “were reviewed by government committees, bodies, or outside organisations, and entered the political discussions.” (Cotton, 2011: 38). Additionally, data indicates that

55.3% of the e-petitions submitted through the “e-petitioner”, are submitted by individuals, indicating that the tool is easy to use for people non-affiliated to interest groups. The efficiency of this system in engaging the public is evident, while the actual outcomes of the petitions vary and should be investigated separately.

### *The petition system in Latvia*

The Latvian Parliament amended its Rules of Procedure on 19 January 2012 to make the provision that a collective submission can be submitted by no less than 10,000 people that have reached the age of 16 on the day of the submission. The collection of signatures can be done both online and on paper, taking into consideration that the protection of personal data must be ensured. If the collective signature has been submitted electronically, it is necessary to submit technical information (that testifies the number of signatures to the collective submission and allows for verification of each name, last name and personal code) (Latvijas Republikas Saeima, 2019).

After receiving a collective submission (complete list is available on manabalss.lv), the Saeima Praesidium evaluates, in no longer than 10 days, the compliance of the submission with the Rules of Procedure and decides if it can be submitted to the Mandate, Ethics and Submissions’ Commission. This Commission evaluates the submission for a period no longer than one month. The Commission is also entitled to invite the person responsible for the representation of the petition, as well as deputies from other parliamentary commissions and representatives of the institutions concerned by the submission. The person responsible for the collective submission is entitled to supply evidence for the legitimacy of the collective submission and participate in the discussions (Deputati uz Delnas, 2012).

Finally, the Commission prepares a report detailing the number of signatories, the ‘essence’ of the submission and the desirable direction the submission should take (e.g. the creation of a special parliamentary committee in order to prepare a draft law, to pass the submission to a different institution, to close it, etc.) (Latvijas Republikas Saeima, 2019). Importantly, the Saeima provides information on the process of the submission via phone or e-mail, as well as personally at its information centre (the Mandate, Ethics and

Submissions committee's homepage also provides an overview of the process and direction of each petition; the portal manabalss.lv also tries to provide information on its homepage under each submitted petition).

Paper-based petition submissions are now rare and considered as 'dying out'. On the contrary, the online petition system in Latvia is popular as a means of public participation: it has 227,427 verified users (Melkis, 2020). Manabalss.lv ("My vote/voice"), run by a non-governmental organisation (which is exceptional in the EU), claims that their success (which is not a widespread phenomenon in the success of online petitioning tools) is accounted for by the following factors: an early recognition by the President of Latvia of the usefulness of a collective initiative tool as a fundamental right of citizens; and the contextual conditions – the global financial crisis and mass emigration from Latvia created a situation where there were record-low levels of trust in the government and parliament.

Furthermore, consistent and targeted lobbying activities were carried out at the Saeima in order to introduce the collective submission as a means of democratic participation. Manabalss.lv also consistently tries to support the petitioners, providing information and consultations on the process, wording and potential of petitioning. Largely, manabalss.lv filled in a vacuum where the government had not stepped in and the New York Times even argued that this could be an example for the rest of Europe (McGrane, 2013). According to its estimates, at least 67% of the initiatives submitted through the portal have had an effect on the law-making process in the Saeima with significant elements of original proposals being implemented in national legislation (Melkis, 2020).

## 18.5 What impact can petitions have?

The first observation to be made is that petition systems are, overall, not the best tools to achieve real changes in policymaking. Assessing the success of petitions is difficult, because most petitions finish up not making it through the high benchmark of quality-control established by the petitioning systems (e.g. manabalss.lv argues that only roughly 40% of all petitions submitted have the opportunity to be published online, in order to enter the public narrative space at all) or are closed for various reasons. However, the 'success' of petitions

can be seen in not only raising an issue in the public space, but also putting it on the agenda of the addressee.

In fact, evidence suggests that the ‘chicken and egg’ problem is commonplace (Carman, 2007). According to Melkis (2020), some political parties picked up issues addressed in collective submissions even if they had not gathered the necessary threshold of 10,000 signatures. This means that measuring *how many* petitions have been ‘successful’ is overall a bad measure to assess the usefulness of a system. The downside is that, apart from the progressively developing systems of e-petitioning that allow access to information and discussion on the status of the files, decision-making is likely to take place without the participation of the petitioner.

*The ‘success’ of petitions can be seen in not only raising an issue in the public space, but also putting it on the agenda.*

Regardless of these limitations, petitions can be influential. Particularly large signature campaigns can effectively mobilise supporters and many NGOs and interest groups strategically initiate large signature drives as a part of their issue-based campaigns in order to drum up supporters and capture media attention. However, it is undeniable that petitions can serve as a link between the public and their representatives. On another level, petitions certainly have a positive effect on societal organisation and mobilisation. Petition platforms are a space for participation where a group of supporters of a certain cause can develop similar narratives, form ideas and even ‘language’ that helps to signal important directions of societal change. This also means that individuals/groups can become more integrated in the political system, providing an instrument that creates pathways for constructive input into policymaking.

## Recommendations

*The key practical characteristics of a responsive, modern petition system should be the following (Riehm, Böhle and Linder, 2014, 195):*

- petitions can be submitted through written and electronic channels;
- petitioners get paid or free legal support as well as expert backing when formulating the petition;

- petitioners can in real time obtain information about the state of processing of the petition during the procedure;
- there are opportunities for petitioners to become actively involved in the consideration of their petitions;
- the petition body actively informs petitioners about the petition system;
- the parliament's petition system has its own website offering various features.

These are requirements that are clearly more efficiently met by providing and encouraging electronic forms of petitioning.

***Promote an inclusive petitioning system.*** The 'new' tools of participation are largely accessible to the younger generations that are information and technology savvy, leaving the older generations in an information vacuum. For example, statistical reviews of the Scottish petitioning system indicate that "petitioners seem to come disproportionately from the middle class" and that "petitioners also seem to be, on the average, better educated than the average member of society", as well as that "petitioners are clearly much more participatory and engaged than are general members of the public" (Carman). Similar issues concern other marginalised groups that find it difficult to participate in petitions (e.g. people with limited eyesight). A potential solution in this case is the introduction of the system of 'contact points', where those with limited online skills/access can exercise their right to petition. The Scottish "e-petitioner" system is also available in Braille.

***Ensure support from visible figures and conventional/social media presence.*** The Manaballs.lv experience shows that success stems from endorsement by various stakeholders, including politicians, officials, the media, the non-governmental sector, the academic sector, and representatives of culture and sports. As petitions are a political process with political goals, politicisation is unavoidable. A 'natural selection' would take place with petitions appealing to broader and more diverse audiences gaining the most support. By showcasing successful petitions, better results can be reached. Statistics are an important part in this process, as they make it possible to compare how some initiatives have been more successful than others, helping the design of strategies to achieve better results. Again, all of these are achievable if the system is electronic and hence automated and instantly accessible.

*The host or administrator of the petition system (governmental or non-governmental) should provide full information* on each petition not only to the petitioners themselves, but also the general public and the decision-makers (parliaments, governments, Ombudsman, etc.). This is crucial as it instils an understanding of the importance of petition systems in order to correct both input and output problems that impact people's quality of life. The process should be transparent and indiscriminately accessible to all people residing in the country even if special assistance should be provided to parts of the population. Electronic access via mobile applications and internet sites should be broadly provided.

*The non-governmental sector can provide an effective gateway* to increase the effectiveness of the petition system. Manabals.lv is an example of a non-profit organisation that survives solely on donations. Therefore, as opposed to, for instance, state-owned organisations with a stable budget, the drive for this sort of organisation to effectively engage in policymaking process as a 'policy entrepreneur' is much higher. Public and decision-maker trust in the host/provider/administrator of the system is paramount. Reputation is mainly the responsibility of the e-petition provider, but it should also be widely respected as part of modern democratic decision-making process.

Finally, *installing systems that are based on modern smart phones is essential*. Fingerprint and face recognition technology, and internet banking tools are already popular ways of authorising online transactions and other activities. With this technology becoming the norm in every individual's life, a well built and administered system would allow immediate direct democratic participation on an increasing number of issues. Not only would voting for political parties become usual, but decision-making in the form of submitting and expressing support for petitions could become a reality. Modern democracies require modern solutions and a comprehensively built e-petitioning system with the ability to cast votes could lead to online-based referendums, the most extreme form of direct democracy.

## References

- Avaaz.com, (2019) "Save Syrian lives - suspend all arms exports to Turkey!", 18 October ([https://secure.avaaz.org/campaign/en/stop\\_the\\_syrian\\_bombs\\_loc/?slideshow](https://secure.avaaz.org/campaign/en/stop_the_syrian_bombs_loc/?slideshow)).
- Böhle K. and U. Riehm (2013), "E-petition systems and political participation. About institutional challenges and democratic opportunities", *First Monday*, 1 July.
- Carman, C. (2007), "The Assessment of the Scottish Parliament's Public Petitions System 1999 - 2006", Public Petitions Committee Report, Scottish Parliament (<https://archive.parliament.scot/business/committees/petitions/reports-06/pur06-PPS-assessment-01.htm>).
- Cavanagh, M. (2000), "Closing the democratic deficit? The First Year of the Public Petitions Committee of the Scottish Parliament", *Policy and Administration*, Vol. 15, No. 2, Summer.
- Cotton, R. (2011), "Political Participation and E-petitioning: Analysis of the Policy-making Impact of the Scottish Parliament's E-petition System", *The University of Central Florida Undergraduate Research Journal*, Vol. 6: 33-44.
- Deputāti uz delnas [Transparency International Latvia] (2012), "Likumi un Balsojumi: Kolektīvais iesniegums - grozījumi Saeimas kārtības rullī", [Laws and voting: collective submission - amendments to the Scroll of Order of the Parliament of Latvia] (<http://arhivs.deputatiuzdelnas.lv/likumi-un-balsojumi/kolektivais-iesniegums-grozijumi-saeimas-kartibas-rulli.html>).
- Dumas, C., D. LaManna et al. (2015), "Examining political mobilisation of online communities through e-petitioning behaviour in We the People", *Big Data & Society*, July-December: 1-20.
- Durso, R., Cr. Jenkins et al. (2018), "How to study political activists: A Petition survey approach", *Social Science Research* Vol. 7: 207-220.
- Latvijas Republikas Saeima (2019), [Parliament of the Republic of Latvia], Mandātu, ētikas un iesniegumu komisija [Mandate, Ethics and Submissions' Commission], (<https://mandati.saeima.lv/kolekt%C4%ABvie-iesniegumi>)
- Lee, C., D. Chen et al. (2014), "The Interplay Between Digital and Political Divides: The Case of E-petitioning in Taiwan", *Social Science Computer Review*, Vol. 32, No. 1, 37-55.

- Linder, R. and U. Riehm (2011), "Broadening Participation through E-Petitions? An Empirical Study of Petitions to the German Parliament", *Policy & Internet*, Vol. 3, Issue 1, 4.
- McGrane, S. (2013), "Latvians' Ideas Can Bloom into Law", *New York Times*, April 9.
- Melkis, D. (2020), Authors' interview with representative of manabalss.lv in Riga, January 29.
- Riehm U., K. Böhle and R. Linder (2014) "Electronic petitioning and modernization of petitioning systems in Europe", Office of the Technology Assessment of the German Bundestag, 195 (<https://www.isi.fraunhofer.de> > *dokumente* > *cct* > *Electronic-petitioning-2014*).
- Russack, S. (2018), "Pathways for Citizens to Engage in EU Policymaking," in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU. The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Scottish Parliament (2020), Petitions (<https://www.parliament.scot/gettinginvolved/petitions/index.aspx>).
- Scottish Parliament, "How to Submit a Petition" (<https://www.parliament.scot/HTSAPP-190712>).
- Strange, M. (2011), "'Act now and sign our joint statement!' What role do online global group petitions play in transnational movement networks?" *Media, Culture and Society*, Vol. 33, No. 7, 1236-1253.



# 19. EUROPE'S DELIBERATIVE INSTRUMENTS: HAS THE EU DELIVERED? WOJCIECH BIAŁOŻYT AND ROMAIN LE QUINIOU

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*The European Union has implemented three instruments to enhance the participatory character of its actions by engaging European citizens in the process of elaboration of EU policies. This chapter's first section reviews these tools: on one side is the implementation of Citizens' Dialogues as well as public consultations on specific legal and policy developments by the European Commission, and on the other are the European Citizens' Consultations implemented by EU member states. Even if different in terms of processing and formats, these two tools share common objectives such as reenergising the link between citizens and politicians and developing mutual understanding. The following section provides an assessment of these instruments made by policymakers, researchers and European citizens, reviewing their ability to facilitate the empowerment of citizens' voices in EU policymaking. Finally, a series of recommendations, at both strategic and operational levels, suggest ways of rising to the major challenge of designing a feasible EU participatory model.*

## **19.1 Introduction: A crisis of representativeness**

Most European Union member states have witnessed a considerable rise in populist and illiberal political movements over the last decade. In a few countries, they have gained power by attacking basic principles of liberal democracy such as an independent judiciary and media. However, the crisis of democratic legitimacy also affects the EU itself, reaching a particular peak as a result of economic and financial downturns. Whether at the national or EU level, this democratic crisis seems to be first and foremost a crisis of

representativeness (Tormey, 2015: 15). In addition to a broken link with their representatives, many citizens have lost confidence in politicians' ability to manage current challenges, a prominent example being the refugee crisis.

*Solutions are needed to reinvigorate democracy across Europe in order to rebuild societal consent around it.*

Democratic governments are then challenged by citizens' opposition manifested through passive (abstention) or active (alternative voting/protests)

means. Solutions are needed to reinvigorate democracy across Europe in order to rebuild societal consent around it.

The European Union has taken into account the current democratic challenge by proposing a new participatory approach, included in the White paper on the future of Europe (European Commission, 2017) and later defended by President Juncker in his address on the State of the Union (Juncker, 2017). In another instance, President Macron has called for "a more democratic daily functioning of tomorrow's Europe" (Macron, 2017a). However, as this declaration was made in the context of the upcoming European elections, one may wonder if it is a long-term perspective or solely a campaign position. Ursula von der Leyen, the newly appointed President of the European Commission, appears to be aligned with her predecessor (Butcher and Stratulat, 2019), proclaiming a "new push for European democracy" and the creation of a two-year Conference on the Future of Europe (von der Leyen, 2019).

## 19.2 New tools for a democratic renewal

Democratic renewal implicitly requires new methods to re-engage citizens in political debates and thereby the creation of policy instruments. In this regard, new democratic instruments involving citizens have been implemented in recent years across the EU. They are as follows:

- Citizens' Dialogues;
- Public Consultations on specific legal and policy developments;
- European Citizens' Consultations.

The *Citizens' Dialogues* were first implemented by the European Commission in 2012. They became a priority under Juncker's

Commission, starting with an event in Riga (8 January 2015) where First Vice-President Timmermans, Vice-President Dombrovskis and Commissioner Crețu met 500 European citizens to debate several topics related to EU policymaking, including the stability of the Eurozone, energy independence and security issues. This tool is based on a general format which includes a dialogue between high-ranking Commission officials – including even Commissioners – and ordinary citizens. Since the event in Riga, more than 1,600 events have been organised all around Europe, involving more than 200,000 citizens (European Commission, 2019: 5). The European Commission labels these events as “public debates on EU policies” that offer the opportunity for European citizens to ask EU policymakers questions, make comments on EU policymaking that affects them or share ideas on the future of Europe. However, the format of these Dialogues has been put into question as it resembles more a ‘Question & Answer’ session than an authentic dialogue (Russack, 2018: 20).

In recent years, the European Commission implemented public consultations on specific legal and policy developments within the EU. This tool offers the opportunity for citizens to provide online feedback on EU policymaking which directly impacts their daily lives. The citizens can express their views directly to the European Commission regarding the scope, priorities and added value of EU policies. Each public consultation on specific legal and policy development is open for several weeks (around three months) and covers specific areas of EU policymaking (e.g. industry, environment, social affairs). This tool is particularly interesting for stakeholders as they can offer precise feedback on the real impact of EU policymaking on their activity and thus provide some useful and technical recommendations to the EU.

Following Emmanuel Macron’s speech at La Sorbonne, member states implemented *European Citizens’ Consultations* in order to “identify priorities, concerns and ideas for the future of Europe” (Macron, 2017b). This initiative then became a “pan-European process of citizens’ consultations” (Council of the EU, 2018a: 1) following the signing of the Joint Framework on citizens’ consultations by all EU member states in March 2018. Around 1,700 European Citizens’ Consultations took place across Europe, generating in-depth discussions on a diverse range of EU-related issues (from general to specific ones). Contrary to Citizens’

Dialogues, these consultations were organised by member states (national governments sometimes in partnership with local actors and civil society organisations) and not by the European Commission (Butcher and Pronckutė, 2019: 81). As a consequence, if member states agreed on limited “common principles” – including inclusiveness, political pluralism, openness or transparency – (Council of the EU, 2018: 1), the format and content of these events would generally be very similar from one state to another (Butcher and Stratulat, 2018: 40). To complement these member state activities, the European Commission simultaneously launched Online Citizens’ Consultations through a questionnaire (available in all EU languages) based on twelve questions designed by a Citizens’ panel (Zacharzewski, 2019: 19-22). As such, any follow-up actions taking into account citizen’s perceptions and recommendations will depend on political will in member states.

While the Citizens’ Dialogues and the Citizens’ Consultations have been based on different methodologies and ways of functioning, they have been centred around common objectives. First, both instruments aim to reinvigorate the relation between citizens and politicians, both at the EU and national levels (Butcher and Stratulat, 2019b: 4). There is undeniably a necessity to re-engage dialogue between those two sides in order to (re)-establish a climate of trust

*An improved approach to Citizens’ Dialogues and Consultations is needed in order to take citizens’ views into account and transform them into EU policymaking.*

and confidence. This leads us to the second main objective of these instruments: the development of mutual understanding between citizens and decision-makers. For citizens, there is the necessity to increase their understanding of the functioning of the EU and its institutions (Macron, 2017a). For EU

officials and politicians, there is the idea of developing an innovative approach to EU policymaking to better acknowledge citizens’ opinions and ideas about EU developments and the future of Europe. As such, an improved approach to Citizens’ Dialogues and Consultations to EU institutions and EU member states is needed in order to take citizens’ views into account and transform them into EU policymaking. European citizens would in this case feel that their voice is being heard (Lambertz and Jahier, 2018: 2).

### 19.3 Assessment of the implementation: mixed reactions and identification of major issues

Branded as central elements of democratic renewal by many European politicians, these new tools have received considerable support through extensive communication efforts by the Commission and member states. Since late 2018, several reports (both official and non-official) have drawn preliminary conclusions outlining the outcomes of these instruments. This has enabled an analysis of perceptions of them among politicians, citizens and researchers with reactions ranging from the enthusiastic to the cautious. More generally, a vast majority of people have recognised the necessity of implementing such tools while also emphasising their desired improvements. Assessment of the implementation of these tools is distinguished in this section as follows:

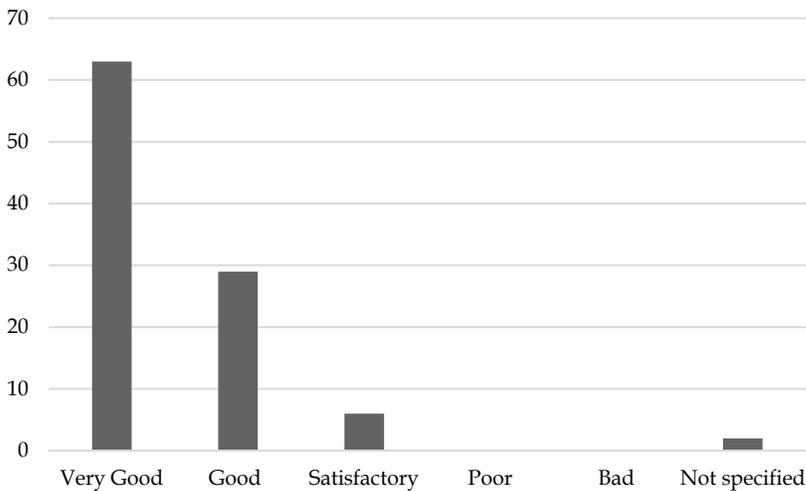
- Official reports (from EU institutions and officials and member states);
- Citizens' evaluation based on Bertelsmann Stiftung's report;
- Civil society experts' perspectives;
- Our assessment of geographical diversity and inclusiveness based on official reports.

In December 2018, the European Commission published a report on Citizens' Dialogues and Online Citizens' Consultations (European Commission, 2018). It includes statistical data demonstrating the smooth running of these initiatives in terms of high involvement of citizens (direct and indirect) and extended geographical coverage. As an official document, the tone used in this report remains neutral. On the contrary, some member states (Cyprus, Luxemburg and the Netherlands) were more enthusiastic when assessing their contributions to the European Citizens' Consultations.

*Neither the Citizens' Dialogues nor the European Citizens' Consultations include a standardised feedback system.*

Regarding citizens, the analysis of their views concerning these tools is much more complicated. Neither the Citizens' Dialogues nor the European Citizens' Consultations include a standardised feedback system. Such a mechanism would be useful to evaluate these instruments more accurately in order to identify possible improvements for future sessions. Apart from the European Commission report on Citizens' Dialogues (European Commission, 2018), which lists citizens' main priorities ("A dynamic economy", "A Europe that protects", "Addressing migration", "Fighting climate change, protecting the environment", "A stronger Europe in the world", "A Europe of values" and "A perspective for the younger generation") no detailed official data on citizens' experience with these instruments are available.

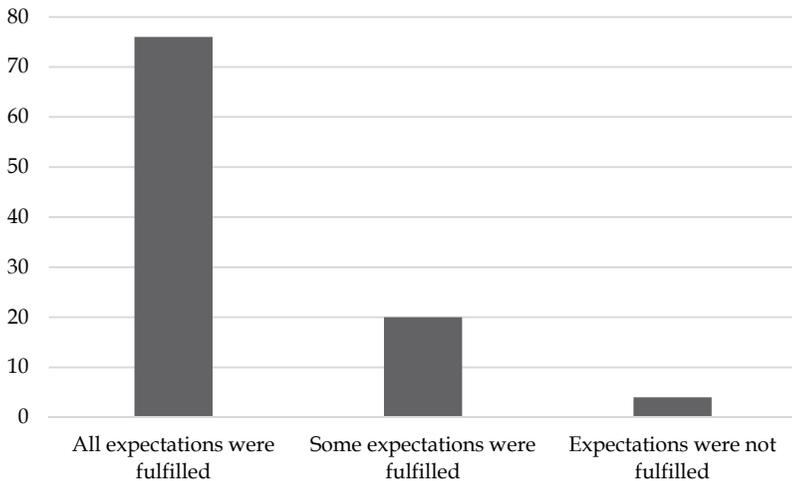
Figure 19.1 How do you rate this Citizens' Dialogue?



Source: Bertelsmann Stiftung (2019).

However, some civil society organisations touched upon the issue of citizens’ feedback. One initiative to mention was led by Bertelsmann Stiftung, which evaluated the EU Citizens’ Dialogue event in The Hague (Bertelsmann Stiftung, 2019) obtaining its assessment from 117 citizens. The majority of the participants were very satisfied (63%) or satisfied (35%) with the event (none of the participants considered the event as poor or bad), while their initial expectations were totally (76%) or partly (20%) fulfilled. The citizens’ key expectations were a debate with other citizens and dialogue with EU politicians about EU issues with a clear desire for their opinions to be taken into consideration (Bertelsmann Stiftung, 2019).

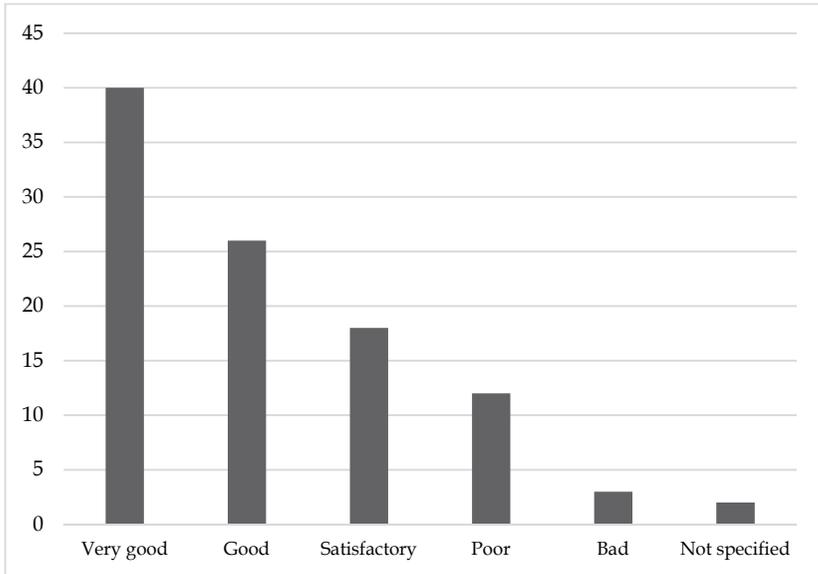
Figure 19.2 Did this Citizens’ Dialogue fulfil your expectations?



Source: Bertelsmann Stiftung (2019).

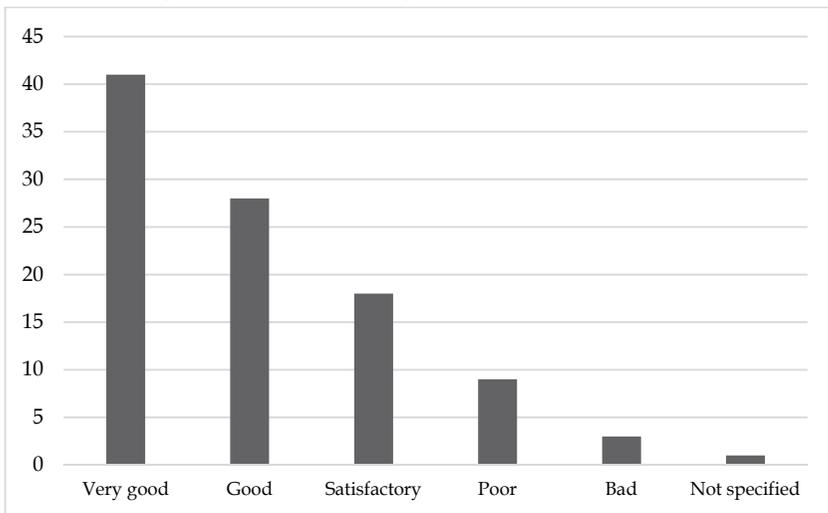
However, views were more balanced when it came to the evaluation of politicians’ participation in the debates, which was found poor or bad by 15% of participants (with 39% very satisfied) and on their willingness to listen to citizens’ opinions (12% of them considered it as poor and bad while only 41% were very satisfied) (Bertelsmann Stiftung, 2018: 14).

Figure 19.3 How do you rate the participation of the politicians in the discussions rounds during this Citizens' Dialogue?



Source: Bertelsmann Stiftung (2019).

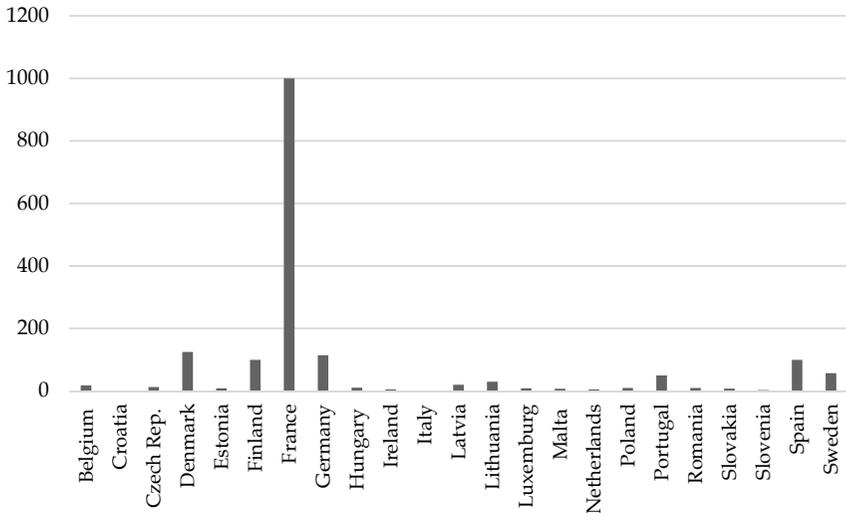
Figure 19.4 How do you rate the politicians' willingness to listen to the citizens during this Citizens' Dialogue?



Source: Bertelsmann Stiftung (2019).

With regards to independent experts, their evaluation of new democratic initiatives seems more cautious. Above all, they share considerable scepticism towards the capacity of these instruments to increase citizens' influence on EU policymaking (Russack, 2018: 20; Butcher and Stratulat, 2018: 42) and advise an "ambitious follow-up strategy" from politicians (European Movement International, 2019). Another concern raised by experts is about the inclusiveness of such events, with fears that "few ordinary citizens" attend these events (Russack, 2018: 20). Consequently, some experts have wondered if a deliberate selection of participants would not be more effective (Bertelsmann Stiftung, 2019: 16). In the specific case of the European Citizens' Consultations, the lack of coherence due to the diversity of format and content between member states has been identified and the necessity for the initiative to have a common identity to achieve better results has been flagged (Butcher and Stratulat, 2018: 40).

*Figure 19.5 European Citizens' Consultations per member state*

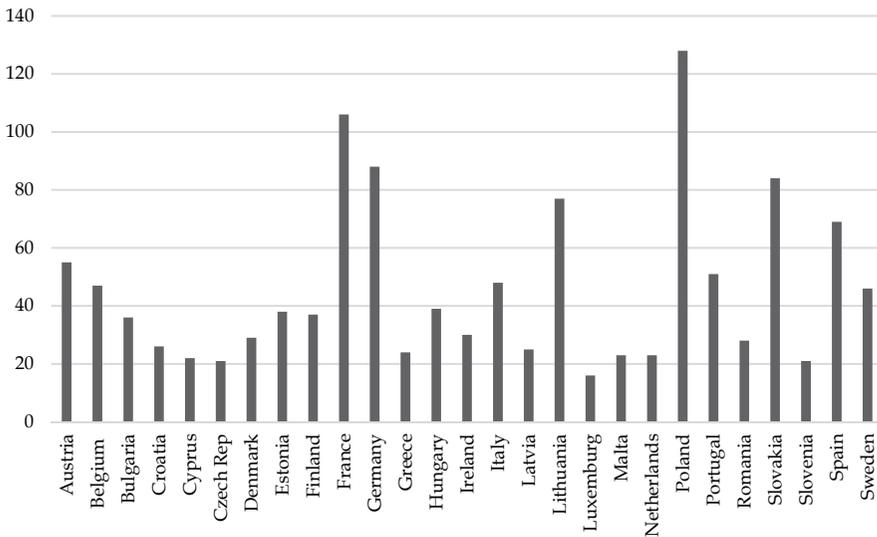


*Source:* Butcher and Stratulat (2018).

An in-depth analysis of official reports has highlighted challenges that need to be tackled. A first look at the geographical repartition of the European Citizens' Consultations and the Citizens' Dialogues reveals a high disparity in the involvement of member

states. Available data is much more extensive concerning Citizens' Dialogues rather than European Citizens' Consultations. Regarding European Citizens' Consultations, only a few of the countries that participated were heavily involved in this initiative. It is no surprise the most active country was France – the country which initiated the Consultations – organising more than 1,000 events. Countries such as Denmark (125 events), Finland (100 events), Germany (114 events) or Spain (100 events) followed. On the contrary, some other countries such as Croatia (1 event) and the Netherlands (5 events) appeared reluctant. Italy emerged as the only country not to participate at all in the Consultations due to internal political reasons. This inconsistency in involvement from the member states can be explained by the non-obligatory and the customisable nature of the initiative.

Figure 19.6 Citizens' Dialogues per member state



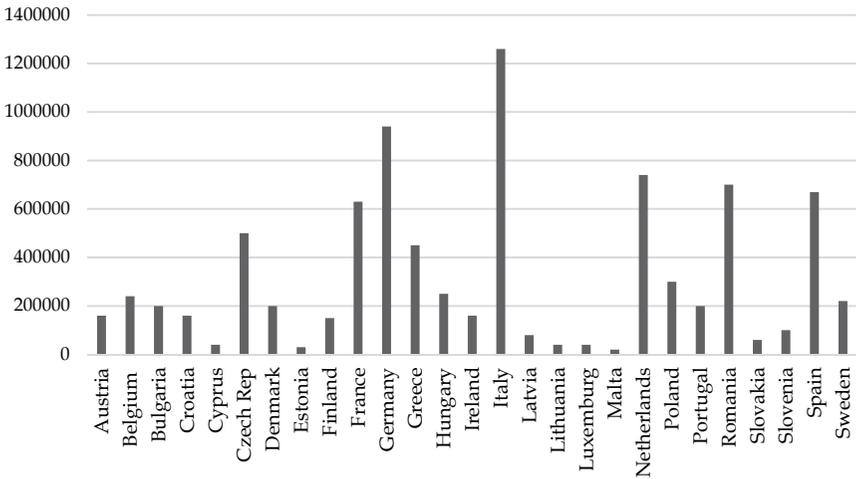
Source: European Commission (2018).

In the case of Citizens' Dialogues, the distribution of events among member states has been far more balanced. Most of the countries hosted around 50 events (up to December 2018). Accordingly, some of them appear as overrepresented (e.g. Poland, France), others underrepresented (e.g. Czech Republic, the Netherlands). This difference can be explained by the fact that

Citizen’s Dialogue is a top-down instrument for which the European Commission is in charge of geographical balance.

Interesting results can be obtained by comparing Citizens’ Dialogues activities in each of the member states while using a weighting coefficient (in this case population). This is to the advantage of small member states such as Cyprus, Estonia and Malta with 1 event for around 30,000 inhabitants, while larger countries such as Italy (1 event for 1,300,000 inhabitants) or Germany (1 event for 900,000) lagged behind. But this logic is sometimes challenged in view of the high turn-outs noted in Poland or, on the contrary, weak participation in the Netherlands. No information is available on how the European Commission might address this imbalance.

Figure 19.7 Citizens' Dialogues per inhabitant in each member state

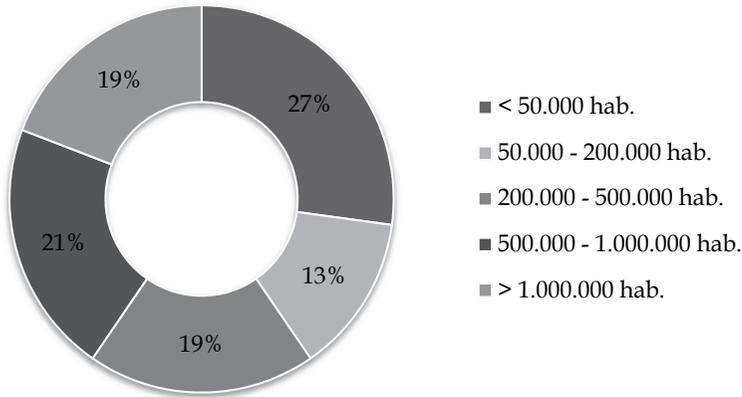


Source: European Commission (2018).

Another essential feature is the level of inclusiveness of the Citizens Dialogues’ events. Regrettably, there is no direct data regarding this issue, as open information about participants’ characteristics is unavailable. An alternative analysis can however be conducted by analysing the location of the events. A sample of 150 Citizens’ Dialogues was reviewed and showed a balanced distribution of events between several types of places. However, there is a huge disparity between urban areas (> 50,000 habitants)

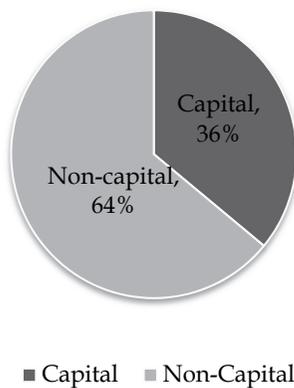
which represent 73% of the events and suburban/rural ones (with only 27%). This imbalance is also confirmed by the distribution between capital and non-capital cities as more than a third of events take place in the former.

Figure 19.8 Distribution of 150 Citizens' Dialogues per type of city



Source: European Commission (2018).

Figure 19.9 Distribution of 150 Citizens' Dialogues per type of city



Source: European Commission (2018).

This trend runs contrary to the desired level of inclusiveness. By favouring urbanised over suburbanised or rural places, the objective of attracting all European citizens, including those who are not particularly aware of EU policymaking or how it operates has not been achieved. A prejudicial flaw in an era of Brexit or *Gilets Jaunes*, which – *inter alia* – have demonstrated the increasing rejection of mainstream politics (including enthusiasm for the EU) from the perspective of levels of urbanisation.

## 19.4 Conclusion

Two flagship European Union citizen-oriented initiatives: the Citizens' Dialogues and the European Citizens' Consultations mark an increasing trend that aims at increasing citizens involvement in European affairs. This coincides with the rise of participatory initiatives well beyond Europe that aim to respond to the crisis of democratic legitimacy and the new expectations of citizens that are often linked to the absorption of digital technologies into human life.

These two initiatives have been triggered as a result of the rapidly weakening credibility and legitimacy of the EU in the eyes of its citizens that peaked around the multiple crises affecting the EU and the member states in recent years, notably those of the euro zone and migration. Accordingly, the spread of digitalisation requires new management models within which the expertise will be shared, instead of being restricted. It is estimated that the best response to the populist challenge across the EU would be offering citizens a freshly created space to develop different types of reactions to turn it into democratic transformation (Fieschi and Grabbe, 2019).

At the EU level, these dynamics have been fuelled in particular by the major electoral success of Emmanuel Macron, whose pro-European agenda brought hope for the renewal of the European project and for challenging populist parties and movements across the EU. When newly elected, the French president managed to bring other EU members on board with his initiative for European Citizens' Consultations, but at the cost of their ultimate coherence, which was linked to the principle of flexibility in their implementation demanded by member states (Butcher and Stratulat, 2018).

This resulted in a traditional, rigid format being used in most countries – a panel discussion of policymakers and experts followed

by a Q&A session – overlooking the possibility of using techniques to generate a more participative spirit. In addition, several countries such as Germany, Lithuania and Ireland rebranded Citizens' Dialogues as European Citizens' Consultations leading to confusion about the identity of both initiatives. Also, most member states regrettably did not engage civic society in the process (Butcher and Stratulat, 2019).

The overall expert assessment of the Consultations varies considerably, ranging from a decisive but small step towards the democratisation of the EU (Butcher and Stratulat, 2019) to the failure of the initiative (Alemanno, 2019).

*The limited budget and short timeframe for preparation and implementation of European Citizens' Consultations need to be taken into consideration when assessing their overall outcomes.*

On the other hand, the limited budget and short timeframe for preparation and implementation of European Citizens' Consultations need to be taken into consideration when assessing their overall outcomes.

The Consultations conducted by most member states in the top-down scheme brought attention to recently emerging and often successful participatory initiatives such as citizens' juries and citizens' assemblies being set up across the EU member states and beyond. These initiatives have been improving in recent years in particular with regards to their methodological approach (Youngs, 2019), which has included such features as:

- Selecting participants by random lot;
- Bringing experts into the process;
- Getting public authorities to commit to the deliberations' results.

With the success of deliberative initiatives such as the citizens assembly in Ireland that concluded with a nationwide referendum on abortion, the establishment of a permanent citizens' assembly in Madrid and the introduction of the participatory system in the German-speaking community in Belgium (Youngs, 2019; Zacharzewski, 2019), the question has arisen as to whether the scaling up of these projects delivered with a bottom-up approach might be a better solution than the traditional forms of consultations between citizens and decision-makers and the European Citizens'

Consultations in particular. On the other hand, while they develop quickly these local or national level bottom-up participatory initiatives are still in the relatively early stages of development, focus (with a few notable exceptions) on policy issues of local interest and impact and are often organised in a one-off mode (Youngs, 2019). Transposing these local participatory schemes to the national and EU levels in all member states would require a major coordination effort by the European institutions.

The positive feature of the Consultations process was citizens demanding to be better informed about EU actions (although many of them were not aware of policy progress already achieved) and to have a greater voice in the functioning of the Union (Butcher and Stratulat, 2019). Some countries – such as Germany and Luxembourg – have already drawn lessons from the Consultations. The latter is about to introduce a new EU-centred school curriculum in response to low levels of knowledge about the EU project, in particular among young people. The former considered that the consultation's conclusions constituted a mandate for the German federal government to implement policy actions outlined by the citizens (Butcher and Stratulat, 2019). Others such as Finland, Lithuania, Slovenia and again Luxembourg called for the Consultations to become permanent. This plethora of feedback, conclusions and lessons learned by member states that were particularly engaged in the Consultations process is in contrast to the unreceptive and rigid positions of other countries (often those affected by illiberal policies). This resulted in several major deficits identified after the whole process was concluded:

- Lack of common identity;
- No coherent message;
- Ambition deficit among member states.

In sum, the European Citizens' Consultations were found to lack credibility, meaning and durability as assessed in the major evaluation report drafted by the European Policy Centre and Democratic Society (Butcher and Stratulat, 2019).

## 19.5 Recommendations and suggestions

To make the most of the results of the European Dialogues and the European Citizens' Consultations while taking into account the best practices of local participatory undertakings, the effort for putting citizens at the forefront of EU integration (Alemanno, 2019) needs to focus on improving both its strategic design and its operational elements. Major strategic recommendations to be implemented (Alemanno, 2019; Youngs, 2019; Zacharzewski, 2019; Butcher and Stratulat, 2019) ahead of future rounds of Consultations include:

- Centralising all participatory channels that will involve all EU institutions to tackle the current lack of synchronisation. This could lead to the establishment of the mechanism for inter-institutional cooperation already proposed by the European Committee of the Regions and the Economic and Social Committee, two entities with a significant record in cooperating with the civil society.
- Securing appropriate funding at the EU level by including the Consultations initiative in the Multiannual Financial Framework and, on the national level, by a dedicated budget within each member state institution leading the process in their respective countries.
- Establishing a Task Force consisting of experts, academics, civil society and EU and member state representatives that would be able to improve the process and propose a participatory design that would best fit into the EU decision-making process.

Several operational improvements, focused on bringing a unified identity and clear messaging to citizens, can also be identified (Butcher and Stratulat, 2018; Zacharzewski, 2019):

- The purpose of consulting citizens and the connection with the European level should be made clear while the citizens should be informed from the start about what the implementation process will look like and how the outcomes of the consultations will be used.
- Engagement is needed with networks of democratic innovations at the local level, making use of existing models of citizen participation.

- Experts to safeguard the quality of standards and processes (methodology) need to be involved.
- The transnational dimension of the consultations should be enhanced to secure a good balance between a common format and diverse national practices.
- National discussions should include issues that currently feature on the EU policy agenda.
- A public synthesis of results, which should include independent voices, is needed.
- Another Citizens' Panel should be held.

As Youngs (2019) points out, the major challenge will be to design an EU participatory model by improving other forms of democratic accountability rather than by undermining or overshadowing them.

*A direct implementation of citizens' input into policies will undoubtedly be confronted by the complex and multi-layered EU decision-making process.*

At the same time, a direct implementation of citizens' input into policies will undoubtedly be confronted by the complex and multi-layered EU decision-making process. The way these two different policy realities will

be resolved will define the eventual success of the process of regaining legitimacy and enhancing the democratisation of the European Union.

## References

- Alemanno, A. (2019), "Democracy Beyond Elections in Europe: The Case for Participatory Democracy", in R. Youngs (ed), *Do We Trust Democracy? A Future Agenda for Europe*, Open Government Partnership.
- Bertelsmann Stiftung (2019), "Evaluation on the Cross-Border EU Citizens' Dialogue", The Hague, May.
- Butcher, P and C. Stratulat (2018), "The story", in Butcher, P and C. Stratulat (eds), *The European Citizens' Consultations - Evaluation report*, European Policy Centre and The Democratic Society.
- Butcher, P and C. Stratulat (2019a), "The European Citizens' Consultations deserve pride of place at von der Leyen's Conference", EPC Commentary, European Policy Centre.
- Butcher, P and C. Stratulat (2019b), "Citizens expect: Lessons from European Citizens' Consultations", Discussion Paper, European Policy Centre.
- Butcher, P and C. Stratulat (2019c), "Yes, we should! EU priorities for 2019-2024", Challenge Europe, Issue 24, European Policy Centre.
- Butcher, P and S. Pronckutè (2019), "European Citizens' Consultations: Consultation begins at home", *European View*, Vol 18, No. 1, 81-88.
- Council of the European Union (2018a), "Joint Report - Citizens' Consultations (14535/18)", Brussels.
- Council of the European Union (2018b), "Citizens' Consultations - Executive summaries (14791/18)", Brussels.
- European Commission (2017) "White paper on the future of Europe. Reflections and scenarios for the EU27 by 2025".
- European Commission (2018), "Citizens' Dialogues and Citizens' Consultations - Progress report".
- European Commission (2019) "Citizens' dialogues and citizens' consultation - Key conclusions", Brussels.
- European Movement International (2019), "Sibiu Summit 2019 - Citizen Consultations in Europe".
- Fieschi, C and H. Grabbe (2019), "Re-imagining the Open Society in the Digital Age: A Bridges Project Position Paper", Counterpoint.
- Juncker, J.C (2017), "State of the Union Address 2017", Brussels.
- Lambertz, K.H and L. Jahier (2018), "Bringing the EU closer to its citizens: the call for an EU permanent mechanism for structured

consultations and dialogues with citizens, European Committee of the Regions and the European Economic and Social Committee”, a proposal by the Presidents of the European Committee of the Regions and the European Economic and Social Committee.

- Macron, E (2017a), “Discours du Président de la République à la Pnyx” {Speech of the President at the Pnyx}, Athens, Greece.
- Macron, E (2017b), “Initiative pour l’Europe – Discours pour une Europe souveraine, unie, démocratique” (Initiative for Europe – Speech for a sovereign, united and democratic Europe), Paris.
- Russack, S (2018), “Pathways for Citizens to engage in EU policymaking”, CEPS Policy Insights, No. 14.
- Tormey, S (2015), *The End of Representative Politics*, Cambridge: Polity Press.
- Von der Leyen, U (2019), “Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission”, Brussels.
- Youngs, R. (2019), “Can Citizen Participation Really Revive European Democracy”, Carnegie Europe, July.
- Zacharzewski, A. (2019), Reconnecting citizens with EU decision-making is possible – and needs to happen now, *Euronews*, 2 May.
- Zacharzewski, A (2018) “The Citizens’ Panel on the Future of Europe” in Butcher, P and C. Stratulat (eds), *The European Citizens’ Consultations – Evaluation Report*, European Policy Centre and The Democratic Society.



# 20. HOW CAN TECHNOLOGY FACILITATE CITIZEN PARTICIPATION IN THE EU?

MIHAI SEBE, BOGDAN MUREŞAN  
AND ELIZA VAŞ

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*How can new technologies facilitate citizen participation in the European Union and what are the main trends in this field? This chapter defines concepts such as digital and e-democracy and looks at some of the opportunities, but also the challenges associated with the use of technology for increasing civic participation in the EU. It finds that technology can both facilitate and hinder civic engagement and there is no one-size-fits-all recipe for the best use of available tools and instruments. The chapter concludes with a series of concrete recommendations for European and national authorities in order to take advantage of current circumstances.*

## 20.1 Introduction: Fashionable or facilitating?

We are living in an age where every political or civic activity, either it be old or new, is undergoing some sort of rebranding through the use of fashionable prefixes such as ‘digital-’, ‘cyber-’ or plain ‘e-’. This makes it difficult to discern what is new, what has remained the same or even if we are dealing with a substantive change at all. What kind of added value do new technologies bring to the democratic toolbox?

There has been a change in nature of the relationship between those that choose, voters, and those being chosen, elected politicians. If this relationship was generally intermediated by formal processes (electing representatives every four/five years, etc.) before the internet and digital tools became widespread, it is now also being intermediated by tools and can occur at any time, without prior

official notice. These new tools, described in the following subsections, do not infringe upon the electoral nature of our representative democracies, but have the potential to facilitate the participation of citizens in European democracies.

The impact of new technologies on citizen participation is a matter for debate as we look deeper into the so-called ‘fourth industrial revolution’. In order to see how and if new technologies can facilitate citizen participation in the EU, we assess the key elements of digital democracy and analyse the opportunities and challenges arising from the use of new technologies (with a focus on AI and blockchain). Finally, we identify possible measures to improve citizen participation in the EU.

## 20.2 Opportunities for the use of new technologies in democracy

### *The common understanding for e-democracy and digital democracy*

The dedicated literature provides a wide range of definitions for some key concepts of interest, but also points to some general common ground among scholars and international institutions.

For instance, there is an overlap between the concept of digital democracy and that of e-democracy, the latter being defined as “the practice of democracy with the support of digital media in political communication and participation” (Rose et al., 2018). Also, digital democracy is understood “as the pursuit and the practice of democracy in whatever view using digital media in online and offline political communication” (van Dijk, 2012: 51; Rose et al., 2018).

The ‘e-democracy’ concept refers to “the use of information and communication technology (ICT) in political debates and decision-

*The ‘e-democracy’ concept refers to the use of ICT in political debates and decision-making.*

making processes, complementing or contrasting traditional means of communications, such as face-to-face interaction or one-way mass media” (Päivärinta and Øystein, 2006: 818; Rose et al., 2018).

In our opinion, an important conceptual framework is provided by the Council of Europe’s Recommendation on electronic

democracy, which encourages member states to: “consider and implement e-democracy as the support and enhancement of democracy, democratic institutions and democratic processes by means of ICT, and linked to the engagement and re-engagement of citizens in democracy” (Council of Europe, 2009).

In the EU context, another important landmark was the eGovernment Action Plan 2016-2020: accelerating the digital transformation of government (Council of the European Union, 2016), which stressed the need for the digital transformation of governments as a means to empower citizens. This was later supplemented by the Tallinn Declaration of 2017, which marked a renewed commitment by 32 EU and EFTA countries to modernise their public administration and deliver cross-border eServices, eProcurement and electronic identification (eID). One of its core user-centricity principles is the support of citizen engagement in public life (European Commission, 2017).

*The Tallinn Declaration marked a renewed commitment by 32 EU and EFTA countries to modernise their public administration and deliver cross-border eServices, eProcurement and electronic identification.*

Further, the 2018 report commissioned by the European Parliament on the prospects of e-democracy in Europe (European Parliament, 2018) analyses various types of e-participation such as e-deliberative designs, e-consultations, e-initiatives or e-petitions. By referring to both national and European examples, the report highlights the fact that the supranational structure of the EU entails particular challenges when using e-democracy tools: large scale, language diversity, and transnationality. One example in this case is that of the European Citizens’ Initiative, the first transnational instrument of participatory democracy, which often proved to be a tool mostly for civil society organisations and less for individual citizen engagement, as it requires considerable organisation to actually set up an initiative and gather the necessary support.

Therefore, while e-democracy aims to spread awareness about democratic institutions and processes and to generate civic participation, there are various opportunities that derive from this objective, as well as challenges that need to be taken into account by decision-makers.

### ***Voting and the influence of media and digital technologies***

Turnout for the European elections in 2019 exceeded most expectations, with more than 1 in 2 citizens going to express their vote. This was the highest turnout in the last 20 years and, even more noteworthy, the rise was due to the increase in participation among young voters (European Parliament, 2019).

The European Parliament, alongside other institutions, launched initiatives using digital instruments to engage and attract more people in the discussions revolving around the elections. One clear example was the “This time I’m voting” digital campaign platform, which had a strong online outreach, but also included multiple offline events. In the post-electoral Eurobarometer, it was mentioned that almost half of the Europeans surveyed recall seeing/hearing messages in their home country to encourage them to vote. To the specific question on the European Parliament and its efforts to encourage people to vote, including messages on TV, on the internet, on posters, in newspapers or on the radio, 44% of respondents said they do remember seeing this type of message in the media or from other sources.

Moreover, in the European elections campaign report (European Parliament, 2019), the impact of social networks on the electoral campaign was observed. The researchers collected more than 11,000 electoral materials produced by approximately 300 political parties across the EU and concluded that there was a shift in the instruments used by political actors, with social networks representing the major source of news in the campaign.

While it cannot be determined if and to what extent the digital outreach substantially influenced the voting behaviour of European citizens, it seems clear that a stronger presence of the European institutions in online and offline campaigns together with national political candidates has raised awareness of the importance of taking part in the democratic process of voting, with a direct impact on the future of the EU.

### ***Artificial intelligence and blockchain as political tools***

One of the most talked about new technologies these days is artificial intelligence (AI) which still lacks a consensual definition, but can be conceived as being basically about systems that, based on available

data, decide the best course(s) of action to achieve a given goal (AI HLEG, 2019). Any artificial intelligence system must have three key qualities: intentionality, intelligence, and adaptability (West, 2018).

As a political tool, AI can be used for crowdsourcing in order to improve the representativeness of the public decision-making process. Citizen Lab, an interdisciplinary laboratory founded at the Munk School of Global Affairs & Public Policy (University of Toronto, US), has developed its own NLP (Natural Language Processing) techniques, with the capacity to automatically classify and analyse thousands of contributions collected on citizen participation platforms. The algorithms identify the main topics and group similar ideas together into clusters, which it is then possible to break down by demographic trait or geographic location. The artificial intelligence is able to process ideas regardless of the language and works for multilingual platforms (Citizen Lab, 2018).

*AI can be used for crowdsourcing in order to improve the representativeness of public decision-making with the capacity to automatically classify and analyse thousands of contributions collected on citizen participation platforms.*

Furthermore, AI has the potential to address and solve real life challenges and problems (e.g. health), and, since 2017, AI research has benefitted from increased political support, as a European Parliament report suggests. The adoption of various European strategies and regulations has laid a constructive path for development of AI technologies in the EU. However, this forward-looking political support has to be matched with positive results deriving from the implementation of AI technologies in the member states.

At the moment, the EU is striving to become a leading actor in the field of AI by regulating the sector and assuring a level playing field for stakeholders. Compared to the US or China, the EU is the most advanced global player in applying ethical principles to the development of AI technologies to ensure that citizens' data are not misused.

Another technological development gaining traction is the application of blockchain technologies to voting. The reason for its success can be attributed to blockchain's security features that could greatly impact the way elections take place. The use of

blockchain technologies can bring voters benefits such as: the ability to vote from anywhere without having to wait at a particular location to cast a ballot; ensuring that their vote has been effectively registered; the impossibility of their vote being altered and rendering the voting process secure (Vaghela, 2018).

There are a series of risks that have been identified in analysis of whether blockchain technology could revolutionise voting, such as the need to comply with various European laws, including the General Data Protection Regulation (GDPR) and accessibility for all potential voters (Boucher, 2016). If properly used, though, it could also benefit the political process as such and not just the electoral process as it can be incorporated in other public functions to provide a direct and secure interaction between the government and the public. Blockchain has attracted the attention of various groups, and coalitions have been set up in some member states to bring together representatives of the government, industries and the knowledge sector, as in the case of the Dutch Blockchain Coalition.

Yet, these are just two of the upcoming technologies that could affect citizen participation, often in ways difficult to imagine at the present time. They will likely not act alone but most likely we shall witness a ‘cocktail’ of them, each reinforcing the other.

### **20.3 The challenges of new technologies for democracy**

Be it on a national, European or international level, new media and social networks have become fertile environments for political communication, knowledge production and in some cases for civic participation. Consequently, disinformation has permeated these channels and challenged the common understanding of facts and truth.

As defined by the European Commission, disinformation is a “verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm” (European Commission, 2018). Other popular terms for disinformation are ‘information manipulation’ or the incomplete, or even misleading term ‘fake news’, both usually associated with the ‘post-truth’ era or the trending (and vaguer) ‘hybrid war’ framework (Bărgăoanu and

Radu, 2018). A March 2018 Eurobarometer on fake news showed that 85% of respondents perceive fake news as a problem in their respective country and 83% perceive it as a problem for democracy in general (Eurobarometer, 2018).

Although not a new phenomenon *per se*, disinformation has mostly 'benefitted' from the sustained advances in digital technology and AI development. Recent years have shown that, as we become more interconnected in the borderless (and generally unregulated) digital realm, creating and propagating disinformation becomes cheaper and more effective for malign actors, and harder to spot and counter for targeted states and societies.

*As we become more interconnected in the borderless (and generally unregulated) digital realm, creating and propagating disinformation becomes cheaper and more effective for malign actors, and harder to spot and counter.*

This old threat in new clothes is usually most visible during electoral periods, with direct effects on our public debates, our civic participatory and deliberative processes, based on values, norms and rules. It tends to exploit existing societal vulnerabilities by creating confusion with the aim of eroding citizens' trust in national authorities and, as a consequence, the overall resilience of states.

2016 was marked by the fateful Brexit referendum and the unexpected win of the Republican Donald Trump in the US presidential elections. Both events have proven to be highly consequential for world affairs and both have been associated with malign online disinformation campaigns having one common (external) denominator - Russia.

Nevertheless, disinformation has strong domestic roots as well, being resorted to without too much consideration by populist and nationalist politicians with a pronounced anti-European and anti-establishment discourse (e.g., Marine Le Pen in France or Viktor Orbán in Hungary). By sowing distrust of the EU and painting simple black or white dichotomies, they demote pluralism, fuel toxic polarisation and extremism in their own countries and, at the same time, do the work of those who seek the decline of the EU's global influence and promote European disintegration. In light of Russian interference in US and European elections, the EU has taken the lead

in drafting and coordinating policy to counter disinformation, just as it did with its ambitious GDPR.

Starting from 2015, the EU has been actively implementing concrete measures in order to address various disinformation campaigns, often deployed online and with political objectives. According to EUvsDisinfo, a project developed within the EEAS and dedicated to monitoring and covering pro-Kremlin disinformation

*EU institutions and member states have stepped up their efforts in countering disinformation and enhancing strategic communication.*

targeting more than 20 countries, over 6,500 disinformation cases have been debunked since 2015 (EuvsDisinfo, 2019). By promoting the principle of coordinated and concerted actions, EU institutions and member states have stepped up their efforts in countering disinformation, on

the one side, and enhancing strategic communication, on the other side (EEAS, 2019). The most important document to date in this field is the Action Plan against Disinformation, launched in December 2018, which provides the four pillars of a coordinated European response to disinformation.

Among others, the Action Plan includes a Rapid Alert System and the close monitoring of the Code of Practice signed by the major online platforms. The Rapid Alert System was launched in March 2019 and is set up among the EU institutions and member states to facilitate the sharing of insights related to disinformation campaigns and coordinate responses. The Code of Practice was signed by the online platforms Facebook, Google, Twitter, Mozilla and Microsoft, marking the first time worldwide that industry agrees, on a voluntary basis, to self-regulatory standards to fight disinformation and attesting the normative power of the EU in this emerging field (European Commission, 2018).

Attempts to regulate the spread of online disinformation are still in their infancy in Europe (Germany, France, Italy) and the spectre of ‘deep fakes’ – highly realistic and difficult-to-detect digital manipulations of audio or video – is becoming more and more menacing (Chesney and Citron, 2019).

Shortly after the European elections in May 2019, the Commission and the High Representative released a report meant to highlight the importance of the fight against disinformation and some

of its concrete achievements in protecting European democracy (European Commission, 2019). It praised the progress already made, but warned that disinformation is a rapidly evolving threat and its tactics develop as quickly as the countermeasures adopted by states and online platforms, again highlighting the importance of the digital sphere as both a blessing and a curse for the European citizen.

## **20.4 Measures to increase citizen participation in the EU through new technologies**

As we have seen, technology can both facilitate and hinder civic engagement and there is no one-size-fits-all recipe for the best use of available tools and instruments. There follow several measures that could be internalised by both European institutions and national authorities or private entities able to develop programmes in the field of citizen participation/civic engagement with the help of new technologies.

### ***Using digital tools to spread awareness about EU legislation and its impact on citizens***

The national/regional parliaments' websites could feature a dedicated user-friendly section, where citizens could follow the transposing of EU legislation into national laws.

For instance, following the adoption of each law that derives from European legislation, a simple infographic on the subject that was debated in the national/regional parliament could be uploaded, coupled with a brief explanation on how the outcome will improve the life of citizens. At the moment of writing, almost every parliament has a special section where the process of adopting legislation can be followed, but in most situations the language is very technical and not easily understood by citizens.

A possible structure for the infographic, starting from the example of banning plastic bags could be the following: 1) What has been adopted at EU level (title of legislation); 2) How it was transposed into national legislation (e.g. law on banning certain plastic bags...); 3) What kind of impact is it expected to have for citizens. The graphic should not exceed more than an A4 page and should be easily downloadable and sharable.

### ***Supporting citizen participation in the EU with the help of artificial intelligence***

An online platform on this subject (that could be named ‘European Civic Space’) could be a joint project developed by the Council of Europe and the European Commission.<sup>1</sup>

It could start from the data on democratic citizenship already available to the Council of Europe and by using EU funds. The purpose of the platform would be to share in real time information related to European democracy between citizens and other entities (including civil society organisations) from various parts of the EU.

In this way, civil society organisations could be connected and have the possibility to share information on drafts of legislation, for instance, that can produce a negative impact on their work. This could also lead to joint efforts to send feedback to the European institutions for improving the proposal concerned.

As for regular citizens, it would be useful to have such a platform with integrated AI systems, especially for sharing information in their own language that could be automatically translated by the platform to other languages and be organised in different categories.

### ***Reducing disinformation in the EU by fostering critical thinking via media literacy***

The full implementation of the Action Plan against disinformation and the gradual development of a European fact-checking culture.

The next Multiannual Financial Framework should include specific funds to counter disinformation and, in the case of Erasmus+/other related funds, civil society organisations should be encouraged to apply for funding that addresses disinformation and fosters media literacy. Also, positive and substantive civic engagement via digital media and social networks should go hand in hand with quality journalism and media literacy, meant to foster the critical thinking and emotional intelligence of the audience and general public. In this case, a complementary idea would be that of

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<sup>1</sup> It could be based on the 2007 Memorandum of Understanding between the Council of Europe and the European Union. <https://rm.coe.int/16804e437b>

European funding attributed to journalistic projects and reports in order to assure a higher degree of independence in the news sector. Although highly desirable, coordinating efforts between EU institutions, member states, journalists, researchers and civil society in order to increase public awareness will likely remain a challenge for the foreseeable future.

## References

- Bârgăoanu A. and R. Radu (2018), “Fake News or Disinformation 2.0? Some Insights into Romanians’ Digital Behaviour”, *Romanian Journal of European Affairs*, Vol. 18, No. 1, June.
- Boucher, P. (2016), “What if blockchain technology revolutionized voting?”, European Parliamentary Research Service ([https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/581918/EPRS\\_ATA\(2016\)581918\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/581918/EPRS_ATA(2016)581918_EN.pdf)).
- Chesney R. and D. Citron (2019), “Deepfakes and the New Disinformation War”, *Foreign Affairs*, January/February.
- Commission (2005), Communication to the Commission, Action Plan to Improve Communicating Europe By The Commission, (<https://ec.europa.eu/transparency/regdoc/rep/2/2005/EN/2-2005-985-EN-F-0.Pdf>).
- Council of Europe (2009), Electronic democracy (“e-democracy”) Recommendation CM/Rec(2009)1 and explanatory memorandum ([https://www.coe.int/t/dgap/democracy/Activities/GGIS/CAHDE/2009/RecCM2009\\_1\\_and\\_Accomp\\_Docs/6647-0-ID8289-Recommendation%20on%20electronic%20democracy.pdf](https://www.coe.int/t/dgap/democracy/Activities/GGIS/CAHDE/2009/RecCM2009_1_and_Accomp_Docs/6647-0-ID8289-Recommendation%20on%20electronic%20democracy.pdf)).
- Council of the European Union (2016), *eGovernment Action Plan 2016-2020: accelerating the digital transformation of government* (<http://data.consilium.europa.eu/doc/document/ST-12359-2016-INIT/en/pdf>).
- Delakorda, S., A. Tzoumas and D. Chalvatzi (2017), “How can citizen’s crowdsourcing foster democracy in Europe?”, European Citizens Crowdsourcing project (<http://www.inepa.si/eucrowd/wp-content/uploads/2016/11/EUCROWD-summary-report-Ljubljana.pdf>).
- Diamond L. (2016), “Democracy in Decline”, *Foreign Affairs*, July/August.
- European Commission (2017), Tallinn Declaration on eGovernment, 6 October (<https://ec.europa.eu/digital-single-market/en/news/ministerial-declaration-egovernment-tallinn-declaration>).
- European Commission (2018), Action Plan against Disinformation, Brussels, 5.12.2018 JOIN(2018) 36 final.
- European Commission (2018), Building trust in human-centric AI, The Ethics Guidelines for Trustworthy Artificial Intelligence (AI),

- (<https://ec.europa.eu/futurium/en/ai-alliance-consultation/guidelines#Top>).
- European Commission (2018), Code of Practice on Disinformation, (<https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>).
- European Commission (2018), Final results of the Eurobarometer on fake news and online disinformation, Eurobarometer survey.
- European Commission (2019) Standard Eurobarometer 91, August.
- European Commission (2019), A Europe that protects: EU reports on progress in fighting disinformation ahead of European Council, Press release, ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_2914](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_2914)).
- European Parliament (2019), European Parliament 2019-2024, (<https://election-results.eu/>).
- European Parliament (2019), 2019 European elections: Record turnout driven by young people (<https://www.europarl.europa.eu/news/en/press-room/20190923IPR61602/2019-european-elections-record-turnout-driven-by-young-people>).
- European External Action Service (2019), Countering disinformation, 11 March, ([https://eeas.europa.eu/topics/countering-disinformation/59411/countering-disinformation\\_en](https://eeas.europa.eu/topics/countering-disinformation/59411/countering-disinformation_en)).
- EUvsDisinfo (2019), “Old Wine, New Bottles, 6500 Disinformation Cases Later”, Disinfo Reviews, issue 167 (<https://euvsdisinfo.eu/old-wine-new-bottles-6500-disinformation-cases-later/>).
- He Li, Lu Yu and Wu He (2019), “The Impact of GDPR on Global Technology Development”, *Journal of Global Information Technology Management*, Vol. 22, No. 1, 1-6.
- Rose, G., G. Aichholzer, I. Korthagen, I. van Keulen, L. Hennen, R. Lindner, K. Goos and R. O. Nielsen (2018), *Prospects for e-democracy in Europe*, European Parliament Research Service, February ([http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603213/EPRS\\_STU\(2018\)603213\(ANN1\)\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603213/EPRS_STU(2018)603213(ANN1)_EN.pdf)).
- The Economist Intelligence Unit (2018), “Democracy Index 2018”, (<https://www.eiu.com/topic/democracy-index>).
- European Elections Monitoring Center (2019), “The use of Facebook in the 2019 European elections campaign”, Social Report (<https://www.electionsmonitoringcenter.eu/article/a99b53a5-e61a-4def-ba42-c65e06e25ecc>).

- OECD and OPCI (2018), "Unlocking the potential of crowdsourcing for public decision-making with artificial intelligence", Open Government Case Studies, OPSI Case Studies (<https://oecd-opsi.org/innovations/unlocking-the-potential-of-crowdsourcing-for-public-decision-making-with-artificial-intelligence/>).
- West, D. Darrell (2018), "What is artificial intelligence?", part of A Blueprint for the Future of AI series, Brookings Institution.
- Youth Department of the Council of Europe, Council of Europe Conference of INGOs.
- Yuvrajsinh V. (2018), "How Blockchain Could Dramatically Change Politics", *IT Chronicles* (<https://www.itchronicles.com/blockchain/how-blockchain-could-dramatically-change-politics/>).
- Zalc, J., N. Becuwe and A. Buruian (2019), "The 2019 Post-Electoral Survey - Have European Elections Entered A New Dimension?", Eurobarometer Survey 91.5 of the European Parliament.

**PART III.**  
**CONCLUSIONS**



# 21. PATTERNS AND PARTICULARITIES IN EUROPEAN DEMOCRACY

RICHARD YOUNGS

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*The large amount of empirical research carried out under the 2CU project reveals much variation in democratic trends across EU member states. In some states democracy is facing an acute crisis, while in some places more positive reforms have taken shape. Notwithstanding the variation, there is something of a common trend towards more citizen- and community-oriented forms of accountability. Governments have sought both to encourage and limit such forms of democratic innovation. The EU level still needs to play a meaningful role in harnessing the myriad forms of democratic experimentation currently expanding across Europe.*

## **21.1 Introduction: Why the EU needs a one-stop shop for democracy**

For the last two years, the 2CU project has assessed democratic trends across the European Union. As this project concludes, a number of important issues emerge from its rich programme of on-the-ground research.

The project has benefitted from the work of partner institutes in the majority of EU member states with strong local knowledge and able to undertake detailed empirical research within their own countries. This has helped build a picture of European democracy from the bottom-up and with a huge amount of extremely granular material.

A striking feature of this mass of information is the sheer variation in political trends across Europe. Today much analysis of EU politics is framed in terms of a single and dramatic narrative of

pan-European democratic crisis. In contrast, our project suggests that a much messier set of developments defines changes to European democracy. The project's detailed study of the many different dimensions of democratic change cautions against parsimony. While there are clearly shared challenges across member states, country contrasts are probably more striking than any all-encompassing thread of democratic evolution.

In some states, democracy has indeed been in the thralls of existential crisis, and yet in others its current condition is un-dramatic and even modestly improved in some areas. Some EU governments have opened up to new forms of participation, but others have been reluctant to do so. In some there is stifling state control, while in others ungovernable pluralism seems to be the greater peril. In some, party systems have begun to realign, while in others mainstream coalitions have hunkered down in even more self-protective fashion. In some, parliaments have lost power and prestige, while in others they have taken on new functions and begun to reassert themselves over the executive.

Some citizens seem to be searching for a different type of democracy, away from traditional representative channels; in other countries, dissatisfaction is with specific parties and leaders more than with the system as such. In some countries, the underlying driver of so much concern is popular antipathy towards core liberal values; in other states, this trend is much less palpable and the nativist-populist prism is of less relevance. And meanwhile at the EU level, while some democracy problems have deepened, promising new reform initiatives have also taken shape.

A question arises from these particularities: is European democracy subject to what is simply a morass of contingent changes, some positive for democracy and others with more negative implications, all emerging from nationally specific circumstances and without much of an overall direction to them? Or are there patterns among the diversity of political developments - more directional changes that tell us something about the longer-term shape of European democracy?

## 21.2 Underlying patterns

The disparity of current trends may make it impossible to trace any kind of grand theory of European democracy and it is certainly difficult to discern any obvious or single teleological endpoint to which democratic systems may be headed – either positive or negative. The prominent narratives of crisis and disruption appear too alarmist to fit some national contexts. A business-as-usual lens is too sanguine to fit others. The ubiquitously posited populist surge is a spectre more pressing in some contexts than in others.

*The disparity of current trends may make it impossible to trace any kind of grand theory of European democracy.*

Yet at least some fairly general patterns are visible. Three common, broad concerns emerge from our project. These may express themselves in different forms or spur different kinds of claim from citizens in each national context, but they are shared concerns that seem to be propelling identifiable directions of change across Europe.

First, an incipient *downward shift* in forms of accountability is evident. Behind the many reform initiatives that our project has unpacked is an apparent interest in citizens gaining more direct hold of public decisions. This sentiment has prompted different kinds of democratic innovation – whether online petitions, participative assemblies, consultations or local referendums. The common thread linking these is an ethos of bringing democratic control and monitoring down to a more local level and ‘closer’ to the apocryphal ordinary citizen.

A second trend is a move from passive to *active* democratic engagement. This is a common spine of recent EU political developments. It is most clearly evident in the spiralling number of pro-democracy protests, citizen assemblies and civil society initiatives. Yet it is equally evident in moves to build an ethos of active citizenship into more traditional democratic channels like political parties and parliaments. It also infuses the spirit of developments in recent years at the EU level.

Curiously, many European governments have become uneasily schizophrenic about these trends towards more locally appropriated, active democratic forms. Their actions have both

prompted but also resisted this direction of travel. Many governments and local authorities have encouraged such developments as a possible way of quelling public frustration with elites and existing institutional structures. But at the same time they have commonly sought to limit or control them, nervous about what more searching and combustible forms of active democratic engagement might produce in an apparent age of populist illiberalism and radical questioning of the status quo. This is the still largely unmapped frontier of current tensions and debates at which the future of European democracy is being fought out: the simultaneous push for more open-ended forms of democratic engagement, on the one hand, and for more controlled forms of democracy, on the other hand.

A third pattern to emerge from the 2CU project relates to the EU level. There appears to be a growing expectation at many different levels of political engagement – from individual citizens through to political parties, parliaments, governments and supranational bodies – that the EU needs to prove itself relevant to democratic regeneration. Our case studies reveal how the EU level is still a problem that in multiple ways compounds Europe’s democratic shortfalls. Yet, the very depth of this concern has begun to galvanise wider recognition that democratic decay cannot be tackled without far-reaching change at the EU level.

Much of the project’s work speaks to the increasingly evident inter-relationships between the national and EU levels. National democracy cannot be protected or enhanced without reform at the EU level; and democratic reform at the EU level will not suffice without reform at the national and sub-national levels. An interesting complexity is that while much focus in democratic innovation has been at a very local level, so too has it intensified at the EU level.

*While much focus in democratic innovation has been at a very local level, so too has it intensified at the EU level.*

This duality might be seen as paradoxical and challenging to the future evolution of European democracy. In a world of sharper geopolitical and geo-economic rivalry, a lot of the current EU debate is about size: many want to see the EU act as a large power to match other large powers and blocs. Yet it is equally clear that many citizens want power brought downwards and that their concerns are with

proximity and access to decision-making, more than with the EU being a singular, power-oriented behemoth. Quite how these twin concerns are to be reconciled remains unclear: how can the new nominally 'geopolitical' Commission also be the Commission that gives 'a new push for democracy' when these might ask for opposite kinds of changes? The pattern behind current political developments might be described as a quest for *localised Europeanism*. Whether and how this is achievable will be a defining issue for the EU's future.

### 21.3 A single European democracy policy?

In sum, some patterns are visible – at least in relatively faint contours – among the particularities of national politics. Yet, what our project also shows is that there is no comprehensive 'democracy policy agenda' across Europe but rather a highly fragmented collection of individual policy responses, civil society initiatives, citizen uprisings, political-party adjustments, parliamentary efforts and digital strategies.

*There is no comprehensive 'democracy policy agenda' across Europe.*

This is true at the national level, within each member state. But it is even more striking at the EU level. At the EU level, the partial and splintered nature of democracy innovations is even more marked – and even more debilitating in terms of the impact that the wide array of reform efforts has so far had. This lack of integrative thinking and action on democracy is evident both across different areas of democratic reform – citizens, civil society, parties, parliaments, local authorities, EU bodies – and between different national-level initiatives.

Of course, all areas of EU policy suffer from problems of coherence and strive with different degrees of success to bring their diverse component parts together in a meaningful whole. But in many areas – like climate change, competitiveness, technology or external relations – the EU has at least made some headway in crafting over-arching strategies and joining together the various relevant elements of a given policy domain.

This is not the case in the area of democracy. Over time, the EU has developed a single European market and a single European currency. It endeavours constantly to find its way towards a single European energy policy. Many diplomats strive for elements of a

single European foreign policy. Yet, the notion of a single European democracy policy has never been raised. It is not even part of the EU lexicon.

EU policies have not really got to grips with the underlying changes driving changes to democracy – whether in positive or negative directions. Rather, policies embody a scattergun of partial initiatives. In respect of European democracy, most actors agree on and even stress the need for reform and concerted effort to push back against strands of democratic erosion. In practice, however, each sees democratic improvement through its own particular prism. Political parties work for changes to political parties. Parliaments see the solution lying in parliamentary changes. Civic organisations advance ideas for getting civic groups more involved. Organisation involved in citizen assemblies champion this fast spreading form of participation. Tech experts work separately in the realms of digital democracy initiatives.

The EU could benefit from a single ‘hub’ or ‘one-stop shop’ to serve as a focal point covering all these different areas and dealing with democratic reform in an all-inclusive sense – a unit and/or a single person charged with bringing all the different arena of democratic change together in a single policy framework.

This is not in any way to advocate moves towards a single political system that seeks to replicate national-level democratic structures at the EU level. This is probably neither feasible nor desirable. Arguably, a strength of many of the initiatives explored in the 2CU project lies in their local roots and the way reform efforts are tailored to the specificities of different national and sub-national contexts. Replenishing the legitimacy of European democracy will rightly and necessarily entail reforms at multiple different levels of reform. The appropriate balance between different types of democracy will vary across these different contexts.

*The EU as a whole needs some kind of hub to consider the state of European democracy in its most comprehensive and integral sense.*

However, precisely because of this need to rebuild democratic citizenship through a complex combination of representative, participative, deliberative and digital democracy, the EU as a whole needs some kind of hub to consider the state

of European democracy in its most comprehensive and integral sense. This one-stop shop would coalesce all the different areas of democratic change across Europe and build a picture of how they relate to each other. It would build linkages between those working on reforms across the different arenas of democratic accountability. It would assess how different forms of democratic regression might require different forms of response. It would work to reduce the risk of different areas of reform undercutting each other.

A promising development is that one Commissioner, Dubravka Šuica, now has overall responsibility for democracy. But elements of fragmentation still exist. The proposed new action plan for democracy appears to break the issue of online threats to elections away from other areas of reform. The debates about a new *Spitzenkandidaten* system and enhanced powers for the European Parliament are narrowly about negotiations with that institution. There is no EU-level mechanism to feed in best-practice learning from the myriad national and sub-national experiments with e-petitions and legislative crowdsourcing.

The policy challenge in this sense lies in the EU juggling both the patterns and particularities in European democracy. It needs to take heed of widening particularities but also draw out emergent common patterns that require common kinds of innovation. Our project concludes just as the Conference on the Future of Europe kicks off, with one of its stated aims to improve democratic processes. The Conference presents an opportunity for the EU to consider some kind of cohering democracy hub. This would help take forward more proactive EU strategy for developing new kinds of democratic accountability and representation, and for encouraging democracy in its most promising long-term directions.



## **22. PARTICIPATORY FUSION: HOW TO GALVANISE REPRESENTATIVE DEMOCRACY WITH DELIBERATIVE TOOLS**

*STEVEN BLOCKMANS*

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### **22.1 Introduction: Gauging the mood**

In an attempt to gauge the mood of European voters ten years on from the polycrisis, and just as Brexit comes to pass, our research picks up on the highest levels of voter turnout for European elections since 1994, and historically high levels of support on key indicators of EU attitudes (Chapter 4). If we can deduce from these findings that there is a positive momentum in EU public opinion, the optimism is a welcome boost because other surveys into the state of public opinion are sounding alarm bells (Chapter 3). Most European citizens today doubt that their children have better prospects than did their parents. And old certainties about the inevitability of democratic progress and the global future of democracy are under threat from the authoritarian, but undeniably efficient, regimes in China and Russia and from the rise of ‘illiberal’ populist parties in established democracies.

While representative democracy remains the best possible form of government around, and the one preferred by most Europeans – especially in high-income countries, satisfaction with how it is practised varies greatly across Europe’s regions, east and west, north and south. Likewise, several aspects of democratic governance are viewed differently by European publics. The fight against corruption and low resilience to disinformation are perceived as key weaknesses in democratic governance (Chapter 3).

The examined data also indicate that commitment to democracy varies across Europe; in some countries significant majorities even find non-democratic models to be desirable alternatives to democracy. Younger cohorts, especially, are less committed to representative democracy. Public opinion remains rather critical and distrustful of political elites; for this reason, many Europeans support direct democracy mechanisms as a means of holding their elites to account. Yet the common assumption that populist voters are rejecting European integration appears empirically weak. In fact, the evidence suggests that when citizens vote for nativist parties, it is more likely to be in spite of (or in indifference to) their Eurosceptic stance rather than because of it. This finding points to a disconnect between national and European politics in the eyes of many citizens, which is important to address now if we are to maximise the relevance of the next European elections in 2024 (Chapter 4).

Building on the empirical findings presented in two previous volumes (Blockmans and Russack, 2018 and 2019) the question that animated the research for this book was **'How to tailor the use of direct participatory instruments to strengthen representative democracy in Europe?'** In no less than 17 contributions to this volume, 2CU partners have formulated their detailed policy prescriptions.

This chapter draws together the *Towards a Citizens' Union* proposals into a coherent framework following the four cumulative criteria used by modern political theorists to assess the health of a democracy: *inclusion, choice, deliberation* and *impact* (Fishkin, 2018: 12-13).

**Inclusion** means that all adult citizens have an equal opportunity to participate. **Choice** means that the alternatives for public decision need to be significantly different and realistically available. **Deliberation** requires that people are encouraged and empowered to think critically about competing alternatives. Finally, **impact** means that people's deliberative choices direct or constrain official decisions or policies. As such, the impact criterion is also the missing link back into *inclusion*, which encompasses the notion of political corruption, i.e. practices that disadvantage the many to favour the few. Mechanisms to hold politicians and policymakers to account if they tinker with the basics that guarantee the proper

functioning of a democratic ecosystem, i.e. the rule of law, will also be discussed under this heading.

Arguably, the boundaries between these four criteria are blurred. Political communication and the right to a free press feature under each of the headings, for instance. Rather than design a strict typology of determining factors of a vibrant democracy, we use the above-mentioned criteria as a loose framework to present the policy recommendations gleaned from the contributions to this volume. In doing so, we focus less on output legitimacy ('choice'), since this is traditionally the realm where the EU has performed well – if the conclusions from subsidiarity and proportionality exercises at both the level of individual member states (e.g. the UK's 2012-14 Balance of Competences Review) and that of the EU (e.g. Commissioner Timmermans' 'better regulation' drive of 2014-15) are anything to go by.

## 22.2 Inclusion

From a neo-functional perspective, the Danish rejection of the Maastricht Treaty in 1992 was the beginning of the end for what scholars have called the 'permissive consensus', which allowed elites to pursue the integration process without directly consulting European citizens (Hooghe and Marks, 2009). Moreover, the failure of the 2004 Treaty establishing a Constitution for Europe marked the advent of a new period where the longstanding notion of the Union's 'democratic deficit' morphed with much stronger perceptions of unaccountability among political and bureaucratic elites. Notwithstanding top-down attempts to improve representativeness through an increase in qualified majority voting in the Council and more co-decision with the European Parliament, these innovations have largely failed to nurture a European public space due to a lack of complementary action from the grassroots up (Chapter 5).

Yet, every EU-level decision that has been taken in the last 60-odd years has somehow, in however limited

*Every EU-level decision in the last 60-odd years has somehow contributed to the Europeanisation of national politics. An inverse trend has also been observed: the nationalisation of European policies. However slow, these mutually reinforcing trends are leading irremediably to the emergence of a European political space.*

a fashion, contributed to the Europeanisation of national politics. An inverse trend has also been observed: the nationalisation of European policies. However slow, these mutually reinforcing trends are leading irremediably to the emergence of a European political space (Lehne, 2019). Growing talk of a political union bears witness to this phenomenon (Morillas, 2019). Therefore, not only politicians and institutions have contributed to it; so have citizens. Top-down and bottom-up solutions, innovations and developments are leading to an incipient European demos (Chapter 5).

Yet, since its creation, the EU has never directly consulted its more than 500 million citizens on concrete policy issues. To date, the European executive is held to account via the elections of members of

*Yet, since its creation, the EU has never directly consulted its more than 500 million citizens on concrete policy issues.*

the European Parliament every five years and national governments represented in the (European) Council. Citizens have very limited direct democracy tools to express their views when it comes to the numerous

policies and decisions made by the EU between elections. The **European Citizens' Initiative** (ECI) may have generated a burst of bottom-up activities, but it is non-binding and has done little to alter the EU's technocratic reputation (see further, below).

**Transnational lists** have been a longstanding federalist dream, as they would bridge the gap between voters and representatives. Such a list would feature candidates, in particular those chosen by their European party families, to lead the campaign and run for the position of president of the European Commission, to be elected in a single constituency from throughout the EU. This would facilitate voting for candidates across member states and effectively give citizens two votes: one for their national constituency and the other for the EU as a whole. First brought before the EP plenary in 2011, this proposal has repeatedly failed to gain majority support. The latest rejection was in 2018, which meant that there was no transnational list for the 2019 EP elections. However, with the reallocation of the 25 seats that became vacant after the UK's departure from the EU, the idea will probably be put back on the table of the **Conference on the Future of Europe**, i.e. well before the EP elections in 2024. It remains to be seen, however, if the first use of the

transnational list will be preceded by a revision of the failed *Spitzenkandidaten* procedure (Chapter 8).

In the same vein, the idea of a **European electoral code** common to all member states, is an idea whose time has not yet come. For years, member states have resisted the European Parliament and Commission in implementing proposals to change and harmonise national electoral procedural laws (Chapter 5).<sup>1</sup>

Initially, it was the role of European party federations (aka **Europarties**) to coordinate EP election campaigns and adopt common manifestos for these elections. But their limited visibility at the national political level and the related low awareness of them among publics mean that Europarties can hardly play their role in transmitting national political preferences to the EU level. Unless national parties begin to mention their Europarty links and unless Europarties themselves run their websites in multiple languages, little can be expected to change. To attract more individual members in the light of declining party membership across Europe, Europarties would need to give them more participatory rights in terms of policy-making and decision-making powers. Allowing them a say in drawing up European manifestos would also force national actors to download the main common positions to the domestic level. That, in turn, leads to the idea of giving Europarties the right to participate in EU-related national referendums and run campaigns for them (Chapter 7).

The supranationalisation of the electoral model, the variants of which have been mentioned above, is a prerequisite not only to enhancing the role of Europarties but also to adhering to the principle of an equal vote. Allowing citizens to vote for transnational lists, next

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<sup>1</sup> Even in the UK, where the makeup of the House of Commons does not reflect the current demographic of the British public, and where the outcome of the 2016 EU referendum and the December 2019 general elections have revealed serious flaws in representative democracy, there has been no serious discussion about replacing the first-past-the-post system with a proportional one. It simply doesn't serve the interests of the party that wins a governing majority to table such proposal. As a result, smaller parties with similar political alchemy cannot translate their combined vote in a coalition (government) to beat the biggest party, even if the latter only received a majority with a plurality of the vote.

to their national ballot for EP elections, and for Europarties and common EU-wide candidates, would likely Europeanise EP elections through the centralised campaign strategy, the conduct of campaigns, candidate selection and manifestos, and would give national media incentives to cover Europarties more intensively (Chapter 7). If information is power, the question arises whether European citizens have sufficient access to information to control EU action.

The EP has tried to increase its own representativeness. An improvement frequently cited by citizens is the use of new technologies (see section 4) to keep better track of voting patterns and parliamentary activity (cf. VoteWatch). With respect to **transparency**, the European Parliament has often been a pioneer, with higher standards than many of the national parliaments. But there continue to be different views on transparency among other EU institutions and member states, which has led to varying degrees of openness across the EU. Several trends challenge the EU's already limited transparency regime: the increased role of the EU's persistently secluded intergovernmental bodies, the emergence of new actors and agencies and the prevalent use of closed trilogues in legislative decision-making (Chapter 6). In terms of specific measures to meet the present challenges, the recommendations of the European Ombudsman following her strategic inquiries into trilogues (European Ombudsman, 2015) and Council decision-making (European Ombudsman, 2017), as well as the ruling of the General Court on the transparency of trilogues from 2018, go a long way.<sup>2</sup> The

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<sup>2</sup> For trilogues, these measures include making publicly available: a calendar identifying forthcoming meetings; summary agendas of those meetings; the positions on legislative proposals; documents tabled during negotiations; minutes or videos of public meetings where trilogues were discussed. For the improvement of Council decision-making, recommendations include: to systematically record the identities of member states expressing positions in preparatory bodies; to develop clear and publicly available criteria for the application of the 'LIMITE' status, in line with EU law; systematically review the 'LIMITE' status of documents at an early stage *before* the final adoption of a legislative act, including before informal negotiations in trilogues; improve the user-friendliness of the Council's public register and its search function, and list all types of documents, irrespective of format and whether they are fully accessible, partially accessible or not accessible at all; develop a dedicated and up-to-date webpage for each legislative proposal, following the example of the EP's legislative observatory.

implementation of these proposals would be an important first step to increasing the openness of the EU's legislative process. The extension of such reforms to EU agencies and 'de novo' bodies would be a logical next step.

Secrecy breeds (the perception of) **corruption**. Political corruption violates the assumption of political equality by excluding large masses of people, while allowing privileged access to a small group of people to the decision-making process. In a democratic society, trust is key to a government's legitimacy. In Europe, four areas of social and political life are vulnerable to political corruption: the financing of political parties, lobbying, public procurement, and EU funds. At a time when perceptions of corruption by politicians is high and trust is low, the EU transparency register should be improved and expanded to include the Council. Apart from ensuring that data on EU-funded projects (structural, agricultural, social, cohesion funds) are published in a readable format to allow for public scrutiny, the European anti-fraud office (OLAF) and the European Public Prosecutor's Office should be provided with ample human and financial resources to investigate and prosecute abusive practices (Chapter 13). For their part, member states should enforce timely reporting of political campaign financing in readable formats to allow for external, independent scrutiny. They should also strengthen the protection of media reporting about political corruption and continue to depoliticise police and judicial (appointment) processes.

Improving representativeness is a challenge that should also be led by civil society and individuals. The **European Citizens' Initiative** was the first instrument in EU law to enable citizens to directly and proactively contribute to the Union's policymaking process. Unfortunately, the original ECI suffered from too many restrictions, beyond those also bearing down on national participatory tools, for it to have any legislative value added and secure continued citizen engagement. The instrument was therefore revised and a new regulation came into effect in January 2020. While improvement in the practicability of the ECI is to be expected, the reform has been mostly technical in nature and leaves questions about the fundamental political value of the tool unanswered (Chapter 17).

**Petitions** share similar characteristics: they are agenda-setting tools and hence a form of participatory democratic process that

enables the organisation of the public in an action with potential political consequences. At the very least, the objective of petition systems is to elicit a reaction from the institution addressed; even if a negative one. However, unlike the ECI, they do not need to meet thresholds and criteria, are free of cost and often address 'intermediary' institutions that stand between the person submitting the petition and the body addressed by the petition. Petitions do not guarantee that governments will be held accountable for popular dissatisfaction; rather, the purpose of petitions is often to generate discussion in the broader society and attract the attention of politicians to a certain problem. As such, they promote transparency, ensure greater information flows and can impact the agenda of legislators, executives or other addressees. Large signature campaigns have the potential to further narrow the democratic deficit, especially among marginalised groups with limited access to political power. Online petition platforms are a space for participation where a group of supporters of a certain cause can develop similar narratives, form ideas and even a 'language' that helps to signal important directions of societal change. This also means that individuals/groups can become more integrated into the political system and as such this instrument creates pathways for constructive input into policymaking (Chapter 18).

While there is much room for improvement, e-petitions surpass the level of inclusiveness of the **citizens dialogues**, which leave much to be desired. Our research reveals a huge disparity between urban areas (73% of the events, with more than one-third taking place in the capital) and suburban/rural ones (with only 27%). As the Brexit and *gilets jaunes* phenomena show, this is a 'fault in the weave' that needs to be corrected if the increasing rejection of mainstream politics in non-urbanised areas is to be countered (Chapter 19).

In the last decade, **national referendums** were often used by populist forces to advance their political agenda and erode the institutions of constitutional democracy. Across the EU, there are important distinctions between facultative and mandatory referendums, popular votes on specific issues and legislative referendums, top-down governmentally controlled plebiscites and bottom-up popular initiatives. As well as highlighting common European standards and good practices identified by the Venice Commission, existing shortcomings could be addressed in the way

referendums are organised, for instance by allowing for citizen-initiated referendums (e.g. abolishing validity or turnout quorums); lowering the number of required signatures; introducing e-tools for signature collection; requiring less personal data; providing longer periods for collection; and ensuring sufficient public space and time for the preliminary deliberation and *ex post* constitutional review of referendum proposals and decisions (Chapter 15).

Referendums on EU issues present a mixed picture across the continent. And EU-related referendum results are not always taken properly into consideration by national governments (e.g. Greece 2015). In other cases, votes expressed by less than a third of eligible voters in consultative referendums have been considered as politically binding on the government, irrespective of their potentially disastrous consequences for both the EU and the country in question (e.g. the Netherlands 2016, the UK 2016). National referendums have in fact contributed to political inequalities between European citizens and the delegitimation of the EU (Cheneval, 2007). When it comes to fostering citizens' participation in the Union's decision-making processes, national referendums on EU issues cannot be a substitute for a Europe-wide plebiscite. Indeed, a referendum among all those European citizens who enjoy the right to vote in their own member state might enhance the EU's democratic legitimacy and secure popular political backing for key issues on the future of Europe that require a substantial change to the treaties or policies affecting citizens' lives. Whether an **EU-wide referendum** would be able to bypass problems of polarised opinion among citizens is less certain, though. Notwithstanding, member state governments are not willing to sacrifice national sovereignty by accepting the introduction of an EU-wide referendum which, to be credible and effective, would have to be binding as well as multi-national (Chapter 16). The latter would require a harmonisation of national legislation on public plebiscites which, as we have discussed above, is still a no-go area for member state governments.

### 22.3 Choice

Today, the eurozone and 'migration' crises appear to have entered a period of dormancy and external challenges have shown the value of the Union in an uncertain world. The internal convulsions of the UK's political system have also transformed Brexit from a potentially lethal

cry of dissatisfaction with the EU into proof of its importance. While deep divisions and incompatible preferences for problem-solving strategies among member states remain, polls indicate that citizens expect the European Union to play a role in addressing the big-ticket policy challenges: migration, climate protection, protecting social rights in an economic union, cyber security and foreign policy (Blockmans, 2019). Increasing citizens' commitment to democracy in Europe demands that the EU develop and implement policies that address these genuine concerns.

On the back of a raft of conclusions of the EU27, proposals by smaller groupings of member states, Commission white papers, Parliament reports and debates on the future of Europe, the 'geopolitical' Commission of President von der Leyen has set out a strategic agenda centred on a 'green deal' and on surfing the wave of digitalisation. An ambitious and detailed workplan informs the legislative process to implement change. Returning to 'business as usual' would be a mistake, however. It would signal to citizens that the EU has not learned the lessons from the huge populist disaster that is Brexit. The UK's withdrawal from the EU should serve as a warning to all as to what happens when ordinary people see the EU as distant, unaccountable and out of touch. The same social and political forces that deepened the political divides in the UK are still a menace across much of Europe. The real test for the EU will come with the next crisis, and national governments again use the Union as a scapegoat for many of their own failings. A greater sense of multi-stakeholder buy-in must be generated to provide the EU with more legitimacy. In this respect, the idea of organising a two-year Conference on the Future of Europe has promise.

## 22.4 Deliberation

The **Conference on the Future of Europe** is expected to organise its work along two strands. The first should focus on policy priorities and what the Union should seek to achieve in terms of output legitimacy. The second strand should focus on institutional matters and democratic processes, thus generating input and throughput legitimacy. Ahead of the kick-off on 9 May 2020, the three main political institutions are involved and will manifest their intentions with a Joint Declaration defining the concept, structure, scope and timing of the Conference. For reasons mentioned in the previous

section, the Conference should not be reduced to a tokenistic exercise for and by the EU bubble. The voices of national politicians and civil society need to be heard, loud and clear, or they may start calling for their national governments to 'take back control'.

The EU is made or undone in national debates. Just as it is up to heads of state or government representatives to own up to the decisions they take collectively (or, as the case may be, fail to take) around the negotiating table in Brussels, so too must national parties and parliaments intensify efforts to bridge the divide in many voters' minds between national and European politics. More focus on the European dimension in day-to-day discussions of national policies is recommended. It is by constructively engaging with the EU dimension of national policies which concern citizens that elected officials would have a chance to rekindle interest and belief in democracy among the youth as well as channel their energies towards democratic forms of participation.

In a multi-layered EU, representative democracy should reform itself, and facilitate and respond meaningfully to such deliberative processes. In the same way that there is a virtuous circle and a better perception of representativeness when citizens are involved in holding those in power to account (Habermas, 2013), institutional reforms such as the harmonisation of electoral systems and the creation of transnational lists can create an upward spiral that positively impacts representativeness in Europe.

When analysing Europarties' deficits, Kovář, Sychra and Kratochvíl in Chapter 7 point to the need to work towards a genuine and functional transnationalisation of party cooperation, instead of the de facto association of national political parties or the mere umbrella organisation that exists today. Such a shift would correspond to the Europeanisation of what used to be purely national policy themes (socio-economic protection, migration, internal security, foreign policy). The transnationalisation of European party discussion and programmes should not be an artificial attempt at social engineering but a reflection of the cross-border preferences of European publics. This change would have to be predicated on parties' presence in the public discourse, the contestation of their ideas, thus offering a deliberative choice to citizens. This, in turn, requires reliable and verifiable information.

*The challenge is to weave facts and values into concrete yet flexible strategies for democratic deliberation that lead to legislative and social change.*

In the recent crisis years in Europe, examples of innovative forms of deliberative democracy have emerged, where soundbites and headlines are replaced by informed consideration of issues on citizens' platforms set up for that purpose. The challenge is to weave facts and values into concrete yet flexible strategies for democratic deliberation that lead to legislative and social change.

The plethora of news and the development of sophisticated technologies makes it increasingly difficult to distinguish between actual news and fake news. Social media not only complement classic sources of information, they might completely replace them, thus adding to 'bubble' mentalities and the polarisation of views (Chapter 12). In addition, targeted online disinformation weakens the democratic system and influences democratic elections.

Eurobarometer data show a correlation between the level of trustworthiness of information provided by national media and public satisfaction with national democracy. Low political pressure on **public service media** correlates with a higher level of press freedom in a country (European Broadcasting Union, 2019). To help a European public space emerge, public service media should pool forces and work on the establishment of transnational media platforms (traditional and millennial) offering content that appeals to a broader European audience. Reinforcing the network of agencies known as Europe Direct, TV channels such as Euronews, Eurosport and Arte, specialised magazines and online newspapers deserve the support of EU institutions (Hillje, 2019).

Positive and substantive civic engagement via **digital media and social networks** should go hand in hand with quality journalism and media literacy to foster the critical thinking and emotional intelligence of the audience and general public. European funding should be attributed to quality journalism and investigative projects and reports in order to assure a higher degree of independence in the news sector. The European Commission's financial and technical support of **fact-checking** networks is already an important element in helping factuality regain ground, especially in the era of new media. Nevertheless, these efforts should be intensified: increased investment is needed as well as better promotion of fact-checkers'

activities and findings that rarely reach a broad public. The funding for the East StratCom Task Force aimed at detecting and exposing cases of disinformation should be stepped up. In October 2018 the Commission established a **code of practice** that was signed by Facebook, Google, Twitter and software companies and bodies representing the advertising industry (Microsoft joined in May 2019), who “voluntarily committed to improve the transparency, accountability and trustworthiness of their services”. The next step would be for the Commission to oblige social media platforms to tighten their transparency regulations and redouble their efforts to counter fake news content and – if these prove insufficient – to propose regulatory measures at the EU level. More transparent political advertising on all relevant online and social media platforms would be welcome. Access to data, especially on sponsored content, should be facilitated for the public, journalists and the scientific community to allow in-depth analysis, comparison and long-term research (Chapter 12).

Armed with facts, citizens can be expected to inject positive energy into the moribund institutions of democracy, improve their representativeness, insist on constructive deliberation, and thus enhance their legitimacy. Research has revealed that citizens tend to agree when identifying the best ways to improve representativeness at the continental level (Notre Europe and CIDOB, 2014). They want policymakers, and in particular their MEPs, to be more informed about their needs and be more accessible. In fact, the possibility to see in person the politicians and the professionals that work in the EU gathers most support in the polls. That desire extends to civil servants, Commissioners and middle administrators. Such an initiative is not entirely new in Europe. It has been tested at the national level, in particular in the UK, where MPs hold ‘**political surgeries**’ with their local constituents. These one-to-one conversations create a strong sense of accountability as MPs are compelled to follow up on many of the issues brought to them (House of Commons, 2019). The generalisation of political surgeries, the consolidation of tools to consult with citizens on a regular basis, and the use of new technologies to follow parliamentary activity are some of the ideas explored in this book (Chapter 5).

Initiated by the European Commission in 2012, **citizens’ dialogues** have since been quasi institutionalised. They are thought

to be the most efficient way of creating links between Commissioners and national audiences.<sup>3</sup> In spite of criticism that they constituted just another type of academic conference to explain technical policies to a passive audience rather than a venue for authentic dialogue (Russack, 2018: 20), public interest was nevertheless sparked by simply making ‘Eurocrats’ visible (Gutiérrez-Peris et al., 2018). At the time of writing, more than 1,600 events have been organised all around Europe, gathering more than 200,000 citizens (European Commission, 2019: 5). The Commission labels these events as “public debates on EU policies” which offer the opportunity for European citizens to ask questions to EU policymakers, make comments on EU policymaking that affect them or share ideas on the future of Europe.

In another effort to whip up participative spirit, several countries such as Germany, Lithuania and Ireland have started organising ‘**European citizens’ consultations**’, thereby confusing the nature of the initiative with the Commission’s citizens’ dialogues.

*Following the signature by all member states of a joint framework premised on a set of “common principles”, around 1,700 European Citizens’ Consultations took place across the continent, generating in-depth discussions on a diverse range of EU-related issues.*

Inspired by Emmanuel Macron’s speech at La Sorbonne in which he stressed the need to “identify priorities, concerns and ideas for the future of Europe” (Macron, 2017), the initiative was upscaled to become a “pan-European process of citizens’ consultations” (Council of the EU, 2018: 1). Following the signature by all member states in

March 2018 of a joint framework premised on a set of “common principles” – including inclusiveness, political pluralism and transparency, around 1,700 European Citizens’ Consultations took place across the continent, generating in-depth discussions on a diverse range of EU-related issues (Chapter 19). Unlike citizens’ dialogues, these consultations were organised by national governments, sometimes in partnership with local actors and civil

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<sup>3</sup> Citizens’ dialogues became a priority under the Juncker Commission after an event in Riga in January 2015 where First Vice-President Timmermans, Vice-President Dombrovskis and Commissioner Crețu met 500 European citizens to debate several topics related to EU policymaking, including the stability of the eurozone, energy independence and security issues.

society organisations (Butcher and Pronckuté, 2019: 81). The unevenness in terms of organisation, ambition, identity and political messaging has so far prevented the European citizens' consultations from producing meaningful change at the EU level (Stratulat and Butcher, 2019).

In an effort to complement member states' activities on the European citizens' consultations, the European Commission simultaneously launched '**online citizens' consultations**' via a questionnaire (available in all EU-languages) based on 12 questions devised by a citizens' panel (Zacharzewski, 2019: 19-22). At the time of writing, it is too early to draw any conclusions from this exercise. The results of these online citizens' consultations were expected to be submitted to the European Council. Any follow-up action on citizens' perceptions and recommendations will therefore depend on the political will of the member states (Chapter 19).

The European Commission has a long tradition of **public consultations** on EU policies and specific legal files. This tool offers the opportunity for citizens to provide online feedback on issues that directly impact their lives (e.g. industry, environment, social affairs). However, this tool is particularly useful for businesses and lobbyists to share technical recommendations that are in line with their corporate interests. The real challenge is how to use new technologies to facilitate a wider citizen participation in the EU. The idea of creating an online '**European civic space**', akin to the project developed jointly by the Council of Europe and the European Commission, could connect civil society organisations and allow them to share information and opinions on draft legislation in real time. Integrating artificial intelligence (AI) systems that would automatically translate information shared in all official languages of the EU and logically place it in the online debating forum would enhance both the participation and deliberation of regular citizens (Chapter 20). It would also enhance the mutual understanding of EU-related matters between citizens and policy- and decision-makers.

The participatory instruments mentioned above mostly follow a top-down approach. Other successful participatory initiatives such as **citizens' assemblies** and **citizens' juries** take a different methodological approach that has included selecting participants by random lot, involving experts in the process, and getting public authorities to commit to the result of the deliberations. With the

successes of the citizens' assembly in Ireland (which culminated in a nationwide referendum on abortion), the establishment of a permanent citizens' assembly in Madrid, and the introduction of the participatory system based on randomly drawn lots in the German-speaking part of Belgium, the question has arisen whether these bottom-up approaches might be scaled up to secure enhanced citizens' deliberation at the national and even the transnational level. Obviously, this would raise major practical and financial problems and require an enormous coordination effort (Chapter 19). In this respect, policy recommendations (Alemanno, 2018; Butcher and Stratulat, 2018; Youngs, 2019) strategically focus on future rounds of European citizens consultations and include:

- Centralising all participatory channels that involve EU institutions to tackle the current lack of synchronisation. This could lead to the establishment of a mechanism for interinstitutional cooperation of the kind already proposed by the European Committee of the Regions and the European Economic and Social Committee,<sup>4</sup> two advisory bodies in the EU decision-making process with a significant record of cooperating with civil society.
- Securing appropriate funding by including European citizens' consultations in the Multiannual Financial Framework (MFF) of the EU and by dedicating a budget within each member state institution leading the process domestically.
- Establishing a task force of experts, academics, civil society and representatives from the EU and member states to propose the participatory design that would best fit into EU decision-making processes.
- Clarifying the purpose of consulting citizens and its connection to the EU level.
- Engaging local democracy networks and experts to ensure the methodology and quality of the consultations; i.e. so that people are encouraged and empowered to think critically about competing alternatives.

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<sup>4</sup> See, e.g., COR, "Working together to bring the EU closer to its citizens: EU cities and regions' key proposals to renew the EU (2019-2024)", CdR No. 3975, June 2019.

- Securing unity in the diversity of national practices and debates to enhance the transnational character and value added of the consultations.
- Including independent voices to synthesise the results.

The overarching challenge of these endeavours would be to design a deliberative model for Europe that reinforces other forms of democratic accountability rather than undermining or overshadowing them (Youngs, 2019).

This remark applies especially to **European Affairs Committees** (EAC) of national parliaments, which have traditionally been seen as the aggregators of citizens' preferences on European affairs, the conveyer belts to and from EU institutions, and EU-level actors in their own right (cf. COSAC, below). In reality, however, it is more important for national parliaments to scrutinise their own governments. Many parliaments do not even demand that their governments report back from Council and European Council meetings. Even the question of granting a greater role to parliaments in monitoring the implementation of EU law is controversial, including among parliaments themselves (Chapter 9). The general tendency seems to be in favour of mainstreaming EU expertise across national parliaments, not of keeping it within the bounds of the EACs. While such mainstreaming is to be welcomed, MPs in sectoral committees would need more EU expertise and assistance to better scrutinise government and engage more directly in EU decision-making.

Our research has shown that national parliaments view subsidiarity as a broad political principle rather than as a narrow legal or technical principle to hold the executive to account. The **extension of the early warning system (EWS) to 'blue' and 'green' card procedures** would allow for multilevel parliamentary scrutiny in a more flexible and proactive way, while at the same time making this control mechanism legally binding for the Commission, the Council and the EP throughout the entire legislative cycle (Chapter 10). In such a new framework, the existing yellow and orange cards would morph into a 'blue card' procedure, no longer leaving the discretionary power to the Commission to decide whether to maintain, amend or withdraw a proposal. National parliaments

would work in tandem with the EP, providing mixed parliamentary scrutiny of legislative proposals and binding the Commission and the Council. In a similar vein, the green card procedure would be amended to allow for a 'positive voting' procedure on proposals issued jointly by national parliaments and the EP (Borońska-Hryniewiecka, 2015). Of course, such a challenge to executive authority would not go unnoticed in the Commission, the Council and national capitals. In the absence of a gentlemen's agreement, it would be difficult to introduce such improvements to the way multilevel democracy works in the EU. For that reason, preliminary work should be carried out to equip national parliaments and their EACs with specific institutional competences.

In spite of the differences between national parliaments' EACs (their constitutional position and political weight, their *ex ante* and *ex post* powers to control government on EU matters, their direct communication with EU institutions, and ways to involve the broader public on European affairs), there are nevertheless a few approaches and practices that could help committees increase their representative role (Chapter 9):

- Make it obligatory for the government to report back to parliament after each (European) Council meeting, and to report all information relating to changes in (position vis-à-vis) Commission proposals.
- Invite Commissioners and top EU officials for debates on strategic and contentious issues, and to respond to green and white papers at an early stage of the legislative process. The appointment of shadow rapporteur MPs may be useful in this regard. The early warning system and political dialogue may also be used, but one should not overestimate the importance of these communication channels because subsidiarity checks usually happen quite late in the legislative process.
- Involve experts and civil society organisations in EAC and sectoral committee debates to provide guidance on EU affairs and national interests.
- Devote EAC-specific sections on national parliaments' websites, where at least the agenda and reports on discussions on EU policies and legislation during EAC and plenary meetings could be easily found.

- Produce own-initiative assessments of legislation in force across the EU or, at least, provide feedback to the government when it states its position on the European Commission's evaluation reports of existing EU law.
- Produce regular self-assessments of the effectiveness of parliament and, in particular, the EAC to engage on EU matters.
- Find ways to communicate regularly with the country's MEPs; meeting with EP rapporteurs on dossiers of interest; and participating in small-scale events organised by the European Parliament on topics of interest to citizens.
- Reinforce and use the federal or regional parliaments' liaison offices in Brussels as permanent interlocutors regarding legislative developments pertinent to the public at home.
- Take part in networking events at EU level, especially COSACs.

While, in theory, the Conference of Parliamentary Committees for Union Affairs of the Parliaments of the European Union (COSAC) is a useful tool for MPs and MEPs to coordinate priorities and cooperate in improving the legitimacy of EU affairs, limited powers to scrutinise (*ex ante* and *ex post*) and influence EU policymakers have meant that the benefits of interparliamentary cooperation in Europe remain largely untapped. Aligning the work and timing of COSAC meetings to (European) Council agendas would improve their impact. Splitting COSAC meetings into smaller groups of parliamentarians to facilitate closer and more informal discussions on specific topics would also reinforce political dialogue, as would increasing the frequency of the appearance of representatives of EU institutions. The use of new technologies might also help to arrange ad hoc working groups without increasing the budget. Finally, taking the development of sectorally-oriented joint parliamentary sessions (as exists already for CSFP/CSDP and economic stability, coordination and governance) and joint parliamentary scrutiny groups (as for Europol) further, would help to improve their impact on the decision-making process as they would be able to adopt deeper analyses of different policy questions, especially when accompanied by joint secretarial support (Chapter 11).

*Apart from introducing new elements of direct democracy, representative democratic processes themselves need to innovate.*

Apart from introducing new elements of direct democracy, representative democratic processes themselves need to innovate. Indeed, some of the most obvious ways to narrow democratic deficits in Europe

and boost EU legitimacy can be found in improving national parliamentary debates and oversight on EU-related matters.

## 22.5 Impact

As noted in passing, the recurrence – if not permanence – of sound deliberative modes of citizens’ participation is a determining factor in representativeness. The most efficient and durable way to gain and retain credibility as a public representative is to create channels of communication and accountability that extend beyond election day.

In terms of **political communication**, democratically elected leaders should adopt language that counteracts, not imitates, populists’ divisive narratives. Referring, for instance, to the rule of law may not be engaging enough and too ‘cold’ to elicit positive responses from the public (Chapter 3). Instead, politicians, experts and opinion-makers should start speaking about democracy by referring to people’s interests and benefits that can be directly derived from the separation of powers, free press and the rule of law.

The aim would be to forge stronger emotional bonds between citizens

*Fact-based deliberation in representative bodies, direct channels to give voice to citizens’ concerns and choices, and shoring up mechanisms to hold government to account can save democracy in Europe from the onslaught of proto-fascist populism.*

and the system of democratic and legal standards that protects them and promotes their individual and collective interests. Crucially, they should engage citizens in this conversation. Fact-based deliberation in representative bodies, direct channels to give voice to citizens’ concerns and choices, and shoring up mechanisms to hold government to

account – these factors can save democracy in Europe from the onslaught of proto-fascist populism.

In terms of **accountability**, a representative democracy should guarantee that the people’s deliberative choices direct or constrain

official decisions and policies. In cases where member states' governments have hollowed out those defences, the EU – through all of its institutions – should step in. Democratic backsliding in one or more member states challenges the mutual trust-based operation of the single market and the entire European Union. Enforcing democratic standards in member states where the rule of law is in crisis should take priority over concerns about a possible Eurosceptic backlash in those countries. The publics in Poland and Hungary, for instance, have remained strongly pro-EU despite the steps taken against their governments' policies and the rejections of 'Brussels interventions'. Populist governments' claims that targeted EU action is unfair because problems also exist in other member states should be dismissed altogether. This does not, after all, absolve them of their assault on the fundamental values on which the EU is built (cf. Article 2 TEU). An erosion of the rule of law requires urgent and determined countervailing action to spread the risk of contagion. Increasing citizens' commitment to democracy in Europe requires that *all* EU institutions do more to consistently ensure that democratic standards and the rule of law are observed in *all* member states.

The new EU institutional cycle is an opportunity to intensify collaboration between the Commission, the European Parliament and the Council of the EU to restore the rule of law and narrow the divisions between member states that have opened up as a result of violations. Among the steps to be taken (Chapter 14), are:

- For the Commission to carry out an objective annual review of the state of democracy in all member states, relying not just on data provided by governments but by making better use of the Fundamental Rights Agency, bodies of the Council of Europe (e.g. Venice Commission) and civil society organisations in collecting information.
- If certain governments' explanations are unsatisfactory and the prospects for addressing the rule of law problems identified in the report not promising, then the Commission should not hesitate to start an infraction procedure before the Court of Justice and ask for interim measures to suspend controversial government action until it renders its final judgment.
- Political 'families' in the European Parliament have a responsibility to assist in upholding the rule of law throughout the EU. The indecisiveness of the European People's Party in

dealing with Viktor Orbán's Fidesz is the most prominent but certainly not the only failure of a European party family to address the persistent violation of EU founding values in a member state. It is a stain on the house of European democracy that national parties that undermine the rule of law at home receive protection from their European party federations.

- In the negotiations on the MFF, member states should accept the European Parliament's proposal to increase EU funding for rule of law promotion and agree to establish a stronger link between respect for fundamental values and sound EU finances. Framing rule of law conditionality for EU funding as an objective, legally grounded instrument and not an attempt to bypass the cumbersome Article 7 procedure would help to see off accusations that the EU is prepared to bend its own laws to punish defiant member states (Chapter 14). The MFF should also include specific funds to counter disinformation and, in the case of Erasmus+ and related instruments, civil society organisations should be encouraged to apply for funding that addresses disinformation and fosters media literacy.

## 22.6 A more democratic future of Europe?

By way of conclusion, the 2CU project has shown that there is a plethora of concrete ideas for how to strengthen representative

*The 2CU project has shown that there is a plethora of concrete ideas for how to strengthen representative democracy at both the national and EU level, with interlinking mechanisms and instruments to facilitate citizens' direct and constructive involvement in EU affairs.*

democracy at both the national and EU level, with interlinking mechanisms and instruments to facilitate citizens' direct and constructive involvement in EU affairs. However, the problem of implementing

policy recommendations in this field is twofold. Firstly, there is no European democracy policy agenda, one that promotes integrative thinking and reform action in a comprehensive, coherent and consistent way (Chapter 21). Secondly, democracy reform is mostly resisted by the main stakeholders: politicians. In every politician lurks a monopolist that is unwilling to share power with others, let alone 'the' people. Then again, this lack of integrative thinking and action on democracy is evident among other constituencies too -

citizens, civil society, parties, parliaments, local authorities, EU institutions. Each sees democratic improvement through its own particular prism: political parties work for changes to political parties; parliaments see the solution in parliamentary changes; civic organisations advance ideas to get civil society more involved; etc. It is for this reason that Richard Youngs argues that the EU would benefit from a 'one-stop shop' to cover all aspects of democracy reform in Europe and deal with them in an inclusive sense, not to replicate national-level democratic structures at EU level but to find a better balance between different types of democracy across these different contexts: "Replenishing the legitimacy of European democracy will rightly and necessarily entail reforms at multiple different levels of reform" (Chapter 21). The policy challenge lies in the EU juggling both the patterns and particularities of European democracy.

*The EU would benefit from a 'one-stop shop' to cover all aspects of democracy reform in Europe and deal with them in an inclusive sense.*

Our project concludes just as the Conference on the Future of Europe kicks off, with one of its stated aims to improve democratic processes. While the focus along the institutional strand of its work is expected to rest on the election of the EU's leadership and transnational lists (after the difficult process that followed the 2019 EP elections), the discussion should be extended to the whole spectrum of democratic legitimacy (Chapter 17). Indeed, the Conference presents an opportunity for the EU, and in particular the new Commissioner responsible for democracy and demography, to consider a more proactive strategy to develop new kinds of democratic representation, deliberation and accountability, and to encourage a more far-sighted vision of democracy.

## References

- Alemanno, A. (2018), "Beyond Consultations: Reimagining EU Participatory Politics", Carnegie Europe, December.
- Blockmans, S. (ed) (2019), *What Comes After the Last Chance Commission? Policy Priorities for 2019-2024*, Brussels: CEPS.
- Blockmans, S. and S. Russack (eds) (2018), *Direct Democracy in the European Union: The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Blockmans, S. and S. Russack (eds) (2019), *Representative Democracy in the European Union: Recovering Legitimacy*. London: Rowman & Littlefield International.
- Borońska-Hryniewiecka, K. (2015), "The Green Card Opportunity: Time to Rethink Parliamentary Engagement in EU Affairs", *Bulletin*, No. 41, The Polish Institute of International Affairs.
- Butcher, P. and S. Pronckutè (2019), "European Citizens' Consultations: Consultation begins at home", *European View*, Vol. 18, No. 1, 81-88.
- Butcher, P. and C. Stratulat (eds) (2018), *The European Citizens' Consultations - Evaluation report*, Brussels: EPC and The Democratic Society.
- Cheneval, F. (2007), "'Caminante, no hay camino, se hace camino al andar': EU Citizenship, Direct Democracy and Treaty Ratification", *European Law Journal*, Vol. 13, No. 5, 647-663.
- Council of the European Union (2018), "Joint Report - Citizens' Consultations (14535/18)", Brussels.
- European Commission (2019), "Citizens' dialogues and citizens' consultation - Key conclusions", Brussels.
- European Ombudsman (2015), "Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/8/2015/JAS concerning the transparency of Trilogues", Brussels.
- European Ombudsman (2017), "Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process", Brussels.
- Fishkin, J.S. (2018), *Democracy When the People Are Thinking: Revitalizing Our Politics Through Public Deliberation*. Oxford: Oxford University Press.

- Gutiérrez-Peris, D., P. Morillas and H. Sánchez Margalef (2018), "Europe's Conventions Démocratiques", in S. Blockmans and S. Russack (eds), *Direct Democracy in the EU: The Myth of a Citizens' Union*, London: Rowman & Littlefield International.
- Habermas, J. (2013), *The Crisis of the European Union: A Response*, Cambridge: Polity Press.
- Hillje, J. (2019), "Warum wir schlecht über die EU reden und wie wir den Nationalismus mit einem neuen digitalen Netzwerk überwinden können" [Why we talk bad about the EU and how we can overcome nationalism with a new digital network, Platform Europe], *Plattform Europa*, Bonn: Dietz.
- Hooghe, L. and G. Marks (2009), "A postfunctionalist theory of European integration: from permissive consensus to constraining dissensus", *British Journal of Political Science*, Vol. 39, No. 1, 1-23.
- House of Commons (2019), "Political Surgeries", (<https://www.parliament.uk/site-information/glossary/surgeries/>).
- Lehne, S. (2019), "The Emergence of a European Political Space", Mercator European Dialogue, German Marshall Fund of the United States.
- Macron, E. (2017), "Initiative pour l'Europe - Discours pour une Europe souveraine, unie, démocratique" [Initiative for Europe - Speech for a sovereign, united and democratic Europe], Paris.
- Morillas, P. (2019), "Grappling with Dissent: How Can Think Tanks Cope with Politicisation?", *Opinió CIDOB* No. 577.
- Notre Europe and CIDOB (2014), "European citizens' involvement in the EU - Report of a qualitative study - national results", Project 'Horizon EU: European citizenship, an horizontal pattern', February.
- Russack, S. (2018), "Pathways for Citizens to engage in EU policymaking", *CEPS Policy Insights*, No. 14.
- Russack, S. (2019) "EU parliamentary democracy: how representative?", *CEPS Policy Insights*, No. 7.
- Youngs, R. (2019), "Can Citizen Participation Really Revive European Democracy", *Carnegie Europe Article*, July.

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