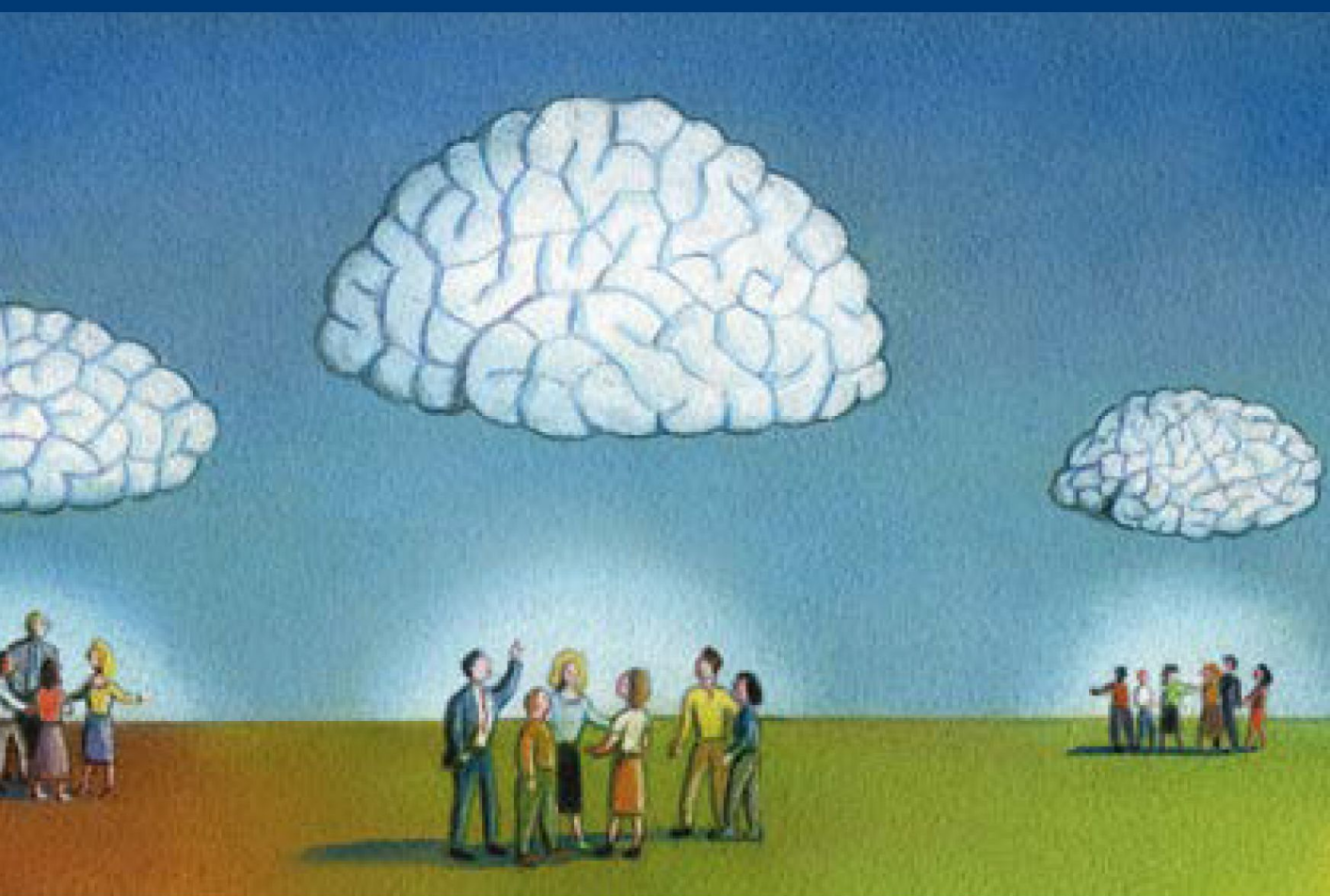


DIRECT DEMOCRACY IN THE EU

The Myth of a Citizens' Union



EDITED BY
STEVEN BLOCKMANS
AND **SOPHIA RUSSACK**

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The European Policy Institutes Network (EPIN) comprises 38 renowned think tanks and policy institutes from 25 European countries. EPIN aims to contribute to the debate on the future of Europe through expert analysis of the different national and EU-level debates. EPIN is coordinated by CEPS.

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ABBREVIATIONS

ACTA	Anti-Counterfeiting Trade Agreement
AFCO	Constitutional Affairs Committee
ALDE	Alliance of Liberals and Democrats for Europe
CETA	Canada Comprehensive Economic and Trade Agreement
CoR	Committee of the Regions
CSO	Civil Society Organisations
CVM	Cooperation and Verification of Progress Mechanism
EC	European Commission
ECI	European Citizens' Initiative
ECR	European Conservatives and Reformists
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EESC	European Economic and Social Committee
EMA	European Medicines Agency
EMU	Economic and Monetary Union
EU	European Union
EP	European Parliament
EPP	European People's Party
EPSO	European Personnel Selection Service
EPIN	European Policy Institutes Network
ESM	European Stability Mechanism
GUE/NGL	European United Left/Nordic Green Left
IGC	Intergovernmental conference
NATO	North Atlantic Treaty Organisation
NHS	National Health Service

OLAF	Anti-Fraud Office
PES	Party of European Socialists
PETI	Committee on Petitions
REFIT	Regulatory Fitness and Performance
S&D	Progressive Alliance of Socialist & Democrats
TTIP	Transatlantic Trade and Investment Partnership
UBI	Unconditional Basic Income

1. INTRODUCTION

STEVEN BLOCKMANS & SOPHIA RUSSACK

1.1 Identity crisis

The state of democracy in the European Union is a subject of constant debate. While some have argued that concern about the ‘democratic deficit’ is misplaced,¹ the prevailing sense is nevertheless that the EU has a democracy problem.²

This sense of a problem is compounded by recent figures about the decline of electoral democracy and the protection of civil liberties, including freedom of expression and backsliding on the rule of law in a growing number of member states.³ In Europe’s patchwork of political cultures, languages, national memories and diverse press channels, the algorithms behind social media are polarising people in a way not seen since the creation of the EU. The seismic shock of the Brexit referendum and the electoral upsets by

¹ Adherents of the former view include, e.g. G Majone. (1998), “Europe’s ‘Democratic Deficit’: The Question of Standards”, *European Law Journal*, 4(1): 5–28; or A. Moravcsik (2002), “In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union”, *Journal of Common Market Studies*, 40(4): 603–24.

² For the view of the mainstream see, e.g. F. Scharpf (1999), *Governing in Europe. Effective and Democratic?*, Oxford: Oxford University Press; S. Hix and Follesdal, A. (2006), “Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik”, *Journal of Common Market Studies*, 44(3): 533–562; and Lindberg, 2018.

³ V-Dem Institute, “Democracy for All? The V-Dem Annual Democracy Report 2018” (https://www.v-dem.net/media/filer_public/3f/19/3f19efc9-e25f-4356-b159-b5c0ec894115/v-dem_democracy_report_2018.pdf).

nativist and Eurosceptic parties across the continent show that, in the EU too, “all politics is local”.⁴

Paradoxically, half a billion people living in a Union that has advanced the notion of ‘citizenship’ since 1991 have never before shared such an intertwined destiny. The single market, free

The achievements of single market, free movement and the Erasmus student exchange programme have all helped to break down cultural boundaries, but they risk being reversed by political narratives that drive citizens into ever more divided national mind-sets.

movement and the Erasmus student exchange programme have all helped to break down cultural boundaries. But these achievements risk being reversed by political narratives that drive citizens into ever more divided national mind-sets. The popular anger that populists feed on seems to be deliberately channelled towards a growing list of targets: from the single currency and austerity policies attached to it, to EU trade agreements with third countries

(mainly the US and Canada), refugees and economic migrants. Now, the radical right is encouraging Europeans to turn against each other.⁵

At the grassroots level, citizens’ perceptions have drifted a long way from the European ‘demos’ imagined by the architects of modern Europe. European integration is often perceived as an elite-driven project that is too remote from ordinary citizens. The ‘polycrisis’ that has plagued the EU for the past few years has led to a cacophony of voices calling for fundamental change to the European integration project.

Insofar as such proposals exist, they have been developed by elites, either “as damage limitation to placate a restless populace”⁶ or as an effort to reduce EU institutional interference at the national level. Examples of the former include the aim to create transnational

⁴ T. O’Neill & G. Hymel (1994), *All Politics Is Local: And Other Rules of the Game*, Holbrook, Ma: Bob Adams Inc.

⁵ H. Grabbe & S. Lehne (2018), “Could an Illiberal Europe Work?”, Carnegie Europe.

⁶ R. Youngs (2017), *Europe Reset: New Directions for Europe*, London: I.B. Tauris, at 11.

lists for the European Parliament elections and to revive the lead candidate ('Spitzenkandidat') system pioneered in 2014. An example of the second category is the renewed call from Central and Eastern European governments to arm national parliaments with a red card to shoot down the European Commission's unpalatable legislative initiatives. Emmanuel Macron's proposal to organise civilian assemblies to debate the future of Europe may be more in tune with the mood of the masses, but a self-declared 'Jupiterian'⁷ president seems hardly the right person to push for its implementation.

While the leaders of the EU institutions and member states increasingly invest their hopes in reviving 'output legitimacy' by delivering on policy objectives (e.g. shoring up security and defence cooperation, reform of the eurozone and the Schengen area, striking up progressive trade deals), the democratic legitimacy problem has in effect been left to fester. The (perception of) non-transparent decision-making continues to feed into popular frustration about how governments and EU institutions operate. The risk of an even greater negative feedback loop is therefore real.

While the leaders of the EU institutions and member states invest their hopes in reviving 'output legitimacy' ... the democratic legitimacy problem has been left to fester.

1.2 Towards a Citizens' Union?

Against this backdrop, 20 renowned think tanks from the European Policy Institutes Network (EPIN) have joined forces in a three-year research project supported by the European Commission under its Erasmus+ programme. The 'Towards the Citizens' Union (2CU)' project is concerned with the two-pronged question of i) how the relationship between citizen, state and EU has changed, and ii) whether and how direct democracy (this volume), representative democracy (volume 2, forthcoming in 2019) and the accountability of democratic institutions (volume 3, forthcoming in 2020) can be improved in a multi-layered EU. As such, 2CU uses the

⁷ See J. Grayson, "The dual meaning behind Macron's 'Jupiterian Presidency'", JohnGraysonBlog, 15 July 2017.

phenomenon of populism⁸ not so much to engage with policy, but as a research handle to assess process and polity.

This volume asks whether a sense of solidarity and European identity can be rescued from the bottom up by politically empowering citizens to 'take back control' of their EU.

Building on the notion of increasing social, economic and political interdependence across borders, this first volume asks whether and, if so, how a sense of solidarity and European identity can be rescued from the bottom up by politically empowering citizens to 'take back control' of *their* EU.

This first 2CU book on the state of direct democracy in the EU presupposes a common understanding of the semantics of direct political participation. Some clarifications may nevertheless be in order.

The EU is founded on the principle of representative democracy (Article 10(1) TEU). Citizens are thus directly represented at Union level in the European Parliament. The functioning of the EU is thus based on the assumption that the elected representatives reflect the goals and preferences of the citizens. Yet delegates might follow their own agenda more than the citizens' will. Complementary procedures may therefore help maintain the legitimacy of governance.⁹ Mechanisms have been created to give more substance to the right of every citizen to participate in the democratic life of the EU (Article 10(3) TEU). The European Citizens' Initiative (ECI) is the most emblematic of these (Article 11(4) TEU). It has been hailed as the world's first transnational tool of direct democracy.¹⁰ Yet, as neither the ECI nor any of the other of the Union's own instruments (cf. Article 11 TEU)

⁸ J.W. Müller (2016), *What is Populism?*, University of Pennsylvania Press; and C. Mudde & C. Rovira Kaltwasser (2017), *Populism: A Very Short Introduction*, Oxford: Oxford University Press.

⁹ H. Catt and M. Murphy (2003), "What voice for the people? Categorising methods of public consultation", *Australian Journal of Political Science*, 38(3): 418.

¹⁰ J. Greenwood and K. Tuokko (2017), "The European Citizens' Initiative: the territorial extension of a European political public sphere?", *European Politics and Society*, 18(2): 5.

is able to directly catalyse or constrain EU decision-making, the term 'direct democracy' is probably a misnomer at the supranational level. The power to govern the EU certainly does not lie directly in the hands of the people and cannot be expressed through, say, EU-wide referendums. The term 'participatory democracy' might thus be better suited for the EU as this concept challenges what is perceived as elitist forms of representation in liberal democracies and puts a prime on the active participation of civil society in public decision-making.¹¹

In a narrower sense, however, 'participatory democracy' is a process of collective decision-making that combines elements from both direct and representative democracy: citizens have the power to decide on policy proposals through referendums, civilian assemblies, public consultations, initiatives, petitions, etc., for example¹² and politicians assume the role of policy implementation with little personal discretion. In this sense, instruments of direct democracy are no silver bullets but may be valuable supplements to representative democracy. They provide "the opportunity to break the cycle of increasingly distant, technocratic political institutions and increasingly disconnected citizens supporting populist positions".¹³

In its original form, 'populism' is an ideology that considers society to be ultimately separated into two homogenous and antagonistic groups: 'the pure people' and 'the corrupt elite', and argues that politics should be an expression of the *volonté générale* of the people. Practically, populist politicians almost always combine it with other ideologies, such as nativism on the right and socialism on the left. Populism is a particular view of how society is and should be structured, but it addresses only a limited part of the larger political agenda. For example, it says little about the ideal

¹¹ C. Pateman (1970), *Participation and Democratic Theory*, Oxford: Oxford University Press.

¹² R. Lindner and U. Riehm (2011), "Broadening Participation Through E-Petitions? An Empirical Study of Petitions to the German Parliament", *Policy & Internet*, 3(1): 63–85.

¹³ J. Organ (2017), "EU Citizen Participation, Openness and the European Citizens Initiative: The TTIP Legacy", *Common Market Law Review*, 54: 1747.

economic or political system that a (populist) state should have. Its essential features are: morality and monism. In his seminal book, 'What is Populism?'¹⁴ Jan-Werner Müller argues that 'populism' is inimical to pluralism. Its target is pluralist, liberal democracy, with those vital constitutional and social checks and balances that prevent any "tyranny of the majority" from prevailing over individual human rights, safeguards for minorities, independent courts, a strong civil society, and independent, diverse media. Müller rejects the term 'illiberal democracy', arguing that it allows people like Viktor Orbán to claim that Hungary just has a different kind of democracy. Timothy Garton Ash stresses the need for

a term to describe what happens when a government [like that also of Jarosław Kaczyński in Poland] that emerges from a free and fair election is demolishing the foundations of a liberal democracy but has not yet erected an outright dictatorship – and may not even necessarily intend to.¹⁵

1.3 Structure of the book

The volume opens with a chapter that digs into the existing EU-level mechanisms intended to give European citizens a louder voice and have it heard. This analysis is complemented by a handful of thematic chapters on narrative, procedural and technical aspects of political participation (Part II). The main body of the book (part III) comprises an empirical analysis of local demand and upward mobilisation. In a representative cross-section of half of the EU's membership (determined along geographical, economic, political, cultural and other lines), 14 country reports provide a bottom-up framework of political change and power contestation in the EU. Working with the grain of these socio-economic, cultural and political developments across the Union, the book concludes with a chapter that synthesises the research findings, debunks the myth of the unifying effects of direct democracy and offers recommendations to improve participatory democracy in the EU.

¹⁴ Op. cit, *supra* note 8.

¹⁵ T. Garton Ash, *Is Europe Disintegrating?*, New York Review of Books, 19 January 2017.

PART I.

EU-LEVEL MECHANISMS

2. PATHWAYS FOR CITIZENS TO ENGAGE IN EU POLICYMAKING

SOPHIA RUSSACK

Introduction: direct democracy at EU level?

Participatory democracy has been a topic of discussion since the beginning of European integration, but mainly around the question of whether treaty revision should be legitimised by popular vote. The right to petition the European Parliament (EP) was for a long time the only instrument at EU citizens' disposal. Only with the Treaty of Lisbon was the role of participatory democracy formally recognised (through Article 11, TEU), when four more mechanisms were introduced. Most notably the European Citizens' Initiative, which is the first instrument that provides the opportunity for the direct participation of European citizens in the EU decision-making process (Böttger, Conrad and Knaut, 2016, 16). There are five EU instruments that can be classified as participatory:

- European Citizens' Initiative
- Petitioning the European Parliament
- Formal complaints to the ombudsman
- Public consultations
- Citizens' Dialogues

These will be subject of this analysis. The five instruments that are the subject of this analysis can be categorised as either bottom-up or top-down. Whereas the European Citizens' Initiative, petitions to the European Parliament, and complaints to the European ombudsman fall into the category of bottom-up instruments as these offer citizens the opportunity to trigger certain processes themselves, Citizens' consultations and Citizens' dialogues account for top-down' approaches that are instigated by the EU's political elite. Bottom-up instruments facilitate citizens' influence over policy outcome because they challenge the existing policy

preferences of the political elite. Top-down instruments are generally weaker as they aim for support of existing policies and the clarification of policy value to achieve more effective governance.

Certainly, this requires a very wide interpretation of the term 'participatory', which more closely resembles mere channels of communication between the EU citizens and the EU institutions.¹

Top-down instruments are generally weaker as they aim for support of existing policies and the clarification of policy value to achieve more effective governance.

This chapter looks at how effective these instruments are at influencing EU policy and decision-making and what impact they have on the democratic quality of the EU. It offers a descriptive and analytical view of the benefits and shortfalls of the current system.

The main body of this contribution (sections 2.1 – 2.5) gives some background information on each of these five instruments and assesses them from three different angles, following the research design of (Hobolt, 2006)). First is the behaviour of citizens – who makes use of this tool, and how? Second, the political elite, who are the main institutional actors and do they (publicly) support the respective instrument? Third, the (potential) effects of these tools are analysed, as is whether they are able to influence EU policy outcomes. This analysis concludes with presenting the key findings (section 2.6).²

¹ Certainly, there are many more other channels of communication, such as a letter to the Commission or the president. These are, however, informal in character; this contribution only looks at the formal mechanisms mentioned in the EU treaties.

² The qualitative data on which this paper is based was gathered in 18 semi-structured expert interviews conducted between May and October 2018. The author would like to thank the interviewees from the European Commission (from the political and administrative level); the European Parliament (MEPs, as well as administration); the office of the European Ombudsman; NGOs as well as academia for taking the time to share their insights.

2.1 The European Citizens' Initiative (ECI)

2.1.1 Background

This is the most prominent but rather recent participatory democratic instrument at EU level. It claims to allow for the direct participation of citizens in the development of EU policies by granting them the right them to ask the Commission to adopt legislation. It is the world's first transnational direct democracy tool (Greenwood and Tuokko, 2017, 5).

Articles 11(4) TEU and 24 TFEU allow citizens ("not less than a million" and "nationals of a significant number of member states", currently seven) to invite the Commission to act within its powers and submit "any appropriate proposal" on matters where they consider that a legal act is required "for the purpose of implementing the Treaties". If the required number of signatures is gathered within the timeframe of one year, then the Commission will consider the proposal.

The ECI idea was developed in the context of the Convention on the Future of Europe (2002-03) and incorporated into the draft Treaty establishing a Constitution for Europe only at the last meeting of one of the Working Groups (Kaufmann, 2012, 3) thanks to the efforts of civil society organisations³ and two convention members.⁴ There was no wide public debate beforehand, which is why it caught many observers by surprise (Interview 15). Due to this rather hasty inclusion, the legal text outlines the contours of the ECI only broadly (Dogan, 2011, 1809). Despite the failure of the Constitutional Treaty, the ECI found its way into the Treaty of Lisbon in 2009.

To give hands and feet to the treaty provisions, the Commission published a Green Paper, followed by a formal proposal a few months later. The institutions reached final

³ More Democracy/democracy international, IRI Europe.

⁴ Jürgen Meyer (Representative of the German Bundestag, Social Democrat) and Alain Lamassoure (Representative of the EP, French Conservative).

agreement in December 2010, and the current ECI regulation⁵ came into force in April 2012. The legal framework for the ECI is complemented by a Commission Implementing Regulation, which further defines technical specifications.⁶

Since its implementation in 2012, various stakeholders have raised concerns about the functioning of the ECI and claimed that the existing instrument and procedures are too complicated and user-unfriendly. They have repeatedly called on the Commission to revise them. Among these stakeholders are civil society organisations, former campaign organisers and academics. Also, EU institutions and bodies have been very vocal on this, including the European Parliament,⁷ the European Ombudsman,⁸ the Committee of the Regions,⁹ and the European Economic and Social Committee.¹⁰

Those (and other) review processes revealed problems in all key phases of the ECI lifecycle: the preparatory phase; registration of initiative; collection of signatures; submission to the Commission and follow-up; and transparency and awareness-raising. The key problems can be structured around the following aspects:

First, the number of initiatives that pass the threshold of one million signatures is very low due to technical shortcomings and the cumbersome administrative procedures for organisers.

⁵ Regulation (EU) No 211/2011 of the European Parliament and the Council of 16 February 2011 on the citizens' initiative: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:065:0001:0022:en:PDF>.

⁶ Commission Implementing Regulation (EU) No 1179/2011 of 17 November 2011: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:301:0003:0009:en:PDF>.

⁷ See more in section 2.1.3 of this contribution.

⁸ The ombudsman closed own-initiative inquiries in 2015 <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59205/html.bookmark#hl1> and 2017 http://ec.europa.eu/citizens-initiative/files/2017_6_SI_EN_V1.pdf.

⁹ In 2015: <http://cor.europa.eu/en/activities/opinions/Pages/opinion-factsheet.aspx?OpinionNumber=CDR%202606/2015>.

¹⁰ In 2016: See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016IE0889&from=en>.

Second, the initiatives have high refusal rates – about a third of all requests (20 out of 68). Once an initiative is submitted for approval, the Commission needs to execute an admissibility test to ensure that a) the proposal is within the framework of its powers to submit a proposal for a legal act; b) the content of the respective initiative is in line with the EU's fundamental rights (as enshrined in Article 2 TEU); and c) it is not “manifestly abusive, frivolous or vexatious”.¹¹

Where the Commission refuses to register an ECI, it has to provide the reasons for such a decision. Most initiatives fail because the Commission considers them to be beyond the scope of its powers. Critical observers have stated that the Commission's approach to the legal admissibility test has been overly restrictive and formalistic. The question of legal admissibility was brought before the European Court of Justice several times and sometimes confirmed the criticism.¹²

Third, the Commission's follow-up is perceived as insufficient. Critical voices highlight both the non-binding character of the instrument (as there is no legislative impact of successful initiatives so far), and the Commission's unresponsiveness. The regulation does not oblige the Commission to take legislative action, but only prescribes that it shall publish a communication containing its “legal and political conclusions” and “the actions it intends to take” or justifying why it decided not to proceed with the initiative. The ECI was deliberately not designed as a ‘popular legislative initiative’ by the members of the convention as they did not want to introduce such an instrument without also granting the EP a right of initiative (Vogiatzis, 2017, 257). The TEU is clear on this question and only foresees the initiative to “ask” the Commission to propose legislation, however, there is a certain expectation of “self-obligation” on the part of the Commission to act upon successful initiatives (Böttger, Conrad and Knaut, 2016, 20).

¹¹ Art. 4(2)(a)–(d) of Regulation (EU) No 211/2011.

¹² In the most prominent case, which aimed to stop TTIP, the Court decided that the initial refusal was unlawful, and the Commission was forced to register it: Judgment in Case T-754/14, Michael Efler and Others v Commission, 10 May 2017.

As a result, there is general agreement among various stakeholders that the ECI is currently not reaching its full potential as a democratic tool at European level. Instead of providing a “whole new dimension of participatory democracy” as hoped by observers in the beginning (the words of Vice President of the European Commission Maroš Šefčovič in (Organ, 2014, 422) and due to the above-mentioned weaknesses in its design and implementation, the ECI is “virtually unnoticed by the mass media and the wider public” (Böttger, Conrad and Knaut, 2016, 10).

To respond to the shortfalls and respect the obligation to revise the instrument, the Commission proposed a revision of the ECI regulation.¹³ First, the Commission’s proposal makes some crucial improvements with regards to technical and administrative hurdles, particularly to the signature collection phase, data requirements and online collection systems. Hence, on the technical side, the revised regulation will ease the process for organisers and supporters. Second, one important change concerning legal admissibility was proposed: the partial registration of initiatives, when it sees only parts of the ECI within its powers. Third, the Commission intends to strengthen the follow-up phase by proposing a longer response period to allow for broader participation and debate around the respective initiatives, before it formulates its legal and political conclusions.¹⁴ No stronger legislative follow-up mechanism is foreseen.

¹³ https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-482_en.

This regulation is adopted under the Ordinary Legislative Procedure and is currently under inter-institutional negotiation, (‘trilogues’) expected to reach agreement by the end of 2018.¹³ The declared aim of the Commission is to adopt this new regulation within this legislature by April 2019, before the election of the next European Parliament and before the new Commission. That way, it could come into force in early 2020.

¹⁴ Add reference proposal.

2.1.2 *EU citizens*

To date, 68 initiatives were submitted to the Commission, of which 46¹⁵ were registered. Four of those initiatives gathered the required number of signatures. These initiatives were: ‘Right2Water’ (intending to declare water and sanitation services as a human right); ‘One of us’ (to prevent the EU from supporting any human embryonic stem cell research); ‘Stop vivisection’ (aims to end live animal testing) and ‘Ban Glyphosate’. In accordance with its obligation, the Commission responded to them by issuing communications; in two cases (‘Right2Water’ and ‘Ban Glyphosate’) it committed to follow-up actions. No initiative has so far resulted in a legislative action, however. The Commission has adopted a proposal for a revision of the Water Directive (98/83/EC).¹⁶ However, this is partly a follow-up to the successful Right2Water initiative, but also as a reaction to a REFIT (Regulatory Fitness and Performance) evaluation and the intention to meet the Sustainable Development Goals.

The declining numbers of proposed initiatives is a consequence of the above-mentioned shortcomings under the old regulation: in each of the first two years, 19 ECIs were submitted, since 2014 there have been five on average per year.¹⁷

The ECI is increasingly becoming an instrument for organised civil society rather than for ‘ordinary’ citizens (Organ, 2014, 440). While the vast majority of ECI campaigns have been described as “largely autonomous from established organisations” (Tuokko and Greenwood, 2017, 2), behind all successful campaigns stands an organised interest group. Campaigners must be part of a big network to have a chance of success (Interview 11). The ECI campaigns are extremely time and cost intensive and are thus difficult for citizens to carry out in a private capacity. On average,

¹⁵ According to the official register: <http://ec.europa.eu/citizens-initiative/public/welcome>.

¹⁶ See http://ec.europa.eu/environment/water/water-drink/review_en.html.

¹⁷ Own calculation based on <http://www.citizens-initiative.eu/eci/open-closed/>.

an ECI campaign costs about €160,000.¹⁸ These are only the actual costs and do not include the value of volunteers' labour. The EP rapporteur on the ECI proposal estimated that a campaign costs about €1 per signature, hence exceeding €1 million for a successful campaign. Achieving this is hardly possible without organisational or corporate funding. Indeed, all successful campaigns were financially supported by organisations working for the same or a similar cause.¹⁹ Hence, while signatures are collected from among individual citizens, organised interest groups are key actors behind the launch of an ECI and its campaign.

2.1.3 EU institutions

European Commission

The Commission is by far the most important player in the ECI: with regards to the adoption of the new regulation, and even more so in the implementation of that regulation. All the important stages of an ECI cycle are led and controlled by the Commission, particularly the admissibility and follow-up stages, which have been described as the most important and delicate. There is considerable discretion involved in the decision-making about whether to register an initiative and how to follow up on the successful ones (Vogiatzis, 2017, 266). The Commission therefore possesses the roles of mediator and gatekeeper of the practical ECI procedure.

The previous Commission (2009-14), as the one implementing the ECI treaty provision first, showed some reluctance and resistance towards the ECI instrument and designed the current ECI regulation to be quite strict (Interview 4). This was due to three concerns: a) fear that citizens would utilise the instrument so extensively that the institution would become overwhelmed by initiatives, which would require more resources than available. Furthermore, b) it feared that this instrument would be abused, for instance by anti-EU and populist forces. And lastly, c) the Commission was afraid that this instrument could potentially

¹⁸ The costs of the four successful campaigns ranged between €23,000 and €328,000.

¹⁹ The official register lists sponsors of all successful initiatives: <http://ec.europa.eu/citizens-initiative/public/initiatives/successful>.

endanger its sole right of legislative initiative (Interview 11). Therefore, it designed the first and current regulation to be quite burdensome and developed a very strict admissibility test (Interview 4). The overall mindset was cautious and sceptical (Interview 10), which set the ECI on the wrong footing and made it rather difficult to develop. Outspoken critics would say that the former Commission killed the instrument by being overly cautious.

The current Commission (2014-19) was contractually obliged to revise the initial ECI regulation in 2015.²⁰ With considerable delay, First Vice-President Frans Timmermans turned his attention to the revision of the regulation in 2017.²¹ The Commission justified this two-year delay with the argument that the instrument needed to mature and that more time was necessary to allow a review and robust revision (Interview 2). Certainly, the ECI revision was not on top of Timmermans' agenda; more pressing issues in the fields of migration and justice and home affairs took precedence by that time.

The current Commission can allow itself to be slightly more accommodating in its handling of the instrument, as none of the above-mentioned fears has materialised and the ECI has proved to be a 'toothless tiger' (Interview 11). Indeed, it shows a more positive, proactive attitude towards the ECI (Interview 8) and seems to be politically more open-minded and willing to take a generous approach (Interview 5).

Evidence for this can be found in two practices: first, the partial registration of initiatives is already common practice, long before the new regulation comes into practice, which has led to a massive decrease in refused registrations. Second, the decision on new registrations is now taken by the political level of the Commission, whereas before it was the Commission's Secretariat-General that would decide on the admissibility of initiatives, it now runs through the same decision-making channels as legal proposals.²² That makes the registered ECIs more visible within the

²⁰ Article 22 of Regulation (EU) No 211/2011.

²¹ Following a report and public stakeholder consultation.

²² According to the internal decision-making procedures of the Commission, most decisions are prepared and de facto made by the Commissioner's cabinets and only formally adopted by the College.

Commission (Interview 11). Also, it entails that the admissibility decisions can be appealed against before the European Court of Justice (ECJ).

European Parliament

The EP has proactively supported the ECI regulation revision process. In October 2015 it adopted a Resolution on the ECI revision,²³ based on an own-initiative report that achieved unanimous support in the Constitutional Affairs Committee (AFCO) and a majority in the plenary. When calling for a review the Commission refused to take action, arguing that the revision process needed more time to identify constructive changes to the regulation. In 2017 the EP picked up its work and drafted a new own-initiative report, which was interrupted as the Commission tabled a proposal before the EP had completed the report.²⁴

Hence, there seems to be interest on the side of the EP to turn the ECI into a workable instrument, although the level of ambition of different groups within the EP varies. All political party families have their own ideas, and they diverge on some points significantly. Some political families, particularly to the left of the political spectrum, had far more ambitious goals than the Commission's proposal, such as the idea to entitle the ECIs to provoke treaty change; or to establish an independent body to decide on registration (Interview 2). These more controversial ideas, however, did not find their way into the EP's report. One can therefore conclude that the Parliament's compromise is no more ambitious than the Commission's proposal.

In 2018, the EP was generally supportive but not overly enthusiastic about the ECI. This might have had something to do with the frustration of having been ignored by the Commission, after investing work in the own-initiative report in 2015 (Interview 15); or with a certain kind of pragmatism due to the desire to adopt

²³ European Parliament resolution of 28 October 2015 on the European Citizens' Initiative (P8_TA(2015)0382): <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0382+0+DOC+XML+V0//EN>.

²⁴ See [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2017/2024\(INL\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2017/2024(INL)&l=en).

the revision in the current legislature (Interview 5); or perhaps some underlying reservations about the ECI as competing with the representative model that the MEPs stood for (Interview 6). The ECI is an instrument that certainly supplements rather than replaces their representative function, but nevertheless might grant citizens a right that the EP itself does not possess. What might explain this guarded reception to the ECI is a general sense of frustration about the limited powers of the EP over the Commission in the legislative process, particularly with regards to initiation (Interview 3).

The Parliament's role regarding the operation of the ECI regulation is rather limited (Vogiatzis, 2017, 265). The only formal responsibility that the EP has is the hosting of a public hearing of successful ECIs. With the new regulation, however, these hearings will be upgraded, as the EP committed itself to holding a plenary debate on any successful initiative. This follows up on demands from activists' groups,²⁵ which want to encourage the EP to take more ownership of successful campaigns. The obligatory plenary debate is not in the regulation but will be in the EP's rules of procedure, which too will be under revision soon.²⁶ The EP is thus showing greater responsibility for improving the implementation of the ECI.

The Council

In general, the Council only has an impact on the adoption of the ECI regulation, not on its operation: the Commission's reaction to each successful ECI (as a Communication) is sent to the organisers, the EP, the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) – not to the Council. Furthermore, the Council does not take part in EP hearings.²⁷

²⁵ Such as the ECI campaign; see the open letter from the ECI campaign to the EP under: <http://www.citizens-initiative.eu/open-letter-european-parliament-take-your-responsibility/>.

²⁶ The Parliament's report only found a majority in plenary after EP rapporteur György Schöpflin announced the amendment to the Parliament's own Rules of Procedure, to ensure that plenary debates are held on successful ECIs.

²⁷ See <https://www.ombudsman.europa.eu/en/correspondence/en/81311>.

The European Ombudsman proposed to include the Council (next to the EP) better in the follow-up process, in order to get both co-legislators involved in the decision as to how to act on successful initiatives.²⁸ However, the Commission and the EP remain the co-organisers for the hearing; no advanced role for the Council is foreseen.

The Council's position towards the ECI can be described as rather restrained. There does not seem to be any substantial objections towards the instrument as such or to the revision of its regulation among member states. On the content, there are only minor technical points of objection, about which no great institutional conflict is expected (Interview 2).

2.1.4 Effects of the instrument

While there is undoubtedly improvement in the way the ECI has been handled under the current Commission (expected to become technically easier in the new regulation), the very discretionary nature of this instrument has not changed: the Commission remains the ultimate gatekeeper, which limits the capacity of citizens to use it.

While there is improvement in the way the ECI has been handled under the current Commission, the very discretionary nature of this instrument has not changed, which limits the capacity of citizens to use it.

The proposal for the revised ECI Regulation does not limit the discretionary power of the Commission. To strengthen the clout of this instrument, the idea of an automatic follow-up has been floated in the debate, which would entail the Commission's obligation to adopt a new law as a response to every successful initiative. Following the Commission's argument, an automatic follow-up would be unlawful as a) it would breach the sole right of initiative; and b) disrespect the Commission's responsibility to check if the principles of proportionality and subsidiarity are respected in the law-making process and to conduct impact assessments (Interview 2).

²⁸ See <https://www.ombudsman.europa.eu/en/correspondence/en/81311>.

It is hardly surprising that the Commission does not support the automatic follow-up as this would touch on its right of initiative, the very core of its institutional power (Interview 10). This monopoly is constitutionally guaranteed under Article 17 TEU and the Commission is reluctant to sacrifice it. However, Article 17(1) TEU states that the Commission serves and promotes the common interest of the EU. That means that the Commission's monopoly is based on its obligation to act on behalf of the Union. When making the decision to act on an initiative, the Commission does this not only in a legal sense, it also makes "political choices".²⁹ The perception of the consistent promotion of the general interest of the EU has been challenged: observers have found that the Commission's responses are often legally explainable but cannot be easily justified politically. They thus conclude that the follow-up procedure leaves too much room for the discretion of the Commission (Vogiatzis, 2017, 269).

This leads to the ECI's key problem: the divergent expectations of the nature and purpose of this instrument. What does the ECI intend to be, a legislative or an agenda-setting tool?

What does the ECI intend to be, a legislative or an agenda-setting tool?

There is a discrepancy between the citizens' and the Commission's expectations (as the two main parties involved). In the eyes of the Commission, the ECI is an agenda-setting tool, serving to draw attention to certain issues (Interview 5). Citizens, however, have the expectation that they can effectively influence policymaking and change existing policy preferences. They therefore perceive the Commission's response to be inadequate (Interview 8).

This discrepancy persists in the imbalance between the ECI's design and its outcome: it is designed as a direct democratic tool but has the effect of an agenda-setting tool (Interview 15). Yet the restrictive registration and heavy procedural requirements of this instrument are more suited to a law-making than an agenda-setting

²⁹ Letter from the European Ombudsman to the President of the European Commission containing suggestions for improvement of the European Citizens Initiative procedure: <https://www.ombudsman.europa.eu/en/correspondence/en/81311>.

tool (Interview 15). There is, however, no doubt that the ECI has not been very successful in legislative terms. There is a huge gap between the effort that citizens must invest in an admissible ECI and the final outcome of their initiative. This 'expectations-delivery gap' generates popular frustration and constitutes the main problem of the ECI.

There is a huge gap between the effort that citizens must invest in an admissible ECI and the final outcome of their initiative.

It is therefore advisable to clarify the ECI's nature and purpose and to develop it further in one or the other direction: either as an agenda-setting or a legislative tool. Supporters of the ECI as a legislative tool suggest a relaxation of the follow-up procedure, in which the Commission also passes those proposals that are not in line with their own agenda to the EP and the Council. The co-decision procedure facilitates discussion among all law-making institutions (Vogiatzis, 2017, 267). The continuation of the strict admissibility test would be crucial because it guarantees that only initiatives that promote real change be turned into new legislation. That procedure would allow deliberation between the two co-

legislators, which are in a better position to reject proposals that might be too controversial.³⁰ This, however, would require treaty change, as Article 11(4) TEU prescribes that citizens can only 'invite' the Commission to take action.

Instead of developing the ECI into a legislative instrument, the ECI might also continue to be an agenda-setting tool, which simply serves to draw attention to certain issues.

To touch upon the Commission's sole right of initiative would certainly meet with some resistance on the part of the Commission. Instead of developing the ECI

into a legislative instrument, the ECI might also continue to be an agenda-setting tool, which simply serves to draw attention to certain issues. If so, then its registration process should be designed in a less restrictive fashion so as to allow more initiatives to reach the political elites – if only for debate (Interview 15).

³⁰ In 2015 this idea was almost included in the EP's own-initiative report but was scrapped due to S&D opposition (Interview 15).

The potential added value of the ECI also lies in generating pan-European debates among citizens. Some find that the very collection of one million signatures is already a sign that the tool has succeeded in fostering debate.³¹ Research has shown that about 1 out of 5 campaigns³² continue their advocacy work on behalf of the issues they raised, also after the signature-collection phase (Greenwood and Tuokko, 2017, 13). The ECI might be able to promote transnational civic discussion, but the creation of a transnational political public sphere, as sometimes stated as the ultimate goal, seems far away. Also, the initiatives do not generally trigger real dialogue on substance between citizens and institutions³³ and the ECIs and their debates are rarely picked up by the media.³⁴

Hence, one of the two crucial stages of the ECI cycle, either the registration or the follow-up procedure should be adapted, depending on the desired nature and purpose of the ECI. If seen as a legislative instrument, ease the follow-up stage ('high effort, high potential impact'); as an agenda setter, relax the registration phase ('less restriction, less impact'). Either way, expectations, effort and outcome need to be aligned.

³¹ See <https://www.ombudsman.europa.eu/en/correspondence/en/81311>.

³² 10 out of the 48 campaigns that were launched between 2012 and 2015.

³³ See for instance the policy position of the European Movement: https://europeanmovement.eu/wp-content/uploads/2016/04/EMI_16_PolicyPosition_Transparency_17_Final_VIEW.pdf.

³⁴ In an analysis of 84 online and print media sources in 14 EU member states, the Bertelsmann Foundation finds that on average, less than one article on the ECI appears in each media source per year. Relatively speaking, there is still a lot of media coverage in Germany, Austria and Luxembourg; however hardly any media attention is paid to it in the Netherlands, the Czech Republic and Denmark.: <https://www.bertelsmann-stiftung.de/en/our-projects/democracy-and-participation-in-europe/project-news/the-european-citizens-initiative-is-largely-unknown-and-hardly-has-any-impact/>.

2.2 Petitions to the European Parliament

2.2.1 Background

The right to petition is the oldest participatory instrument, as it is the only one that existed prior to the last treaty revision (Dogan, 2011, 1808).

A petition to the European Parliament “may take the form of a complaint or a request and may relate to issues of public or private interest”, thereby “may present an individual request, a complaint or observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter.”³⁵ According to this very wide definition, a variety of requests can be expressed via a petition and they can be seen as a communication tool between the EP and European citizens regarding all competences that fall under the mandate of the EU.

2.2.2 EU citizens

Since the Treaty of Maastricht, every EU citizen has the right to address the EP with a petition. The right to petition is based on Article 227 TFEU and its specifics are determined by the EP’s rules of procedure.³⁶

In 2017, 1,271 petitions were filed, with most coming from Spain, Italy and Germany in the last two years. EU citizens are most likely to petition the EP in the areas of environment, fundamental rights and justice.³⁷

³⁵ <http://www.europarl.europa.eu/at-your-service/en/be-heard/petitions>.

³⁶ Rules 215 to 218.

³⁷ In 2014, 2015, 2016 and 2017: These numbers can be found in the draft report on the deliberations of the Committee on Petitions during the year 2017 (2014/2018(INI)) (forthcoming). 2014 and 2015: <http://www.europarl.europa.eu/factsheets/en/sheet/148/the-right-of-petition>.

2.2.3 *EU institutions*

European Parliament

In contrast to what applies for the EC (i.e. a key role for the Commission), the key player with respect to petitions is the EP, more precisely the Committee on Petitions (PETI). Most petitions (about two-thirds) are dealt with in the written procedure, which entails the secretariat of the committee checking its admissibility and suggesting a follow-up action. The secretariat's recommendations are considered approved if MEPs do not voice an objection. Petitions are deemed admissible if the matter at stake lies within the EU's fields of activity and if it affects the petitioner directly (Article 227 TFEU). About one third are usually declared inadmissible.³⁸ Effectively, the MEPs discussed only a very small share of cases in its public committee meetings (about 10-15%). In those committee meetings, there is the general attempt to bundle several (if not all) petitions on the same topic. A potentially high number of petitions on the agenda ensures that the same follow-up is given to all petitions and that members get a more comprehensive picture of the subject matter.

When a petition is assessed as admissible, formally several follow-up actions that can be taken: a) the Commission can be contacted to request more information on the respective case; b) petitions can be referred to another committee; c) the report can be voted on in plenary; d) any other appropriate action may be taken. In most cases the committee prepares a response to the petitioner explaining the EU's actions on that matter. The Commission is consulted in about a third of cases (Interview 9). No individual cases go to plenary. If the EP receives a number of petitions circulating around the same topic, and if there is a certain political interest, the Committee can decide to transform them into an oral question (with or without resolution). This means that the whole EP – and not only PETI – then takes a position on a subject matter, based on concerns

³⁸ The main reason why petitions are declared inadmissible is that petitioners confuse EU and member state competences, as well as EU and Council of Europe responsibilities: <http://www.europarl.europa.eu/factsheets/en/sheet/148/the-right-of-petition>.

raised by citizens in their petitions to the European Parliament. Petitions provide the data and basis for questions and arguments expressed in the oral question resolutions. For example, an oral question and a resolution was debated and adopted in plenary on the topic of precariousness and the abuse of fixed-term contracts.³⁹ Hence, petitions can lead to political parliamentary action. This, however, is an exception (which occurs about four or five times a year) (Interview 9).

There might be reports adopted by the PETI committee only, without adoption in the plenary. In the context of such investigations, PETI can also do fact-finding visits in order to give a proper follow-up to a group of petitions (or to just one petition, if the matter is important enough). One example here would be a fact-finding visit to London to investigate the issue of adoption without parental consent in 2015, based on approximately 20 petitions on this topic. After the visit, a report is adopted by Committee, containing a set of non-binding recommendations to various bodies.⁴⁰

European Commission

The EP is the key player with regards to petitions, but the Commission is the “natural partner” of the EP when it comes to processing petitions.⁴¹ Most petitions concern the application of and compliance with EU law and it is the Commission’s responsibility to provide legal reply to the issue at stake. Coordinated by the Secretariat-General, the responsible Directorate-General analyses the issue, gives its opinion on how to act and drafts a response to the petitioner (Interview 9). The Commission sees petitions as ‘grassroots’ feedback on loopholes and breaches in EU law implementation. Petitions often raise awareness about the mal-implementation of EU law by member states and draw attention, for

³⁹ Responding to petitions on tackling precariousness and the abusive use of fixed-term contracts (2018/2600(RSP)): <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2018-0238&language=EN>.

⁴⁰ [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU\(2015\)519236_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU(2015)519236_EN.pdf).

⁴¹ Committee report, p. 17.

example, to shortcomings in the area of waste disposal or wastewater in a given member state (Interview 12).

As a last resort there might be infringement procedures, but this hardly ever happens. Many steps can be taken to verify, falsify and potentially act on concerns expressed via petitions, for instance contacting national authorities. Since the Commission rarely launches its own investigations it is rather dependent on the information received from national authorities (Interview 9). And within the Commission, petitions hardly ever translate into political action but mostly remain on a technical level as they concern rather technical small-scale issues. Only in very exceptional cases do petitions move to the Commission's political level.

In short, the Commission does not see the right to petition as a potential legislative instrument, but more of a communication and information-gathering instrument. It has been described as one 'mosaic' piece in a very complex picture and one of many ways in which to get in touch with the Commission (Interview 17). This means that petitions mainly target the implementation not the adoption phase of the decision-making procedure in a bid to improve policy output.

The Council

The Council Secretariat and member state representatives are present in the PETI committee meetings but otherwise the Council is not involved in the petitions process and there is no collaboration between the EP and Council during the procedure (Interview 12). The Council's main focus is on the legislative procedures, under which petitions rarely fall (Interview 10).

2.2.4 Effects of the instrument

Linder and Riehm (2011) define three kind of functions of petitions: individual-level functions; intermediate-level functions and system-level functions. The individual-level function is determined by two different kinds of requests: individual complaints (*res privata*) rather than requests to change public policy (*res publica*) (Korinek, 1977).

At the national level petitions are primarily understood to serve a legislative function. National constitutional systems

interpret them as a tool with which a significant number of eligible individuals (collected signatures) can, when a certain threshold is reached, trigger a government response or plenary debate (Yasseri, Hale and Margetts, 2013). In this sense they resemble the ECI and its requirements.

At the EU level, however, petitions do not usually result in legislative action but serve more as an information tool that operates in two directions. They convey information from citizens to the institutions with regards to implementation problems on the ground and shortcomings of individual cases (Interview 12). In turn, citizens receive information about issues that concern them; the competence and (if an EU competence) and status of EU action. A petition can help citizens find ways through the maze of EU and national administration.

At the EU level, petitions do not usually result in legislative action but serve as an information tool that operates in two directions.

Petitions to the EP are generally more subject to a technical handling: they hardly trigger any other political attention or action such as plenary discussion or resolution adoption by the EP, or the launch of infringement procedures by the Commission.

Petitions to the EP are generally more subject to a technical handling: they hardly trigger any other political attention or action such as plenary discussion or resolution adoption by the EP, or the launch of infringement procedures by the Commission.

Most petitions remain within the PETI secretariat as they are processed by written procedure. With regards to the Commission, the services deal with them as they do not require collegial decision,

as for instance with parliamentary questions or the registration of an ECI. Very few petitions are transferred to the political level and rarely do they gain media attention. Petitions to the EP thus have a stronger individual complaint (*res privata*) character.

According to the intermediate-level functions, petitions can improve the responsiveness of the Parliament and its communication with citizens. Petitions to the EP certainly constitute the easiest and most accessible way for EU citizens to get in touch with the institutions and can even strengthen the Parliament vis-à-vis the other institutions or the executive (Lindner and Riehm, 2011,

5). It has been argued that the right to petition has facilitated the expansion of the EP's rights vis-à-vis the European Council (Guckelberger, 2004, 24).

With regard to the third function of petitions, the system-level function, we see that petitions generally have the potential to boost democratic legitimacy. Citizens participate in policymaking as they hand in requests to the political elite. If the elite picks up the idea constructively, both input (from citizens) and output legitimacy (by improving political decisions) could be enhanced (Lindner and Riehm, 2011, 5–6). However, without any kind of political action as a result, the ability to boost EU legitimacy seems very limited.

2.3 Complaints to the European ombudsman

2.3.1 *Background*

The ombudsman's mandate is established by Article 24 TFEU⁴² and primarily defined in 228 TFEU. According to that provision, the ombudsman shall “receive complaints”, or launch own initiatives “concerning instances of maladministration” in the activities of the EU's institutions, bodies, offices and agencies. Hence, the Ombudsman can be described as a mediator between citizens and institutions (Interview 13). Whereas the EP is responsible for the democratic oversight of legislation, the European ombudsman takes care of the democratic oversight of the EU administration (Interview 6). What is unique is that with the help of the ombudsman citizens can inspect documents that are otherwise not publicly available (Kostadinova, 2015, 1080).

Rather than binding powers, the ombudsman has an own-inquiry power, which means that s/he is also able to investigate without complaint (Tsadiras, 2008).⁴³ That extends her/his role as a mediator to being an external investigator (Interview 13).

⁴² Every citizen of the Union may apply to the ombudsman established in accordance with Article 228.

⁴³ A prominent example here is the special report on the transparency of the Council's legislative work: <https://www.ombudsman.europa.eu/en/press-release/en/89685>.

The ombudsman is independent from the other institutions but has a natural tie to the EP since s/he is elected by the EP and reports to it. Her/his mandate extends only to the administrative sphere of the EP, the political (the MEPs) falls outside the mandate (Interview 6).

2.3.2 EU citizens

According to the treaties “any citizen of the Union or any natural or legal person residing or having its registered office in a Member State” (Article 228 TFEU) can file a complaint with the EU ombudsman.

The kind of people who might contact the ombudsman are: current or potential future EU staff on employment issues or contractors and others who are in any way beneficiaries of the EU. With regards to general transparency or to gain information on specific topics, i.e. EU funding received. Journalists, NGOs, researchers and think tanks might contact the ombudsman, as might businesses and law firms on state aid and competition cases, or on the implementation of EU law (Interview 13).

Be they organisations or individuals, those contacting the ombudsman are already engaged with the EU institutions in one way or another in a professional capacity. (Interview 6). In short: Without prior interaction with one of the EU institutions, there is no interest in contacting the ombudsman.

Without prior interaction with one of the EU institutions, there is no interest in contacting the ombudsman.

2.3.3 EU institutions

The European ombudsman has no legal power over the other institutions, hence can only issue non-binding recommendations. Nevertheless, the other institutions show a great willingness to implement those recommendations ((Kostadinova, 2015). In 85% of cases, the institutions take up the ombudsman's proposals on how to improve EU administration.⁴⁴ Among others, recommendations have been made to the European Commission; the European

⁴⁴ See the European ombudsman's annual report:
<https://www.ombudsman.europa.eu/en/annual/en/87679>.

Personnel Selection Service (EPSO), the Anti-Fraud Office (OLAF); the European Medicines Agency (EMA); the Court of Justice of the EU; the European External Action Service (EEAS); the Council of the European Union and the European Parliament. Most of the 14 institutions accessed scored 100%; the Commission 77% (accounts for almost all cases) in taking up the ombudsman's proposals.

Institutions want to improve their internal functioning, which generally makes them comply with the recommendations of the ombudsman; that and concern about their reputation towards the outside world. Although the ombudsman has no powers to enforce her recommendations, she has soft power mechanisms at her disposal, such as publicly exposing the institution's poor administrative practices (Interview 13).

2.3.4 Effects of the instrument

The European ombudsman has a vital role in improving the EU's administration. In being an advocate for EU citizens vis-à-vis the EU institutions, she is an "important venue for EU citizens to practice their rights of transparency and accountability" (Kostadinova, 2015, 1078). As seen in her work for instance on the Council's "opaque" decision-making; or her inquiry on the Commission's Secretary-General's appointment procure: the Ombudsman's mandate is about administrative transparency.

Transparency is understood as the openness of the EU institutions and implies the right of citizens to access information about the activities of EU institutions and also these institutions' responsibility to provide such access and information (Kostadinova, 2015, 1080). Transparency is a crucial element of democracy. But transparency does not equal participation: it underpins democratic governance as it facilitates the accountability of policymakers, but it does not in itself guarantee increased democratic legitimacy. Effective citizen participation is therefore a key indicator for a polity's democratic legitimacy and a criterion in its own right (Organ, 2017, 1716).

The presence and work of the European ombudsman improves EU democracy insofar as transparency is concerned. It does not, however, impact citizens' ability to participate in EU decision-making.

This leads to the conclusion that the presence and work of the European ombudsman improves EU democracy insofar as

transparency is concerned. It does not, however, impact citizens' ability to participate in EU decision-making.

2.4 Public Consultations

2.4.1 *Background*

The European Commission organises public online consultations in which EU citizens can give feedback on concrete proposals. They can express their views on the scope, priorities and added value of EU action for new initiatives, or evaluations of existing policies and laws. These consultations are organised on all major initiatives that the Commission is preparing, but not on every proposal. This is done before the Commission tables the proposal and gives citizens a minimum of 12 weeks to react. The results are then supposed to feed into the proposal. The treaties state the importance of this exchange by prescribing that "the Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent" (Article 11 (3) TEU). The most prominent case so far is the public consultation on summertime, as the participation hit a record number: 4.6 million Europeans gave their opinion on whether to keep or abolish the daylight-saving time.⁴⁵

Apart from the consultations for regular law-making purposes, there is an ongoing consultation process on the future of the EU, which would allow the Commission to find out how EU citizens imagine the future of European integration. This does not feed into the regular EU's policymaking, but will be handed to the European Council, hence on a different level of governance. Whereas the consultations on regular law-making are conducted by the respective Directorate-Generals and coordinated by the Secretariat-General, consultations on the future of Europe are led by DG Communication.

⁴⁵ See https://ec.europa.eu/info/consultations/2018-summertime-arrangements_en#add-info.

2.4.2 *EU citizens*

These consultations are open to everyone; any EU citizen who is interested can provide input. The consultations are designed as online questionnaires which are usually accessible in all official EU languages (except Irish) and replies may be submitted in any EU language. That makes it very inclusive and the Commission invites “all individual and organisations” to respond to consultations. The aim is to reach a broad range and potentially a large number of stakeholders.

However, the respective DGs usually identify a target group according to the policy field at stake, especially concerning a very specific issue. Although there are no statistical data (publicly) available on this, there is a general perception that participants are mostly lobby and interest groups, but hardly ‘ordinary citizens’ (Interview 6). Also, the Commission itself manages expectations by drawing attention to the self-selection causes bias and the potential lack of representativeness.⁴⁶

The fact that it is mostly professionals and experts participating in these consultations is not necessarily a bad thing: organised interest is also part of participatory democracy, as long as it is not imbalanced or overly dominant. Legal acts are complex and often require previous knowledge of the field. Expert knowledge is justified when policymakers seek to “base a new policy initiative on more accurate and up-to-date knowledge of a particular issue area” (Catt and Murphy, 2003, 409). Advocacy groups might be more able to do that than citizens in a private capacity, particularly in very technical or sensitive areas.

However, by focusing on specific subgroups and not on the community at large, the aim of the consultation is not to gather information on the perspective and preferences of the wider public. Consultations are therefore not generally an instrument through which normal citizens can make their voice heard.

⁴⁶ See http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf, p. 319.

2.4.3 *EU institutions*

The consultation instrument is solely bound to the Commission, which initiates, implements and assesses the consultations. They serve to feed into the Commission's legislative proposals and improve policy outputs.

2.4.4 *Effects of the instrument*

The consultation procedure is based on the assumption that citizens' input leads to better policy results and an increased legitimacy of decisions. According to (Catt and Murphy, 2003), there are three purposes to give voice to groups within a government-created policy process: synthesis, contestation and to provide information. All three categories of the 'consultation matrix' aim to provide information to the policymaker, not involvement in policy creation. Consultations fall under the category of 'information provision' in which groups "are invited to present evidence that may include facts, views, values and preferences (Catt and Murphy, 2003, 417).

Whether information provision for decision-makers falls under 'influence' is a matter for debate. Consultations might increase public influence if the political elite is willing to incorporate its input into the policymaking process (Catt and Murphy, 2003, 419). That is not always the case, as this instrument can also be used to equip decision-makers with a "veneer of legitimacy" without actually incorporating citizens' input into the policy decisions (Cheeseman and Smith, 2001, 97–9).

Public consultations do not serve to give citizens any direct control over or involvement in policymaking, rather it is experts that provide knowledge and feedback.

It is beyond the scope and intention of this volume to assess how far the Commission incorporates the results of consultations into its policy proposals and whether the Commission's consultations indeed increase the quality of policy outcomes. These consultations do not serve to give citizens any direct control over or involvement in policymaking, rather it is experts that provide knowledge and feedback. Hence, at best (if picked up by the decision-maker), they can increase the output legitimacy of EU decision-making (Catt and Murphy, 2003, 420).

2.5 Citizens' Dialogues

2.5.1 Background

Citizens' Dialogues are public debates where representatives of the European Commission, the European Parliament, other EU bodies and EU decision-makers such as national, regional and local politicians, discuss with EU citizens. These are prescribed by the treaties in Article 11 (2) TEU, which determines the requirement for the institutions to "maintain an open, transparent and regular dialogue with representative associations and civil society". These might be dedicated to one specific policy topic or designed in a broader fashion, allowing questions on all fields of EU governance. These dialogues usually start with keynote remarks by an EU representative, followed by a question and answer session, and usually take 60 to 90 minutes.⁴⁷

2.5.2 EU citizens

These dialogues invite all EU citizens to participate, without formal restrictions. Further research is needed to determine exactly who attends these meetings – 'ordinary' citizens in a private capacity wishing to learn more about EU politics, or people already familiar and connected with EU activities in one way or another.

2.5.3 EU institutions

Most of these dialogues are organised by the Commission, and 1000 citizens' dialogues in 345 towns have already taken place across the EU since 2012. There has been a marked increase in dialogues recently; whereas in 2015 there were 53 talks, by September 2018 there had been 515 dialogues across the EU. The Commission intends to organise 300 more by the end of March 2019.⁴⁸ Initially

⁴⁷ See for instance: Frans Timmermans in Utrecht <https://www.youtube.com/watch?v=1Aku8OKKmXY>; or Violeta Bulc in Vienna <https://www.youtube.com/watch?v=ckMF3n39uAM>.

⁴⁸ See https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-brochure_en.pdf, p. 148.

these events were designed only for members of the College but were then extended to include high-rank officials (Interview 18).

The Juncker Commission has thus amplified the exercise, compared to his predecessor. Organising responsibilities are spread across the Commission, the Commission representations in member states and in local Europe directs information centres.⁴⁹ DG Communication formally coordinates these events, but it remains unclear what the formal requirements are to be categorised as a 'Citizens' Dialogue'. It is hard to identify any overarching methodology of Commission-organised Citizens' Dialogues.

2.5.4 Effects of the instrument

The quality of the debates depends on the Commissioner that is participating, as well as on the moderator. There are some careful attempts to experiment with innovative forms of quality improvement, such as the introduction of randomly selected citizens' participation.⁵⁰ However, the Commission generally seems to prioritise quantity over quality.

According to the categorisation of (Catt and Murphy, 2003) citizens' dialogues fall under the category of public meetings that fulfil the purpose of 'contestation'. Here, citizens are invited to present their thoughts and opinions (p. 417). It goes one step further than information provision as there is an interactive element. To have an effect, however, the discussions would need to be recorded, aggregated and fed into the decision-making process; there is no clear methodology behind the dialogues and no process of channelling back the information received into decision-making. Since these meetings are more question and answer sessions they cannot really be called 'dialogues' – a true exchange can hardly be achieved. Citizens' Dialogues therefore constitute more of a Commission communication strategy than an in-depth discussion with citizens.

⁴⁹ See https://europa.eu/european-union/contact/meet-us_en.

⁵⁰ See https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/224-2018_BST_Evaluationsbericht_Citizens_Panel_final.pdf.

Citizens' dialogues constitute more of a Commission communication strategy than an in-depth discussion with citizens.

That being said, it is still an important exercise to inform citizens about EU and Commission activities, and political institutions (especially at EU level) should always make an effort to reach out to citizens. The Citizens' Dialogues, however, do not facilitate the opportunity for citizens to participate in the EU's decision-making.

Both types of top-down instrument do not aim to be involved in policy creation. They work in two directions: public consultations seek information that citizens feed into the political process; and citizens' dialogues aim mainly to inform citizens about the EU's and the Commission's activities. The Commission engages with citizens in a top-down fashion and citizens largely remain passive actors.

2.6 Conclusion and Key Findings

This contribution assessed all the participatory instruments that are available to European citizens. It concludes that these instruments do not allow citizens much influence over the EU decision-making process. Participatory elements are not very developed, and this is due to the reasons given below.

Few 'ordinary' citizens

Interestingly, most of the analysed tools do not address or involve 'ordinary' citizens. They mainly target either organised (ECI), or professional (ombudsman) interests, or experts in a particular field (consultation). The only one that includes individual citizens is the right to petition, which is a particularly weak tool, and the citizens' dialogues, which aim for transparency, not for participation.

Interestingly, most of the analysed tools do not address or involve 'ordinary' citizens.

Top-down trumps bottom-up

The Commission supports and promotes top-down more than bottom-up instruments. This suggests that it considers allowing citizens to bring in their own policy preferences as less important

than improving existing policymaking. It favours instruments that justify its own policy decisions and provide more transparency in policymaking.

Expertise trumps opinion

The Commission did not manage to overcome the rather technocratic modus operandi on which it was once built. For a long time, European policies were shaped according to the 'Monnet method', in which step-by-step integration was guided by the judgement of a technocratic elite rather by political (involving citizens) judgement (Radaelli, 1999, 759). Technocratic expertise provided effectiveness and efficiency of decision-making (Vogiatzis, 2017, 245). This was considered legitimate, as it was the best way to arrive at the valuable aim of European unity (Tsakatika, 2005, 195).

The Commission supports and promotes top-down more than bottom-up instruments. This suggests that it considers allowing citizens to bring in their own policy preferences as less important than improving existing policymaking.

Despite the post-Maastricht democracy concerns, the Monnet conception of legitimacy is ever present. The expert knowledge that the Commission possesses is, besides its neutral position vis-à-vis the member states, the key element on which it builds its legitimacy to represent the Union's interest (Tsakatika, 2005, 199–200). The Commission argues that the EU law-making process is complex and often requires profound knowledge of the respective policy fields at stake. Organised interest and advocacies are often said to be in a better position to comment and assess than individual citizens. This makes 'civic dialogue' mainly an elitist one, between the institutions and interest representative organisations (Greenwood and Tuokko, 2017, 4).

This analysis suggests that the Commission's default position is still a technocratic one, triggering a natural constraint towards citizens' (bottom-up) participation.

This analysis suggests that the Commission's default position is still a technocratic one, triggering a natural constraint towards citizens' (bottom-up) participation. The Commission is aware of the distance between itself as an institution and is currently showing more

willingness to reach out and bridge this gap. Nevertheless, the value

it places on citizens' opinion is very low compared to in-house and external expertise.

Output trumps input

The EU remains more focused on output than input legitimacy. It is commonly accepted that input-oriented legitimacy can currently hardly be claimed for the EU (noted most famously by Scharpf, 2009, 178). Next to input legitimacy (government by the people) and output legitimacy (government for the people), EU governance relies on government with the people, in which civil society, businesses, consumer advocates and other interest groups participate in consultations and the implementation of new EU law (Schmidt, 2006). Rather than developing fully fledged mechanisms for direct participation, EU democracy rests almost solely on the principles of representation.

This research confirms this by highlighting the Commission's focus on only those forms of participation that potentially improve the policy outcome (top-down). The aim is not a generally permeable system, but the improvement of output. As citizens are not able to challenge politicians' decision-making, the input is almost entirely limited to the consultative phase of policymaking. The tools are too much at the discretion of the political elite to facilitate true input.

As citizens are not able to challenge politicians' decision-making, the input is almost entirely limited to the consultative phase of policymaking. The tools are too much at the discretion of the political elite to facilitate true input.

The fact that most forms of participation offered do not address 'ordinary' citizens but rather organised interest and expert communities plays into this argument. The low involvement of individual citizens at the same time hinders the potential of democracy with the people. According to Schmidt (2006), direct individual citizen participation in the EU institutions and policy processes, outside of elections for the EP, has great potential to strengthen EU democracy. Perhaps inspiration can be found from the experiences at member state level in the following chapters of this volume.

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PART II.
TRANSVERSAL ASPECTS &
THEMATIC ISSUES

3. EUROPE'S CONVENTIONS

DÉMOCRATIQUES

**DÍDAC GUTIÉRREZ-PERIS, POL MORILLAS &
HÉCTOR SÁNCHEZ MARGALEF**

This chapter analyses the democratic conventions taking place in the European Union (EU) throughout 2018 and 2019. These Conventions are the latest EU-wide initiative to enhance citizens' participation and awareness of the European integration process, and are an attempt to address the EU's democratic deficit.

To explore whether the Democratic Conventions bring something new to the table, this chapter looks at the experiences of

This chapter looks at the experiences of the European Convention in 2004 and the Citizens' Dialogues since 2012 and retraces how the Democratic Conventions take inspiration from Emmanuel Macron's presidential campaign.

the European Convention in 2004 and the Citizens' Dialogues since 2012 and retraces how the Democratic Conventions take inspiration from Emmanuel Macron's presidential campaign. It argues that the Conventions successfully offer a bottom-up approach to democratic engagement but that they may not translate public expression into political reform effectively enough. This chapter

also points to the disconnect between participatory initiatives and the legitimacy of political reform at the European level if such initiatives are not coupled with visible political outcomes.

Introduction

The set of events and participatory initiatives commonly identified as 'Democratic Conventions' for the future of Europe are attracting increasing attention (Malherbe, 2018). To a certain extent, these conventions are perceived as the ultimate mechanism to overcome

the longstanding legitimacy deficit in European integration, which has become more salient as a result of the multiple crises affecting the EU and the need to involve citizens in EU decision-making mechanisms. Discussion of Europe's democratic deficit has tended to focus on voter turnout in European Parliament elections, the powers of the European Parliament and the ownership of European decisions by national electorates. The reinforcement of participatory mechanisms opens a new debate about the capacity of bottom-up initiatives to empower the voice of citizens and bridge the democratic deficit in the construction of Europe.

This chapter reflects on this process while acknowledging that the debate is still a live one and that final conclusions will have to be drawn after the European Parliament elections in May 2019 (Versini, 2018). Keeping these qualifications in mind, the following analysis focuses on three main research goals: exploring some of the earlier initiatives at European level, such as the 2004 European Convention and the Citizens' Dialogues organised by the European Commission since 2012; describing Emmanuel Macron's method in order to argue that the political rationale behind the Democratic Conventions is largely connected to the 2017 French presidential campaign; and summarising the findings regarding the essential precautions and difficulties in translating large participatory processes at the European scale.

Despite their evolving nature, there is already some consensus about the nature of the current Democratic Conventions. They encompass a set of political initiatives organised by the European Commission, as well as by different member states of the European Union, between the first semester of 2018 and the European Parliament elections in May 2019. These initiatives might be further expanded in the future, but currently are based on three key developments. The first consists of a substantial increase in the number of Citizens' Dialogues organised throughout the continent – up to 500 Dialogues will be organised by May 2019, as indicated by the European Commission (2018a).¹ The second development consists of a pan-European qualitative online consultation – open, voluntary and addressed to the entire EU population, which has

¹ See the section of the official website of the European Commission, Future of Europe: <https://goo.gl/ZQfRjv>.

been accessible via the European Commission website since May 2018 for all citizens wishing to take part. The third 'leg' of the Conventions is a series of events organised independently in each participating member state – often referred to as 'Citizens' Consultations'. These events might take different forms – from conferences to town hall meetings or online consultations, but they all have the specific quality of allowing citizens to express their ideas and worries about the future of the EU.

The political drive behind the Conventions is connected with the advent of Emmanuel Macron's presidency, more specifically from what his *En Marche!* movement achieved across France in 2016, inspired by a philosophy that seeks to issue a political 'diagnosis' as the start of any project of political reform (Couturier, 2017). This was best described by Macron himself during an interview with *Les Echos* in May 2016 (*Les Echos*, 2016): "we will propose a transformation plan for the country on the basis of the diagnosis. It will be different than a detailed programme because it will contain a very detailed vision but only a few very concrete measures and how we will adapt them". In this sense, the Democratic Conventions are set up as part of a process following a cyclical order: first listen to people, then translate opinions into political direction, finally, achieve historical progress (Couturier, 2017).

Following this methodology, the Democratic Conventions currently taking place have been designed as a series of discussions that are completely transparent and potentially accessible to all. The content of such discussions is not homogenous;² the topics generally include a wide range of subjects connected in some way with the European Union and the public perception of transnational policies. The ambition to use the initiative as a way to 'legitimate' the next wave of reforms indicates the will to use the Conventions to strengthen the input legitimacy of the EU (Schmidt, 2010; 2012; 2015).

The initiative is very much presented in its first phase as a bottom-up approach for EU reform as well as a way of expanding

² For more on the content and weaknesses of the initiative, please see below 'Reflections on the Conventions'.

Macron's idea of European sovereignty (Macron, 2017a).³ However, the process is still managed on an intergovernmental basis and the responsibility of translating into action the outcomes of the Conventions will reside solely with the European Council.⁴ Indeed, the main advocate of the initiative was the French President himself and despite the initial reluctance of some member states, they later voluntarily joined the project.⁵ Moreover, those governments participating in the initiative retain control over where, when and how the Conventions take place. National governments will also be in charge of gathering the thoughts and putting together the conclusions, which denotes a much more top-down approach at the end of the process. The Democratic Conventions are thus taking shape with a certain amount of flexibility, not to mention ambiguity, since they vary enormously from one country to another. The following section explores two initiatives that have attempted to tackle the same question since 2002.

3.1 Prior Experiences

Before the current Democratic Conventions, there were other participatory exercises at the European level whose outcomes — have been rather nuanced. Cases in point would be the 2004 European Convention, prior to the 'Treaty establishing a Constitution for Europe', and the Citizens' Dialogues implemented since 2012.

In December 2001, European leaders established the Convention on the Future of the EU at the European Council of Laeken. The declaration already mentioned the democratic

³ Emmanuel Macron developed a 'six-point' manual for reinforcing European sovereignty, presented for the first time at the Sorbonne University (see footnote 11). The points covered the following fields: Security, Borders & Immigration, Foreign Policy, Ecology & Agriculture, Digitalisation, the Eurozone. E. Macron (2017a), "Initiative pour l'Europe - Discours d'Emmanuel Macron pour une Europe souveraine, unie, démocratique", Elysée official website (<https://goo.gl/oNybvj>).

⁴ See footnote 1.

⁵ For more about the member states participating in the initiative, please refer to the European Commission webpage: https://ec.europa.eu/commission/consultation-future-europe_en.

challenge at the top of the agenda: “the European Union stands at a crossroads, a defining moment in its existence (...). Within the Union, the European institutions must be brought closer to its citizens. (...) Many [citizens] also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to member states and regions elected representatives” (European Council, 2001). Concern regarding “legitimacy and popular sovereignty” (Magnette and Nicolaidis, 2004: 383) and responding to “the vague but powerful urge to democratise the EU” (2004: 385) were the issues that led to the convention. So, back in 2001, this ‘democratic deficit’, although it did not yet bear this name, demanded a form of treaty revision other than the ‘business as usual’ intergovernmental conference (IGC).

Trenz and Eder argued that “the European Convention [became] the major forum for turning ‘policy debates’ restricted to the institutional field into ‘public debates’ opening a European-wide public sphere for the salient issues of constitutional reform” (2004: 14). However, when the time for drafting came, government representatives tried to take control of the outcome, since they had not been able to control the process as much as they would have wished (Magnette and Nicolaidis, 2004: 389), and national interests prevailed over any other cleavage (Crum, 2004). Given that some debates were left out on purpose and that the final text would be adopted at an ICG, it hindered the claim of an open and transparent and bottom-up process capable of reforming the EU.⁶

The current Democratic Conventions have ‘learnt’ some of the lessons of the 2004 Convention, in particular giving citizens centre stage to overcome the democratic deficit and avoiding the IGC logic as much as possible. Also, the fact that the convention ended up in a failed constitutional treaty might explain why some member states prefer to call the current process ‘Citizens’ Consultations’, instead of the ‘Democratic Conventions’ often referred to by Emmanuel Macron. Moreover, both the 2004 Convention and the 2018 Conventions retain a significant element of ‘top-down’ methodology and their success will very much rely on the quality of political leadership to transform public expression into public

⁶ See S. Blockmans and S. Russack in this volume for further information.

appropriation. The risk here is that citizens will be left feeling disempowered and neglected if at the end of the process there is no clear leadership to give meaning to all the public opinions collected across the different countries.

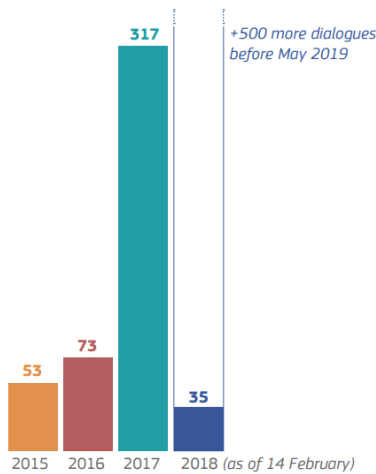
Conventions retain a significant element of 'top-down' methodology and their success will very much rely on the quality of political leadership to transform public expression into public appropriation.

The second experience informing the Democratic Conventions is a series of delocalised initiatives under the name 'Citizens' Dialogues' (Euractiv, 2010) launched in 2012 under the personal leadership of Commissioner Viviane Reding. The Dialogues were

set up in a 'town hall meeting' format across several cities in Europe, with the objective of allowing an informal and close debate between a high representative of the European Union – it started with Commissioners – and the local population. Up until then, citizens' access to Commissioners had always been indirect and mainly occurred through the pressroom, journalists and the institutions themselves.

The European Commission evaluated the debate originating from the Dialogues and the public audiences attending the events reached 195 million EU citizens. The number of participants is officially 88,000, which illustrates, in the opinion of the European Commission, people's growing interest for such formats since 2012 (European Commission, 2018b).

Figure 3.1 Dialogue with citizens ahead of the European elections



Source: European Commission (2018b).

The quantitative assessment could simply be the outcome of the increasing number of Dialogues organised, but whereas Citizens’ Dialogues were only a secondary political project during Barroso’s mandate (Candau, 2018), they have been expanded since 2014 by the cabinet of Commissioners led by Juncker – and will run until 2019 as part of the ‘Discussion on the future of Europe’. In a sense, the Citizens’ Dialogues managed to start a conversation about how people and EU representatives engage with one another and can be considered one of the first structured initiatives to put the highest

The EU’s Citizens Dialogues are probably the only democratic convention initiatives that have been tested in real conditions.

EU civil servants on the level of ordinary citizens (European Commission, 2014). Moreover, they are probably the only Democratic Convention initiatives that have already been tested in real conditions.

The outcome of the different Democratic Conventions organised in 2018 and 2019 in several member states will mostly depend on how far lessons have been learned from the Citizens’ Dialogues. The first of these lessons is that debating and discussing an issue can raise more public awareness than simply facilitating information about the issue. Think tanks in Europe have explored

this lack of knowledge about the EU (Llaudes, 2014), but the experience of the Citizens' Dialogues seems to point to debating as the key tool for achieving the engagement objective between institutions and citizens.

The second outcome points to the importance of promoting a sincere, proactive conversation between institutions and citizens. This is often defined as a 'two-way' communication strategy, where both agents are truly interested in listening to each other. This is a common mistake of representative bodies. Daniel Innerarity (2014) has addressed this issue in the particular context of the European Union, and concluded that European institutions – compared to national institutions – are particularly vulnerable to public perception because they justify their existence primarily on the basis of public support.

3.2 The Emmanuel Macron method (2016-17)

3.2.1 *The three principles set in place by 'En Marche!'*

It is well known that Emmanuel Macron's campaign strategy was inspired by that of Barack Obama in 2008 (*Le Journal du Dimanche*, 2017). For example, his election team hired Liegey Muller Pons, a French start-up founded by specialists that worked on the American presidential campaign in 2008. This company played a central role in the digital dimension of Macron's candidacy by using new statistical software to improve the micro-targeting approach to door-to-door canvassing (Dryef, 2017). Another example is the influence of David Plouffe – the director of Barack Obama's first campaign, particularly his book *The Audacity to Win: The Inside Story and Lessons of Barack Obama's Historic Victory* (Kakutani, 2009).

Two elements of Plouffe's strategy seem to have been at the core of Emmanuel Macron's strategy. The first was the importance of setting clear goals and objectives before the launch of the campaign; the second was never to deviate from these goals. This communication strategy was led by Adrien Taquet whom, influenced by Obama's campaign, sought, in Taquet's own words, "to create a campaign which differentiated itself from the others" (Gutiérrez-Peris, 2018). Emmanuel Macron's vision for the Democratic Conventions in Europe recognisably takes inspiration from his own positive experience during the first months of his

campaign in 2016 and 2017. Among the various elements that differentiated the campaign from others was the decision to create a movement that did not require 'a membership fee'. By doing so, *En Marche!* managed to occupy a political space with relative ease, despite the movement being extremely new to the political landscape.

A second key decision that in retrospect appears to have been decisive is that the movement allowed double party membership. Instead of approaching the election as a zero-sum electoral competition, *En Marche!* broke with the idea that electoral support must be the monopoly of a single party. This, again, allowed the movement to compete with mainstream parties within the record time of four months – between July and November 2016.

Finally, there is a third key criterion that proved to be central to the rise and success of Emmanuel Macron's movement in the early stage: the central direction granted absolute autonomy to all local communities. This meant that in comparison with other parties, supporters of *En Marche!* were able to freely create, without supervision or ideological preconditions, local action committees. Citizens could become members of the movement with a few clicks on its website, and with a few more set up their own local committee. At this early stage, the role of *En Marche!* was circumscribed to suggesting some common topics for the local committees to discuss, as well as suggesting some common activities. Apart from this, the movement also managed to reinforce itself by betting on spontaneous activism on the ground. This is particularly essential to understanding the rationale behind the Democratic Conventions. Ideally, the same philosophy of decentralisation and absolute autonomy at the national level should have been promoted.

The strategy of the movement was to link these organisational choices with a coherent message and communication policy. Decisions such as choosing the initials of Emmanuel Macron for the slogan of the movement (**En Marche**), or the use of Macron's handwriting for the logo made all its operations more authentic and personal. These decisions would ultimately prove essential to gaining track and differentiating *En Marche!* from other parties, ahead of the second phase known as the '*Longue Marche*'.

3.2.2 *The ‘Longue Marche’*

‘*La longue marche*’ (the long march)⁷ officially took place between 28 May 2016 and 31 July 2016. Emmanuel Macron had already created his movement on 6 April, but at that time he was still a Minister in the François Hollande administration – he would quit at the end of August of 2016. By then, he had already created the small ‘start-up’ team of roughly 15 people, who were responsible for all the decisions regarding Macron’s method (*Les Echos*, 2017).

In practical terms the march referred to the substantial qualitative surveying exercise undertaken across the French countryside over several weeks. The aim was to mobilise several hundred *En Marche!* supporters and send them to survey thousands of French people in a vast door-to-door operation. Emmanuel Macron himself published a YouTube video filled with images of the march, explaining why the exercise was so important for his political ‘package’ and strategy (Macron, 2016). Both the narrative and the rationale behind the march was the same as that presented to justify the European Democratic Conventions in 2018 and 2019.

As Macron explained in 2016: “the final step will consist of analysing more than 25 000 questionnaires (filled in France, overseas and abroad) which represent an extraordinary source for getting feedback on personal experiences. The following weeks will allow us to learn some lessons from all this material” (Macron, 2016). In other words, Macron’s strategy consisted of using the march and its outcome to build momentum, but more importantly, to justify his presidential intentions and his political programme, which would be unveiled at the end of the year. By doing so, he implemented a methodology that is very close to that proposed at the European level: first, issue a clear diagnosis of the country, second, set in motion some sort of public exercise to collect data from society, and only then, create a precise political programme.

3.2.3 *Setting the stage for the Democratic Conventions*

The rationale behind the long march echoes the initiative launched by Emmanuel Macron at the European level during two symbolic

⁷ Despite the military connotation, in French, the phrase suggests the idea of moving forward.

speeches that took place on 7 September 2017 in Athens, and 26 September 2017 at the Sorbonne University in Paris. In Athens, for example (Macron, 2017b), only four months after being elected, Macron pointed to a “roadmap to build the future of Europe”. Such a roadmap was presented as the basis for the next ten years and the first feature envisaged was that a new “treaty should not be negotiated behind the citizens’ back, on the sly, whether it be a text discussed behind doors in a dark room in Paris, Brussels or Berlin” (Macron, 2017b). Macron suggested a new method, for those willing to join him, consisting of organised consultations, “democratic conventions that will be a time during which our people throughout our countries discuss the Europe they want” (Macron, 2017b).

During the Sorbonne speech, Macron announced “democratic conventions”, taking the form of “vast debates in order to identify the priorities, the preoccupations, the ideas, which could nourish our roadmap for the upcoming Europe” (Macron, 2017a). There are also other similarities, such as using a common questionnaire and avoiding too many open questions that could broaden or blur the feedback from respondents. The initial methodology and the intention behind those Democratic Conventions were set out by Macron himself during the Sorbonne speech: “debates will be organised around the same questions”, following a “shared roadmap between the governments that are ready to go in that direction” (Macron, 2017a). A “group for the re-foundation of Europe” will be charged with analysing and delivering the proposals to the political leaders (Macron, 2017a). The initiative invited member states to organise a series of debates to identify priorities, preoccupations and ideas to stimulate Europeans’ future redesigning. This second speech evoked the idea of a European sovereignty understood as the involvement of citizens in order to justify the Union’s reform.

Following the strategy as for his own campaign – that communication must serve the overall message, the places chosen for these speeches were also linked with the idea of popular empowerment. Pnyx Hill in Athens is the birthplace of democracy, and the founder of the Sorbonne University, Pierre de Sorbon, was one of the most outspoken supporters of the collegial method for decision-making.

Finally, during an address delivered before the European Parliament in Strasbourg (Macron, 2018a), the president also held that the idea that simply voting to ratify a text was too simplistic. Instead, he suggested an “open, difficult and honest” (Macron, 2018a) debate to truly take steps forward regarding democracy in Europe. This same idea came to the fore during his acceptance of the Charlemagne Prize (Macron, 2018b), when he took the opportunity to defend the thesis that only a more democratic approach to Europe can preserve the European ideal, as well as protect it from foreign powers, ensuring that the continent remains free to decide its own future.

3.3 The Democratic Conventions

3.3.1 The European Commission initiatives

Between September 2017 and July 2018 (the time of writing), several documents have cast some further light on the methodology being used for the Democratic Conventions. There are two useful references: the Information Report published by the French National Assembly on 7 December 2017 (Assemblée Nationale, 2017) and all the material published by the European Commission on its website, in the section ‘Online Consultation on the Future of Europe’.⁸

This official material shows how the European Commission started the process by setting up an equivalent of the long march organised in France in 2016. This takes the form of an open, free, online public consultation. Any citizen from any member state, and even citizens from abroad, can take the survey by accessing a website specifically designed for this purpose: https://ec.europa.eu/commission/consultation-future-europe_en. The consultation is being eagerly promoted by the European Commission through its communication channels, its national representation offices and its own communication personnel. Operations are overseen by the Directorate-General for Communication, which has been under the direct responsibility of

⁸ See footnote 1.

the president since the re-organisation put in place by Jean-Claude Juncker in 2014.

The online consultation consists of a qualitative survey regarding a set of elements. These elements include questions on immigration, environment, education, inequalities, healthcare, technology, economic security, risks and threats, agriculture, as well as questions on the desire will for more or less harmonisation across Europe regarding different public policies. The content of the survey was designed after a series of workshops held on the 5th and 6th of May 2018 under the umbrella of the European Economic and Social Committee (EESC). The EESC explains how a “a group of 80 European citizens from 27 member states came to the EESC premises in Brussels to work together and draft a 12-question online consultation” (European Economic and Social Committee, 2018).

An essential specific aspect of the overall process regarding the online consultation is that the data collected and the methodology used does not follow the requirements for representativeness at the European level. In this sense, the operation is significantly different from the statistical data published by Eurostat, or the survey monitoring conducted regularly through Eurobarometer. Therefore, the ‘online consultation’ – as an essential part of the Democratic Conventions campaign – cannot be defined as a representative sampling of public opinion among European citizens. The final step envisaged is to transform all the citizen’s feedback and opinions into a clear and coherent report, written by the European Commission and discussed first during the European Council in December 2018, and then officially presented in Sibiu, Romania during the summit scheduled for 9 May 2019.

3.3.2 *The Conventions in the member states*

The online consultation driven by the Commission complements a series of events organised throughout several member states on a voluntary basis between June 2018 and March 2019. After Emmanuel Macron announced his intention to launch the Democratic Conventions, experts and commentators started to think about the requirements for reproducing the process successfully across several member states. At an informal European Council Meeting on 23 February 2018 (European Council, 2018), the

initiative was officially launched, with all member states except Hungary joining.⁹

The French Government and National Assembly expressed their views on how to conduct the process (*Assemblée Nationale*, 2017). The French Minister for European Affairs, Nathalie Loiseau, suggested seven topics on which the citizen's consultation could focus (security in Europe, Europe in the world, sustainable development in Europe, innovation in Europe, prosperity and stability in Europe, the unity of Europe and a more democratic Europe) (Nominacher, 2018). Among the suggestions she called organisers to defend and abide by "certain common principles" (representativeness, objectivity, transparency, and interoperability) and suggested some questions to be answered at all conventions. The French Parliament's report also called for "national steering committees" in charge of supervising the process, whose most important role would be to draw conclusions and transform them into "coherent legal proposals" (*Assemblée Nationale*, 2017).

Spain has also implemented Citizens' Consultations. The process is defined on the Spanish webpage devoted to the initiative,¹⁰ but this does not necessarily coincide with the definition used by consultations in other member states. The organisation of the consultations is led by the Spanish Minister of Foreign Affairs and civil society organisations, which confirms the ambiguity regarding a bottom-up or top-down approach. Regarding the Spanish agenda of events, results are not posted online and speakers and organisers are typically pro-European, which might hinder the opportunity to reach neutral or overtly critical segments of society.

Reflecting on the methods and objectives of the conventions in member states, Stephen Boucher and Lex Paulson (2018) suggest that to engage citizens in a meaningful debate, national governments should ask a representative sample of Europeans what issues should be discussed. These topics should then be debated by policymakers and experts in Brussels, although it is far from clear whether this method will be applied in the consultations organised by member states. Other authors have flagged challenges related to implementation of the conventions, such as time

⁹ See footnote 5.

¹⁰ For more details, see the official webpage: <https://goo.gl/BBAAsLc>.

constraints; how to encourage wide participation; the difficulty of comparing results across member states; and the production of an effective, inclusive and independent synthesis of these results (Nominacher, 2018). Another key aspect is whether these exercises will ultimately be influential, meaningful and real policy options, due to the differences between member states (Font, 2018).

To overcome some of these challenges, Stratulat, Rittelmeyer and Butcher (2018) suggest a one-month period of public awareness-raising led by national governments. National secretariats led by civil society should then be formed to coordinate the organisations and report to a European secretariat. Such a body would coordinate the national secretariats and act as facilitator. It would be composed of “one or more independent, non-profit organisation(s) with experience in setting up, supporting and coordinating similar projects on a transnational scale”, whose tasks would include drafting a report which includes the findings of all national reports.

3.3.3 *Reflections on the Democratic Conventions*

Civil society and experts agree that the exercise runs a substantial risk of disappointment. Either the implementation process obeys a bottom-up approach or overcoming the democratic deficit will be impossible, widening the distrust instead of bridging citizens and EU politics. Stratulat, Rittelmeyer and Butcher believe that it is better to “leave the idea unimplemented than to risk making matters worse” (2018).

Either the implementation process obeys a bottom-up approach or overcoming the democratic deficit will be impossible, widening the distrust instead of bridging citizens and EU politics.

It could be argued that should the Democratic Conventions thrive, now or in any future endeavours, they must comply with certain

specifications. First, and most importantly, a clear definition and some clarity regarding their name is needed. Was it really necessary to adjust the name to ‘Citizens’ Consultations’ through fear of changing the treaties? What are these consultations for? Are they created to design the future of Europe – copying the strategy of Emmanuel Macron, to raise awareness, or provide food for thought for the European Parliament elections in 2019?

The results of the online consultation led by the European Commission will be published in an interim report in December 2018, whose final report is expected at the European Council Summit in Sibiu, in May 2019. Heads of State and Government will decide whether the results of the consultations can be translated into effective policy. National consultations should end in March 2019, but some member states will keep their events running until May 2019. Therefore, each national government can produce a document with conclusions, but it is unclear whether they will be adopted or endorsed by the Heads of State and Government. It is also unclear whether the reports at national level and the report produced by the Commission can or will be merged.

Another concern pertains to the process itself. The rationale behind the consultations was to bridge the gap between the citizens and the EU; thus implementing a bottom-up process that would lead to policy options. So far, the consultation organisers have been national governments – with government officials or ministers

Only by organising open, free and transparent consultations, where no topics are off the table and the citizens take centre stage can a bottom-up process be assured.

sometimes giving addresses (Munta, 2018). This is precisely one of the risks that must be avoided at all costs, since the goal of the consultations should be to listen to citizens, not lecture them. Only by organising open, free and transparent consultations, where no topics are off the table and the citizens take centre stage can a bottom-up process be assured. The fact

that there is no recognisable political figure leading or embodying the Democratic Conventions at the European level also poses a problem in terms of the pan-European visibility of the initiative.

Another issue is the profile of participants and how to evaluate the consultations' success. There is a risk that the biggest share of participants will come from the 'Euroenthusiastic' camp, although for credibility it is paramount to attract 'Eurocritics' and 'Eurosceptics'. It seems equally critical to involve those whom take a neutral view and citizens not politicised in European matters. Ultimately, the question is how 'success' will be measured, both in terms

The question is how 'success' will be measured, both in terms of the number of citizens participating and the quality of policy recommendations.

of the number of citizens participating and the quality of policy recommendations. In short, to be successful the Democratic Conventions should first issue a diagnosis that evaluates the state of the country (or the continent); second, launch a broad participatory process to collect public views and concerns; and third, to translate such views into political proposals (or a political programme).

3.4 Conclusion: challenges to the success of the Democratic Conventions

The Democratic Conventions were originally aimed at overcoming the EU's democratic deficit, but whose application is still in its test phase. Its methodology can learn from previous experiences, ranging from the 2004 European Convention and the European Commission-led Citizens' Dialogues to the Emmanuel Macron's *En Marche!* movement. However, there are still many open questions regarding the timing, representativeness and impact of the initiative.

On timing, it must be noted that the calendar foreseen for the Democratic Conventions is very tight. The Conventions as a whole last for eight months (some national Citizen's Consultations are even shorter), which could be too short to guarantee the inclusive scope underpinning the process. The representativeness challenge already detected in 2016 during Emmanuel Macron's long march indicates the difficulty in granting the process some kind of representative value. As in France, participation in the Democratic Conventions is voluntary and the methodology used does not guarantee any of the traditional criteria to ensure that the samples of people are as representative as possible. In particular, there are no established quotas, so the final outcome cannot be framed as a representative sample of the population. This might prove to be a key point for Convention conclusions, which are meant to inform, inspire, and drive the practical proposals made by the Commission and the European Council.

Finally, another pitfall relates to the question of who has the last word in the decision-making process. Member states, and in particular the relevant governments, are responsible for translating the popular will into "coherent legal propositions" (Assemblée

Nationale, 2017). In other words, there is no common European convention planned, so there will not be an opportunity for exchange between citizens from different member states. The responsibility to interpret and translate the popular will into practical initiatives resides with the national governments rather than, for example, an ad hoc transnational assembly made up of citizen representatives. In order to better translate the inputs into coherent political initiatives, it would be useful in this regard for Heads of State and Government to discuss and compare the national reports in the European Council alongside those from the Commission.

Yet the Democratic Conventions do have a certain transformational potential. They allow for an improved perception of the proximity and interaction with citizens in defining the priorities of European integration. They are also a more creative, politically innovative and disenfranchised way of connecting citizens than traditional partisan structures. With the European Parliament elections on the horizon, the momentum generated by the initiative is also particularly well timed. The question remains whether the European Commission and national governments will be adventurous enough to transfer the outcomes of the Democratic Conventions to the European political agenda.

The question remains whether the EC and national governments will be adventurous enough to transfer the outcomes of the democratic conventions to the European political agenda.

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4. CIVTECH: THE DIGITAL REVOLUTION IN DEMOCRACY AND DECISION-MAKING

WOJCIECH BIAŁOŻYT & ARKADIUSZ LEGIEĆ

4.1 The digital revolution and its impact on relations between citizens and governments

The digital revolution has become an integral part of human existence, facilitating but also disrupting it in fundamental ways.

The internet and social media have changed how much of the population behaves.

The internet and social media have changed how much of the population behaves socially, economically and politically, which has major consequences for the interaction between citizens and governments. The

revolution has also contributed to the world becoming more chaotic and more difficult to understand and govern.

New concepts and phenomena have emerged, such as: organising without organisation, the democratisation of innovation, crowdsourcing, 'wikinomics' and 'cognitive surplus'. These developments increase pressure on governments to change the nature of their relations with citizens, with a focus on social and information networks, pushing both governments and citizens towards regular and close cooperation.

The internet has been absorbed by individuals and social organisations in a way that has enabled them to act quickly and often more effectively than states and governments.

These trends – the digitisation of all spheres of life coupled with social transformations and followed by new dimensions of governmental decision-making – are irreversible and interlinked while happening at different paces. This creates a need for new

holistic governance and decision-making models to respond to tensions between netizens (citizens of the net) who have become increasingly demanding and public administration that still works with outdated models and rules.

4.2 Governmental legitimacy in the digital era

The digital revolution means that governments and public administrations must meet the expectations, needs and requirements of citizens differently, and not persist with their internal bureaucratic logic. This is triggering a transformation towards a more transparent, open and mutually beneficial relationship between citizens and governments, in which the former can play an increasingly important role in shaping public policies. The final act of this transformation will be citizens acquiring real influence and co-ownership of decision-making processes.

A transformation is underway towards a more transparent, open and mutually beneficial relationship between citizens and governments.

At the beginning of the 1970s, Harlan Cleveland pioneered the notion of governance (Frederickson, 2004) as an emerging form of relations between governments and citizens with his message of “less government, more governance”. Cleveland pointed out that:

The organizations that get things done will no longer be hierarchical pyramids with most of the real control at the top. They will be systems – interlaced webs of tension in which control is loose, power diffused, and centers of decision plural (...). These new style public-private horizontal systems will be led by (...) Public Executives, people who manage public responsibilities whether in ‘public’ or ‘private’ organizations. (They will be guided by) a sense of welfare; a sense of equity; a sense of achievement; and a sense of participating.

In accordance with the ‘less government, more governance’ approach, the notion of a *centreless society* emerged. At the same time states became increasingly networked and governed in a polycentric way. The government’s goal in the polycentric model is to enable the broadest possible public and social interactions for public responsibilities to be managed by various agents on the

grounds of cooperation, partnership and co-ownership. That model could equally be implemented at local, national and international levels. What distinguishes government from governance is that government relates to acts based on formal power while governance acts on common goals.

Another form of decision-making and government-citizen relations is embodied in the notion of “governing without government” (Rhodes, 2006). Rhodes wrote that in place of the hollowed-out state, a new form of government is to emerge that is difficult to classify:

Governance based on self-organizing networks will challenge governing abilities as networks are autonomous and resistant to top-down management. They become first examples of governing without government.

Traditional examinations of politics, government and public administration are unable to embrace and explain the emergence of

New economic and social phenomena, including new ways of online communication, are disrupting traditional legal frameworks.

forces and social phenomena, making new forms of communication and decision-making necessary. They follow the fact that new economic and social phenomena, including new ways of online communication, are disrupting traditional legal frameworks and are making it clear that legal systems

established in past decades on the one side and digital-driven social, technological, political and economic realities on the other are unfit with each other.

4.3 Determinants for governmental efficiency in the digital era

Factors other than technological that contributed to the transformation of relations between citizens and governments was the financial and economic crises in the late 2000s. The crises undermined citizens’ confidence in governments and showed that transparent and accountable decision-making is linked to how economies perform.

Mobile technologies that are being added to governments’ toolkits are naturally an important way to communicate better and

involve citizens in decision-making processes. They may bring the following benefits to governments-citizens relations:

- Increased participation
- Increased empowerment and capacities of citizens in relations with governments
- Increased effectiveness in delivering and evaluating policies.

From an organisational perspective, permanent and direct communication with citizens requires governments to avoid the three most common traps:

- Insufficient transparency in relations between citizens and governments/public administration
- Isolated model of daily administrative routines
- Citizens excluded from the centre of governmental planning and operations

Avoiding these traps above would allow governments to learn, predict and understand individual and collective needs of citizens. This would represent a major shift from the top-down model of decision-making towards one in which decisions and policies are discussed continuously with citizens and modified depending on the feedback received from them.

Factors defining the efficiency and effectiveness of governments in this model are:

- Access: citizens need to have access to technologies and be able to use them
- Participation: citizens need to keep involved and remain in touch with government representatives
- Tools: the need for a proper format or delivery on proper platforms.

4.4 The digital revolution as a disruptor of government

4.4.1 From e-government to Digital Era Governance

The introduction of the internet into government operations has led to the emergence of the notion of e-government, which initially focused on the introduction of hardware into daily public

administration. The concept of e-government has evolved since the early 2000s when it was defined as serving the needs of citizens better, seen as clients, with the use of new technologies. Over time, it evolved towards a model in which governments initiated the transformation of its internal and external relations, in recognition of the importance of civic participation. They now embrace practices and cultures arising from internet-related ideas such as open source or digital rights.

4.4.2 *Networked government*

The notion of networked government describes more transparent, cooperative and mutually beneficial relations among the government, citizens and private entities, as a result of the digital revolution. This model prioritises an active role for citizens and non-governmental organisations to put them at the centre of designing and decision-making in cooperation with governments.

The characteristics of the networked government model are:

- Communication between citizens and governments are served on commercially delivered digital platforms
- Communication is personalised as much as possible,
- Advanced digital tools and multichannel communication devices are available without interruption.

Governments need to be effectively connected to citizens in a digital world where the latter are part of the heterogeneous, moving stream of social media and blogs. Governments need to be a constant part of this stream, to influence it, contribute to it and make the most of it by sharing information. Governments need to be constantly present and active in this stream, unlike in earlier times when citizens had to actively seek the information they needed.

Gathering and making available to the public various forms of communication (e.g. email, SMS, webpages, social media) is key to ensuring the effectiveness of networked government, enabling both an active and automatic participation in real time and at the lowest possible cost. Social media and governmental chats can be used to promote new initiatives and receive feedback to proposed draft policies. This would allow governments to identify challenges, needs and desired solutions more effectively, and to clearly communicate the outcomes of policies.

4.4.3 *Experimental government*

In order to keep pace with the digital revolution governments must incentivise an internal work culture of work in which experiments involving citizens are par for the course. Most advanced countries structure their internal government communications so that they are a kind of innovation laboratory. And several governments, making the most of digital tools, have set up internal laboratories to work on changing the ways administrations work, on supporting inclusiveness and better communication with citizens to reflect their actual needs.

Governments must incentivise an internal work culture in which experiments involving citizens are common.

Leading government laboratories include the UK's Policy Lab, the Danish Mindlab and the Finnish Design Lab. These units are designed to be small and interdisciplinary, both in terms of policy fields and organisational structure. Government officials are being taught to communicate better with citizens and test new ways of working with them, with a view to evaluating the past and designing new policies. MindLab has implemented human-centred design as a way of identifying problems and needs of citizens and shaping policy recommendations. Similarly, Chile's Laboratorio de Gobierno is examining how relationships between government and societies have changed and are designing new tools to boost the inclusiveness of the government's operations. It also supports civil servants in upgrading their skills and organises challenges in which private entities compete by proposing prototypes of innovative solutions to transform government-citizen relations.

4.5 Levels of e-democracy

These developments have in turn led to an increasing number of initiatives and tools supporting civic engagement at the European, national and local levels. According to Ann Macintosh's¹

¹ A. Macintosh (2004), "Characterizing E-Participation and Policy Making", Proceedings of the 37th Hawaii International Conference on System Sciences (<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.98.6150&rep=rep1&type=pdf>).

classification, citizens can be engaged using online tools through three levels of e-participation, which reflect the UN's typology, concerning eEnabling (passive level of one-way information with accessibility and understandability functions), eEngaging (active level of two-way consultation with top-down direction) and eEmpowering (active level of advanced two-way participation with bottom-up direction).

Citizens can be engaged using online tools through three levels of e-participation: information, consultation and active participation.

The information level (eEnabling) is about a one-way relationship in which government produces and delivers information for use by citizens. In other words, eEnabling is a process of supporting those who would not typically access the internet or take advantage of the large amount of available information. The objectives we are concerned with are how technological tools can be used to reach a wider audience by providing a range of technologies for the diverse technical and communicative skills of citizens.

The consultation level eEngaging is about a two-way relationship in which citizens provide feedback to government during the process of information-sharing. Nowadays governments define the issues for consultation, set the questions (also with possible variants of answers) and manage the process, while citizens are enabled to contribute their views and opinions. This uses technology to engage with citizens and consult a wider audience to enable deeper contributions and support deliberative debate on policy issues.

The active participation (decision-making) level is about a relationship based on partnership with government in which citizens actively engage in defining the process and content of policy- and decision-making. This level constitutes a crucial form of e-democracy, when e-society is fully enabled to shape social reality through the process of e-decision making. It acknowledges equal standing for citizens in setting the agenda, although the responsibility for the final decision rests with

A crucial form of e-democracy is based on partnership with government in which citizens engage in defining the process and content of policy and decision-making.

government. eEmpowering citizens is concerned with supporting active participation and facilitating ideas to influence the political agenda 'bottom-up', which is particularly effective for local communities and governing bodies.

4.6 Tools of democratic engagement in the digital era

E-consultations are an example of such tools; they are asynchronous, consultative, and offer provider-to-provider communications within a shared electronic record, system or web-based platform. They are intended to improve access to services without the need for a face-to-face visit and constitute a basic-level e-tool in democratic and social activity.

E-petitions are signed online, usually through a form on a website or other interactive platform (increasingly through the use of mobile apps). Visitors can sign the petition by adding their details, but also are able to modify the whole form to the extent enabled by the administrator. Typically, when there are enough signatories, a letter may be sent to the subject of the petition's signatories, by email or also as an interactively realised web-page or mobile app. The online petition may also deliver an email to the target of the petition each time the petition is signed, which can at the same time be a tool of civic pressure as well as engagement.

E-deliberations are a form of online enabling technology for collaborative decision- and strategy- making by individuals who have the expertise or are impacted by the focus of the e-deliberation (in the context of its subject, mechanism etc.). It takes deliberation online and provides a thinking process and platform to tie it all together, creating an interactive 'brainstorm' platform for a theoretically unlimited group of process leaders and end-users.

E-budgeting is a process of using ICT applications and digital technologies for budgetary functions, procedures, or services across the budgetary cycle, such as planning, programming, budgeting, appropriations, control, and evaluation of financial resources. E-budgeting refers to the digitalisation of budgetary and accounting procedures. One of the most distinctive features of e-budgeting (and e-government in general, which is a more consistent term and broader approach to e-budgeting) is that it promotes an active role

for citizens and civil society organisations, also in the context of the social control and verification of public expenditures.

Democratic engagement tools can be also applied to elections and broader voting processes. **E-voting** is an election system that allows a voter to record his/her secure and secret ballot electronically, without personal presence in the polling station. Electronic votes are stored digitally in a storage medium such as a tape cartridge, diskette, or smart card before being sent to a centralised location where tabulation programmes compile and tabulate results. Electronic voting can reduce election costs and increase civic participation by making the voting process more convenient. But this form of voting requires that governments put

New e-tools and forms of civil engagement establish new safeguards for security.

more effort into the protection of democracy. It is vital that all new e-tools and forms of civil engagement establish new safeguards for security of such processes, especially in the context of hacking, and potential electoral fraud, etc. Critics of e-voting maintain that without a paper trail recounts are more difficult and electronic ballot manipulation, or even a poorly written programming code, could affect election results. Data protection, voter secrecy, data storage and personal data archives could be under threat, especially in undemocratic countries.

4.6.1 Examples of tools engaging citizens in the digital era

Websites monitoring politics involve evaluation and review of the policy in action, research evidence and views of users, enabling them to go directly to users of services and those at whom the policy is aimed to seek their input. Interesting cases of such websites are 'TheyWorkForYou' and 'Abgeordnetenwatch.de'.

TheyWorkForYou is a parliamentary monitoring website that aims "to make it easier for UK citizens to understand what is going on in Westminster as well as Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly" (TheyWorkForYou.com). It also contributes to create accountability for UK politicians by publishing a complete archive of every word spoken in Parliament, along with a voting record and other details for each MP.

Abgeordnetenwatch.de is an independent internet platform that offers the possibility to publicly consult parliamentarians of different parliaments (Abgeordnetenwatch.de.) This website enables citizens to get in touch with the deputies of the Bundestag, the German members of the European Parliament and the deputies of the provincial assemblies. It includes a basic entry on every candidate and is free of charge.

Informal agenda-setting tools are informal policy instruments that affect either the content or processes of policy implementation; that is, they alter the way goods and services are delivered to the public or the manner in which such implementation processes take place (STOA Final Report, 2011). Good examples are the petitions system in the House of Representatives in the Netherlands, The Finnish Citizens' Initiative and even the portal 'Participedia'.

The House of Representatives in the Netherlands allows citizens to submit a petition to a committee of the House of Representatives or to the speaker of the House. Petitions to the speaker can only be made as part of a national project. Petition submissions may be requested via a letter explaining the purpose and the organisers of the petition. The House decides whether to accept the petition based on this letter. An initiative requires at least 40,000 signatures by registered voters for the House to consider it.

The Finnish Citizens' Initiative aims to increase participatory democracy on the national level. According to the Constitution, when 50,000 eligible voters express their support for a certain initiative, the Finnish Parliament is obliged to process the initiative (see chapter 11). Although it is a so-called agenda initiative, meaning that it does not lead to a popular vote, it does influence political agenda-setting and is therefore expected to increase political inclusion.

Participedia harnesses the power of collaboration to respond to a recent global phenomenon, which is the rapid development of experiments in new forms of participatory politics and governance around the world. Participedia's research goal is to develop a large article and database. It is an experiment with a new and potentially powerful way to conduct social science research. All of Participedia's content and data is and will remain free and publicly accessible.

Formal agenda-setting tools are formal policy instruments, that affect either the content or processes of policy implementation; that is, which alter the way goods and services are delivered to the public or the manner in which such implementation processes take place. Examples of such tools can be the process of writing a new constitution in Iceland² (as the process itself), the Slovenian portal 'Predlagam', the European Citizens' Initiative³, the consultation platform 'Futurium' and the platform 'Your Voice in Europe'. A new view on democratic e-tools was also tried out through the European Citizens' Consultation 2009.

Predlagam.vladi.si is a government-initiated e-participation platform with an active interface for petition-type proposals for new policy by citizens that can be commented and voted upon. The proposals can amend current regulations (Predlagam.vladi.si).

Futurium is a consultation platform on EU digital policy making dedicated to European citizens for discussing EU policies, which is a combination of online and offline participation instruments (offline meetings such as workshops, public events, community meetings, etc., also feed the online discussion and vice versa).

Your Voice in Europe is a public consultation platform on EU policy conceived as a policy instrument such as e-consultations via the online platform or a communication instrument with a transformative mission aimed at sensitizing participants about EU policy issues (European Commission 2018).

The European Citizens' Consultation 2009 was a participative cross-border deliberative experiment to give citizens a platform to propose and discuss ideas with other EU citizens.

A similar project was The European Citizens' Consultation 2009 (ECC09), which was a participative cross-border deliberative

² Iceland's 320,000 citizens all had a say in the writing of their new constitution. With the help of Facebook, Twitter, YouTube and Flickr, the 25-member council drafting the constitution reached out to Icelanders for recommendations. Everyone registered with their name and address can submit a suggestion which, after being approved by local staff, was passed on to the council and became open for discussion online.

³ See chapter 2 by Sophia Russack.

experiment to give citizens across Europe a platform to put forth and discuss ideas with other EU citizens. The aim of the ECC09 was to give EU citizens a voice and allow them input in determining the economic and social future of Europe. The main objectives were to promote interaction between citizens and policy makers, establish citizens as policy advisors, bring the EU closer to its citizens, increase public interest in the EU, expand civil society networks across the EU, and to develop citizen participation as a policy tool for the future.

Non-binding decision-making tools have been adjusted to the internal decision making - or consultation-making activities inside of political parties, civil associations and other civic organisations. A good example is the Pirate Party of Germany, which is making extensive use of new technology to communicate and collaborate on the decision-making process within the party itself on a national scale, especially during consultation of the party's strategic documents and programmes. Another political party in Europe – Italy's Five Star Movement – is making similar use of new technology, including election and voting on representatives (e-voting). Finally, the Spanish political party Podemos is making increasingly intensive efforts to use digital tools and make internal party procedures more decentralised and available to all its members.

Cities like Paris are creating digital platforms designed to engage the voting population in decisions on budget allocation of pre-selected projects as proposed by the city government. Furthermore, in Paris, citizens can participate in the distribution of an increasing share of the city's budget by voting on pre-selected projects and submit proposals themselves. (European Parliament, 2014). These are the binding decision making tools.

More popular examples of binding decision-making tools are **e-voting procedures**. In Switzerland, e-voting includes not only the casting of votes in elections and referendums, but also the giving of 'electronic signatures' for initiatives, referendums and proposals for candidates for membership of the National Council. Estonia allows citizens to vote electronically in local, national and European elections, ten to four days prior to the actual election day in addition to the traditional voting method. The German Green Party (a political party within the European Parliament) used e-voting even

for the selection procedures of the *Spitzenkandidaten* in the 2014 European Parliament (EP) elections.

4.7 Cyber security in the age of digital tools in civil society – opportunities coupled with challenges

The safe use of the internet is not a simple task on the level of individuals, which is why it will not be a simple task at the level of social procedures. There are many different threats on the level of e-tools stifling democratic processes and civil participation; voiding all of them requires a lot of diligence, attention and carefully thought out actions in advance. Particularly fragile fields of e-activation of citizens are security systems in the context of data protection and data storage. In an age of cyber-espionage and technology hacking, origins of technologies (operating systems, security systems and all other software enabling administrating of system) should be a case of double checking and deep verification. Such responsibility can help avoid unplanned and unconscious data spoiling and external interference on these processes. But even without external threats, such processes will always be exposed to the risk of data loss resulting from technical failure or other random events. For this reason, data storage during such processes should be developed and prepared for potential risks.

Cyber security threats coincide also with a much broader challenge that is being posed to increasingly digital elections, which is foreign interference in electoral systems. The case of the 2016 US election showed a massive and sophisticated attempt to influence the outcome of the vote, making the most of social media channels. Tactics included targeted ads via Facebook and Twitter that carried fake news and 'alternative facts'. Similarly, the Brexit campaign was reportedly influenced by cyber hacking and disinformation linked to the Russian Federation. The mechanics of the disinformation and fake news generation system was provided in the stunning Channel 4 report on Cambridge Analytica (CA). It was reported that the data of over 100 million Facebook users, mostly based in the US, were accessed by CA and targeted by malicious ads. BuzzFeed revealed that in 2016 US election, the most popular fake news stories reached more Facebook users than the most popular news items provided by traditional media. Several countries have already responded to the fake news threats – Germany has passed a law under which

social networks may be fined millions of euro; the British government has set up a 'fake news' unit; Italy has introduced an online service to report false articles; and a fake news law is being discussed in France.

Conclusions

The internet and mobile technologies made cooperation and communication between government and citizens possible on a scale that could not have been envisaged. This specific organisational culture has infiltrated government and has undermined old procedures driving governments to a new reality as simple digitisation of old bureaucratic relationships with citizens no longer works.

The spread of e-technologies, led by social media technologies, has had an important effect on the ways in which people access and consume information, interact and relate to others. The ability to connect with wider communities, and to both receive and contribute information are part of these networks. Online social networks have enabled users to find and connect with other people across the globe, facilitating the development of powerful communities of individuals who may have struggled to access the same kind and level of peer support and engagement in their offline interactions.

To a similar extent, e-tools are shaping a new form of relations between citizens and governments, governing bodies and all types of public administration. This irreversible process, with its opportunities and potential, also brings also challenges, especially in the field of data protection and security of public e-systems.

Digital tools to track governments' performance and online self-organisation will however not bring a value impact to the quality of democracy if it is not supported by citizens' and netizens' constant, personal involvement in civic and democratic processes in the real, not virtual world.

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5. A NEW NARRATIVE FOR EUROPE: WHO WILL LISTEN?

NIKOLETA VASILEVA & BORISLAV MAVROV

EU communication policy – or more precisely the lack of it – directly affects the present and the future of the Union. A great deal of effort has already gone into improving communication with citizens with a view to enabling them to understand its functions and policies and participate in its political life. However, the EU appears to be failing in this endeavour and this is a failure it can ill afford. Relying on both quantitative and qualitative research, this chapter analyses existing EU communication methods, focusing on the so-called EU success stories, and recommends possible improvements by providing answers to three questions: what, who, and why?

Introduction

This chapter studies past and existing communication approaches, mostly at EU level, from different perspectives. It proposes a set of effective methods for EU storytelling and a new narrative for Europe to encourage political participation of European citizens. Existing practice and its effectiveness are explored, using both quantitative and qualitative research. The findings are based on two surveys, one of Bulgarian citizens and the other of EU communication experts. Reference is also made to Eurobarometer reports from 2017 and 2018. As an integral part of the analysis, the chapter also presents the positions of academics and practitioners in different spheres closely linked to EU communication policies. The aim is to explore the potential use of existing instruments to solve problems and increase turnout in the forthcoming elections so as to overcome the EU's democratic deficit.

5.1 Survey methodology

Two surveys were conducted online from March to April 2018 for the purposes of this research.

The first was answered by more than 100 people in Bulgaria. Participants were not selected according to any specific criteria, but were instead reached through various means of communication such as email, social media and individual approaches. The age of the respondents ranged from 18 to over 65, with the majority being aged between 18 and 29.

The second survey was answered by EU communication experts from 22 different countries within the European Union. Most of the participants work within the Europe Direct Network or with MEPs offices and are experts with field experience of communicating EU policies on regional, national and European levels. Some 56.45% of respondents declared that the citizens they most often communicate with are aged between 18 and 29. Experts from the following member states took part in the survey: Poland, Italy, Portugal, Slovakia, Romania, Greece, Spain, Italy, Denmark, Germany, Czech Republic, Finland, the Netherlands, the United Kingdom, France, Belgium, Lithuania, Bulgaria, Hungary, Malta, Latvia and Sweden.

5.2 Assessment of EU communication strategies and their impact on political participation – past, present and future

“Democracy was not part of the original DNA of European integration.”¹

The term ‘democratic deficit’ has been increasingly used in recent years. It implies how the European Union’s complexity and its decision-making processes distance it from the ordinary citizen and end up leading to a deficiency in participatory democracy. This issue has been discussed on numerous occasions by authors and politicians alike, but a solution has yet to be found. Is it the unusual

¹ J.H.H. Weiler (2011), “The political and legal culture of European integration: An exploratory essay”, *International Journal of Constitutional Law*, 9(3-4): 678-694 at 694.

character of the EU that simply does not correspond to the usual methods of analysis? Is it its ever-changing nature that makes it hard to keep up with? Or is it the inability of European leaders to bring about the changes that their voters seek? Greater efforts and new approaches are clearly needed.

In 2011, Joseph Weiler presented his position on the matter, contending that Europe is at a great nadir, which the Treaty of Lisbon did not redress. Election turnout in 2004, before the Treaty of Lisbon, was 45.47% (in 25 member states), but in 2009 and 2014 the percentages were even lower. This is not, however, a recent phenomenon: the turnout in 1979 was 62% and has been decreasing ever since. What is perhaps surprising is that the changes introduced by Lisbon to improve participatory democracy failed to encourage more citizens to exercise their right to vote in European Parliament elections.

Perhaps the EU's top-down communication is at fault. But if it is failing, it is not for lack of trying to improve it. Since 2012 for example, the European Commission has aimed to engage citizens in debates regarding the Future of Europe, along with the 'New Narrative for Europe' initiative that initially originated in the European Parliament.² Its work included meetings between political leaders and civil society to develop ways to describe European ideals to generations that have not known war. The ultimate purpose of this initiative was to address the growing dissatisfaction among EU citizens and their growing sense of disconnection by exploring means for the EU to reconnect with people and assume a leadership role. In 2013, Commission President Barroso explained that it is for the new generation that does not identify with the peace narrative that 'the story of Europe' must be told again and again. He compared the latter with a book and stated:

² While the administrative implementation of the project was carried out by the European Commission, the idea for "a new narrative for Europe" was originally presented in 2012 by MEP Morten Løkkegaard who succeeded in amending the budget to fund pilot actions in this direction. Later on, President Barroso's "substantive interest" in the project led to its subsequent development, as described by Wolfram Kaiser in 2015.

It cannot only stay in the first pages, even if the first pages were extremely beautiful. We have to continue our narrative, continue to write the book of the present and of the future. This is why we need a new narrative for Europe.

But does this approach take into account all the paths that have led to the current identity crisis? As Umberto Eco said, “It’s culture, not war that cements European identity”.³ The Barroso narrative sought to present European integration and institutions as an integral part of the cultural history of the continent by turning events into stories. However, the focus on cheap flights, mobile roaming and even on Erasmus+ was considered inadequate by many. The problems Europeans are faced with today include “unemployment, uncertainty and in many cases growing inequality ... coupled with a lack of understanding” and simply could not be addressed by the transparent political campaigning attitude of the EU, which led to this initiative being either criticised or simply never heard of.

Later, in the autumn of 2017, the European Parliament once again pointed out the need to take action and to develop a comprehensive strategy. It agreed on a note urging that a better-armed Union address people’s concerns in the context of the forthcoming elections.

The focus was put on storytelling – a powerful tool for highlighting the Europe Europeans may want (or the EU wants to parade before Europeans). But the stories are of little value if there is no one listening to them.

It is therefore important to hear first-hand what citizens think about the EU. Happily, among more than 100 Bulgarians asked whether they think the country has benefited from its membership in the EU, 73.64% answered “yes”. However, only one third are of the opinion that they are sufficiently well-informed to actually vote in European elections as opposed to the 16.36% who feel the same way about national elections. This shows that people’s decision to vote is directly affected by the amount of information they think they have, and that they feel far less familiar with EU affairs – possibly because they seem too far removed.

³ G. Riotta (2012), “Interview with Umberto Eco”, *La Stampa*, 26 January (www.theguardian.com/world/2012/jan/26/umberto-eco-culture-war-europa).

When respondents were asked about which EU areas they would like to learn more, one of the most curious answers read “the actions the EU plans to take in order to escape the deep existential crisis it is currently in the middle of” – speaking directly to the truth of the identity crisis of European citizens. While over 66% of respondents confirmed that they have personally benefited from their country’s EU membership, this is still no proof of a successfully developing collective identity comprised of mutual values and respect and shared by all European nations. When asked whether their vote matters, one of the answers included the discouraging contention that “nowadays, politics is not what it’s supposed to be – it’s robbing the people, no matter who you vote for”. Another important idea stands out here – that citizens fail to distinguish between national and European politics and they often blame the latter as they do not quite understand it.

Experts working for the Europe Direct network or engaged with the work of MEPs also commented on what stories need to be told. In their experience throughout Europe, news about immigration, Schengen and Erasmus are examples of information that easily reaches a wide audience (see the tag cloud results of one of the questions below).

Figure 5.1 A tag cloud depicting the answer to the question “Name at least one ‘success story’ that easily reached a wide audience”

Q9 Name at least one EU ‘success story’ that easily reached a wide audience



Other interesting examples from the data gathered include “the possibility for smaller regions and municipalities to access free Wi-Fi” and “attempts at taxation for multinational corporations”.

The experts also commented on the type of negative news that attracts attention. They all agree on one thing – fake news is an issue. Multiple examples were provided in this regard. A disturbing message from Poland read that “this is information that the EU

cannot control with the rule of law – the meaning of European values and of Article 7 should be clarified”. Equally worrying examples include “the EU wants to ban traditional Bulgarian food products” and “the EU forbids children’s books”. But when asked what is generally considered to be the greatest failure of the EU, almost 55% answered “terrorism and immigration”. Hence, this is definitely something that attracts attention – so it should be taken advantage of in the most advantageous way possible.

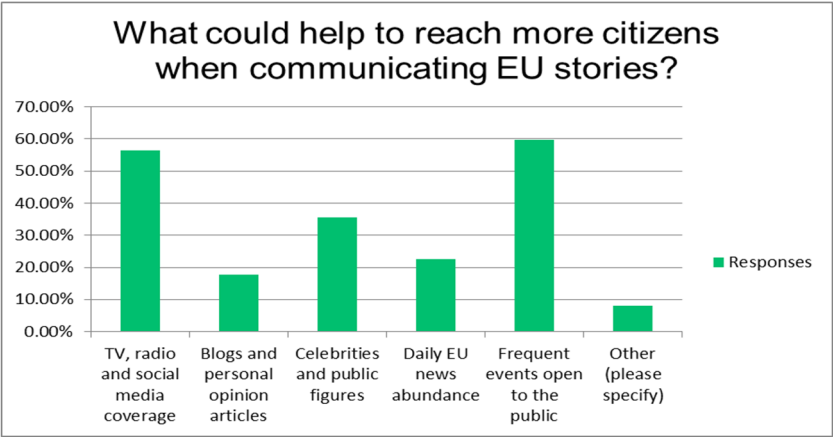
Figure 5.2 A tag cloud depicting the answer to the question “Name at least one piece of fake or criticising EU news that easily reached a wide audience”

Q10 Name at least one piece of fake or criticizing EU news that easily reached a wide audience



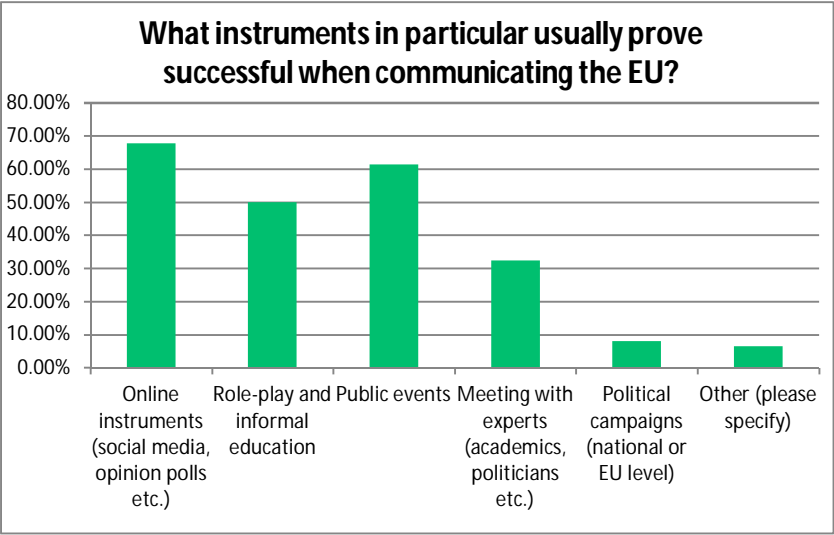
The experts shared their opinion regarding the ways of communicating these stories. According to them, media coverage and regular events are what can really contribute to improving the image of the EU and more importantly the citizens’ understanding of it.

Figure 5.3 Answers to the question “What could help to reach more citizens when communicating EU stories?”



The survey also addressed the question of whether particular instruments can prove successful. While they obtain wide approval, online methods and social media tools are very limited, albeit powerful. They do not reach the majority of citizens and operate in an environment abundant in information and, unfortunately, fake news and propaganda. On the other hand, informal education was considered one of the most successful means of communicating the EU. While in terms of quantity its impact can also be limited, it does lead to significant and long-term results. Successful examples are the ‘Team Europe’ and ‘Team Europe Junior’ members in certain states. In particular, ‘Team Europe Junior’, an innovative pilot initiative by the Representation of the European Commission in Bulgaria, brings together a team of students who have the will, motivation and knowledge to participate as speakers in the communication activities of the Representation and of the Europe Direct information network in Bulgaria. This is a project where people communicate the EU themselves – clearly the shortest route to creating a citizens’ union.

Figure 5.4 Answers to the question “What instruments in particular usually prove successful when communicating the EU?”



One of the key objectives of this survey was to analyse the connection between the topics discussed and people’s actual

willingness to vote in European Parliament elections. When asked about the issues that influence voters, nearly 60% answered with “regional investment and development”, followed by “security and defence” and “economy and energy policy”. This points to two things: first, security is crucial to people (including financial); second, people look for the EU not in Brussels, but in their backyard. This is where they want to see a clear difference between member and non-members. They want to see the EU close to home – and this is indeed what the European idea was originally about.

The EU has been making efforts to better communicate its image and its character. And it is the duty of ‘euro optimists’ to offer a critical appraisal of what has been done so far, when it has worked or failed and, most importantly, why. The experts interviewed shared their thoughts on EU storytelling and particularly on the following issues: the way the EU is spoken of (promotion versus criticism), the language that is used, the content of the stories, the target audience, the channels and the balance between EU and member-state stories.

First, the way the EU is spoken of in general: the consensus was that the EU should be criticised, even if the self-criticism the EU opts for should be based on thorough argumentation, frank analysis of problematic areas and referral to its core values. With daily battles between optimists and sceptics, the best strategy might be to only emphasise the good. But treating the European project as a product that needs to be advertised opens the way for sceptics to emphasise its flaws and gives rise to a louder response from populists, who build on the lack of criticism to gain even more support. In this regard, Prof. Antony Galabov, a leading Bulgarian political scientist and sociologist, says

Populism is a countercultural phenomenon. It needs an official policy to stand against and if it gets engaged in a dialogue – it dies.

Populism is a countercultural phenomenon. It needs an official policy to stand against and if it gets engaged in a dialogue – it dies. Even the most vociferous populists prefer yelling with a megaphone to maintaining a conversation because it involves a question to which they have no answer – how to solve the problem.

He states that European leaders must admit when there is a problem while also pointing out that it is shared across Europe and that Europeans must work together to solve it.

He further suggests that EU officials must not seek to avoid two topics – migration policy and Schengen: “The Dublin Regulations and the Schengen agreement need to be renegotiated – even as a package. Citizens need to know who, how and why gets into the EU.” Openly speaking of this issue would let people see that their safety and security are a priority and prevent populists from building on anti-immigration propaganda or islamophobia: “Islam is part of the history of Europe. This is a very important message that the EU must make sure to send.”

Prof. Ingrid Shikova, a renowned specialist in EU policies, also shares the opinion that leaders must be careful not to speak of the EU in ways that resemble propaganda: “This is something that political candidates do and that may be one of the reasons why people are disappointed with the EU in the end – promises are made that can’t be kept.”

Dr. Ralitsa Kovacheva, an experienced journalist and assistant professor at Sofia University, makes an interesting observation: “The EU is trying to sell itself as if it were a diet soft drink. This makes people see it as something plain and hollow.” She also links this to Brexit and criticises EU media coverage. She contends that political confrontations far removed from the EU’s normal comfort zone are needed to make European affairs more visible and engaging.

People in the UK might not like the EU, but they have deeply internalised it. They fight over something EU-related on a daily basis – not only when elections are coming. This is why the politically correct anti-Brexit campaign did not succeed. This is why Brexit happened.

The language used for EU storytelling is also of crucial importance. If the goal is for the EU to be better understood through shedding more light on integration processes instead of adding to the widespread confusion, Brussels jargon is hardly the right way to reach the average citizen. At the same time, it is essential that they understand how the institutions function, how decisions are taken and how they concern everyone. There should be a strong emotional bond between the Union and its citizens, who now perceive its

institutions as boring and its language as encoded in impenetrable jargon. This is also a flaw of the 'citizens' dialogues'. Experts do not agree on their usefulness. While it is undeniably important to make sure people feel that their voice can be heard and that the notion of Brussels is not all that far away, it is a challenge for the dialogues to achieve any great success or go a significant way towards filling the existing communication gap. Addressing different target audiences with almost identical messages (and speakers) undermines the effectiveness of this device and limits its expected impact at local and national level.

Prof. Shikova regularly meets with the public to discuss EU matters and she strongly advocates using simple words and being honest with people, because that is what people appreciate. She shared an amusing example of using Bulgarian cities that caught people's attention after they got confused with terms such as 'cohesion' or 'two-speed Europe':

I told them that the European idea is like travelling from Sofia to Plovdiv.⁴ Some drive a sports car, others drive a Trabant. The important thing is that we are all going to Plovdiv. Maybe some of us will get there an hour early. Maybe the sports car will tow the Trabant. But the real problem comes if someone changes direction. We must all keep our arrangement.

The most essential ingredient of storytelling is, of course, the stories themselves. The Commission rightfully recommends to institutions and journalists to make Europe seem more human so that citizens understand how the EU is part of their lives. This is most likely the right way – letting people do the actual talking. Regarding the content of the stories, Prof. Shikova emphasises the importance of instances that show everything is possible – such as the small Bulgarian village of Chavdar, also called 'the European village' that has benefited very noticeably from European funds, "making it a little piece of heaven". "People need to know that the EU is not concerned only with Erasmus+, roaming charges and easy travelling. They need to know that if they are active enough, the EU might come to their village."

⁴ Sofia and Plovdiv are the two biggest cities in Bulgaria.

The idea is to reach all groups of citizens. Recent data shows that 75% of European citizens have a positive image of the EU. Nevertheless, efforts should not necessarily be focused on the other 25%. Instead, optimists and sceptics alike should be included if a sustainable outcome is sought when communicating the EU. While Erasmus+ is undoubtedly one of the most successful initiatives the EU has ever undertaken, it cannot be endlessly counted upon to burnish the EU's image. Some experts maintain that the focus should not be on young people, but rather on middle-aged working and active voters who are interested in business opportunities, regional development and healthcare, for example. Moreover, this group is capable of influencing both the young and the elderly, leading to successful intergroup communication to the advantage of the EU. Others think the focus should indeed be on the young. Prof. Shikova in particular has always been keen on working with young people: "What you sow now might not grow during the next elections or the ones after them. But it will grow and there will be fruit." She shared an extremely successful initiative she started that involved students visiting regional elder activist clubs to talk about the EU. In the end, every group should feel heard and whoever stands before the public should be ready with a key message for everyone.

The channels used also determine who will be reached. It is crucial that EU affairs receive regular media coverage even if there is no specific occasion. A video of Jürgen Klopp, the current manager of Premier League club Liverpool, went viral recently. In a short but influential interview he speaks about the European idea and the implications of Brexit: "The EU is not perfect, was not perfect, will not be perfect. But it's the best idea we've had so far."

Nonetheless, online coverage should not be to the detriment of traditional media. Not everyone is on Facebook or Twitter, nor does everyone follow the online accounts of EU institutions. Most people do not actively seek information and are entirely dependent on the news they receive. It is TV and radio coverage that can influence millions of people from all groups at once and to an extent that even the audience itself does not realise. Citizens from all member states voted in favour of traditional media in response to the question of which channels should be trusted. Radio, television and printed issues were preferred to online newspapers and

magazines. At the same time, more than one third of voters admitted that they do encounter fake news (almost) every day and consider that journalists have the responsibility to stop the spread of fake news. However, the EU has the responsibility to work with journalists in order to actually achieve this goal.

Figure 5.5 Answers to the question “How much do you trust or not the news and information you access through...”

Q1 How much do you trust or not the news and information you access through...
(% - UE28)

	Radio		Television		Printed newspapers and news magazines		Online newspapers and news magazines		Video hosting websites and podcasts		Online social networks and messaging apps	
	Total 'Trust'	Don't know	Total 'Trust'	Don't know	Total 'Trust'	Don't know	Total 'Trust'	Don't know	Total 'Trust'	Don't know	Total 'Trust'	Don't know
UE28	70	10	66	5	63	10	47	20	27	25	26	20
Sex												
Male	69	9	62	5	62	10	48	17	30	21	27	18
Female	71	11	69	5	64	11	46	23	25	29	26	21
Age												
15-24	72	7	67	3	73	6	60	6	46	5	36	3
25-39	74	7	64	6	67	9	59	8	35	11	31	6
40-54	75	7	69	4	65	10	52	16	26	22	29	14
55 +	64	15	65	5	57	12	34	34	16	43	19	36
Education (End of)												
15-	55	18	57	5	45	17	22	39	14	44	18	39
16-19	68	10	67	4	60	11	41	23	26	27	27	21
20+	75	8	67	5	68	9	56	15	29	22	27	16
Still studying	76	7	70	2	79	4	65	4	47	4	36	3
Respondent occupation scale												
Self-employed	69	7	58	6	62	9	53	13	29	19	28	14
Employee	77	7	70	4	69	8	58	12	31	17	29	10
Manual workers	68	9	63	8	59	12	44	19	31	21	31	16
Not working	66	13	65	5	60	11	38	28	23	33	24	28
Frequency of Online Social Media use												
Every day or almost everyday	75	8	69	4	68	9	60	8	37	12	38	3
At least once a week	71	8	66	4	64	8	52	11	28	17	30	6
Several times a month	68	8	64	4	61	6	42	17	25	22	27	7
Seldom or never	64	13	62	6	58	12	29	37	13	44	9	46

Base: All Respondents (N=26,576)

Source: Flash Eurobarometer 464, February 2018.

Storytelling is also a way to draw the line between what is national and what is European. It is not that upholding European identity has become any less important for the success of the Union. On the contrary, Europe is a responsibility, moral and political, and must be shared among all Europeans. In Dr. Kovacheva's words: "It's not the EU that should talk – it's the national politicians." All the experts are unanimous on this matter, emphasising the impact that politicians have on the image of the EU and the way it is perceived by the people.

Many citizens think of the Union as a source of funding, but this is far from being a universal perception or one that unites. The 'European charity' notion is one of the fundamentally toxic but sadly widespread perceptions of the EU. This is disastrous on numerous levels – starting from the fact that the EU becomes the usual suspect to blame for certain failures of national governments, leading to the point where crucial elements for the survival of the European idea such as culture, identity and unity are completely overlooked.

What is more, few citizens can tell for what the EU is responsible and what depends entirely on the member state itself. Knowing the difference could significantly influence attitudes towards the European Parliament elections: first, people would understand better that the Union is not a magic wand that can wave away national problems; second, people would appreciate the areas to which the EU has contributed, the ways in which it did, and especially those where only the EU could make that contribution. Recent data reaffirms that the areas that challenge governments the most are the ones in which the EU does not have competence to act. As pointed out by Prof. Galabov, the things citizens in countries like Bulgaria mostly complain about such as healthcare, education or salaries are almost always something the EU cannot help with – but something for which it stands accused of not improving. In line with this, the most positive results can be found in areas where the EU exercises exclusive competence. These are the kind of contemporary challenges that new narratives should focus on to help the EU reconnect with Europeans.

The identity crisis has brought about the misconception that the EU is something we are only supposed to benefit from. Prof. Shikova is often asked the sceptical question "What did Bulgaria get

out of joining the EU?”, to which she always answers “Bulgaria got a chair and a microphone.” It is precisely this opportunity for a voice and the responsibility of member states to raise it that citizens usually forget when considering the pros of being part of the EU. They should, however, be regularly informed about the actual areas in which the EU has a say and which aspects are purely national problems, where the EU is not to blame.

While the national perspective and its correlated interests cannot be avoided, what can be achieved is to present supranational values through this national perspective. This is why it is essential to always refer back to the bigger picture, especially when it comes to Eastern European countries. Today’s generation should be reminded not only of wars, but also of the basic rights, freedoms and privileges that can only now be enjoyed – not because they are all the EU is about, but because they were unthinkable just a few decades ago.

It is therefore critical for pro-European political parties to conduct their campaigns accordingly and to have the courage to condemn all factors leading to disintegration, as maintained by Prof. Plamen Pantev, a leading expert in the theory of international relations.

Conclusions

The three questions with regard to today’s new narrative – what, who and how? – have been answered on the basis of these findings. Taken together these answers could pave the way towards more direct democracy and provide some of the tools citizens should understand and use in order to encourage their political participation.

The ‘what’ is concerned with the stories themselves. They should convey the message of sustainable benefits connected with the EU and its core values. While everyday examples can be communicated more easily, they should still be seen as part of the bigger picture and as only being possible through European unity. Topics such as terrorism and migration, which are undoubtedly of key importance to citizens, must be communicated by the EU on a daily basis. The comparison between what was then and what is now should also be included as it highlights the great efforts made

along the road to achieve the present-day EU. At the same time such generation gaps that remain unaddressed are something Eurosceptics use for their benefit. All of this should be channelled into calls for political participation as the only way that positive change is possible.

The 'who' relates to the actors who could impact the narrative. Reconsidering the leading role of traditional media is necessary. Although the current efforts put into online tools have proved successful, they should remain a subsidiary means of

The EU needs to reconnect properly and actively with all its citizens, especially the middle-aged who are in the position of influencing other groups but often do not really benefit from globalisation.

storytelling so as not to further reinforce the Brussels bubble. The EU needs to reconnect properly and actively with all its citizens, especially the middle-aged who are in the position of influencing other groups but often do not really benefit from globalisation. Audiences should be thoroughly analysed and every EU speaker has to be prepared to properly address the concerns of

different groups. In this regard, there should only be complementary reliance on 'citizens' dialogues'. Most importantly, young people should be educated from a young age to realise that they have the responsibility to engage politically, even if they are the most pro-EU generation so far. Political participation can be improved if these unprecedentedly educated and 'euro-optimistic' young people are also taught how they are supposed to exercise – and not only enjoy – their much-appreciated rights.

The 'how' represents the final recommendations in this paper and the manner in which successful storytelling could potentially take place. EU politicians should be

visionaries who look beyond short-term political campaigns and accept measured risks by openly speaking about the failures of the Union in order to secure people's long-term trust. Identifying the real problems while working on longstanding reforms is crucial for disarming populists. National politicians themselves should be the ones translating, if necessary, EU

EU politicians should be visionaries who look beyond short-term political campaigns and accept measured risks by speaking about the failures of the Union in order to secure people's long-term trust.

policies to their people and supporting them. It is not about blindly following the EU, but about clearly distinguishing the interests at hand and forcefully underlining how interconnected they are.

Identifying the real problems while working on long-term reforms is crucial to disarming populists.

All Europeans should understand three fundamental messages – what is good for the nation, what is good for the EU and why they must stand together to succeed. This is why they should be actively encouraged to make use of the existing direct democracy tools and to work towards the Union they want – towards a citizen's Union.

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6. CIVIL SOCIETY IN EU DECISION-MAKING: A LATVIAN CASE STUDY

RASMUS FILIPS GEKS

The capacity of civil society organisations (CSOs) to engage with EU decision-making is vital to effective democratic participation in the member states. This chapter assesses the activities of CSOs in Latvia and their use of EU-level participation methods. While CSOs are generally informed about the methods available, most fail to use them extensively. CSOs lack the resources to be effective, and previously inconsequential efforts or poorly designed methods can deter further participation. Taking part in expert groups and transnational cooperation are viewed as effective methods of participation, while public hearings and online debating tools are seen as ineffective. Participation rates and quality can be boosted by improving local-level engagement with MEPs, focusing on low-cost and low-effort methods, simplifying the design of public consultations, and offering financial incentives to smaller CSOs.

Introduction

Democratic engagement in decision-making is an important part of participatory democracy. CSOs often serve as the main intermediaries between citizens and decision-makers; their function is to give citizens a voice by bringing the plurality of interests to the attention of decision-makers. Nowhere is this more important than in the EU, where institutional structures and procedures can impose considerable limits on representation, which means that additional attention must be paid to the accountability of decisions that are made by the institutions (Kohler-Koch & Quittkat, 2013).

As such, consultations with external experts and interest groups on various legislative proposals are an important tradition

in various EU institutions. For the EC, this regime has evolved significantly over time, initially including only large trade unions and federations of associations, yet later expanding to create a more consistent dialogue with various European partners all along the policy chain (Lironi & Peta, 2017). The main principles of EU consultations are defined in the 2015 'Better Regulation Guidelines' and its accompanying toolbox 'Stakeholder Consultation Tools', which include various opportunities for CSOs to be a part of the consultation process.

Yet research on CSO engagement in EU decision-making often revolves around interest groups that are active only at the transnational level.¹ Less attention is paid to national level organisations and the tools of participation that are available to them, especially in smaller member states (MS).

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This chapter first surveys the extent to which Latvian CSOs are aware of and use the methods that are available for participation at EU level. Then it examines the perspective of Latvian CSOs regarding the effectiveness of these tools, to better understand how engagement between CSOs in various countries and EU policymakers can be boosted.

6.1 Characteristics of CSOs in Latvia

Latvian legislation provides for two types of non-governmental legal structure: associations and foundations. Both organisation types have non-profit goals; the main differences between them relate to the institutional structure and functions of the organisations. Foundations focus on the redistribution of either property or funding provided by founders, while associations mostly deal with interest representation (Frīdenberga, 2001). Further legal provisions allow organisations to be classified as 'public benefit organisations', assuming that their activities fulfil

¹ For example, see Klüver (2013).

certain public benefit functions specified in the law.² This allows organisations to receive additional benefits, such as provisions for tax discounts. We refer to all of these organisations as CSOs in this chapter.

The most detailed assessment of CSOs activities in Latvia is carried out by the association 'Civic Alliance – Latvia', which is an umbrella organisation representing the overall interests of civil society. In 2015 the total number of CSOs was around 20,000, and an average of 1,500 new organisations have been registered annually since 2008. Of these, around 30.4% worked on a city or municipal scale, 10.9% worked regionally, 38.6% nationally and 12.5% on an international scale.

Most organisations focus on advocacy (13.5% of all CSOs), education (12.9%) and community development (11%), while other areas of work include leisure activities (10.4%), social services (9.2%), as well as culture and art (7.4%). Around 5.5% of CSOs represent professional associations (Civic Alliance – Latvia, 2016).

6.1.1 CSOs membership and participation in the legislative process

The trend seems to indicate that the overall involvement of individuals in CSOs is increasing. In 2015, around 35% of Latvians confirmed in a survey that they had been involved in some public group organisation over the previous three years, which is slightly more than in previous years. Despite this, activism in CSOs in Latvia is generally viewed as moderate – only around 5% of the population are members of associations, and around 15% engage in interest groups and volunteer activities. Furthermore, only around 14% of the population think that they can meaningfully influence the decision-making process in Latvia, which is why the ability of CSOs to create real impact through their activities is so important (Civic Alliance – Latvia, 2016).

The main means of cooperation between CSOs and policymakers include participation of representatives from CSOs in i) development of policy planning documents and legislation; ii) supervision of EU structural funds; iii) participation in working

² Detailed explanation for requirements and benefits of the status is available at State Revenue Service (2015).

groups, either in ministries or Parliament; iv) ad hoc consultations regarding key issues in specific areas; v) research into economic or other social issues; vi) educational events; and vii) provision of services and delegation of tasks to the CSOs (Civil Alliance – Latvia, 2016).

Research into the capacity of CSOs in Latvia overwhelmingly concludes that most lack the capacity and expertise to successfully influence decision-making. It highlights the prominence of a few organisations with a reputation for active and successful advocacy, and a lack of access and interest on the part of smaller CSOs. Nevertheless, in a recent comparative assessment on the quality of access for CSOs in the EU, Latvia scored significantly above average, indicating that the environment for social dialogue is generally favourable (Alksne, 2014).

6.1.2 Research on Latvian CSOs and EU-level participation

Some research has specifically explored the involvement of Latvian CSOs in advocacy on an EU-level. A survey of Latvian CSOs in 2013 concluded that CSOs mostly focus on national-level policymaking and choose to focus on advocacy in national organisations and institutions. Direct methods of interest representation, such as written communication, are used most often. When engaging in advocacy on an EU level, the survey suggests that Latvian CSOs seem to focus on the European Commission and European Parliament, with most of the actual advocacy done through the national representations of these institutions. Active advocacy in Brussels seems to be rare, as only 2-3% of organisations have any experience of this. Similarly, the research concluded that professional associations tend to be more active in Brussels than other types of social CSOs (Rūse, 2013).

Additional research has explored the extent to which Latvian CSOs are able to engage in shaping Latvia's national position on EU policy proposals. It concluded that the Latvian legislation overall provides good opportunities to influence national positions, but CSOs themselves often lack the skills and experience to meaningfully influence the national position in the short time frame during which they must give feedback to the draft national positions (PROVIDUS, 2014).

6.2 Survey methodology

6.2.1 *Opportunities for participation on an EU level*

We identified ten main ways in which organisations in Latvia might have had an opportunity to be involved in the discussion of EU issues and EU-level policymaking. These methods are:

- 1) **Public consultations with the EC online.** These include surveys and questionnaires published by the European Commission and often promoted by the representative national organisation, in which the Commission seeks the views of citizens and stakeholders on proposed policy and legislation. As of August 2018, 486 such public consultations have been organised by the EC.³
- 2) **Participation in expert groups of the EC.** These include expert groups and similar entities that assist the Commission in the preparation of legislative and policy initiatives, delegated acts, and the implementation of EU legislation, its coordination and cooperation with relevant stakeholders.⁴ Experts from organisations tend to be invited to these groups.
- 3) **Consultations by the European Economic and Social Affairs Committee (EESC).** As an independent consultative body of the EU, the EESC can also take up the role of facilitating the consultation process between the EC and civil society. One of its main functions is specifically giving a voice to workers' and employers' organisations, and other interest groups.⁵
- 4) **European Citizens' Initiative.** This is a specific participatory democracy instrument that allows citizens to propose concrete legislation in any field where the EC has a competence. Launching an initiative currently requires seven

³ For additional information on the method, see EC (2018), "Consultations".

⁴ For additional information on the method, see EC (2018), "Registration of Commission Expert Groups".

⁵ For example, see EESC (2018).

EU citizens in seven MS and one million signatures before the EC can decide to take action.⁶

- 5) **Citizens' dialogues in member states organised by the EC.** These are public events organised in a specific member state, which often include the participation of either the relevant Commissioner or another high-ranking EU official.⁷
- 6) **Consultations with EU institutions or politicians in cooperation with umbrella organisations.** These include events or consultations that are facilitated specifically by transnational organisations that represent a specific interest group or a poll of organisations from various MS.
- 7) **'Debating Europe' or other online discussion platforms on global EU issues.** This platform offers an opportunity for citizens to engage in or initiate discussions on various global issues relevant for the EU. The platform aims to involve high-level EU officials in the discussions (Cmeci, C., & Doina Cmeci, 2014).
- 8) **Public hearings organised by the EP Committees.** EP committees can organise hearings that include experts on aspects that are essential to their work on a particular subject. Most committees organise such hearings regularly, since they allow MEPs to hear expert opinions and hold discussions on key policy issues.⁸
- 9) **Public consultations organised by Latvian MEPs on specific EP policy initiatives.** These include either public or private meetings with MEPs, during which EU policy initiatives are discussed.
- 10) **Participation in shaping Latvian national positions on EU policy proposals.** This is usually done either by consulting ministries or the European Affairs Committee of the national parliament. Latvian legislation requires the responsible ministries to inform CSOs about the start of the national

⁶ For additional information on the method, see EC (2018), "The European Citizens' Initiative. Basic Facts".

⁷ For additional information on the method, see EC (2018), "Citizens' Dialogues".

⁸ For additional information on the method, see EP (2018), "Hearings".

policy development process and how they can engage in working out a national position. In most cases, organisations participate either by submitting written comments or by taking part in working groups and meetings. The most important positions are submitted to the European Affairs Committee of the parliament, which is generally open to participation by CSOs (PROVIDUS, 2014).

6.2.2 Survey design

For the purpose of this survey, organisations were provided with a list of the methods identified previously. In the first part of the

For the purpose of this survey, organisations were provided with a list of the methods identified previously

survey, participants were asked to identify whether they were familiar with each of the methods, and whether they considered the method to be an effective or an ineffective form of engagement. In the second part,

organisations were asked to identify the methods they had used before and to say whether the method they used was effective or ineffective. Lastly, organisations were asked to comment on the most and least effective methods of participation based on their experience. The survey was conducted during June-August of 2018; a full list of questions is available in Annex 2.

The results of this survey have some important limitations. First, the survey was voluntary therefore the organisations that chose to fill it in did not constitute a perfectly representative sample of CSOs in Latvia. Second, while this report refers to the opinion and experience of organisations, it is necessarily limited by the expertise and experience of the individuals providing answers on behalf of the organisations. Nonetheless, the survey is an opportunity to examine the perspective of a diverse range of CSOs and offers valuable insights into the overall CSOs sector in Latvia and its perspective on democratic participation on an EU level.

6.2.3 Profile of the survey participants

More than 200 active organisations that had contact details or social media pages were invited to participate in the survey; 46 organisations responded. Eighteen main activity areas were

identified, with most organisations working in healthcare, social issues, development, business interests, education, civil society, social services and technology.

The organisations' membership is quite evenly distributed, yet most organisations have only a small number of employees. Around 24% of organisations represent up to ten member (either legal entities or individuals), 26% represent between ten and 50 members, 19.6% represent between 50 and 100 and 30.4% represent more than 100 members. As for the capacity of these organisations, 63% employ between one and five full or part-time employees, while 13% employ between five and ten and 22% employ more than ten.

The organisations were also profiled on their policymaking activities. A majority expressed a keen interest in advocacy to influence national policy, but only a few were actively involved with advocacy on an EU-level. About 45% considered it to be either their main or one of the main functions of the organisation, while 37% tended to be involved and around 17% are barely involved or not involved in policymaking at all. Regarding EU-level policymaking, a clear majority was either never involved (28%) or hardly ever involved (48%). Only a few said they were often involved (9%) or considered it to be one of the key functions of the organisation (15%).

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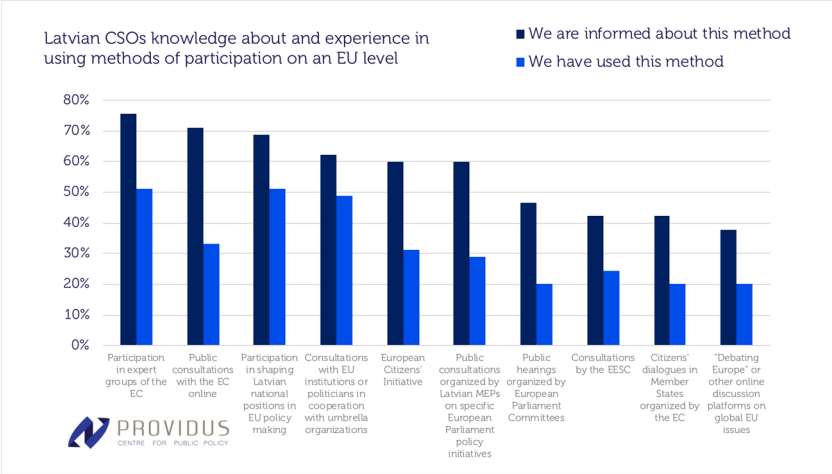
Despite this, when enquiring about general interest to participate on an EU level, most organisations expressed some interest. Some 32% were slightly interested, 30% were interested and 24% expressed great interest in being involved in discussions on EU issues and EU policymaking. Additionally, 63% of all organisations were also members of transnational organisations that operate on an EU level. **This suggests that despite a lack of activism, most organisations have an interest in increasing their activities on an EU level.⁹**

⁹ Full profile of the organisations is available in Annex 1.

6.3 Survey results

6.3.1 Knowledge and experience of using the methods

Figure 6.1 Latvian CSOs experience of EU-level participation methods



When evaluating overall knowledge of participatory methods, participation in expert groups, public consultations with the EC and in shaping national policies seemed to be the most recognised methods (Figure 6.1). Consultations with umbrella organisations, ECI and public consultations with MEPs all seemed to be known by around 60% of organisations, while the least recognised methods were public hearings, consultations with the EESC, Citizens' dialogues and the 'Debating Europe' platform.

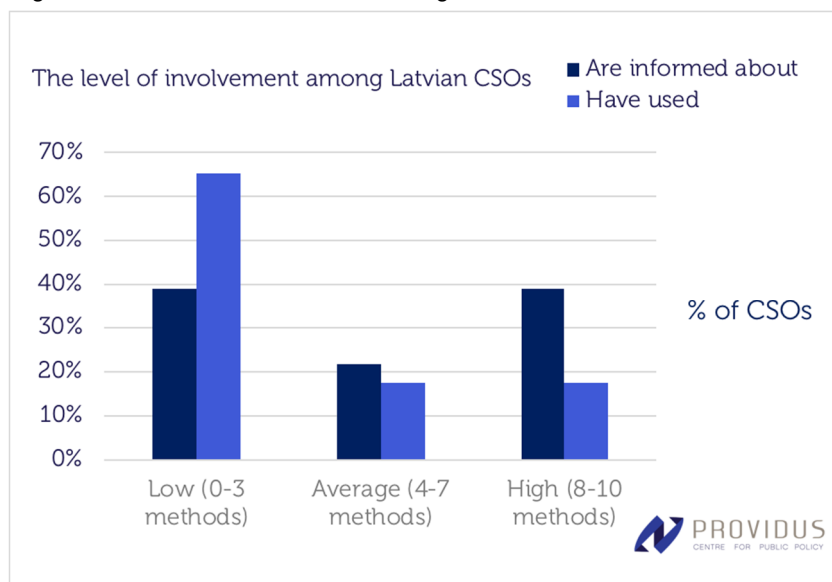
Experience of using these methods varied. Generally, organisations had the most experience in shaping national policies, participation in expert groups, and consultations with EU institutions in cooperation with umbrella organisations. While most CSOs had heard of public consultations, only about 30% had actually used them. Organisations responding to this question remarked that public consultations usually involved long and complicated questionnaires that discouraged participation. A similar gap between knowledge and experience seemed to exist for public EP hearings, the ECI, and consultations with MEPs.

When commenting on why organisations did not use the available methods, most respondents referred to the capacity and financing that was available to them; a lack of information on how

to participate; or the organisation's specific focus on national rather than EU-level politics. Organisations tended to view this type of participation as resource heavy and did not see that activism or participation would necessarily result in any tangible benefits. Other comments referred to the disproportionate influence of larger member states; the fact that EU-level participation is mostly conducted through umbrella organisations or that their efforts to contact Latvian MEPs for assistance had been dismissed.

There is also a marked difference between the levels of knowledge and an active use of participatory methods for most CSOs (Figure 6.2). While about 40% of organisations were barely informed or knew about three or fewer methods, another 40% were well informed and knew of eight or more methods of participation. Yet most organisations were also very inactive – two-thirds only had experience of using three or fewer methods, and less than one-fifth had experience of using more than eight methods. The average CSO knew five and had experience of two methods of EU-level participation.¹⁰

Figure 6.2 Level of involvement among Latvian CSOs



¹⁰ Median for the participations of the survey.

6.3.2 Effectiveness of methods

Figure 6.3 Latvian CSOs: effectiveness of various methods of EU-level participation

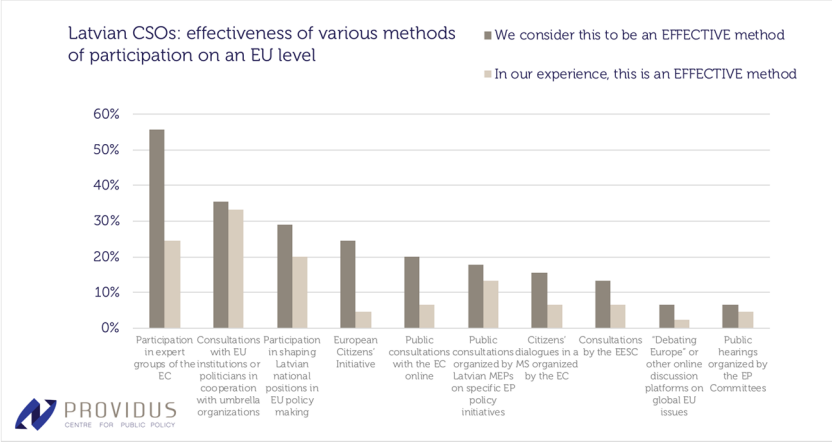
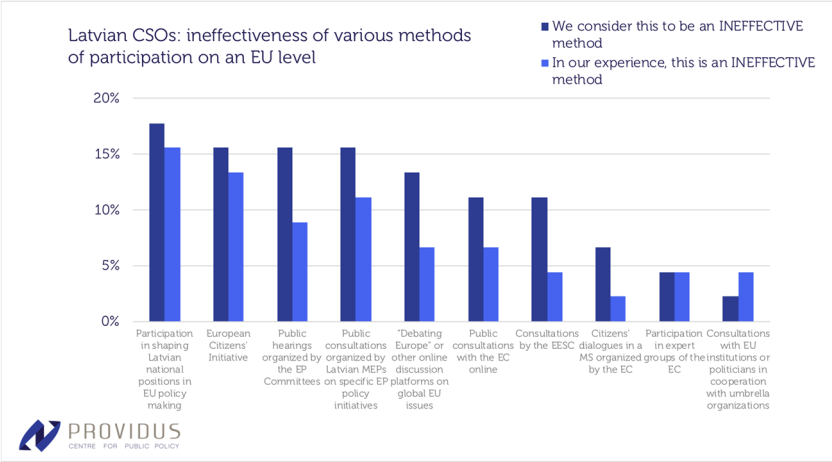


Figure 6.4 Latvian CSOs: ineffectiveness of various methods of EU-level participation



Latvian CSOs view participation in expert groups, as well as involvement in umbrella organisations, as the most effective forms or participation (Figure 6.3 and Figure 6.4). Both of these are rated favourably by the majority of CSOs, and both received only a few

negative ratings. Additional comments on this offered little detail as to why this might be the case, yet the overwhelmingly positive opinion and other comments in the survey seem to suggest that participation in expert groups and umbrella organisations has allowed Latvian CSOs to achieve the type of impact that CSOs seem to be looking for. Similarly, it could be the case that they are viewed particularly favourably because they provide the

Latvian CSOs view participation in expert groups, as well as involvement in umbrella organisations, as the most effective forms or participation.

most direct access to EU decision-makers, as is suggested by the fact that most organisations that view expert groups as effective have not actually used the method.

The biggest differences in opinion about efficacy relate to shaping national positions and consultations with Latvian MEPs. Both of them are viewed either positively or negatively by similar numbers of CSOs, and additional comments also contain mixed opinions on their effectiveness.

The biggest differences in opinion about efficacy relate to shaping national positions and consultations with Latvian MEPs.

Consultations with MEPs received both praise and criticism; some respondents highlighted a strong desire on the part of certain politicians to assist their organisation, while others said that MEPs only dismissed or ignored their concerns.

Participation in shaping national positions reveals similar comments. Some organisations indicated that the time and resource investment in this method produced no results; that significant effort to provide commentaries is ignored by the responsible institutions or that the method is employed by the ministries as a token rather than out of a genuine interest to ensure CSOs' participation. Other organisations indicated that this method was the easiest way to communicate information to decision-makers.

Additional assessment of data suggests that size of the organisation could be a contributing factor.¹¹ Larger organisations with more than five employees were more likely to rate shaping national policies as effective compared to smaller organisations, and smaller organisations were more likely to view consultations with national MEPs as ineffective.¹² Again, comments from organisations suggest that resources available to organisations could be a contributing factor, especially when it comes to access to MEPs or the ability to influence individuals responsible for developing national policies.

The ECI, consultations with the European Economic and Social Affairs Committee (EESC) and online consultations with the EC returned similarly mixed reviews, but are recognised or have been used by far fewer organisations. Furthermore, methods such as the ECI or consulting the EESC seemed to be more popular among larger organisations, while smaller organisations were more aware of citizens' dialogues. Public hearings by the EP and Debating Europe platform were the only methods to be viewed more negatively, yet they were also among the least recognised and least used methods of participation.

6.3.3 Opinion on increasing civil society involvement

Most of the responses received suggested ways in which CSOs

Specific invitations to use certain methods or to state the organisation's opinion is the best way to incentivise more participation. Additional financing and budgeting support were mentioned frequently.

could be incentivised to use more participatory methods. Specific invitations to use certain methods or to state the organisation's opinion is the best way to incentivise more participation. Similarly, additional financing and budgeting support were mentioned often, as lack of adequate staff seems to prohibit organisations from using these

methods. These comments also reflect a more general sentiment

¹¹ Organisations were also asked how many full and part-time employees they had. Some 63% of organisations were classified as small (between 1 and 5 employees) and 34.8% as large (5+ employees).

¹² In both cases, the difference was by about 15 percentage points.

among Latvian CSOs; the lack of long-term and consistent funding from the government is viewed as one of the biggest issues currently facing organisations. As such, some organisations thought that financial rewards could be a good incentive to boost participation.

Additional comments requested more opportunities to meet Latvian MEPs, suggesting that there should be more direct pressure from the EP to achieve this. Similarly, more consistent outreach from the EESC could be helpful, in which Latvian organisations receive more formal recognition, as well as campaigns to inform them about the available participation methods or easy-to-read resources that could be distributed to members of organisations inviting them to participate. A lack of information and events in the Latvian language is also mentioned a few times, since organisations tend to have longstanding members with no knowledge of English.

Conclusions

This chapter provides a brief assessment of a select group of CSOs in Latvia. Feedback from national organisations can be helpful when trying to improve both representative and participatory democracy on an EU level.

The average Latvian CSO is informed about five methods and has experience of using two means of EU-level participation; while CSOs are generally informed about the available methods of participation, they have very limited experience in using them. Participation in shaping national policies, and expert groups organised by the EC are the most recognised and used methods, while public consultations offered by the EC are as popular but used far less. Other popular and frequently used methods of participation include consultations with the EU through transnational organisations, consultations with national MEPs and the ECI.

While CSOs are generally informed about the available methods of participation, they have limited experience in using them. Participation in shaping national policies, and expert groups organised by the EC are the most recognised and used methods, while public consultations offered by the EC are as popular but used far less.

Generally, participation in expert groups, as well as consultations through transnational organisations, are recognised

as the most effective forms of participation. Views on shaping national policies and consultations with MEPs vary – some organisations see them as being particularly effective, while others reported that their experience had been mostly negative. Only public hearings by the EP and online discussion platforms elicit a more negative response, and they are also among the least popular methods of participation.

Some valuable insights for policymakers can be derived from the responses provided by the Latvian CSOs:

- 1) **There should be a focus on low-cost and low-effort methods of participation.** While public consultations have the potential to be more widely used by organisations, the complexity of questionnaires seems to be a considerable disincentive. Because of resource constraints, less established and smaller CSOs whose main focus is not EU-level policymaking might otherwise never choose to use these methods, even if there is some desire to do so.
- 2) **More systematic incentives to organise individual meetings with MEPs should be created.** While these are generally at the discretion of MEPs themselves, our survey results indicate that this approach has the most potential to boost the participation of CSOs. Despite some of the negative perspectives, detailed comments received during the survey mostly praised this method; providing more organisations with access to MEPs could thus be useful.
- 3) **Initiatives that specifically reach out to CSOs could boost overall levels of participation.** The current methods of promoting different forms of participation are more rewarding for CSOs that seek out participation themselves. Yet some organisations whose perspective on overall issues could be valuable seem to indicate that they will not commit to participatory methods unless directly engaged. While this kind of approach might be more resource-intensive for EU bodies, it also has the potential to boost the participation of local CSOs in member states.
- 4) **Transnational organisations are still an important channel but this leaves behind organisations that might not be members.** The survey indicates that Latvian CSOs that are already active in transnational umbrella organisations view

this type of participation as very positive, and this could be particularly valuable for smaller CSOs. Since a number of the CSOs surveyed claimed that policy in their area of expertise is only developed at a national level, efforts to boost their participation in transnational organisations could change that perspective and facilitate their EU-level engagement.

- 5) **Despite high levels of awareness, public consultations with the EC do not have a good reputation among CSOs.** Since this seems to be one of the most recognised methods of participation, additional efforts to simplify ways for organisations to provide input might be valuable in boosting participation, especially for smaller organisations whose ability to participate on an EU level will always be limited.
- 6) **Financial incentives could boost involvement from CSOs that are more financially constrained.** This seems to be particularly relevant for environments in which CSOs systematically lack access to funding. In such cases, even small incentives could play a big role in boosting participation.

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Annex 1 to Chapter 6: Profile of CSOs in the survey

Main area of focus	Number of organisations
Did not specify	15
Health care	5
Social issues	4
Development	3
Business interests	2
Civil Society	2
Education	2
Professional association	2
Technology	2
Agriculture	1
Environment	1
Environmental	1
Foreign Affairs	1
Human Rights	1
Interest representation	1
Migration	1
Politics	1
Sports	1

	Regional scope of activities (organisations could specify several answers)
City	8.7%
Regional	10.9%
Several regions	8.7%
National	78.3%
International	45.7%

	Total employees (full or part time)
1-5	63.0%
5-10	13.0%
10-20	8.7%
20+	13.0%

	Total members (legal persons or individuals)
0-10	23.9%
10-25	13.0%
25-50	13.0%
50-100	19.6%
100+	30.4%

	To what extent is your organisation involved in legislation on a national level?
Not at all	6.5%
Barely involved	10.9%
Sometimes	37.0%
One of the key objectives	39.1%
Main objective	6.5%

	To what extent is your organisation involved in legislation on an EU level?
Not at all	28.3%
Barely involved	47.8%
Sometimes	8.7%
One of the key objectives	15.2%
Main objective	0.0%

	To what extent is your organisation interested in discussing important EU issues and participating in EU legislation (1 - not interested at all, 5 – very interested)
1	0.0%
2	13.0%
3	32.6%
4	30.4%
5	23.9%

	Is your organisation a member of a transnational umbrella organisation in the EU?
Yes	63.0%
No	37.0%

Annex 2 to Chapter 6: Survey Questions

1. Please list the main area in which your organisation is working.
2. What is the geographical scope of the activities of your organisation?
 - City
 - Regional
 - Several regions
 - National
 - International
3. What is the total number of employees in your organisation (full or part time)?
 - 1-5
 - 5-10
 - 10-20
 - 20+
4. What is the approximate total number of members in your organisation (legal entities and individuals)?
 - Mark if no individuals
 - 0-10
 - 10-25
 - 25-50
 - 50-100
 - 100+
5. To what extent is your organisation involved in legislation on a national level?
 - Not at all
 - Barely involved
 - Sometimes
 - One of the key objectives
 - Main objective
6. To what extent is your organisation involved in legislation on an EU level?
 - Not at all
 - Barely involved
 - Sometimes
 - One of the key objectives
 - Main objective

7. Please rate the extent to which your organisation interested in discussing important EU issues and participate in EU legislation.
 - 1 (not interested at all) to 5 (very interested)
8. Is your organisation a member of an international umbrella organisation or coalition of organisations that is involved in interest representation on an EU level?
 - Yes
 - No
9. Please mark all of the methods of participation on an EU level that you are informed about! After that mark all of the methods that you consider to be effective (if any) and methods that you consider to be ineffective (if any). You are not required to mark every method, but only ones that you are informed about.
 - List of the 10 methods specified in the main body of the paper.
 - Each method has a tick box for ('We know this method'; 'We think this is an effective method'; 'We think this is not an effective method')
10. Please mark all of the methods of participation on an EU level that you or your organisation has used! After that mark all of the methods that based on your experience were either effective (if any) or ineffective (if any). You are not required to mark every method, but only ones that you have experience in using.
 - List of the 10 methods specified in the main body of the paper.
 - Each method has a tick box for ('We have used this method'; 'In our experience, this was an effective method'; 'In our experience, this was not an effective method').
11. If your organisation has been involved in discussing issues on an EU level, which method of participation did you find to be the most effective? Why?
12. If your organisation has been involved in discussing issues on an EU level, which method of participation did you find to be the least effective? Why?
13. If your organisation is not often involved in participating on an EU level, what are the main reasons?
14. What could national or EU level institutions and organisations do to facilitate a more active involvement from your organisation in discussing EU level issues or developing EU legislation?

PART III.
COUNTRY REPORTS

7. DIRECT DEMOCRACY IN AUSTRIA: JUST A TOOL FOR THE OPPOSITION?

STEFAN SCHALLER, PAUL SCHMIDT &
CHRISTOPH BREINSCHMID

There are several forms of direct democracy in Austria: legally binding referendums, non-binding popular initiatives, people's consultations, parliamentary citizens' initiatives and parliamentary petitions – all are regulated by the Austrian Federal Constitution and appear in the parliamentary rules of procedure. On the regional level the state constitutions of the nine federal provinces also allow for direct democracy, albeit to a different extent.

EU matters are regularly the subject of direct democratic instruments, even though the prospects of success remain rather low. Political parties – especially when in opposition – frequently use them to stimulate public debate and mobilise voters. In recent years, calls to strengthen direct democracy *à la suisse* have grown louder. This is also reflected in the coalition agreement of the current Austrian government.

Introduction

It is nearly 100 years since direct democracy instruments were introduced in Austria. The Federal Constitutional Law of 1920 allowed for the possibility of holding referendums or popular initiatives.¹ Even one year earlier we can find such regulations in the state constitution of Austria's westernmost federal province of

¹ Gesetz vom 1. Oktober 1920, womit die Republik Österreich als Bundesstaat eingerichtet wird (Bundes-Verfassungsgesetz) [Law of 1 October 1920 establishing the Republic of Austria as a Federal State] (www.verfassungen.de/at/at18-34/oesterreich20.htm).

Vorarlberg.² Despite this long legal tradition, it was not until 1964 that the first nationwide popular initiative was held, and the first referendum took place in 1978.

As a result of the multiple internal and external crises the EU has had to cope with, the fragmentation of Austria's party system and the overall impact of globalisation and digitalisation, there is growing scepticism about the ability of traditional parties, representative democracy and the EU decision-making process to deal with the challenges ahead.

Due to the multiple internal and external crises the EU has faced, the fragmentation of Austria's party system and the impact of globalisation and digitalisation, there is scepticism about whether traditional parties, representative democracy and the EU decision-making process can deal with all the challenges.

Consequently, calls for more 'direct democracy' have gained prominence in the national political debate.

7.1 The national context

Several forms of direct democracy are regulated by the Austrian Federal Constitution and appear in the parliamentary rules of procedure: **referendums** (Volksabstimmung), **popular initiatives** (Volksbegehren), **consultations of the people** (Volksbefragung), **parliamentary citizens' initiatives** (Bürgerinitiative im Nationalrat) and **parliamentary petitions** (Petition im Nationalrat / Bundesrat). On the **regional level** the state constitutions of the nine federal provinces³ all allow for direct democracy, but to differing extents.⁴

² Historisches Gesetz vom 14. März 1919 über die Verfassung des Landes Vorarlberg [Historic law of 14 March 1919 on the State Constitution of the federal province of Vorarlberg] (www.mehr-demokratie.at/de/vorarlberg-historische-landesverfassung-1919).

³ See www.help.gv.at/Portal.Node/hlpd/public/content/223/Seite.2230001.html.

⁴ Kommunalwissenschaftliche Gesellschaft (2014), „Direkte Demokratie und Partizipation in den österreichischen Gemeinden“ [Direct Democracy and Participation in the Austrian communities], pp. 5-23 (www.gemeindebund.at/website2016/wp-content/uploads/2017/05/).

In some provinces communities have the right to initiate referendums on intended federal state laws.⁵ They also allow for citizens' assessments (Bürgerbegutachtungen) of bills as well as the right to launch petitions. In 2013, the province of Vorarlberg enshrined 'direct democracy' as well as 'other forms of participative democracy' in its state constitution⁶ and promoted its model of 'wisdom councils' (Bürgerräte) in which a small group of randomly selected citizens of a community deliberate over one or two days on community issues and develop ideas and recommendations for policymakers.⁷

7.1.1 *Referendums*

The regulations to hold a referendum are defined in the Federal Constitutional Law⁸ and in the Referendum act of 1972.⁹ If the National Council – the Austrian Parliament – so resolves, or if the majority of members of the National Council so demands, every National Council enactment can be put to a referendum. Any total revision of the Federal Constitution must be made the subject of a national referendum; any partial revision requires this only if one third of the members of the National Council or the Federal Council

[RFG_4-2015-Direkte-Demokratie-und-Partizipation-in-den-oesterreichischen-Gemeinden.pdf](#)).

⁵ See www.parlament.gv.at/PERK/BOE/DD/.

⁶ Verfassungsgesetz über die Verfassung des Landes Vorarlberg [Constitutional Law on the State Constitution of the federal province of Vorarlberg], Art. 1.4 (www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000001).

⁷ Büro für Zukunftsfragen, Amt der Vorarlberger Landesregierung (2014), „Bürgerräte in Vorarlberg – Eine Zwischenbilanz“ [Wisdom councils in Vorarlberg – a mid-term evaluation] (www.vorarlberg.at/pdf/kurzfassungbuergerraetzezw.pdf).

⁸ Bundes-Verfassungsgesetz [Federal Constitutional Law], Art. 43 and 44(3) resp. Art. 60 (6) (www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf).

⁹ Volksabstimmungsgesetz von 1972 [Referendum Act of 1972] (www.bmi.gv.at/410/files/Volksabstimmungsgesetz_1972_Kunsttext_2013.pdf).

so demands. A national referendum can also be used to depose the federal president before expiry of his term of office. Such a referendum can be held if the Federal Assembly so demands. All Austrian citizens eligible to vote aged 16 years¹⁰ and over are entitled to take part in a national referendum.

Two nationwide referendums have been held so far: in November 1978 Austrians were asked whether they approved a law allowing for the peaceful use of nuclear power – an issue which was rejected by 50.47% of voters in a turnout of 64.1%. In June 1994 Austrians voted to join the European Union with the consent of 66.6% of voters, in a turnout of 82.3%.

Two nationwide referendums have been held: in November 1978 Austrians were asked whether they approved a law allowing the peaceful use of nuclear power – an issue rejected by 50.47% of voters in a turnout of 64.1%. In June 1994 Austrians voted to join the European Union with the consent of 66.6% of voters, in a turnout of 82.3%.

7.1.2 Popular initiatives

The popular initiative instrument is regulated in the Federal Constitutional Law [Article 41] and the Act on popular initiatives.¹¹ To start a popular initiative, signatures of support from one-thousandth of the overall population (according to the latest population census) are required, in this case 8,401 signatures. For a popular initiative to be dealt with by the National Council, either a threshold of 100,000 signatures on the national level (including those already obtained in the initiating phase) or the signatures of one-sixth of the eligible voters of three federal provinces are required. This number can already be reached in the initiating phase (whose duration is not regulated) but at the latest during the official registration week (eight consecutive days) set up by the Ministry of Interior. Since 30 January 2018, citizens can sign a popular initiative in every municipality (regardless of their own place of residence) or online via a 'qualified electronic signature' ('Handy-Signatur').¹² A

¹⁰ In 2007, the voting age in Austria was lowered from 18 to 16 years of age.

¹¹ Volksbegehrensgesetz 2018 [Act on popular initiatives 2018] (www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009719).

¹² See www.bmi.gv.at/news.aspx?id=4330656F32336438727A413D.

'successful' popular initiative is dealt with in the responsible parliamentary committee that reports within four months to the plenary, which further discusses the issue. As the popular initiative is non-binding, members of the National Council can decide if (or in which way) its contents will be implemented.

By April 2018, 38 Austria-wide popular initiatives had been 'officially' started,¹³ albeit with varying degrees of frequency and success. In the first six years (1964-69) three initiatives were launched, which all attained the required number of signatures to be dealt with in Parliament. In the 1970s, only one fulfilled all requirements. The instrument gained momentum in the following decades: in the 1980s ten initiatives passed the threshold to be started and nine to be dealt with in Parliament. This trend continued during the 1990s (ten started /nine dealt with in Parliament) and the 2000s (nine started and dealt with in Parliament). Between 2011 and 2017 six popular initiatives were started, of which three were debated in Parliament. The current debate about more direct democracy is reflected in the fact that only in the first half of 2018 had two popular initiatives gained sufficient support to be dealt with by the National Council, although the official registration period had not even started when a third initiative already passed the 8,401 signatures necessary to qualify for registration week.

The requirements to initiate or register a popular initiative have been lowered continuously: at the first attempt in 1964, the signatures of 30,000 citizens [eligible voting population 1962: **4,805,351 / =0.62%**] or of 15 members of the National Council or one-fifth of three state parliaments (Landtage) were needed to start an initiative. To be dealt with in Parliament, 200,000 signatures had to be collected (=4.16%). In 1972 the Act on Popular Initiatives decreed that only 10,000 signatures (eligible voting population 1971: **4,984.448 / = 0.20%**); or eight signatures of members of the National Council, or four members of three state parliaments were needed to launch a popular initiative. In 1981 the threshold of 200,000 was reduced to 100,000 (eligible voting population 1979: **5,186.735 / = 1.93%**). In 1998 the current regulation entered into force, eliminating

¹³ In April 2018 (at the time of writing), two popular initiatives had already gained sufficient support to be dealt with by the National Council, although the official registration had not yet started.

the possibility for members of the National Council or the state parliaments to 'officially' support the launch of a popular initiative.

The popular initiatives instrument is also codified on the regional level, although it has rarely been used in practice. In 1986, Styria held a popular initiative against the deployment of the Draken interceptors in the federal province (turnout: 28.63%). Vorarlberg's citizens were able to cast their vote in four popular initiatives since 1962 – although turnout was extremely low.¹⁴

7.1.3 Consultations

The people's consultation instrument is regulated in Article 49b of the Federal Constitutional Law and in a corresponding act of 1989.¹⁵ It is non-binding and can be started if the National Council or the government so decides, to gauge people's opinion on matters of "fundamental or overall national importance". Elections and matters subject to a decision by court or an administrative authority cannot be the topic of a people's consultation. The instrument has so far only been used once, in 2013, on the question of whether to introduce a professional army and a voluntary social year or to keep compulsory military service and civilian service.

The people's consultation instrument has so far only been used once, in 2013, on whether to introduce a professional army and a voluntary social year or to keep compulsory military service and civilian service.

At regional level, people's consultations are a much more common tool to gauge public opinion: Vorarlberg was the first province to hold such a consultation in 1972 on shops' closing time, a second consultation on banning lorries at night followed in 1989.¹⁶ To cite other examples, in March 1986 citizens of Lower Austria could decide on whether Lower Austria should have its own capital city (Vienna being the seat of the Lower Austria's state parliament

¹⁴ See www.vorarlberg.at/pdf/uebersicht-teil-vbeg.pdf.

¹⁵ Volksbefragungsgesetz 1989 [Act on consultations of the people 1989] (www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001008).

¹⁶ See <http://www.vorarlberg.at/pdf/uebersicht-teil-vbef.pdf>.

until then), which was supported by 56% of those polled (turnout: 61.3%).¹⁷ Viennese citizens have already taken part in eight (partly multiple-question) consultations since 1973, for example in 1991 on the question of the joint organisation of the EXPO with Budapest (which was rejected by 64.85%, with a turnout of 43.7%), or in 2013 on the subject of hosting the Olympic Summer Games (which was rejected by 72% with a turnout of 38.83%).¹⁸ A potential candidature to host the Olympic Winter Games was also the subject of consultations in Tyrol (twice in 1997 and in 2017) and in the province of Salzburg (twice in 1997 and 2006). In recent years, some provinces reduced the threshold to initiate direct democracy instruments, notably to make them more attractive (e.g. Upper Austria in 2015, Carinthia in 2017, Lower Austria in 2018).

At the local level of Austrian communities, direct democratic instruments are also very common, although exact figures are hard to find. As a study of the Kommunalwissenschaftliche Gesellschaft (Municipal Science Society) shows, until October 2014 about 150 referendums, 554 public initiatives and 172 consultations of the people (preliminary data) have been held at community level.¹⁹

7.1.4 Further forms of direct democracy

Other means of regulated direct democracy are the parliamentary citizens' initiative²⁰ and the parliamentary petition.²¹ A parliamentary citizens' initiative has to be supported (also online) by 500 Austrian citizens (16 years and older) and can formulate a citizens' concern that is within the jurisdiction of the legislative or executive

¹⁷ See www.ris.bka.gv.at/Dokumente/LgblNO/LRNI_1986001/LRNI_1986001.pdf.

¹⁸ See www.wien.gv.at/vbefergeb/internet/.

¹⁹ Kommunalwissenschaftliche Gesellschaft (2014), „Direkte Demokratie und Partizipation in den österreichischen Gemeinden“ [Direct Democracy and Participation in the Austrian communities], p. 35 (www.gemeindebund.at/website2016/wp-content/uploads/2017/05/RFG_4-2015-Direkte-Demokratie-und-Partizipation-in-den-oesterreichischen-Gemeinden.pdf).

²⁰ See www.parlament.gv.at/PERK/BET/BII/INFOBLATT/.

²¹ See www.parlament.gv.at/PERK/BET/PET/.

branches at federal level. With a parliamentary petition a member of the National Council or the Federal Council (Bundesrat)²² introduces a concrete citizens' concern to the plenary. Citizens can register their support for a parliamentary petition at the Austrian Parliament's website, which is however only of an informative nature. In both cases the parliamentary committee on petitions and citizens' initiatives can simply take note of it, request the opinion of ministries and/or institutions or forward it to the Austrian Ombudsman Board or another parliamentary committee. The committee's reports are published on the Austrian parliament's website.²³ There have also been calls to give citizens the possibility to propose a parliamentary citizens' initiative online or allow initiators the right to speak in the committee if their concern is supported by 5,000 signatures of support, for example, in order to increase the efficiency of these instruments.²⁴

Levels of participation as drivers of voter mobilisation have varied depending on the subjects of the plebiscites, which themselves were manifold and covered both national and EU-related affairs. While the referendum on Austria's accession to the EU reached the highest turnout (82.3%) only 0.9% supported the popular initiative on 'church privileges' and 1.1% a popular initiative on more direct democracy (!).²⁵

Levels of participation as drivers of voter mobilisation have varied depending on the subjects of the plebiscites, which themselves were manifold and covered both national and EU-related affairs.

²² The chamber representing the interests of the nine federal provinces.

²³ See www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00022/index.shtml.

²⁴ See www.ots.at/presseaussendung/OTS_20180227_OTS0104/neos-bekraeftigen-reformwillen-zum-start-des-petitionsausschusses.

²⁵ Furthermore, there are citizens' initiatives on a regional or local level and private online petition websites that are able to assemble a relevant number of supporters.

7.2 The EU dimension

7.2.1 Referendums

The most important direct democratic decision on EU matters was the Austrian national referendum on joining the European Union on 12 June 1994. It was also the only nationwide EU-related referendum so far and was compulsory as it entailed a total revision of the Austrian Federal Constitution. The remarkably high support for EU membership was partly the result of a nationwide information campaign supported by the federal government, the Austrian social partners, other major societal players, and the commitment of Austria’s biggest daily newspaper, *Kronen Zeitung*. The most notable groups opposing Austria’s membership were the Freedom Party and the Green Party, which criticised the pro-EU accession campaigns as a propaganda tool raising unrealistic expectations.

Table 7.1 Referendum on Austria’s accession to the EU²⁶

Date	In favour	Against	Turnout
12 June 1994	66.6% (3,145,981 votes)	33.4% (1,578,850 votes)	82.3%

Although the instrument has only been used twice so far, it has nevertheless been demanded often by political parties as a means of reacting to European developments. This holds true especially for opposition parties, first and foremost, the Freedom Party. Since the year 2000, the demand for a nationwide referendum has been expressed by FPÖ representatives in connection with the eastern enlargement of the European Union; the Treaty of Nice; Turkey’s possible EU membership; the ratification of an EU constitution; the Treaty of Lisbon; the European Stability Mechanism (ESM); the EU as a social union; Austria’s membership of the Economic and Monetary Union (EMU) and the reintroduction of the Schilling as the national currency; Austria’s banking secrecy; leaving the Schengen zone; financial aid for Greece; ratification of TTIP and CETA; and closing the borders against ‘mass migration’, among

²⁶ www.bmi.gv.at/410/Ergebnisse_bisheriger_Volksabstimmungen.aspx.

others. On several occasions FPÖ representatives have also examined the possibility of an 'ÖXIT'-referendum – which in 2012 party leader Heinz-Christian Strache called “a last resort”.²⁷ FPÖ presidential candidate Norbert Hofer in 2016 would have considered this “if Turkey joined the European Union”.²⁸ Following the popular initiative on Austria's EU exit (2015) the Freedom Party filed a motion to consult the people on this matter.²⁹ The day after the British decision to leave the EU, the FPÖ stated that direct democracy should become more important in Europe and even stand above EU law. In its statement the FPÖ also called for a referendum on EU membership if the EU was unwilling to implement reforms or if Turkey became an EU member.^{30 31} Due to

²⁷ Freiheitlicher Parlamentsklub (2012), “FPÖ: Strache sieht Schilling und EU-Austritt als letzte Möglichkeit” [FPÖ: Strache sees Schilling and EU exit as a last resort], 29 January (www.ots.at/presseaussendung/OTS_20120129_OTS0043/fpoe-strache-sieht-schilling-und-eu-austritt-als-letzte-moeglichkeit).

²⁸ Freiheitlicher Parlamentsklub (2016), „FPÖ-Präsidentschaftskandidat Hofer: Schutz der Österreicher steht im Zentrum” [FPÖ presidential candidate Hofer: Safety of Austrians is key], 14 March (www.ots.at/presseaussendung/OTS_20160314_OTS0092/fpoe-praesidentschaftskandidat-hofer-schutz-der-oesterreicher-steht-im-zentrum).

²⁹ Pressedienst der Parlamentsdirektion Parlamentskorrespondenz (2016), „Europäische Union besteht Feuerprobe im Parlament” [European Union passes the acid test in Parliament], 27 January (www.ots.at/presseaussendung/OTS_20160127_OTS0237/europaeischen-union-besteht-feuerprobe-im-parlament).

³⁰ Freiheitlicher Parlamentsklub (2016), „Strache, Vilimsky: Brexit ist Weichenstellung für Demokratie sowie gegen Zentralismus und Migrationswahn” [Strache, Vilimsky: Brexit sets the course for democracy and against centralism and ‘migration mania’], 24 June (www.ots.at/presseaussendung/OTS_20160624_OTS0011/strache-vilimsky-brexit-ist-weichenstellung-fuer-demokratie-sowie-gegen-zentralismus-und-migrationswahnimpl).

³¹ Freiheitlicher Parlamentsklub (2016), „Krise der Europäischen Union: FPÖ-Bundespräsidentschaftskandidat Hofer mahnt Vorsicht ein und wünscht sich Großbritannien im EWR” [Crisis of the European Union: FPÖ presidential candidate Hofer calls for watchfulness and wants the UK to be

changes in public opinion – Austrians' support for EU membership has been growing since Brexit³² – these opinions were duly toned down.

Austrians' support for EU membership has been growing since Brexit.

Direct democratic votes in neighbouring Switzerland were taken by the FPÖ several times as an occasion to praise the Swiss model and portray it as an example worthy of imitation. This was the case following the successful Swiss federal popular initiative "against the construction of minarets" in 2009 as well as an initiative for the "deportation of criminal foreigners" in 2010 and the initiative "against mass migration" in 2014.

Claims to hold nationwide referendums were also expressed, though to a lesser extent, by other opposition parties, e.g. recently on CETA by the Greens,³³ the Social Democrats and the Liste Pilz in Parliament.³⁴

The claim to hold referendums on EU matters has also partly been supported by Austria's tabloid press, especially by the most widely read daily newspaper *Kronen Zeitung*, which campaigned loudly against the ratification of the Lisbon Treaty, TTIP and CETA, for example. To illustrate just how influential politicians perceive the *Kronen Zeitung* to be, one should look back at the summer of 2008

part of the EEA], 4 July (www.ots.at/presseaussendung/OTS_20160704_OTS0068/krise-der-europaeischen-union-fpoe-bundespraesidentschaftskandidat-hofer-mahnt-vorsicht-ein-und-wuenscht-sich-grossbritannien-im-ewr).

³² Österreichische Gesellschaft für Europapolitik (2017), „ÖGfE-Survey: High support for EU-membership in Austria“, 21 December (www.oegfe.at/2017/12/oegfe-survey-clear-majority-of-austrians-in-favour-of-eu-membership-2/).

³³ Die Grünen (2018), „CETA: Türöffner für weitere Handelsverträge“ [CETA: Door opener for other 'trade agreements'], 15 June (<https://www.gruene.at/themen/europa/ceta-wo-bleibt-die-volksabstimmung>).

³⁴ Parlamentskorrespondenz (2018), „Handelsabkommen CETA nimmt erste parlamentarische Hürde“ [Free Trade Agreement CETA clears the first hurdle], 5 June (https://www.parlament.gv.at/PAKT/PR/JAHR_2018/PK0643/index.shtml).

when both the incumbent and the designated federal chancellors Alfred Gusenbauer and Werner Faymann (both SPÖ) wrote a joint open letter to the 'Krone' editor declaring that due to growing public discomfort with the EU and its politics prior to the ratification of

The claim to hold referendums on EU matters has also partly been supported by Austria's tabloid press.

the Treaty of Lisbon "future changes in EU treaties affecting the Austrian interest" should be put to a nationwide referendum.³⁵ This letter received harsh criticism from both the coalition partner ÖVP and the opposition Green Party, who saw it as a sign of submission to the *Kronen Zeitung* media power. The FPÖ in turn noted that the letter just included empty phrases and was without tangible consequences.

7.2.2 Popular initiatives

EU-related items have also accounted for 13 popular initiatives since 1991. Since this date, nearly half of all popular initiatives were launched to broach an issue related to EU matters, e.g. the claim for a referendum on EEA-accession, keeping the Schilling as the national currency, exiting the EU and EURATOM, opposing nuclear energy in Austria and Europe, genetic engineering and Austrian neutrality.

³⁵ Der Standard (2008), „Der SPÖ-Brief an Dichand im Wortlaut“ [Wording of the SPÖ letter to Dichand], 1 July (www.derstandard.at/3393035/Der-SPOe-Brief-an-Dichand-im-Wortlaut-).

Table 7.2 EU-related popular initiatives³⁶

Year	Subject	Valid signatures of support	Turnout	Ranking (corresponding turnout in %)
1991	To hold a referendum on Austria's accession to the European Economic Area (EEA)	126,834	2.25%	33
1993	Austria First	416,531	7.35%	14
1996	Neutrality	358,156	6.21%	15
1997	Genetic engineering	1,225,790	21.23%	2
1997	To hold a referendum before introducing the euro ('Schilling-Volksbegehren')	253,949	4.43%	20
1997	Non-nuclear Austria	248,787	4.34%	21
2000	New referendum on EU membership	193,901	3.35%	26
2002	Veto against Temelin*	914,973	15.53%	6
2003	Non-nuclear Europe	131,772	2.23%	30
2006	Austria stay free!**	258,281	4.28%	23
2011	Out of EURATOM	98,678	1.56%	35
2015	EU-exit of Austria	261,056	4.12%	22
2017	Against CETA and TTIP	562,389	8.87%	11

* Nuclear plant in the Czech Republic near the Austrian border.

** Guarantee of neutrality, ratification of EU convention and EU accession of Turkey only after referendum.

Most of these initiatives focused on fundamental and far-reaching aspects of EU integration and can be seen as a protest against developments regarded as not being in Austria's interest and endangering national identity and sovereignty. They also express the desire to protest against the harmful effects of globalisation. Often supported by – mostly opposition – political parties, these initiatives have often portrayed an image of an all-dominant EU forcing a small country like Austria to obey to its rules – rules

³⁶ See www.bmi.gv.at/411/Alle_Volksbegehren_der_zweiten_Republik.aspx.

criticised as undemocratic and driven by business interests rather than the will of 'ordinary people'. Consequently, mobilisation was often accompanied by fierce debates and polarisation – a characteristic that we can generally observe in the Austria's EU discourse.

One can argue that non-binding popular initiatives are a blunt instrument that can be easily pigeonholed by politics. Most popular

Popular initiatives can be a useful tool for political campaigning, especially if mass media support them.

initiatives on EU matters did not in fact address the initiators' concerns. These experiences clearly constitute one explanation for the overall low turnout. Nevertheless, popular initiatives can be a useful tool for political campaigning,

especially if mass media support them. By abolishing the possibility for members of the National Council to start a popular initiative in 1998, the direct democratic character of this instrument was strengthened. Nevertheless, the limited prospects of success for popular initiatives remain a major downside – an aspect that shifted to the core of debate in recent years.

7.2.3 Consultations

The instrument of non-binding people's consultations was also regularly promoted – mainly by opposition parties, although since its introduction in 1989 only one Austria-wide consultation has been held. Yet the proposed subjects for potential consultations rarely differed from those proposed for national referendums: Turkey's accession to the EU, non-participation in a European transfer union, the right to reintroduce controls at the national borders, TTIP and CETA (the latter also promoted by the Green Party), the national government's migration and asylum policy, and indeed the system of direct democracy itself as a topic that should be submitted to the Austrian public. Propositions that could not reach the necessary support for further implementation though.

As a consequence of the bilateral measures imposed by 14 EU member states against Austria following the participation of the Freedom Party in the government, the Austrian government decided to launch a consultation covering the following issues: the immediate suspension of the 'sanctions' imposed by the other member states; further development of the European Union as a

community of equal member states “that grants all members equal rights and duties and prevents bigger EU members dominating smaller ones”,³⁷ ensuring that the EU grants a country’s fundamental right to decide its own government on the basis of free elections and respects the rights of democratically elected political parties and instruments of direct democracy; a clear division of tasks between the European and the national level, as well as a reinforced role of the regions; the commitment of all EU institutions to comply with the basic rule of law and human rights; integration of constitutional procedures, including a judicial review of any alleged violation of human rights in a new EU treaty.³⁸

This controversial intention never became reality, however, as the bilateral measures were suspended in September 2000.

7.2.4 The European level

Besides ideas to strengthen direct democracy at the national level, calls for an EU-wide equivalent can also be heard in Austrian political discourse, albeit to a lesser extent. Proposals for EU-wide referendums were brought forward by different political parties on various matters, e.g. the EU constitution, the Treaty of Lisbon, a European financial transaction tax or TTIP. Although keen to foster direct democratic participation at the national level, members of the Freedom Party were rather cautious to promote the same on the EU level, arguing that a European referendum would undermine national sovereignty.

Looking at the existing instruments of direct democracy at European level, three out of the four successful European citizens’

³⁷ See “which guarantees equal rights and obligations for all Member States and does not allow the dominance of a few larger states over the others” (https://www.parlament.gv.at/PAKT/PR/JAHR_2000/PK0437/).

³⁸ Parlamentskorrespondenz (2000), „Hauptausschuss beschließt mehrheitlich EU-Volksbefragung“ [Main committee by a majority decides consultation of the people on the EU“, 11 July (www.parlament.gv.at/PAKT/PR/JAHR_2000/PK0437/).

initiatives (ECI) so far reached the minimum number of signatures required for Austria (14,250 before 1 July 2014 / 13,500 thereafter). Interestingly, Austria is the only EU country where citizens can participate in an ECI from the age of 16.

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Table 7.3 Successful European citizens' initiatives and signatures collected in Austria³⁹

Title	Year of registration	Total number of signatures	Number of Austrians signatures
Water and sanitation are a human right! Water is a public good, not a commodity!	2012	1,659,543	57,643
One of us!	2012	1,721,626	24,973
Stop vivisection!	2012	1,173,130	9,208
Ban glyphosate and protect people and the environment from toxic pesticides	2017	1,070,865	41,099

Austrians' knowledge of ECI remains rather limited, however, as a survey of the Austrian Society for European Politics (ÖGfE) shows: 63% said they had not heard of the European Citizen's Initiative. Only 30% did know about it, while 7% did not respond. Nevertheless, 52% thought that the ECI could be a meaningful instrument to provide EU citizens with more means of direct democratic participation. Some 31% doubted that the ECI could strengthen citizens' involvement in EU decision making.⁴⁰

³⁹ www.ec.europa.eu/citizens-initiative/public/initiatives/successful.

⁴⁰ Österreichische Gesellschaft für Europapolitik (2018), "ÖGfE-Survey: 6 Years European Citizens' Initiative – little knowledge among Austrians", 3 April (www.oegfe.at/2018/04/06-eci-survey/).

7.3 Influence of direct democratic mechanisms on political realities at national level

The Austrian 2017 national elections are a good example of how the topic of more direct democracy was picked up by nearly all political parties – though to differing degrees – with the Eurosceptic Freedom Party (FPÖ) being the strongest supporter. In its 2017 national election programme, the FPÖ criticised the current democratic system as unfair, arguing that representative democracy was being abused to implement laws against the majoritarian will of the people; that decisions were being taken over peoples' heads; that election promises were being broken and that the concerns of politically active citizens expressed in the form of parliamentary petitions or citizens' initiatives were consequently being ignored. To re-establish trust in politics, the FPÖ called for the creation of a constitutional basis for legislation by the people ('Volksgesetzgebung') following the Swiss example; compulsory referendums if successful popular initiatives (= 256,000 signatures of support, or 4% of eligible voters) are not implemented by Parliament; veto referendums against laws adopted by Parliament; the right of parliamentary minorities to initiate people's consultations and the greater involvement of young people in direct democratic procedures.⁴¹

The conservative People's Party (ÖVP) also called for more direct democracy in its election programme, criticising the Austrian political system for being dominated by political parties and for neglecting direct democratic participation.⁴² The ÖVP therefore proposed that every year one or two days be designated for citizens to vote on their concerns in the form of referendums or

⁴¹ Freiheitliche Partei Österreichs (2017), „Österreicher verdienen Fairness. Freiheitliches Wahlprogramm zur Nationalratswahl“ [“Austrians deserve fairness. Programme of the Freedom Party for the national elections], p. 10 (www.fpoe.at/fileadmin/user_upload/Wahlprogramm_8_9_low.pdf).

⁴² Österreichische Volkspartei (2017), “Das Programm der Liste Sebastian Kurz – die neue Volkspartei – zur Nationalratswahl 2017. 3/3” [Programme of the Liste Sebastian Kurz – the new People's Party for the National elections 2017. 3/3], pp. 37-39 (https://mitmachen.sebastian-kurz.at/page/-/Teil%203_Ordnung%20%26%20Sicherheit.pdf).

consultations of the people. If a public initiative gains the support of 10% of the population but has not attained parliamentary approval, citizens should decide on it in a nationwide referendum. This would apply only if the initiative is not in conflict with fundamental and human rights or international law, however.

In the Social Democrats (SPÖ) election programme, direct democracy is not mentioned once. Instead, the SPÖ calls for the faster formation of a government after an election, for reducing the number of ministries and for strengthening parliamentary democracy by flexible majorities in parliament to pass laws.⁴³ The Social Democrats already had their own experiences with a recent attempt at direct democracy: in 2016 they organised a survey amongst their members (non-members could also participate) to settle the party's official line on the subject of CETA. However, this campaign only saw a turnout of approximately 7% of SPÖ-members (=14,387 votes), which rejected CETA by a majority of 88%. While the SPÖ interpreted this result⁴⁴ as a strong mandate to advocate changes in the treaty agreement, others concluded⁴⁵ that there was no massive opposition of SPÖ-members. Others still raised the question of the representativeness of a vote in which only a minority took part.

For the Green Party, which in the end failed to get into Parliament, direct democratic instruments can be an opportunity –

⁴³ Sozialdemokratische Partei Österreichs (2017), "Plan A für Österreich" [Plan A for Austria], p. 213 (https://christian-kern.at/wp-content/uploads/2017/09/Plan-A_SPOe-Wahlprogramm-2017.pdf).

⁴⁴ SPÖ-Bundesorganisation (2016), "Niedermühlbichler: Erste bundesweite Mitgliederbefragung zu CETA und TTIP ein voller Erfolg" [Niedermühlbichler: First nationwide member survey on CETA and TTIP complete success], 20 September (www.ots.at/presseaussendung/OTS_20160920_OTS0002/niedermuehlbichler-erste-bundesweite-spoee-mitgliederbefragung-zu-ceta-und-ttip-voller-erfolg).

⁴⁵ Vertretung der EU-Kommission in Österreich (2016), „CETA: Deutliche Botschaft der SPÖ-Mitglieder zu Kanada-Abkommen“ [CETA: Clear message of SPÖ-members on Canada-agreement], 20 September (www.ots.at/presseaussendung/OTS_20160920_OTS0170/ceta-deutliche-botschaft-der-spoee-mitglieder-zu-kanada-abkommen).

if they are used “wisely”.⁴⁶ The Green election programme states that they can contribute significantly to people’s involvement and to policymaking but can also be misused for populist purposes. If a public initiative (not being in conflict with fundamental and human rights or international law) is well supported but not taken into account by Parliament, citizens should decide on it in a referendum or at least have a say in a non-binding consultation of the people. Additionally, the Green manifesto also promotes EU-wide referendums on major integration steps.

Finally, the view of liberal NEOS Party, as expressed in its manifesto, is that a democracy close to citizens and citizens’ participation entails both opportunities and responsibilities, but they do not go into detail on these points.⁴⁷

Beside these attempts to regain trust and demonstrate a willingness to strengthen the instruments of direct democracy, the 2017 Austrian election campaign was also characterised by the efforts of political parties to (re)brand themselves as movements, unlike traditional party politics which have been perceived as remote and removed from people. This was the case with the ÖVP that presented itself as the ‘New People’s Party’; it largely refrained from using its name on election billboards but concentrated instead on their lead candidate, Sebastian Kurz. Another example of a highly personalised list is the Liste Pilz that was founded – due to a split in the Green party – by the end of July 2017. The Liste Pilz has only marginal organisational structures and no official party programme

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⁴⁶ Die Grünen (2017), „Wahlprogramm der Grünen – Nationalratswahl 2017“ [Green Party Election Programme - national elections 2017], pp. 51-52 (<https://www.gruene.at/partei/programm/wahlprogramm>).

⁴⁷ NEOS (2017), „Das Zukunftsmanifest für ein neues Österreich“ [The manifesto for the future of a new Austria] (https://cdn2.hubspot.net/hubfs/2359661/NEOS_Manifest_RGBweb.pdf?t=1527245784173).

but managed to pass the threshold to get into Parliament. It chooses to strengthen representative democracy by suggesting to voters that they cast 'minus votes'⁴⁸ to show their discontent and vote political parties out of parliament.

7.4 Influence of direct democratic mechanisms on European/EU political realities

In the 2017 coalition agreement⁴⁹ of the Austrian government between the ÖVP and the FPÖ, the importance of more direct democracy is highlighted. It is stated that political participation cannot be decreed unilaterally but has to grow by itself. The government parties call for step-by-step development of direct democratic elements "together with the citizens". Two main reforms are addressed in detail.

First, the advancement of popular initiatives: 100,000 eligible voters can start a 'real' legislative initiative on an equal footing with (hitherto existing possibilities to bring in) government bills or motions. This can also be done online. To prevent a successful popular initiative from being sidelined, it will be dealt with in parliamentary committees and a plenary session and broadcast on TV where the organisers have the right to speak. Additionally, the minister in charge is obliged to comment on the initiative and an obligatory assessment of concrete legislative initiatives is envisaged. After three years this procedure should be evaluated.

As a second step, the government programme envisages binding referendums by 2022 if a popular initiative is supported by more than 900,000 eligible voters (=14%) and has not been implemented by Parliament within one year. To be valid, at least one-third of eligible voters must cast their vote in the referendum that is decided by absolute majority. The National Council has the

⁴⁸ A purely hypothetical proposal in which plus or minus options might appear on the ballot paper.

⁴⁹ Austrian Federal Government (2017), „Zusammen. Für unser Österreich – Regierungsprogramm 2017-2022“ [Together: For our Austria. Governmental Programme 2017-2022] (www.bundestkanzleramt.gv.at/documents/131008/569203/Regierungsprogramm_2017%e2%80%932022.pdf/b2fe3f65-5a04-47b6-913d-2fe512ff4ce6).

right to bring in a counterproposal to be voted upon. If this new procedure stands the test, the number of signatures necessary to launch it could be reduced gradually.

To become reality, however, that 900,000 votes would automatically lead to binding referendums has yet to be accepted by a two-thirds majority in the Austrian Parliament because it would mean a change to the Austrian Constitution.⁵⁰ At least one opposition party would have to support it, which at present seems rather unlikely. In the event of no sufficient parliamentary backing, the government wants to hold a consultation of the people on this issue, which again would be non-binding but could at least put pressure on the opposition parties if voter support is high.⁵¹

The measures proposed differ greatly from those initially intended by the Freedom Party mentioned above, which also withdrew its former demand for a people's vote on the ratification of CETA.

The measures proposed differ greatly from those initially intended by the Freedom Party.

The government programme also states that the constitutional court has to confirm that a consultation of the people does not contradict obligations Austria has assumed in terms of basic rights, international and European law. Any **referendum on Austria's membership of international institutions is explicitly excluded, as is Austria's membership of the European Union**. One can assume that Austria wants to avoid the experience the UK has had with the emotionally charged referendum on EU membership and its as yet unpredictable consequences.

⁵⁰ Bundes-Verfassungsgesetz [Federal Constitutional Law], Art. 44 (1) (<https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10000138/B-VG%2c%20Fassung%20vom%2017.04.2018.pdf>).

⁵¹ There has been one precedent in the case of the only consultation of the people held so far in 2013 on the question of introducing a professional army and a voluntary social year or keeping compulsory military service and civilian service. Following the rejection of the introduction of a professional army by 59.7% of voters (turnout: 52.4%), the SPÖ/ÖVP government decided to keep the original regulation.

Besides, a plebiscitary system as desired by the Freedom Party could also strengthen the parliamentary opposition, which would regularly launch popular initiatives to counter governmental proposals. The latter was the case with the popular initiative 'Don't smoke'⁵² that was started by the Vienna Chamber of Physicians and Austrian Cancer Aid after the ÖVP/FPÖ coalition had repealed a law adopted by the former government on banning smoking in bars and restaurants, due to enter into force in spring 2018. Only within the initiating phase were 591,146 signatures of support collected – nearly six times more than required to be debated in parliament – with the official registration week and the possibility to collect further signatures still ahead in October 2018. Against this background, those advocating the 'Don't smoke' initiative – supported by the parliamentary opposition, the Green Party and several organisations of civil society, for example – called on the government parties to remember their self-proclaimed appraisal for direct democratic instruments and reconsider scrapping the intended smoking ban or to put this question to an Austria-wide referendum. The Freedom Party, as the fiercest opponent of a total smoking ban – even making it a condition to enter the government – criticised the popular initiative as not being serious. It made the point that a referendum could only be started by 2022, as envisaged in the coalition agreement after passing the threshold of 900,000 signatures of support. FPÖ leader Heinz-Christian Strache again stated that he personally would be ready to introduce such a referendum at once – combining it with other referendums on CETA, the EU as a transfer (debt) union and the compulsory licence fee for the Austrian broadcaster ORF.⁵³

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⁵² See www.dontsmoke.at/.

⁵³ See www.kurier.at/politik/inland/strache-will-ganzes-paket-volksabstimmungen-oevp-sei-dagegen/311.853.173.

Conclusions

Various direct democracy instruments exist in Austria at the national, regional and local level. Yet, calls to strengthen direct democracy have grown steadily as an expression of doubt about the ability and legitimacy of representative democracy to tackle global challenges and defend the people's will. This is especially true of citizens' involvement at the national level and issues related to the European integration process. EU-related issues have rarely been a matter of direct citizen involvement: the referendum on EU membership was the only time Austrians had a legally binding say and the non-binding instrument of a people's consultation has not been used once. Popular initiatives have been conducted more often but have proved to be a rather blunt instrument, easily sidelined by politics.

Against this background, one could argue that calls for more direct democracy are justified. Indeed, stronger citizen involvement via direct democracy instruments can represent a meaningful supplement to the system of representative democracy. However, experience shows that non-binding direct democratic instruments have had little impact and serve more as a tool for mobilisation – often for opposition parties; as a placebo to keep up the pretence of citizens' involvement. Debates on how to take successful initiatives more seriously should thus be intensified – not only at the national but also at the European level in the case of the European citizens' initiative.

Yet it would be neither wise nor simple for Austria to copy-paste the Swiss system, given the differences in political systems of the two countries, the long-term experiences with direct democracy of Austria's western neighbour and the challenges that even Switzerland faces regarding the implementation of the results of popular votes.

Direct democracy can be a useful instrument when citizens are directly involved and can evaluate the concrete implications of their decision, as is often the case at local or regional level. But considering the complexity of most EU matters – take for example the topics of free trade agreements – and the possible implications for related areas, it is questionable whether such broad topics should be decided by a simple Yes or No vote. Experience shows

that such votes can also be easily influenced by political and (social) media campaigning, e.g. in the case of the Brexit referendum or the Netherlands vote on Ukraine's EU accession, and are used as an opportunity to protest against the government or by the government itself to campaign for an issue, e.g. the instrument of national consultations in Hungary. They are characterised by polarisation and emotion rather than an unbiased assessment of the pros and cons. The argument that 'the people' have the right instinct about what is 'right' and 'wrong' and that their will is therefore more relevant than that of a group of experts, as is often argued by those advocating more referendums, cannot be regarded as valid. It is in fact a deliberate attempt to weaken and delegitimise the system of representative democracy. The political art of compromise and the attempt to guarantee minority rights can also be challenged by the tools of direct democracy.

A wiser way to incorporate citizens' views into the political decision-making process would be broad and open citizens' dialogues well ahead of major decisions to explain and discuss possible implications.

A wiser way to incorporate citizens' views into the political decision-making process would be broad and open citizens' dialogues well ahead of major decisions to explain and discuss possible implications. A better exchange between citizens and politicians could counter perceptions of a political elite not aware of 'ordinary' citizens' concerns. Such a policy approach could increase trust in political decision-making and democracy in general and would be more effective than launching campaigns where emotions run high.

8. DIRECT DEMOCRACY AND THE POPULIST ZEITGEIST: BULGARIA

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The Bulgarian case study does not support the widespread hypothesis that direct democracy might be the answer to today's crisis of confidence in politicians, political parties and institutions. Rather, the use of direct democracy in Bulgaria could be interpreted as a combination of the following three factors: i) party politics using referendums to gain competitive advantage; ii) initiatives by media personalities with ambitions to enter politics; iii) plebiscites organised by the government or head of state to rubberstamp particular policies. In all three instances, the *demand* for referendums has been generated strategically by specific structures of representative democracy or by aspiring politicians/parties.

Introduction

In common with other democracies, Bulgaria is seeing an increased demand by the public for referendums and other instruments of direct democracy. This demand is accompanied by significant levels of distrust in politicians, political parties and the Parliament – the key institutions of representative democracy. In these circumstances, it is easy to jump to the conclusion that direct democracy is the answer to the contemporary crisis of confidence: direct democracy seems to provide hope for restoring trust in politics more generally. The Bulgarian case study will challenge this bold hypothesis.

Growing demand for direct democracy could be just the flipside of the populist *Zeitgeist*. The advent of populist politics in Europe has been characterised by the emergence of politicians who claim to reflect the will of the people as it is – without distortion or

any pretension to educate the electorate. The populist politician promises to follow the wishes of the people no matter what – constitutional, economic or even sometimes ethical constraints are to be overcome in the name of democracy. Yet on most political questions a great majority of people actually do need to rely on *authority and leadership* in order to form an opinion. Therefore, there is a considerable gap between the populist claim that politicians just follow the will of the people, and the fact that people form their views by relying on political authority – be it partisan, expert or mixed. This gap provides ample opportunities for manipulation and strategic use by public figures and politicians of direct democracy instruments.

On most political questions most people need to rely on authority and leadership in order to form an opinion. Therefore, there is a considerable gap between the populist claim that politicians just follow the will of the people, and the fact that people form their views by relying on political authority – be it partisan, expert or mixed. This gap provides ample opportunities for manipulation and strategic use by public figures and politicians of direct democracy instruments.

The chapter also looks at the effect of the populist *Zeitgeist* on the media environment and the challenge it presents for direct democracy. In general, a populist party is hardly different from a media outlet – it claims that it reflects, represents and transmits the opinion and preferences of other people – ‘the people’. Increased media influence makes the media crucial for the operation and the survival of politicians. When government decisions are announced (and probably taken) in real time on Twitter, it is not surprising that the line between politicians and media personalities is thinning, as is the line between political parties and TV shows. Overall, key representatives – both from the political and the media spheres – have been the primary users of instruments of direct democracy.

8.1 The national context

8.1.1 *Historical view: referendums do not necessarily imply democratic rule*

Paradoxically, the first referendum (not nominally but substantially) in Bulgaria was held during the period of Ottoman

rule, prior to the proclamation of the country's independence in 1908, as argued by Peycheva (1996). It was decreed in 1873 by Sultan Abdülaziz and facilitated the legal status of the Bulgarian Exarchate and thus, Bulgaria's cultural autonomy within the Ottoman Empire. The referendum was held in 1873-74 under the control of the Ottoman authorities and the ecumenical Patriarchate of Constantinople. Two-thirds of the Christian population in the territories designated by the Sultan's decree considered themselves as Bulgarians. The recognition of the Bulgarian Exarchate played an important role in the establishment of the modern Bulgarian state and the proclamation of Bulgaria's independence in 1908.

In the wake of World War II, the Yalta Agreement facilitated the establishment of totalitarian rule in Bulgaria. Prior to remaining behind the Iron Curtain the country didn't manage to establish a track record of consolidated democracy either. All three referendums in the period 1908-89 were held at a time of non-democratic regimes – a semi-dictatorship in 1922 and the communist totalitarian regime in 1946 and 1971. None of them was initiated by citizens or can be considered as democratic. All three were held on the basis of a special law adopted for the purposes of the respective referendum and were initiated by the governing political elites. All three aimed to legitimise the position and power of the governing politicians. Slavov (2010) considers the three referendums as plebiscites on the basis of a typology distinguishing between referendums (initiated by citizens) and plebiscites (initiated by politicians).

- The purpose of the 19 November 1922 referendum, initiated by the government of the agrarian populist leader Alexander Stambolijski, was to authorise criminal charges against members of the government and politicians with regard to their alleged involvement in the national catastrophes of 1913 and 1918.
- The purpose of the 8 September 1946 referendum was to abolish the monarchy and to proclaim the People's Republic of Bulgaria – a communist state set up under Soviet supervision.
- The purpose of the 16 May 1971 referendum was to endorse Zhivkov's constitution (Zhivkov being the Bulgarian

communist dictator) with its Article 1 enshrining the leading role of the Communist Party.

Considerations about the role of direct democracy at the level of municipalities resulted in the early adoption, in 1909, of a law on consulting the people on local (municipal) issues, but this law was abolished after the coup d'état in 1934. Every citizen had the right to initiate a referendum and this very liberal provision allowed the launch of many local referendums on rather minor issues.

The first Bulgarian law with regard to direct democracy, either at the national or local level, was adopted in 1983 and published in State Gazette (1983). For the first time Article 5 (3) allowed citizens to take the initiative (the quorum being 30,000 citizens) but during the 13 years the law was in effect (until 1996) the provision was never used at the national level.

8.1.2 Direct democracy in post-communist democratic Bulgaria

The Bulgarian Constitution does not provide for mandatory referendums.

In post-communist Bulgaria the first attempt to introduce direct democracy was the new law on consulting the people, as published in the State Gazette (1996). It backtracked on the right of citizens to initiate a national referendum. This right was preserved for the Council of Ministers, the president or a minimum of 60 members of parliament.

NGOs and some politicians made several attempts to put the adoption of substantial amendments to the 1996 law on the agenda of the 39th National Assembly (2001-05) but no amendments towards facilitating direct democracy were introduced. In 2006 Balkan Assist (a Bulgarian association for partnership and citizen action) started drafting a new law in close cooperation with several Bulgarian local authority associations. Their work was based on research of legislation and practice in other countries, mainly Switzerland. In early 2008 a group of MPs agreed to submit the draft law to the National Assembly. On 3 July 2008 the law was adopted at first reading but the finally approved and published law in the State Gazette (2009) introduced major amendments that distorted its philosophy (according to the authors of the draft):

- A threshold of 200,000 signatures (instead of 150,000) in order to let the National Assembly consider a citizens' initiative for a national referendum;
- A threshold of 500,000 signatures (instead of 300,000) to make the holding of a national referendum mandatory (in 2017 the number of eligible voters was 6,810,341);
- Introducing a quorum (in relation to the turnout at preceding national and local elections) to consider the results of a referendum binding;
- Broadening the scope of issues that cannot be subject to a referendum (i.e. issues that would require a decision by a Grand National Assembly; international treaties that have been ratified by the National Assembly, taxation, financial issues, etc.).

Supporters of direct democracy consider as obstacles to its functioning the relatively high threshold of signatures needed to make a referendum compulsory, the relatively short period of time (three months) to collect the required number of signatures, and the high quorum for considering the results of a referendum binding.

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A new Article 14 (2), an amendment enshrined in the State Gazette (2015), provides for easier merging of referendum initiatives with general, local or presidential elections. This is to encourage higher turnout at referendums to reach the high quorum required for making the outcome of a referendum binding.

The 2009 law on the direct participation of citizens in the governance of the state and locally provides for four different instruments of direct democracy:

- Referendum (can be applied both at the national and municipal level)
- Citizens' initiative (can be applied both at the national and municipal level)

- European Citizens' Initiative (provisions for the participation of Bulgarians in the ECI were introduced in 2012, after the adoption of Regulation(EU) No 211/2011 of the European Parliament and of the Council)
- Common assembly of the population (can be applied at the municipal level only).

A 'parliamentary petition' as an instrument of direct democracy is not explicitly included in Bulgaria's legislation. Under the law on direct participation of citizens in the governance of the state and locally the citizens' initiative has a much broader scope (it can be an initiative addressing proposals not only to the Parliament but also to other national or municipal institutions). In order to be considered by the Parliament or any other relevant national institution, the citizens' initiative has to be launched by an assembly of 50 eligible voters and conducted by an 'initiative committee' elected by the same assembly and composed of seven members, including a chairperson. A committee in Parliament is in charge of relations with NGOs and citizens' complaints but, depending upon the scope of the citizens' initiative, they might be addressed to individual parliamentary committees.

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Recently, the internet and social media have allowed a mushrooming of petitions that function more as publicity instruments than instruments of direct democracy. The websites <https://www.peticiq.com> and <http://grajdanskapeticia.com> enable any individual to launch a petition and facilitate the collection of signatures in support of that petition. Social media offers great publicity opportunities for any petition launched on these two websites. But petitions launched through these websites do not meet the legal requirements for an eligible citizens' initiative. Regardless of the easy outreach provided by the internet and social media, support for the petitions launched on these two websites mostly remains in the thousands. Furthermore, a number of petitions are not compatible with democratic standards (e.g. to ban the annual LGBT Pride parade in Sofia, or to ban the Bulgarian Helsinki Committee etc.).

Awareness of petitions addressed to the European Parliament is growing but this is not accompanied by a growing confidence in the effectiveness of the instrument, especially when the subject of a petition falls within the competence of member states themselves. A recent case well covered by Bulgarian media was a petition from the Association of Bulgarian Schools Abroad. The petition was avidly supported by all Bulgarian MEPs. Its charge was the fact that most EU countries do not provide opportunities for language exams at graduation from secondary school in any other than language than the main ones studied (i.e. English, French, German, Spanish and Italian), which it considered to be a hindrance to pupils' mobility. It therefore called for the option for language exams to be held in so-called minor languages (such as Bulgarian). Given that educational issues fall under national competences, it was clear that there could not be any binding EU solution to the problem. Another petition to the European Parliament promoted by Bulgarian ALDE MEP Ilhan Kyuchyuk was closed after a short period of time. It

Bulgarian legislation does not provide for a recall of parliamentarians/executives as an instrument of direct democracy.

asked for support to campaign in Turkish during elections in Bulgaria, which contradicts the constitutional provision that political campaigns have to be conducted in the official language of the country, i.e. Bulgarian, (although under the ECHR Bulgaria has to provide

opportunities for campaigning in languages other than Bulgarian).

Bulgarian legislation does not provide for a recall of parliamentarians/executives as an instrument of direct democracy. At a time of growing distrust in politicians this has been a recurring issue but its introduction would require constitutional amendments.

National referendums

On the basis of the 2009 law on the direct participation of citizens in national and local governance, 24 proposals for a referendum have been registered, seven of them including more than one question and several of them overlapping in substance (e.g. introducing the possibility for citizens to vote online; abolishing or lowering subsidies for political parties; questions related to energy production and supply).

Most initiatives failed to reach the threshold required to make a referendum compulsory (e.g. a proposal in 2010 to hold a referendum opposing Turkey's membership in the EU). Some initiatives were registered but the Initiative Committee did not submit any signatures (e.g. for a proposal in 2010 to oblige the Bulgarian government to renegotiate agricultural subsidies with the EU a proposal in 2013 to question landownership by foreigners or foreign-owned businesses).

Three national referendums have been held so far on the basis of the 2009 law, the first and the third marked by numerous scandals both before and afterwards. None reached the quorum required to make the results binding. The 2016 referendum missed the quorum by just 11,500 votes, which meant that the results were contested by the initiators but there was no public outcry. The three referendums were:

- In January 2013, on the construction of a new nuclear power plant (turnout 20.22%; 60.60% 'for'; 37.96% 'against'); the referendum was held without being linked to another election;
- In October 2015, on the introduction of online voting (69.5% 'for'; 25.99% 'against'); the referendum was held alongside municipal elections (turnout for the referendum 39.67%; turnout for the municipal elections 53.60%)
- In November 2016, with three questions on the introduction of i) a majoritarian voting system with absolute majority in two rounds (71.95% 'for'; 16.05% 'against'); ii) compulsory voting in elections and referendums (61.89% 'for'; 25.96% 'against'), and iii) setting the subsidy for political parties to one Bulgarian lev, i.e. down from 11 (72.16% 'for', 15.02% 'against'); the referendum was held in parallel with the presidential elections (turnout in the referendum 50.86%; turnout in the presidential elections 57.47%).

The 2013 referendum was the first national referendum to be held in post-communist democratic Bulgaria. It started as an initiative of the Bulgarian Socialist Party and remained closely linked to one of the few controversial issues on the eve of Bulgaria's accession to the EU – the early closure of units 1-4 of the nuclear power plant Kozloduy, which was deemed by many to be a huge economic setback for the country. In order to make the Kozloduy 'sacrifice'

more acceptable, in 2002 the Saxecoburgotski government decided to relaunch the project for a second nuclear power plant in Belene – a project abandoned in 1991 because of safety concerns in the wake of the Chernobyl disaster. In early 2012, ten years after the relaunch of Belene, Borisov's government decided once again to abandon Belene as an economically unsustainable project. The Socialists opposed the decision. They regarded it as an opportunity to revive pro-Russian sentiments and old fears of high electricity prices. More than 500,000 signatures were collected, which made the holding of the referendum mandatory. In order to defeat Borisov and his party GERB managed to modify the question in a way that blurred its meaning so that a Yes or No answer was subject to different interpretations.

The media and biased experts compounded the confusion. The referendum was held on a factual question: whether or not NPP Belene could be profitable. The experts of one of the main parties (BSP) argued that it would be profitable, while the experts of the other party (GERB) argued precisely the opposite. Thus, the public was asked to decide on a complex matter on which they could have no authoritative knowledge.

Most Bulgarians decided that the best way to avoid being misused by the main political players was to invalidate the referendum through low turnout (if turnout was below 20% Parliament would have no obligation to consider the outcome).

Most Bulgarians thus decided that the best way to avoid being misused by the main political players was to invalidate the referendum through low turnout (if turnout was below 20% Parliament would have no obligation to consider the

outcome). The 20.22% turnout obliged Parliament only to discuss the issue without being bound by the outcome of the referendum. Consequently, the National Assembly duly discussed the issue without changing its mind. Instead of convincing people of the advantages of direct democracy, the Belene referendum was thus a big flop.

Extremely low levels of trust in politicians and political institutions and rather low levels of turnout in elections confirm analyses that there is a crisis of representative democracy in Bulgaria. This is the backdrop to understanding many of the proposals and discussions around introducing some kind of

majoritarian vote, compulsory voting, and voting online (that would facilitate participation for the Bulgarian diaspora) etc.

On 30 January 2014, President Plevneliev used his right to propose a referendum with three questions related to the introduction of majoritarian voting, compulsory voting and online voting. Furthermore, he proposed to hold the referendum on the same day as the European elections. No agreement was reached in Parliament to merge the referendum with the European elections, partly because of speculation about the advantages and disadvantages for the different political players.

The reluctance of Parliament to decide on a referendum provoked the only case of genuine mobilisation of civil society with regard to referendum initiatives. Politicians were involved in the Initiative Committee as well but civil society was really active. In early 2014, 570,029 signatures were collected in under three months in support of a referendum on the three questions suggested by President Plevneliev. Yet, even in this case one of the main parties – GERB – was actively involved in the collection of signatures. After all necessary checking of data, 463,326 signatures were declared valid, i.e. below the threshold of 500,000 (a year later, in July 2015, the threshold was lowered to 400,000). Because of mounting pressure parliament finally decided to hold a referendum on just the question of online voting simultaneously with the municipal elections in October 2015. Although support remained below the quorum needed to make the result binding, Parliament adopted a decision to work towards introducing online voting. Technical and security arguments have so far prevented this, however. It is still doubtful whether the 2019 European election will provide such a possibility – most probably not.

The 2016 referendum on the introduction of a majoritarian electoral system in Bulgaria is an example of the huge potential of media and aspiring politicians to *form* public opinion while at the same time claiming to be only the mouthpiece for people's beliefs. Slavi Trifonov, the host of a popular TV show (broadcast on the bTV channel since 2000 every weekday evening), picked this issue, along with other popular themes such as the reduction of the number of MPs and the abolition of public funding for political parties. These issues were then discussed for months on end on his primetime TV programme and the message was unambiguous: the introduction of

such measures would solve most of the problems of Bulgarian democracy – from corruption to widespread distrust in politicians. In essence, Trifonov used the resources of the biggest commercial television in the country to form – and indeed manipulate – public attitudes in a specific direction.

Trifonov has never denied allegations that he might enter politics proper. His popularity, his show and the mood of protest among citizens facilitated the collection of the necessary signatures. Trifonov envisaged a profound overhaul of the political system on the basis of six legislative changes, one being online voting (already subject to the 2015 referendum), two being in conflict with the Constitution and the rest subject to well-argued criticism. Because

TV show host Slavi Trifonov envisaged a profound overhaul of the political system on the basis of six legislative changes, one being online voting (already subject to the 2015 referendum), two being in conflict with the Constitution and the rest subject to well-argued criticism. Because of Trifonov's media power, MPs preferred not to get on the wrong side of him.

of Trifonov's media power, MPs preferred not to get on the wrong side of him. They tried to prevent holding the referendum at the same time as the presidential elections but endorsed all six questions submitted by Trifonov and his team. President Plevneliev however referred the questions to the Constitutional Court, which found three of them unconstitutional (most notably, the reduction of the number of MPs and the direct election of police directors). After numerous scandals, three out of the six original questions were

subjected to a referendum alongside the presidential elections. Public support for all three issues was a clear anti-system protest vote and put pressure on the government to consider a reform of the electoral law. Trifonov and his team staged several protests against Parliament for its alleged 'neglect of the people's vote' but didn't manage to mobilise people to protest themselves.

The 2009 law allows a consideration of the issue at stake on the basis of the number of Yes responses. This has repeatedly resulted in odd formulations or reformulations of the questions. More recent initiatives for national referendums in Bulgaria continue to follow the line of populist abuse of the referendum idea by politicians and wannabe politicians.

On 25 January 2018, a group of Socialists MPs (headed by the chairwoman of the party) registered an initiative to put to a referendum the question: “Do you support a ratification of the Council of Europe ‘Convention on preventing and combating violence against women and domestic violence?’” A few days later the same group withdrew the question and registered an initiative with the reformulation: “Are

More recent initiatives for national referendums in Bulgaria continue to follow the populist abuse of the referendum idea by politicians and wannabe politicians.

you against the ratification of the so-called Istanbul Convention of 11th May 2011?” As its official name suggests, this Convention is a Council of Europe instrument for the prevention of violence against women and domestic violence. The Socialists argued, however, that its use of the terms ‘gender and ‘gender identity’ were problematic and could lead, among other things, to the legalisation of a ‘third sex’ or ‘same-sex marriages’. Despite experts’ arguments that the conventions did not require any such legislation, the Socialists argued vehemently against it as an instrument peddling ‘gender ideology’. This initiative represents an apparent paradox – a Socialist Party member of the PES attempted to prevent the ratification of a landmark piece of legislation on the basis of essentially homophobic arguments. This paradox is explained by the sharp turn of the Bulgarian Socialist Party towards conservative, national-populist positions, which make it only nominally a European centre-left party.

8.1.3 Experience with participatory democracy

The desire to hold a referendum is closely linked to divisions in society. Deliberative polling – a unique form of political consultation that combines public opinion research techniques and public deliberation to construct hypothetical representations of what opinion on a particularly divisive issue might be if citizens were more informed – was conducted in Bulgaria by the Centre for Liberal Strategies on two occasions: in 2002 (on policies to fight crime), and in 2007 (on policies towards Roma in Bulgaria).

This form of participatory democracy demonstrated that opposition and prejudices against reasonable policies can be

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decisively softened on the basis of proper information and profound debate between proponents and opponents.

Inspired by the two national deliberative polls, in 2008 Bulgarian national TV adopted a modified form, a kind of 'deliberative polling lite', and designed a programme (running weekly except during winter and summer holidays) with the title 'Referendum'. The programme is conducted in cooperation with the

well-established polling agency Alpha Research. The 'Referendum' team chose a hot topic every week and invited proponents and opponents, experts and politicians, for debate in the studio. Alpha Research polls a representative sample of people on the discussion topic both before and towards the end of the programme and any shift of opinion is discussed at the end of the programme. Politicians of course have no obligation to take account of the results of the TV 'referendum' but for ten years it has developed into a forum for 'the voice of the people'.

8.2 The EU dimension

Bulgaria joined the European Union in 2007 without holding a pre-accession referendum.

The start of accession negotiations in 2000 was formulated by the Prime Minister Ivan Kostov as representing the second most important shift in Bulgaria's modern history after the proclamation of independence in 1908. From late 1989 onwards, virtually all Bulgarian politicians paid lip service to EU membership as a top-priority matter of national interest. But before 1997 Bulgaria was rather slow to introduce economic reforms on its own. Because of the stop-and-go national policies between 1990 and 1997, Bulgaria's transition agenda was shaped in parallel with its EU accession agenda between 1997 and accession in 2007. The EU accession agenda became Bulgaria's modernisation tool and was thus highly important. Mobilisation to comply with EU membership requirements resulted in a certain neglect of policies that are more

of a national than a European competence (namely education, culture, health, pensions, and social security etc.) during the pre-accession period. Naturally, after accession all these issues moved to the top of the political agenda and came to dominate both national and EU elections.

One of Bulgaria's paradoxes is that Bulgarians seem to be unhappy with the transition but are rather happy with the country's EU membership. According to Eurobarometer (2017), 57% of

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Bulgarians have a positive image of the European Union (much higher than the EU28 average of 40% and as high as 82% among people under 24!). Only 14% have a negative image of the EU. Moreover, Bulgarians tend to support deeper integration within the

European Union (with regard to a common defence and security policy: 75%; a common migration policy: 68%; a common foreign and security policy: 66%; and further enlargement: 52.5%). Alpha Research (2014) registered rather high levels of appreciation of life before 1989 and low levels of appreciation of social and economic life post-1989. For many Bulgarians the EU represents a beacon of democratic standards and successful economic policies. According to Eurobarometer (2017), 61% of Bulgarians consider the economic situation in the European Union to be positive but only 18% consider the situation in their own country positively. However, Alpha Research (2017) registers a cautious optimism with regard to economic developments in Bulgaria itself.

High support for Bulgaria's EU membership did not and does not go hand in hand with a high level of knowledge about the different EU policies and the rationale behind them. These circumstances allowed virtually all small anti-system populist players (and even mainstream players) to use and abuse the opportunity to dispute certain provisions in Bulgaria's Accession Treaty after the country joined the EU. In most cases the EU and its institutions were not so much the target of populist criticism as the Bulgarian politicians that

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negotiated the Accession Treaty. Some of the issues being repeatedly taken up are the early closure of units 1-4 of the nuclear power plant Kozloduy, levels of payments for agricultural producers, rates of excise duties for alcohol produced by small breweries, Bulgaria's post-accession EU monitoring under the Cooperation and Verification of Progress Mechanism (CVM), and land ownership regulation.

Lack of information about which policies fall within the competence of the EU can be easily used and abused to foster unsustainable hopes. In early 2014 Bulgaria's trade union, CITOB, succeeded in mobilising 30,000 Bulgarians to sign the European Citizens' Initiative for an Unconditional Basic Income (UBI). Bulgaria exceeded the national eligible target level of participation but since the UBI initiative fell far short of the one million signatures required for consideration by the Commission, there was no official European reaction to the initiative. The organisers were enthusiastic about the level of mobilisation but in a country like Bulgaria an initiative with an unrealistic goal can undermine trust in the EU. Grassroots initiatives to mobilise support for other European Citizens' Initiatives had little success, as illustrated by the level of support for the four successful ECIs.

Table 8.1 Levels of support in Bulgaria for four successful ECIs

Title of the successful ECI	Number of signatories from Bulgaria	Threshold counted among the required seven member states
Water and sanitation are a human right! Water is a public good, not a commodity!	1,406	13, 500
One of us	906	13, 500
Stop vivisection	12, 598	13, 500
Ban glyphosate and protect people and the environment from toxic pesticides	552	12, 750

In general, EU issues trigger political party positioning, attract media coverage and play a role in national elections only when they

have a real or perceived impact on Bulgaria and its citizens. As an external border of the EU, Bulgaria has high stakes in the EU's migration and common border control policies. Although Bulgaria was hardly affected by the 2015 refugee crisis, the way the crisis was handled fuelled nationalist and populist reactions. Nevertheless, the government did not join the Visegrad countries in their open opposition to a common European solution of the crisis.

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With populism and anti-globalism on the rise all over Europe, tense relations between the EU and Russia, and hybrid threats against the EU, there is an increase of EU issues that are represented in the public discourse as threats for Bulgaria. The Anti-Counterfeiting Trade Agreement (ACTA), the Transatlantic Trade and Investment Partnership (TTIP), the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and last but not least sanctions against Russia have provoked serious political polarisation in Bulgaria.

EU policies and decisions that could be interpreted as applying 'double standards' (justifiably or not) have the potential to stoke up political and public scepticism. Instances of perceived double standards include the EU's reluctance to admit Bulgaria to the Schengen area and to the ERM II as a first step to joining the euro (being outside Schengen and outside the euro raises the possible danger of drifting

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away to the marginalised political periphery), but more recently also discussions on the Posted Workers Directive (especially the application of the 'Mobility package' to drivers and transport companies) and different ingredients in food stuffs of the same brand.

8.3 Influence of direct democracy on national political realities

Direct democracy doesn't play a formal role in the shaping of political realities in Bulgaria but populist and nationalist players that are part of it often instrumentalise people's discontent with the current political system.

In general, accession to the EU has played a decisive role in shaping the political landscape of Bulgaria. Early on, the main political players were eager to seek affiliation with the three big political families – EPP, PES and ALDE. The incumbent government, a coalition between GERB (EPP member) and the United Patriots (itself a coalition between three nationalist parties) is the first government since Bulgaria's accession to the EU in 2007 that does not have a full affiliation to one or more of the three big pro-European political families. Both PES and ALDE have, on several occasions, criticised GERB for entering into coalition with the United Patriots, whereas EPP has preferred to adopt a low profile on this coalition format.

The painful transition and the perception that the Bulgarian political elite is corrupt provided fertile ground for populist and nationalist anti-establishment players of different colours, even in the late 1990s, as discussed by Krastev (2007) and Krasteva (2013). Since 2001, general elections in Bulgaria have been marked by a succession of new political players promoted by the Europe-wide populist movement. As outsiders to the political establishment, they benefited from creating an image of siding with ordinary people against the incumbent political elites but, in most cases, this image started to wear thin as soon as they made it into Parliament or into government. The soft populists among them were easily and eagerly integrated into the pro-European mainstream. Into this category falls the former King of Bulgaria, Simeon Saxecoburgotski, the new political star in 2001, replaced in 2009 by his former bodyguard, Boyko Borisov. Back in 2001, Simeon Saxecoburgotski won a landslide victory with his 'National Movement Simeon the Second' (NDSV) (winning 120 out of 240 seats) on a wave of soft populism, but without stirring either nationalism or Euroscepticism. On the contrary, his government continued and

concluded the EU accession negotiations and his party joined the ALDE political family.

In the 2009 general elections, GERB, the party emerging from Boyko Borisov's 'Citizens for the European development of Bulgaria' movement narrowly missed the majority (117 out of 240 seats) and was eagerly admitted to the EPP. After serving as Bulgaria's prime minister in 2009-13, Borisov once again became head of the government from November 2014 to January 2017 and since May 2017 is prime minister for the third time.

In a political landscape that increasingly calls for coalition-building, in recent years political engineering has produced a number of small anti-establishment players with a vague ideology but strong economic interests in political brokering. Most of these parties are hybrid media-political structures. Two such parties have emerged on the basis of a single TV company SKAT – namely Ataka and the National Front for the Salvation of Bulgaria. Another television company, TV7, produced a party of its own by turning its executive director into a party leader (Barekov's 'Bulgaria without Censorship'). At the time of writing another TV personality: Slavi Trifonov, is in the process of entering politics.

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Just one month after the signing of Bulgaria's accession treaty in May 2005, the June 2005 general elections catapulted the first hard populist party associated with Euroscepticism in Bulgaria into the National Assembly (with 21 out of 240 seats in the parliament). A proponent of anti-globalism and anti-capitalism, Ataka is a typical protest party - xenophobic, homophobic, anti-Turkish, anti-Semitic, anti-NATO and Eurosceptic. It is one of the partners in the United Patriots coalition involved in the incumbent government. Ataka was not in formal coalition with the Socialists in the minority government 2013-14 (built with the mandate of ALDE member DPS) but was dependent upon its support.

In the 2014 European election a populist coalition sent two MEPs to the European Parliament (without running on an explicitly

Eurosceptic ballot) that were eagerly accepted into the European Conservatives and Reformists Group.

The most recent populist newcomer to the Bulgarian Parliament, Mareshki with his Volya party, claimed to be on the way to apply for EPP membership in spring 2017 but on 1 May 2018 attended a rally of far-right European partners in southern France, led by Marine Le Pen.

In the first post-communist years the main cleavage in Bulgaria was between communists and anti-communists. With populism and nationalism on the rise, current splits tend to form along the liberals vs conservatives line, which sometimes overlap with the pro- vs anti-European division.

8.4 Influence of direct democratic mechanisms on EU political realities

Bulgaria joined NATO in 2004 and the EU in 2007 without holding a referendum. Since referendums were held in virtually all acceding EU members that were part of the fifth enlargement (except in Cyprus and in Romania), the issue was occasionally discussed in Bulgaria.

Most persistent on the issue of holding a referendum on Bulgaria's EU membership was President Parvanov, having first raised it in January 2004 and then again even after the ratification of Bulgaria's accession treaty on 11 May 2005, with 231 votes 'for', two abstentions, and one single vote 'against'.¹

President Parvanov insisted not simply on holding a referendum but on holding it on the eve of Bulgaria's accession to the EU, i.e. in the autumn of 2006, after signing and ratifying the accession treaty. He was immediately suspected of either wanting to sabotage Bulgaria's accession to the EU or aiming to hold the referendum simultaneously with the 2006 presidential elections, thereby facilitating his own re-election for a second mandate.

In January 2004 Parvanov's proposal for the referendum was turned down by all political parties except the Socialists, but later that year several of them took up the idea themselves. They each made different calculations to facilitate their own re-election in the

¹ The Bulgarian Parliament has 240 members.

2005 general elections. The Socialists didn't oppose Parvanov's initial proposal in January 2004, but later they did oppose holding a referendum on Bulgaria's EU accession without a prior referendum on the early closure of NPP Kozloduy's units 1-4 – a precondition for the start of negotiations in 2000. All in all, because of partisan wrangling, there was no referendum on Bulgaria's EU accession in the end. The main reason for this was that there could be few doubts about the positive outcome of such a referendum. Neither could there be any doubt that a national referendum on the early closure of units 1-4 of the Kozloduy NPP would result in a No for the agreement. Holding the two referendums would therefore make it clear that one cannot have one's cake and eat it.

Yet the political debates around the different options did a lot of harm to citizens' trust in politicians. Furthermore, the way politicians shunned the responsibility of explaining the rationale behind the EU's insistence on the Kozloduy issue paved the way for continuing debates around nuclear power and energy in general, in an irrational and populist way. The first-ever referendum in post-communist Bulgaria cannot be properly understood without taking into account the use and abuse of the Kozloduy card in the run-up to Bulgaria's EU accession.

Recent referendums in other EU member states have not triggered a debate on the advantages or disadvantages of direct democracy. They were mainly considered from the point of view of Bulgaria's national interest as an EU member: namely, the country's aspirations to join the eurozone or the right to free movement for Bulgarian citizens.

The Irish referendum on the Nice Treaty in 2001 and the Dutch and the French referendums on the European Constitution in 2005 were considered in Bulgaria mainly as potentially endangering Bulgaria's accession to the EU. The spectre of the 'Polish plumber' during the campaign in France was perceived as an instance of hostility towards new member states and candidate countries alike.

The July 2015 Greek bailout referendum (and the Greek crisis in general) has been perceived mainly from the perspective of whether it could have a negative economic and financial impact on Bulgaria because of the Greek ownership of some Bulgarian banks.

With regard to the Brexit referendum, the Leave campaign was presented in Bulgaria as very much a populist one based on

fake data, manipulation and outright lies, not least with regard to citizens moving to the UK from Eastern Europe in general, and Bulgaria in particular. No serious demands to follow in the UK's footsteps were registered in Bulgaria. In the eventuality of a referendum on remaining in or leaving the EU, 82% of Bulgarians would have voted Remain and 18% Leave, according to Gallup International (2015), compared to the EU14 average of 68% for Remain and 32% for Leave in the 14 countries polled (Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Romania, Spain, Sweden, UK).

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After the Brexit referendum in June 2016, the same question provoked more uncertainty – 75% of Bulgarians would have voted Remain and 25% Leave; a result that proves that attitudes towards the EU are determined not only by national circumstances but also by international developments and discourse.

As regards the Hungarian 2016 referendum on the reallocation of refugees, it was the marginal Bulgarian Union for Direct Democracy that suggested that Bulgaria should organise a similar referendum but they used the opportunity to criticise the high threshold and quorum under the current law that does not facilitate the holding of such a referendum.

8.4.1 Level of (dis)alignment with political families in the European Parliament

Membership of the political families in the European Parliament was first made possible after Bulgaria's Accession Treaty was signed in April 2005. The parties with representatives in the Bulgarian Parliament obtained observer status in the EP in autumn 2005. Out of 18 observers only one did not join any of the three big political families. Seven joined the ALDE group, six joined the Socialists, and four the EPP group.

In May 2007 Bulgarians were able to vote for ordinary MEPs for the remaining period of the EP's mandate. The turnout was rather low: 28.69%. Fifteen MEPs joined the three mainstream

parties (EPP, the Socialists and ALDE gained five Bulgarian members each). Three Ataka members joined the Identity, Tradition, Sovereignty group (that ceased to exist on 14 November 2007).

Turnout in the 2009 elections and the 2014 elections was higher – respectively 37.49% and 35.84% because both elections were perceived as a rehearsal for the general elections. European issues played a rather marginal role. Once again, the majority of elected Bulgarian MEPs joined the pro-European mainstream. In 2009, out of 18 Bulgarian MEPs seven joined the EPP, five – ALDE, and four – the Socialists. In 2014 seven Bulgarian MEPs joined the EPP, four – ALDE, four – S&D, and two – the Eurosceptic ECRF.

The fact that the major Bulgarian political parties are affiliated to the pro-European mainstream of EPP, PES (Bulgarian Sergey Stanishev being their president) and ALDE should not be overestimated and taken as a guarantee that Bulgaria's political elite is immune to populism and Euroscepticism. The pro-European political groups in the European Parliament are not homogeneous. More and more of their members seem to be tempted to fight the far-left and the far-right by adopting populist positions themselves. A ready demonstration of the discrepancy between a European political family and its national members can be provided by the Bulgarian experience – on the one hand, support within PES and S&D for the ratification of CETA and the Council of Europe "Convention on preventing and combating violence against women and domestic violence", on the other hand fierce resistance against both ratifications by the leadership of the Bulgarian Socialist Party. In a situation where there are no homogeneous political families, any discussions on transnational lists and the Spitzenkandidaten procedure won't convince Bulgarian citizens that this is the way to increase the democratic legitimacy of the European Union.

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Conclusions

The Bulgarian case study does not support the bold and widespread hypothesis that direct democracy might be the answer to the

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contemporary crisis of confidence in politicians, political parties and institutions. Rather, the use of direct democracy in Bulgaria could be interpreted as a combination of the following three factors: i) party politics using referendums to gain competitive advantage; ii) initiatives by media personalities with ambitions to enter politics; iii) plebiscites organised by

the government or head of state to rubberstamp particular policies. In all three instances the *demand* for referendums has been generated strategically by specific structures of representative democracy or by aspiring politicians/parties. In each case the use of referendums has not reversed the growing trend of distrust in politicians.

In Bulgaria, direct democracy instruments have been successfully used by two types of actors – large parties and influential TV shows. Both have a huge potential to *form* public opinion, which they do by *hiding* behind public opinion. The Bulgarian experience with the referendum on electoral reform allows us to interpret direct democracy instruments as a form of manipulation of public opinion by those with access to key resources, rather than as a triumph of the voice of the people.

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Indeed, political scientists understand that electoral reform cannot remedy deeply entrenched problems such as structural corruption, clientelism – nor could they avert oligarchic tendencies.

Scaling down public funding is another dubious measure because it could increase the dependence of politicians on corporate interests. But if a popular TV show thinks otherwise, public opinion could easily become less sensitive to the complex arguments of political pundits.

This brings us to a more general point. In circumstances where society can rely on trusted, non-partisan authorities and experts to form opinions and preferences, direct democracy could be a useful addition to representative, partisan politics. But if the media and the expert community are also partisan, or people are convinced that they are partisan, direct democracy becomes yet another instrument for the partisan mobilisation of voters.

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Unfortunately, the populist *zeitgeist* suggests that Europe in general and Bulgaria in particular find themselves rather more in the second scenario. The fashionable term 'post-truth' is yet another symptom of the politicisation along partisan lines of the media, academia, and the expert community. This politicisation could be either real or perceived – crucially, the *public* is convinced that this is the case. This belief is the product of strategic actions by specific players. 'Fake news', 'biased experts' and attacks on meritocratic elites have been used as arguments to undermine most of the independent authorities in the public sphere.

This ambiguity around the uses of direct democracy is a cause for concern in itself. It suggests that the successful introduction of direct democracy instruments requires improvements to the functioning of closely related areas such as the media, academia, the expert community, etc. Direct democracy is not a panacea for problems in these related areas – actually, it could easily become prey to such problems.

All these complications underline an obvious point: direct democracy is no *substitute* for a functioning representative democracy. Responsible, competent representatives are key to present-day democracy: if they have been replaced by skilful manipulators, direct democracy could hardly remedy the situation. The hope is that societies draw the right lessons from their experience with direct democracy and use it in more meaningful ways in the future. In this regard the Bulgarian case study is not

devoid of hope for the proper use of direct democracy at the national level.

As far as direct democracy at the EU level is concerned, experience with referendums held in the last two decades support Krastev's (2017) view that:

... in a political construction like the EU, where you have a lot of common policies, you have far fewer common politics. Where nobody can prevent member states voting on issues that can dramatically affect other states in the union, an explosion of national referendums is the fastest

way to make the union ungovernable. Such an explosion could even trigger a "bank run" that could catalyse the breakup of the union. Europe can't exist as a union of referendums because the EU is a space for negotiation while referendums are the final

Europe can't exist as a union of referendums because the EU is a space for negotiation while referendums are the final word of the people that preclude further negotiations.

word of the people that preclude further negotiations. Referendums are therefore political instruments that can be easily misused by both Eurosceptic minorities and euro-pessimistic governments to block the work of the union. If the EU commits suicide, the weapon used will quite likely be a popular referendum or a series of popular referendums.

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9. CZECHIA DIRECT DEMOCRACY: FROM THE SHADOWS TO THE LIMELIGHT

JAN KOVÁŘ, PETR KRATOCHVÍL &
ZDENĚK SYCHRA

Czechia has limited experience of direct democracy. While petitions are in use and referendums can be organised at the local and regional level, Czech citizens cannot vote in nationwide referendums and have no other direct democracy tools at their disposal. Calls for the wider use of direct democracy have multiplied, however, especially in the past five years. Direct democracy is promoted by challenger parties to gain electoral advantage and achieve political goals thought to be unachievable via representative democracy (namely ‘Czech-out’ – a Czech exit from the EU) rather than as a means to improve the quality of democracy and increase citizens’ involvement.

Introduction

As Czechia has been a typical representative democracy until recently, direct democracy instruments were few and their usage

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rather rare. Yet during the last five years direct democracy has been the subject of increasing attention; in some political circles it has come to be presented as a panacea for all political legitimacy problems. Since the wider use of direct democracy has been taken up enthusiastically by Czech populists as a *cause célèbre*, experts’ misgivings about it

in the Czech context have only increased.

Even though several direct democracy instruments exist in the country's legal system, they are generally considered to be merely additional tools that should not fundamentally shift the balance away from the representative aspects of democracy. This does not entirely preclude the possibility of new direct democracy instruments from being introduced, however. The country's constitution defines the simple condition under which a direct democracy instrument (more specifically, a general referendum) can be adopted in its Article 2: "A constitutional law can define when the people exert state authority directly" (Constitution of the Czech Republic, 1992).

9.1 The national context

9.1.1 *Direct democracy instruments*

Referendums

In Article 10a, the Constitution also mentions the possibility to ratify an international treaty by referendum which, again, has to be defined by special constitutional law (Constitution of the Czech Republic, 1992). Paradoxically, the special law on a general referendum has been discussed with remarkable frequency and more than a dozen legislative proposals were tabled during its introduction, but none has been successful. But the general referendum's moment might finally have come: the current political climate clearly favours passing a law on a general referendum and the coalition partners in the new government all support this step.

Having said this, Czechia's only experience of national referendums so far is the EU accession referendum. This binding referendum was based on the constitutional law no. 515/2002, whose sole purpose was to introduce the possibility of a one-time referendum. However, the possibility of the law's repeated application resurfaced once again in 2008 during a heated political debate surrounding the ratification of the Lisbon Treaty. The then President Václav Klaus asked the Constitutional Court if a) the law on the referendum on EU accession could be used in the ratification process of the Lisbon Treaty and b) if a referendum was really necessary in this case, as his clearly stated preference was a positive answer to both questions. The Court refused the necessity of

ratification by referendum, even though it did not exclude the possibility of doing so (Constitutional Court of the Czech Republic, 2009).

Unlike the general referendum, local referendums are common, usually run simultaneously with other types of elections. While the local referendum is not explicitly mentioned in the Constitution, there is a reference in the Charter of Fundamental Rights and Freedoms that is part of the constitutional order. The conditions and criteria for local referendums were set in law no. 22/2004 and later updated by decreasing the necessary quorum for the referendum's validity (law 169/2008).

Finally, a regional referendum is also possible: it was legally defined once law 129/2000 was adopted, and regional referendums could be held from January 2011.

Petitions

Another direct democracy instrument is the right of petition. This right is guaranteed in the constitutional order and enshrined in the law on petitions (85/1990): every citizen has the right to petition state organs or local and regional authorities with respect to proposals, requirements and complaints. Citizens can petition individually or by forming a petition committee. The petitions addressed to the central state institutions has varied widely but in general they have decreased in number. For instance, the lower chamber of Parliament received hundreds of petitions a year 20 years ago but only around 30 in the last five years (Chamber of Deputies, 2017b). In the second half of 2017 only five petitions were submitted, which were signed by a total of 21,287 citizens (Chamber of Deputies, 2017c). No other traditional direct democracy tools such as civilian assemblies, civilian juries or various types of recall are in use.

9.1.2 Participation in citizen involvement instruments

Low levels of political participation are often cited as one of the main problems of Czech politics. Yet while there has clearly been a decline in political participation in all its aspects, comparative research shows that the Czech situation is far from being the worst.

In fact, studies conducted around the time of the country's EU accession (2004) show that the level of political participation placed Czechia exactly in the middle (fifth) of the post-communist countries analysed. At that time, the most politically active societies were those of East Germany and Slovakia and the least active were Romania, Bulgaria, and particularly Hungary and Poland. The tendency to

evaluate post-communist countries on a different scale from that of established Western democracies is misconceived. For instance, although lagging behind Slovakia or Eastern Germany, Czechia fared similarly to the United Kingdom in terms of electoral participation, demonstrations, internet discussions and several other criteria (Vráblíková, 2009).

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As direct democracy tools are seldom used, it is extremely difficult to assess how active citizens would be if new direct democracy instruments were introduced. In the single existing case of a nationwide referendum (the EU accession), participation stood at just above 55%, with 77% in favour of accession. As regards petitions, their overall number has been decreasing for years but the numbers of petitioners remain relatively high (Chamber of Deputies, 2017c).

A specific problem arises with local referendums. The law on the local referendum was amended several times and the main controversy stemmed from the required threshold for the referendum's validity. The law's 1992 version required the participation of at least 25% of all voters for it to be valid, and adoption would depend on a majority of voting citizens choosing that option. In 2004 the threshold was raised to 50% and in 2008 lowered again to 35%. Hence, even the biggest local referendum held in the second-largest city (Brno), with a turnout of almost 25%, was not considered valid. In other words, local referendums are far more likely to succeed in small municipalities than in large cities because the high threshold discourages politicians from even considering the referendum, and discourages citizens from voting.

9.1.3 *The main drivers of voter mobilisation*

In the last five years, voter mobilisation has taken on a populist hue, accompanied by a shift towards rhetorical support for direct

In the last five years, voter mobilisation has taken on a populist hue, accompanied by a shift towards rhetorical support for direct democracy. The year 2013 can be considered as a turning point: the first direct presidential election brought Miloš Zeman to power, with a distinctly nativist, anti-migration and even anti-German rhetoric.

democracy. The year 2013 can be considered as a turning point: the first direct presidential election brought Miloš Zeman to power, with a distinctly nativist, anti-migration and even anti-German rhetoric. In the same year, two new populist parties entered Parliament, the technocratic one-man ANO movement of Prime Minister Andrej Babiš (18.65%, in second place) and the Eurosceptic anti-immigration Dawn of Direct Democracy of Tomio Okamura (6.88%, in sixth place).

These two parties represent the two branches of populism that have been gaining ground ever since. The first, and clearly more widespread, is the populism driven by the neoliberal rhetoric of anti-bureaucratic efficiency ('manage the state like a firm'). Its success can be understood as emerging from the post-communist era because communism plays no role in its political narrative (either positive or negative). Rather, this movement managed to channel protest against liberal elites and the ongoing disparities between the living standards of agricultural blue collar workers and the mainly Prague-based elite. In this sense, voter mobilisation does not follow a traditional left-right cleavage but simply evokes the image of an efficient businessman with great expertise and no political ideology (which is of course an illusion). The ANO movement later became the stronger political party in the country and its leader, Andrej Babiš, is the current prime minister.

The second type of populism is the nativist, strongly anti-EU, anti-Muslim variant, which is weaker but growing nonetheless. It is openly xenophobic, borderline racist and more radical in its discourse than the supposedly non-ideological first type of populism. It is this nativist populism that has made direct democracy one of its slogans. Indeed, the most influential extreme-right party uses direct democracy in its name (the above-mentioned Dawn of Direct Democracy and its later incarnation Freedom and

Direct Democracy (SPD)). The leader of this party, Tomio Okamura, became known for the knee-jerk repetition of the 'direct election and removal of politicians' campaign mantra. For this reason, direct democracy – already regarded with suspicion by analysts and political scientists alike since the direct election of the president, has become even more dubious due to its connection to the extreme right.

9.2 The EU dimension

9.2.1 *Significance of EU affairs for citizens, media and political parties*

Political party discourse

Over the course of its EU membership, of almost 15 years, there has been a substantial development in terms of the significance accorded to EU issues by Czech media, political parties and citizens. For political parties, this has been the case since 2002 (Kovář, 2016). The trend is non-linear, however, as there was a slight decrease in the salience of EU issues between 2004 and 2009. Following the EU crises, the importance of EU issues grew again and reached hitherto unprecedented levels across all parties. Virtually no relevant political party could avoid discussing the EU refugee and migration crisis. Much of this discussion focused on the EU's role in the crisis.

Notwithstanding the increasing salience of EU issues in Czech party discourse, EU issues are still chiefly mentioned in terms of the general direction of the EU or as a framework reference that Czechia can utilise to become a fully fledged member. At the same time, the EU is commonly discussed in terms of a source of financial support (EU funds to be used at national level). Nevertheless, party discourse still pays very little attention to specific issues such as the adoption of the single currency in Czechia and even less to the role and reform of EU institutions. Despite the increased attention to EU issues in Czechia, especially since 2010, they are still not of first-order importance in political discourse.

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Media discourse

A similar trend can be observed in the media. The salience of EU issues in news media was low until the EU sovereign debt crisis. Before 2010, EU topics were covered only marginally, except for key events such as European Council summits and the EU presidency etc. Moreover, coverage of EU affairs was only selectively prioritised by the public service broadcaster and a small number of the broadsheet newspapers. In other outlets coverage was usually limited, even during key events. There has been a trend of increasing media coverage of European issues since 2010 and the EU sovereign debt crisis (Kovář, 2016). The most significant increase can be traced, however, to the refugee/migration crisis of 2015 and later.

Even today, the EU is given more prominence by public service broadcasters and broadsheet newspapers than by private television or the tabloids, where it is subject to sensationalist reporting.¹ The main focus is still on national political actors; EU issues are more often portrayed as national matters with an EU dimension than as EU matters in their own right (Kovář, 2016).

Relevance of EU issues for voters

EU issues are not among the main determinants of voting choice in Czechia, but in EP elections the relevance of EU issues for voters has been increasing since 2004 and was most evident in the 2014 EP elections. However, national political issues still remain the most important determinants of vote choice and the decision (or not) to turn out.

In the 2013 national elections, EU issues were not among the top 15 that citizens considered important; only about 2% of voters saw EU-related issues as important in the election (CVVM, 2017). This changed in 2017, however, as a reflection of the intense politicisation around the migration crisis. While national political issues were still more important for voters, EU issues were considered important for almost 10% of them. Moreover, for voters of particular parties such as the openly pro-EU TOP09 and the

¹ Part of the media landscape is in the hands of politicians, which may explain the uneven coverage of certain parties and politicians.

highly Eurosceptic SPD, EU issues were more relevant. Yet even here they were of secondary importance (CVVM, 2017). It remains to be seen whether EU issues retain their relevance once the sensitive question of immigration is no longer so politicised in the public sphere.

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The relevance of EU affairs for referendums

The only nationwide referendum held so far on EU membership was made possible by the adoption of an ad hoc constitution law. It was held as the conclusion of a long process of Czechia's 'return to Europe'. This meant that practically all parties (except the communists) were in favour of Czech membership of the EU (even the Eurosceptic ODS, the Civic Democratic Party led by Václav Klaus). Given the strong cross-party consensus, there was little contention surrounding the move and EU issues in general caused no real division in domestic politics. Available research shows that most voters followed their favoured party's position. Some 77% backed EU membership in the referendum, with a 55% turnout. For most voters, the EU represented longstanding democracy, market reform and indeed Czech identity, as most voters tend to identify themselves as belonging to (Western) Europe and thus accession to the EU was seen as the logical next step in the post-communist modernisation process.

For the next decade or so, there were no demands for nationwide referendums on EU issues except for occasional requests from the ODS and SSO (Free Citizens' Party) to hold a referendum on the adoption of a common currency. These requests were usually countered by pointing to the obligation in the accession treaty to adopt the common currency. A referendum on eurozone membership was thus seen as redundant by most political parties as Czechs had already agreed to join it in the EU accession referendum. The ODS countered these arguments by pointing to the change in the structure of the eurozone since Czech accession, which required a new referendum. The call for a referendum on membership of the eurozone was later joined by the SPD, a

Eurosceptic party established around the issue of direct democracy. In fact, the requests of ODS and other political actors to hold such a referendum did not reflect any desire to ensure citizens' deeper involvement in the political process. It rather reflected their opposition to membership; they saw that the public were becoming more sceptical about adopting the euro and exploited this opportunity as a means of blocking membership. By calling for a referendum, political entrepreneurs would show that they cared about people's wishes and at the same time hoped that the Czechs would decide not to adopt the common currency, thus achieving their political goals.

Finally, political parties started to campaign widely for the adoption of a constitutional amendment on nationwide referendums. Already before the 2013 national elections, at least seven relevant parties advocated the adoption of such a constitutional law. However, only two of them explicitly connected a national referendum to EU issues. The ODS has maintained that it would insist on such a referendum for Czech accession to the eurozone. The SPD demanded a national referendum if any competences were transferred to the EU level. No party at this time called for a referendum on Czech membership of the EU. The situation changed ahead of the general elections of 2017. Perhaps inspired by the Brexit referendum, several parties – namely the SPD, Communists (KSČM) explicitly called for the adoption of a constitutional law on referendums in order to hold a referendum on Czech-out. Representatives of two other parties – the Pirate Party, and Mayors and Independents (STAN) – pointed out that they would allow the question of EU membership to be the subject of a referendum following rather strict procedural requirements. However, the pro-European party TOP09 explicitly stated in their programme that they would not allow a referendum on such a question. Other parties have been rather sceptical about the possibility of deciding upon membership of an international organisation by referendum.

The constitutional amendment was submitted to Parliament following the 2017 national elections. But it is not clear whether it will be passed and what its procedural requirements will be at this point. In any case, while the call for direct democracy and greater citizen involvement is usually used as a reason to adopt a

constitutional referendum bill, it appears that the main reason certain parties, in particular the Communists and SPD, lobby to allow citizens to decide on Czech membership of the EU/NATO by referendum is more driven by their political goals than by a concern for the quality of democracy. Both parties represent extremes of the political spectrum, both are anti-establishment and anti-EU. The long-term pro-EU consensus among major parties created a space for these parties to exploit growing Euroscepticism.

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The 'mobilisation' of EU issues

Using the distinction between vertical and horizontal Europeanisation, we can observe some nascent horizontal Europeanisation where national media cover issues in other EU member states and national actors address issues or actors in another EU member state. However, there is very limited vertical Europeanisation where national actors address European actors and EU issues, and European actors partake in national debates on EU issues. Media reporting thus clearly indicates a domestication of EU matters rather than a burgeoning European(-ised) public sphere (Kovář, 2016).

Political parties' mobilisation of EU affairs reveals a very similar pattern. Despite the notable increases of EU-related references in party discourse since the pre-accession period, the quantitative increase is not matched by a 'qualitative' exploration of substantive EU issues. Often, EU references in party discourse relate to European funding and the EU as an easy source of cash to fulfil national political promises.

The EU is viewed as something detached, resembling an us vs. them understanding of EU politics where the EU and Brussels are external to Czechia.

This further underlines the view of the EU as something detached, resembling an *us vs. them* understanding of EU politics where the EU and Brussels are external to Czechia. EU issues have never played a role in the formation of a governing coalition, except possibly in 2002, just before EU accession.

European Citizens Initiative

Looking first at the requirements for the European Citizens’ Initiative (ECI), the eligibility age to sign initiatives in Czechia is 18 years, as this is the voting age for elections to the EP. The national minimum threshold for the number of signatures to be collected is 15,750 for initiatives registered after 1 July 2014 and 16,500 signatures for initiatives registered before this date. The Czech experience with the ECI so far can be described as ‘lukewarm’. While signatures were collected for each of the four successful initiatives so far, in none of them did the number of signatures reach the minimum threshold (see the table below).

Table 9.1 Successful ECIs in Czechia

Name	Number of Signatures
Water and sanitation are a human right! Water is a public good, not a commodity	7,575
One of us	11,468
Stop vivisection	4,075
Ban glyphosate and protect people and the environment from toxic pesticides	9,901 ²

Moreover, looking at participation in the citizens’ committees that propose an initiative and must be composed of at least seven EU citizens old enough to vote in EP elections, we see that out of more than 50 initiatives so far (including successful, unsuccessful,

² The signatures were submitted after the deadline and therefore not counted as eligible.

withdrawn by organisers and rejected by the Commission but not ongoing), Czech citizens were members of a citizens' committee in only four cases (two withdrawn and two unsuccessful, i.e. 'Suspension of the EU Climate & Energy Package', 'New Deal 4 Europe', 'EU Directive on Dairy Cow Welfare', and 'For Only One Time' (i.e. abandoning summer/winter time changes). Czechs have not been members of a citizens' committee of any successful initiative so far. The only ECI initiated in Czechia, the 'For Only One Time' initiative, underlines the lack of enthusiasm for this mechanism. After registering the initiative with the Commission and launching the collection of signatures, the organisers decided to pursue other avenues, such as the domestic level and Czech MEPs.

Research on the Czech experience and ECI's shortcomings highlights several points. Perhaps given the limited experience with participatory mechanisms, Czech citizens rarely initiate ECI and rather join others once an initiative is registered. Several problematic elements in the eyes of citizens were also identified, namely: a) little time to collect signatures, b) lack of assistance instruments (translation, web-design support) leading to excessive administrative and financial burden, c) age limit of 18 years, d) final assessment of successful initiatives by the Commission, which makes the instrument rather dull, not participatory. Problems at the national level were identified as well. Most importantly, unlike in some other EU member states, Czech legislation requires supporters of an initiative to include their personal identification number, which organisers and supporters of past initiatives saw as a disincentive. In addition, there is a lack of dissemination and mediatisation of initiatives among public service broadcasters. However, it also appears that Czechs have little interest in pursuing citizen's initiatives at the EU level, perhaps due to a high level of Euroscepticism and low trust in EU institutions (Pitrová and Manosoglu, 2014).

9.3 The influence of direct democratic instruments on political realities

9.3.1 *Manifestos, campaigns and characteristics of the party system*

Assessment of the extent of party-system advocacy for direct democracy instruments reveals several trends. The first relates to the introduction of legislation for local referendums, which was adopted originally in 1992 and replaced in 2004 by new legislation (later amended in 2006 and 2008), and the legislation for regional referendums that was adopted in 2010. Ever since the adoption of new legislation for local referendums in 2004, only one mainstream political party (the Greens) discussed the issue before 2006 legislative elections and highlighted the need to revise the legislation on local referendums. The turnout threshold for validity set at 50% of eligible voters and the threshold to be binding set at 25% of eligible voters were seen as too high. The Greens therefore advocated abandoning both thresholds to make local referendums valid and binding with no thresholds on minimal participation.

Before the 2010 legislative elections, the number of parties explicitly mentioning a revision of rules on local referendums in a bid to make them more useful has increased. Five relevant parties,³ two of which gained seats in the Parliament, advocated the simplification of calls for referendums and/or the easing of conditions for the validity and binding force of a local referendum. The same situation occurred before the 2013 legislative elections when five parties⁴ advocated the better use of local and regional referendums and two of these parties were elected to Parliament. Moreover, one of these parties established shortly before the elections had direct democracy in its name and its main policy priority – the Dawn of Direct Democracy. The situation recurred before the 2017 national elections, showing that since 2010 there are consistently five relevant parties advocating the greater and easier

³ Communist Party, Green Party (SZ), Public affairs (VV), Pirate Party (Piráti), and Party of Civic Rights – Zeman's People (SPOZ).

⁴ The same parties as in 2010 supported the issue with the exception of VV, which ceased to exist. The fifth party was the Dawn of Direct Democracy.

use of referendums at local/regional level. Three of these parties were elected to parliament at the election. Although the (electoral) strength of these parties has increased over time, there were no changes to the legislation on local/regional referendums.

Support for the adoption of legislation on a national (general) referendum was even greater after 2004. Article 2(2) of the Czech Constitution stipulates that a constitutional act may designate the conditions under which people may exercise state authority directly and is understood by many parties to mean that direct democracy instruments at national level should be an integral part of the constitutional order. During the first post-accession legislative elections in 2006, three major parties (ČSSD, KSČM, and SZ) advocated the speedy adoption of a constitutional law on a general referendum. Failure to do so in the past was seen as an attempt to prevent the fulfilment of the presumption of the Czech Constitution, whereby its Article 2 states that law should be adopted to define when the people can exert state authority directly. Six relevant political parties advocated the adoption of a constitutional law on a general referendum in the campaign for 2010 legislative elections (ČSSD, KSČM, Pirate Party, SPOZ, SZ, and VV).⁵ In their manifestos and election promises the newly created Pirate Party and VV criticised the political mainstream and the clientelism connected to representative democracy. They hoped to change the political culture by direct democracy instruments.

Six relevant political parties advocated the adoption of a constitutional law on a general referendum in the campaign for 2010 legislative elections.

The main parties' growing support for a national referendum was visible before the 2013 legislative elections. There were six parties calling for the introduction of nationwide referendum (ČSSD, KSČM, Pirate Party, SPOZ, SZ, and Dawn of Direct Democracy). The Pirate Party maintained that a referendum would be mandatory to amend the Constitution and for binding international treaties. Moreover, the newly created (in May 2013) Dawn of Direct Democracy party even made direct democracy its

⁵ Czech Social Democratic Party (ČSSD), Communist Party (KSČM), Pirate Party (Piráti), Party of Civic Rights – Zeman's People (SPOZ), Green Party (SZ), and Public Affairs (VV).

main political agenda. Their campaign was based on criticism of the political mainstream and the disconnect between politicians and citizens that, as they saw it, could only be remedied by the direct involvement of people in politics. They maintained that citizens should have the option to initiate, amend or block legislation and remove politicians from office via referendum. Given the growing support for a nationwide referendum, the constitutional amendment was discussed, albeit without success, during the 2013-17 parliamentary term of office.

In the last legislative elections, the question of a national referendum became an important issue in the campaign for the first time. Given the Brexit vote and previous failures to adopt the required constitutional amendment, a number of parties advocated amendment of the Constitution before holding the EU membership referendum. In particular, SPD (the informal successor of Dawn of Direct Democracy), demanded that citizens be given the opportunity to vote on Czechia's EU membership in a referendum. It became their main campaign issue and, after election, their condition for support of any government coalition. The call to hold a referendum on EU membership was countered by other parties which, while supporting legislation for a national referendum, argued that a referendum could not be called for membership of international organisations. TOP09 even maintained that they would prevent holding an EU membership referendum at all costs. In any case, the growing support for a national referendum and the intensification of public and political debate about direct democracy resulted in a new proposal to Parliament by the SPD in December 2017, the details of which are being discussed by both chambers. However, as the bill needs three-fifths majority in both chambers it is unclear if and under what conditions it will be adopted. But it appears to be closer to adoption than all previous attempts.

Over the last 15 years or so, certain parties also made other proposals concerning direct democracy. Already in 2006, SZ proposed the direct election of mayors, regional governors, and the president. The call for the direct election of the president was also supported by other parties and resulted in the first direct election of a president in 2013. Other parties later also supported the direct election of mayors and hetmans (such as TOP09, Pirate Party, VV, Dawn of Direct Democracy). At the same time, the Pirate Party,

SPOZ, Dawn of Direct Democracy and later on SPD advocated allowing citizens to remove politicians from office via direct democracy instruments (either petition or referendum). The Green Party and the Pirate Party also made the case for a citizens' legislative initiative to be introduced. And the Greens espoused the lowering of the voting age from 18 to 16 years to increase citizens' participation in politics. However, none of these measures gained support in the political arena and have not made it beyond campaign pledges.

Overall, direct democracy instruments, in particular referendums, have increased in popularity over the last decade. This trend is mainly driven by smaller parties (SZ) and newly created parties (Dawn of Direct Democracy, SPD, Pirate Party, and SPOZ) rather than traditional parties (KSCM as the only unreformed Communist Party in Europe being an exception). The main arguments parties make in favour of direct democracy are to a) increase the involvement of citizens in public affairs and political decisions, and b) to protect and promote those citizens' interests that are ignored by mainstream political parties. Direct democracy is assumed to improve the quality of representative democracy in this sense. Looking at the arguments in favour of direct democracy more closely, it appears that direct democracy is promoted by smaller and newly created challenger parties to gain electoral advantage and to achieve political goals unachievable via representative democracy rather than as a means to improve the quality of democracy and increase citizen involvement.

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Concerning the latter, parties promoting direct democracy often advocate exiting the EU (Dawn of Direct Democracy, SPD) and NATO (KSCM), neither of which is easily achievable via Parliament. As regards the former, parties try to gain electoral advantage by criticising the fact that mainstream parties do not represent ordinary citizens. Given the growing dissatisfaction with the political mainstream, new parties argue that mainstream

parties' unwillingness to adopt legislation on a national referendum and other direct democracy instruments is an attempt to prevent people from having more influence over politics. To have a greater say in political decisions, argue the newer parties, people should vote for those that advocate direct democracy.

9.4 The influence of direct democracy on Europe's political realities

9.4.1 *Resonance with elections and referendums elsewhere in Europe*

Election results in other European countries have only a limited and indirect impact on Czech perceptions of political affairs in Europe. Slightly more attention is devoted to elections in neighbouring countries, i.e. Germany, Austria and the Visegrad countries. One exception that has substantially influenced Czechia's discussion about the EU was the Brexit referendum. Czech political and public discourse was already critical of Europe even before the financial crisis and the migration crisis but the Brexit referendum has further strengthened the negative voices. This pertains to both the mainstream parties (ČSSD, ANO, KDU-ČSL, TOP 09, and ODS) and to anti-systemic and anti-European parties (the Communists and, above all, the Dawn of Direct Democracy, and SPD led by Tomio Okamura), but also to the increasingly critical President Miloš Zeman. Brexit has further highlighted the problems related to the EU's legitimacy and has eroded the fragile consensus around the once indisputable benefits of European integration. This was more significant than the EU accession referendum in 2003, which was part of the then narrative about a return to Europe, accompanied by an intensive information campaign, but not an in-depth public debate about the membership's impact.

Although political elites see EU membership as indisputable, the debate on EU politics has now been substantially transformed. An increase in Euroscepticism has been strengthened by external factors such as a wider Euroscepticism across the EU, the crises in the EU's recent history and the disunity of the member states in addressing them. In the eyes of Czech Eurosceptics, Brexit offers the ultimate evidence that their criticism of the EU is justified and the EU's reform necessary. Public discourse has even shifted towards

the possibility of a Czech-out referendum as a solution to current problems. The likelihood of this strategy increased after the election in October 2017. The fragmentation of the Chamber of Deputies and the difficulties with the formation of a majority government have strengthened those political forces (the Communists, SPD and partially

the Pirates) that favour the adoption of a law on a general referendum which could be used even for the vote on the country's EU membership. If such a law is adopted, the likelihood of a referendum would substantially increase as no parliamentary majority would be needed for a special law on an EU referendum, requiring instead the basic conditions of a general referendum and the collection of a sufficient number of citizens' signatures. Given the rise of populism and the country's strong Euroscepticism, such a referendum would be very risky. Czech-out would thus cease to be a purely hypothetical issue, especially as it is likely to be used in internal political conflicts.

In the eyes of Czech Eurosceptics, Brexit offers the ultimate evidence that their criticism of the EU is justified and the EU's reform necessary. Public discourse has even shifted towards the possibility of a Czech-out referendum as a solution to current problems.

EU-related referendums are highly unpredictable phenomena. Emotional arguments often trump rational arguments, as was clearly the case during the Brexit campaign (Hobolt, 2016). Paradoxically, any analogy with Brexit should be nuanced by the fact that an EU exit would constitute a far greater risk for Czechia as a small landlocked European state surrounded by other EU members, and a country largely dependent on the trade exchange with the EU. The low level of satisfaction with the EU closely corresponds with the low numbers of those who supported membership. There is a vicious circle of mutually reinforcing negative attitudes towards the EU between the political elites and the public. As a result, the EU is considered "a good thing" by 34% of Czechs (April 2018), which is the lowest figure in the Union.

9.4.2 The uptake of EU matters by government

Recently, Czechia has been going through a politically unstable period as the strongest political actor (ANO) has not been able to form a majority government. Nonetheless, this rather peculiar

situation has not substantially influenced Czech EU policy as its hallmark is continuity with the previous period. In its EU policy, however, the government has not (yet) formally used any direct

Despite the growing demand for direct democracy tools, the government has so far rejected the notion that the referendum could be applied to Czech EU/NATO memberships.

democracy tools. Despite the growing demand for these tools, the government has so far rejected the notion that the referendum could be applied to Czech EU/NATO memberships. Similarly, it refuses a referendum on the adoption of the common currency, which is

advocated by the strongest opposition party ODS.

The official programme of Andrej Babiš's government from January 2018 underlines active EU membership as its priority, which can be understood as a response to the previously reactive nature of Czech EU policy. The government's declaration stresses Euro-Atlantic structures but also elements of keeping a distance from the EU, ranging from an emphasis on the necessity of EU reform, the rejection of further integration ("the aim is that the EU does less, but more effectively") to migration policy. The government does not aim for eurozone membership either, mainly due to fears about a loss of control over monetary policy and incomplete convergence (Government of the Czech Republic, 2018). Taken together, these priorities clearly reflect the critical public mood in the country. Active EU membership is thus supposed to become a means of promoting national interests more forcefully, which would be more intelligible both for the Czech public and for the external EU partners.

Practically, however, this strategy has two weaknesses: first, the apparent distinction between the domestic and European levels means that they are seen as being competitive rather than complementary. Second, the EU-critical tone may go down well with the domestic audience, but it makes coalition-building with other EU partners more difficult.

In terms of proposed EU reform, the government advocates a longstanding Czech position that underlines the unity of the EU and a preference for cooperation in those areas where consensus is possible and where EU-wide cooperation has clear added value. The main concern revolves around the division of the EU into a core

and a periphery, which – given that the government does not want to join the deepening eurozone – would clearly not play out well for Czechs. Rather, the government's priority is the continuation and strengthening of other key projects, such as the single market and the Schengen area (Chamber of Deputies, 2017a). The government also believes that flexible integration should take place in a contractual institutional framework (such as the treaty-based mechanism of enhanced cooperation). The government finds it important to have a stable eurozone based on a united institutional framework, non-discrimination of member states on the grounds of currency and respect for the authority of the Council and states' financial autonomy. Furthermore, the Czech position stresses intensifying the external dimension of migration policy and further cooperation in the realm of internal security.

Last but not least, Czechia also continues to call for increasing the legitimacy of the decision-making process in the EU, particularly by strengthening the role of the European Council and national parliaments (Government of the Czech Republic, 2017).

Conclusions

Although direct democracy tools are neither frequently used nor well developed in Czechia, their popularity has been growing. A number of factors have contributed to this development: first, the overall dissatisfaction with the functioning of the political system and growing alienation of voters from the political 'elites' has led to an (almost obsessive) search for alternative instruments that could reconnect the popular will with policymaking.

Overall dissatisfaction with the functioning of the political system and growing alienation of voters from the political 'elites' has led to an (almost obsessive) search for alternative instruments that could reconnect the popular will with policymaking.

Second, the inability of the ruling class to acknowledge how deep-rooted this problem was led to voters deserting established parties (right-wing ODS, left-wing ČSSD, etc.) and the emergence of several populist parties/movements whose slogans centre on removing corrupt politicians from office and replacing non-functioning institutions with a supposedly more transparent form of direct democracy. Third, the continuing inability of the strongest

political movement to create a stable majority government further reinforces the view that direct democracy is also more efficient.

External factors such as the alleged legitimacy crisis of the EU and the Brexit referendum have further strengthened the advocates of direct democracy. The introduction of direct election for the president has further polarised views: both sides believe that subsequent events confirm their positions. Advocates of greater direct democracy claim that the election is a success as the president was brought to office by dissatisfied voters who had a voice. Critics see the activities of the suddenly more legitimate president as verging on a violation of the constitution; his populist agenda is seen as harmful to liberal democracy at large.

As regards possible new direct democracy tools, the referendum is most frequently mentioned as a suitable instrument. While the country has no law on a general referendum, virtually all political parties agree that it should be introduced. Disagreements are not about 'if' but about 'in what form'. In all likelihood, draft legislation will be on the table in the coming years, but it remains

With new populist forces in Parliament, the debate on Czech-out has shifted from a purely hypothetical analogy with Brexit to a substantive discussion about the possibility of such a referendum. Hence, direct democracy is no panacea as its effects may be unpredictable, and in some cases catastrophic.

unclear whether the law will contain a provision on its applicability (or the rejection thereof) on EU and NATO membership. With new populist forces in parliament, the debate on Czech-out has shifted from a purely hypothetical analogy with Brexit to a substantive discussion about the possibility of such a referendum. Hence, direct democracy is no panacea as its effects may be unpredictable, and in some cases catastrophic. It can lead to the

strengthening of the democratic ethos, but also to the legitimisation of the greatest enemies of liberal democratic order.

Finally, as regards the potential of direct democracy instruments for EU politics, they cannot be seen as a solution either, for several reasons. First, EU issues still only play a minor role in the voting choices of citizens across all types of elections. Those who vote on EU issues usually vote for parties critical of the EU whose EU-criticism is a part of a wider strategy to capitalise on growing

dissatisfaction with the political system and the growing alienation of voters from political elites. Second, when EU issues generate mobilisation, only rarely are they seen as purely EU issues; they are rather national political issues that are domestically framed. Third, a number of parties promoting direct democracy are either newly created (populist) parties and/or fringe parties that, by and large, promote direct democracy to gain electoral advantage over mainstream parties and/or achieve political goals unachievable via representative democracy (such as Czech-out). They are rarely a means to improve the quality of democracy or increase citizen involvement. It is therefore likely that EU-related referendums will lead to even deeper polarisation in society and risk being about everything but EU politics.

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10. DENMARK AND DIRECT DEMOCRACY: FRONTRUNNER AND LAGGARD

CATHARINA SØRENSEN

Denmark makes extensive use of direct democracy instruments to determine its political approach to Europe. This is due to a constitutional requirement to hold referendums under certain circumstances and the longstanding practice of involving the public in EU decision-making. Since the 1972 referendum on membership, Denmark has held seven additional referendums on EU-related issues, a number only exceeded by Ireland. All have seen remarkably high turnout. The public debates ahead of referendums have generally been fierce and three polls have resulted in a no-vote: the Maastricht Treaty in 1992; the introduction of the euro in 2000; and the Danish EU-opt out on justice and home affairs in 2015. Denmark's referendums have had a major impact on EU politics, most notably the rejection of the Maastricht Treaty, which directly inspired the French plebiscite, led to wide-ranging EU opt-outs for Denmark, and started a wave of democratisation efforts at the EU level. Danes strongly support the practice of EU referendums, and the high turnout points to its obvious democratic merits; however, we argue that the answer to the question of how meaningful the Danish EU referendums have been in influencing EU politics is not as clear-cut as these merits would suggest. This is due to the referendum's concomitant tendency to promote and sustain black and white debates about yes or no to the EU, rather than to serve as a catalyst for nuanced debate about the nature of EU politics.

10.1 Danish direct democracy

Denmark has two direct democracy instruments with a potential to influence EU politics: the referendum and the citizens' initiative.

Whilst the former has been deployed eight times on EU-related issues since 1972, the latter was only made available to the public in early 2018 and has not yet been used with respect to European issues. In addition to these national-level initiatives, the European Citizens' Initiative (ECI) is the other formal direct democracy instrument available to Danes. There is no procedure in place in Denmark to recall members of parliament, or any tradition of petitions.

In order to evaluate how meaningful these instruments are in influencing EU politics, this chapter first considers Danish mobilisation for the ECIs. We then look at the intentions behind the two national instruments and the functions they serve, how Denmark's history of EU-referendums, with traditionally high levels of participation and high public salience, has influenced the role and position of 'Europe' in Danish political debates, and consider the broader impact of Danish direct democracy on national and European political realities. We conclude by drawing some lessons from the Danish experience with referendums as an instrument to influence EU politics.

10.1.1 Danish mobilisation for the ECI

Eight well-attended EU referendums have earned Denmark a reputation as a proponent of direct democracy. Examining the experience with the main European-level instrument of direct democracy, the ECI, however, mitigates that reputation. Only 16% of Danes say that they are likely to make use of the ECI – the lowest figure in the entire EU (Eurobarometer 86). This public reticence explains Denmark's poor mobilisation for open ECIs. In only one of

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the four successful European initiatives to date was Denmark able to reach the threshold of 9,750 signatures and count as one of the backing countries (the glyphosate initiative of 2017), and very few Danes have been involved in the steering groups behind the various

attempted proposals (Hjöllund et al., 2015).

The lack of Danish enthusiasm for the ECI can be explained by a combination of three factors. First, until recently there has been no experience with citizens' initiatives in Denmark; as such, it is not part of 'Danish culture'. Second, according to Danish campaigners, Euroscepticism is a barrier as many people allegedly refrain from supporting a proposal if they realise the campaign is part of an 'EU-initiative' (Hjöllund et al 2015). Consequently, widespread support for EU referendums may say more about Danes' wish to put brakes on the integration process than about a desire for instruments of direct democracy. At the very least, Danes' experience with direct democracy as a means to influence EU politics shows that they are frontrunners when it comes to referendums but laggards when it comes to ECI.

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10.1.2 The Citizen's Initiative

In January 2018, a new tool for direct democracy, called the citizen's initiative, was introduced in Denmark after a cross-party proposal was approved by parliament on a two-year trial basis. The new initiative, similar to the ECI, was triggered by a wish to enhance democratic participation (*Folketingsbeslutning*). It takes the form of a website that gives Danes the opportunity to send political proposals to parliament. It enables any citizen who is entitled to vote at Danish parliamentary elections, and who can get at least three persons on board as co-proposers, to put an item of interest online (provided it fulfils the rules of the initiative). If 50,000 enfranchised people support the proposal within a time period of six months it will be put on the parliamentary agenda (Danish Parliament, 2018; according to the Ministry of the Interior, 4,146,602 people were eligible to vote at the latest Danish parliamentary election in June 2015). Thus far, two proposals have been successful in gathering the necessary signatures – on reducing ministers' pensions and on education. Both were subsequently rejected in parliament.

In connection with its launch, the speaker of the parliament, Pia Kjaersgaard of the Danish People's Party stated that the

instrument represented a new form of civic engagement in Denmark, which would “give democracy an extra dimension”

A search among the 1,000 or so citizens’ initiatives proposed to date shows five initiatives that have the EU in the title, three of which call for Denmark’s withdrawal.

(ibid). A search among the 1,000 or so citizens’ initiatives proposed to date shows five initiatives that have the EU in the title, three of which call for Denmark’s withdrawal. At the time of writing, none of these EU-related

proposals looks likely to come close to receiving the number of signatures required (Borgerforslag, 2018).

The introduction of a new instrument of direct democracy in Danish politics, on top of the widespread referendum practice discussed below, underpins the prominence of ‘the people’ in Danish politics (Østergaard, 2000). However, given the low number of, and support for, Danish citizens’ initiatives on the EU, and as this direct democratic instrument still only exists on a trial basis in Denmark, it is not considered further in this chapter.

10.1.3 Denmark’s referendum practice

To understand the role played by referendums in shaping Danish debates on Europe, a key starting point is their link to Denmark’s Constitution. One of its most publicly well-known sections is ‘section 20’, which stipulates the conditions under which Denmark can ‘transfer competencies’ to international authorities, such as the EU. The section determines that unless a 5/6 majority in the Danish parliament – by all standards a high figure – votes in favour of a proposed handover of competencies, there has to be a binding referendum on the matter. In media and public debates, this section is referred to – with a subtle, yet critical, nuance in the wording – as regulating the ‘handover of Danish sovereignty’ (Sørensen et al, 2017). Given the strong presence of sovereignty-based Euroscepticism in Denmark, described in more detail below, the very activation of section 20 is thus, in itself, highly sensitive.

The formal legal definition of what is meant by ‘transfer of competencies’, defined by the Ministry of Justice, is, however, rather technical, surprisingly apolitical, and completely unknown to the wider public (Sørensen et al., 2017). It has been specified, including through lawsuits against the Danish government for illegally ceding

sovereignty to the EU (e.g. the Supreme Court, 2013), as what happens when Denmark grants an international authority new powers to legislate with *direct effect* for citizens and companies.

Table 10.1 Denmark's eight EU referendums

Topic	Date	Turnout	Yes	No
Accession	02.10.1972	90.1%	63.4%	36.6%
Single European Act	27.02.1986	75.4%	56.2%	43.8%
Maastricht Treaty	02.06.1992	83.1%	49.3%	50.7%
Maastricht Treaty + Edinburgh Agreement	18.05.1993	86.5%	56.7%	43.3%
Amsterdam Treaty	28.05.1998	76.2%	55.1%	44.9%
The euro	28.09.2000	87.6%	46.8%	53.2%
Patent court	25.05.2014	55.85%	62.5%	37.5%
Change to the justice and home affairs opt-out	03.12.2015	71.9%	46.9%	53.1%

Source: Translated by the author from Folketingets EU-Oplysning (www.eu.dk).

Since the entry into force of Denmark's present constitution in 1953, section 20 has been activated solely for affairs relating to the EU, as other international commitments such as the World Trade Organisation (WTO), North Atlantic Treaty Organisation (NATO), or the United Nations (UN), are not considered to have a *direct effect* on citizens or companies. Section 20 was the reason for six out of Denmark's eight EU referendums, the two exceptions being a vote on the Single European Act in 1986, and the 1993 vote on accessing the Maastricht Treaty, with four Danish opt-outs. The latter two referendums did not formally require a referendum and were called for political reasons: the Single European Act was not deemed to involve new transfers of competencies, but large-scale EU ambivalence in the Danish parliament provoked a referendum for domestic reasons (*Den Store Danske*, 2012). The re-vote on accessing the Maastricht Treaty, with its protocol listing four Danish opt-outs, formally entailed a transfer of competences but not a new public vote,

The parties behind this large majority made a joint political pledge to always consult Danes on the opt-outs in a referendum.

as more than 5/6 of members of parliament favoured the agreement. However, the parties behind this large majority made a joint political pledge to always consult Danes on the opt-outs in a referendum.

10.2 Voter participation

10.2.1 The positive contribution of referendums to EU-debates in Denmark

Danish EU referendums are popular with the electorate; they generate considerable public debate and boast high turnouts. This is in contrast to the prevailing assumption in much EU literature that EU votes typically assume second-order status to national votes (e.g. Franklin et al., 1994; Garry et al., 2005).

Danish EU referendums are popular with the electorate; they generate considerable public debate and boast high turnouts.

Four of Denmark’s eight EU polls have attracted more than 80% of the electorate (see Table 10.1). Although a slightly lower figure than at Denmark’s national elections, where participation is consistently above 80%, turnout on this scale does suggest that, at least at ‘referendum times’, the EU is highly salient for Danes. There is much to suggest that this is directly due to the practice of holding referendums, which receive much more intensive coverage across most media outlets than an average EU news story in Denmark. While public funding sources and broadcasters operate on the principle that both sides of the argument should have equal access/exposure, there tends to be ample exposure for both sides in the media. Perhaps as a result of these referendum campaigns, many Danes tend to feel well-informed about EU issues (we return to this finding below).

Perhaps as a result of these referendum campaigns, many Danes tend to feel well-informed about EU issues.

Another key hypothesis of the ‘second-order thesis’ is that EU polls tend to trigger a high ‘protest vote’. Protest voting at an EU referendum would be where many voters use their vote to demonstrate dissatisfaction with the incumbent national government (e.g. Franklin et al, 1994). Yet Danish EU referendums

show little evidence of protest voting. While many Danes certainly do vote against the recommendation of their government-of-the-day, or against the party they normally vote for at a general election (i.e. low party loyalty at EU polls), studies of Danish public opinion suggest that, rather than a domestic protest unrelated to the EU, this phenomenon has more to do with a difference in stance because many citizens on both sides of the political spectrum perceive themselves as more Eurosceptic than their party (Sørensen et al., 2017).

Yet Danish EU referendums show little evidence of protest voting.

Moreover, as illustrated in Table 10.2, referendums are popular with the Danes. In a poll asking respondents to position themselves on a scale between 0 and 10 as to whether EU referendums are a negative or a positive thing, the most frequently chosen response – by 20% of respondents – is 10 (‘very positive’). Some 61% position themselves somewhere on the positive half of the scale, with only 12% figuring in its negative half (Sørensen et al., 2017; 18% replied ‘don’t know’).

The Danes also appear to take the subject matter – the EU – seriously: when asked about their intentions to seek information prior to a referendum, only 4% stated that they would “not be looking for information” (YouGov for Think Tank EUROPA, 2014).

Table 10.2 Denmark’s EU referendums: a popular instrument

Attitude to ‘Referendums on EU issues’	0 – Very negative	1	2	3	4	5	6	7	8	9	10 – Very positive
Per cent	2	1	3	3	3	11	9	12	13	7	20

Source: Sørensen et al., 2017 (own translation). Number of respondents: 2,056.

Looking at Eurobarometer data across the 28 populations in the Union, there are several indications that the referendum practice may have heightened Danes’ awareness of Europe. Danes are among the EU populations that indicate the greatest interest in European affairs: 76% say they are “interested”, compared to 54% on average in the EU28.

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54% on average in the EU28 (Parlemeter, 2018). In addition, six out of ten Danes (61%) say that they “feel well informed” about European matters, also well above the EU average of 42% and only exceeded by 68% in Luxembourg (Parlemeter, 2017).

It is also a remarkable feature of Danish EU attitudes that these are relatively evenly represented across social divides.

It is also a remarkable feature of Danish EU attitudes that these are relatively evenly represented across social divides. While Danish Eurosceptics tend to be slightly less well-educated than Danish pro-EU citizens, income, gender and

geographical location do not explain the scepticism of society in general (Sørensen et al, 2017).

10.2.2 The other side of the story: referendums as a polarising instrument

There is, however, a less obvious, but nonetheless critical, aspect to Denmark’s referendum practice that nuances the merits of the referendums as meaningful instruments to influence EU politics. It has to do with the tendency of referendums to boil down highly complex and nuanced arguments to simplistic and monochrome Yes or No decisions. Rather than automatically serve as a tool for democratic debate, referendums can therefore also polarise opinion and force voters into boxes.

Rather than automatically serve as a tool for democratic debate, referendums can therefore also polarise opinion and force voters into boxes.

Analyses of Danish EU referendums show that few Danes on either side of the issue have been able to communicate what was at stake in a given referendum (Sørensen, 2015). An exit-poll from the most recent referendum, on the opt-out from justice and home affairs in 2015, suggested that a staggering two-thirds of voters felt unable to explain what the referendum was about, and more than one-third reported that they were more confused by the campaign than they were before it started (Winther, 2015).

Another way in which Danish referendums can be said to polarise Danish EU debate is that Danes only tend to think about EU issues around the time of a referendum. On a day-to-day basis,

EU affairs have very modest saliency in the public mind: when asked about the degree to which the EU impacted daily life, for instance, only 8% believed that the EU had a very strong impact (YouGov for Think Tank EUROPA, 2014). In connection with referendums, however, the EU surges forward from its backseat role to become a highly charged and polarising topic, which many even fear impacts on the very independence of Denmark as a country (Sørensen et al., 2017).

This has led to some extreme events. The EU is the only issue in peacetime that has provoked a situation where the Danish police force opened fire, with real bullets, on civilians, wounding 11. This happened after the 1993 referendum when public acceptance of the Maastricht Treaty, with the Danish opt-outs, led to violent demonstrations in Copenhagen. While violence on this scale was a one-off occurrence, analysis of social media campaigns shows that the Danish referendums continue to provoke highly charged rhetoric on the part of the Danish electorate (Sørensen and Vormsby, 2016).

The EU is the only issue in peacetime that has provoked a situation where the Danish police force opened fire, with real bullets, on civilians.

Arguably, the harshness of the EU debate during referendums has provoked a situation whereby pro-European civil society leaders, including business representatives, have become reluctant to engage in debate on European issues. As one top-level

The harshness of the EU debate during referendums has provoked a situation whereby pro-European civil society leaders, including business representatives, have become reluctant to engage in debate on European issues.

CEO put it recently, seemingly reflecting a much broader sentiment, Danish EU debate is perceived as being simply “too negative” to get involved (Aabo, 2018). This absence of important actors in EU discourse is a by-product of Denmark’s referendum experience, and one that arguably reduces its role as a meaningful instrument to facilitate Danish EU politics.

10.2.3 Main drivers of voter mobilisation

Confirming a common trend for Danish EU referendums (Sørensen, 2007), an exit poll after the 2015 referendum on the justice and home

affairs opt-out showed that the most important reason why voters voted no – decisive for 68% of no-voters – was the wish to safeguard Denmark’s sovereignty from EU interference (Winther, 2015) – not actual opposition to the concrete policy issue(s) at stake. In fact, more than eight out of ten Danes supported Denmark’s continued participation in the EU police agency Europol, which was jeopardised by a no-vote (YouGov for Think Tank Europa, 2015).

Research on the nature of Danish Euroscepticism suggests that, at a referendum, the most important EU question in the public mind is how integration affects national sovereignty; how to safeguard control and national identity (Sørensen, 2016).

Sovereignty-based scepticism is the main form of Euroscepticism in Denmark, and it is strong enough to decide the outcome of Danish EU referendums.

Sovereignty-based scepticism is the main form of Euroscepticism in Denmark, and it is strong enough to decide the outcome of Danish EU referendums, as shown by the above-mentioned exit poll from 2015. The close link in many Danes’ minds between the EU and Danish

sovereignty means that EU referendums are highly sensitive events: what is perceived to be at stake when there is a referendum is nothing less than the survival of Denmark as an independent country, which trumps most other arguments (Sørensen et al, 2017).

Sovereignty-based Euroscepticism coexists with very low degrees of other types of scepticism, both in actual figures and relative to the EU average. The Danes are not characterised by significant degrees of ‘hard’ scepticism towards membership itself; ‘economic’ Euroscepticism towards the EU’s perceived utility; or ‘democratic’ Euroscepticism about flaws in the EU’s institutional set-up (Sørensen, 2007). This suggests that the main drivers of voter mobilisation ahead of a referendum are *not* campaigns informing voters about the EU’s economic advantages for Denmark, but rather campaigns that play on the EU’s role in affecting the Danish ‘way of life’.

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Studies of the yes- and no-campaigns ahead of the 2015 referendum document that sovereignty-based concerns were purely tackled by the no-side. Contrary to the argumentation in other parts of Europe, where the EU is presented as a means to strengthen national sovereignty (Macron, 2017), the story in Denmark is one of how the EU diminishes Danish sovereignty: a quantitative study of all comments about 'sovereignty' made by the public on the Facebook pages of Danish party leaders and MEPs in the month leading up to the referendum found that only 6% of these comments focused on how the EU could strengthen Danish sovereignty (Sørensen et al, 2016). The rest made a connection between the EU and losing sovereignty.

As mentioned above, Danish no-voters are remarkably well represented across societal divides, including across income groups and the political left/right scale (Sørensen et al, 2017). Danish no-voters at EU referendums thus bear little resemblance to the typical 'globalisation loser', or less-advantaged citizen that some studies on European public opinion have suggested as an explanation of Euroscepticism across many parts of Europe (Kriesi et al, 2006).

Danish no-voters at EU referendums thus bear little resemblance to the typical 'globalisation loser', or less-advantaged citizen that some studies on European public opinion have suggested as an explanation of Euroscepticism across many parts of Europe.

Of the nine parties currently represented in the Danish parliament, three advocated a 'no' at the 2015 referendum: the far-left Unity List (8% of the vote); the libertarian centre-right Liberal Alliance (8% of the vote); and the far-right Danish People's Party (21% of the vote). Despite representing markedly different positions on the left-right political spectrum, all three had in common the argument of not 'handing over control' to the EU (Sørensen, 2017A).

As the three parties' combined share of the vote at the latest general election – 37% – suggests, many no-votes at the referendum will have come from supporters of so-called 'yes-parties'. This again underlines the finding that many Danes perceive themselves as being more Eurosceptic than the majority in parliament (Sørensen et al, 2017). The exit poll showed that a staggering 42% claimed not to have followed the recommendation of their usual party (Winther, 2015). The majority of non-party organisations involved in the

campaign, including trade unions and employers' organisations, favoured a 'yes' vote, but their engagement was deemed to be very weak (Christensen et al, 2015). This may be a consequence of the aforementioned sensitivity of the EU issue in Denmark.

10.3 Impact

10.3.1 *National-level impact*

The marked difference between the low salience of EU issues when there is no referendum on the agenda, and the strong emotive potential of these issues during a referendum campaign means that the outcome is usually difficult to predict for the government. At the two 'failed' Danish EU referendums, on the euro in 2000 and on JHA in 2015, the yes-side enjoyed a comfortable advantage in the polls at the time of calling the referendum: in 2015 it even led by some 20 percentage points.

Marked by this experience, pro-European politicians in Denmark have attempted to 'come together' on EU politics. This has had a tangible impact on Danish political realities. For years, for example, EU politics in Denmark have been informed by large cross-party 'EU agreements' setting out the major lines of Denmark's engagement (Folketingets EU-Oplysning), rather than by 'normal' political contestation. Moreover, prior to participating in a Council meeting in Brussels, Danish ministers have to obtain a parliamentary mandate for their negotiating position in a powerful EU committee of the Danish parliament.

This helps to create a large support base for the government's EU policy positions, whilst also ensuring broad parliamentary oversight of the government's engagement in Brussels. Nonetheless, it also sustains a view that 'EU politics' are fundamentally different from 'national politics', despite growing findings that this line is now blurred, as various Europeanisation processes have meant that the EU impacts most national policy areas in one way or another (Lauridsen, 2015). The social democrats and the liberals, for instance, rarely make prior alliances on Danish agricultural policy, which is debated in the specialist agricultural committee in the Danish parliament. But when the topic is the EU's Common Agricultural Policy, these parties usually refer to the EU agreement and discussions take place in the separate EU committee.

In a 'chicken and egg' fashion, the fact that EU policy matters are isolated in this way is both a product of EU issues being so sensitive in Denmark and a contributing factor to the Danes' understanding that EU politics is not normal politics. The EU has become a disproportionately sensitive issue.

In a 'chicken and egg' fashion, the fact that EU policy matters are isolated in this way is both a product of EU issues being so sensitive in Denmark and a contributing factor to the Danes' understanding that EU politics is not normal politics.

10.3.2 European-level impact

Another impact of Denmark's EU referendums concerns not just the political realities in the country, but in the EU as a whole. It comes in the shape of the Danish opt-outs from justice and home affairs, the euro and defence – key parts of the European integration process.¹

A 'failed' national referendum can pose a huge legal problem, not just for the country concerned but also for the future of the EU as a whole. When Danes rejected the Maastricht Treaty in 1992, it left ratification of the entire treaty in limbo. In such a situation there is usually great pressure for a solution to be found quickly. In a rather spontaneous reaction to the referendum outcome, Danish politicians drew up four opt-outs that centred on the EU's supranational, 'state-like' aspects: the single currency, defence, justice and home affairs, and citizenship (DIIS, 2008). The opt-outs were subsequently incorporated in the 1993 Edinburgh Agreement and added as an annex to the Maastricht Treaty. They were intended to be temporary (ibid), and all subsequent Danish governments (at the left and right of the political spectrum) have been in favour of abolishing them. The two attempts made – the aforementioned euro-referendum in 2000, and the JHA-referendum in 2015 – failed, however, and the present government has ruled out a new referendum during its mandate (Rasmussen, 2018).

¹ As for the euro, Denmark will be the only member state with a formal opt-out when the UK leaves the EU; on justice and home affairs Denmark is the only country with a block opt-out; and on defence policy Denmark is the only country in the EU with an opt-out.

The opt-outs are proof that Danish direct democracy has significant, long-term policy consequences for Denmark that go against the wishes of a broad parliamentary majority, but are popular among citizens.

The opt-outs are proof that Danish direct democracy has significant, long-term policy consequences for Denmark that go against the wishes of a broad parliamentary majority, but are popular among citizens. It serves as a tangible reminder

that even the public in a small country can strongly impact EU politics.

Denmark's non-participation in key aspects of the integration process naturally influences EU politics. One key impact of Danish direct democracy has been to contribute to a Europe of different speeds. Denmark's referendums have imposed differentiated integration upon the EU and sparked debates between those who support the need to respect national specificities, those who value EU unity, and those who feel unfairly treated simply because they have not produced a 'failed' referendum.

One key impact of Danish direct democracy has been to contribute to a Europe of different speeds.

10.3.3 Danish referendums as agenda setters

The broader impact of the Danish 1992 referendum on EU politics was that it introduced Euroscepticism to Europe's political discourse (for instance Dinan 1994; Hix 1998), where it has since remained a major factor (Sørensen 2007). There is widespread consensus in the literature on European integration that it was the ratification crisis surrounding the Maastricht Treaty that ended (perceptions of) the so-called 'permissive consensus' (Lindberg and Scheingold, 1970), i.e. that European leaders, at least on the continent in the 1960s, 1970s and 1980s, could rely on what was seen as positive prevailing attitudes towards integration, or simply a lack of interest, to allow developments to happen without much opposition.

The gap that the Danish referendum seems to have revealed between the 'public' and the 'elite' on EU issues put normative pressure on other EU leaders to pay more attention to public opinion in their own countries – and public pressure for

referendums started to grow. In a confident gesture, then French President François Mitterrand offered to reassure European leaders of the public's dedication to the EU by letting the French demonstrate their support for the Treaty in a referendum in the autumn of 1992. The narrow 'yes' that resulted (51%) only served to cement the political realisation that Euroscepticism was both more prevalent and more powerful than had hitherto been realised. And, more ominously, that instruments of direct democracy could pose new and far-reaching challenges to the integration process. The British referendum in 2016 showed just how far this could be taken.

Danish referendums have also set the agenda in terms of the EU's attempted response to Euroscepticism. The Danish 'no' in 1992 inspired the 'democratic deficit' thesis, which holds that Euroscepticism is largely due to democratic shortcomings in the EU's institutional set-up (e.g. Hix & Føllesdal, 2006), which – compared to a well-established fully fledged democracy such as Denmark's – had obvious flaws. Arguably, had the first 'failed' EU-referendum to shock Europe been in a country with weaker democratic standards, this immediate interpretation of Euroscepticism as the critique of the EU's democratic credentials would not have been made.

The Danish 'no' in 1992 inspired the 'democratic deficit' thesis, which holds that Euroscepticism is largely due to democratic shortcomings in the EU's institutional set-up.

The most prominent political consequence of this understanding has been the gradual strengthening of the European Parliament to improve the EU's democratic standing (Sørensen, 2007). As Stefan Goetze and Berthold Rittberger argue, increasing the powers of the European Parliament was an automatic reaction of EU leaders seeking to boost public support for the Union (Goetze and Rittberger, 2010). We argue that this process has its roots in the Danish referendum of 1992, and that the main cause of the Euroscepticism voiced at this referendum did not in fact involve a critique of the EU's democratic shortcomings, but rather the concern that the EU went too far in terms of challenging the Danish way of life. Ironically, the process of actually strengthening EU democracy would entail far greater encroachments on national sovereignty, thus engendering more Danish euroscepticism.

Conversely, expressions of direct democracy in other member states may also impact Denmark's EU debate. Polls show that Brexit, as it is currently playing out, is perceived by a majority of Danes to be negative for Britain (YouGov for Think Tank EUROPA, 2018). The biannual Eurobarometer polls suggest that support for EU membership has been on the rise in Denmark since late 2016, and it is possible to speculate that one contributing factor may be that Brexit has served as a reminder to many Danes that leaving the EU would not be a simple or painless endeavour for a small country.

Conclusion

Denmark's use of direct democratic instruments to influence EU politics is limited to referendums, but in this respect the Danes have only been outstripped in number by the Irish, having held eight polls between 1972 and 2015. In terms

If the very act of having referendums is a helpful tool to ensure that EU politics receive broad public attention and debate, the referendum instrument can be said to represent a meaningful means of influencing Denmark's EU politics.

of impact, Denmark is in a class of its own, as its opt-outs, and the normative implications of the failed referendums, have had far-reaching consequences for European integration.

We have argued that the answer to the research question posed by the present volume, namely 'How meaningful are direct democratic instruments in influencing EU politics?'

has two sides. On the one hand, high levels of public awareness of, and support for, EU referendums in Denmark, and the high voter turnout, point to the obvious democratic merits of this instrument: by definition, an engaged public who takes voting seriously is a positive feature of a democracy. If the very act of having referendums is a helpful tool to ensure that EU politics receive broad public attention and debate, the referendum instrument can be said to represent a meaningful means of influencing Denmark's EU politics.

However, the fact that the referendums are only called on EU

However, the fact that the referendums are only called on EU issues, and demand a yes or a no response, has meant that this direct democracy instrument has in practice removed nuances from Danish debates about EU politics – by definition a complex subject.

issues, and demand a yes or a no response, has meant that this direct democracy instrument has in practice removed nuances from Danish debates about EU politics – by definition a complex subject. Denmark's referendum debates have triggered existential questions about national independence where the EU is only discussed as a threat. This has polarised society, with the result that key actors explicitly refrain from EU debates, and pro-EU parties seek recourse to an increasingly artificial distinction between EU politics and domestic politics.

In this sense, a more meaningful way of influencing EU politics could be to 'normalise' it – either by introducing referendums also on national policy matters, for those wishing to maintain a strong role for instruments of direct democracy, or, for those content with representative democracy, by treating all policy issues according to 'normal' political lines of contestation, whether EU-related or not.

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11. FINLAND: DIRECT DEMOCRACY AND THE REPRESENTATIONAL SYSTEM

JUHA JOKELA & TUOMAS ISO-MARKKU

New tools to enable the direct engagement of citizens in democratic policymaking have been introduced in Finland. This has taken place within the representational political system, and with the explicit aim of strengthening it. While the EU referendum in 1994 constituted a key moment in the country's political history in general, and in terms of direct democracy in particular, the ensuing direct engagement of citizens in EU affairs has been limited. The introduction of the national citizens' initiative is, however, linked to the European one, and the re-politicisation of EU affairs in light of several EU crises has been partly reflected in the use of direct democracy tools in Finland. The national citizens' initiative has duly proved to be both accessible and popular, and has resulted in some novel political dynamics in Finland.

Introduction

The decreasing turnout for elections and increasing alienation of citizens from political decision-making have highlighted the importance of direct democracy instruments in enhancing citizens' democratic participation in Finland.

The decreasing turnout for elections and increasing alienation of citizens from political decision-making have highlighted the importance of direct democracy instruments in enhancing citizens' democratic participation in Finland.

In this context, a national citizens' initiative, which enables citizens to propose new legislation, was introduced in 2012 through a constitutional amendment and secondary legislation. In a similar vein, the new Local Government Act of 2015 aimed to enhance and

streamline residents' opportunities to engage directly at the local level. The national and local administrations have also aimed to provide new pathways to collect input from citizens in policymaking. The user-friendly digital 'e-platforms' that have been used to implement these tools have served to increase accessibility, yet Finland has shied away from increasing the number of national referendums (of an advisory nature) as well as moving towards legally binding mechanisms of direct democracy.

This chapter begins by outlining the key elements and trends related to direct democracy in Finland. It then maps out the significance of EU affairs in the utilisation of direct democracy tools, and concludes by analysing the role of direct democracy in Finnish politics and EU affairs.

11.1 Key trends and instruments of direct democracy in Finland

The Finnish constitution underwent a major reform in the late 1990s, an important element of which were efforts towards a parliamentary political system, and a move away from a presidential or semi-presidential system (Raunio and Tiilikainen, 2003: 79). In this context, referendums and other direct democracy tools have often been resisted in Finnish political discourse on the grounds that they would weaken representational democracy (Setälä, 2010: 120) and the parliamentary system. Finnish citizens have viewed referendums rather positively, however (Pesonen, 1994: 192; see also Setälä, 2010: 121). Decreasing turnouts in elections – albeit 70.1% in the most recent parliamentary election in 2015, and 66.9% in the presidential election in 2018 – have nonetheless steered political debate in Finland towards the question of citizen participation and, in this context, to the opportunities embedded in direct democracy.

Referendums and other direct democracy tools have often been resisted in Finnish political discourse on the grounds that they would weaken representational democracy.

Yet aspirations towards parliamentarism and an emphasis on representational democracy largely explain why the recent key reforms and new mechanisms to enhance direct democracy in

Aspirations towards parliamentarism and an emphasis on representational democracy largely explain why the recent key reforms and new mechanisms to enhance direct democracy in Finland have taken place within the representational system at national and local levels.

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The most notable new instrument is the citizens' initiative at the national level, which was introduced in 2012. In addition, new digital platforms have been established to gather citizens' input into the policymaking processes, while the parliamentary committees (convening behind closed doors) have decided to organise open hearings in

which citizens can participate in person or follow the discussion via webcasts. In developing decision-making at the local level, residents' direct engagement has also been taken into account in the recent reforms.

Discussion on 'harder' forms of direct democracy, such as legally binding referendums or other mechanisms aiming to bypass the representational system, has been decidedly limited in Finland's policy circles, however. It is academics, for the most part, who have called for a more open-minded approach towards novel tools (e.g. Herne et al., 2018). Their research have been mostly related to participatory democracy and deliberation (Grönlund et al., 2014; Christensen et al., 2017).

Discussion on 'harder' forms of direct democracy, such as legally binding referendums or other mechanisms aiming to bypass the representational system, has been decidedly limited in Finland's policy circles.

11.1.1 Instruments of direct democracy: old and new

There are currently two principal instruments of 'soft' direct democracy at the national level and three instruments of 'soft' direct democracy at the local level. The concept of soft direct democracy refers here to non-binding referendum motions and advisory referendums (see Jäske, 2012). We include different forms of citizens' initiatives in this category, as they are in essence non-binding and aim to shape the decision-making agenda rather than reach legally binding decisions.

In addition, the Finnish constitution allows consultative referendums (legally non-binding, and of an advisory nature) at the national level. National referendums are not a common practice in Finland, however. As they require a legislative act by parliament, broad political support is needed to call one. In the history of independent Finland, two consultative referendums have been called, including one on prohibition in 1931 and another on EU membership in 1994. The ultimate power to implement (or not) the outcome of a national referendum lies with the executive(s) and the parliament. Although referendums have largely been seen as politically binding, this does not necessarily translate into a smooth implementation of the outcome. In the context of the EU membership referendum in 1994, some MPs who resisted membership used the tools at their disposal to stop or at least hinder the legislative accession process, despite the decisive referendum outcome.

In recent years, a consultative referendum has mainly been discussed in light of possible membership of the North Atlantic Treaty Organization (NATO). The leaders of the political parties, as well as most of the presidential candidates in the last presidential election in 2018, have tended to point out that membership would require a successful outcome in a consultative referendum.

In recent years, a consultative referendum has mainly been discussed in light of possible membership of NATO.

While the worsening European security environment has led to some discussion in Finland on this matter, the President of the Republic nonetheless recently stated that NATO membership is a card to be held rather than played: "It's a security weapon in itself. Finns do not support it and I am a Finn" (Hancock, 2018). Meanwhile, popular support for NATO membership has remained relatively low, fluctuating between 18 and 30% since 2005, and standing at 22% in the most recent poll conducted in 2017 (The Advisory Board for Defence Information, 2017: 11).

After Finland's EU accession, a consultative referendum on the adoption of the single currency gained some notable political support as the then main party in opposition (the Centre Party) resisted membership and supported a referendum on the matter. Subsequent Danish and Swedish referendums on this issue, and the

euro crisis, have prompted some political debate in Finland about the government's decision not to call a referendum on the euro in the late 1990s. A new EU referendum has been called for with varying degrees of intensity by some key figures in the Finns Party and in light of the developments in the UK. However, these calls have gained neither political nor popular support in Finland, and according to several polls the Brexit vote led to an immediate and significant decrease in popular support for a new EU referendum.

The election manifestos of three (out of eight) parties in the Finnish parliament for the European Parliament elections in 2014 mentioned referendums. While the Finns Party (CER) was supportive of a UK-style renegotiation and referendum, the Left Alliance (GUE/NGL) suggested a "multi-option referendum" to politicise the EU, which it felt should be organised as an EU-wide plebiscite. It also suggested that if the euro crisis were not resolved, the single currency should be dismantled in an orderly fashion and euro membership should be put to a referendum. The Green League argued that the European Citizens' Initiative should be streamlined and made easier, and supported the idea of EU-wide referendums. The other parties did not push for more referendums in the EU context, however, and mainly focused on transparency in EU decision-making (e.g. the Social Democrats and Swedish People's Party) and decision-making as close to citizens as possible (e.g. the Centre Party and Christian Democratic Party).

Given reservations about calling referendums, direct democracy tools have been discussed in Finland during the past decade in terms of the national citizens' initiative introduced in 2012.

In light of reservations about calling referendums, direct democracy tools have been discussed in Finland during the past decade predominately in terms of the national citizens' initiative introduced in 2012. The introduction of this new instrument resulted from a broad political consensus concerning the need to improve citizens' engagement in policymaking in view of the longer-term

trend of decreasing interest in national elections (in terms of turnout). It was also inspired by the negotiations related to the EU's constitutional treaty and ensuing Lisbon Treaty, which introduced the European Citizens' Initiative (Government of Finland, 2010).

The specific working group tasked with reviewing the functioning of the 2000 constitutional reform, and proposing amendments if deemed necessary, suggested that in principle the citizens' initiative could be a more effective way to increase citizen participation than a move towards legally binding referendums. It was argued that the latter option would not change the current situation in practice, as referendums are often treated as politically binding in Finland and elsewhere, and they have been few and far between in Finland. Importantly, the working group reasoned that developing direct democracy should also aim to strengthen the representational system in Finland (Perustuslaki 2008 -työryhmän muistio 2008 [Constitution 2008, working group memorandum 2008]).

Importantly, the working group reasoned that developing direct democracy should also aim to strengthen the representational system in Finland.

The national citizens' initiative requires 50,000 signatures within a six-month period for a legislative proposal to be submitted to the Finnish parliament (Parliament of Finland n. d.). The initiative may include a draft act or a decision to commence legislative drafting. It may also propose an amendment to, or the repeal of, an act. Moreover, the initiative must be limited to one issue and relevant grounds have to be provided.

Crucially, initiatives cannot be used to change Finland's international commitments such as membership of international organisations or treaties. The constitution stipulates that an initiative can only be used to propose acts that fall within the *legislative powers* of the parliament. While the parliament approves Finland's international commitments, as well as withdrawing from them, these matters do not fall under the definition of the legislative powers of the parliament. Hence, the

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government's proposal to amend the constitution and allow the citizens' initiative explicitly notes that these matters (as well as budgetary issues) remain outside the realm of the citizens' initiative (Government of Finland, 2010).

One citizens' initiative has so far required consideration of the parliament's Constitutional Committee in this respect, because its subject was Finland's membership of the euro area. It proposed a consultative referendum as a legal act, which is potentially within the remit of the parliament's legislative powers. As the initiative gained more than 50,000 signatures, it was received by the parliament. However, the constitutional committee of the parliament decided not to advance this citizens' initiative, on two main grounds. In addition to the above-mentioned limitation of it being potentially unconstitutional, the committee stated that the initiative did not propose a legal act that could be advanced in parliament without thorough preparation by the government. This suggests that the complexity of the matter at hand, and difficulties in assessing its implications without the usual government-led legislative preparation and impact assessment processes, might impose significant limitations on citizens' initiatives. It also suggests that proposed acts must be well prepared and implementable.

Nonetheless, the citizens' initiative has proved to be highly popular and widely used. As such, it has introduced new dynamics into the Finnish political system, which will be further analysed in the next section of this chapter. Notwithstanding its importance in providing a direct channel to engage in policymaking, the new mechanism can be seen as a way to develop rather than challenge the Finnish representational system inasmuch as the direct engagement of citizens takes place within the parliamentary system.

At the local (i.e. municipal) level, the key focus of governance reforms has also been largely on well-functioning representational

democracy. The more than 300 municipalities in Finland enjoy strong autonomy entrenched in the constitution, and have responsibility for organising several key services such as education, healthcare, and levying taxes. Currently, the

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government is proposing a major overhaul of the healthcare and social service system, including the introduction of 18 autonomous and elected regional councils. The potential implications of this reform as far as the direct influence of residents is concerned are still largely unknown.

Enhancing citizens' opportunities to have a direct say in municipal decision-making started in the 1970s, and the municipality initiative was adopted as early as 1976 (Christensen et al., 2016: 9). Moreover, the legislation has allowed municipal consultative referendums. When preparing the Local Government Act of 2015, special emphasis was placed on the direct democratic influence of residents, however, and the new act duly clarified and streamlined the direct democracy mechanism at the local level.

According to the current legislation (Local Government Act 2015), residents have the right to submit initiatives to the local authority on policy areas related to its functions. Citizens submitting initiatives should be informed of any action taken as a result of a municipal initiative. If the initiative is supported by at least two per cent of residents entitled to vote in the municipal elections, the municipal council must consider the initiative within a six-month timeframe. The municipal council can also decide to organise a consultative referendum in the municipality on a matter belonging to its competences. The referendum can address an issue related to the entire municipality, or a specific area within a municipality. Residents of a municipality also have the right to initiate a consultative referendum, providing that a minimum of five per cent of residents over the age of 15 support it. In this case, the council must decide without delay whether it will organise a referendum on the matter (Parliament of Finland, n. d.).

11.1.2 Level of participation in direct democracy and mobilisation

Figures showing voter participation in the two referendums, the use of citizens' initiative instruments, and elections at the municipal, national and EU level provide a mixed picture of the importance of direct democracy instruments in Finland. Importantly, the turnout in direct presidential elections (since 1994) has generally been higher than in parliamentary elections based on the d'Hondt method of proportional representation, as well as local and European parliament elections.

The level of participation in the consultative referendum on prohibition in 1931 was 44.4% of those entitled to vote (Suomen virallinen tilasto [Official statistics of Finland], 1932). The level of participation was lower than in the national parliamentary elections

at that time, but higher than in municipal elections of the period. The voters were offered three choices: the continuation of prohibition, a change in the prohibition rules allowing for the production and sale of mild alcoholic drinks, and an overturn of the prohibition legislation. The first proposal received 28% of the votes, the second a mere 1.4% and the third 70.6%.

The turnout in the consultative referendum on Finnish EU membership in 1994 (see Pesonen, 1994: 183) was 74%, which was a few points higher than in the parliamentary elections in 1991 and 1995, yet lower than in the first round of the presidential elections in 1994 (82%). In the referendum, 56.9% of voters were in favour of joining the EU, while 43.1% voted against. In a separate referendum on the autonomous Åland Islands, 73.7% of voters were in favour of EU membership and 26.3% against, with a turnout of 49%.

Citizens' initiatives at the national level have proved highly popular. As of September 2018, a total of 794 initiatives have been filed since the introduction of this mechanism (kansalaisaloite.fi e-platform 2018). There are currently 40 initiatives pending, two of which have so far obtained the required 50,000 signatures, and the 731 that failed to reach the required number were subsequently withdrawn. Twenty-three initiatives have fulfilled the formal criteria and been handled by parliament.

The strong public interest in directly influencing parliament can also be partly explained by parliament's supportive approach

The strong public interest in directly influencing parliament can also be partly explained by parliament's supportive approach towards the tool of citizens' initiatives.

towards the new initiative. The political parliamentary groupings agreed that those initiatives that fulfil the criteria will be subject to swift yet thorough scrutiny, and should be voted upon in a plenary session. Yet parliament has likewise reserved itself the right to decide whether an initiative should be carried forward to a vote or not.

At the time of the introduction of this new initiative, researchers and civil society actors were concerned that proposals made under this new move might receive a lukewarm reception in parliament. This, in turn, could have led to citizens' initiatives being treated in much the same way as legislative initiatives by individual members of parliament (MPs). In addition to the government, an

MP has the right to propose legislation, but many of these so-called MPs' initiatives have been buried in the parliamentary committees, even if some have been undersigned by the majority of MPs. This could be partly explained by the majority government tradition since the mid-1980s. As the parties in the government also hold a majority in the parliamentary committees, they have tended to highlight the government's (rather than MPs') role in initiating new legislation.

To highlight the importance of citizens' initiatives, a practice has been created whereby those citizens who have launched the initiative will hand over eligible proposals to the speaker of the parliament. This short ceremony often captures media attention, which has also highlighted the importance of the initiatives. Further, filing such an initiative and collecting signatures for it have been made user-friendly via a digital e-platform. This reflects the aspiration highlighted by the parliament's Constitutional Committee, for instance, that formal requirements should not make the initiative too complicated for citizens to carry out.

The opportunity to collect signatures for a citizens' initiative electronically, as well as the cost-free platform provided by the ministry for registering them, has lowered the threshold when it comes to campaigning for and launching an initiative.

According to an evaluation by the Ministry of Justice, the opportunity to collect signatures for a citizens' initiative electronically, as well as the cost-free platform provided by the ministry for registering them, has lowered the threshold when it comes to campaigning for and launching an initiative. Researchers have also suggested that the platform provided by the state appears to be a unique practice compared to other countries (Nurminen, 2017: 16). Hence, successfully increasing direct citizen engagement in Finland has been linked to the new opportunities afforded by technological development. Cyber-security considerations are taken into account even in the preparation stage of the legislation. The citizens' initiative is therefore based on so-called strong e-identification, namely the use of online banking identification, an electronic ID or a mobile certificate provided by tele-operators, for example.

Direct democracy instruments have also been used fairly widely at the local level. Based on a review of the digital platform,

which has been available since 2013 and which covered around 70% of the Finnish municipalities in 2017, 2,906 municipal initiatives have been filed since September 2013, along with 64 proposals for municipal referendums. On average, there have been seven municipal initiatives per year and per municipality, with figures ranging from 0 to 126 (Kuntaliitto 2017). Added to this, a total of 61 municipal referendums were organised between 1991 and 2016 (Oikeusministeriö 2015). The lowest recorded turnout was 38.9% in a referendum organised in 1992, and the highest 87.2% in 2003, with an average turnout of 67.1%. Based on a review of referendums between 1991 and 2016, in 80% of cases, the municipal council acted according to the result of the referendum, whereas in 20% of cases the municipal council chose to act differently.

National citizens' initiatives have dealt with a broad spectrum of topics, the most common of which seem to be health, welfare and housing, as well as civil rights and law enforcement. The latter

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theme has also gained the most notable support, which might stem in part from the overwhelming number of signatures for the initiative proposing same-sex marriage (for more, see Christiansen, 2017: 14). At the local level, the merger of municipalities, themes concerning health, education, the environment, and traffic arrangements are among the most

popular in terms of municipality referendums and initiatives (ibid.: 16–18).

In light of the topics, citizens become mobilised for various reasons. Recent research on citizens' initiatives suggests that socio-demographic factors play a minor role in mobilisation (Christiansen, 2007: 28), yet for the most part organisers and campaigners tend to be active in political parties. However, this is not the case at the local level (ibid.: 33). Moreover, the available data suggest that the citizens' initiative is not widely used by the smallest parties without a single MP, or by parties in opposition (ibid.: 29). Moreover, civil society organisations seem to have taken citizens' initiatives more seriously than traditional interest groups (ibid.: 30). Recently, however, labour unions have also campaigned for an initiative to try to repeal recent changes to the unemployment

benefit system by the centre-right government. Moreover, the Social Democrats (currently the main party in opposition) lend their support, at least indirectly, for the initiative.

11.2 Significance of EU affairs in direct democracy

The EU has played a significant role in the development related to direct democracy in Finland. First, the only post-war national referendum was called to settle the EU membership question in 1994. Second, the European Citizens' Initiative discussed in the Convention on the Future of Europe and included in the Lisbon Treaty was one of the drivers of the national citizens' initiative adopted in 2012. Third, the re-politicisation of EU affairs in Finland has been reflected in the use of this new national mechanism.

The ECI discussed in the Convention on the Future of Europe and included in the Lisbon Treaty was one of the drivers of the national citizens' initiative adopted in 2012.

In the membership debate and referendum, the yes and no camps focused largely on the same topics and issues, and the membership question divided both the political parties and the people (Bäck, 2017: 33; Raunio and Tiilikainen, 2003). Whereas the yes camp saw the economic benefits and Finland's influence in Europe and the world as the most important reasons for membership, the no campaigners saw this differently and provided counter-arguments. However, security considerations and identity questions were equally decisive in the vote. Moreover, the question of belonging to the West and the consolidation of Finland's international position have been seen as key factors in the membership decision and referendum.

The overall assessment of the EU referendum in Finland in 1994 has been quite positive. Importantly, research carried out after the referendum (Pesonen, 1994) suggests that the related information campaigns succeeded reasonably well. Interestingly, citizens suggested that they received information mainly from the state (institutions) and the media. The role played by the parties and campaigns was felt to be less significant. It has been concluded that in comparison to the corresponding information policies of Austria, Norway and Sweden, Finland's performance appeared rather impartial. The Finnish state ran its largest-ever information

campaign and, unlike in other countries, it disseminated material produced by the no campaigns (Pesonen, 1994: 191). However, notwithstanding the fact that plenty of information was available, factual information was partly treated as ‘opinion’ and hence it has been noted that “no ‘truth’ existed” in the information related to the referendum (ibid.).

While the 1994 referendum clearly positioned EU affairs as a matter of primary concern in Finnish politics, it can also be seen as a factor affecting the de-politicisation of EU affairs in the longer-

term perspective. A broad national political consensus was established on EU affairs during the early years of EU membership, which has broken down only twice since Finland’s accession – firstly in the late 1990s over the adoption of the single currency, and then in the late 2000s over the management of the euro crisis. However, as a result of the euro crisis, migration pressure and

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Brexit, EU affairs have become re-politicised in Finland as well, which has been partly reflected in the use of direct democracy tools. According to the e-platform data (kansalaisaloite.fi), 13 citizens’ initiatives to date have either dealt directly with the EU or with EU matters, most of them demanding a referendum on Finland’s membership of the EU (six initiatives) or the eurozone (three initiatives); so far, only one (demanding a referendum on Finland leaving the eurozone) has managed to collect the requisite 50,000 signatures. Others have obtained from 34 to 33,743 signatures. Importantly, all of these initiatives reflect the re-politicisation of EU membership or the euro membership question in Finland.

National citizens’ initiatives can also be ‘EU-related’ in that they touch upon existing EU legislation. An

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example of this is the initiative suggesting that the government should abolish daylight saving time (i.e. the switch to summer and winter times). The initiative gained more than 70,000 signatures and was hence received by parliament. It was rejected, however, as the

daylight saving practice results from an EU directive, and consequently falls outside the legislative powers of parliament. Yet parliament tasked the government with exploring the possibilities for abolishing this at the EU level. The European Commission first launched a public consultation on this matter due to a request to review the practice by civil society, the European Parliament and some member states (including Finland), and then proposed to let member states decide whether they want to live in summer or winter time.

Even if the European Citizens' Initiative is one of the drivers behind the national version in Finland, Finns have been much more enthusiastic about the latter than the former. In Finland, the required minimum number of signatures for a European Citizens' Initiative is 9,750. Out of the four European initiatives that have reached the required threshold at the EU level, only two have reached the national limit (European Commission, 2018). The 'Stop vivisection' initiative secured 12,495 signatures in Finland, while the 'Water and sanitation are a human right' initiative was signed by 14,589 Finns. The initiative to ban glyphosate gained 3,786 signatures, while the 'One of us' initiative obtained 1,230 signatures in Finland. Two Finnish citizens are among the organisers of the water and sanitation initiative, and one Finnish citizen is among the organisers of the 'Stop TTIP' initiative, which is currently open.

Rather limited public and media attention has been paid to the European Citizens' Initiative in general, and the individual initiatives and their campaigns. In terms of the national debate, the focus has clearly been on the national citizens' initiative, and the available data suggest that Finnish citizens have been actively engaged on the domestic front, but less so in European terms.

11.3 Implications of direct democracy in Finland

The EU membership referendum constitutes a key development in Finland's recent political history, and particularly in terms of the use of direct democracy tools. As such, it has had significant implications for the management of EU affairs in Finland.

The referendum did not settle the matter immediately, however. Its non-binding nature enabled some members of parliament to continue working against membership, while others

also referred to their constituencies in their attempts to form a blocking one-third minority in parliament. In the longer-term perspective, the outcome of the referendum can be seen as central to the evolution of the Finnish EU policy and the distinctly broad consensus upon it. Despite the divisive nature of the referendum, a broad consensus on Finland's EU policy at the elite level was established during the early years of membership, and the decisive outcome of the referendum can be seen as lending political legitimacy to this.

In short, Finland is often referred to as the most integrationist Nordic EU member, which has aimed to gain political capital through constructive rather than obstructive engagement in EU decision-making. While the early years of Finnish EU membership have been understood in terms of overcoming a peripheral geographic location through full participation in the core projects of the EU, including the third phase of the EMU, a rather more managerial approach has arguably emerged over time. Similarly, the Finnish representatives in EU decision-making do not accept the view that Finns are regarded as 'model pupils' in the 'EU classroom'. Rather, they have suggested that the political capital gained through constructive engagement should be used sparingly for issues in which significant national interests are at stake (Store, 2014).

Importantly, Finland did not call a referendum when it decided to sign up for the third phase of the EMU in 1997, and to adopt the euro in 1999-2002. The Centre Party, which is one of the country's largest parties (then in opposition), positioned itself against membership and supported a referendum on the issue. Accordingly, the broad national political consensus broke down temporarily. The government, a coalition led by the other two main parties – the Social Democrats and the centre-right National Coalition Party – argued that as Finland had accepted the Maastricht Treaty in full when it joined the EU in 1995, and as citizens had voted in a referendum on membership in 1994, there was no need for another one, as Finland had already committed itself to the formation of the euro. The counter-argument claimed that the euro had not really been debated or understood in 1994 because the single currency was merely a political aspiration enshrined in the treaties at that time.

While the government's reluctance to hold an EMU referendum is also consistent with the unenthusiastic approach towards referendums in general among Finnish political elites, the fact that Sweden opted for an EMU referendum, which delivered a negative result, revived this old debate at the height of the eurozone crisis. However, this has not led to any serious discussion among the traditional political parties about increasing the number of referendums in Finland. The only citizens' initiative calling for an EU-related referendum (on euro membership) which secured the necessary 50,000 signatures was rejected outright in parliament, as discussed above. While the Finns Party has highlighted the possibility of organising an EU referendum in Finland in the aftermath of the Brexit vote, the UK case has been just as often used as an example of the democratic complications that can arise with referendums. First, there is the question about the usefulness of a simple yes/no response in the context of highly complicated matters such as an exit from the EU. Second, the discussion in Finland has also referred to the research findings that analyse the drivers and motives of voting behaviour in referendums. Third, Finnish politicians have also reminded their audiences of the key characteristics of representational democracy and the legitimacy ideals that underpin them, suggesting that referendums might be problematic in terms of accountability, and might obscure this key feature of representational democracy.

While the Finns Party has highlighted the possibility of organising an EU referendum in Finland in the aftermath of the Brexit vote, the UK case has been just as often used as an example of the democratic complications that can arise with referendums.

In light of all this, the consequences of direct democratic mechanisms in Finland have taken place within the representational political system and are predominantly related to the national citizens' initiative.

To date, only one citizens' initiative has been successful in Finland. Yet the instrument has been seen to carry political

relevance for both citizens and policymakers. Importantly, several of the eligible but unsuccessful initiatives that reached Parliament have had legislative implications. In other words, some have been

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Several of the eligible but unsuccessful initiatives that reached Parliament have had legislative implications.

followed up in the government's legislative proposals on a related matter, or have influenced the parliamentary proceedings of related legislation. In addition, the accepted initiative to legalise same-sex marriage required additional legislative work prepared and proposed by the government after the parliament's decision.

Moreover, the successful citizens' initiative was related to a major political debate during the 2011-15 electoral period, namely the one on the 'equal marriage act', which proposed opening up marriage to same-sex couples. A very similar act with almost identical effects had already come into force in Finland in 2002. However, this law created a separate institution of registered partnership. The key practical difference between the latter and marriage was the absence of the right to adopt a child as a couple in registered partnership.¹

Political pressure to open up marriage to same-sex couples mounted in the run-up to the 2011 parliamentary election, and expectations ran high that the new government would take this on board. International and European developments also played a role, especially the fact that all the other Nordic countries had already moved in this direction. However, the inclusion of the Christian Democratic Party as a junior coalition partner (albeit with only a 4.03% support in the 2011 election) prevented the government from including the amendment to the marriage act in the government's programme. Most of the other parties attempted to overcome this obstacle by proceeding with an MP's initiative filed by a Green League MP. However, due to the political balance in the parliamentary Law Committee, this initiative was not taken forward and voted on in the plenary.

¹ Adoption was, however, open for individuals (also in registered partnership), and the so-called internal adoption within a family was made possible in 2009 for same-sex couples.

The introduction of the citizens' initiative nevertheless provided a new pathway for surmounting obstacles in both the government and the parliament. Arguably, the landslide number of signatures (some 166,000) for this initiative in record time underlined the political weight of the issue for the electorate, and led to a real parliamentary process and contentious but clear outcome with the passing of the initiative. The campaigning for, and to some extent against, the initiative also energised society, leading to peaceful demonstrations and a heated parliamentary debate.

The successful outcome also generated a 'real marriage' counter-initiative aiming to repeal the new marriage act before it could come into force in 2017. As this initiative also gathered the required number of signatures, it was voted on in the ensuing parliament in 2017, but failed to garner a majority. This has led to some political discussion about whether this type of counter initiatives should be banned to avoid incoherence in the legislative process.

Against this background, the first successful citizens' initiative has clearly highlighted the importance of the new direct instrument available to the electorate. It provided a pathway to overcome the political bargaining typical of the formation of coalition governments, at times criticised by the public and

The first successful citizens' initiative has provided a pathway to overcome the political bargaining typical of the formation of coalition governments, at times criticised by the public and labelled as a form of 'dirty politics'.

labelled as a form of 'dirty politics'. Moreover, the record number of signatures registered in a short period of time elevated the importance of the issue on the national political agenda. This led to the kind of political mobilisation – in terms of demonstrations and campaigns – that has rarely been seen over a single issue in Finland. During the decisive vote in the plenary, more than 5,000 supporters of the motion gathered in the Citizens' Square in front of the parliament building. This highly charged political moment, widely reported in the media and social media, also served to highlight the role of the new direct democracy tool for citizens. As the mobilisation is partly related to the active part played by various civil society organisations (old and new, formal and informal), their role in the Finnish political system, characterised as it is by strong

and influential interest groups (labour, business and agriculture, for instance), could also be on the rise, due in part to the new mechanism.

Conclusions

The analysis of direct democracy trends and instruments in Finland allows us to draw some conclusions of a potentially broader significance. First, the political pressure to enhance direct democracy in Finland is linked to the domestic trend of diminishing participation in national elections, which has been observed in several Western liberal democracies. Yet the EU developments and the introduction of the European Citizens' Initiative have also contributed to the reasoning and developments in the country. Second, the EU has featured strongly in the utilisation of direct democracy tools in Finland. The EU membership question led to the only post-war national (advisory) referendum in the country. While direct engagements in the form of referendums did not take place in conjunction with the adoption of the single currency or major EU treaty changes, the re-politicisation of EU affairs in light of several major EU crises has been partly reflected in the use of direct democracy tools.

The national citizens' initiative has been used 13 times vis-à-vis EU membership, euro or other EU issues, yet only one initiative (on organising a referendum on Finland's euro membership) has secured the required number of signatures. It was nonetheless rejected at the outset of parliamentary proceedings due to constitutional reservations and on grounds related to its incoherent substance. The failure of these initiatives points to a lack of popular and political support for EU-related referendums in Finland, also reflected in recent polls. On the other hand, the only successful citizens' initiative to date, on opening up the institution of marriage to same-sex couples, provides an example of the new political dynamics and mobilisation at work in the country. The citizens' initiative has offered a tool to overcome political bargaining related to the formation of a coalition government, through which a minor conservative party managed to block a reform which was widely supported in society and by the majority of political parties alike. The attendant campaign mobilised citizens, civil society

organisations and also private businesses to some extent, and led to a vibrant public debate in the media and social media.

Finally, the analysis suggests that direct democracy in Finland has been used to strengthen the primacy of representational democracy as the foundation of the country's political system. Importantly, the national citizens' initiative and the enhancement of direct democracy at the local level is subordinate to the representational system and its institutions. The introduction of these tools can also be seen to partly counter calls to increase the number of national advisory referendums, or potentially to move towards legally binding ones.

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12. DIRECT DEMOCRACY IN GERMANY

ERIK BRANDES, NICOLAI VON ONDARZA & FELIX SCHENUIT

The story of direct democracy at the national level in Germany is rather short: there have been no national referendums on European questions in the country. Yet elements of direct democracy come into play in three areas: at the local and regional level, through the European Citizen's Initiative and the burgeoning discussion about whether direct democracy should be used at the national level. Even though an advisory referendum on EU issues is theoretically possible, the German political system remains, for the foreseeable future, characterised by representative democracy, with very limited scope for direct democratic elements.

Introduction

On a state visit to Switzerland in April 2018, Germany's Federal President Frank-Walter Steinmeier took part in a panel discussion at the University of Fribourg about the future of democracy. Prompted to give his take on direct democracy, Steinmeier asserted that Switzerland's model could not be exported easily, as Germany had a "different political DNA". The German *Grundgesetz*, he argued, has been the result of lessons learned from the failure of Germany's first democratic system between 1918 and 1933 – and excludes binding referendums on a national level.

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are therefore no empirical cases of instruments of direct democracy used in Germany to influence EU politics.

Nevertheless, there are three areas where elements of direct democracy might come into play in Germany's European policymaking. First, it is relevant to look at the legal situation today and the circumstances under which instruments of direct democracy are and can be used in Germany. Second, the European Citizens' Initiative (ECI) is currently the only instrument of direct democracy used on a national level in Germany. Despite its limited use so far it merits special attention. Finally, both among the current governing parties and the Eurosceptic *Alternative für Deutschland* there are growing calls for the introduction of more direct democratic elements into the German political system. This poses questions about the circumstances under which a referendum on EU-related issues could be conceivable in Germany.

12.1 History and situation today

President Steinmeier's stance in Switzerland reflects a well-established attitude in German politics. The *Grundgesetz* (Germany's Constitution), drawn up under the auspices of the allied forces four years after the end of World War II, is often lauded as having created a "well-fortified democracy" as opposed to the "most democratic democracy" (Eduard David) of the Weimar constitution of 1919. It is seen as a means of stabilising and protecting democratic order against anti-democratic unrest. The *Grundgesetz* (or GG) therefore not only introduced legal measures to ban unconstitutional political groups, but also established a five-percent threshold in parliamentary elections, transformed the office of president into a solely representative role without a popular mandate, and largely abolished referendums at national level. All these measures served to strengthen the German Parliament as the main bearer of political legitimacy.

Previously, there had been six national referendums in Germany: two based on popular initiative during the Weimar Republic – on expropriating the princes and on stopping the Young Plan (both rejected) – and four unfree *ex post* referendums arranged by the Nazi regime to legitimise decisions already taken – on exiting the League of Nations; on merging the offices of president and chancellor; on the military occupation of the Rhineland; and on

annexing Austria. The instrumentalisation of manipulated plebiscites for propaganda purposes continued in the Eastern German Democratic Republic after World War II, whereas the Western Republic distanced itself from this method almost entirely (Jung 1994). In practice, there has never been a nationwide referendum in the Federal Republic of Germany – not even for enacting the *Grundgesetz*.

The case is somewhat different at the level of states (*Bundesländer*). Eight of the *Länder* constitutions drawn up after 1945 were adopted by referendum and most of them incorporated plebiscitary mechanisms, some obligatory and some citizen-demanded referendums. However, the hurdles for such processes were high at first, so that until 1990 there were only a few cases of public votes at state level, including plebiscites on restructuring *Länder* territory, constitutional referendums in Bavaria and Hesse, and citizen-demanded plebiscites in Bavaria and Baden-Württemberg.

The situation began to change with Germany's reunification. The Joint Constitutional Commission offered an opportunity to revisit direct democracy at federal level, but the necessary two-thirds majority for the introduction of a plebiscitary procedure at federal level was not attained. Since 1992, several legislative initiatives to introduce nationwide referendums have been debated in the *Bundestag*. A constitution-changing majority has, however, never been achieved – not even in 2002, when the governing SPD and the Greens put their own initiative to the vote. With 63.38% support in the *Bundestag*, the two-thirds majority was missed again – albeit by a small margin (Decker, 2017, p. 140).

At *Länder* and municipal level, a constitutional reform in Schleswig-Holstein in 1990 led to a new dynamic across the states: the three-step procedure established there (see below) was adopted by all eastern German states in their new constitutions. Lower Saxony, Berlin and Hamburg subsequently also adopted this rule and Bremen, North Rhine-Westphalia and Rhineland-Palatinate reformed their state constitutions. During the 1990s, all federal states – albeit in different forms – also anchored citizens' decisions at local level.

12.2 Legal framework for direct democracy and its use in Germany

Direct democratic instruments are often differentiated in terms of legal necessity and of legal liability. A referendum can be (constitutionally) required or non-required and it can be binding or non-binding (advisory). These distinctions refer to judicial circumstances and thus to the degree to which the trigger or outcome of a referendum can be legally enforced.

At federal level, direct democracy instruments are very limited. The *Grundgesetz* cites two cases in which a referendum becomes mandatory: first, for re-arranging the federal territory (Art. 29, GG) and second, for enacting a new constitution (Art. 146, GG). While the former prerequisite has led to regional referendums, the second situation, although in discussion during German reunification, has not yet occurred. The *Grundgesetz* articles on federal legislation (Art. 70ff., GG) do not envisage a role for plebiscitary elements; binding referendums on other political decisions would therefore be unconstitutional, if only because they bypass *Länder* participation in law-making. Whether non-binding plebiscites are covered by the constitution is disputed. Citing the *Grundgesetz*'s claim that "all state power [...] shall be exercised by the people through elections and other votes" (Art. 20, GG), a large number of legal experts now believe that advisory referendums (*Volksbefragung*) could be called without a change to the constitution (Wissenschaftlicher Dienst des Deutschen Bundestages, 2010).

Another form of public participation in federal decision-making is petitioning the *Bundestag*, as set out in Art. 17 and 45c GG. The petitions committee discusses notable entries publicly if they attain 50,000 signatures or more. This mechanism can be used to influence German EU policy, as a recent petition on EU democracy attempted to do.¹ However, *Bundestag* petitioning rarely manages to create substantial political pressure.

At state and municipal level, by contrast, several forms of plebiscites exist. While the complete revision of the *Länder*

¹ Petition 73232 to the German Bundestag, November 2017 (https://epetitionen.bundestag.de/petitionen/_2017/_08/_22/Petition_73232.nc.html).

constitutions require referendums in most states, in Bavaria, Hesse, Bremen and Berlin, even (certain) changes in *Länder* constitutions necessitate referendums. In addition to these required referendums, there are several forms of non-required but binding referendums, usually called *Volksentscheid* (people's decision) on state level or *Bürgerentscheid* (citizens' decision) at municipal level. In Baden-Württemberg, Lower Saxony, Rhineland-Palatinate and Hamburg, a passed state law can be put to a confirmative *Volksentscheid*. Most of the time, however, referendums on state or municipal level are the result of public initiative. The three-step procedure (*Volks-/Bürgerinitiative*; *Volks-/Bürgerbegehren*; and *Volks-/Bürgerentscheid*) requires citizens to collect a specific number of signatures before their case can be put to a referendum. How restrictive the provisions for such plebiscitary procedures are and which issues they can cover differs enormously from state to state. Advisory, non-binding referendums are only possible in Berlin, Hamburg and Schleswig-Holstein, as their constitutions allow plebiscites on any issue of political will formation.

In practice, over 50 *Länder*-level referendums have been called since 1990, 22 of which at the initiative of citizens (Mehr Demokratie, 2017). Notable examples include non-smoker

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protection in Bavaria (2010); school reform in Hamburg (2010); on the construction project 'Stuttgart 21'; in Baden-Württemberg (2011); and the re-municipalisation of energy supply in Hamburg and Berlin (2013).

Participation ranges from 23 to almost 80 percent, averaging at around 50 percent. At local level, Baden-Württemberg had long been a frontrunner in plebiscitary participation, while use is nowadays particularly frequent in the *Länder* Berlin, North Rhine-Westphalia, Bavaria, and Hesse (Schiller, 2011, Kost 2010: 400).

With European affairs being mostly a national government responsibility, local and state-level direct democracy can rarely touch upon European politics. A constitutional referendum in Bavaria in 2013 was one of the few plebiscites with relevance to EU policymaking: the adopted change gives the Bavarian parliament the right to bind the government on questions of power transfer to the EU level and demands that the Bavarian government seek the parliament's opinion on EU initiatives with impact on Bavarian legislation.

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12.3 The ECI in Germany – a largely abandoned experiment

Incidentally, there is one major exception to the current lack of direct democratic instruments on a national level in Germany – the European Citizens' Initiative (ECI). Introduced under the Treaty of Lisbon and made operational in April 2012, the ECI's objective is to ensure "that every [EU] citizen is to have the right to participate in the democratic life of the Union" (Regulation 211/2011) – including all EU citizens living in Germany. In essence, the ECI allows European citizens to call upon the Commission to make a proposal for a legal act of the EU that could, at least in theory, then be enacted by the Council and, if applicable, the European Parliament. Neither the Commission nor the Council or Parliament are bound in any legal sense to follow an ECI, however. In legal terms, the ECI therefore comes closest to the popular initiatives possible at regional or local level in parts of Germany, although the Commission may completely refuse to act upon ECIs and has already done so in the past (Regulation 211/2011).²

There are two additional important hurdles to an ECI. First, the EU treaty limits ECIs to initiatives for legal acts that fall under the competence of the European Commission. The Commission

² See chapter 2.

therefore initially checks every initiative on admissibility. This not only rules out any initiatives beyond the realm of the EU, but also any initiatives that would be directed towards German EU policies or that are outside the narrow definition of “proposals for legal acts of the Union”. For instance, the Commission rejected the ECI ‘Stop TTIP’, initiated inter alia by civil society groups from Germany, on the grounds that EU free trade agreements do not constitute legal acts of the Union.³

Secondly, in order to be successful, an ECI needs to gain the support of one million EU citizens while at the same time meeting a quorum in at least a quarter of EU member states. This quorum relates to the number of MEP seats per inhabitant, and thus the principle of degressive proportionality. As Germany is the largest member state, the largest number of signatures need to be collected for it to count, i.e. 72,000. This contrasts to, for instance, 55,500 in France, 15,000 in Sweden or 4,500 in Estonia. The flipside of this is that it constitutes only 0.09% of the German population, which is the smallest ratio across the EU, together with France, Italy, Spain and the UK.⁴ Despite the higher threshold, this should, in theory, make it easier for initiatives to gain the requisite number of signatures in Germany.

The use of ECI in Germany, however, largely mirrors that in the EU overall. After its initial introduction, there was keen interest on the part of both civil society groups to test this new instrument and that of citizens to participate. In 2012 there were 20 ECIs launched in quick succession, which gained over 5 million signatures in 2013 across the EU.⁵ After this initial wave of support,

³ In 2017 the European Court of Justice ruled that the Commission’s refusal of the ‘Stop TTIP’ ECI was wrong. By that time, however, CETA was already ratified in the EU and TTIP negotiations frozen after the election of Donald Trump, so that the initiative has not (yet) been revived (<https://euobserver.com/institutional/137855>).

⁴ Thresholds for the signatures were lightly reduced downwards in 2014; previously the threshold was 74,250 for Germany.

⁵ Official figures from the public information of the European Commission on the ECI. Unfortunately, the Commission only published the signatures for the successful ECIs, so that no overall data on the amount of signatures for all ECIs from Germany are available (<http://ec.europa.eu/citizens-initiative/>).

disillusionment kicked in as the ECIs did not gain enough signatures, the procedure proved too unwieldy and the EU institutions reacted to the successful initiatives very reluctantly. Consequently, the amount of new ECIs dropped off to only six in 2015, collecting only 8,500 signatures across the whole of the EU (Berg 2016). That is a drop-off of 99%. Overall, since 2012, over 60 ECIs have been launched, of which only four have been successful in reaching the threshold of one million signatures.

Nevertheless, two points stand out in the use of the ECI in Germany. First, signatures from Germany have been crucial to the few ECIs that have been successful. As demonstrated in Table 12.1, in three of the four successful ECIs the largest or second largest number of signatures originated in Germany. In the most prominent ECI so far, the 'Right 2 Water'-initiative, more than one million signatures alone came from Germany, amounting to 75% of all signatures. It could therefore be argued that any successful ECI almost invariably needs at least some support from Germany to reach the one million signatures.

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Table 12.1 Share of German signatures in ECIs that gathered 1 million signatures

Year	Name	Total signatures	Signatures from Germany	Share	Rank
2014	Right 2 Water	1,659,543	1,236,455	75%	1 st
2014	One of Us	1,721,626	137,874	8%	4 th
2015	Stop vivisection	1,173,130	16,304	14%	2 nd
2017	Ban Glyphosate	1,070,865	663,867	62%	1 st

Source: Own compilation from data provided by the EU Commission. Share = share of German signatures from total; Rank = rank of German signatures compared to other EU member states.

Second, the most recent successful ECI concerned the ban of glyphosate in the EU. It not only achieved more than one million

signatures, but also over 600,000 from Germany. Despite this, the German government representative at the same time voted within the relevant EU committee for the extension of the use of glyphosate in the EU. This triggered a heated public debate in Germany, as the minister responsible cast the vote during the time of the caretaker government after the 2017 elections, without properly consulting the SPD coalition partner. The ECI for the ban of glyphosate barely figured in the German debate. Overall, therefore, it has to be argued that in terms of its impact on German EU politics, the ECI has been a largely irrelevant instrument.

12.4 Possible scenarios in the future

Although we have not yet seen a German EU referendum, political signs point to more plebiscitary democracy in the future. Polls suggest that over 70% of German citizens favour holding referendums on political issues at federal level, while less than 30% are against this move (Infratest Dimap, 2017). Germany is, together

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with Belgium, Portugal, Cyprus and Bulgaria, one of five EU member states that have never held a referendum on EU matters (EPRS, 2016, p. 4). Today, calls for a stronger role of plebiscitary mechanisms at federal level can be heard across

parties and the coalition agreement from February 2018 actually promises to task an expert commission with looking into ways to introduce direct democratic mechanisms. In light of this general thrust towards direct democracy and past discussions on whether EU integration should be put to a popular vote in Germany (e.g. for the Maastricht Treaty or the Constitutional Treaty), and amid a Europe-wide increase in EU-related referendums (EPRS, 2016), a future referendum on European integration is also conceivable in Germany.

Typically, one can differentiate three types of EU referendums (Hobolt, 2009): membership referendums (e.g. Polish accession vote in 2003 or the Brexit referendum in 2016), treaty referendums (e.g. Dutch, French, Luxembourg and Spanish votes on the Constitutional Treaty in 2005), and single-issue referendums (e.g. Greek bailout vote in 2015 or Dutch EU-Ukraine Association

Agreement vote in 2016). The likelihood of such referendums in Germany depends both on legal circumstances and on political developments.

12.4.1 Legal perspective

The narrowly defined legal basis of referendums in the German constitution does not – for now – provide opportunities for binding referendums on EU membership, treaties or single issues. Establishing such a binding vote would therefore require a change of the *Grundgesetz* and thus a two-thirds majority, as legal evaluations have concluded for the case of a possible referendum on the Lisbon Treaty (Wissenschaftlicher Dienst des Deutschen Bundestages, 2009). Consultative referendums, however, could be implemented through a federal act. This kind of public vote would "have no legally binding effect, but would merely be a political decision-making aid" (ibid.). Although such a "political decision-making aid" is legally non-binding, the political implications could be quite far-reaching, as the Brexit vote in 2016, legally a consultative referendum, demonstrated.

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Members of the right-wing populist party AfD have attracted attention by calling for a plebiscite on EU membership – explicitly referring to the 'British model'. Notwithstanding the legal difficulties of direct democracy on a federal level in general, such a vote would also come into conflict with the 'EU-friendly' parts of the *Grundgesetz*. The constitution's preamble and Article 23 of the GG insist that Germany take part in European integration. Apart from establishing mechanisms for direct democracy at federal level, German legislators would likely also have to change these parts of the constitution to allow enacting a possible leave vote (Thiele, 2016).

Similarly, a single-issue referendum would also face the above-mentioned constitutional hurdles. While a binding vote would require a two-thirds majority, a consultative referendum might be implemented with a simple majority. However, the

introduction of the latter type of plebiscite would nevertheless be a major political novelty and might thus be challenged before the Constitutional Court. Given their political impact, some kind of limit on which matters could be legally covered by advisory referendums are likely, for instance on international obligations.

In contrast to a referendum on EU membership and single issues, the idea of adopting a new treaty by public vote has been the subject of legal and political debate in Germany. In the famous judgment by the Federal Constitutional Court on the conditions for the ratification of the Lisbon Treaty, judges argued that a referendum on the treaty would be necessary if the reforms reached the limit of "integration authorisation". In this case, Article 146, GG would be a legal basis for a referendum on a new treaty – by establishing a new, European constitution in the place of the *Grundgesetz*. For the Lisbon Treaty itself, however, the Federal Constitutional Court did not identify the creation of a European federal state with integration authorisation, but argued that the EU is still a "*Staatenverbund*" [a union or association of states] (Bundesverfassungsgericht, 2009). A referendum was therefore not necessary. The legal necessity of a referendum on a new treaty was explicitly discussed during the euro crisis in 2012. By then, Finance Minister Wolfgang Schäuble, his predecessor Peer Steinbrück, and other politicians expected a referendum in Germany. The implementation of the Fiscal Pact and the European Stability Mechanism raised the question of whether the EU's responses to the financial crisis crossed red lines formerly set by the Federal Constitutional Court in its judgment on the Lisbon Treaty. The largest constitutional complaint in German history (joined by ca. 37,000 claimants) questioned the constitutional conformity of the Fiscal Pact and ESM. The judges, however, declared in March 2014 that Germany's participation in the mechanism was compatible with the German Basic Law.

12.4.2 Political conditions

A *membership referendum*, as we saw in Britain in 2016, would not only be difficult from a legal perspective in Germany, but also unlikely from a political perspective. Polls suggest an overwhelming and consistent support for EU membership among

the German population.⁶ This is reflected in the positions of the leading political parties: currently six out of seven parties in the *Bundestag* do not back leaving the EU (cf. 2017 election manifestos). Not even the *Alternative für Deutschland* (AfD), Germany's rising eurosceptic party, has a clear anti-EU stance, since it calls for an EU membership referendum only "if necessary" ("*gegebenenfalls*", AfD election manifesto 2017, p. 8). As most of the major parties on the left and the right pride themselves on their pro-European heritage, general support for European integration remains the political consensus in Germany. Consequently, although a significant number of Germans favour an EU membership referendum (*Der Spiegel*, 16.03.2017), reflecting general support for more direct democracy, such a vote remains highly improbable. It could likely only be caused by a major event such as an economic or political crisis that would shift public opinion or the political landscape significantly.

Single-issue referendums, an increasingly prominent feature in European politics, are somewhat more likely in Germany. As such a vote would pre-suppose the introduction of direct democratic mechanisms at federal level, much would depend on the specific legal implementation. Yet even an open and accessible procedure would probably exclude referendums that run counter to EU law, ruling out solely regressive votes such as on leaving the eurozone.⁷ Nonetheless, Eurosceptic forces could employ such mechanisms, whatever their form, to try and stop specific policies or measures at European level. Also possible would be the political instrumentalisation of consultative referendums on EU affairs by the government to improve its negotiating hand (cf. Greek bailout referendum or Hungarian referendum on refugee quotas). Considering Germany's powerful position within the EU system, however, such a move seems unnecessary and would constitute a major change from established German political tradition. In the

⁶ Asked whether Germany would fare better inside or outside the EU a couple of weeks after the Brexit vote, 78% of respondents answered that Germany would fare better inside the EU. In the latest Eurobarometer polls, 79% of German respondents said they deemed EU membership to be a good thing (Eurobarometer 88, *Der Spiegel*, 16.03.2017).

⁷ A referendum on leaving the eurozone is also one of the AfD's political goals (AfD, 2017, p. 8).

realm of political possibility and legal admissibility are also regional referendums employed at the *Länder* level to counter EU policies. But so far no such proposal has been tabled in any of the German *Bundesländer*.

The most likely form for a public vote on European integration in Germany is a *treaty referendum*. Past treaty reforms, particularly the Maastricht Treaty and the Constitutional or later Lisbon Treaty, have sparked discussions on the necessity and desirability of legitimising further European integration through a public vote. Such a discussion is likely to arise again should there be another treaty reform in the future. Several of the German parties' proposals for reforming the EU system – such as a simple majority vote in the EP for dismissing the Commission (Greens) – would require a treaty change. The Social-Democrats and *Die Linke* openly endorse treaty reform, the former aiming at a European constitution. Whether these amendments would require a referendum in Germany is open for legal debate. Politically, there could be increasing pressure to consult the public, particularly with the AfD as a new and vocal political force. *Die Linke*, too, actively calls for referendums across European states to legitimise their desired treaty reform. With rising pressure from the political fringes and high expectations from the public, a referendum on the next European treaty appears entirely possible. The simplest legal way in such a case would be an advisory *Volksbefragung* – which still could have, as we know from the British 'advisory' EU referendum, significant politically binding consequences.

Conclusions

The use of direct democratic instruments on EU issues remains a very remote possibility for Germany. The analysis of the legal framework has shown that at least binding referendums are not envisaged in the constitution – and while their introduction is currently under discussion, there is no strong commitment to do so in the foreseeable future. Direct democratic instruments ranging from popular initiatives over advisory referendums to binding and, in select cases, obligatory referendums are possible on the local and regional level. They are also limited to local and regional competences. There have been very few cases where they were linked to EU issues.

Secondly, the only nationwide direct democratic instrument currently in use in Germany is the European Citizens Initiative, which directly concerns EU policies. Like the ECI overall, however, interest in the instrument fell in Germany after it proved too cumbersome and the EU institutions chose either to ignore it or to react very slowly, even upon the few ECIs that were successful in gathering more than one million signatures. The ECI therefore had no discernible impact on Germany's EU policies, even if it was directly applicable, such as those on TTIP or the banning of glyphosate.

Finally, on the question of whether the use of referendums on EU issues is possible in the future, it is first important to state that legal constraints remain in place. In addition, a membership referendum appears unlikely in Germany, even if legal barriers were removed. Even under the current legal framework, however, non-binding consultative referendums are possible, for instance on single issues. These might be used to halt specific European policy projects and would thus mostly be employed by Eurosceptics. Last but not least, a plebiscite on treaty reform, on the other hand, might find support even among pro-integrationists, as it would add legitimacy and accountability to the new foundation of the EU system.

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Due to the lack of experience with direct democracy on the federal level in Germany, the outcome of such referendums cannot be anticipated and would thus further increase the political risks already inherent in EU treaty reform. For the foreseeable future, however, Germany's political system remains characterised by representative democracy, with very little scope for direct democratic elements.

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13. MOBILISING FOR DEMOCRACY DURING AUSTERITY IN GREECE

FILIPPA CHATZISTAVROU¹

This chapter assesses the state of direct democracy in Greece since the outbreak of the financial and economic crisis in 2008. Throughout its long history, Greece has oscillated between two narratives: the timeless reference to the legacy of Athenian democracy in the classical era and the modern and post-modern reference to an incomplete (immature) representative democracy combining personalistic leadership, governmental favouritism and political partiality.

Introduction

Since its liberation in the early 19th century, the country has had a long way to go in trying to adapt to Western democratic standards of the French Enlightenment and Anglo-Saxon empiricism. This difficulty has been the subject of various explanations, such as the Byzantine patrimonialism of the state, the Ottoman approach to governing and the Greek elites' obedience to the great powers, as well as the de facto satellisation of the country justified by an underdog culture.²

The two key elements of Greek narrative identity – the Athenian civic democratic ethos and the sense of belonging to the West – have been transformed through biased stories, thus creating

¹ Valuable research assistance was provided by Konstantinos Papanikolaou, ELIAMEP Junior Research Assistant.

² In 1994, Nikiforos Diamandouros discerned two cultural political prototypes in Greece, the reformist one and the underdog (i.e. clientelism, corruption, individualism, lack of meritocracy and professionalism, obstructive foreign policy, ottomanism etc.) (Diamantouros, 1994).

well-established and holistic although inaccurate beliefs about normative guarantees for (direct and indirect) democracy.

While the invocation of ancient democracy was supposed to play a major role in the battle against the monarchy in Europe and in favour of citizens' rights in the West, in fact it served as a decisive metaphor for modern liberal democracy, i.e. individualist liberalism in the full sense of the term (Castoriadis, 2008).

Ancient Greeks sought to share social power among all citizens in the open (public) space where freedom was central. However, the free world of the Athenian polity was based on a series of exclusions, namely of women, slaves and metics; furthermore, the social and economic conditions of citizens were not part of the discussion (Castoriadis, 2008). The aim of the 'Moderns' (17th century) has always been to safeguard their private pleasures and they have viewed the freedom offered by institutions as a guarantee of these pleasures (Constant, 1819). The industrialisation of the economy, the rise of the bourgeoisie and then the internationalisation of capitalism promoted a value system that emphasises the liberal variable of the democratic pattern, as an (unequal) combination of a normative Rousseauist conception of the role of the people and an empiricist Lockean conception of the role of the state.³ Liberal democracy established the economic and social conditions within societies as structuring elements of a system where the dominant democratic ethos stems from the principle of representativeness. The fact that the two models – Rousseauist and Lockean – consider political participation in different ways (the first as a means and the second as a goal) did not obstruct the establishment or prevent the deleterious effects of mass democracy, through which political participation progressively became a formalistic option for electing small minorities.

Western interpretations of classical Greek democracy as well as the Greek ruling elites' faith in the

Western interpretations of classical Greek democracy as well as the Greek ruling elites' faith in the value system of modern liberal democracy contributed to a 'historical' misunderstanding of a certain continuity between the old and new democratic ethos.

³ The conceptual distinction between the two standards suggests that liberalism and political democracy do not necessarily coincide.

value system of modern liberal democracy contributed to a 'historical' misunderstanding of a certain continuity between the old and new democratic ethos. In these terms, the country imported an anachronistic, simplistic and moralist Western interpretation of its own invention of democracy as it engaged in the process of integrating into the West and later into the European Communities.

In light of the historical traumas of dictatorships (junta) and civil war, the country opted for an occasional use of referendums only at critical moments of modern Greek history, while at the same time a culture of resistance towards foreign interventionism flourished.

During the post-dictatorial (*metapolitefsi*) era, Greece imported the institutional-social model of mass democracy, whose main features are broad government intervention in the economy for developmental and redistributive purposes, the organisation of citizens into mass parties, trade unions and social organisations, and development of the welfare state (Manitakis, 2012). The economic crisis caused a serious break in this process, exacerbating confusion about the country's existential identity while increasing attempts to seemingly (re)claim the fundamentals of a (direct) democratic process.

13.1 The reappraisal of more direct forms of participation and mobilisation against contentious politics

In comparison with other European countries, Greece is the only one that consents to living under an eight-year regime of memorandums of understanding (MoUs).⁴ At a time of crisis and high political volatility, with positions on austerity, immigration

⁴ Greece concluded three MoUs that set out the economic adjustment policies the country was called to implement in the context of its request for financial support from the euro-area EU countries and the IMF. The first programme was based on bilateral loans, and the second and the third were financed by the European Financial Stability Facility and the European Stability Mechanism respectively. The European Commission, the European Central Bank, the IMF and, at a later stage, the European Stability Mechanism (the so-called troika, which then became a 'quadriga') monitored the implementation of adjustment policies.

and European integration moving to centre stage, Greece has been led to a more or less forced Europeanisation of its national policies. That in turn has contributed to the entanglement of economic issues with the refugee crisis and (national) security concerns (over the Balkans and Turkey). In this context, eurozone requirements for budgetary discipline and structural reforms have been closely intertwined with national political considerations, making it difficult to distinguish national from European issues. Yet, in contrast with other countries where the refugee question has monopolised public debate, economic and social issues related to socioeconomic decline and social fragmentation have been more prevalent in Greece. The refugee issue has received far less popular attention, being mainly instrumentalised by the neo-fascist, extreme right-wing Golden Dawn party.

Since Greece's engagement in the first economic adjustment programme, there has been a reappraisal of more direct forms of civilian mobilisation and social movements. Economic crisis policies and the MoUs have brought out new politicised forms of active public participation. In this context, the repertoires of contention of these broad and progressively cross-class coalitions of anti-austerity protesters have combined different types of action: i) demonstrative, confrontational and sometimes violent actions (unconventional forms of both legal and illegal political participation, i.e. threats, symbolic violence or destruction of property); and ii) direct democratic tools and action (conventional forms of legal political participation).

Economic crisis policies and the MoUs have brought out new politicised forms of active public participation.

Actually, the different forms of civilian mobilisation started to spread after the December 2008 events, which contributed to the reinvigoration of various grassroots groups. Meanwhile, following his death, the teenager Alexandros Grigoropoulos became a new icon of resistance for Greek youth against what they perceived as state authoritarianism. For the period 2010 to 2015, the literature distinguishes three waves of anti-austerity mass mobilisation while various local movements were also active. More or less loosely organised and unconventional legal forms of political participation, including new social movements, strikes and protests, reached their climax with the holding of the 2015 referendum on the bailout.

The mobilisation took the form of local demonstrations, some simultaneously in more than one city, with occupations of public buildings, encampment in squares (such as Syntagma Square) and participation in assemblies. The frequency and size of demonstrations had no precedent in the *metapolitefsi* (Sotiropoulos, 2017).

While the expansion and the intensity of these movements was significant, their main motive was neither revolutionary nor to contribute to formulating a new political project for Greece and Europe.

It is clear that while the expansion and the intensity of these movements was significant, their main motive was neither revolutionary nor to contribute to formulating a new political project for Greece and Europe. In principle, revolutionary movements are composed not of deprived, oppressed, annihilated people but of a powerful, highly

intellectual minority that cannot stand to see other people suffering (Arendt, 1970). These movements – less in their identitarian form and more in their protestatory form – potentially could have represented an opportunity for a favourable political structure (Tilly, 1997); yet they were taken over in large part by partisan politics. The direct democracy process should enable or restore popular channels for expressing and outlining a new system of political beliefs, ideas and proposals, not just as a mode for ‘questioning’ people, but as a mode for articulating a new socio-political demand (Laclau, 2005). Instead, Greeks mobilised themselves over what they considered to be political mistakes that had caused an ‘exceptional’ situation. The main goal of mobilisation was to protest against the bad economic situation through two main channels of criticism.

On the one hand, some of these forms of public expression were intended to condemn the core individualist, dysfunctional values of liberal democracy. At the beginning of the crisis, Greeks experienced the crisis as a means of imposing a new European order, i.e. interdependent economic and political systems where *homo economicus* prevails over *homo politicus*. The imposition of restrictive policies through the MoUs has been classified as an approach that exacerbates the liberal side and strengthens the authoritarian side of the regime (Barber, 2003). Initially, there was an attempt to recall the importance of the organic solidarity of

Athenian democracy in contrast with the utilitarian culture of enlightened self-interest on which representative democracy has traditionally been based. Instead of the liberal individualist – and in this sense pluralist – and adversarial conception of modern politics, a more radical conception of the common interest, the steering role of the state and the primacy of the polity over people was even temporarily rehabilitated.

On the other hand, the different waves of popular mobilisation expressed discontent towards the ruling elites that have exercised political power since the *metapolitefsi* and who have been considered responsible for the country's subordination to the economic MoUs and subsequent policies. Here the criticism of the elite might be easily interpreted as an interest in the revival of direct democracy in the 21st century; nevertheless one should carefully evaluate to what extent these forms of participation and mobilisation represent an alternative or a complementary process to strengthen democracy. Undoubtedly, the Greek political system has been weakened by its embedded, idiosyncratic, confrontational political method and personalistic culture, which has elicited calls for reform since the outbreak of the crisis under a European regime of increasing economic asymmetries and unmutual political reciprocity between EU member states.

One way or another, popular movements in all their variety put into question the loose foundations of liberal democracy in its southern paternalist version. Unsurprisingly, these movements in the new context of post-*metapolitefsi* have become the object of two quite contrasting academic analyses about their 'populist' nature and the prospects of their inner dynamics becoming tools of further democratic decline or renewal.

On one side, there is a long academic tradition rejecting all forms of populism as "illiberal democratic forms" (Pappas, 2013), and which describes Greece's *metapolitefsi* as a 'populist' one, thus challenging its liberal foundations.⁵ Scholars of this tradition, devotees of representative democracy, have analysed popular attitudes of resentment since 2008 as a phenomenon stemming from

⁵ Populist Greek political culture is dealt with exclusively within the post-authoritarian period, as the "political culture of the petty bourgeoisie" (Elefantis, 1991) or as a "defensive political culture" (Katsoulis, 1988).

a populist underdog culture that is driven by clientelist demands against the rational domestic elite. The latter is presented as a regular part of modernising politics and as being confronted by these anti-establishment (populist) forces.

On the other side, other scholars distinguish different kinds of populism and consider that a large part of these popular expressions represents excluded groups attempting to put forward an egalitarian agenda and hence combine the formal populist core with the legacy of the radical democratic tradition (Stavrakakis & Katsambekis, 2014). In this perspective, these forms of mobilisation can be seen as an integral part of democratic politics, as a source of renewal of democratic institutions and as a vehicle for a sought-after redemocratisation (Stavrakakis & Katsambekis, 2014).

Without denying Greeks' propensity for personalistic authority and embedded clientelism (Featherstone, 1990), we pay more attention to the fact that populism as an embedded feature of Greek politics has artificially increased political polarisation and the adversarial nature of the system in order to heighten partisan identity. In this respect, Pappas (2013) talks about strategic and not ideological polarisation. Nevertheless, in the framework of this contextual analysis, the populist argument seems more useful not as a holistic but as a complementary explanation so that we can examine the extent to which these various forms of mobilisation have cultivated democratic reflexes. Therefore, we can go beyond those explanations that use populism generally to demonstrate why Greece has never reached the level of maturity of liberal democracy seen in other countries (Barber, 2003) and that merely analyse the Greek crisis as the result of a systemic compromise between the ruling parties which prevented the country from 'effectively' meeting its EU membership commitments, thus fostering anti-austerity attitudes and protests.

13.2 Varieties and drivers of public participation and mobilisation

During the first wave of mobilisation in 2010, there was an escalation of the traditional social movements of general strikes, demonstrations and intense protests. These involved ordinary full-time employed people of all educational backgrounds and ages from the militant political Left who are most likely to be involved in strikes and demonstrations (Rüdig & Karyotis, 2014). The traditional networks of trade unions and voluntary group membership, as well as public sector employment, played a key role in recruiting protesters already engaged in organised political participation through their membership. Still, these networks exerted their influence through previous protest experience.

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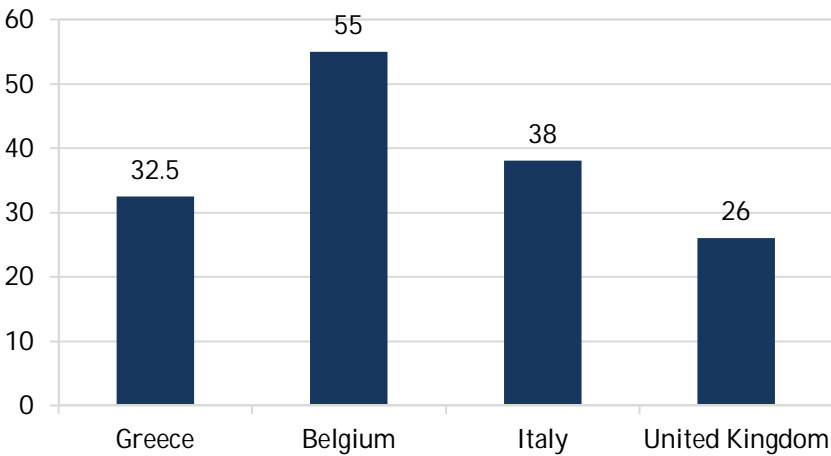
In other words, those involved were people fully plugged into economic life, rather than people on the margins or outside the labour force. They were the main carriers of this protest movement, organisationally linked to a number of resilient extra-parliamentary leftist groups, trade unions and parliamentary parties of the Left, giving it an 'old politics' flavour (Kassimeris, 2005). As later discussed, the second wave of mobilisation during 2011 can be regarded as a new social movement, focused, however, on issues of material concern.

In the third wave from mid-2012 onwards, a number of large protest events took place. Among them were three national general strikes by public and private sector workers, one workers' rally, two national, general work stoppages (one of which was part of the first strike by the European Trade Union Confederation against austerity) and one march on the commemoration of the university student uprising against the military junta (Kousis & Karakioulafi, 2013).

Concerning trade union membership and density in Greece, it has been observed that there is an underrepresentation or no representation in trade unions of the most vulnerable categories of the workforce (Kretsos, 2012). Greece nonetheless remains high on

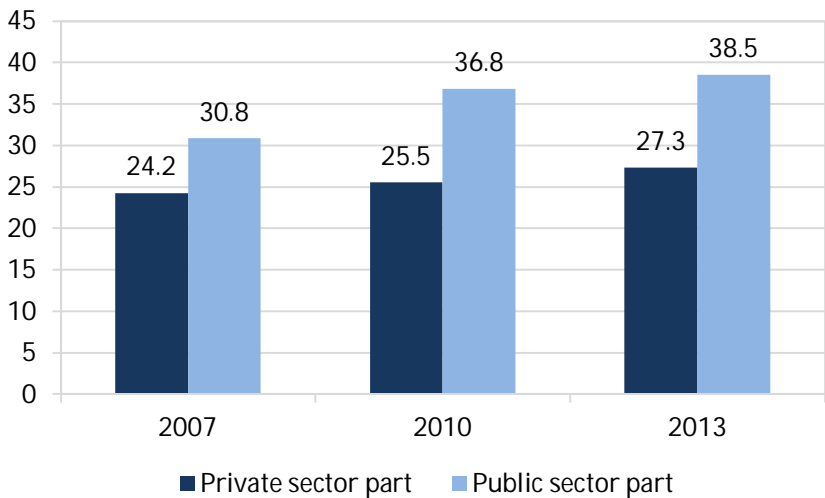
the list of strike-prone countries in Europe, with very conflictual industrial relations (see Figure 13.1 and Figure 13.2).

Figure 13.1 Trade union membership in selected EU countries, 2015 (%)



Source: OECD Statistics (2015).

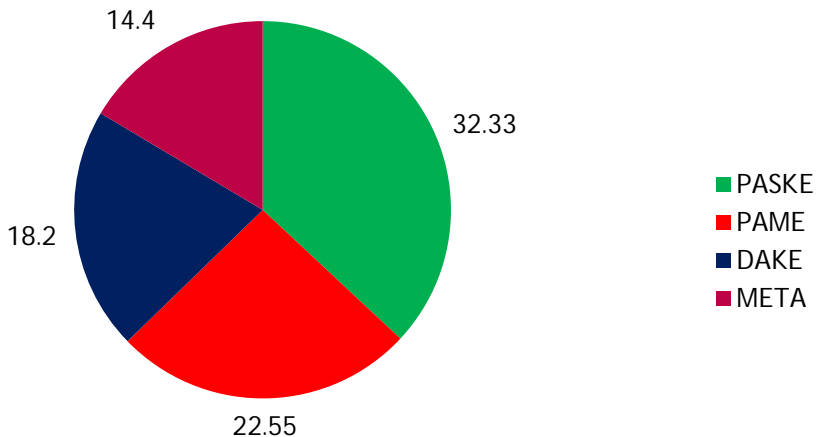
Figure 13.2 Trade union membership, private and public sector in Greece, 2007–13 (%)



Source: Labour Institute, General Confederation of Greek Workers (INE–GSEE) (2014).

Trade unions have historically been dominated by the Socialist Pasok party and the Communist Party of Greece. In the pre-crisis period, Syriza had no real trade union, militant tradition (Tsakatika & Eleftheriou, 2013). Despite Syriza having limited influence in the two biggest trade unions in Greece, Syriza's replacement of Pasok as the main centre-left party in the Greek political system has increased its connections with the main political groups of the trade unions (see Figure 13.3 and Figure 13.4). Yet, in the national parliamentary elections of January 2015, the negative effect of union membership on the Syriza vote indicates that it failed to steadily strengthen its ties with the trade unions.

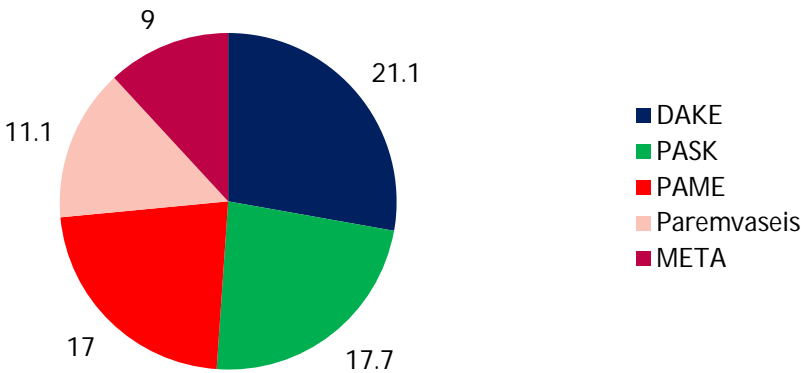
Figure 13.3 Election results by trade union political group, General Confederation of Greek Workers, 2016 (%)



Notes: PASKE is affiliated with Pasok; PAME is affiliated with the Communist Party of Greece; DAKE is affiliated with New Democracy; and META is affiliated with Syriza. Despite the breakup of Syriza during the summer of 2015, the trade union forces of the radical Left section of the party (which has been renamed LAE (Popular Unity)) remained in the same political group with Syriza until the end of 2016.

Source: General Confederation of Greek Workers (GSEE) (2016).

Figure 13.4 Election results by trade union political group, Civil Servants' Confederation, 2016 (%)

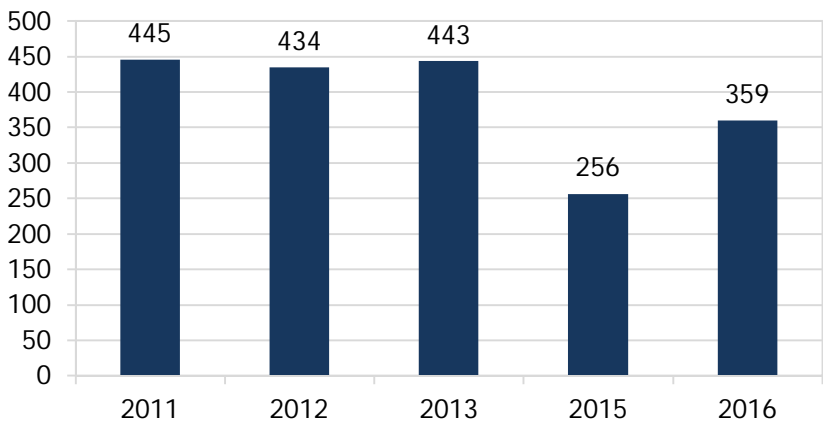


Notes: DAKE is affiliated with New Democracy; PASK is affiliated with Pasok; PAME is affiliated with the Communist Party of Greece; Paremvasseis is affiliated with the radical Left; and META is affiliated with Syriza.

Source: General Elections of the Civil Servants' Confederation (ADEDY) (2016).

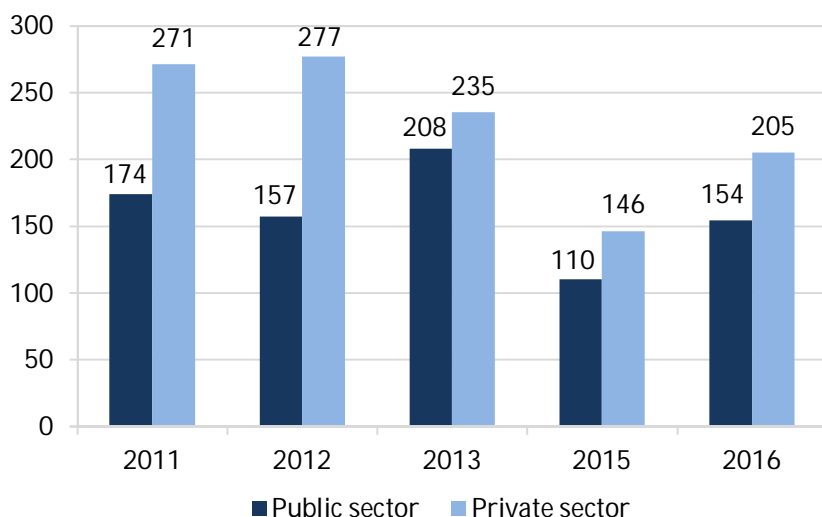
The high degree of participation in strikes lasted mainly until 2013. Furthermore, what is interesting to observe is the inverse correlation between the toughening of austerity measures and the decrease in strike activity (see Figure 13.5 and Figure 13.6).

Figure 13.5 Number of strikes and labour mobilisations in Greece during the crisis, 2011-16



Source: Labour Institute, General Confederation of Greek Workers (INE-GSEE) (2017).

Figure 13.6 Number of public and private sector trade unions involved in strikes and labour mobilisations, 2011-16



Source: Labour Institute, General Confederation of Greek Workers (INE-GSEE) (2017).

During the first five years of increased fiscal oversight, a wide network of local movements entitled “I don’t pay” was created mainly to protest against the taxes and other fiscal burdens that Greek governments had successively imposed. The members of these movements organised a number of actions and gatherings objecting to the imposition of high taxes and fees (property tax, income tax, toll fees, etc.). Thousands of people participated in such collective actions in different parts of the country. Furthermore, local ecological movements in the Greek countryside constituted a significant share of the mobilisation of the Greek public (Lekakis & Kousis, 2013). Over 40 such local movements have developed in the last decade in Greece, opposing the placement of industrial wind and solar parks in environmentally protected areas as well as mining in several marine areas, and promoting the establishment of sustainable local communities. In the Attica region, civil protests by the majority of residents in the *southern part* of Athens (about the development of landfill facilities in Keratea), the (ongoing) mobilisation of people in the region of Chalcidice (over development of the Skouries mining site for gold extraction) and also in the region of Epirus (concerning development and

production facilities for oil or gas extraction) are among the most popular local movements in Greece. The basic demand of all such movements is to halt environmental degradation in the respective regions by fast-track privatisations and investment plans that, owing to heavy-duty industrial processes for the sake of economic viability and profitability, risk disaster through huge ecological, environmental and social changes.

Similarly, the first successful European Citizens' Initiative was organised in 2012 for the non-privatisation of water in EU member states ('Right2Water'). In Greece, this initiative took the form of the 'Save Greek Water Initiative', which collected over 33,000 signatures by individuals and social organisations. The second successful European Citizens' Initiative was organised in 2015 for a reduction in the use of animal testing ('Stop Vivisection'), which gathered over 18,000 signatures in Greece.

More generally, the level of participation in plebiscites and public involvement as well as more violent anti-systemic movements peaked just before the referendum of June 2015. Since the December 2008 events, it has been observed that initial protests or demonstrations could turn into unconventional and illegal actions, such as riots, squabbles, damage to foreign property, squatting and conflicts with the police or political opponents. These

Illegal forms of unconventional participation are signs of a rising 'uncivil' society, giving birth to or reinvigorating anti-systemic or violent 'shadow' activism and vigilante movements.

illegal forms of unconventional participation are signs of a rising 'uncivil' society, giving birth to or reinvigorating anti-systemic or violent 'shadow' activism and vigilante movements (such as the militias of Golden Dawn), as well as para-state action, anarchist activity in the district of Exarcheia and initiatives

by the Rouvikonas group. Rouvikonas is one of the main anarchist groups that emerged during the period of the 'anti-austerity movements' in Greece. From 2013 to 2018, the group carried out more than 50 acts against government and non-government facilities (foreign embassies, the representative offices of European institutions, multinational corporations, etc.). More specifically, the members of Rouvikonas – according to police sources, the group has approximately 120 to 150 members and many of them have been

arrested – take mainly organised action to protest against the enforcement of austerity measures. The group's operations have been characterised by a 'violent symbolic' activism that is a common feature of Greek anarchist organisations. Nevertheless, their activities have turned mainly against 'non-grassroots' targets with the aim of becoming more likeable to a section of Greek public opinion.⁶

Riots can be a means used by anti-systemic movements to specific ends or an (irrational) eruption of mass behaviour (Drury and Reicher, 1999). In the Greek case, the crisis broke the longstanding unspoken compromise between the ruling elites and a (stagnant) society, which had legitimised policies that produce significant distributional asymmetries, and thus reinforced inequality and provoked self-defensive reactions by young people and deviant attitudes. Among the causes of the riots have been the increasing feeling of social injustice, the absence of effective political institutions and the state's decreasing legitimacy (Andronikidou, 2012).

The crisis broke the unspoken compromise between the ruling elites and a (stagnant) society, that had legitimised policies that produce significant distributional asymmetries, and thus reinforced inequality and provoked self-defensive reactions by young people and deviant attitudes.

As we will see, after a first phase in which the ideological imperatives of anti-globalisation were raised, the political and cultural aspects of a long period of anti-systemic or anarchist activism within the country were replaced by more materialist concerns.

In the second wave of mobilisation in 2011, there were escalating and intensive cross-class protests across the country. The social movements that were sparked included those with violent

⁶ The practices of Rouvikonas contrast with those of the majority of Greek anarchist groups, which often choose nihilistic tactics (such as Black Bloc anarchism, which is part of the wider political anarchism in Europe). The members of these groups focus on an anti-capitalist agenda based on nihilistic arguments and approaches without having an alternative, specific political plan to propose (unlike other currents of political anarchism, such as anarcho-syndicalism). Their actions gain minimal popular support since they are characterised by indiscriminate violence.

repertoires. In Western democracies, the widely spreading credibility crisis of conventional channels for participation has led to the organisation and proliferation of new social movements. These grassroots, self-organised assemblies in central squares are defined by their inclusive and diverse nature, their fluid and leaderless structure and their use of and mobilisation via digital media (Castells, 2012). For some analysts, this has been the case in Greece too. In fact, according to this view, the second wave of mobilisation can be classified as a new social movement, which distinguishes it from the traditional/old social movements of strikes and demonstrations like those that took place extensively in 2010.

Indeed, this classification appears useful in order to underline that these newer forms of mobilisation do not have a consistent or common class background and that is why they are less focused on political issues or ideology. Instead they comprise divergent ideological or political backgrounds of segmented, diffuse and decentralised groups of individuals rather than collective coherent movements. Thus, as far as the Greek case is concerned, new social movement scholars have rightly considered that the participants in these mobilisations politically identified themselves as outside the political system since they seemed unorganised and lacking in resources. But thereafter, scholars have extrapolated the new social movement explanation in order to support the idea that the participants were more concerned with post-materialist,⁷ cultural and symbolic issues, i.e. personal and intimate aspects of human life (Andronikidou, 2012).

In fact, this *Indignados*-inspired movement called the *Aganaktismeni*,⁸ and no doubt more varied socially and politically

⁷ In the new social movement approach, the explanatory variables are linked to post-materialism, such as interpersonal trust and some political interest by a mainly middle class educational elite who are active in their spare time, while trade union membership is negatively associated (Rüdig & Karyotis, 2014).

⁸ According to Rüdig & Karyotis (2014), a more detailed comparison of the different groups since 2010 suggests that the *Aganaktismeni* participants are older than those in other groups, are less likely to be members of voluntary organisations and have a lower degree of interpersonal trust. Rüdig & Karyotis claimed that the *Aganaktismeni* reached, at least marginally, a

than before, was focused on the occupation of public spaces primarily against austerity policies and their economic and social implications. Anti-austerity protests could be regarded as having some characteristics of a more recent wave of diverse mobilisation than new social movements, in which individuals are mobilised around personalised values to engage with multiple causes – such as economic justice (fair trade, inequality and development policies), environmental protection, and worker and human rights (Bennett, 2012). However, their main focus was on ‘material’ issues, such as cuts in public expenditure, unemployment and inequality. In this context, we observe that people expressed attitudes of estrangement from or rejection of the prevailing political system by taking controversial political action, which is quite different from civic engagement activities. The rise of civic voluntarism is mainly detected in the area of health and social protection/welfare given the dramatic decrease of state financial support pursuant to the MoUs; in this field, the extreme right-wing Golden Dawn took advantage of the situation by undertaking social work initiatives in order to build a ‘humanitarian profile’.

People expressed estrangement from or rejection of the prevailing political system by taking controversial political action, which is quite different from civic engagement.

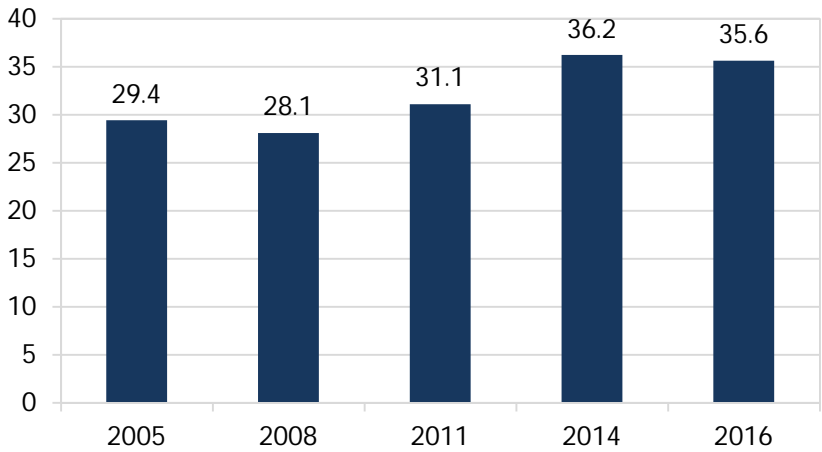
Conventional mobilisation waned as a consequence of declining loyalty, distrust of programmatic promises and a considerable shrinking of ideological cleavages. Progressively from 2012 and during the third wave from mid-2012 onwards, there was a further increase in participation and an expansion of mobilisation in the form of a new, resurgent *apartisan* protest.

In more general terms, mobilisation during the years of crisis was motivated by cultural as well as socioeconomic factors. The drivers of mobilisation varied somewhat according to the period. Nonetheless, we see that there is a common set of them enabling analysis based on deprivation theory. This theory refers to the deterioration of living conditions explaining to a large extent popular mobilisation as a social phenomenon of anger and social

group of people who are not part of the usual Greek protest culture but clearly do not fit a ‘new social movement’ profile either.

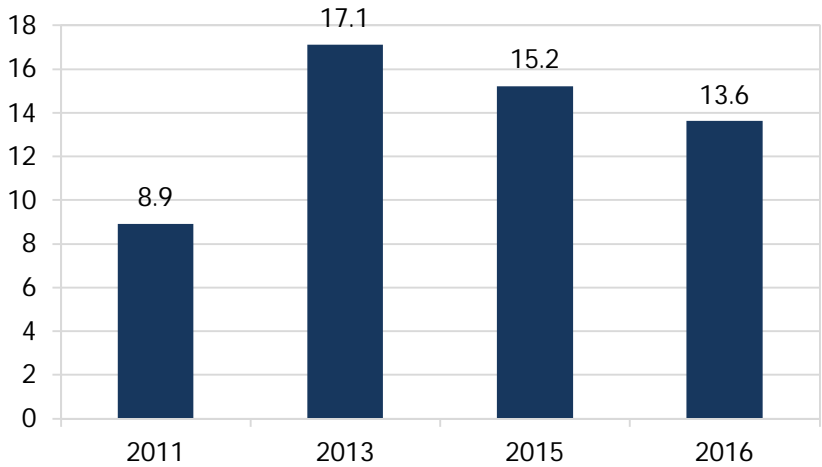
aggressiveness towards the ruling elites (see Figure 13.7 and Figure 13.8).

Figure 13.7 Rates of poverty and social exclusion in Greece, 2005-16 (%)



Source: Hellenic Statistical Authority (ELSTAT) (2017).

Figure 13.8 Rates of extreme poverty and food insecurity in Greece, 2011-16 (%)



Source: Hellenic Statistical Authority (ELSTAT) (2017).

Yet, Greek political culture has also played an important role in triggering social movements. Since 1897, there has been resistance

against the law, with representatives of public order/security being viewed as instruments of oppression. Through authoritarian and turbulent periods of a long confrontational history, this political culture of 'resistance' has marked the country, although it has mainly been linked to the extra-parliamentary and parliamentary Left and to trade unions. While this culture of resistance became a timeless way of expressing discontent, it has failed to transform itself into a political and social mode for forming and transforming collective structures. Similarly, protesters' fervent socioeconomic demands have become ends in themselves rather than evolving into coherent ideas about the political and social transformation in Greece and in Europe. That is why the motive of relative deprivation (the fear of economic scarcity),⁹ which has transformed street socialisation into protests, has been expressed by groups of action with different political stances.

The motive of relative deprivation (the fear of economic scarcity),¹ which has transformed street socialisation into protests, has been expressed by groups of action with different political stances.

13.3 Assessing direct democracy

Does the increase of participation in conventional and unconventional forms of mobilisation equate with a kind of real democratic breadth that signals a 'critical juncture'? According to the historic neo-institutionalist approach, if that were the case, it should produce a radical change of democratic conditions or the revision of established procedures in favour of direct democracy.

Indeed, according to the ancient Greek conception, the social and economic condition of citizens was not part of the discussion. The establishment of freedom in the sense of social position was

⁹ The theory of 'relative deprivation' is focused on a range of conditions necessary to turn the stimulus of 'absolute' deprivation (poverty and inequality) into active protest. Relative deprivation theory was replaced as the dominant theory of protest in the 1960s and 1970s by approaches that focus on individuals' resources and variables, such as education, occupation and income – their 'socioeconomic status' (SES approach). In the 1990s, the SES approach was supplemented to create an extended model known as 'civic voluntarism' (Rüdig & Karyotis, 2013).

completely separate from the granting of political and civil rights to all those considered free citizens (ισηγορία, equality in the right to speech; and παρρησία, the obligation to express oneself in public affairs). Nowadays, the globalisation of capitalism has privileged the consumerist rights of contemporary liberal democracies, pushing towards a more authoritative doctrine about economy and politics. While there are many definitions (and practices) of deliberation, we probably should accept that there is a common prerequisite in all cases that all participants must be free of the kinds of material deprivations that hinder participation, such as a lack of income or education (Mutz, 2006).

The impact of the crisis on southern European democracies has been so great that this Great Recession has ended up affecting the quality of democracy at large. The worsening of the economy has mainly affected the rule of law, electoral accountability, participation, equality and responsiveness (Morlino & Quaranta, 2016). In other terms, a representation crisis has also negatively affected the legitimacy standards of the democratic model itself.

In relation to the distinction proposed by David Easton (1965; 1975) between diffuse support for democracy as a principle and the specific support for the procedures and typical actors of democracy, the question is whether the economic crisis jeopardised support for democracy in Greece. In the Greek case, there was a decline of diffuse support, when comparing 2008 with 2012 (Freire et al., 2016). Studies have likewise found a decline in specific support for the incumbent political authorities, which may be related to the emergence of the economic crisis. Similar observations can be found on the decline in electoral turnout, the decay of mainstream parties, the growth of distrust in political institutions and the decreasing capacity of parties to channel and represent the preferences of voters (Freire et al., 2016; Hernandez & Kriesi, 2016). An 'electoral epidemic' affected all the regions of southern Europe during the first years of the eurozone sovereign debt crisis, at its peak registering even higher levels of public dissatisfaction (Bosco & Verney, 2016).

During those turbulent protest years, Greek citizens went beyond their main call for an end to austerity and demanded more accountable and direct models of democracy (Sotirakopoulos & Sotiropoulos, 2013; Diani & Kousis, 2014). The question again is

whether the incentives for participation and mobilisation proved to be capable of sufficiently bolstering direct democracy. This observation is related not only to the outcome of the 2015 Greek referendum, but also to the prerequisites of direct democracy, which include some structural politicised features. There are various approaches that try to see whether these prerequisites were met in this specific historical period in Greece.

The *Aganaktismeni* movement has been seen as an ideal type of populist, grassroots engagement in which the basic characteristics – such as a leaderless, self-organised mobilisation demanding direct democracy – could classify the participants as a ‘multitude’.¹⁰ Or, since they claim to represent the whole community, they could be characterised as ‘the people’, who consider that any anti-populist attitude can be seen as a crucial aspect of post-democracy and as a way of marginalising any disagreement (Katsambekis, 2014a; 2014b). From such a perspective, this movement is seen as the engine of democratic revival.

Others scholars have asserted that these movements established an antagonistic dichotomy that separates ‘the people’ from ‘the other’ (e.g. ‘the enemy’, ‘the establishment’ or in the recent period of financial recession, ‘the troika’, ‘the Memorandum defenders’ and ‘the global financial elites’). Anti-globalisation, anti-Western and anti-imperialist rhetoric has had a long history in Greek political culture (Doxiadis & Matsaganis, 2012). In this context, populism tends to deny the legitimacy of any entrenched elite, however recruited (Mavrogordatos, 1997). These protesters believed that they were defending themselves, their rights and the Greek nation against various opponents: the markets, the banks, foreigners and the corrupted Greek political elites who betrayed Greece by not protecting national and popular interests. Indeed, according to this view, this point was exactly where social populism met national populism (Pantazopoulos, 2013). The enemy was no longer only at the top. The enemy was also on the other side and the

¹⁰ In the early 2000s, Antonio Negri introduced the term ‘multitude’ as a concept of emancipation from the old political designations of the masses. The ‘multitude’ does not refer to unity but to the common social and political capacity of a group of people to take decisions and act in common.

political elite was cooperating with the enemy against the people. The appearance of these *Indignados*, who perceived themselves as being the new National Liberation Front, initiated the transformation of social populism into national populism, breaking down the boundaries between the Left and the Right (Pantazopoulos, 2013).

Supporting the idea that ideological and political boundaries have collapsed because of these newly formed street constituencies that seek in a simplistic way the 'restoration of the previous regime' cannot explain why, despite the increase of direct and unconventional mobilisation, the effectiveness in terms of reviving democratic reflexes in a long-term process has remained quite low. Populist strategies may involve, in a disruptive way, various elements of the above normative categories (referring either to a leaderless, grassroots democracy phenomenon or to a blind insurrection of manipulated people); and in this sense, it is not a sufficient, clear-cut explanation of the political and social ramifications.

Undoubtedly, from 2011 onwards, the heterogeneous group of protesters included people from all kinds of ideologies and social strata. Even though no overall collective identity preceded the collective mobilisation or was constructed through collective protest, there were strong partial (collective) identities congregating in the two levels making up Syntagma Square (Right and Left stances, respectively), i.e. Ano and Kato Plateia (Simiti, 2014). Accepting the fact that political contestation is not reducible to a single ideological dimension (Freire et al., 2016), both Left and Right gained new ideological content. Particularly in the context of the Greek electorate, not only economic and social but also cultural(ist), nativist (especially those concerns derived from the issue of migrants and refugees) and territorial issues emerged, forming a multidimensional ideological space with new congruencies and incongruencies, new socio-political cleavages and preferences.

Nevertheless, the protests in public places did not convert into venues of (democratic) deliberation, since people were not exposed to oppositional views and so there was no exposure to political disagreement. Although deliberation seemed completely appropriate for most participatory settings (open-dialogue thematic groups, popular assemblies, occupation of the city hall,

neighbourhood gatherings and information in workplaces),¹¹ interactions with others of differing views were not assumed to be essential to comprehend and come to appreciate the perspectives of others. Awareness of the rationales for oppositional views is a particularly important type of political knowledge because of its close ties to legitimacy (Mutz, 2006). Those with high levels of exposure to political disagreement would thus have more balanced judgement.

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The above observations can better explain why the political recapture or recycling of social demands by Syriza has been so successful. With respect to the three waves, party affiliation shows that protesters did not radically detach from political parties and that they progressively identified with Syriza (Karyotis & Rüdig, 2017). While they would have liked their actions to be more political, at the same time there was a fear of being instrumentalised by established or emerging political organisations seeking to gain political benefit. From 2012, the mobilisation phenomenon of decentralised, everyday forms of resistance¹² transformed into an electoral opportunity for promoting Syriza to those in the centre of the political spectrum (Aslanidis & Marantzidis, 2016).

The economic voting argument (Lewis-Beck & Stegmaier, 2007) explained quite well the outcome of the January 2015 elections. Greek voters sanctioned the previous governing coalition of New Democracy and Pasok for its overall macroeconomic record

¹¹ There were different kinds of meetings planning actions, which were surrounded by smaller groups (such as the “Audit Committee”) and subgroups preparing proposals and resolutions for the grand assembly, which was attended by 2,000–3,000 people each day and broadcasted live on the internet.

¹² The number of public protests was much higher in Greece than in Portugal. The absolute number of marches and demonstrations recorded in police data remained high, with 5,654 protest events taking place in 2012, 6,231 in 2013 and 3,032 in the first six months of 2014 (Rüdig & Karyotis, 2014).

and for the impact of its policies on individual economic well-being. But, in the September 2015 elections, the main motivation of New Democracy voters was to support the country staying in the eurozone, while that of Syriza voters was first to approve the personality of the prime minister and second to show their partisan support. Hence, it has been rightly pointed out that by voting for Syriza, the Greeks approved the government's persistent and difficult efforts to bring about a better bailout agreement¹³ (Rori, 2016).

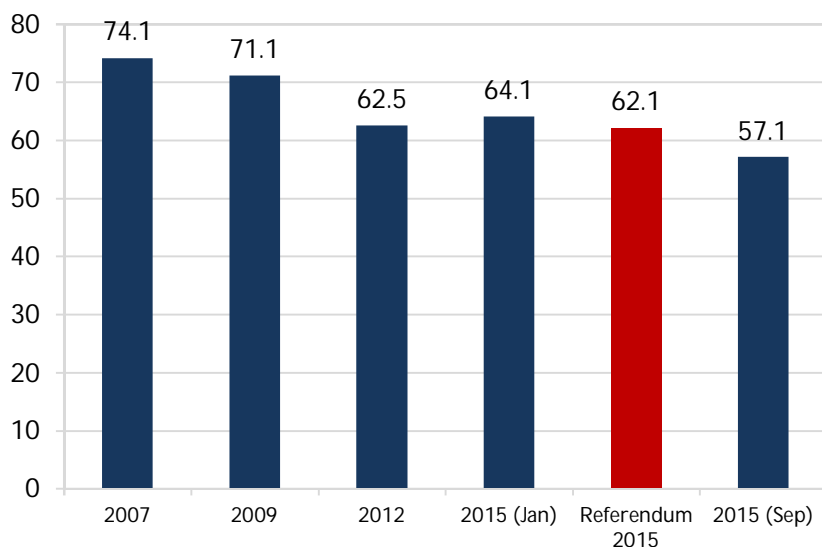
The 2015 referendum revealed an intergenerational divide, with young voters massively voting 'No' and older ones supporting 'Yes'. Still, the referendum served more as another 'pre-electoral

The referendum served more as another 'pre-electoral test' and less as an autonomous device for recording popular preferences on eurozone policies. It helped to stabilise the contours of the ruling structure of Syriza, which thus gained governability.

test' and less as an autonomous device for recording popular preferences on eurozone policies. It helped to stabilise the contours of the ruling structure of Syriza, which thus gained governability. It did not serve its main purpose of increasing citizens' capacity to intervene in the policy process in order to (re)clarify the frame of

negotiation, empowering the incumbents to take appropriate action. Actually, participation in the referendum was about 62.15%, which was 2% lower than the turnout for the January 2015 elections and 5% higher than the September 2015 elections. The above observation explains how, in the September elections, 77.62% of the vote supported parties that had endorsed the third bailout agreement (see Figure 13.9).

¹³ Source: Metron Analysis, common exit poll, 20 September 2015.

Figure 13.9 Participation rates in Greek national elections, 2007-15 (%)

Source: Greek Ministry of Interior Affairs (2016).

The second wave of popular mobilisation was a mixture of spontaneous reaction and activation of established organisational structures. The capitulation of Syriza showed very clearly that it has been progressively instrumentalised by a growing political movement that builds its political power and recognition on it transforming protest into electoral promises. Voters opted for a radicalised political choice in the January 2015 elections, but the referendum ended up having the opposite effect. The strict oversight regime reinforced the weaknesses of the Greek political system instead of enhancing more direct forms of democracy. Since September 2015, we have observed that mobilisation and calls for direct democracy have been quashed. There has been a return to more traditional engagement and a decline in mobilisation (strikes and demonstrations), with the occasional eruption of illegal, violent political action, for instance by Rouvikonas.

The MoUs brought a significant change in the nature and functioning of Greece's economic and social model, i.e. the relations between the state and the economy as well as between society and the state. The politics of the crisis in Greece under the European Stability Mechanism endorsed the full dependence of Greece's

economic and social development on the conditions and requirements of the leading powers of the EU (Manitakis, 2012). This is about a legal regime where a state is formally sovereign but is fiscally and economically substantially dependent. The Greek people realised quite late the country’s longstanding commitments to the EU and consequently the extent of the dependent relationship between Greece and the EU, where the imperatives of eurozone integration significantly limit the exercise of fiscal autonomy. The results of a national survey conducted by Dianeosis in 2018 to assess the impact of eurozone policies in Greece show that public opinion, while considering EU membership valuable, accepts more easily than before the structurally asymmetrical nature of the EU and its unequal consequences for the weakest member states (see Table 13.1).

Table 13.1 Greece and the EU

Overall evaluation of EU membership	<u>Positive & Fairly Positive 67.6%</u> Negative & Rather Negative 30.5%
Has Greece today lost or gained from its participation in the EU?	<u>Lost 48.9%</u> Gained 22.2%
As a whole, from Greece’s participation in the EU, would you say that the EU has:	Mostly <u>benefited 58.2%</u>
Was the country’s entry into the eurozone ultimately the right or wrong decision?	<u>56.8% Sure & Rather Wrong</u> 41.7% Sure & Fairly Right
Do you think the objective of Greece’s real convergence with the average of the most developed countries in the euro area in the next years is	<u>38.2% Not achievable</u> 30% Feasible 29.3% The distance will grow

Source: Dianeosis, Panhellenic survey research, “What do the Greeks think?”, January-February 2018.

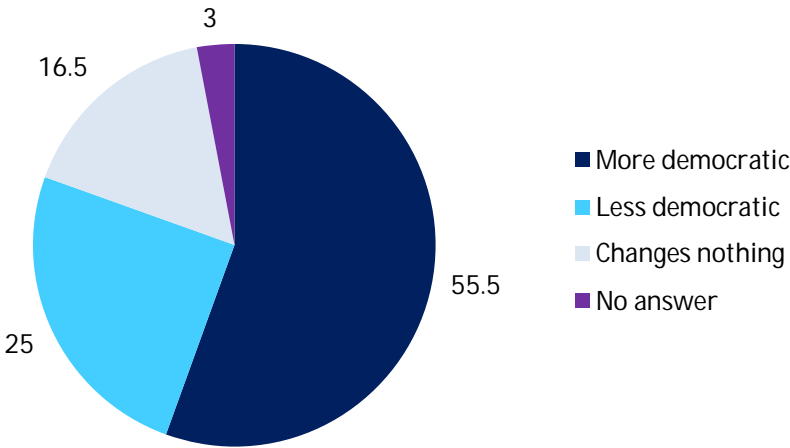
In this sense, the 2015 Greek referendum was a point of no return for national and EU political realities, proving that direct democracy tools in democracies lacking maturity – against a backdrop of economic scarcity – can easily be diverted from their initial purpose. In this sense, it serves as a counter-paradigm in relation to the Brexit referendum.

Indeed, the country shows little experience with referendums. Following the fall of the junta in 1974, the Karamanlis government held a referendum that abolished the monarchy and instated the constitution of 1975, which gave the president of the newly established democratic republic exclusive responsibility for the initiative to hold a referendum on critical national issues.¹⁴ The constitutional reform of 1986 widened the use of referendums on serious social issues, and the initiative to hold a referendum now belongs to the government. *It was not until much later*, in November 2011, that Greek Prime Minister George Papandreou withdrew his proposal for holding a referendum on the creditors' proposals at that time and resigned from office. Since then, particular subjects have been the object of (informal) local referendums (regarding the privatisation of the Thessaloniki water supply company in 2014, the privatisation of the four regional airports in the Ionian Islands region in 2015 or the Kallikratis reform of regional and local authorities).

However, Greek citizens are not discouraged in their diffuse support for the idea of direct democracy (see Figure 13.10).

¹⁴ In the Greek constitutions until 1975 there was no reference to a referendum, with the exception of the constitution of 1927, which provided for an optional referendum.

Figure 13.10 Will the introduction of referendums make the political system more democratic? (%)



Source: Dianeosis Survey (2016).

In this context, the tool of local referendums, incompletely introduced in 2010, has been reinforced through the recent Kleisthenis decentralisation reform in 2018. Local referendums can be held on issues based on the initiative of municipal and regional bodies, but also on citizens' initiatives. Furthermore, in 2016 the government announced its intention to undertake a constitutional reform. This reform is intended to reinforce direct democracy by introducing, among others, new referendum mechanisms on national issues or in the case of the transfer of sovereign powers of the state. It also introduces the possibility for citizens, after collecting more than a million signatures, to express an opinion on a law passed or even take a legislative initiative. This constitutional reform is currently subject to a public consultation; but while it is presented as a 'democratic restart', it is having difficulty attracting participants, especially young people.

The capitulation of 2015 showed clearly that the negotiation process was based on an ever-more 'constraining consensus'¹⁵: the

¹⁵ Inspiration for this term has been taken from Hooghe and Marks (2009) description on the shift from a "permissive consensus" to "constraining dissensus" towards the EU integration process since 1991.

more the economy of a country is dependent, the more the country must consent to the conditions proposed and accept external control of its socioeconomic model of production. Scholars have seized upon the issue of divisive referendums – plebiscites based on a monopolistic form of agenda setting that favours tribalism (division into non-communicating competitive groups in political and social life) while disregarding the political consequences – by proposing inclusive solutions (Tsebelis, 2018).

Conclusions

In the theoretical debate on democracy there are radical approaches that consider direct democracy to be only real form of democracy, thus opposing the representative model and promoting direct democracy as the alternative to liberal democracy (Barber, 2003; Castoriadis 2008). There are other holistic approaches that speak of 'big' democracy, which includes both forms, indirect and direct (Heller [1985], 1990). Then, there are approaches that follow the tradition of Rawls, Dworkin and Pettit, which consider that constitutional equality is better ensured by representative institutions and not by occasional majorities in the name of a united people or nation (Alivizatos & Eleftheriades, 2002). For those defending indirect democracy, the problems are complex and technical and there are no simple answers; there is a danger of oversimplification and imaginary dilemmas that favour demagogues – as the public cannot be fully informed because there is no time for that, no real possibility of consultation, meditation and decision (Barber, 2003). Conventional and unconventional mobilisation through street protests, repeated elections and the referendum have shown that the Greek people do accept a combined use of direct and indirect democracy, while the elites show reluctance over the systematic use of referendums, basing their argument on the danger of populism.

Athenian democracy was not a state of things but, as long as it remained fertile, a process of continual transformation (Castoriadis, 2008). Democracy was not regarded as the rule of law assuring citizens' freedom or equality, but as a questioning of the traditional law. It was the first appearance of social autonomy in the sense of a society challenging its own institutions through reason, in other words, the confrontation of opinions (Castoriadis, 2008).

Protests have mainly operated as critiques against the economic performance of governments and against their political shortcomings without acquiring substantial political and social gains from active participation. In a context of structural inequality, to create citizens according to the Rousseauist conception is a big task. A public sphere dominated by like-minded discussants is not a good place for cultivating a civic culture; at the same time, oppositional views should not be an obstacle to reaching a consensus. John Stuart Mill ([1861], 2010) pointed out that a lack of contact with oppositional viewpoints diminishes the prospects for a public sphere; Hannah Arendt (1970) talked about “enlarged mentality”. A deliberative democracy legitimately should justify non-unanimous decisions and ultimately should lead from dissimilar views to a consensus by building agreements (the ideal speech situation of Jürgen Habermas (1973)).

Recent grassroots mobilisation, participation in plebiscites and public involvement were an expression of a political and social perception of ‘no way out’ of Greece’s crisis. Yet this protest against

This protest against the state of humanity did not evolve into a coherent and robust critical view of politics, or prove able to formulate the political demands to change it.

the state of humanity did not evolve into a coherent and robust critical view of politics, or prove able to formulate the political demands to change it. These street movements have nothing in common with the post-materialist expectations of the 1960s. The intensification of grassroots movements has mostly been related to socioeconomic

demands. Here, they are about neo-materialist claims confronting the fear of global capitalism as a force of continual uncertainty for individuals.

A movement lasts a short time but has considerable effects on political development over long periods (Arendt, 1970). The civilian mobilisation brought a fundamental shift in political discourse and civic consciousness yet did not succeed in proposing a plan for political and democratic transformation in Greece or the EU. Despite the intensification of public mobilisation, its influence on EU politics is minor in political terms. The 2015 referendum affected the credibility, the effectiveness and the coherence of popular action. The vigour of these ‘conjunctural majorities’ has been

instrumentalised in order to restructure the partisan and strategic game at the national and to a certain extent the European level, and finally to legitimise specific policies for economic and social development.

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14. ENGAGED BUT DISEMPOWERED: ITALIANS EXPERIENCE DIRECT DEMOCRACY

ELEONORA POLI

Italians are among the most active participants of European Citizens Initiatives (ECIs). Yet when it comes to national referendums or petitions there are fluctuating levels of involvement because these instruments are often perceived to be ineffective. And not without reason. Citizens' legislative initiatives have rarely been converted into national laws and, according to the Italian Constitution, Italy's obligations under international and EU treaties cannot be changed by public consultation anyway. Unlike the ECIs, which are thought to be an effective direct democratic instrument, the poor success rates of national direct democratic instruments have resulted in the latter being used more to protest against the government and the status quo than to influence the legislative process.

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14.1 National-level direct democracy

14.1.1 Which instruments of direct democracy are there?

Italians believe that direct democratic instruments can be fundamental to exerting their rights to influence the legislative process (Censis, an Italian socio-economic research institute). But since their trust in government and to some extent European institutions is quite low, they prefer to interact with the regulators to better control the decision-making process. Direct democratic

Direct democratic participation is a fundamental principle of Italy's Constitution.

participation is a fundamental principle of Italy's Constitution. As Article 3 of the Constitution clearly states, all citizens have equal "dignity and rights" when it comes to contributing to the political, economic and social organisation of their country.

The most common direct democracy instrument is the referendum. However, as established by articles 50 and 71 of the Constitution, citizens can also access the decision-making process directly by proposing bills to Parliament to initiate legislation. Specifically, Article 50 sets out the possibility for any citizen to present petitions to parliament to request legislative measures or express a collective need. However, such an instrument is quite weak from an institutional point of view. As Article 109 of the Chamber of Deputies' regulation, and Articles 140 and 141 of the Senate's regulation read, none of the Chambers has any obligation to decide on petitions (Cuocolo, 630). Nevertheless, since the role of petitions is to highlight socially relevant issues, they are a valid instrument for parliamentarians to understand the problems affecting their electorate (Gambale, 2).

None of the Chambers has any obligation to decide on petitions. The role of petitions is to highlight socially relevant issues, they are a valid instrument for parliamentarians to understand the problems affecting their electorate

Article 71 allows a common citizen to propose a bill if the latter is supported and signed by at least 50,000 voters. Yet since the role of such a proposal is rather to trigger a discussion within Parliament, which has the exclusive competence of the final approval of the law, the Italian citizens' legislative initiative is sometimes considered a poor direct democracy instrument (Barile, 473; Allegretti, Bardazzi, Caramischi, Bova, 79).

Referendums are regulated by Article 75 of the Constitution, which stipulates how public consultations can repeal a law, in whole or in part. To be effective, repealing referendums requires the support of at least 500,000 voters or of five regional councils. Moreover, Italy's Constitution does not allow referendums on tax laws, budget laws, amnesty, or international treaties (Senate of the Republic, b). Finally, as stated in Article 138, public consultations to reform the Italian Constitution are allowed when requested by one-

fifth of the members of a chamber of Parliament, 500,000 voters or five regional councils (Ibid.).

14.1.2 Level of participation in (different forms of) citizen involvement

Generally, Italians do not have the belief that their voices count for much. According to Eurobarometer, in 2017 four Italians out of five did not trust their national government (78% versus 17%) (EU Commission, 2017b, 44) and two Italians out of three were convinced that they could not influence the EU decision-making process (64% vs. 29%) (EU Commission, 2017c). At the national level, the perception of impotence is somehow confirmed by the low number of bills proposed by citizens that have actually been made into laws by parliament.

According to Eurobarometer, in 2017 four Italians out of five did not trust their national government (78% versus 17%) and two Italians out of three were convinced that they could not influence the EU decision-making process (64% vs. 29%).

According to a study published by Openpolis, out of 260 bills presented by citizens from 1979 to 2014, only three became laws. These three succeeded because they were endorsed by members of parliament or merged with proposals developed by Parliament or the government, sometimes at the expense of not keeping anything of the original draft bill. For instance, out of 11 popular initiative bills proposed during the Renzi government (22 February 2014 - 12 December 2016), only one popular initiative bill was approved as it was combined with the electoral law 'Italicum'. However, the number of bills proposed by Parliament and then enacted as law is already quite low, if compared to those promoted by the government. There is a huge difference in the approval times; governmental proposals take only 77 days to pass on average, while parliamentary proposals take around 245 days (Bardazzi Caramaschi, Di Battista).

Leaving aside citizens' legislative initiatives, referendums should play an important role in challenging Italians' negative perception of their negligible influence over national decision-making processes. Yet until very recently, their use has been rather limited. According to data provided by the Italian Ministry of Interior, since the creation of the Italian Republic in 1945, there have

been 22 popular referendums, ten of which have been organised in the last 20 years, with widely varying levels of participation.

In 2009, during a referendum on the Italian electoral law, only 24% of the citizens eligible to vote actually went to vote. This was too few to reach the 34% threshold necessary to validate the consultation. In 2011, another referendum saw a higher turnout, with around 55.5% of the electorate expressing their opinion. One of the issues voted, among those related to nuclear power and public water, was linked to the need to repeal the ‘Legitimate Impediment Law’, which would have directly affected Prime Minister Silvio Berlusconi.¹

Again, in April 2016 a referendum on oil drilling did not reach the quorum, with only 31% of the electorate expressing a view one way or the other. By contrast, the constitutional referendum supported by former Prime Minister Renzi a few months later, in December 2016, saw the participation of 65.47% of Italian voters, with the great majority opposing the proposed reforms.

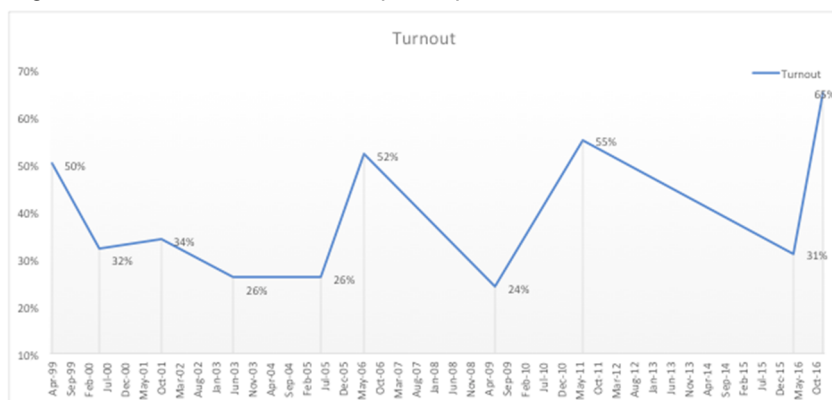
Table 14.1 Italian referendums, level of participation

Year	Turnout	yes	no
April 1999	50%	91%	9%
May 2000	32%		
October 2001	34%	64%	36%
June2003	26%		
June 2005	26%		
June 2006	52%	39%	61%
June 2009	24%		
June 2011	55%		
April 2016	31%	86%	14%
Dec. 2016	65%	41%	59%

Source: Italian Ministry of Home Affairs (2017).

¹ In 2010 the legitimate impediment law was approved by Italy’s lower house so that it could block trials against the prime minister. It allowed him or ministers of his cabinet to request that trial hearings be postponed on grounds that they would be too busy with government work to attend. The act was repealed after the 2011 referendum.

Figure 14.1 Italian referendums, participation trends



Source: Italian Ministry of Home Affairs (2017).

14.1.3 Main drivers of voter mobilisation

If we analyse the mobilisation trends registered in the above-mentioned referendums, it is easy to maintain that the drivers pushing Italians to vote are first of all political. In other words, referendums or public consultations are often used by Italian voters to signal discontent with the government. The most recent example was the constitutional referendum of December 2016.

The drivers pushing Italians to vote are firstly political. In other words, referendums or public consultations are often used by Italian voters to signal discontent with the government.

Formally promoted by the opposition parties and minority groups within the Democratic Party to block what they saw as a distortion of the Italian system of checks and balances, set up back in 1948, the aim of the consultation was to undermine Renzi's political legitimacy.² Yet even Prime Minister Renzi called Italians

² The reform proposed by the referendum aimed to overcome the equal bicameral system within Parliament whereby the Chamber of Deputies could maintain the main legislative power, while the Senate could see its legislative competences cut and the number of its members reduced from 315 to 100. Moreover, it aimed to provide the government and not the regions with exclusive competences on strategic issues related to infrastructural, transport, energy, education, health and labour policies.

to the ballot box as a means of bolstering support for his government against the Five Star Movement (M5S), which in 2016 won administrative elections in many Italian constituencies (e.g. Rome and Turin). Renzi repeatedly declared that he would step down as Prime Minister if the reforms proposed were rejected by the majority of citizens.

Admittedly, part of the electorate did not vote on the substance of the reforms, but rather for ideological reasons, to register discontent with the government and Renzi. Similarly, the 2011 referendum saw a very high level of participation because it was seen as a vote against the then Prime Minister, Silvio Berlusconi.

On these two occasions, beyond any other economic or social motivations, voters' mobilisation was based on opposition to the

Social rights can be an important driver of participation and mobilisation.

government. Indeed, social rights can be an important driver of participation and mobilisation. For instance, apart from protests against Berlusconi, high participation in the 2011 referendum was due to the two reforms dealing with water

privatisation and nuclear plants, widely perceived as controversial. Similarly, in 1981 an unprecedented number of citizens (79.38% of the Italian electorate) expressed their views in the referendum on abortion and in 1974, 87.72% of Italian voters participated in the consultation on divorce (Ministry of Interior). Moreover, in May 2016, an online petition organised by the Italian NGO 'Riparte il Futuro', collected more than 88,000 signatures and led to the enforcement of the Freedom of Information Act: FOIA (Ministry of Public Administration).

This could allow the government to carry out huge infrastructural projects. The constitutional reform also aimed to change the regulation on referendum and citizens' legislative initiatives, and the voting system for electing the president of the Republic and to abolish the CNEL (Public Council), a national institute with an advisory role on economic and labour policies.

14.2 The EU dimension

14.2.1 Are EU issues of first or second order?

Italians used to trust European institutions more than their national government. Yet the multiple crises the EU has faced, the resulting austerity policies, and the mismanaged migration waves have fuelled anti-EU sentiment, turning the country into one of the most euro-critical member states. According to the European Council on Foreign Relations, Italy used to be ranked 10th in its show of support for the Union. Now, the country ranks 23rd out of 28 (Delcker, ECFR). This trend is indicative of how European affairs now play out in the national debate.

While EU affairs are central to defining Italy's economic, political and social development, information about Europe and the way it works is quite poor, resulting in the perception that the EU is a remote and technocratic set of institutions that can hardly be influenced (Bindi).

At the same time, there is little or no opportunity for Italians to have a say on European policies through national channels of direct democracy. Indeed, according to Article 75 of the Italian Constitution referendums cannot modify the structure or content of an international (i.e. European) treaty or agreement. European issues were central to a public consultation only in 1989, when a non-binding advisory referendum on the European Economic Community was held to revive Italian popular support for the European integration process. Since the Italian Constitution did not foresee any type of consultative referendum, the latter was held through a special law. At the time, Italians were asked if they agreed to transform the European Economic Community into a political union, with a government and a European constitution drawn up by Parliament. The great majority (89.1% vs 10.9%) agreed in principle with this proposal and 81% of the citizens with voting rights took part in the referendum (Deloy, Ministry of Interior).

Since Italians have not been called upon since to directly express their views on EU matters, the proposed referendum on eurozone membership, which was flagged before the 2018 electoral campaign for national elections by parties such as the League and the Five Star Movement, was welcomed by many citizens. Yet it is

evident to most that to hold such a consultation there would need to be a reform of the Constitution (Codogno 2018a).³ On the other hand, Italians seem keen to have a say on the EU legislative or decision-making process. They are indeed among the most active Europeans when it comes to voicing their opinions in European Citizens Initiatives (ECI). Italy was one of the few countries, together with Germany and Spain, where the last four successful ECIs managed to reach the required threshold. Italy provided 25.79% of the vote (European Commission, 2017d).

In particular, the ECI on *Ban glyphosate and protect people and the environment from toxic pesticides* launched in October 2017 to reform the pesticide approval procedure and set an EU-wide mandatory reduction of pesticides gathered the support of 1,070,865 people, of whom 71,367 (6.6%) were Italians.

Similarly, the ECI on *Right2Water*, submitted to the Commission on 20 December 2013, called for "legislation implementing the human right to water and sanitation" and saw the participation of 65,223 Italians, some 4% of the total voters.

Again, in 2014 the ECI *One of Us* on the need for the EU to stop financing research activities that presupposed the destruction of human embryos saw a very high participation of Italians. Among the 1,721,626 who went to vote, around 36% were Italians (623,947). Finally, the ECI *Stop vivisection*, which called for the Commission to abrogate Directive 2010/63/EU, saw the participation of 690,325 Italians, 59% of the total 1,173,130 (European Commission, 2015).

In this respect, European issues are not considered to be of second-order by Italians, but the ineffectiveness of national direct democratic tools in giving Italians room to influence European policies and legislation means that EU matters are perceived as remote. However, when provided with workable channels, Italians seem keen to influence the European legislative process.

³ A number of Italians would probably express a negative view of the eurozone and the euro. Indeed, in the most recent Eurobarometer survey, only 59 Italians out of 100 were in favour of a European economic and monetary union with one single currency and the euro is often blamed for the worsening living standards in Italy. This was the most Eurosceptic outcome among the eurozone member countries.

Table 14.2 Participation in ECIs

Ban glyphosate and protect people and the environment from toxic pesticides	Total number of European vote	1,070,865
	Total number of Italian vote	71,367
	Percentage of the Italian vote	6,66%
Right2Water	Total number of European vote	1,659,543
	Total number of Italian vote	65,223
	Percentage of the Italian vote	3.93%
One of Us	Total number of European vote	1,721,626
	Total number of Italian vote	623,947
	Percentage of the Italian vote	36%
Stop vivisection	Total number of European vote	1,173,130
	Total number of Italian vote	690,325
	Percentage of the Italian vote	59%
TOTAL ECIs	Total number of vote for 4 ECI initiatives	5,625,164
	Total number of Italian vote for 4 ECI initiatives	1,450,862
	Percentage of the Italian vote	25,79%

Source: European Commission (2018).

14.2.2 How are EU issues mobilised – in their own right or as national matters with an EU dimension?

Generally, EU issues are mobilised as national matters with an EU dimension. There is a poor understanding of how the EU works and what citizens can actually expect of EU institutions. This is largely but not entirely due to the downgraded legitimacy of the EU, which is perceived as completely detached from normal citizen

ns and their everyday lives. Of course, the origin of this legitimacy deficit is not only in the multiple crises the Union has had to face. The crises have exacerbated a latent sense of disempowerment already widespread among citizens, favouring a disengagement from EU matters. For too long the EU has been used by national governments as a scapegoat to justify painful economic policies that have a detrimental effect on citizens' welfare and lifestyle. As a

result, European issues are mostly perceived negatively by the general public and always filtered through the national lens. So far,

The origin of this legitimacy deficit is not only in the multiple crises the Union has had to face. The crises have exacerbated a latent sense of disempowerment already widespread among citizens, favouring a disengagement from EU matters. For too long the EU has been used by national governments as a scapegoat to justify painful economic policies that have a detrimental effect on citizens' welfare and lifestyle.

for instance, the role of the European Union and its member countries in managing the migration crisis has been perceived critically and the EU is often accused of not doing enough to protect Italy. On the other hand, even in the recent electoral campaign, there was no detailed debate on the future of Italy within the EU. Ahead of important talks about the future of European economic governance, politicians neither discussed their ideas on how to reduce the national debt

nor analysed the consequences of poor economic performance and how this could affect relations between Italy and the EU (Codogno 2018b).

14.3 Influence of participatory mechanisms on national political realities

14.3.1 Characteristics / party programmes?

According to CENSIS, poor trust in institutions has pushed Italian citizens to ask for direct involvement in the decision-making process and increasingly to refuse any sort of mediator so as to have at least a perception of having more influence vis-à-vis the government and legislative institutions. This trend increased in 2013, when in the aftermath of Berlusconi's government the need to rebuild trust in national institutions and politics, combined with the widespread use of the internet, resulted in more online platforms involving citizens in new forms of participatory democracy (Frediani).

Online platforms became one of the main tools of the Five Star Movement (M5S), which understood how participatory democracy could satisfy Italians' desire to be more politically involved. It was partly thanks to a calculated use of this instrument that the party

has been able to grow exponentially, becoming the number one political force in Italy. Online platforms are used by the M5S not only to involve citizens in political debates but also to define the internal decision-making of the party. At the same time, the tool has also allowed the Movement to 'take the pulse' of Italian society and change its political rhetoric accordingly.

Since the direct involvement of citizens has so far allowed the party to be perceived as open, legitimate and democratic, the M5S is the only political force campaigning for an increased use of direct democratic tools. Beppe Grillo, the founder of the Movement, has also considered reducing the role of parliament and allowing citizens to decide on political issues by voting from their personal computers (De Sanctis).

14.3.2 Cleavages in the political spectrum

The majority of cleavages in the Italian political spectrum have been rightly identified by the SWG, a polling organisation based in Trieste, which carried out a survey on the topic in June 2017 (see also Hooghe Marks, Lipset Rokkan). Italians consider the split along the honest /dishonest axis as the most important one, scoring 8.2 score on a scale of 1 to 10. The second rift is traced along the classic divide between rich/poor people. The gap between a minority of the wealthy privileged and the rest of society – the middle and lower classes who bear the burden of economic uncertainty – is felt by 8 citizens out of 10. Beyond these, the survey identifies at least three other social divisions. The first separates 'steady job/flexible job' (7.7 out of 10). This involves mainly the baby boomers (the fifty-sixty-year-olds) who enjoyed better social welfare than the younger generation of workers. The others deal with the divides between 'migrants/Italians first' (7.6 out of 10) and equity versus growing economic disparities (7.6 out of 10). The majority of Italians believe that austerity measures have caused more problems than they solved (65% in total, or 60% of voters of the League, 78% of voters of Forza Italia, 70% of the PD voters, 76% of the M5S). Similarly, lower labour costs to boost companies' competitiveness is considered to be a poor strategy by 57% of voters (52% of the League voters, 56% of Forza Italia voters, 50% of the PD voters, and 72% of the M5S voters) (Faggiano, SWG).

14.4 Influence of participatory mechanisms on EU political realities

14.4.1 *Resonance with elections/referendums elsewhere in Europe*

Identity issues cause concern all over Europe. Most of the key referendums held in Europe over the last four years were related to *independence* (the Scottish independence referendum in 2014 and the referendum for independence held in Catalonia in 2017), or the Brexit referendum in 2016. All three referendums had considerable resonance for Italian political trends.

For instance, building on the media attention around the UK's vote, the Italian government and Prime Minister Renzi in particular used the opportunity to campaign for an Italian constitutional referendum. Although the referendum had to consult Italians on the above-mentioned constitutional reforms it was presented as a sort of 'Italian Brexit' as it would allow citizens to express their support for radical institutional change. Even the business community linked the Brexit referendum result to the Italian referendum, with the General Confederation of Italian Industry (Confindustria) maintaining that a rejection by Italians of the reforms proposed by the government had the potential to be more detrimental than Brexit.

Similarly, on 1 October 2017, as soon as the referendum for independence in Catalonia was held, the Italian regions Lombardy and Veneto organised a '*consultative* referendum' that aimed to strengthen the political mandate of regional leaders to demand more autonomy. In the case of Veneto, this referendum was not the first of its kind. An unofficial online referendum for regional independence was indeed organised in the aftermath of the Scottish referendum in 2014. The consultative referendum on 22 October 2017 saw a turnout of 57.2% with 98.1% voting Yes, but this outcome has not produced any major consequences.

14.4.2 *The uptake of EU matters by government*

Italy has traditionally been among the worst EU law offenders. As a result, the number of sanctions imposed by the EU is quite high but the trend has declined in recent years. Although the

Commission opened 19 new infringement cases against Italy in 2016, the country has increased its credibility on this score – passing from 89 cases in 2015 to 70 in 2016 and 58 in 2018 (ANSA, European Commission 2017a).

The recently appointed Italian government, led by Lega and the Five Star Movement, could reverse this trend, however. Although the parties in government have shared quite Eurosceptic positions, it is not clear whether their stance towards the EU will now be critical or moderate. In other words, the new government might toe the EU line or conversely, challenge ‘Brussels’ wherever this is opportune. On the one hand, most of the appointed ministers are renowned experts or academics with no reputation for especially radical positions. On the other hand, the Minister of European Affairs is Prof. Savona, a well-known Eurosceptic economist who has promoted the idea of an Italian exit from the eurozone. In this respect, from once being a follower of Germany and France when it came to defining EU policies, Italy could adopt a more critical position towards the EU. On its relations with EU institutions, the populist Italian government has turned out to be, from time to time, more moderate or more radical than expected, adopting a somewhat schizophrenic approach (Morillas, Poli).

Conclusions

On the one hand, participatory instruments are crucial to democracy because they encourage citizens to become informed about the decision-making process. From an Italian institutional perspective, the promotion of participatory instruments and their application is considered to be fundamental to a functioning democracy – as long as they enhance and improve the decision-making process. Yet the abuse of direct democracy can also jeopardise the stability of national institutions. For example, a referendum can call voters together to decide upon a socially relevant issue, thereby boosting the proactive involvement of citizens in everyday political life. But conversely, if a referendum is called to settle sensitive matters, a slight nuance in the referendum

If a referendum is called to settle sensitive matters, a slight nuance in the referendum question or a misguided campaign can undermine the referendum itself, and lead to outcomes that harm society for a long time.

question or a misguided campaign can undermine the referendum itself, and lead to outcomes that harm society for a long time.

This is especially relevant when it comes to EU affairs. According to the Italian Constitution, citizens cannot use direct democracy instruments such as a referendum to change an international – and therefore a European – treaty. Although the new government has highlighted the need for EU member states to use instruments that will allow citizens a say on EU decisions, there has been very little debate in Italy about the tools that are already working such as the European Citizens Initiative, which would provide Italians with the channels to influence EU legislation. Italians have shown a keen interest in ECI and are among the nationals participating the most in these initiatives.

It is evident that Italy's participatory instruments are not among the most meaningful when it comes to influencing national

When provided with an effective opportunity to have a say on both national and European legislation, Italians respond.

dynamics. Yet when provided with an effective opportunity to have a say on both national and European legislation, Italians respond. Leaving aside the problems related to the possible

misuse of direct democracy, it goes without saying that more direct democratic accountability could allow both the Italian government and the EU to overcome the perception that they do not take Italians' views into consideration. This would in itself reduce citizens' frustration at not being heard by national or European institutions.

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15. THE EUROPEANISATION OF LATVIA'S DIRECT DEMOCRACY: NOT THERE YET

KĀRLIS BUKOVSKIS & ELIZABETE VIZGUNOVA

This chapter looks at attitudes towards and patterns of the use of direct democratic instruments in Latvia. The authors note an increased interest in various instruments of direct democracy, which also indicates a transition towards liberal, democratic institutions and the shedding of the post-Soviet mindset. Yet it seems that on a national level, only issues revolving around corruption, the usurpation of power and identity are powerful enough to mobilise the eligible population to a protest vote. Between roughly 2007 and 2012, civil society in Latvia seemed to undergo an awakening – triggered by desperation, the global financial crisis, the distrust of institutions and high levels of corruption. However, mobilization of society was also supported by personalities (ex-presidents) and their confrontation with the political establishment. Since the so-called Language referendum, the dynamics seems to have changed, giving space to e-democracy instruments (collective initiatives and public deliberation tools) and local referendums.

Meanwhile, EU issues are largely absent from political party agendas, and the state administration is rarely proactive when it comes to EU issues, partly due to a lack of capacity. While the Latvian population is not by nature Eurosceptic, it does show signs of Euro-apathy, stemming largely from a lack of information about the prerogatives at the disposal of European passport-holders.

Introduction

Despite the rapid democratic transition of Latvia, participation in public life remains low.¹ While involvement in (supposedly) non-political activities – i.e. charity – is high and denotes significant social solidarity, political participation is still relatively low.² This is mostly due to a sense of alienation but it is key to understanding direct democracy in Latvia and its link to the EU. Transition to liberal democratic institutions is still ongoing in Latvia.³

The attitudes and behaviour of Latvian citizens towards various instruments of direct democracy – referendums, plebiscites, citizens' initiatives, popular initiatives and citizen-initiated referendums and recall procedures – seem to fall into the same category. Whereas the 2012 referendum '*On Russian as the second official language*' (the Language referendum) gathered 71% of eligible voters, other referendums have had only modest success in mobilising the population (e.g. the 2011 '*On the proposal on dissolution of the Saeima*' (the national parliament) which, despite the unprecedented circumstances, only gathered 46% of eligible voters).⁴ The low turnout was even more surprising in this context because trust in the Saeima and government is low (although this changes from government to government, the Saeima is trusted by roughly 16% of the population, and the cabinet of ministers by 27%),⁵ pointing to an crisis in representative democracy.

The use of referendums as an expression of protest against corruption, nepotism and oligarchy is established; the other recurrent theme of direct democracy practices relates to identity and

¹ Ivars Ījabs, "Politiskā līdzdalība" in: *Cik demokrātiska ir Latvija? Demokrātijas audits 2005-2014*", 2015, dspace.lu.lv/dspace/bitstream/handle/7/31245/Demokratijas_audits_2014.pdf?sequence=1.

² Ibid.

³ Filip Kostelka, "The State of Political Participation in Post-Communist Democracies: Low but Surprisingly Little Biased Citizen Engagement", in: *Europe-Asia Studies*, Vol. 66, No. 6, August 2014, 947.

⁴ Centrālā Vēlēšanu Komisija, Referendums, <https://www.cvk.lv/pub/public/30629.html>.

⁵ "Pērn esto pieaugusi iedzīvotāju uzticība Saeimai", 05.01.2018, <http://www.tvnet.lv/zinas/latvija/767545-pern-esot-pieaugusi-iedzivotaju-uzticiba-saeimai>.

The use of referendums as an expression of protest against corruption, nepotism and oligarchy is established; the other recurrent theme of direct democracy practices relates to identity and the ethnic Latvian-ethnic Russian divide.

the ethnic Latvian-ethnic Russian divide. Indeed, the first use of a direct democracy tool after Latvia's independence revolved around a conflict that had a strong ethnic component ('the independence referendum' of 3 March 1991). Now, despite 27 years of intense democratic

consolidation and nation-building, issues related to minority integration/assimilation in Latvia are still widely seen as damaging the quality of democracy and governance in the state. Domestically, and despite claiming cultural unity, the issue of including minorities in the democratic process is still a highly contentious one in Latvian politics.

15.1 Between ethnicity and oligarchy

Since 2007, interest in a variety of forms of direct democracy – referendums, popular initiatives, petitions and the recalling of officials – has increased. This clearly resonates from the aforementioned crisis of representative democracy, spurring the population to turn to direct democratic tools. However, despite the general approval of political parties and forces and the population itself, the Language referendum brought about fundamental changes in the legal framework.

All types of referendum discussed in this chapter are binding for the state; Latvia's constitution therefore has not established consultative referendums as a direct democracy tool.

15.2 Mandatory constitutional referendums

The mandatory constitutional referendum, concerning any changes to articles 1, 3, 4 and 6 of the Constitution (*Satversme*; see Table 1) requires a very high quorum (two-thirds of the parliament, and one-half of the electorate having participated in the previous election), thereby serving as a limitation to direct democracy.

Retrospectively, the 2004 accession to the EU modified the understanding of sovereignty and independence, as enshrined in articles 1 and 2 of the *Satversme*. The one-off referendum was held

on 20 September 2003 with a turnout of 71.4 % (and with 66.97% voting for membership).⁶ This was the first referendum in which over a million eligible citizens took part, thereby giving a broad legitimacy to Latvia's decision to become a member of the EU. Whereas the popularity of accession is undeniable – according to opinion polls prior to the referendum, support was above 50% of the whole electorate,⁷⁸ despite certain fluctuations – this referendum is often referred to as a 'non-referendum', as the result was certain beforehand.

In a deliberate move to facilitate Latvia's accession to the EU (and for fear of a negative turnout/negative result), the Saeima amended articles 68 and 79 of the Satversme, alongside the law *On the Referendum and the Proclamation of Laws* as a pre-emptive step. The high quorum required for constitutional changes was thus decreased to one-half of voters having participated in the previous parliamentary elections.⁹

This referendum has been subject to considerable criticism from experts and the civic society. The decision-making process is often described as "highly centralised", "non-democratic and non-transparent". The elites were concerned by two issues: a) the 50% of the population claiming to support accession to the EU was not enough; and b) the risk of 'ethnic voting'. Indeed, the latter proved

⁶ "Oficiālie referenduma rezultāti apliecina pārliecinošu atbalstu ES", 6.10.2003, <http://www.tvnet.lv/zinas/latvija/230695-oficialie-referenduma-rezultati-apliecina-parliecinosu-atbalstu-es>.

⁷ "Mazinājies iedzīvotāju atbalsts dalībai ES", 18.03.2003, <http://www.tvnet.lv/zinas/latvija/230431-mazinajies-iedzivotaju-atbalsts-latvijas-dalibai-es>.

⁸ [Importantly, this made Latvia the 4th most Euro-optimistic country in the EU, only after Lithuania (57,67%); Slovenia (54,02%) and Malta 48,78%.] Jānis Ikstens, "Referenduma skaitļos atskatoties", 23.09.2003, <http://providus.lv/article/referenduma-skaitlos-raugoties>.

⁹ Evren Somer, "Direct Democracy in the Baltic States: Institutions Procedures and Practice in Estonia, Latvia and Lithuania", C2D – Centre for Research on Direct Democracy, 42/2012, 32.

to impact the election: only 20% of the ethnic Russian population of Latvia voted for Latvia's accession to the EU.¹⁰

Indeed, the pre-referendum debates were over-simplified and dominated by identity issues rather than the actual changes EU accession would bring about legally, economically and politically. The electorate was invited to vote Yes even in official pre-referendum campaigns rather than leaving the choice to the voter.¹¹ Due to the identity politics 'card' that was played by most parties, speculation about the legitimacy of the referendum was voiced by non-citizens particularly because, on separate occasions, there were accusations of falsifying votes.¹²

Economic conditions also played a significant role in determining the no-vote of ethnic Russian speakers: the eastern-most parts of Latvia – the regions of Krāslava, Ludza and Daugavpils that voted against – are in the eastern-most part of Latvia, which was (and still is) economically the least developed. As a result, these regions were more susceptible to Eurosceptic messages and Eurosceptic parties; messages along the lines of – the EU means higher prices, taxes, unemployment, immigration and shutting down of local businesses.¹³ However, ethnic voting is a phenomenon that has interwoven Latvia's direct and indirect democratic processes since the country regained independence; it is a reflection of the segmentation of society in the 1980s and 1990s and therefore cannot be attributed to contemporary processes alone.

¹⁰ Inese Šūpule, "Vēlreiz par referendumu: etniskā šķelšanās balsojumā par Latvijas iestāšanos ES. Pētījumu rezultāti", *Providus*, 25.02.2004, <http://providus.lv/article/velreiz-par-referendumu-etniska-skelsanas-balsojuma-par-latvijas-iestasanos-es-petijumu-rezultati>.

¹¹ Daunis Auers, "Cik demokrātisks bija referendums?", 14.10.2003, <http://providus.lv/article/cik-demokratisks-bija-referendums>.

¹² Inese Šūpule, "Vēlreiz par referendumu [..]" op. cit.

¹³ Ibid.

Parliamentary plebiscite for changes in EU membership, semi-plebiscites on repealing a law, the presidential plebiscite on recalling parliament

The parliamentary plebiscite can be triggered (both proactively and reactively) when confirming legal changes to Latvia's status as a member of the EU. As in the case of the referendum on EU membership, the constitution envisages that a referendum will only be deemed binding if "at least half of the number of electors that participated in the previous Saeima election and if majority has voted in favour of the draft law."¹⁴

Conversely, the semi-plebiscite on repealing a law deals with any laws which, in the Latvian legal system, are below *Satversme*.¹⁵ The process of the semi-plebiscite is rather complex, as it first involves the president suspending (vetoing) the proclamation of a law after receiving a request from no less than one-third of the Saeima members. The population must then confirm the triggering of the referendum by collecting signatures from at least one-tenth of the electorate that took part in the previous election. This type of referendum can therefore be considered either as a plebiscite or as a facultative citizens' referendum.

The president can also trigger the dissolution of the Saeima which, if initiated, also puts him in a perilous position – if more than 50% of voters decide against the dissolution, the president is dismissed from office. On the flipside, should the presidential initiative gain popular support, new national elections will be held no later than two months after the date of the dissolution of the Saeima.¹⁶

¹⁴ Evren Somer, "Direct Democracy in [...]", *op. cit.*, 32.

¹⁵ *Ibid.*

¹⁶ Juri Ruus, "Democratic participation at the local level in post-communist states: Estonia, Latvia, Lithuania", in: *Local Direct Democracy in Europe*, Theo Schiller (ed.), Vs Verlag, 2011, 273.

15.3 Citizen-initiated referendums

There are two other types of referendum (to amend the constitution, and to create a law) that elicit a strong sense of ownership among citizens, as they are in complete control. However, and especially after 2012 and the amendments to the law 'On popular voting, creating laws, and the European Citizens Initiative' ("Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu") of 1 January 2015, the number of signatures required for a full draft or an amendment to the Constitution or a law increased almost five-fold.¹⁷¹⁸ This system replaced the previous two-step signature collection system. Importantly, the process was already thought to be only moderately citizen-friendly due the high approval quorum (one half of the whole electorate), which makes it very difficult to arrive at valid referendum decisions.

According to article 78 of the Satversme, if the initiative or draft law manages to gather the necessary number of valid signatures, the Saeima must consider the amendment. If it is not adopted without change, a national referendum must be called.¹⁹ Importantly, and unlike the constitutional initiatives, a draft law will only be adopted if it gathers 50% support of the electorate having participated in the previous parliamentary election.

Latvia's citizens can also exercise the power to recall parliament, if one-tenth of the electorate proposes the dissolution of parliament. However, this form of initiative was only introduced after the ex-President Latvia Valdis Zatlers (2007-11) put his ultimatum to the Saeima, requesting, among other things, to amend

¹⁷ Constitutional Court of the Republic of Latvia, The Amendments to the Law on National Referendums, Legislative Initiatives and European Citizens' Initiative comply with the Satversme, 12.02.2014, <http://www.satv.tiesa.gov.lv/en/press-release/the-amendments-to-the-law-on-national-referendums-legislative-initiatives-and-european-citizens-initiative-comply-with-the-satversme/>.

¹⁸ Edīte Brikmāne, "Tautas rosināti referendumi: vai jaunais regulējums tos ierobežo?", <https://lvportals.lv/skaidrojumi/268528-tautas-rosinati-referendumi-vai-jaunais-regulejums-tos-ierobezo-2015>.

¹⁹ Evren Somer, "Direct Democracy in [...]", op. cit.

the Constitution, providing the people with a new tool to fire Saeima.

Zatlers unsuccessfully launched a referendum on 2 August 2008 with this objective (see Table 1). The negative outcome can partially be explained by the timing of the referendum (during the summer holidays) and the fact that other political party members urged people not to vote. Nevertheless, Zatlers' activism finally paid off in 2009, when the Saeima responded to pressure from both Zatlers and the broader population and amended the Satversme. This gave *"no less than one tenth of the voters"* the possibility to recall parliament by popular vote, under article 14.²⁰ In this instance a failed referendum managed to achieve its aim: it not only introduced the desired amendments but also rejected the policies of a government that was perceived as dishonest and corrupt.

15.4 Recent developments: citizens' participation in direct democracy mechanisms

Latvian citizens are sceptical and passive²¹ about the level of political influence they can exercise at national level. Arguably, the population often lacks information about how to take part in political processes, which consequently leads to a marked lack of empowerment. Even in crises, such as the extraordinary parliamentary elections following the dismissal of parliament (2008 and 2011, see Table 15.1) there is also a relatively low turn-out.

The post-2007 period has been a particularly intense one for direct democracy instruments in Latvia. The reason is most likely linked to the global financial crisis (2007-10), which highlighted the crisis of representative democracy, namely oligarchy, corruption and the lack of appropriate supervision mechanisms; 'the same old political faces', for example.

²⁰ Evren Somer, "Direct Democracy in [...]", op. cit.

²¹ Ivars Ījabs, "Politiskā līdzdalība" [...] op. cit.

Table 15.1 Direct democracy in action

Tool	Approved/Rejected	Turnout
Referendum of 3 March 1991, The Independence referendum*	Approved	87.6 %
Referendum of 3 October 1998 on the repeal of the facilitated naturalisation amendment	Rejected	69.2 %
Referendum of 13 November 1999 on the repeal of the pension system reform amendment	Rejected (no quorum)	35.2 %
Referendum of 21 September 2003 on the accession to the European Union (the ‘non-referendum’)	Approved	71.5 %
Referendum of 8 July 2007 on the repeal of amendments to the law on state security authorities	Rejected (no quorum)	37.3 %
Referendum of 2 August 2008 on the dissolution of parliament by popular vote	Rejected (no quorum)	38.2 %
Referendum of 23 August 2008 on a limited increase of public pensions	Rejected (no quorum)	38.2 %
Referendum of 23 July 2011 on the early dissolution of the Parliament	Approved	44.7 %
Referendum of 18 February 2012 on Russian as the second official langue (the Language referendum)	Rejected	70.7 %

Note: In one case, the amendments, suggested by a popular initiative, were adopted without referendum, namely, to the ‘Law on Electric Power Industry’, to prohibiting the privatisation of ‘Latvenergo’.

**Referendums took place under Soviet law.

Source: compiled by the authors from the homepage of the Central Electoral Committee.

In this context, and despite the modest track-record of the success of referendums, another referendum has managed to achieve the set goal, even when losing the ballot. The referendum of 8 July 2007 'On the Repeal of Amendments to the Law on State Security Authorities', triggered by ex-President Vaira Vīķe-Freibergas vetoing the law on 'State Security Services and State Security Authorities' was a retaliation against the attempt to provide the Saeima with extensive rights to information retained by the secret services (which might, in turn, damage Latvia's ties with NATO). As a result, on 29 March 2007, prior to the referendum (which was still triggered as the constitutional arrangements foresaw it), the Saeima withdrew the amendments.²² Despite the lack of quorum, Vīķe-Freibergas' initiative attracted the overwhelming support of the voters (97%), showing the government of Prime Minister Aigars Kalvītis (2004-07) that Latvia's security would not be subject to political manipulation.

On 28 May 2011, shortly before the end of his tenure, Vīķa-Freibergas' successor Zatlers called for a referendum on the dissolution of parliament after receiving an application from the Latvian Free Trade Union Association. This came as most parliamentary deputies had blocked a corruption inquest by the Latvia's anti-corruption agency (*Korupcijas Novēršanas un Apkarošanas birojs*) into one of the country's most powerful oligarchs and the former Minister of Transport/Member of Saeima Ainārs Šlesers. Zatlers saw a clear conflict between the parliament and the state judiciary.²³

This time, the referendum garnered the overwhelming support of the population. Immediately, new elections followed on 17 September 2011. This clearly showed that it was not only Zatlers

²² "Referendums par Valsts prezidentes Vairas Vīķes-Freibergas apturētajiem grozījumiem drošības likumos. Kvoruma trūkuma dēļ referendums uzskatāms par nenotikušu", <http://providus.lv/article/referendums-par-valsts-prezidentes-vairas-vikes-freibergas-apturetajiem-grozijumiem-drosibas-likumos-kvoruma-trukuma-del-referendums-uzskatams-par-nenotikusu>.

²³ Guntars Laganovis, "Prezidenta V. Zatlera rīkojumam Nr. 2 – 5 gadi. Ko panāca 10. Saeimas atlaišana?", 06.09.2016, <https://lvportals.lv/viedokli/281492-prezidenta-v-zatlera-rikojumam-nr-2-5-gadi-ko-panaca-10-saeimas-atlaisana-2016>.

who was 'punished' (his tenure as president was not renewed for a second term, instead electing former President Andris Bērziņš (2012-16), who adopted a more passive stance throughout his presidency). The vote for the dissolution of parliament meant that people had clearly rejected state corruption. Direct democracy 'from above' helped protest the lack of transparency and therefore became a corrective mechanism. Further, it was a tool to caution against corrupt developments in the establishment and to combat the power of the oligarchs. **Importantly, Zatler's epithet – 'state capture' – still lingers in the recent 'Hotel "Rīdze" conversations (a.k.a. the 'Oligarch conversations') involving a number of Latvia's politicians and businessmen.** Leaked records of conversations between the previously mentioned Šlesers and Aivars Lembergs, the mayor of port city Ventspils (and a well-known oligarch) and other high-ranking figures clearly spoke of buying off the main media outlets in Latvia, as well as disposing of Zatlers and choosing a "proper president that would pave the way for government change".²⁴

In Latvia, roughly 25% of the population is ethnically Russian, on top of other Russian-speaking groups (38% in total).²⁵ Due to the restrictive nature of the 'law on citizenship'²⁶ and no regulation on non-citizens taking part in local elections, as well as the gradual changes introduced by the 'Law on general education'^{27,28} *de facto*

²⁴ BNN, "Oligarchs in Latvia have been building up influence by distorting media for years", 29.06.2017, <http://bnn-news.com/oligarchs-in-latvia-have-been-building-up-influence-by-distorting-media-for-years-167790>.

²⁵ Ieva Bērziņa, Jānis Bārziņš et al., "Sabiedrības destabilizācijas iespējamība Latvijā: potenciālie nacionālās drošības apdraudējumi", 2016, <http://www.naa.mil.lv/~media/NAA/AZPC/Publikācijas/WP%2004-2016.ashx>, 3.

²⁶ Likumi.lv, Pilsonības likums, 22.07.1995, <https://likumi.lv/doc.php?id=57512>.

²⁷ "Kārtējā parakstu vākšanā mēģina aizstāvēt krievu valodas pozīcijas izglītībā Latvijas skolās", 08.11.2017, <http://www.delfi.lv/news/national/politics/karteja-parakstu-vaksana-megina-aizstavet-krievu-valodas-pozicijas-izglitiba-latvijas-skolas.d?id=49422515>.

²⁸ "Saeima turpina atbalstīt likumus par izglītību skolās tikai latviešu valodā", 08.03.2018, <https://www.lsm.lv/raksts/zinas/latvija/saeima->

liquidating Russian schools, the civil society organisation 'Mother tongue' succeeded in collecting the 10% quorum of signatures for citizens to launch the referendum of 18 February 2012, on Russian being the second official language. Even more importantly, the 'Harmony' party, representing the interests of the ethnically Russian population of Latvia, had gathered a significant number of followers (at that point in time, Harmony had 31/100 seats in parliament) who were increasingly disappointed with governmental politics. Whereas Harmony did not officially support the referendum, it did not prevent individual members from doing so. Nils Ušakovs, the Mayor of Riga and the Chairman of Harmony, famously said that despite the fact that he agreed that the Latvian language needed protection, "he is nothing without his electorate" and therefore stood with the silent minority.²⁹ Meanwhile, all other Latvian parties urged people to vote against Russian as the second state language.³⁰ The No camp succeeded by a landslide (see Table 1). The period before and after the referendum was characterised by extreme intimidation; the Security Police announced that 'Mother Tongue' was funded by Russia.³¹ In this way, via the proxy of the referendum, direct democracy became a threat to Latvia's constitutional order as an external actor tried to use direct democracy tools to weaken social cohesion in Latvia.

Indeed, the *épopée* started by the Language referendum did not stop there. Its direct tangible effect was the amendment to the law 'On popular voting, creating laws, and the European Citizens Initiative'. The high threshold of required signatures has resulted in a virtual bursting of the referendum bubble in Latvia. However, the

turpina-atbalstit-likumus-par-izglitiba-skolas-tikai-latviesu-valoda.a270641/.

²⁹ "Ušakovs: Latviešu valodu nepieciešams aizstāvēt", 28.04.2015, <https://www.lsm.lv/raksts/zinas/latvija/usakovs-latviesu-valodu-nepieciešams-aizstavet.a127360/>.

³⁰ "Viķe-Freiberga: galvenie impulsi valodas referendumam nākuši no Krievijas", 13.02.2012, <http://nra.lv/latvija/politika/66007-vike-freiberga-galvenie-impulsi-valodas-referendumam-nakusi-no-krievijas.htm>.

³¹ "DP: Valodas referendumu finansēja arī Krievijas iedzīvotāji", 22.02.2014, <http://www.la.lv/dp-valodas-referendumu-finanseja-ari-krievijas-iedzivotaji/>.

narrowed direct democracy space has now been partially filled by direct democracy e-platforms, as described below.

Only recently has the right to hold local referendums been added to the list of instruments of direct democracy that could potentially be available to the citizens of Latvia. The NGO that conceived of the proposal, *Jūrmalas aizsardzības biedrība*, recently expressed disappointment with the unfinished outcome. It claims that the new law 'On local referendums', which is scheduled to come into force on 1 July 2019 (but is still stuck in the Saeima), lacks the power to call a referendum on amendments to the local town planning.³² Indeed, the passing of the law has been taking a long time; the interests of powerful municipalities cannot be excluded as one of the primary reasons for this. Lembergs was among the authorities speaking against the referendum, claiming that the law already provided a variety of consultative mechanisms for citizens;³³ authorities from the Association of the Big Cities of Latvia (*Latvijas Lielo pilsētu asociācija*) claimed that such referendums could hamper development,³⁴ using the argument of security.³⁵

Overall, the empowerment of citizens on a local level could be a major positive change. This is particularly important because the Latvian electorate's trust in regional authorities is comparatively

³² [Nonetheless, the law is currently 'stuck' again, as the Ministry of Environmental Protection and Regional Development is questioning the relevance of the reform.] Anete Bērtule, „Pašvaldību referendumu iniciatori apšaubā pašreizējā likumprojekta jēgu”, 19.09.2017, <https://www.lsm.lv/raksts/zinas/latvija/pasvaldibu-referendumu-iniciatori-apsauba-pasreizeja-likumprojekta-jegu.a250729/>.

³³ Egons Mudulis, “Lembergs: pašvaldību referendumu likumprojekts nav atbalstāms”, 06.02.2012, <http://www.db.lv/zinas/lemborgs-pasvaldibu-referendumu-likumprojekts-nav-atbalstams-251737>.

³⁴ Irliepaja.lv, “Sesks: Attīstība bremzēsies, ja par katru rūpnīcu būs referendums”, 07.02.2012, <https://www.irliepaja.lv/lv/raksti/bizness/sesks-attistiba-bremzesies-ja-par-katru-rupnicu-bus-referendums/>.

³⁵ Latvijas Lielo pilsētu asociācija, http://www.llpa.lv/index.php?option=com_content&view=article&id=358:llpa-aicina-atlikt-likumprojekta-vietejo-pasvaldibu-referenduma-likums-iesniegsanu-saeima-un-izvertet-ta-iespejamos-drosibas-riskus&catid=58:uncategorised&Itemid=88.

high, with 48% of residents trusting the local government.³⁶ But this novelty is yet to bear fruit. Given the low levels of civic activity in the country overall, it remains unclear how effective it will be.

15.5 E-digital direct democracy tools – non-binding collective initiatives and digital feed-back mechanisms

Manabalss.lv. Non-governmental e-democracy platforms are becoming increasingly popular in Latvia. The development of such e-democracy platforms was only possible because the Saeima amended its rules of order, envisaging that ten thousand citizens (having reached the age of 16) had the right to hand in a collective petition, which would then be reviewed by the Saeima. The amendments only came in the aftermath of the ‘Let’s open the Parliament!’ initiative which gathered 10,000 signatures on Manabalss.lv homepage. Importantly, it was also former President Zatlers who urged society to vote for this petition.³⁷

Despite the overall lacklustre civic activity in Latvia, over the seven years of ManaBalss.lv existence, it has gathered more than 1,015,791 signatures and 1,327 initiatives have been submitted.³⁸ Overall, 19 collective petitions have been incorporated into law,³⁹ for example on the progressive taxation system; on the responsibility of MEPs for breaking their oath; on carrying out a technical inspection of motor vehicles once every two years; on finding a cure for cancer, inter alia. The platform has enabled citizens to mobilise on a broad spectrum of issues that relate to transparency, corruption and justice.

³⁶ Lilita Seimuskane, Inga Vilka, “Local Referendums as a Paradigm for Transformation of Citizens’ Participation in Latvia”, in: Social Research, Nr. 3(28), 2012, 76-78.

³⁷ Indra Mangule, “E-Democracy in Action”, https://www.kogu.ee/wp-content/uploads/2015/10/E-democracy-in-Action_case-studies-from-Estonia-Latvia-Finland_2016.pdf, 16-18.

³⁸ Manabalss.lv, Paveiktais, <https://manabalss.lv/page/progress>.

³⁹ Interview with Manabalss.lv, 06.07.2018.

Mazasslogs.gov.lv. In November 2013, the State Chancellery launched the project to receive feedback from citizens with two purposes: a) to improve the legislation and reduce the 'red tape' of public service; b) to improve the quality of public service. The homepage allows complaints and suggestions to be submitted.⁴⁰ Importantly, the portal operates in parallel with the application 'Futbols', which allowed on-the-spot evaluation of the work of public authorities.

Mazinamslogu.lv has attracted much less public support (arguably, because it is still a state-run initiative). However, some achievements have found favour with the public – for instance, changes to real estate tax legislation; changes to legislation on bookkeeping in micro-sized companies; reduced administrative burden for the home-schooling of children; investigations into institutions not replying to formal complaints and investigations of building safety and legality, etc.⁴¹

15.6 Main drivers of voter mobilisation

Slowly, a picture of Latvia's mobilisation patterns starts to emerge. By looking at the age breakdown of voters, it becomes apparent that people in the 18-24 age group are the least likely to vote (e.g., in the elections of 2011, 34.7% did not participate), whereas the 35-44 age group shows a slightly higher activity (only 20.1% did not participate in 2011).⁴² However, the interest of all age groups is fairly similar, indicating that the cliché about politics being a dirty business still engenders apathy and apoliticism. When asked about the reasons for mobilisation, voters usually mention 'citizen's duty' (41.5%) rather than any real hope of changing the future (22%) or a willingness to support a particular candidate/party (11.6%).⁴³ Importantly, when the question was reversed and put to those who

⁴⁰ [Lvportals.lv](https://lvportals.lv/norises/296357-aicina-zinot-par-birokratiskam-nejedzibam-2018), Aicina zinot par birokrātiskām neēdībām, 7.06.2018, <https://lvportals.lv/norises/296357-aicina-zinot-par-birokratiskam-nejedzibam-2018>.

⁴¹ [Mazinamslogu.lv](https://mazaksslogs.gov.lv/slogs/par-iniciativu/), <https://mazaksslogs.gov.lv/slogs/par-iniciativu/>.

⁴² Centrālā vēlēšanu komiteja, "Vēlētāju attieksmju pētījums 2011: Latvijas iedzīvotāju aptauja", Tīrgus un sabiedriskās domas pētījumu centrs, 2011, https://www.cvk.lv/pub/upload_file/atskaite_CVK_102011.pdf.

⁴³ Ibid.

did not vote, they said that “there was no point” or “I didn’t know who to vote for”.

Secondly, single-issue politics is on the rise in Latvia. The best illustration of this is what occurred during the financial crisis: a more ancient form of direct democracy emerged. For instance, in 2009, the ‘Farmers’ Saeima’ and the ‘Farmers’ Cooperation Council’ not only set out specific requirements and arranged remarkable protests against the austerity measures that damaged their business, they also created networks to subsidise what the government could not provide. Disruptive cooperatives and farmers’ markets, as well as civic resistance to bureaucratic obstacles, became part of their tactics to deal with the repercussions of the crisis. Similarly, business associations, trade unions and the ‘Union of Local and Regional Governments’ became more active, sometimes joining the ‘Farmers’ Saeima’ coalition and ‘Farmers’ Cooperation Council’. Remarkable solidarity networks were formed around the 2009-11 period but they also dissolved quickly as the crisis abated. Nevertheless, they served to demonstrate that socio-economic issues and the widespread oligarchy were enough to generate discontent and mobilise voters.

When asked about the reasons for mobilisation, voters usually mention ‘citizen’s duty’ (41.5%) rather than any real hope of changing the future (22%) or a willingness to support a particular candidate/party (11.6%).

Low participation in political parties and other forms of societal organisation/mass organisation is not uncommon, also in other countries of the post-Soviet space.

Thirdly, party membership in Latvia is the lowest in the EU-28.⁴⁴ Currently, only 1.1% of the population (or roughly 21,000 people) are members of the party. Harmony, which is Latvia’s biggest party, is still relatively small: with 2, 400 members, it ranks 15th among the three Baltic states’ parties.⁴⁵ Low participation

⁴⁴ Ingrid van Biezen, “The decline in party membership across Europe means that political parties need to reconsider how they engage with the electorate”, 05.06.2013, <http://blogs.lse.ac.uk/euoppblog/2013/05/06/decline-in-party-membership-europe-ingrid-van-biezen/>.

⁴⁵ Māris Klūga, “Latvijā politiskās partijas daudzārt mazāk biedru nekā Lietuvā un Igaunijā”, 02.01.2018, <https://www.lsm.lv/raksts/zinas/>

in political parties and other forms of societal organisation/mass organisation is not uncommon, also in other countries of the post-Soviet space. This also means that the “I didn’t know who to vote for” attitude clearly stems from the political parties’ inability to represent the beliefs, traditions and ideas of the Latvian population. It is also important to note that the non-governmental/civic sector does not enjoy high levels of trust and participation either. Yet while the latter sector seems preoccupied with the erosion of its membership, the political parties remain largely unconcerned. This means that other forms of ‘top down’ direct democracy are also unlikely to be motivated by a concern for voters. Despite their representative functions, the presidents of Latvia – mainly Vīķe-Freiberga and Zatlers – have however been the most notable players in evoking people’s right to vote, protest, make a stand against corruption and correct the decisions of the Saeima.

Ultimately, an analysis of national referendums and other direct democracy tools in Latvia reveals that nation-building and identity are crucial factors in

Ultimately, an analysis of national referendums and other direct democracy tools in Latvia reveals that nation-building and identity are crucial factors in determining voter activity and affiliation.

determining voter activity and affiliation. Two referendums in particular were marked by ethnic voting: the referendum on joining the EU and the Language referendum on 2012. In the first case, 44% of the ethnic Russians with a right to vote in Latvia voted against Latvia joining the EU; 36% did not participate. This is a striking result if we

consider that in the mid-1990s ethnic Russians in Latvia had a more positive attitude towards the EU than the Latvians themselves. One can argue that it could have been overall political discontent and political alienations that drove this decision. Additionally, the pre-referendum campaign spoke about Latvia’s security interests, and supposedly marked a clear ‘break’ from Russia, Belarus and other states “on the wrong side of history”.⁴⁶ The Language referendum epitomised ethnic voting. The referendum itself was a form of

latvija/latvija-partijas-daudzkart-mazak-biedru-neka-lietuva-un-igaunija.-kapec-ta.a262825/.

⁴⁶ Inese Šūpule, “Vēlreiz par referendumu [..]”, op. cit.

protest vote by long-suffering second class citizens. It followed the attempts of the National Alliance party to gather 10,000 signatures for the petition to end Russian state-funded schools. Importantly, the feeling of insecurity goes both ways: one can argue that there is an increasing number of ethnic Latvians who feel threatened by the educated ethnic Russians who are more competitive in the job market. Therefore, those who only speak Latvian are under pressure to learn at least basic Russian.

15.7 EU affairs à *la carte* ? The absence of EU dimension to Latvian politics

EU affairs are not a popular topic of discussion in Latvia; rather, they are mostly presented and discussed as national matters with an EU dimension. The uptake of EU issues is rather passive and technocratic – it does not entail popular deliberation but remains within the walls of the responsible line ministry. The ‘bastion’ of the EU’s norms, values and integration has traditionally been the Ministry of Foreign Affairs, but even in this case, the capacity to respond to the numerous calls of EU bureaucracy is complicated by a shortage of staff. For this reason, Latvia’s EU policies are mostly reactive; it formulates positions after receiving information on European Commission proposals. Hence, internal discussion between the ministries with or without the involvement of civil society and social partners takes place after the proposal is submitted to the Council.

Although the Latvian EU coordination scheme requires consultations with the social partners, i.e. the Employers’ Confederation of Latvia and Free Trade Union Confederation, as well as civil society stakeholders, the general population is detached from deliberation on EU matters. Occasional discussions with stakeholders, experts, politicians and decision-makers are organised by think tanks, academia and state institutions. Having said that public interest is also very low, so decision-making and action is usually left to professionals – politicians, diplomats and bureaucrats. Only a handful of politicians tackle issues related to the EU’s future in depth. Most of them are members of the European Affairs Committee of the Saeima (a structure exercising significant power as a parliamentary scrutiny body on the EU affairs). In the public domain politicians tend to simplify EU matters, for instance

discussions on the completion of the Economic and Monetary Union only take place if they are organised by professional groups. Politicians tend to focus on increasing the standard of living in Latvia, with the EU serving as a source of security, welfare and international alignment for the small country.

The Russo-Ukrainian war and the transatlantic relationship crisis shows that several political issues relating to the EU's solidarity, values and unity, including the longevity of the Schengen area, have received increased attention from all stakeholders. The Multiannual Financial Framework is another issue that catches the attention of the media and the Latvian population. Since 2004, Latvia has been one of the main net recipients of EU funding and EU co-financing is estimated to contribute about 1.5-2% of additional GDP growth. Besides the 'country envelopes', the Common Agricultural Policy and agricultural subsidies are widely discussed as Latvian farmers receive disproportionately lower subsidies than their counterparts in other EU member states.

The other 'hot potato' is the EU migration policy, although there are only a few members of parliament who are openly speaking in favour of a more migrant-friendly Europe, especially ahead of the October 2018 election. The topic may be less prominent than during the migration surge of 2015, but it has become highly politicised – once again underlining the strength of identity-related topics in Latvian politics. This is partly due to Latvians' self-perception as a disappearing ethnos: the Soviet deportations of 1941 and 1949, the state-orchestrated russification of the population during the Soviet era and the massive exodus of Latvians to foreign labour markets since the accession to the EU (for instance, just since 2010, Latvia has lost 170.000 thousand, or 8%, to migration) make Latvians more wary of foreign influence. Even though Latvia approved the European Commission plan to share refugees, agreeing to accept 776 refugees (more than it has accepted since the restoration of independence in 1991),⁴⁷ this expression of solidarity

⁴⁷ Leonig Ragozin, "Latvians find unity in rejecting refugees", 25.09.2015, <https://www.politico.eu/article/latvia-migration-asylum-crisis-baltics-eu/>.

has been received with a lot of resistance in the broader population.⁴⁸

These central societal narratives are taken account of and utilised by the political parties; politicians promise a 'strong' positioning of Latvia in the EU. At the same time, no political party represented in the parliament has called for Latvia's exit from the EU or from the eurozone. The dominant position remains that Latvia is better off in the EU mostly because of security reasons and obvious economic gains.⁴⁹

Indeed, prior to the October 2018 election, the party programmes (in their traditionally popular form of 4000 characters) only indicate EU issues as present and the EU as important. Parties tend to emphasise that the EU guarantees Latvia's prosperity, and that the parties will strongly defend the Latvia's national interests: industry, the labour force and farmers in the EU. Party programmes do not address the shape of the EU institutions or visions for Latvia's membership. Hence, debates on issues take place when the issues are formulated and presented as European Commission proposals or in preparation for European Council meetings. But those rarely gain public interest and moreover participation.

The general homogeneity of the approach to EU issues is also explained by the fact that Latvia's political scene is unusually divided not by economic principles, but by geopolitical and ethnical ones. 'Latvian' political parties tended towards cooperation with Western countries, and 'Russian' political parties are traditionally pro-Russian. Recent years have witnessed a slight reconfiguration, with parties becoming more embracing, if not catch-all. On some issues, one can even observe similarities between more liberal

The general homogeneity of the approach to EU issues is also explained by the fact that Latvia's political scene is unusually divided not by economic principles, but by geopolitical and ethnical ones.

⁴⁸ Marija Golubeva, Marta Rikša, "Patvēruma meklētāji Latvijā", 2015, http://providus.lv/article_files/3177/original/Patveruma_mekletaji_Latvija_PROVIDUS.pdf?1459941547.

⁴⁹ Karlis Bukovskis (ed.), "Euroscepticism in Small EU Member States", Latvian Institute of International Affairs, 2016, <http://liia.lv/en/publications/euroscepticism-in-small-eu-member-states-546>.

political parties and more conservative ones on social issues, including sexual minority rights. It is unclear whether this reconfiguration is tied to bigger ideational shifts, as Latvian parties are continuously populist and catch-all in their behaviour. Among the issues that are becoming more popular, accepted and discussed across party divisions are not only rights of sexual minorities and status of non-citizens, but also attitudes towards the European Commission and Latvia's relations with the EU as an organisation. This reality, which was also a recurring topic in the pre-accession debate – reflecting pro-arguments relating to increasing economic well-being, and the counter-arguments to culture – has remained relatively static for years.

Ultimately, another unusual trend underpins Latvian society. Voter loyalty is almost non-existent in Latvian party politics since the re-establishment of the democratic system. Party ideologies

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have never mattered much, except for ethnical positioning and geopolitical positioning. Therefore, the relatively homogenous approach to EU affairs does not have the potential to change voter affiliations. Latvia's party system is an ever-changing phenomenon. Although

some parties have existed since the beginning of the 1990s and the Latvian Social Democratic Worker's Party claims continuity since its establishment in 1905, none of the political parties have either survived in their original form and ideology or have been continuously present in the national parliament of Latvia. Before every election parties tend to die out and new ones are established. Many politicians seek to change the political parties and form new coalitions for the sole purpose of appealing to voters.

Consequently (and perhaps curiously), Euroscepticism in Latvia is relatively limited;⁵⁰ recent polls show that two-thirds of the population support membership of the EU. This shows that geopolitical realities are being acknowledged by the Latvian

⁵⁰ See Kārlis Bukovskis, Aldis Austers (eds.), "Euroscepticism in the Baltic Sea States: Uncovering Issues, People and Stereotypes", Latvian Institute of International Affairs, 2017, <http://liia.lv/en/publications/euroscepticism-in-small-eu-member-states-546>.

population, diplomats and politicians. Additionally, 84% of the population supports a common EU defence and security policy; 71% supports a common EU energy policy; and 66% supports a common foreign policy.⁵¹ The official position of Latvian diplomats and decision-makers thus reflects the views of the general population, and has been openly pro-European and supportive of deepening and widening the EU.

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15.8 The ECI goes unnoticed

Unsurprisingly, the European Citizens' Initiative (ECI) has not attracted much interest among Latvian citizens; as stated above, interest in EU issues is very low. The 'Right2Water' only gathered 393 signatures – the lowest number across the EU, and far behind both other Baltic states – due to almost non-existent media coverage and the lack of knowledge of the prerogatives, granted by ECI. The relatively weak trade unions (Trade union of Latvia's societal services and transport workers and the Trade Union of Latvia's Communication workers), as well as some political parties (Progresīvie)⁵² promoted the initiative's cause online but it is hard to find traces of information besides these two sources in Latvian. Eventually, perhaps a banal – yet telling factor – is that Latvia is ranked fourth on an EU list of freshwater resource availability per inhabitant annually.⁵³

⁵¹ Standarta Eiropabarometrs 88, "Sabiedriskā doma Eiropas Savienībā: Latvija", 2017. gada rudens, 10.

⁵² Progresīvie, Cilvēkam ir tiesības lietot ūdeni, <https://www.progresivie.lv/kampanai-ir-nepieciešams-jusu-un-latvijas-atbalsts/>.

⁵³ Eurostat, Freshwater resources per inhabitant – long-term annual average, 2017, [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Freshwater_resources_per_inhabitant_%E2%80%94_long-term_annual_average_\(1_000_m%C2%B3_per_inhabitant\).png](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Freshwater_resources_per_inhabitant_%E2%80%94_long-term_annual_average_(1_000_m%C2%B3_per_inhabitant).png).

Table 15.2 Number of signatures gathered for all successful ECIs

ECI	Number of signatures gathered	Threshold
Right2Water	393	6765
One of Us	9132	
Stop Vivisection	3167	
Ban glyphosate	1197	6000

Source: European Commission, European Citizens’ Initiative, Successful Initiatives, <http://ec.europa.eu/citizens-initiative/public/initiatives/successful>.

A radically different picture is painted by the high number of signatures, gathered by the ‘One of Us’ initiative. Media attention was noticeably greater, as was the interest of the Association ‘Family’ (an NGO defending traditional values), the Catholic Church of Latvia; the ‘Lutherans for life’ movement; Latvian Christian radio, *inter alia*. Some sources claim that church-goers were even asked to sign even during the service.⁵⁴ This has become by far the most popular initiative in Latvia; however, despite the threshold reached – and exceeded – it does not point to a consistent rise in popularity of the ECI, but rather to a one-off success due to an active engagement of institutions that have a high number of loyal followers.

Overall, Latvia’s apathy vis-à-vis the ECI is also illustrated by the fact that no Latvian citizens became committee members of registered ECIs.⁵⁵ The lack of knowledge about the rights of EU citizens is therefore becoming a real impediment to democratising

⁵⁴ “Ap 800 000 ES iedzīvotāju parakstījušies par cilvēka dzīvības aizsardzību no ieņemšanas brīža”, 26.06.2013, <http://www.delfi.lv/news/national/politics/ap-800-000-es-iedzivotaju-parakstijusies-par-cilveka-dzivibas-aizsardzibu-no-ienemsanas-briza.d?id=43513995>.

⁵⁵ European Commission, Report from the Commission to the European Parliament and the Council: Report on the Application of Regulation (EU) No 211/2911 on the citizens’ initiative, <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF>, 5.

the EU itself. Whereas several public organisations (e.g. the centre for public policy 'Providus'⁵⁶ and the European Movement in Latvia) have engaged in public discussion of the reform of the ECI, it is still a non-topic in the Latvian public arena.

The lack of knowledge about the rights of EU citizens is becoming a real impediment to democratising the EU itself.

Conclusion: the dos and don'ts

In Latvia, as elsewhere, the prolonged distrust of the establishment – dismissed as a healthy, democratic phenomenon – is indicative of a prolonged crisis of representative democracy. The attempts of the EU to enhance its legitimacy via the promotion of ECI have not been successful; they only add to the lack of information and knowledge about the EU among the general population.

Yet some mechanisms offer hope that the politically apathetic population will eventually reform into a fully fledged civil society.

The attempts of the EU to enhance its legitimacy via the promotion of ECI have not been successful in Latvia; they only add to the lack of information and knowledge about the EU among the general population.

Here, two instruments of direct democratic practices seem to be particularly useful. First, the referendum rights put in place by an impartial authority can serve as a safeguard for a country suffering from the creeping influence of soviet-style pyramids of power and 'special' interests. Two Latvian presidents – Vīķe-Freiberga and Zatlers – became

well-known to the broader population and seemingly represented its interests in the face of the corrupt establishment. Importantly, both serve as key figures on the domestic political scene even now, standing up for European values and solidarity (more vocally than the current President, Vējonis).

Secondly, whereas the overall variety of political parties shows that a fully fledged representative democracy is in place, one cannot help but wonder if the lack of adequate representation (systemically) of all the population will backfire. This situation

⁵⁶ "PROVIDUS atzinums par Eiropas pilsoņu iniciatīvu", 30.01.2018, <http://providus.lv/article/providus-atzinums-par-eiropas-pilsonu-iniciativu>.

seems critical as several European democracies are now facing the repercussions of failing to create a multicultural and inclusive social fabric.

The apparent stability of the status quo should not be taken for granted, especially with the rise of parties such as the 'New Conservative Party' (currently not in the Saeima), which openly presents itself as a Central-European party. Furthermore, right-wing populism has been present in Latvia for much longer ('National Alliance') and in a sense has 'normalized' itself among political forces (the 'them vs us' narrative is often heard in the public space).

Thirdly, the Language referendum was a crucial turning point that signalled that direct democracy can threaten the foundations of the state. However, whereas the referendum can be

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seen as part of Russia's 'soft power' and a direct attempt to undermine the state, it was also a sign to the centrist, liberal forces that inter-ethnic relations in Latvia have an international dimension. The Language referendum, despite being a clear-cut protest (and a warning) played into the hands of the political forces instrumentalising the ethnic divide. There is something of a catch-22 situation here; on the one

hand, by strengthening Latvia as a democratic, Western-oriented state, on the other it is also exposing its biggest vulnerability to its influential Eastern neighbour.

One also needs to mention the fact that knowledge is a powerful tool that can be played out against those with it. The ECI 'One of Us' campaign illustrates this: once an issue is mobilised through NGOs and their networks – and is intuitively understandable to the audience – it can draw considerable attention to an issue that rarely appears in the popular media domestically. Whereas this isolated case is insufficient to indicate a pattern, it is indicative of a certain set of values that can have a mobilising force.

16. POLITICS, IDEOLOGY AND VOTER APATHY: DIRECT DEMOCRACY IN POLAND

JACEK KUCHARCZYK

Poland's experience with direct democracy instruments after the 1989 transition is uneven and ambiguous. On the one hand, the 2003 EU accession referendum provided strong democratic legitimation to Poland's EU membership and is still an important reference in current debates about Poland's relations with the EU. Local referendums have also become an important (and mostly positive element) of local democracy. But on the other hand, Poland has seen a number of referendums and citizens' initiatives that have been more driven by political and institutional interests than grassroots citizen groups. Such initiatives tend to increase social and political polarisation and seldom resolve controversial socio-political issues. Importantly, there is no evidence that referendums and citizens' initiatives increase civic participation in public and political life. Importantly, the recent political developments in Poland, namely the rise to power of the authoritarian populist PiS party (Fomina, Kucharczyk, 2016; Kucharczyk 2017), increase the likelihood of direct democracy instruments being misused and manipulated at the service of populist majoritarianism.

16.1 State-wide referendums

Any nationwide referendum in Poland, as opposed to local referendums, is ordered by the Sejm (the lower chamber of Parliament) or by the president, in the latter case with the consent of the Senate, in cases of "particular importance". It is regulated by

Article 125 of the Constitution¹ and a 2003 act on referendums.² A referendum in Poland is optional; there is no legal obligation to hold it under any circumstances. In 2013, the Parliament rejected a proposal to make a referendum obligatory if it is proposed by one million citizens. If a referendum is held, voting can last one or two days and if the turnout exceeds 50% the result is binding. Otherwise, it has a consultative character only.

A separate procedure has been implemented for the ratification of international agreements whereby certain state institution competences are transferred to an international organisation. The Sejm can determine whether ratification can be decided by referendum (Wyrozumska, 2002). This procedure was designed specifically for Poland's accession to the European Union and was used once in 2003.

The use of referendums has recently become very politicised. The most recent proposals, of Presidents Komorowski and Duda, were in fact part of their political campaigns and were perceived more as political self-interest than as an attempt to decide on a pressing or controversial political issue. It has not always been so. Since the democratic breakthrough in 1989 and before 2015, four country-wide referendums were held in Poland and significant decisions were taken directly by the citizens.

The first two, both on 18 February 1996, related to the privatisation of state assets and property restitution. They came about as a consequence of heated discussions in the 1990s and the problem of overgrown state-owned companies and other assets inherited after the communist system, in which the state was the main owner in the economy and private ownership was perceived as unwanted and dubious. The referendums were non-binding, however, and only had a turnout of 32.44%.

¹ "The Constitution of the Republic of Poland of 2nd April" (1997), *Dziennik Ustaw*, No. 78, item 483 (<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>).

² „Ustawa z dnia 14 marca 2003 r. o referendum ogólnokrajowym” [The Act of 14 March 2003 on a state-wide referendum] (<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20030570507>).

In the following year, another referendum was held to accept the new Polish Constitution that replaced the so-called 'Small Constitution' of 1992,³ which in turn amended the communist constitution of 1952, but only in a limited scope. The referendum in 1997, with a turnout of 42.86%, was valid but formally non-binding. The constitution was accepted, but only by 52.7% votes in favour (45.9% voted No).

The last significant and successful referendum was organised six years later, in 2003, on membership of the European Union. It was also the first referendum conducted on the basis of the current Polish Constitution, according to which a referendum is binding "if more than half of the number of those having the right to vote have participated in it". Otherwise it has a consultative character, and the decision is taken by Parliament (Wyrozumska, 2002). The vast majority of voters (77.45%) favoured accession. Importantly, it was the only referendum in democratic Poland in which a majority voted (with a 58.85% turnout) and as such it was not only valid, but also binding for the state institutions.

The most recent referendum was organised in 2015 at the initiative of President Bronisław Komorowski. Its purpose was political. Komorowski proposed the referendum during the election campaign, after his poor performance in the first round of presidential elections and before the second, as a means of boosting his support among anti-establishment voters. The topics of the three questions reflected Komorowski's party political programme, i.e. i) changing the parliamentary election system to single-seat constituencies, ii) abolishing the financing of political parties from the state budget and ii) the tax system. The referendum was organised a few months after Komorowski's final defeat in the second round and without the support or interest of any political party or civil society group, including the anti-establishment Kukiz'15 party, for which the introduction of first-past-the-post

³ USTAWA KONSTYTUCYJNA z dnia 17 października 1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym, 'Dziennik Ustaw' 1992. [The Constitutional Act as of 17 October 1992 on the mutual relations between the legislative and executive power of the Republic of Poland and on local self government, *The Official Gazette*, 1992.

electoral system was the key (in fact the only) element of its electoral platform. Turnout was only 7.8%.

16.2 Local referendums

Apart from national-level referendums, local referendums can also be organised in Poland, but their scope in practice is limited. The law allows for the following referendum objectives:

- recalling local elected executives (presidents, mayors, councillors);
- deciding on important issues related to a particular municipality;
- issuing additional local taxation.

It is regulated by the local referendum act.⁴ The referendum can be initiated by the local council (only a 'substantial' referendum) or by citizens (any referendum). In the second case the application must be supported by differing numbers of citizens, depending on the municipality level. At the lower level of community (*gmina*) or district (*powiat*) it is 10% and in the highest level (*województwo*), 5%. The signatures have to be collected within 60 days.

To be valid the turnout in 'recall' referendums must be at least three-fifths of the turnout in the elections when the potentially recalled authority was elected and in the case of a 'substantial' referendum, it must reach the level of 30%.

In practice, most of the referendums that are organised relate to the former purpose. In 2010-15 there were 172 local referendums, of which 132 were to recall local authorities and only 40 on substantial decisions (Wójcik, 2015). Most of them were invalid due to low turnout (see below). The most common issues for 'substantial' referendums included the liquidation of the municipal police force (its tasks to be undertaken by the state police) and the localisation of wind power plants (Wójcik, 2015).

According to a report prepared for the Chancellery of the President, most of the 'recall' referendums were in fact related to a particular authority decision being opposed by the initiators of

⁴ Ustawa z dnia 15 września 2000 r. o referendum lokalnym [Act on local referendum] (<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20000880985/U/D20000985Lj.pdf>).

referendum. It suggests that the “real reasons behind referendums are personal or political conflicts” and “that initiators treat referendums as a preliminary election campaign and a kind of pre-election” (Chancellery of the President, 2013).

A recent successful use of a local referendum was in 2017 when the PiS government proposed a merger of the Warsaw municipality with the neighbouring suburban communities. The aim of the proposal was clearly political – to increase the chances of success of the ruling party in the forthcoming local elections by expanding the liberal-leaning Warsaw municipality to include conservative-voting suburban communities. This would lead to the absorption of small neighbouring municipalities. This blatant attempt at gerrymandering was met with fury from the smaller independent communities (most of which, it should be noted, voted for PiS in 2015). In 2017, in 22 municipalities (including the city of Warsaw) citizens’ committees managed to collect enough signatures to call the referendum on the government’s proposal. In the end, six referendums were organised and more than 90% of participants voted against the government’s plan. These referendums easily reached the required turnout threshold and were therefore valid. In other municipalities, including the City of Warsaw, referendums were suspended by the *wojewoda* (province governor, representative of the central government). In response the government decided to withdraw the plan and the remaining referendums were suspended as no longer being relevant.

16.3 Citizens’ initiative

The citizens’ initiative exists in Poland and is often referred to in public debate, but its results are rather limited. To propose a legal act to Parliament one must establish a committee of 15 members and then collect 100,000 signatures from citizens who are eligible to vote. However, the proposal is non-binding and in most cases does not lead to the adoption of a new law.

The citizens’ initiative exists in Poland and is often referred to in public debate, but its results are rather limited.

Between 1997 and 2015 there were 143 initiatives, 53 of which were successful, i.e. they fulfilled all conditions (including 100,000 signatures) to be submitted to the Speaker of the Sejm. However,

during this period (16 years) only 11 initiatives led to the adoption of a new law. Moreover, in some cases the resulting final draft of a legal act was contrary to the initiators' intentions due to changes made by the Members of Parliament. This was the case with an initiative on pharmaceutical law. The system does not make any provision to prevent such a situation, namely for a referendum to be organised in the final stage (as exists in Latvia). In eight out of these 11 cases, the draft law proposed by citizens was considered by Parliament together with other drafts proposed by the government or Members of Parliament. Most of the 53 initiatives were submitted by trade unions, NGOs or political parties; that is, institutions with considerable organisational capacity rather than by spontaneously self-organised citizens (Rachwał, 2016). None of them directly concerned European issues.

Nevertheless, there are frequent new proposals for such initiatives. For instance, abortion law is a recurrent issue. Initiatives proposing a restriction of the abortion law were submitted in 2011, 2013, 2015 and 2018 (all four successful in collecting signatures, the first three rejected by Parliament, the last one still in process). Initiatives proposing a liberalisation of the law were started in 2011 (unsuccessful in collecting signatures) and 2018 (successful but rejected by Parliament, despite being signed by half a million citizens).

16.4 Voter mobilisation

There is a general problem with voter mobilisation in Poland. Since 1989, referendums have not reached the required majority of eligible voters, the one exception being the European referendum in

There is a general problem with voter mobilisation in Poland.

2003, which was the result of exceptional work and effort. This is not related to the referendum instrument as such but is more the result of citizens' generally minimal engagement in democratic processes.

Turnout in parliamentary elections fluctuates between 40 and 55%; in local elections between 44 and 48% and in the most popular, and the most personalised elections, i.e. the presidential, it is around 50-55% in the first round and up to 60% in the second. But citizens' engagement is decreasing in general. At the other end of the spectrum are the European Parliamentary elections, for which the

turnout has never exceeded 25%. See below for a summary of referendum turnout.

Table 16.1 Turnout in state-wide referendums and in different types of elections

Issue	Date	Turnout
Privatisation of state assets and property restitution	18.02.1996	32.44%
New constitution	25.05.1997	42.86%
EU accession	7-8.06.2003	58.85%
Single-seat constituencies, financing political parties, tax system	6.09.2015	7.80%

Elections	Year	Round	Turnout
Parliamentary election (highest turnout)	1989		62.70%
Parliamentary election (lowest turnout)	2005		40.57%
Presidential election (highest turnout)	1995	I round II round	64.70% 68.23%
Presidential election (lowest turnout)	2005	I round II round	48.96% 55.34%
Local elections (highest turnout)	2014	I round II round	47.40% 39.97%
Local elections (lowest turnout)	1994		33.78%
European Parliament elections (highest turnout)		2009	24.53%
European Parliament elections (lowest turnout)		2004	20.87%

Source: Polish Electoral Commission.

As regards local 'substantial' referendums, out of 40 organised in 2010-15, 16 reached the turnout level and were valid (40%) (Wójcik, 2015). Recall referendums, by comparison, were valid in only 15% of cases. Altogether 17 presidents or mayors and 5 councils were

recalled (Wójcik, 2015). One can conclude that substantial issues are more important for voters than recalling authorities. It has to be noted, however, that the low turnout in such referendums is not necessarily a result of citizens’ disengagement, rather that abstention from a vote can be equated to voting against the initiative. For these reasons (opponents of the elected authorities are usually more motivated), it is relatively easy to initiate a referendum, but difficult to reach the turnout threshold. This paradox was also apparent in Warsaw, where such a referendum was organised in 2013 to recall the City President, Hanna Gronkiewicz-Waltz. Although most voters favoured recalling her, the referendum was invalid because the threshold was not reached. The final turnout of 25.66% was lower than the legally required 29.1%.

Table 16.2 Turnout in local referendums in Poland (2010-15)

Type of referendum	Turnout
Substantial – average	28.20%
Recalling local authorities – average	17.89%
Total	20.22%

Source: Wójcik, 2015.

16.5 The European referendum 2003

The success of the European referendum is often attributed to the efforts and the mobilisation of civil society. At that time NGOs provided a number of voter mobilisation activities, information

The success of the European referendum is often attributed to the efforts and the mobilisation of civil society.

campaigns and pro-European initiatives, especially at the local level and very often with no financial support from either the state or EU institutions (Kucharczyk, Fałkowski, 2005). A pro-turnout campaign was launched by the Institute of Public Affairs, which successfully advocated the adoption of pro-turnout measures such as giving turnout information at different stages of the vote, guaranteeing free access to public radio and TV for civil society organisations and, most importantly, extending the voting period from one to two

days. This latter measure increased voters' awareness about the importance of turnout.

Political parties and other institutions and organisations, including the media, were also very active and the debate about the pros and cons of EU membership was very engaging. The then President Kwasniewski, who was at the peak of his popularity, threw all his political capital behind the Yes campaign. Although the mainstream parties' levels of engagement differed, in the end the ruling Democratic Left Alliance (post-communist); the main opposition party at that time, the Civil Platform, and even the Law and Justice party all ran separate pro-European campaigns (Piasecki, 2004).

In its news service Polish television channel (TVP1) showed a clock counting down the days and hours to the referendum. Both state and private (TVN) broadcasters presented separate programmes about the EU, and European issues were even featured in popular soap operas (Piasecki, 2004).

Another important factor was the support of the Catholic Church. Its support was the result of the personal engagement of Pope John Paul II, whose openly pro-European endorsement weeks before the referendum encouraged the Polish Church, usually rather suspicious of Europe, to prepare a letter to read in all churches a week before the referendum encouraging people to vote Yes (Piasecki, 2004). Significantly, the Church's pro-EU stance is thought to have been the result of a more or less formalised 'agreement' with the post-communist government to abandon some of its policy programme, such as liberalising access to abortion, in exchange for the Church's support for the European Union.

16.6 Poles and the European Citizens Initiative

Poles' participation in the successful initiatives is significant. Out of four successful initiatives that reached the required one million signatures, Poles were the most numerous signatories in one (on abortion; 235,964 signatures, followed by Romanians – 110,405 and Spaniards – 144,827), and the third most numerous in the other (an initiative to stop vivisection; Germans – 164,304, Spaniards – 47,194,

Poles' participation in the successful citizens' initiatives is significant.

Poles – 38,824) (ECI Register, 2018).⁵ They were much less involved in the other two on banning pesticides and recognising access to water as a human right. Data on unsuccessful initiatives is unavailable.

Table 16.3 Number of Polish signatories of four successful ECI

Name of ECIs	Number of Polish signatories	Percentage of all signatories
Ban glyphosate and protect people and the environment from toxic pesticides	7,107	0.66%
Stop vivisection	38,824	3.31%
'One of us' Legal protection of the dignity, the right to life and of the integrity of every human being from conception (...)	235,964	13.71%
'Water and sanitation are a human right! Water is a public good, not a commodity!'	3,962	0.24%

Sources: ECI Register, 2018.

The fact that organisers managed to collect so many signatures for the abortion-related initiative is due to the support and active involvement of the Catholic Church and affiliated institutions (NGOs, right-wing media), which is also why so many signatures were collected in favour of a referendum on a total ban of abortion (which is supported by less than 10% of the population, but strongly endorsed by the Church hierarchy).

16.7 Influence of direct democracy on national political realities

Debates about organising referendums in Poland have recently concentrated on two issues: adopting single-mandate constituencies in parliamentary elections and access to abortion. Both cases

⁵ See <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000007>.

confirm instrumental usage of this tool by politicians, which easily becomes a populist element to boost their visibility in public debates. Most recently (and controversially) President Andrzej Duda announced his intention to hold a referendum on whether the current Polish Constitution of 2007 should be amended or replaced.

Debates about organising referendums in Poland have recently concentrated on two issues: adopting single-mandate constituencies in parliamentary elections and access to abortion.

16.7.1 Single-mandate constituencies – case study 1

A social non-partisan movement advocating single-mandate constituencies has been active since the early 1990s. It has promoted this electoral system as a way to create closer relations between Members of Parliament and ordinary citizens, resist partisan elections and promote democracy within political parties. The movement directly refers to the models in the UK, France and the US, real or imaginary.

Introducing single-mandate constituencies in the parliamentary elections in Poland became one of the proposals of the founding political programme of the Civil Platform (of *Platforma Obywatelska*, PO), ruling the country in 2007-15. In 2004 the party managed to collect 750,000 signatures for a citizens' initiative to introduce such legislation. However, it later implemented them only in the Senate and municipalities, but not in the Sejm (the lower chamber), because the latter case would be inconsistent with Article 96 of the Constitution, stating that elections to the Sejm are proportional.⁶

The fact that PO did not make good on its electoral pledge led to the creation of an anti-establishment, populist movement by former rock singer Paweł Kukiz (now called Kukiz'15), for whom the postulate of introducing single-mandate constituencies was the first and foremost political aim. Kukiz performed well in the 2015 parliamentary elections, gaining third position with 8.81% of votes. Although single-mandate constituencies and criticism of the PO's

⁶ It should be noted that the idea that single-mandate constituencies would 'heal' Polish democracy was strongly contested by experts, but these voices were largely ignored by the key players.

abandoned political programme were the main slogans of his campaign, one can assume that voters were more attracted by his general anti-establishment and populist rhetoric than by this particular promise.

Nevertheless, single-mandate constituencies as a direct democracy issue returned as a 'rescue initiative' of President Bronisław Komorowski, who proposed it during the election campaign after his unexpectedly poor performance in the first round of presidential elections. The questions referred to i) changing the parliamentary election system to single-seat constituencies, ii) ending the financing of political parties from the state budget and iii) the tax system (introducing a rule that tax offices should resolve any doubts in legal tax interpretations in favour of the tax-payer).

As experts pointed out, these proposals were intended to please voters, not to solve the persistent problems of democracy in Poland. Voters were not impressed and Komorowski lost the elections to PiS candidate Andrzej Duda. The referendum, organised a few months later, proved to be a failure with a turnout of only 7.8%.⁷ Unlike the previous referendums at national level (the constitutional, the European etc.) the 2015 referendum was mainly organised to save Komorowski's presidency. Importantly, it did not impact the issue of electoral system in Poland. Single-seat constituencies have not been implemented and the issue has (at least temporarily) disappeared from the public agenda.

16.7.2 The abortion issue – case study 2

For the last 25 years there have been a number of attempts to change the so-called 'abortion compromise', not in fact a compromise, but one of the most restrictive abortion laws in Europe. The law was adopted after the 1989 democratic transition under pressure from the Catholic Church that had voiced strong opposition to abortion since the 1980s. It bans abortion in all but four cases (for medical but not social reasons). Since then both women's rights groups and conservatives have tried to change the law that enjoyed the support

⁷ Some 78.75% voted to implement single-mandate constituencies; 82.63% were against financing political parties from the budget and 94.51% for implementing the rule favouring tax-payers.

of mainstream political parties. Initially, during the 1990s, public opinion was in favour of the earlier, more liberal legal framework, but with time and especially under the influence of the Church the status quo (the so called 'abortion compromise') was supported by a plurality, if not a majority, of voters.

Direct democracy tools, i.e. citizens' initiatives and referendum proposals, were used by groups seeking to change the law. Resistance to the restrictive abortion law led to the creation of a strong movement already in 1993, when the law was approved. The movement managed to collect 1.7 million signatures under an initiative to organise a referendum on this issue. The initiative was rejected by the Sejm, which was dominated by right-wing parties.

In the 2010s several other abortion-related initiatives were undertaken, but those aimed at restricting the law were far more successful in collecting signatures. The debate was re-opened in 2016 when an ultra-conservative organisation, *Ordo Iuris* (with strong links to similar conservative organisations in Latin America, the US and Russia) introduced a citizens' initiative entitled 'Stop Abortion' to Parliament to totally outlaw abortion. Eventually it collected almost half a million of signatures. A counter-proposal: 'Save Women' was launched in response, to liberalise the regime. It collected another half a million signatures.

Both initiatives were submitted to Parliament and voted on simultaneously, but only the 'Stop abortion' initiative was passed on to be further processed by a parliamentary commission, whereas the 'Save women' initiative was rejected. In the process, some MPs from the liberal opposition came under strong criticism for not supporting the proposal to liberalise abortion law. They voted to reject both the liberal and conservative proposals and defended the status quo.

An important development in Poland's struggles with abortion legislation and reproductive rights was the Irish referendum of 2018, where an overwhelming majority of Irish citizens voted to liberalise the country's restrictive laws. Polling conducted immediately after this referendum showed an upsurge in support for the liberalisation of the abortion law in Poland, despite the Polish Church's strong condemnation of the vote in Ireland.

Conclusions are rather negative when it comes to strengthening democratic processes via direct democracy. Anti-abortion movements are much stronger, better organised and can use the organisational and 'marketing' support of the Catholic Church and affiliated institutions (such as Catholic media) to collect large numbers of signatures quickly and frequently. This does not necessarily reflect the level of support for their positions in society, however, because according to research only around 10% of citizens support further restricting the abortion law. The frequent attempts to tighten the already strict legislation led to deeper polarisation of public opinion and – somewhat paradoxically – have created space for the supporters of liberalisation.

16.7.3 President Duda's 15-question referendum – case study 3

The most recent use of direct democracy tools was the referendum proposed by the President Andrzej Duda in 2018. Duda's initiative is, at least to some extent, an attempt to change the conversation about his own track record vis-à-vis the existing constitution. The opposition and the legal establishment have accused him of contravening the Constitution. A series of reforms of the Polish judiciary by the Law & Justice government, with the support of the president, have been criticised by international organisations as undermining the independence and legitimacy of the Constitutional Tribunal and the Supreme Court, namely forcing judges to retire after lowering their retirement age and granting the Minister of Justice discretionary power to appoint and dismiss all presidents of courts without concrete criteria etc. This has led the European Commission to trigger a procedure under Article 7 of the Treaty on the EU, which could result in sanctions against Poland for undermining the rule of law, enshrined in Article 2 of the aforementioned treaty. The reforms of the judicial branch of government led to massive street protests and calls for President Duda to veto them. However, Duda eventually signed the controversial legislation and publically defended the reforms. The proceedings under Article 7 as well as the decision of the European Court of Justice, which ordered the Polish government to suspend some of the reforms, gave further grounds to opposition party calls

for Duda's impeachment (which is unlikely as long as the PiS has a parliamentary majority).

In order to regain the initiative, President Duda has frequently referred to the need to adopt a new Constitution, for which PiS does not have the required 'super majority' in Parliament. To overcome this obstacle, President Duda proposed a referendum. According to his proposal, citizens would be asked 15 questions, the answers to which would set the direction of constitutional changes.

The political motivation of the proposal is obvious from the first question: "Are you in favour of adopting (a) a new Constitution, or (b) changes to the current Constitution", with no possibility to reject the idea of amending the Constitution at all. Other questions relate to ensuring the continuation of the Law and Justice social programmes in the Constitution.

Interestingly, one of the questions proposes a new direct democracy tool, i.e. "3. Are you in favour of introducing in the Constitution an obligation to organise a country-wide referendum on issues of essential importance for the Country and the Nation, if at least 1,000,000 make such a request?".⁸

Two of the (mutually exclusive?) questions are related to Poland's membership of the European Union: "7. Are you in favour of securing Poland's membership of the EU in the Constitution?" and "8. Are you in favour of securing in the Constitution Poland's sovereignty within the EU and the rule of superiority of the Constitution over international and European law?".

The referendum is part of the president's drive to bolster his political position vis-à-vis his Law and Justice party. For this reason political reactions to the proposal were ambivalent and the party has not decided on the proposal so far (the organisation of the referendum has to be accepted by the Senate, which can only accept or reject the proposal, not propose amendments). The opposition has called to boycott the referendum, arguing that a president who routinely contravenes the Constitution does not have a mandate to change it.

⁸ Working translations by authors.

16.8 Political party attitudes towards direct democracy

Referendums in Poland have mostly been run along partisan lines. One exception is the 2003 European referendum, where there was by-partisan support for the Yes vote across the left-right political divide, and only fringe parties and politicians supported a No vote or called for a boycott. This was undoubtedly a key factor in the remarkable success of this referendum, especially when compared to others. The two referendums (one held, the other proposed) by Presidents Komorowski and Duda, are at the opposite end of the spectrum as their main aim seems to be to raise the political standing of their respective supporters. Both referendums are unusual in that they are deeply unpopular with their proponents' home parties.

Political parties represented in Parliament do not usually support citizens' initiatives, for instance, in the collection of signatures. This is probably because such initiatives place them in an uncomfortable position that they cannot fully control, highlighting ideological divisions within the parties, not just between them.

The citizens' initiative has always been a rather cumbersome tool for political parties. Defining their positions on such initiatives may be divisive, as was the case with the last two initiatives to liberalise or restrict abortion law. The 2017 abortion liberalisation initiative was rejected by Parliament by only nine votes, because of the confusion of some members of the centre-right parties PO and *Nowoczesna* (or 'Modern'). This situation and the ensuing media criticism led some parliamentary members of *Nowoczesna* to leave the party, causing a serious crisis and a decline in popularity among voters. At the same time, the more restrictive abortion proposals are a challenge for the ruling PiS party, which is hard pressed by the Church hierarchy and fears social protests against such measures. Another example is the European flag initiative. Despite the pro-European statements of some political parties, none of them is directly involved in it.

The situation is rather different for parties without a parliamentary representation, for which an initiative can be a way to mobilise votes and increase the party's constituency. This is the

case for the most recent initiative of the left-wing *Razem* (or Together) party that is currently collecting signatures in support of an initiative to shorten the working-week from 40 to 35 hours.

Conclusions: is Poland slouching towards a 'Polexit' referendum?

Mobilisation around European issues has picked up more recently, largely due to the current government's anti-European stance and its anti-democratic activities. There are two issues that dominate the Polish government's European policy: refugee and asylum policy, and the rule of law. On both issues, the Polish government's position is a long way from that of the European Commission and European Parliament. The recent proposals on the future MFF (multi-annual financial framework, or the EU budget), which included a deep cut in funds for Poland, sparked a new wave of anti-EU statements from the ruling PiS party.

There are two issues that dominate the Polish government's European policy: refugee and asylum policy, and the rule of law.

The Law and Justice party has had considerable pushback from civil society organisations on its European-level activities. There have been protests against the government, at which the European flag is an important symbol. A large demonstration in Warsaw in May 2016 brought together all mainstream parliamentary and non-parliamentary parties and politicians opposing the Law and Justice party. It had as its motto "We are and will be in Europe". In reaction to the removal of European flags from the room where the Polish prime minister organises press conferences, a citizens' initiative was launched to provide the European flag with similar legal protection in Poland as the Polish red and white flag. It is promoted by a coalition of NGOs called 'The European Front'.

The most notable recent example of other European referendums having resonance in Poland was Brexit. The PiS government officials and pro-government media and experts used the results of this referendum in discussions about whether Brussels should pressure the Polish government on its backsliding on the rule of law. They argued that adopting Article 7 sanctions could

generate anti-EU sentiment among the public and lead to calls for a 'Polexit' referendum, whose results (they claimed) would be unpredictable.

As it turned out there was no real anti-EU backlash among the public after the Brexit referendum, nor after triggering Article 7, and

Polish society continues to support the country's EU membership by 80-90%.

Polish society continues to support the country's EU membership by 80-90%. According to the recent Institute of Public Affairs' opinion poll, only 4% of Poles support exiting the European

Union (Łada, 2018).

Nevertheless, the aforementioned constitutional referendum proposal by President Duda includes a question about the supremacy of Polish law and the national Constitution. If such a statement is endorsed by the public in a referendum, it could encourage Eurosceptics and have troublesome implications for Poland's membership of the EU. While it is hard to imagine a majority of Poles endorsing an exit from the EU, an 'exit by stealth' scenario, as an accumulated effect of the many conflicts between populists, the Eurosceptic Law and Justice government and the EU institutions, cannot be ruled out.

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17. THE UNTAPPED POTENTIAL OF DIRECT DEMOCRACY IN ROMANIA

MIHAI SEBE & ELIZA VAȘ¹

Introduction

Direct democracy instruments have been used in Romania several times in recent years, both by the authorities and citizens. Six referendums were organised between 2003 and 2018 and there were also calls for various consultations, proving that citizens can have the power to decide both in elections and in other circumstances. Local referendums are also a good example of how the ‘power distance’ between people and decision-makers can be reduced by more inclusive formats of decision-making.

When it comes to citizens’ initiatives and civic movements, we can observe an upsurge in their use between 2007 and 2018. While some of the initiatives and movements triggered many debates in society and led to a marked divergence of opinion, others paved the way for reforms and a change in attitudes.

Romania may have lost a lot of its citizens to emigration in recent years, but on the plus side, seeing how things work in other countries has given rise to demands for reform, as in “I want a country like the ones abroad”. However, we have also seen that liberal-style democracy cannot and should not be taken for granted,

¹ The authors would like to thank the third member of the Romanian research team, Mr. Bogdan Mureșan for his useful comments and assistance provided in the realisation of this paper. Also, the entire team would like to express their gratitude for the support and feedback provided by Professor Gabriela Drăgan, Director General of the European Institute of Romania and by Ms. Oana Mocanu, PhD, Head of Studies and Analyses Unit, European Institute of Romania.

even in the more developed Western European societies that usually serve as role models for Romanians and their political representatives.

17.1 Transitioning from communism to democracy (1989-2007)

Granted, the past decade has not been the best in the history of the European 'project', but arguably it was the best in the history of Romania's modern state, which celebrates its 100th anniversary in 2018. In spite of the numerous crises that have affected the EU as a whole and Romania as a member state, the country has progressed significantly in terms of its economic prosperity, political stability and overall security since accession in 2007, two and a half years after the 'Big Bang' enlargement of 2004.

Since the beginning of the 1990s, successive National Salvation Front (FSN)-dominated governments struggled to convince the European community that the country was serious about economic and political reform in its quest for Euro-Atlantic integration. Even though the 1990s were marked by (occasionally violent) domestic infighting and inter-ethnic incidents (especially concerning the Roma and Hungarian communities), Romania has learned to deal with its national minorities in a more consensual manner. It has learnt to keep racist and xenophobic sentiments at bay and follow its overarching Euro-Atlantic integration project, which was basically the most common denominator of all political parties, regardless of their left-right orientation.

The Romanian government was among the first of the CEE countries to submit a membership application on 22 June 1995. The submission was preceded by the 'Snagov Declaration', a symbolic document signed by all major political parties in the country, which stated their firm commitment to the country's integration into the EU. This signalled a higher than usual show of unity by the Romanian political elite. Negotiations were effectively launched in February 2000 and concluded in December 2004.

In 2003, a constitutional referendum was held to revise and modernise the constitution (fundamental law), for the first time since its adoption in 1991 (Table 17.1, Permanent Electoral

Authority, 2003),² in accordance with the future accession to the European Union. Around 70 articles (from a total of 156) were proposed for modification or completion. Of these we can mention a couple here regarding the instruments of direct democracy: in sum, national sovereignty must reside with the Romanian people who will exercise it by means of their representative bodies, by means of free, periodical and fair elections, as well as by referendum. Another change proposed was that organic laws should regulate the organisation and holding of referendums. Also, that the revision of the Constitution must be subject to approval by referendum, organised according to the provisions of Article 147 (3) of the Constitution of Romania (Law for the revision of the Constitution of Romania, 2003).

Table 17.1 Constitutional referendum results of 18-19 October 2003

<i>Do you agree with the law on the revision of the Constitution of Romania as adopted by the Parliament?</i>	
Voter turnout	55.70 % (corresponding to 9,938,441 citizens)
Yes	89.70% (corresponding to 8,915,022 citizens)
No	8.80% (corresponding to 875,172 citizens)

Accession to the European Union in 2007 gave rise to joyful celebration and fulfilled the long-held hopes of millions of Romanian citizens. It represented a formal re-joining of the European family and union with 27 other countries, promising to be the best framework for Romania’s future development. Despite the consensus that accession to the EU was the most

Despite the consensus that accession to the EU was the most important event at that time, internally the political scene remained fragmented.

important event at that time, internally the political scene remained fragmented. Just one month after joining the European Union, there was a call to impeach President Traian Băsescu.

² Permanent Electoral Authority website: <http://alegeri.roaep.ro/>.

17.2 Direct democracy instruments and citizens' participation in Romania (2007-18)

17.2.1 Referendums

According to the Romanian Constitution (Article 95), the president can be suspended from office when grave acts infringing upon constitutional provisions have been committed. In this specific case, on 12 February 2007 the Social Democrat Party³ started court proceedings to suspend Traian Băsescu, the then Romanian president. Sixteen days later, Parliament voted to set up a commission of inquiry to further investigate the issue. The commission's report concluded that the president had violated the Constitution. However, the constitutional court later ruled that the president could not be found guilty in the sense required by the fundamental law. As the opinion expressed was a non-binding one, the next step towards suspension was taken and Parliament voted to impeach Băsescu on 19 April 2007 (322 votes for, 108 against and 8 abstentions). One month later a legally binding referendum was organised and citizens were called upon to cast their vote on the issue (Table 17.2, Permanent Electoral Authority, 2007).

Table 17.2 Presidential referendum results of 19 May 2007

<i>Do you support the impeachment of the President of the Republic Traian Băsescu?</i>	
Voter turnout	44.45% (corresponding to 8,135,272 citizens)
Yes	24.74% (corresponding to 2,013,099 citizens)
No	74.48% (corresponding to 6,059,315 citizens)

As voter turnout did not exceed 50%, the president could not be impeached. The constitutional court had ruled that a minimum 50% of eligible voters would be needed to reach a quorum. The main accusations made by the opposition to impeach the president referred to partisanship towards the Democratic party, conflicts with parliament and the prime minister, disregarding the separation of powers principle and involvement in issues related to

³ Social Democrat Party website: <http://www.psd.ro/>.

the independence of the judiciary, among many others (Soare, 2014). Rather than leading to a dismissal vote, the allegations reinforced the president's image as an anti-corruption hero. Messages used in the referendum campaign were later used to strengthen his political profile and secure majority support among citizens: namely that the fight against corrupt political oligarchs must continue, Romania's government had to be modernised and the country's status within the EU must be consolidated and safeguarded beyond dispute (Maxfield, 2007).

This political turmoil continued during 2007, with governmental changes taking place as well. In the second half of the year it was the president who called for a new referendum, this time

According to Romania's constitution (Article 90), the president may, after consultation with Parliament, ask citizens to express their views on matters of national interest by referendum.

to change the electoral system. According to Romania's constitution (Article 90), the president may, after consultation with Parliament, ask citizens to express their views on matters of national interest by referendum. The purpose of the referendum was to vote for or against the adoption of a new uninominal

system for the election of MPs.⁴ This envisaged a majority-based voting system with two rounds of polls in which those obtaining an absolute majority won all the votes, and where constituencies have only one mandate (International Foundation for Electoral Systems, 2007).

The referendum was scheduled to take place simultaneously with the first European Parliament elections open to Romanian citizens. Unfortunately, combining the two events proved problematic and caused confusion among voters; the participation rate was lower than expected in both cases. Even though the proposal to change the electoral system was approved with a majority of over 80% of votes cast, it remained only of symbolic importance as it was impossible to produce effects due to

⁴ A single-member district or single-member constituency is an electoral district that returns one officeholder to a body with multiple members such as a legislature. This is also called single-winner voting or winner takes all.

insufficient voter turnout (Table 17.3, Permanent Electoral Authority, 2007).

Table 17.3 Referendum results of 25 November 2007

<i>Do you agree that, beginning with the next elections that will be held for the Romanian Parliament, all deputies and senators be elected in single-member constituencies, based on a majority vote in two rounds?</i>	
Voter turnout	26.52% (corresponding to 4,851,470 citizens)
Yes	81.36% (corresponding to 3,947,212 citizens)
No	16.17% (corresponding to 784,640 citizens)

Discussions concerning the revision of the Romanian electoral system were nothing new; different positions on the topic had previously been expressed. However, it was soon after joining the European Union that the exchange of ideas on the matter between the president, the government, the parliament and civil society intensified. An important role in the process was that of the Pro-Democracy Association (a non-governmental organisation), which has been promoting the idea of electoral reform since 1995. Years after organising public campaigns and gathering more than 470,000 signatures to support a proposal on electoral law reform and the introduction of an uninominal system, the Pro-Democracy Association's proposal was backed by the government and further discussed in Parliament. While the president's plan was not approved through the advisory referendum, the Association's proposal provided the background for the electoral law adopted in 2008 (the Resource Centre for Public Participation, 2010).

In 2009, a new call for a referendum was made by then President Băsescu, in an attempt to tackle the issue by putting two questions to citizens: whether Parliament should be changed to a unicameral one and whether the number of MPs should be reduced to 300 (Table 17.4, Permanent Electoral Authority, 2009). Being in the last year of his mandate and having a limited time span before the next presidential elections, he argued that these changes would lead to a more efficient system, with reduced costs. Another argument was linked to the financial crisis, whose socioeconomic consequences started to affect citizens directly and on a large scale.

At first, Romanians were told by the ruling class that the country was going to circumvent the crisis altogether.

The 2009 referendum triggered much debate, mainly because it was organised at the same time as the first round of the presidential elections, on 22 November. Unsurprisingly, the incumbent president was running for a second term in office. On this matter, four NGOs asked the Romanian ombudsman to bring to the attention of the constitutional court that the simultaneous organisation of the referendum and the elections may give a clear and unfair advantage to the incumbent president. Moreover, civil society members pointed out that having a single presence list for voters both in the referendum and in the presidential election would increase the chance of electoral fraud (Hotnews, 2009). The NGOs' request was denied, and the referendum date remained as previously set.

Table 17.4 Referendum results of 22 November 2009

<i>Do you agree with the change to a unicameral Parliament in Romania?</i>	
Voter turnout	50.94 % (corresponding to 9,320,240 citizens)
Yes	83.31% (corresponding to 7,765,573 citizens)
No	10.46% (corresponding to 975,252 citizens)
<i>Do you agree that the number of MPs be reduced to a maximum 300?</i>	
Voter turnout	50.94 % (corresponding to 9,320,240 citizens)
Yes	83.31% (corresponding to 7,765,573 citizens)
No	10.46% (corresponding to 975,252 citizens)

The referendum reached the compulsory turnout rate to be valid and the majority of votes were in favour of the proposals. However, as it was neither legally nor politically binding, it had little consequence. In order to reduce the number of MPs, a law adopted by Parliament is required, and although several bills had been introduced by different parties none had attained a majority of the votes by 2018. Traian Băsescu turned out to be the most popular candidate, later also winning the second round of the presidential elections, with 50.33% of the votes.

The only thing that is constant is change, as Heraclitus is reputed to have said. This axiom also applied to President Băsescu’s second term, which was subject to a new referendum for impeachment (Table 17.5, Permanent Electoral Authority, 2012). In 2012, a new set of allegations emerged, adding to the ones invoked in 2007. It was claimed that the austerity measures supported by the president led to a further impoverishment of the population. The Social Liberal Union that was in office at that time started the process to suspend the president by arguing that the government’s policies were being blocked by the head of state (Corinne Deloy, 2012). Romania’s Parliament voted in favour of the suspension (256 in support, 114 against) at the beginning of July 2012. The Constitutional Court later decided that the referendum would be considered valid and thus be legally binding if voter turnout exceeded 50% and the majority of votes favoured suspension (decision no. 371 of 10 July 2012).

Table 17.5 Constitutional referendum results of 29 July 2012

<i>Do you support the impeachment of the President of the Republic Traian Băsescu?</i>	
Voter turnout	46.24 % (corresponding to 8,459,053 citizens)
Yes	87.52% (corresponding to 7,403,836 citizens)
No	11.15% (corresponding to 943,375 citizens)

The votes were overwhelmingly in favour of suspension, but the turnout proved to be lower than 50%, thus ultimately leaving it to the Constitutional Court to invalidate the referendum in the end.

In the months before and after the vote, Romania’s political scene was turbulent, to say the least. Five years after accession to the EU, Romania found itself in fresh political turmoil. José Manuel Barroso, President of the European Commission at the time, publicly addressed the Romanian Prime Minister Victor Ponta on “the importance of respect for the rule of law and the independence of the judiciary for restoring political and economic stability and confidence in Romania” (European Commission, 2012).

Five years after accession to the EU, Romania found itself in fresh political turmoil.

Six years later, between 6 and 7 October 2018, a controversial referendum took place. The purpose was to consult citizens on a proposal to amend the constitution to define marriage as a union between one man and one woman. It marked some important firsts for the Romanian political life: primarily that it was the first referendum initiated based on a citizen’s initiative without direct political backing. It represented an ongoing ideological debate and a resurgence of traditional Christian based-values among the population (see the *Coalition for Family* below). It was also the first referendum to take place under looser conditions, having cut the threshold for validation to just 30% of all the registered voters, and at least 25% of voters to cast a yes/no ballot for the result to be considered valid. Finally, it was the first with lax anti-fraud monitoring, unlike past electoral processes.

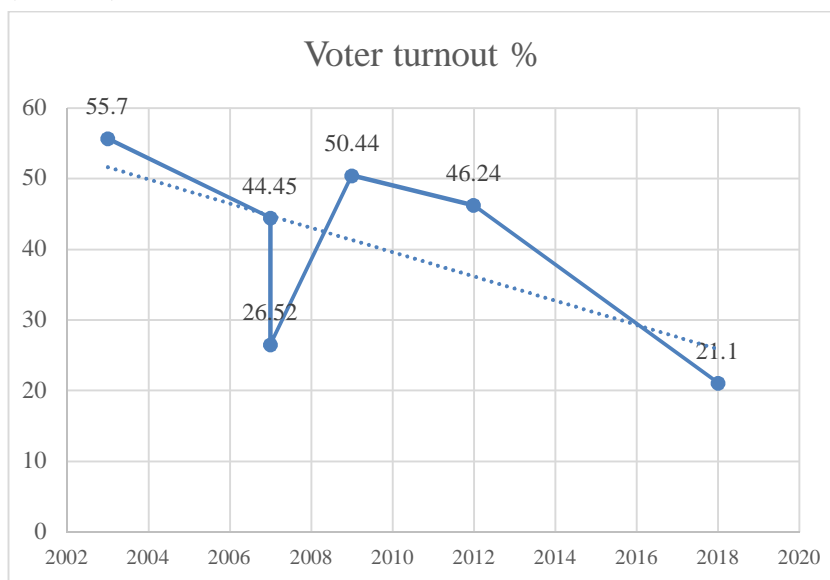
The progressives, the civic and the pro-LGBTQ rights organisations had decided that the best strategy was to call for an organized boycott in order not to meet the voter threshold – a strategy that proved to be successful given that the referendum failed to reach a quorum (Table 17.6, Central Electoral Office, 2018).

The aftermath of the referendum saw a heated debate on whether low turnout was a result of the boycott (as a sign of the pro-European engagement of Romanian citizens), of a rejection of the current governing coalition or in a much broader sense, of Romanian citizens’ failure to partake in civic engagement and fulfil their civic duties.

Table 17.6 Constitutional referendum results of 6-7 October 2018

<i>Do you agree with the law on the revision of the Constitution of Romania as adopted by the Parliament?</i>	
Voter turnout	21.10 % (corresponding to 3,857,308 citizens)
Yes	91.56% (corresponding to 3,531,732 citizens)
No	6.47% (corresponding to 249,412 citizens)

Figure 17.1 Comparative view of voter turnout for national referendums (2003-18)



Source: authors' own elaboration.

The referendums from 2003 to 2018 had three main purposes: to impeach the president, to vote on matters of national interest and to give citizens a voice on issues regarding the Constitution. As illustrated (Figure 17.1, Permanent Electoral Authority) voter turnout varied depending on the subject of the referendum (the highest rate of participation was in 2003 when the Constitution was amended for preparing the accession to the EU, and the lowest rate of participation was registered in the last referendum for defining family). But the referendum Law 3/2000 (Article 13) also included the possibility to organise local referendums on specific issues in the administrative-territorial units and the administrative-territorial subdivisions of the municipalities.

An example with an EU dimension was that of the Oradea municipality (a city located in northwest Romania), which in 2015 advanced the idea to unite with Sânmartin commune (comprising six villages and two spa resorts, of which Băile Felix is the biggest in Romania). The main arguments brought forward by the municipality related to the economic development of the area. With the two structures united, more European funds could be accessed

and the potential to attract tourists would increase significantly. Yet the city of Oradea also needed more space for housing and other services. The citizens of Sânmartin and Oradea were called to cast a vote on the issue in 2015, and later on in 2016. Turnout had to be higher than 30% according to the Romanian legislation, but because it failed to meet this threshold among the citizens of Oradea, the referendum had no effect.

17.2.2 Citizens' initiative

Another direct democracy instrument, closely connected to referendums, is the citizens' initiative. Romania's fundamental law (Article 150) stipulates that the revision of the Constitution may be initiated by the president at the proposal of the government; by at least one quarter of the deputies or senators; or by at least 500,000 citizens with the right to vote. Thereafter, citizens who initiate a revision of the Constitution must correspond to at least half the number of the counties in the country, and in each of the respective counties, or in the municipality of Bucharest, at least 20,000 signatures must be registered in support of the initiative.

For example, two cases of citizens' initiative are the subject of considerable debate in Romania at the moment. The first one concerns the *Coalition for Family*,⁵ a group of 46 associations and foundations that advocated a change of the constitution to state that a family is composed of a woman and a man (Coalition for Family, 2017). The issue brought Romania closer to the so-called Visegrad countries, such as Poland, and distanced it from the so-called 'hard core' of the European Union. What is a family at the end of the day? On the one hand, there is the Coalition for Family definition, and on the other there is the broader, more liberal definition (also represented by the Respect Platform⁶) that includes legal arrangements such as a civil partnership. In the end, it is not so much about family as about the associated civil liberties and social benefits, among others.

The Coalition for Family gathered more than three million signatures nationwide in support of its cause, and against this

⁵ Coalition for Family website: <http://coalitiapentrufamilie.ro/>.

⁶ RESPECT Platform for Rights and Liberties (2018), https://platformarespect.ro/despre_noi/.

background a constitutional amendment proposition was filed with the Romanian Senate in 2016. The Constitutional Court then gave a positive opinion on the amendment proposal (decision no. 580 of 20 July 2016), after which it was debated in the Senate once the chamber of deputies had expressed a favourable vote on the amendment. Following discussions, the referendum was set to take place between the 6 and 7 October 2018.

Another initiative set to revise the constitution concerns the Save Romania Union Party (USR),⁷ which has politicians' criminal records in its sights. The political party started to gather signatures in March 2018 and by the end of September had more than 1 million supporters, exceeding 20,000 signatures in more than half of the counties. The campaign aims to amend Article 37 of the Constitution by adding a new paragraph:

The citizens permanently convicted of deprivation of liberty for intended offences cannot be elected to the bodies of the local public administration, to the Chamber of Deputies, to the Senate or as President of Romania, until a situation that removes the consequences of the conviction occurs (*Without convicted people in public offices*, manifesto, 2018).

The campaign's website also specifies the legal steps required to put forward the initiative: a group comprising at least ten citizens is formed; the proposed draft amendment is sent to the legislative council for an opinion; the draft and the consultative opinion are published in the Official Gazette; the group starts to collect at least 500,000 signatures in six months from at least 21 counties; the signature lists, together with the draft and the explanatory memorandum, are registered with Parliament; Parliament sends the proposal to the Constitutional Court for control; the parliamentary procedure starts, with debates in the committees and voting in the plenary session of the chamber of deputies and the senate; the referendum can then be organised.

17.2.3 Civic movements

The above-mentioned initiative has close links to the biggest civic movements that took place in Romania after 1989. At the beginning

⁷ Save Romania Union website: <https://www.usr.ro/>.

of 2017, the governing coalition led by former Prime Minister Sorin Grindeanu passed an emergency decree to amend the criminal code. The law, enacted without parliamentary deliberation, was seen as reversing a decade-long process to fight graft after Romania's EU accession (i.e. it was meant to decriminalise official misconduct when the funds involved amounted to less than €44,000). On the one hand, it was argued that the proposed changes would lead to a more efficient judicial system, but citizens opposed the move and organised massive protests – nearly half a million citizens in total. On the other hand, such changes were likely to be perceived to benefit several politicians, including prominent figures of the ruling coalition who were either under investigation or facing trials for previous offences. In essence, the changes in law were seen as measures to decriminalise corruption, or at least to make it more socially acceptable. The European Commission released a statement saying that “the fight against corruption needs to be advanced, not undone.” (European Commission, 2017). In addition, the embassies of Belgium, Canada, France, Germany, the Netherlands and the United States issued the joint statement:

We, Romania's international partners and allies, express our profound concern at the actions of the Romanian Government on the night of January 31, 2017, which have undermined Romania's progress on rule of law and the fight against corruption over the past ten years. (US Embassy in Romania, 2017)

The protests, which refused any formal affiliation or financing from opposition parties, changed the status quo. The government abrogated the emergency decree no. 13/2017 a few days later and asked the Justice Ministry to initiate public debates with all political parties and civil society on the topics in the decree (Romanian government, 2017).

Other protests were a response to tragic events linked to corruption, such the *Colectiv Revolution* in 2015 (when 64 people died in a nightclub fire on 30 October), or environmental matters related to mining rights in natural sites or the exploration and exploitation of shale gas.

The protests triggered by the deadly fire of 2015 in Bucharest's *Colectiv* club highlighted the devastating effects of corruption in general, and of safety norms in particular. Following the street

demonstrations and the calls for Prime Minister Victor Ponta to resign, the government left office a couple of days later (BBC, 2015). The president then called the political parties for consultation and a new prime minister was appointed, this time the technocrat Dacian Cioloș, former European Commissioner for Agriculture and Rural Development. People involved in the street demonstrations also formed part of the new government, as members of civil society.

17.2.4 Petitions

Romania’s Constitution stipulates that citizens have the right to address public authorities via petition, formulated only in the name of the signatories (Article 51). In addition, legally established organisations have the right to put forward petitions on behalf of the collective body they represent. The public authorities are bound to respond to petitions within the time limits and under the conditions established by law. The right to address petitions has been further developed in subsequent legislation (i.e. law no. 233/2002).

In order to exemplify the use of right to petition a public authority, we addressed a formal request to the Chamber of Deputies (Romanian Parliament), which provided us with some statistics (Table 17.7, Committee for the Investigation of Abuses, Corrupt Practices, and for Petitions - Chamber of Deputies, 2007-2018). Depending on the petitions’ content addressed to the Committee, citizens were mostly interested in domains such as: justice (1,661), social (1,246), prison environment (895) and public administration (777).

Table 17.7 Overview of petitions to the Committee for the Investigation of Abuses, Corrupt Practices, and Petitions

Petitions addressed to the Committee for the Investigation of Abuses, Corrupt Practices, and for Petitions (Chamber of Deputies) between 2007 and 2018		
7,924 registered petitions	7,596 admitted petitions	7,596 solved petitions

17.2.5 The main drivers of voter mobilisation in Romania

To find out more about what drives voter mobilisation in Romania, we spoke with several experts in European affairs, each of them evoking several contrasting themes. Factors included emotions driving voters and person-centric (as opposed to party-centric) voting, fear and populism leading to turnout in presidential elections specifically, and low participation, attributed by one interviewee to lack of information and a tendency to act in accordance with others in their communities. The above views illustrate the dividing lines along Romania's political spectrum, both in terms of citizen voter habits and party politics. The scientific literature points to two types of cleavage affecting Romanian society and thereby influencing all current and future political parties. In essence, and in view of their chronology, they can be summarised as follows:

In terms of the pre-communist era divisions, we must consider rural-urban factors (economic in nature and manifesting themselves in greater support for the social-democrats in rural areas and for liberal forces in the urban ones); **centre-periphery circumstances** (the differences between the privileged capital and the other disadvantaged regions); **state-church divisions** (which is becoming increasingly visible due to the referendum on 'traditional families'); **owners versus workers factors** (mostly seen as a conflict between the social-democrats and the liberals).

As for the post-communist divisions, we have the maximalist-minimalist factors (between the parties that support a radical transition towards a market economy and those supporting a moderate transition); **attitudes towards communism** (separating the supporters of the communist structures from those opposing them [Vaida, 2006]), and **globalisation and anti-globalisation forces** (starting with the 2016 elections, between those identifying as domestic 'representatives' of Brussels and those in favour of a 'national approach' [Carp, 2017]).

17.3 EU topics and the influence of direct democracy on national politics

It might be argued that European topics have now become more prominent in Romania's public discourse, but not always in a way

that might be hoped. Often, these topics give rise to controversy and criticism, especially regarding immigration and common foreign and security policy. Other important issues, namely the labour market, the ageing population, social inequality, environmental protection, energy self-sufficiency, digital transformation, global competitiveness – are totally overlooked, not only at the level of public debate, but also at the level of policymaking.

How to deal with the past and move forward radically divides public opinion in Romania. As such, some of the main bones of contention in the current political scene are the following: the reform of the legal system; Romania's role in the EU; electoral reform; the best economic model for the country; deep divisions in the body politic and the 'traditional family' debate.

How to deal with the past and move forward radically divides public opinion in Romania.

17.3.1 Reform of the legal system

The topic appeared on the public agenda only months after the general elections of 2016 when the government sought to modify the justice codes without trying to gather the necessary political backing on such an important issue. This was despite the strong opposition of Romanian President Klaus Iohannis, who repeatedly warned against it. Moreover, the opposition of Western embassies and of professional associations generated a public outcry.

Even though it draws its legitimacy from the need to update the criminal code with the decisions of the Constitutional Court and EU legislation, there was a lack of coherent debate and real dialogue. The perceived lack of transparency and the focus placed on the immediate 'advantages' provided to the ruling political class translated into a breach of good governance that was sanctioned by the general public (Sebe, 2017).

17.3.2 The role of Romania in the European Union

In the context of the upcoming Romanian Presidency of the Council of the European Union and the May 2019 Sibiu Summit on the future of the EU, the political parties have initiated a debate on what Romania's role should be in a post-Brexit world. This is often carried

out formally through Citizens' Dialogues and Forums (such as the Forum for Public Consultation, Communication, and Debates for the Preparation and Exercise of Romania's Presidency of the Council of the European Union 'EU-RO 2019'⁸ or Citizens Consultations for the Future of the European Union).

This was initiated by the Social-Democrat party (socialist with conservative touches, pro-European governing party, S&D European Parliament affiliated political group) through the Ministry of Foreign Affairs⁹ or through the initiation of the first Participative Governing Programme by the Save Romania Party-USR (pro-European, opposition party, non-affiliated to any European political group) in 2018, where ordinary citizens can contribute. The relationship of Romania with the European Union was also the subject of the 2003 referendum when voters were called to decide upon the country's membership with the European Union (see above).

On Europe Day (9 May 2018), the European Commission launched an online public consultation, asking all Europeans what direction they wanted the Union to take in the future, in order to consolidate its legitimacy and counter the so-called 'democratic deficit'.

The Romanian chapter of this unique consultation, part of the broader Future of Europe debate launched with the Commission's White Paper on 1 March 2017, highlighted that, for Romanians, the main problems that the EU is facing (61%) relate to security challenges (such as terrorism and regional instability in the vicinity). Brexit was ranked last, with only 37%. This clearly shows that, at least for ordinary people, the political and economic impact of Brexit seems negligible when compared to other broader and somewhat more 'tangible' issues such as the overall lack of cohesion between member states or the rise of domestic inequalities that fuel social disparities. Romanians, according to the Standard Eurobarometer 88 (2017), tend to trust the EU (51% as compared to the EU28 average of 48%).

⁸ Romania's Presidency of the Council of the European Union: www.romania2019.eu/en/topics-of-interest/.

⁹ Romanian Ministry of Foreign Affairs website: www.mae.ro.

In a nutshell, Romania is going in the right direction yet there are subtle differences and progress is slower than desired. At times, the governing coalition seems to favour closer relations with the Visegrad Group countries as regards the bilateral relations (Măgrădean, 2017) while at the same time promoting the ideal of an “ever closer Union” (Ministry of Foreign Affairs, 2018). Romania also has a series of common interests both inside and outside the EU that determine its pragmatic approach towards the Visegrad countries (i.e., the negotiation of the post-2020 Multiannual Financial Framework, where Romania looks to maintain a higher allocation of resources for traditional policies such as the Common Agricultural Policy and Cohesion Policy).

With regards to the opposition parties and the president, they both favour a decisive and often unilateral engagement towards joining the perceived European Union core around the Franco-German axis (Save Romania Union - USR, 2017; Presidential Administration, 2018).¹⁰

17.3.3 Electoral reform

The main problems of the opposition parties include lack of territorial structures. This is especially the case for the new parliamentary parties such as USR and the Popular Movement party (PMP, centre-right, pro-European, opposition party, European People’s Party affiliated) of the former President Traian Băsescu. When considering electoral reform, one relevant citizen initiative was launched in June 2018 by USR, the Romania Together Movement (MRI, centre, pro-European, non-parliamentarian, initiated by the former PM Dacian Cioloș, non-affiliated to any European political group) and several dozen NGOs in order to modernise the electoral system.

To conclude, in the last couple of years the opposition parties and the new entry-level parties have campaigned for a more flexible electoral legislation, benefiting from improved political competition. However, the debate has stalled, with limited chances of progression, in particular due to the opposition of mainstream parties.

¹⁰ Romania’s Presidential Administration website: www.presidency.ro.

17.3.4 What type of growth for Romania?

A more pragmatic debate that is present in public debate and party manifestos is the impact of the government's economic policies on Romania's economy. Mindful of the 2016 electoral promises, the governing coalition has engaged in 'wage-led growth', supported by economic experts that work closely with the governing party (Socol, 2018). In practice, this means an increase of the minimum wage and of wages in general to stimulate economic growth (Socol et al., 2018). The results are mixed because, even though Romania has seen significant economic growth based on an increase in domestic consumption, there are still some economic indicators pointing otherwise: "This strong upswing will not be sustainable in the absence of reforms to increase the economy's potential." (European Commission, 2018).

The opposition says wage-led growth is a dead-end mechanism that will result in inflation and economic crisis (Cîțu, 2018). This debate is also supplemented by the decade-long quest to join the eurozone. After having been rescheduled several times and following several postponements, the current government has agreed upon a timeline for Romania's accession to the eurozone by the year 2024 (PSD, 2018). In theory, that would require a concentrated and sustained effort on behalf of all political parties towards this common goal and would demand a series of measures to be adopted regardless of the party or parties that govern the country at a certain time in the future.

All in all, the different approaches towards the role of the state in the economy and the best way to support economic growth characterise the Europe-wide debate between market-orientated versus people-orientated measures and are reflected as such in the political parties' programmes. However, accession to the eurozone would require a convergence of economic measures to be taken by the current and future governments.

Conclusions

If we look at the context in which the referendums took place, there are a couple of correlations worth mentioning. The referendum of 2003 had the largest voter turnout, but it was also open for two days. Rightfully associated with the future accession to the European

Union, it mobilised citizens to approve the law that would change more than 70 articles of the Constitution. Four years later, Romania was celebrating joining the EU, but at the same time the political class was so divided that a referendum to impeach the president took place soon afterwards.

The first European elections to be organised in Romania, in the autumn of 2007, were also coloured by domestic political issues. A second referendum in that year to modify the national electoral system saw a similar voter turnout (29.47% for the European elections and 26.52% for the referendum).

The next referendum, in 2009, about a change in the structure of the parliament, was closely connected to the presidential elections at that time, triggered by the incumbent president who ran for a second mandate. It did not result in any immediate binding consequences, being purely consultative in nature, but it would represent a recurrent theme in subsequent years.

The 2012 referendum to suspend the president (the same person as in 2007) drew moderate criticism from the European institutions and other foreign partners, namely on the subject of preserving the rule of law and assuring the continuation of the justice reforms. Six years later (2018), another referendum was set to take place, yet once again it appears to illustrate how direct democracy instruments can be misused and polarise opinion rather than solve contentious issues.

Instruments of direct democracy (referendums, citizens' initiative, petitions) are often used by political leaders to advance their own agenda and can be less effective when it comes to casting votes and/or higher interest when it comes to sign a list for advancing an initiative. In both cases, the credibility of direct democracy is affected by the quality of debate and transparency that lies beneath these processes. In Romania's case, we can see that in recent years the instruments of participatory democracy (namely the civic movements) have been actively used by citizens and have contributed to an increase in civic participation. This also shows that participatory and direct democracies are connected and when one supports the other, the citizen becomes more empowered and the state can withstand challenges.

As regards the major political fault lines over the past decade, Romania does not stand out from the regional context; issues of

corruption, civil rights and liberties, the economic model, what role to play in the EU etc. are all debated in the region. What differentiates Romania is perhaps the timing, as we are now debating issues that have been in the public arena of other EU member states in the region for years. What also makes Romania stand apart is its EU enthusiasm, which has so far resisted Eurosceptic attitudes.

The conflict between maintaining the status quo and the need to change has favoured the emergence of new political movements from within civil society, the most visible one being, at the time of writing, USR, which originated from a public interest group based in Bucharest. Yet, like other similar domestic movements, it has trouble adapting to the rigours and constraints of formal political organisation. Recent years have seen various newly formed political parties (sometimes with an extremist right-wing twist) that have gradually taken their place in the mainstream political family (in Western and Central Europe). That was not the case for Romanian newcomers.

Romania also has another regional peculiarity; the importance of national minorities in political life. By guaranteeing their political representation, the Constitution and the subsequent

Romania also has another regional peculiarity; the importance of national minorities in political life.

legislation has effectively removed the possibility of violent conflicts between the majority and the minority, which is not the case in other neighbouring countries.

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18. DIRECT DEMOCRACY AND THE EU IN SLOVAKIA: LOOKING BEYOND THE REFERENDUM

VLADIMÍR BILČÍK

Introduction

With the exception of the 2003 referendum on its membership of the EU, the use of direct democracy instruments in day-to-day politics is rather limited in Slovakia. Citizens' initiatives have served as a useful mobiliser for people to express their preferences on what they would like to see regulated or abolished. At the same time, the Slovak institute the 'National Convention on the EU' has served as a limited (both in time and scope) basis for attracting public attention to strategic questions of European integration. On the whole, the EU agenda has been increasingly divisive in public discourse and this fact alone has served to mobilise the public rather than any official use of direct democracy instruments.

18.1 Public deliberation and a Slovak export: National Convention on the EU

Slovakia introduced its first participatory democracy instrument before it entered the European Union. Slovaks responded to the EU's call at the Nice summit in December 2000 for the participation of candidate countries in the discussion on the future of Europe by establishing the National Convention on the European Future of Slovakia. It was a tool of deliberative democracy open to both political parties and organised interests, and NGOs covering broad segments of civil society. Its main aims were to offer a platform for public debate on the EU and Slovakia's future in the EU and to foster public consensus and recommendations for the governmental strategy vis-à-vis the European Union. The National Convention

The National Convention meant that Slovakia was the first candidate state to have institutionalised its national discussion on the future of the European Union.

meant that Slovakia was the first candidate state to have institutionalised its national discussion on the future of the European Union.

The main output of the National Convention in pre-accession Slovakia was a public and political confirmation

of a broad societal consensus on EU membership. While the Convention's conclusions were not legally binding, their advisory nature was important in fostering the drive towards EU membership after a period of gradual international isolation under the rule of Vladimír Mečiar's coalition government (1994-98), when Slovakia had been excluded for political reasons from opening accession talks at the EU summit in Luxembourg in December 1997. The National Convention also addressed the discussions following the Laeken Declaration in 2001 and the proceedings of the Brussels-based Convention on the Future of Europe, although the main message of the Slovak domestic debate was about equal participation in the Brussels debate rather than a specific shaping of EU contents. Until 2004, Slovakia was preoccupied with the successful completion of EU accession negotiations and its smooth entry into the Union.

The idea and practice of the National Convention has lived on until 2007. It helped to strengthen the negotiating capacities on EU integration by engaging experts, practitioners and the general public in national policymaking on EU-related issues through the establishment of sectoral EU communities based on sectoral working groups. It also created an important channel for spreading information about EU issues in Slovakia. Since then, it has become an ad hoc mobilising tool for

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the government and a platform for discussing EU issues with university students.¹

The National Convention model has become an important export of Slovak foreign policy and overseas development assistance in countries aspiring to join the EU, both in the Western Balkans and within the Eastern Partnership. The project has aimed to foster public debate on association agreements and their implementation in countries such as Serbia, Montenegro, Bosnia and Herzegovina, Albania, Macedonia, Moldova, Ukraine and Georgia, and has been marketed as an important contribution of Slovakia's diplomacy to the EU's neighbourhood.²

The National Convention model has become an important export of Slovak foreign policy and overseas development assistance in countries aspiring to join the EU, both in the Western Balkans and within the Eastern Partnership.

18.2 Referenda

Slovakia's constitutional provisions on the use of a referendum in part have their roots in the era of the Czechoslovak Federation. The Czechoslovak Federation adopted its provisions for calling a referendum in June 1991. Although initially there were suggestions

During the dissolution of Czechoslovakia, no referendum ever took place.

for an array of subjects that could be scrutinised in a public plebiscite, the final provisions allowed for questions on the architecture of the federation and on the secession of one of the constituent republics

whereby only the Czechoslovak federal assembly and national parliaments could initiate a referendum. Yet, during the dissolution of Czechoslovakia, no referendum ever took place.

The Slovak Republic adopted constitutional provisions (articles 93 – 100 of the Slovak Constitution) according to which the

¹ See <https://www.euractiv.com/section/future-eu/opinion/slovakia-did-not-hesitate-to-start-its-national-eu-convention/>.

² See https://www.mzv.sk/web/en/news/current_issues/-/asset_publisher/IrJ2tDuQdEKp/content/minister-lajcak-positively-appreciated-the-activities-of-the-research-center-of-the-slovak-foreign-policy-association/10182.

country must hold a referendum on the entry into a state union and a referendum with the same question can only be held after a time lag of three years. In addition to this obligatory nature, a

A national referendum of public interest can be initiated in two ways: either through a request tabled and approved by members of parliament or through a public petition supported by signatures of at least 350,000 Slovak citizens.

referendum in Slovakia can also be held on an important issue of public interest, though budgetary questions, taxes and basic human rights and freedoms are excluded. A national referendum of public interest can be initiated in two ways: either through a request tabled and approved by members of parliament or through a public petition supported by signatures of at least 350,000 Slovak citizens. The president of Slovakia calls a

referendum based on either a successful parliamentary request or a successful public petition. The result of a referendum is only valid if more than 50% of Slovakia's eligible voters participate. Since its establishment in 1993 Slovakia has organised six nation-wide referendums. Of these only one referendum was valid – that on EU accession held on 16-17 May 2003.³ All other referendums have been unsuccessful. There was insufficient turnout for four plebiscites and the government barred one referendum on the controversial and very dubious grounds that a referendum cannot change the Constitution.⁴

Since its establishment in 1993 Slovakia has organised six nation-wide referendums. Of these only one referendum was valid – that on EU accession held on 16-17 May 2003.

Indeed, the Slovak Constitution is not very clear on the legal impact of a referendum. The constitution talks in general terms of declaring proposals approved by a referendum as laws. While the

³ Some 52.15% of voters participated and 92.46% of those supported Slovakia's entry into the Union.

⁴ The Meciar-led coalition government spoilt the referendum held in May 1997, which covered four questions. The so-called unconstitutional question – according to the government – on the direct election of Slovakia's president was initiated through a public petition and enjoyed the support of opposition parties. The government argued that one could not change the constitution and allow for a public election of the country's president.

Slovak Parliament is expected to accept the referendum's outcome – illustrated decisively when a huge majority of members of the Parliament conformed to the will of the people and approved the accession treaty following the result of the plebiscite on Slovakia's entry into the European Union, it is also true that the members of the Communist Party of Slovakia did not vote in favour. This means that the issue of a binding referendum result remains somewhat open for the future, since there is no sanction for MPs who do not vote in line with the results of a valid referendum.

In sum, apart from some lack of clarity regarding the constitutional provisions for a referendum, there are other question marks about participatory democracy in Slovakia. There is no clear consensus on the role of direct democracy.

More than anything else, a referendum remains another bargaining tool for political parties. Slovakia's accession to the EU was a rare example of a cross-party political consensus.

There is no clear consensus on the role of direct democracy.

Otherwise, conflicts among political parties characterised past unsuccessful referendums; on issues such as the privatisation of strategic industries, the shortening of electoral terms in office or the protection of marriage and the traditional family. This contributed to a low turnout of voters since some political forces urged citizens to ignore the plebiscite, thus making the whole exercise invalid. In this way, the high quorum does – to some extent – distort political competition and citizens have a decreasing ability to control the course of public events.⁵

In addition to nationwide referendums, Slovak local authorities and municipalities have organised some of their own plebiscites, often having to do with the delineation of territorial municipal boundaries or mayoral mandates. However, there is no systematic record or analysis of these sub-national referendums, which opens up opportunities for future research.

18.3 Referendum on the 2004 European Constitution

The crux of the debate about whether Slovakia should or should not hold a referendum on the text of the Constitutional Treaty focused

⁵ E. Láštík (2011), *V rukách politických strán. Referendum na Slovensku 1993-2010*, Bratislava: Univerzita Komenského.

around the issue of whether the European Constitution would create a state union. If the former were true, a referendum would be mandatory.

It is important to state that article 7 of the Slovak Constitution distinguishes between three different acts:

1. Entry into a state union (paragraph 1),
2. Standard international treaties (paragraphs 3-5),
3. A specific international treaty that transfers the execution of some rights and laws to the level of the European Communities and the European Union. The ratification of such a treaty requires a 3/5 majority of all members of the Slovak parliament – the same majority that is needed for an amendment of the country's Constitution (paragraph 2).

Therefore, those who argued that the Constitutional Treaty does not create a state union, pointed to article 7, paragraph 2 of the Slovak Constitution as the basis for domestic ratification. A referendum in this case is not obligatory. It may, however, still take place.

Arguments for and against the referendum could be summed up in two ways.

On the one hand, some experts and politicians argued that the EU Constitutional Treaty would have equipped the European Union with all doctrinally recognised features of a state union. Namely, it possessed the key institutional characteristics of a state, such as territory, citizenship and jurisdiction. In addition, the EU Constitution also charges the Union with fulfilling the functions of a state. Most notably, the EU Constitution provides for the protection of basic rights and freedoms (Charter of Fundamental Rights) and both internal and external security. Whilst the EU is by no means able to guarantee and carry out all functions related to security matters, it is an actor in its own right with specific functions and corresponding institutional structures.

On the other hand, the critics of this view pointed out that it was too rigid. They argued that the debate had been framed too strictly within the existing legal doctrines and offered a perspective whereby the Constitutional Treaty was a qualitatively different source of law from the modern constitutions of nation states. They also stressed that European integration was not a linear process. Rather the EU has been built on an ongoing conflict between

intergovernmental and supranational approaches. However, no matter which of these two trends has prevailed, the decisive players have always been the member states of the Union. Although some competencies have been moved to the level of the EU, countries that form the EU decide the rules for such moves. In the Union there is no independent sovereign in the form of a single political nation. Instead, even if the Constitutional Treaty were ratified, the EU would derive its legal personality from member states. Hence, the language used to describe the common characteristics of individual nation states may not readily apply to an entity such as the European Union.

Hence, it is highly debatable whether the EU does indeed possess the characteristics of a state. First, while it is possible to talk of the territory of the EU as the sum of its member states' territories, this is not that evident. Most visibly, the euro and the Schengen regime, crucial features for a homogeneous EU legal and political space, do not apply equally across the Union. Moreover, the Constitutional Treaty talks of a whole range of member state territories where EU law either does not apply or applies only in part. The sheer complexity of exceptions to the rules and overlapping ties between the states inside and outside the EU confirm the treaty basis governing relations between countries rather than the existence of a dominant source of some central and uniform state power. Second, while the Constitutional Treaty broadens the freedoms of an individual person to the space of the whole Union, member states remain the source of legitimacy of the EU's architecture. Third and finally, the European Union is not united on the basis of some sovereign state authority but on the basis of strict conformity with the principle *pacta sunt servanda*.

This legal debate was effectively ended by the rejection of the EU Constitution in France and the Netherlands in 2005. The experience of direct democracy across the EU over the last decade has made politicians in Slovakia much more careful and resistant to the use of a referendum on EU-related matters. More recently, the UK's decision to exit the EU highlighted the existential threat posed by referendums to EU membership itself and decreased appetites for a national plebiscite on EU-related matters among all those who support Slovakia's membership of the EU.

18.4 European Citizens' Initiative

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The European Citizens' Initiative (ECI) has been an important mobilising tool on ethical and environmental issues. In the three initiatives in which Slovakia took part, the country gathered more signatures than the neighbouring Czech Republic that has twice the population of Slovakia.

To take part in the ECI signatories must be resident in Slovakia or Slovakian nationals even if they reside outside Slovakia. The quorum is 9,750 signatures obtained during one year. Slovakia did not take part in the initiative to ban glyphosate and other pesticides.⁶

However, it mobilised 12,055 signatures for 'Stop Vivisection', the ECI to protect animal rights⁷, 31,951 signatures to support the 'One of Us' initiative to protect the dignity of the human embryo and stop funding research that uses human embryos,⁸ while the initiative to support the principle that water and sanitation are a human right obtained 20,988 signatures.⁹

18.5 Future of Europe and Slovak politics¹⁰

Slovakia's politics has been less Eurosceptic than that of its neighbours. While the European elections in May 2014 were

⁶ See <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2017/000002>.

⁷ See <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000007>.

⁸ See <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000005>.

⁹ See <http://ec.europa.eu/citizens-initiative/public/initiatives/successful/details/2012/000003>.

¹⁰ This section draws on V. Bilčík, "The Slovak EU Council Presidency: In defense of post-Brexit EU", *JCMS AR* 2017 and V. Bilčík, "Back to Normal: Slovak European Policy in 2017", in *Yearbook of Slovak Foreign Policy*,

interpreted throughout Europe as a sign of political earthquake with Europhobic and extremist parties gaining more significant voter support than ever before, this was not the case in Slovakia.¹¹

Slovakia's politics has been less Eurosceptic than that of its neighbours. Nevertheless, the political landscape is also changing in Slovakia.

Nevertheless, the political landscape is also changing in Slovakia. The neo-fascist political party led by Marian Kotleba has been in the Slovak Parliament since 2016 and has openly called for a referendum on Slovakia's EU membership.

The UK referendum on EU membership defined the political backdrop for Slovakia's Council Presidency.¹² The UK's decision to leave the EU did not derail Slovakia's original plans for the Council Presidency. At the same time, the UK decision to leave tabled the hitherto unimagined possibility of a potential EU breakup as a result of rising political divisions inside the European club. The new constellation of European politics in turn raised the profile of the Council Presidency.

The Bratislava summit of 27 EU leaders may be the one thing for which Slovakia's Council Presidency earned a mention in the

Bratislava: SFPa, 2018 (http://www.sfpa.sk/wp-content/uploads/2018/04/Rocenka_2017_web985.pdf).

¹¹ The ruling party, Direction Social Democracy (Smer-SD – S&D group), won the election, even if it gained four seats as opposed to its five MEPs in 2009. The EPP group gained six seats in Slovakia; two for the Christian Democratic Movement (KDH), two for Slovak Democratic and Christian Union – Democratic Party (SDKÚ-DS), one for Party of the Hungarian Community (SMK) and one for Most-Híd. The Alliance of Liberals and Democrats for Europe (ALDE) secured one seat through Freedom and Solidarity (SaS) and the European Conservatives and Reformists (ECR) group gained two MEPs – one from New Majority (NOVA) and the other from Ordinary People and Independent Personalities (OIaNO).

¹² EurActiv.sk, 21 June 2016 (<http://euractiv.sk/clanky/manazer-eu-eu2016sk-ukreferendum-migracia/tazke-to-bude-s-brexitom-aj-bez-neho/>).

history books. An informal meeting of EU leaders had been proposed prior to the UK referendum in June 2016.¹³

In March 2018 the European Commission launched its White Paper on the Future of Europe followed by a series of reflection papers on various EU policy fields.¹⁴ The point of the paper was to stimulate discussion on the EU's future after Brexit and in the aftermath of various political and economic crises since the onset of this decade. The Commission offered five possible scenarios for the EU to frame the public debate. At the same time, however, it acknowledged that none of these were likely to reflect the Union's future.

Slovakia engaged in the future of Europe debate in the aftermath of its active role during the EU Council Presidency that produced the so-called Bratislava roadmap adopted by 27 member states at the informal EU summit in September 2017.¹⁵ The aim of the roadmap was to reinforce the Union's internal and external security and improve the state of its economy. The Commission's document, on the other hand, offered a broader setting for EU reform. In this context, Slovakia's response to the Future of Europe discussion oscillated between a statesmanlike attempt to foster common strategic commitment to the EU and diverse responses by individual political actors.

Arguably, the most important statement of where Slovakia stands vis-à-vis the EU came in October 2017.

Arguably, the most important statement of where Slovakia stands vis-à-vis the EU came in October 2017. In a joint statement, Slovakia's President,

¹³ TASR, NewsNow, 28 June 2016 (<https://newsnow.tasr.sk/foreign/bratislava-to-hold-informal-meeting-of-eu-leaders-in-september/>).

¹⁴ European Commission, *White Paper on the Future of Europe: Five scenarios*, Brussels, 1 March 2017 (https://ec.europa.eu/commission/white-paper-future-europe/white-paper-future-europe-five-scenarios_en, accessed on 15 January 2018).

¹⁵ "Bratislava Declaration and Roadmap, Bratislava", European Council, Bratislava, September 2016 (<http://www.consilium.europa.eu/en/policies/eu-future-reflection/bratislava-declaration-and-roadmap/>, accessed on 20 December 2017).

Speaker of Parliament and Prime Minister declared, among others, the following shared goals:¹⁶

- ensure clear and responsible communication of the pro-European and pro-Atlantic orientation of the Slovak Republic and of the jointly adopted decisions at the level of the European Union and the North Atlantic Treaty Organization. This should be done equally in our communication outwards as well as inwards towards the citizens of Slovakia;
- support a future for Slovakia inside the core of European integration. Our decisions and actions shall be primarily conducted in the interests of our citizens in order for them to fully use the possibilities of EU membership as well as being in the interests of the entire European Union;
- support the continual deepening of the Eurozone and the development of tools which will support its stability as well as its resilience to future crises;
- advocate principles of equal treatment in the internal single market and the non-discrimination of citizens and consumers in all parts of the European Union (e.g. the dual quality of foodstuffs);
- support a strong and "wise" EU budget that will enable the funding of traditional EU policies and at the same time be capable of reacting to new challenges;
- push for steps that will increase the security of our citizens and the defence capacity of Slovakia, especially by means of implementing the updated Security Strategy, Defence Strategy, and Military Strategy of the Slovak Republic.

This was a rather unprecedented declaration of resolve and unity in the context of divided and increasingly Eurosceptic political landscape across Central Europe. It seemed to reflect the importance

¹⁶ "Declaration by the President, Speaker and Prime Minister on the EU and NATO", President of the Slovak Republic, Bratislava, 23 October 2017 (<https://www.prezident.sk/en/article/vyhlasenie-prezidenta-predsedu-narodnej-rady-a-predsedu-vlady-k-eu-a-nato/>, accessed on 15 February 2018).

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of Slovakia's international standing for its domestic success, especially with respect to membership in the EU, the eurozone, the single market and Schengen. It also reflected public support for these projects, which has been consistently solid.

A closer look at the actions and positions of major political players suggests, however, a much more mixed picture of political support for the EU. The day that President Andrej Kiska spoke in favour of more cooperation, integration and solidarity in the EU and warned against Russian propaganda,¹⁷ the Speaker of the National Council Andrej Danko delivered a speech in the Russian Duma calling for a strong Russia and closer Slavic ties.¹⁸

In terms of the government, Prime Minister Robert Fico (Smer-SD) declared in August 2017 that Slovakia should be firmly anchored to the EU's deeply integrated core, driven by France and Germany. Fico distanced himself somewhat from more sceptic partners in the Visegrad group when he claimed interest in Visegrad cooperation while saying that Slovakia's "vital interest was in the EU".¹⁹ Robert Fico has maintained this more positive stance towards the EU, which he adopted following the Brexit vote

¹⁷ "President Kiska addressed the European Parliament", President of the Slovak Republic, Strasbourg, 15 November 2017 (<https://www.prezident.sk/en/article/prezident-kiska-vystupil-s-prihovorum-v-europskom-parlamente/>, accessed on 25 January 2018).

¹⁸ "Danko zožal v ruskej Štátnej dume standing ovation, Kiska zatiaľ v Štrasburgu varoval pred propagandou Moskvy" [Danko received in Russia's state Duma standing ovation, meanwhile in Strasbourg Kiska warned against propaganda from Moscow], *HNonline.sk*, 15 November 2017 (<https://slovensko.hnonline.sk/1063297-kym-kiska-v-strasburgu-varoval-pred-propagandou-moskvy-danko-zozal-v-ruskej-statnej-dume-standing-ovation>, accessed on 18 March 2018).

¹⁹ T. Jancarikova, "Slovakia's future is with core EU, not eurosceptic eastern nations: PM", *Reuters*, 15 August 2017 (<https://www.reuters.com/article/us-slovakia-politics-eu/slovakias-future-is-with-core-eu-not-eurosceptic-eastern-nations-pm-idUSKCN1AV1YY>, accessed on 9 March 2018).

and Slovakia's EU Council Presidency. While Fico continued to refuse the quotas on accepting refugees across the EU, he avoided the legal action launched by the Commission against Hungary, the Czech Republic and Poland as Slovakia continued to work actively towards fulfilling an old pledge to accept 100 asylum seekers from Greece and Italy. Fico also reacted quietly – unlike Hungarian politicians – to the dismissal by the European Court of Justice of a complaint filed by Hungary and Slovakia against compulsory quotas on asylum seekers in 2015.²⁰

In practice, Visegrad cooperation in the EU did not break down, it just differed across policy areas and diverged on some issues based on the strategic goals of the individual member states. Broadly speaking, the V4, including Slovakia, remained united on migration and in rejection of quotas for dealing with asylum seekers in the EU. At the same time, the V4 offered financial assistance to Libya to deal with migration in the EU's southern neighbourhood when the four countries pledged €35m to help with Libyan border control in December 2017.²¹ Moreover, in October 2017 it was important for Slovakia and the rest of the V4 to reject continued internal border checks within the Schengen area that had undermined the smooth operation of the single market, so essential for the success of Slovakia's economy, with much of its performance reliant on exports within the EU.²²

²⁰ While Robert Fico reacted calmly, he played down the ECJ's ruling by referring to it as a different legal opinion. "EU Court dismisses complaints by Hungary and Slovakia over refugee quotas", *The Guardian*, 6 September 2017 (<https://www.theguardian.com/world/2017/sep/06/eu-court-dismisses-complaints-by-hungary-and-slovakia-over-refugees>, accessed on 9 March 2018).

²¹ "V4 to contribute to Libya border control", *MTI*, 14 December 2017 (<http://www.visegradgroup.eu/news/v4-to-contribute-to>, accessed on 3 March 2018).

²² "Slovensko na summite odmietne kontroly vo vnútri Schengenu" [Slovakia will refuse internal Schengen checks at the summit], *EurActiv.sk*, 19 October 2017 (<https://euractiv.sk/section/buducnost-eu/news/slovensko-na-summite-odmietne-kontroly-na-vnutornych-hraniciach-schengenu/>, accessed on 20 February 2018).

In February 2018, the Slovak government, with the support of the V4 countries raised the issue of dual food quality across the EU. Prime Minister Fico said “if the Commission does not address the issue vigorously enough, the Slovak government stands ready to introduce one-off measures to restrict the import of EU food products to the Slovak market”.²³

The V4 and some other smaller and newer EU member states called the practice of companies selling lower quality foodstuff in Central and Eastern Europe under a single European brand unethical. The Commission promised to take up the issue, in which Slovakia and other CEE member states are calling for greater EU competence. However, as the initiative so far lacks the support of bigger member states, the result may just be more public pressure and greater national screening mechanisms.

Beyond the issues of migration and double standards between the West and the East of the Union, the Slovak government also pursued an agenda that distinguished it from some of its V4 partners.

Beyond the issues of migration and double standards between the West and the East of the Union, the Slovak government also pursued an agenda that distinguished it from some of its V4 partners. Most notably, Slovakia announced a structured dialogue across policy sectors with Germany. It also – together with the Czech Republic – was willing to compromise with France on a

change to the Posted Workers Directive.²⁴ The Slovak government was also ready for more integration in the eurozone, including a more common European approach on tax and social policy.²⁵

²³ “Slovakia: Dual food quality”, CEC Brief, 18 October 2017 (<http://cecgr.com/2017/08/10/slovakia-dual-food-quality/>, accessed on 20 January 2018).

²⁴ “Slovensko a Česko sa zblížujú s Nemeckom a Francúzskom, V4 ostáva bokom” [Slovakia and Czech Republic are aligning with Germany and France, V4 is being sidelined], EurActiv.sk, August 18, 2017. Available online: <https://euractiv.sk/section/buducnost-eu/news/slovensko-cesko-sa-zblizuju-s-nemeckom-francuzskom-v4-ostava-bokom/> (accessed on March 3, 2018).

²⁵ “Fico očakáva hlbšiu integráciu eurozóny. V daňových aj sociálnych veciach” [Fico expects deeper integration of the eurozone. In tax and social

Minister of Finance Peter Kažimír (Smer-SD) – who in 2017 failed to become the new head of the Eurogroup²⁶ – publicly outlined his plan for the eurozone with a complete banking union and a solid fiscal union with reliable institutions.²⁷

These visions for more integration, were, however, not shared by the wider political spectrum in Slovakia. Besides the sceptical coalition partner, the Slovak National Party whose leader Andrej Danko spoke in the Russian Parliament in 2017, Richard Sulík, leader of the largest opposition party Freedom and Solidarity (SaS), questioned the whole drive towards the EU core as something that could damage rather than help Slovakia.²⁸ Instead, the SaS presented its own vision of 'Eurorealism' for Slovakia that is reminiscent of several elements of Czech Euroscepticism of the early years of this century.²⁹

Conclusions

While visions for Slovakia's place in the EU differ across its democratic political spectrum, there is a broader consensus within the country and in newer EU member states on the need to push for

affairs], *TASR*, 16 June 2017 (<https://euractiv.sk/section/buducnost-eu/news/fico-ocakava-hlbsiu-integraciu-eurozony-v-danovych-aj-socialnych-veciach/>), accessed on 20 February 2018).

²⁶ "Slovak finance chief fails to become new head of the Eurogroup", *Spectator.sme.sk*, 4 December 2017 (<https://spectator.sme.sk/c/20711013/slovak-finance-chief-fails-to-become-new-head-of-the-eurogroup.html>), accessed on 2 February 2018).

²⁷ "Speech by Peter Kažimír at Bruegel Annual Dinner 2017", *Bruegel.org*, 7 September 2017 (<http://bruegel.org/2017/09/speech-by-peter-kazimir-at-bruegel-annual-dinner-2017/>), accessed on 2 March 2018).

²⁸ "Sulík: byť v jadre EÚ by bolo pre Slovensko nevýhodné" [Sulík: to be in the core of the EU would be disadvantageous for Slovakia], *TASR*, 3 April 2017 (<https://euractiv.sk/section/buducnost-eu/news/sulik-byt-v-jadre-eu-by-bolo-pre-slovensko-nevyhodne/>), accessed on 2 March 2018).

²⁹ R. Sulík, "Manifest slovenského eurorealizmu k 60. výročiu podpisu Rímskych zmlúv" [Manifesto of Slovak Euro-realism on 60th anniversary of the signing of the Rome Treaties], *Sulik.sk*, 25 March 2017 (<http://sulik.sk/wp-content/uploads/2017/03/reforma-europskej-unie-2017-sas.pdf>), accessed on 3 April 2017).

continuity in EU cohesion policy beyond 2020.³⁰ In the near future we may therefore expect more Slovak willingness to compromise in the name of additional EU resources for member states rather than to adopt a major policy reform in the Union just on its own. At the same time, referendums and public initiatives are likely to be used increasingly to challenge the EU status quo or to question Slovakia's benefits from EU membership.

³⁰ "Joint Paper of the Visegrad Group, Bulgaria, Croatia, Romania and Slovenia on Cohesion Policy after 2020", *Visegradgroup.eu*, 2 March 2017 (<http://www.visegradgroup.eu/calendar/selected-events-in-2017-170203/joint-paper-of-the>, accessed on 10 March 2017).

19. SPAIN: NO COUNTRY FOR DIRECT DEMOCRACY?

JAVIER LORENTE

Spain has two main participatory democracy mechanisms: the referendum and the citizens' initiative. Only four referendums have so far been called at the national level, with seven in various autonomous communities (regions). The citizens' initiative has mostly been ignored: only two initiatives have been approved by the Spanish parliament after modifications. However, the way in which referendums have been used in Spain avoids certain problems related to direct democracy. Political elites have not used them to blur political responsibility or called referendums to decide on divisive issues, and politicians have favoured agreement and consensus over calling a referendum. It might be interesting to extend these participatory tools to the European level.

Only four referendums have so far been called at the national level, with seven in various autonomous communities (regions). The citizens' initiative has mostly been ignored.

Introduction

Spain made the transition to democracy in the late 1970s following the authoritarian regime of General Francisco Franco, which began in 1936-39 and came to an end with his death in 1975. The 'Transition' is considered to be one of the main success stories of recent Spanish history; it is key to understanding present-day Spanish politics. During the Transition democratic institutions were designed to leave behind almost 40 years of authoritarian rule (Powell, 2001, pp. 127-8). The trauma of the Civil War (1936-39) and the dictatorship favoured an institutional architecture that would privilege representative democracy and strong government over participatory instruments (Powell, 2001, pp. 192 & 228). This design

aimed to avoid mass polarisation and instability, two factors that characterised the end of the democratic experience of the Second Republic (1931-36/39) (Gunther, Montero & Botella, 2006, pp. 79-80). Spain has enjoyed a strong and stable party system ever since.

The Spanish Constitution nevertheless provides for two mechanisms of participatory democracy: referendums and the

The Spanish Constitution nevertheless provides for two mechanisms of participatory democracy: referendums and the popular legislative initiative.

popular legislative initiative. Still, referendums are less frequent (Sartori, 1976, p. 50) because parties are able to aggregate political preferences (Almond & Powell, 1966; Lutz, 2012).

However, the development of regional governments and parliaments has meant the emergence of laws that allow new participatory tools to involve

citizens in political decisions, mainly at the local level. The internet has also opened up new ways for people to engage with politics – ways that are usually understood to improve the quality of political outcomes. Political changes experienced since 2011, the Social Movement of the *Indignados* (also known as 15-M) and the emergence of new parties such as *Podemos* have transformed the political space, introducing demands to improve and create new tools for direct democracy.

Supporters of direct democracy defend it as a means of improving representative democracy. They hold that participatory tools end up positively affecting policy outcomes, introducing more perspectives into political negotiations and conferring legitimacy upon the political process (della Porta, Reiter & Alarcón, 2014). This could be particularly interesting for the European Union (EU), which has been criticised for its democratic deficit. One way to solve, or at least to minimise, the democratic deficit would be to adopt new direct democracy tools to involve citizens in European matters. The first question should therefore be: what do we know about national experiences of direct democracy? Once the national instruments have been identified, it should be possible to understand how these direct democracy tools can influence EU politics and whether they can help to minimise the democratic deficit.

19.1 How has direct democracy been designed and used in Spain?

19.1.1 Referendums

The Spanish Constitution allows for two mechanisms of participatory democracy: referendums and citizens' initiatives. These two tools have been underused since the Constitution's entry into force. Including the constitutional referendum itself, Spanish citizens have participated in three referendums: the constitutional referendum (1978), Spain's membership of NATO (1986) and the Treaty for a New Constitution for Europe (2005). The same goes for the citizens' initiative: only two have been debated and approved (the first with substantial addendums and modifications) by the Spanish Parliament, in 2012 and 2017.

Spanish citizens have participated in three referendums: the constitutional referendum (1978), Spain's membership of NATO (1986) and the Treaty for a New Constitution for Europe (2005).

Referendum at the national level

The main principles to regulate referendums in Spain are in the Constitution, Article 92. Spanish referendums are advisory; that is, governments are not legally obliged to accept the results of the processes although politically it would be difficult to ignore them. The king calls referendums on the proposal of the prime minister and authorisation by the Spanish Parliament. An organic law (LO 2/1980) regulated referendums in greater depth (as regards campaigns and specific procedures). Both government and parliament can ask citizens to decide on all manner of topics within their national competences while respecting the rights and principles covered by the Constitution. Parties are responsible for campaigning, whereas government and institutions may only provide information about the referendum and call for greater participation without influencing the vote.

Referendums are also needed to reform both the Constitution and the statutes of autonomy of four regions (the Basque Country, Catalonia, Galicia and Andalusia). The constitutional text regulates the procedure to reform constitutional articles. If changes do not

affect the most important part of the Constitution, referendums are optional, but if changes affect core principles or fundamental rights there is a reinforced procedure that consists of calling for snap elections, approving the reform in the newly elected parliament and holding a referendum.

During the Franco regime, referendums were used to legitimise authoritarian rule. They were not participatory instruments since they complied with no democratic standards and were called in completely non-competitive contexts. Turnouts and approval percentages were extremely high, clearly pointing to fraud. For this reason, this paper only discusses referendums held during the democratic period (see Table 19.1).

Table 19.1 National referendums in democratic Spain (%)

Issue	Date	Question	Turnout and results			Parties		
			Turn-out	Yes	No	Yes	No	
Ratification of Spanish constitution	6 Dec. 1978	Do you approve the constitutional project?	67.1	88.5	7.9	AP, UCD, PSOE, PCE, Catalan Minority	Small radical parties from left to right.	PNV
Spain's membership of NATO	12 March 1986	Do you consider it convenient to remain in NATO on the terms agreed by the national government?	59.4	52.5	39.8	AP, UCD-CDS, PSOE, CiU, PNV	PCE-IU Small radical parties	
European Constitution	20 Feb. 2005	Do you approve the Treaty that establishes a Constitution for Europe?	42.3	76.1	17.1	PP, PSOE, CiU, PNV	IU, small radical parties	

Note: national parties listed from right to left included AP/PP (Popular Alliance, Popular Party), UCD-CDS (Centrist Democratic Union-Social-Democratic Center), PSOE (Socialist Party), PCE-IU (Spanish Communist Party, United-Left). Regional parties on the centre-right were PNV (Basque National Party) and CiU-Catalan Minority

(Convergence and Union). By 'small radical parties', I mean parties without representation in Parliament and radical nationalist parties from Galicia, Basque Countries and Catalonia: BNG (Nationalist Group of Galicia), EHB (radical nationalist party which supported the terrorist group ETA and changed the name several times), and ERC (Republican Left of Catalonia).

Source: the author based on <http://www.congreso.es/consti/elecciones/referendos/>.

The first democratic referendum was held to approve the Constitution. In the referendum, Spanish citizens were called to vote for or against the 'constitutional project', which had previously been agreed between the main political parties across the left-right spectrum. The Popular Alliance (AP, the predecessor of the Popular Party), the Centrist Democratic Union, the Socialist Party, the Spanish Communist Party and the predecessor of the regionalist Catalan Party (Democracy and Union) campaigned for approval. The main Basque regionalist party, the Basque National Party, called for abstention in the referendum, which explains why turnout was lower in that region.¹ Turnout was close to average and the support of the main political parties contributed to the approval of the Constitution, which explains why almost 90% of Spaniards voted in favour of it. There were certain procedural problems (for instance, the electoral roll was deficient in certain provinces) but they were overcome without being considered significant enough to affect the result or the standards of the democratic process.

The second referendum was called to determine Spanish public opinion about membership of NATO. Spain joined the Atlantic Alliance in May 1982 after a decision by the centrist UCD government. There were protests against the decision led by the Socialist and the Communist parties, among others. They demanded Spain's exit from the alliance as soon as possible. However, following the Socialist victory in the general election of November 1982, the Socialist Party shifted its position. To deal with this inconsistency, Felipe González called for a referendum to support Spain's membership of NATO in 1986. The three biggest parties – UCD, AP and the centrist regionalist parties – campaigned for NATO membership. The Communist Party led the opposition to

¹ The Basque Country comprises the three provinces of Álava, Guipúzcoa and Vizcaya. In Álava less than 60% of the population voted in the constitutional referendum, while turnout in Guipúzcoa and Vizcaya was even lower, at around 43%.

Spain's membership of the Alliance along with the smaller (and more radical) regionalist parties. The result was closer than in the constitutional referendum, with over a ten-point difference. Turnout, however, was lower.

The latest national referendum concerned the relationship between Spain and the EU. Spain generally shows high levels of support for the European project; according to the available data (for instance, Eurobarometer trends) Spaniards are among the most pro-European in the Union and political parties reflect this preference. In 2005 the government called for a referendum to ratify the new treaty to update the competences of Europe's institutions. Some changes were far-reaching enough to consider the treaty a 'Constitution for Europe'. Once again, all the main Spanish political parties supported the Yes option in the referendum (the Popular Party, the Socialist Party and the moderate regionalist parties), while smaller parties promoted a negative vote (United Left and the radical regionalist parties). Given the lack of competition, turnout was low but the Yes vote exceeded 75%. The EU is an issue that generates broad-based consensus both at the elite and popular levels.

In Spain, referendums have not been used as instruments to resolve political conflicts but rather to ratify agreements reached by the political parties and elites. In fact, national referendums have

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been approved by Spaniards in accordance with the position of the large political parties. The political parties are thus the main players since civil society is not powerful enough (with the exception of trade unions, which are usually close to the leftist parties). In this respect, the role of

social movements, associations and other collectives is significant in mobilising citizens' votes. Both the lack of civil society mobilisation and the lack of consensus around any topic among the main parties help to explain why turnout to referendums has been low in Spain. Since there was no real sense of contest the results were predictable; it is difficult to mobilise citizens in such circumstances. Political actors did not need to expend resources to ensure a favourable outcome. Neither competition nor top-down mobilisation can be

used to explain the electoral participation. The consensus among the main parties is one reason for the huge distance between the voting percentages for both options on the ballot.

As for turnout, the Spanish average is around 70% in national elections, slightly lower in regional and local elections, and even lower in elections for the European Parliament (Anduiza, Rico & Muñoz, 2014). Meanwhile, referendums have an average turnout of 56%. The relative certainty lack and the weak competition in national referendums help to explain the low turnout.

Referendums at the regional level

As mentioned above, autonomous communities have competences regarding referendums but are subject to the limitations set by the Constitution. The latter allows referendums to approve and reform the statutes of autonomy of regions that are considered to be 'historical nationalities': the Basque Country, Catalonia and Galicia. Andalusia is also

The Constitution allows referendums to approve and reform the statutes of autonomy of regions that are considered to be 'historical nationalities': the Basque Country, Catalonia and Galicia. Andalusia is also thought to be part of the group.

All the referendums to approve regional statutes of autonomy have been successful, despite significant differences in turnout.

thought to be part of the group because it initiated a special process to gain fast-track autonomy, requiring two referendums. All the referendums to approve regional statutes of autonomy have been successful, despite significant differences in turnout.

Table 19.2 Regional referendums in democratic Spain

Issue	Year	Turnout and results (%)		
		Turnout	Yes	No
Statute of Autonomy – Basque Country	1979	59.77	90.29	4.71
Statute of Autonomy - Catalonia	1979	59.70	88.15	7.71
Autonomous Initiative of Andalusia	1980	64.19	86.94	5.36
Statute of Autonomy – Galicia	1980	28.27	73.35	19.77
Statute of Autonomy – Andalusia	1981	53.49	89.38	7.00
Statute of Autonomy (reform) - Catalonia	2006	48.85	73.24	20.57
Statute of Autonomy (reform) - Andalusia	2007	36.28	87.45	9.48

Source: the author based on <http://www.congreso.es/consti/elecciones/referendos/>.

The two first autonomous-community referendums were in Catalonia and the Basque Country, both regions with a strong demand for decentralisation and whose cultural identity was harshly repressed by the Franco regime. Turnout was similar to that of local and regional elections. The same can be said of the referendum in Andalusia. Galicia, which was granted a statute of autonomy before the Civil War, recorded the lowest turnout. The regional referendums matched the parties’ positions in the constitutional referendum, except in the Basque case, where the Basque National Party (PNV) had campaigned for abstention in the constitutional referendum. However, the PNV promoted the Yes option for the statute of autonomy along with the parties that campaigned in favour of the constitutional referendum.

No autonomous-community referendums were called until the 2000s. In that decade, several regional autonomy statutes were reformed. During the 1990s the state transferred many competences to the regions. And, after that, some autonomous communities agreed that it was necessary to adapt their regional constitution to the new realities. Reforms began in Valencia, Andalusia, Castilla-La Mancha and Catalonia. However, only the historical regions need

to put their statutes to referendum. Consequently, only in Andalusia and Catalonia were referendums called in accordance with the articles of their existing statute and the constitution. Turnout levels were lower than in previous cases, showing how little enthusiasm the public had for territorial issues.

All referendums reflected a broad consensus among the main political parties prior to their approval, except for the latest reform of the Catalan statute of autonomy. In Catalonia the main parties at the regional level agreed on the 2006 reform although the left-wing nationalist ERC eventually withdrew its support in protest at amendments introduced in the negotiations that took place at the national level, in the Congress of Deputies.

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During the entire process, as a result of the confrontational behaviour of all parties (from the PP to the Catalan nationalists), there was an increasing polarisation as regards the territorial preferences of the public, with a particularly heavy impact in Catalonia. In 2010, when the Constitutional Court declared that some of the provisions of the statute of autonomy were contrary to the Spanish Constitution (and, subsequently, declared void or redrafted), most political forces in Catalonia (including the regional branch of the Socialist Party) reacted angrily to the judicial decision. The sentence declared some aspects of the Catalan statute of autonomy that eroded national competences as unconstitutional and changed the interpretation of some other articles. There was controversy around the categorisation of Catalonia as a nation in the preamble to the regional constitution. Depending on one's perspective in this conflict, the Court's decision either served as a way to justify, or caused the change of position by the moderate nationalist party Convergence and Union (CiU) towards independence.

Since that moment, when the CiU shifted its historical position the movement for Catalan independence gained support. Parties favourable to independence and other social movements began a period of mobilisation. They organised massive demonstrations in which almost one million people demanded self-

determination. The idea of calling a referendum to decide on the independence of Catalonia was widely accepted in the region. At least, that seems to be true in some surveys. Nevertheless, the parties that reject the referendum have more than 40% of the votes. Besides, some surveys that use different questions to ask about citizens' support for a referendum point to a more moderate support at the popular level. In spite of citizens' views on referendums, the Constitutional Court and a broad majority of Spanish scholars maintain that this referendum is not legal since it contravenes some constitutional articles. A referendum in Catalonia is only possible with the explicit authorisation of the central government. And, as with all Spanish referendums, its outcome does not have direct effect.

The regional government of Catalonia pushed ahead with other referendum on national self-determination on 1 October 2017 – a referendum that was previously banned by the Constitutional Court and with no authorisation from the central government.

Despite not having this authorisation, the Catalan government called two referendums, both without guarantees.² The first one was considered a simulacrum, and had no major consequences. However, the regional government of Catalonia pushed ahead with other referendum on national self-determination on 1 October 2017 – a referendum that was previously banned by the Constitutional Court and with no

authorisation from the central government. The referendum was conducted in a context of polarisation and the response of the Spanish police was harshly criticised for its disproportionality. Even though the results cannot be interpreted because there were no guarantees, the Catalan president accepted the results of the referendum in favour of Catalan independence.

In his speech before the Catalan regional parliament on 10 October 2017, Catalan President Carles Puigdemont refrained from declaring independence but stated that the referendum of 1st October gave Catalans a mandate to create a sovereign state. The

² In legal electoral calls (both in referendums and elections) there is a protocol established by the law that requires a census, an electoral board, randomly chosen citizens to count the votes, and a certain electoral campaign period.

constitutional crisis came to a head on 27 October 2017 when, after several deadlines set by the Spanish government of Mariano Rajoy passed, the parliament of Catalonia unilaterally declared independence from Spain. Within hours, the Spanish Senate approved actions proposed by the government to invoke Article 155 of the Spanish Constitution and assume direct control over some of Catalonia's autonomous powers. Catalan President Carles Puigdemont and his cabinet were fired, the parliament of Catalonia dissolved and fresh Catalan elections scheduled for 21 December 2017. Before the elections, Puigdemont and other secessionists fled the country and the action of the judicial courts, and those who did not were imprisoned due to their contravention of regional government duties.

Under those circumstances, in these regional elections, the parties for independence retained a slim majority as a consequence of the electoral system, which over-represents rural areas where nationalists have greater support. Official results showed an actual support for independence of 47.6% (all independence-supporting parties taken together) versus 52.4% who voted for parties that did not support independence. Some 43.5% voted for constitutionalist parties. Podemos obtained about 8% of the votes. The role of Podemos is interesting in understanding the electoral results, if that is possible. In the end, the elections were regional in nature; it is problematic to interpret the results as the elections were also a referendum on other party-specific policies besides independence, such as pensions or school budgets, for example. Podemos supported the call for a referendum but rejected independence, which meant that the vote for Podemos cannot be considered as either pro-independence or pro-status quo. For that reason, the votes in favour of independence are close to the majority but, election after election they are unable to reach a support level of over 50%.

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Puigdemont, who fled to Belgium after charges of rebellion, sedition, misuse of public funds, prevarication and disobedience, had European Arrest Warrants issued against him and other

members of his government. He was not elected by the Catalan parliament as he was considered a fugitive from Spanish justice. Parliament finally elected Quim Torra, a politician very close to Puigdemont.

The independence referendum broke the (Catalan and Spanish) tradition of calling referendums only to ratify agreements previously approved by the central or regional parliaments with sizeable majorities and a consensus among the elites (although the 1986 NATO membership referendum was also divisive). It also showed the incapacity of political elites in both Catalonia and Spain to agree a new form of coexistence.

The conflict has two sides. On the one hand, it affects the relationship between the Spanish and Catalan governments. In this regard, it can be seen as a battle between state and region. On the other hand, the conflict caused deep divisions between the citizens of Catalonia, depending on their sense of national identity and territorial loyalties.

For some, the territorial crisis of 2017-18 showed the rigidity of the Spanish Constitution and the counterproductive stance of successive Rajoy governments in dealing with the territorial crisis.

The new Spanish government, headed by Pedro Sánchez, is opening a dialogue to restore trust between the regional and the national government, based on respect for the law and the Constitution. Only from mutual acknowledgement can division, dissatisfaction and disaffection be overcome.

For others, the territorial crisis revealed the disrespect and the disloyalty of the Catalan government towards the Constitution and legal procedures, including the Catalan Constitution (the Statute of Autonomy), in that they made promises without limit and broke the foundational agreements of the democratic period. The new Spanish government, headed by Pedro Sánchez, is opening a dialogue to

restore trust between the regional and the national government, based on respect for the law and the Constitution. Only from mutual acknowledgement can division, dissatisfaction and disaffection be overcome.

Referendums at the local level

The organic law on referendums (LO 2/1980) allows municipalities to call referendums on local issues. Whatever the case, they must request authorisation from the central government, specifying both the matter at stake and the election roll. Some regional constitutions, not only of those regions considered to be historical nationalities, allow regional governments and municipalities to call referendums. Despite the constitutional limits for autonomous communities to call referendums of their own accord, regions can request authorisation from the central government to call referendums in certain other cases.

Since 1980 authorisation has been requested 60 times but only 24 referendums have been approved. Municipalities can appeal against government decisions not to authorise a referendum. In one case, the Supreme Court overturned the central government's decision not to allow a referendum in an Andalusian town.

In any event, informal processes by local governments to gauge public opinion on local issues are largely irrelevant because they lack the resources or authority to guarantee a transparent process.

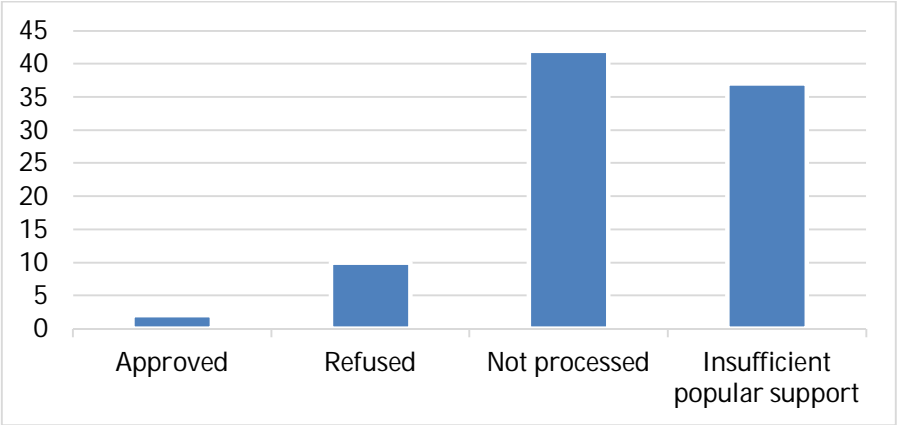
19.1.2 Citizens' initiatives

The Popular Initiative is a mechanism for citizens to propose laws to the Spanish Parliament or other legislative assemblies at the regional level. The Constitution regulates them in Article 87.3, while Organic Law 3/1984 regulates the appropriate procedures. The Spanish Constitution requires 500,000 signatories in order for Parliament to consider a petition, unless it affects fundamental rights and other issues regulated by organic laws, tax regulations, international agreements or judicial pardons. At the regional level, statutes of autonomy establish even more limits. Local governments have no competence to legislate. Even if they have certain processes to pass on demands or petitions, these cannot be strictly considered as popular initiatives.

Parliaments can accept and process initiatives or not. They do not require a formal vote by their members but their governing bodies can halt any process. If an initiative is accepted it then passes to the plenary sessions to be voted upon. An initiative can be

accepted if approved by a majority, refused if it lacks sufficient votes or amended and then voted upon again. Figure 19.1 shows the data on popular initiatives at the national level.

Figure 19.1 Popular initiatives in Spain (frequency)



Source: <https://www.lamarea.com/2012/11/17/ilp-el-poder-del-pueblo-llega-al-parlamento-y-alli-muere/>.

Spanish citizens have presented 94 initiatives but some of them have not obtained the 500,000 signatures required to be processed. The topics covered by these initiatives are fairly broad, but none are related to the EU. Twelve received sufficient support but the Spanish Parliament only approved two of them, finally. The first called for the protection of families subject to eviction due to their inability to meet mortgage payments and was approved but with major changes. The second, more recent, case led Parliament to accept an initiative to protect bullfighting as a ‘cultural good’.

At regional level, statutes of autonomy allow popular initiatives and reduce the number of signatories required to be accepted, while introducing some changes in procedures and the capacity to process them. By April 2007, 127 regional popular initiatives had been presented but, once again, the topics did not involve the EU (Cabedo, 2009). Their results are similar to those of national popular initiatives; they failed because it is not easy to reach the signatures threshold and because representative assemblies have a considerable capacity to reject them.

If Spain is no country for referendums, the same applies to popular initiatives. The conditions for being accepted are difficult to meet and parliaments are not readily disposed to process citizens' demands. These mechanisms should be reformed to introduce the public's demands that are not addressed by the political parties. Spain has experienced something of a 'crisis of representation',³ a reform of its party system and a territorial crisis that might be easier to manage if citizens' preferences were channelled through democratic institutions. The popular legislative initiative could be a way forward.

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The European Citizens' Initiative

The EU has developed a new tool for participatory democracy in line with the petition mechanism already in existence in some European countries. It is considered to be an interesting means for citizens to engage in and influence European policies. The procedure (part of the Lisbon Treaty) is very similar to the Spanish citizens' initiative described above.

Four initiatives have succeeded since 2012 (see Table 19.3). In all of them Spain made a modest contribution to the one million signatures required, except in the case of the 'pro-life' initiative. This could be due to the lesser importance of green parties and associations in Spain compared to other countries such as Germany. Moral issues, on the contrary, are highly politicised in Spain and mobilise more people to sign petitions.

³ In 2012 less than 50% of voters intended to vote for the biggest parties, the PP and the PSOE. By contrast, in 2008 these parties gained over 80% of the vote. The 2015 general election showed high volatility, with almost 40% of voters changing their vote between 2011 and 2015. Finally, two new parties gained over 10% of the vote and entered Parliament: Cs (Citizens, centre-right) and *Podemos* (far left).

Table 19.3 Spanish participation in successful ECIs

Name	Year	Supporters	Signatories from Spain	Signatories (total)
Right2Water	2014	European Federation of Service Unions	58,051	1,659,543
One of us	2014	Various anti-abortion associations	144,827	1,721,626
Stop vivisection	2015	Various ecological associations	47,194	1,173,130
Prohibition of glyphosates	2017	Various ecological associations	72,357	1,070,865

Source: <http://ec.europa.eu/citizens-initiative/public/initiatives/successful>.

19.1.3 Innovations in direct democracy: the internet, deliberative forums and participatory budgeting

Local governments are implementing new ways to improve the participation of citizens in politics. Since local governments are closer to their citizens, the interaction between them and their political representatives is easier. Some issues are of limited local interest and have a moderate impact on the political system, so it is the level of government more appropriate to developing new democratic experiences because, if something goes wrong the consequences do not affect the entire political system.

One of the most representative innovations in direct democracy is participatory budgeting. Following the example of Porto Alegre (Brazil, 1989) some municipalities have opened up their budgets to citizens in order to prioritise the areas of public spending. Córdoba was one of the first cities in Spain to implement such a system of direct democracy (in 2000), allowing citizens to decide on a small part of the city budget. There have been similar cases in Rubí, Alicante, Málaga, San Quirze del Vallés, Cabezas de San Juan, Castelfells, Puente Genil, Barcelona, San Juan de Alicante, Rivas Vaciamadrid and Madrid (Ramírez Nárdiz, 2009). The emergence of new parties, such as *Podemos*, on the far left, has

intensified the importance of these initiatives, including the creation of digital platforms to facilitate interaction between citizens and local authorities.

Some of the new democratic experiences are being channelled through the internet, as in the case of certain participatory online platforms to influence local policies. Since 2015 there have been many such instances in Spain. Madrid is an interesting case to illustrate these new forms of direct electronic democracy. The local government, under the leftist *Podemos*, has developed an online platform that allows citizens to decide how to spend a percentage of the budget or to choose different renovation projects for certain areas and neighbourhoods in the city. Citizens can both propose projects and specific policies, vote for different proposals and, finally, prioritise which projects should be carried out. The introduction of the internet in the formula to improve citizen participation elicits two different reactions: optimistic and pessimistic. Some authors see the internet as reducing the cost of becoming politically involved; since citizens have more access to political information and are exposed to many mobilisation networks they can interact easily with politicians (Michels & de Graaf, 2010). Other authors consider that online participation compounds the inequalities derived from politics and inequalities derived from the digital divide (Norris, 2001; Shane, 2015). Security concerns, the lack of transparency and the risk of fraud should be taken into consideration when discussing problems generated by e-democracy.

19.1.4 Participatory democracy in non-institutional contexts

Direct democracy does not only occur in institutional politics. Social organisations such as trade unions and social movements – i.e. the *Indignados* Movement (also known as 15-M) – use some of these participatory tools. In fact, the popular use of certain instruments of direct democracy is key to understanding

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why and how they have been incorporated into the institutional design.

Referendums are one of the main instruments of trade unions, used to determine the position of workers when negotiating labour conditions (Almond & Powell, 1966). Deliberative referendums were one of the most characteristic forms of action in the 15-M movement (Fernández-Albertos, 2012). Large-scale street assemblies were the way to decide on the social movement's future action and these initiatives were imitated by other social movements in New York (Occupy Wall Street) and Paris (*Nuit Debout*). Even if these social movements are radical versions of direct democracy, when political parties close to them take office at local level, they end up introducing deliberative processes that reproduce the logic and repertoires of the protests (as in Barcelona, for instance).

19.2 Critical lessons from Spain: the impact of referendums

Beyond local developments, the most important mechanism for participatory democracy in Spain is the referendum. Spain has only held three national referendums since it became a democratic society but, nevertheless, the processes have been considered to be positive. First, they led to no polarisation or instability. The agreement between the political elites (on not only calling a referendum but also on the favoured option) allowed citizens to ratify a prior consensus. Second, neither the topics nor the issues were especially divisive: they did not question the status quo or imply a fundamental change to the political system, other than the foundational constitutional referendum. The most significant political cleavage in Spain is the left-right divide. All referendums were agreed between the main parties, from both left and right.

The main problem with referendums in Spain concerns Catalonia. For Catalan nationalist parties, from both right and left, a referendum is the best way to solve the territorial crisis. In fact, two referendum simulacrum with no legal or constitutional coverage were called, in November 2014 and October 2017, by the Catalan regional government. The Catalan parties that are not nationalist, such as the PSOE, PP and Cs refused to campaign against independence. Only the 40% of Catalan citizens voted in this

referendum. This is a number close to the support for nationalist parties in regional elections. The results, even if the lack of democratic guarantees prevented any serious conclusions, were clearly favourable to Catalan independence from Spain. The results can only be interpreted as proof that voters who did not opt for independence abstained.

Such a scenario is relatively new to Spain, since referendums have previously been called on the basis of agreements between political elites. Despite the legal aspects, and however this kind of referendum fits in with Spanish Constitution, some authors have expressed concern about whether referendums are the appropriate tool to solve the Catalan political conflict.⁴ On the one hand, certain authors underline the growing polarisation in Catalonia around the issue of independence, with society riven down the middle. A simple majority could impose its political choice by means of a referendum, obliterating the middle-ground choices between outright independence and the status quo. Referendums also make it difficult to incorporate the voices of minorities and to respect their rights. In such cases, and given the political context, referendums fail to respect the plurality of visions held by complex societies on complex issues such as territoriality. Parliament, on the other hand, is a better space to deliver solutions that only can be reached on the basis of negotiation and consensus.

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Concluding remarks: can the Spanish experience influence EU politics?

Spain is not a particularly good country for direct democracy. At the very least, it has had limited experience at the national, regional or local levels of government. It could be an interesting example, however, because of how it has dealt with referendums, having used them only to ratify a prior consensus or broader agreements between the political

⁴ See, for instance, <https://www.politico.eu/article/catalonia-referendum-independence-want-to-vote-not-secede/>.

elites. Legal referendums in Spain have neither led to division nor polarisation. Politicians have not used referendums to blur responsibilities or sidestep accountability. Even the reform of the Catalan Statute in 2006, approved in a moderately polarised context, gained an acceptance rate of almost 80%.

There are perhaps four lessons to be drawn from how referendums have been deployed in Spain: i) they have avoided divisive issues that polarise society; ii) they have made it easier for political elites to reach agreement and for them to present a common front about what is good for the country; iii) political elites have avoided referendums that blur political responsibilities; and iv) governments have avoided resorting to referendums on decisions that especially affect minorities or fundamental rights.

Nevertheless, this analysis shows that social scientists must evaluate local experiences in greater depth. There are many different participatory tools in local politics and this is an ideal moment to study and evaluate how they work. For instance, although we know about political participation in direct democracy, we know less about the biases that can exist. Are citizens equally represented in public debates or in online deliberation processes? Looking at the future, is it important to determine the long-term effects of these instruments: do they actually improve citizens' skills? If referendums are used at the European level, what will be their effect on citizens' attitudes towards the political system? Do referendums lead to an engaged and participatory citizenry?

Since the 1980s authors have discussed the EU's democratic deficit. Some have proposed participatory tools to correct the problem. However, democratic deficits have more to do with the deficiencies of representative democracy than with introducing participatory tools at the European level. The evidence from Spain suggests that Europe should work harder to reach a political consensus using parliaments as a preferential resource. There is a debate about the consequence of voting on divisive issues by referendum, regarding their capacity to increase polarisation and blur accountability. This is particularly relevant when the instruments proposed are beyond legal frameworks, as was the case in Catalonia. A misuse of participatory democracy can trigger a rejection of those instruments, thereby invalidating them as a solution to a political problem. In a context of growing volatility and polarisation in many European countries, politicians should be very

cautious about those participatory instruments and be mindful of their limits and unintended consequences for democratic performance.

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20. DOES DIRECT DEMOCRACY WORK IN THE UK?

**AGATA GOSTYŃSKA-JAKUBOWSKA &
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This chapter explores how British citizens have used direct and participatory democracy to take decisions about European affairs, and traces the roots and repercussions of these instruments across the European Union. The referendum is the most powerful direct democracy instrument available to British citizens. However, referendums have often been called more out of cynical political interest at critical moments than out of a desire to facilitate genuine democratic expression. Voters have sometimes appeared to lack sufficient knowledge to participate meaningfully. Despite these shortcomings, referendums have been powerful in capturing the public's attention and increasing civic participation, as seen with the 2014 Scottish independence referendum and the 2016 EU referendum. Direct democracy is most effective when underpinned by a thriving participatory democracy scene, which educates and engages citizens in decision-making in the long term.¹

20.1 Decision-making by British citizens

Modern democracies, of which the UK is one, are based on three forms of democracy: representative, direct, and participatory. In a representative democracy, the people delegate decision-making to their parliamentary representatives, who tend to be better placed to take complicated decisions. Direct democracy is where the people

¹ The authors are grateful to Vernon Bogdanor, Ian Bond, Claudia Chwalisz, Maarten de Groot, Alan Renwick, and John Springford for their insightful comments on earlier drafts of this paper. The authors also thank Peadar Ó hÚbáin for his research assistance. The responsibility for any errors or omissions is with the authors of this piece.

determine policy directly (for instance through referendums). Participatory democracy involves citizens in decision-making (for instance through public consultations). Deliberative democracy is a subcategory of participatory democracy, whereby a wide cross-section of society engages deeply with a particular policy area before giving concrete recommendations to policymakers (e.g. citizens' juries). All these forms can coexist and complement one another. A mainly representative system may include some elements of direct democracy – for example, referendums on constitutional changes – and participatory and deliberative democracy.

20.1.1 Direct democracy: referendums and the right to recall

The best-known direct democracy tool is the referendum, in which the electorate votes for or against a proposition. Unusually, the UK does not have a codified constitution, which means its rules are based on precedent rather than set out in a single text. As a result, its democratic instruments have developed organically, so there is a great deal of flexibility in how or why referendums can be called (Constitution Unit, 2018). The lack of a codified constitution makes calling referendums vulnerable to electoral calculation and

The lack of a codified constitution makes calling referendums vulnerable to electoral calculation and party interest.

party interest. But referendums have also performed the role of constitutional protection and ensured that governments cannot introduce policies that would go against the people's will. For instance, a precedent has been established whereby referendums are needed to validate constitutional reforms, or introduce significant devolution (Bogdanor, 2009).

In the UK, the outcome of referendums is usually advisory rather than legally binding on parliament, because of the principle of parliamentary sovereignty.

In the UK, the outcome of referendums is usually advisory rather than legally binding on Parliament, because of the principle of

parliamentary sovereignty.² In reality, however, they are often politically binding. Neither Parliament nor the government of the day can easily ignore citizens' decisions once expressed in a referendum. The Brexit referendum was advisory, and Leave won by just a small margin. Yet both the prime minister and her Labour counterpart have been adamant that they will implement the 'will of the people'.

Referendums have largely tackled constitutional questions in the UK. Since 1973, referendums have been held on the devolution (delegation) of powers to Northern Ireland, Scotland and Wales, as well as to London and the North East of England. These plebiscites

These plebiscites have conferred legitimacy on new forms of sub-national government.

have conferred legitimacy on new forms of sub-national government, as in the case of the 1973 and 1998 Northern Ireland referendums; the Scottish referendums in 1979 and 1997; and the Welsh referendums in 1979 and 1997.

The first referendum held in the UK was the 1973 Northern Ireland border poll, which asked Northern Irish citizens whether they wanted to remain part of the UK, or form a united Ireland with the Republic. Altogether, British authorities have held ten referendums on power structures in the UK's nations and regions (Owen, 2016).

UK-wide referendums are rarer. The UK held two such referendums on Europe, one on continued membership of the European Economic Community (EEC) in 1975, and one on EU membership in 2016. The Conservative-Liberal Democrat coalition government (2010-15) also promised to hold a referendum if EU member states decided to transfer greater powers to EU institutions. The relevant legislation was passed in the European Union Act of 2011, but no referendum was ever held under the act. The British people were also asked whether they wanted to change their electoral system in a referendum in 2011 but they decided against it.

Local authorities also hold referendums. These can address questions such as introducing an elected mayor (House of

² However, there were three referendums in the UK which asked voters to accept or reject legislation previously passed by Parliament: the 1979 referendums on the devolution of powers to Wales and Scotland and the 2011 referendum on electoral reform.

Commons Library, 2016), or more trivial questions such as whether pubs should open on Sundays (Owen, 2016).

The coalition government also introduced another direct democracy instrument in 2015 – a limited power of ‘recall’. It allows constituents to depose their Member of Parliament (MP), subject to strict conditions. The origin of the new power was a serious loss of trust in MPs, following the 2009 scandal in which numerous MPs were found to have claimed excessive or fraudulent expenses. In the event of serious misconduct by an MP, a petition signed within six weeks by 10% of their constituents triggers a by-election (Electoral Commission, 2016b). This is a high threshold, and at the time of writing no MP has been recalled. In September 2018, the first ever parliamentary recall petition was circulated, but failed to reach the required number of signatures.

20.1.2 Participatory and deliberative democracy: *e-petitions, public consultations, citizens’ juries*

British citizens can use petitions to propose legislative changes (Hazell, 2010). According to Peter Riddell, former director of the Institute for Government, they “represent a marriage of direct and representative democracy” (Riddell, 2011). We decided to place petitions within the scope of participatory democracy because they set the agenda but do not directly determine policy outcomes. The world’s first e-petition system was created in Scotland alongside the new Parliament in 1999 (Scottish Parliament, 2018). British Prime Minister Tony Blair followed suit with an e-petition site for Downing Street in 2006, where petitions were addressed by government departments. In 2011 the coalition government linked petitions to parliamentary debates. Since then, any petition that gathers 10,000 electronic signatures receives a written government response; a petition with 100,000 electronic signatures will be considered for debate in the House of Commons; a video of the debate and a response is also posted on the petitions website. The petition must demand a specific action from the UK government or House of Commons, and be within their sphere of competence; it cannot be either offensive or extreme (Petitions: UK Government and Parliament, 2018).

It is difficult to point to tangible policy outcomes from e-petitions, though a report by the Scottish Parliament claimed that its

own petitions system has “brought about changes in the law, in government policy” (Carman, 2008). Petitions can mobilise and unite citizens; provide a valve for citizens to express their discontent with their government’s (in)action; and draw parliament’s attention to particular concerns (Leston-Bandeira, 2017).

The UK government and the devolved administrations also hold public consultations, mostly online in the form of surveys. Citizens are given three months to evaluate a policy proposal, and then the government publishes a response after 12 weeks (UK Government, 2018a). But consultations have proved expensive, costing up to £40,000 each, and have been neglected by the government; in March almost a third of public consultations commissioned by Conservative governments since the 2015 election had yet to receive a government response (Morgan-Bentley, 2018).

In the late 1990s and early 2000s, Labour Prime Ministers Tony Blair and Gordon Brown held ‘citizens’ juries’, a form of public consultation originating in Germany and the US (Maer, 2017). Citizens’ juries bring together between 12 to 24 citizens, chosen at random from different demographic groups, for three or four days. A facilitator encourages participants to deliberate on a policy suggestion and then arrive at recommendations, with input from experts. The government or local authority must then respond. Examples have included two juries of women that deliberated on the national childcare strategy in 1998; multiple juries on pension reforms in 2006; and a jury on crime and communities in 2007 (Maer, 2017). Both leaders thought that the juries would address low voter turnout and trust in politics, and that they would strengthen rather than threaten representative democracy in the UK (Brown, 2007). Citizens’ juries, however, were of limited success. They were costly, time-consuming, and participants were sceptical that they were being listened to. One citizens’ jury in the late 2000s held five meetings for the Department of Children, Schools and Families, at the cost of £467,704 (Chwalisz, 2017b, p. 65). When the financial crash hit in 2008, expensive democratic experiments could no longer be justified, and juries were discontinued.

Whilst governments have not revived the citizens’ jury, there has been increased interest in this form of citizens’ engagement among non-governmental organisations since the 2016 EU referendum. The Constitution Unit at University College London

held its own Citizens' Assembly on Brexit in September 2017, with no government involvement. The Assembly consisted of around 50 randomly selected people, who heard from experts and deliberated over two weekends with the support of professional facilitators on what shape the future UK-EU trade and migration relationship should take. Despite the controversial subject matter, participants were enthusiastic and engaged in a constructive discussion (Renwick, 2017). More recently the Health and Social Care Committee and the Housing, Communities and the Local Government Committee in the House of Commons have commissioned a citizens' assembly on social care; its recommendations have strongly influenced the committees' report, and the assembly was praised in the subsequent Commons debate (Parliament UK, 2018).

Whereas participatory and deliberative democracy have been criticised at the national level, they have flourished at the regional level. Consultations have been held recently in all the devolved administrations, for instance, Participation Cymru in Wales, or the National Conversation in Scotland regarding devolution, or the emergence of experimental civic groups in Scotland called 'tings' (from Old Norse, meaning an assembly of the people), where local community members gather to discuss problems and formulate solutions (Chwalisz, 2017a). Another example is the 2016 People's Plan for Manchester, an independent public engagement programme that gathered citizens together to deliberate on local issues, before publishing recommendations (People's Plan, 2017).

20.2 UK citizens' engagement in European affairs

The British people have used direct and participatory democracy to express their take on EU affairs. Two of the three national referendums held in the UK addressed the relationship with the European Union. EU affairs also featured in the Scottish independence referendum campaign because secession from the UK would have had implications for Scotland's membership of the bloc. Referendums have in turn contributed to increased civic participation, for instance via the growing use of petitions to debate EU affairs. During the coalition government (2010-15), just 2% of

petitions related to Europe.³ During the subsequent Conservative government that spanned the EU referendum (2015-17), this rose to 12%. A petition which urged the government to hold another referendum if turnout was not sufficiently high and if the winning margin was slim elicited over four million signatures (Petitions: UK Government and Parliament, 2016). Petitions on European themes fell significantly during 2017-18, to 3%, indicating that referendums struggle to stimulate citizen engagement in the long term.

Table 20.1 British petitions and Europe

	2010-15	2015-17	2017-2018	All years
All petitions	60,949	31,731	9,878	102,558
Petitions on the themes of Europe, European and EU	1,266	3,943	315	5,524
%	2%	12%	3%	5%

Source: House of Commons Petition Committee (2018), data provided via email in August 2018 and analysed by the authors.

Whilst British citizens have expressed interest in European affairs via petitions, British governments have been reluctant to engage. Governments have been particularly unenthusiastic about promoting EU-wide instruments for civic engagement. London has argued that the EU lacks democratic legitimacy, and that neither the European Citizens’ Initiative (ECI) (see Russack, chapter 2 for an explanation of how the ECI works) nor citizens’ dialogues are – in the words of then Europe Minister David Lidington – a “durable solution ... to the real problem of democratic legitimacy in the EU”. Lidington and others believed the solution lay in “greater powers to national parliaments” (European Scrutiny Committee, 2014). Indeed, British citizens trust their national government more than the EU – the opposite of the trend across Europe.⁴ But the UK

³ Raw data provided by the House of Commons Petitions Committee in August (2018). Analysis by authors based on searching for the terms ‘Europe’, ‘European’, and ‘EU’ in petition titles.

⁴ In 2017, trust for the EU was higher than in national governments, with 41% of European citizens trusting the EU, and 36% trusting their own governments (European Commission, 2017).

parliament does not always effectively engage in the EU decision-making process via the existing instruments (Gostyńska, 2015).

The UK held just one citizens' dialogue, which took place in February 2014 with then Vice-President of the Commission Viviane Reding, David Lidington and members of the British public. Citizens' dialogues are public debates that aim to narrow the gap between the public and the EU and educate citizens about their rights arising from EU citizenship. In comparison with the UK, Italy hosted seven and Germany four dialogues between September 2012 and March 2014 (European Commission, 2014), and 26 and 22 respectively between 2015 and 2018 (European Commission, 2018a). The UK has not hosted any of the Commission's citizens' dialogues held since Jean-Claude Juncker became President in late 2014.

The UK held just one citizens' dialogue.

Participation by British citizens in the ECI has also been lower than average. The ECI requires one million signatures from European citizens, from at least seven member states (each member state needs to individually reach a quota of signatures). Available data on the four successful initiatives shows that UK participation fell significantly below its allocated quota (i.e. 54,750) on three out of four initiatives. This contrasts with the public interest expressed in the ECI in, say, Germany where all successful initiatives reached the required threshold (i.e. 72,000) (Bertelsmann-Stiftung, 2018b, see also von Ondarza, chapter 12). Negligible government and media coverage of the initiative in the UK undoubtedly contributed to the lack of enthusiasm for ECI among British citizens.

Table 20.2 Participation in successful ECIs by British, French, German and Italian citizens⁵

Date	ECI	British signatures	French signatures	German signatures	Italian signatures
10/05/2012	Right2Water	7,104	0 (17,247)*	1,236,455	65,223
11/05/2012	One of Us	26,298	83,503	137,874	623,947
22/06/2012	Stop Vivisection	19,472	61,818	164,304	690,325

⁵ Germany, France and Italy are chosen for comparable-sized populations.

25/01/2017	Stop Glyphosate	0 (94,502)*	57,895	663,867	71,367
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* Signatures were not certified in time for the initiative's submission and as such were not included in the total number of signatories.

Source: European Commission (2018).

The outcome of the Brexit referendum in June 2016 has generated greater interest in the ECI among British citizens. The instrument was used in an effort to stop Brexit, and also to convince the Commission to submit a proposal that would allow British citizens to retain their EU citizenship rights after the UK's departure from the EU. The Commission refused to register a 'Stop Brexit' initiative, arguing that it fell beyond its competences to propose EU legislation to that end. But on 23 July 2018 the Commission registered an initiative that calls for permanent European citizenship whereby EU citizenship and associated rights cannot be lost once they have been attained. The initiative was established with British citizens in mind, who are due to lose their EU citizenship after Brexit. The organisers will now have one year to collect one million signatures in at least seven member states (European Commission, 2018b).

20.3 Politics, parties and referendums

The lack of a written constitution in the UK makes it easier for British politicians to call referendums at their will. Political elites

Political elites have used referendums to resolve internal political divisions rather than to facilitate genuine democratic expression.

have used referendums to resolve internal political divisions rather than to facilitate genuine democratic expression. Vernon Bogdanor, a constitutional expert, argues that the referendum has served the political class rather than the people (Bogdanor, 2009). This approach was particularly marked on the issue of

Europe; as demonstrated by the Labour Party's 1975 referendum on joining the EEC and the Conservatives' in 2016 on leaving the EU.⁶

⁶ Initially, Euroscepticism found its home in the left of the Labour Party, which opposed EEC membership, whilst the Conservative Party was supportive. But roles reversed in the 1980s when European Commission

But the 1975 and 2016 referendums did not resolve the vexed question of Europe in either party. At the time of writing, two years after the UK voted to leave the EU in 2016, neither the Conservatives nor Labour have reached consistent views on the future UK-EU relationship. Both parties are tussling over the trade-off between sovereignty and close economic ties with the EU. Prime Minister Theresa May recently lost several of her cabinet members over her position on Brexit, whilst Labour leader Jeremy Corbyn lost six junior frontbench MPs over his refusal to keep post-Brexit Britain in the European Economic Area.

The idea of holding a referendum on the final withdrawal agreement is also proving divisive for both political parties.⁷ The 'People's Vote' campaign was founded in April 2018, and seeks to ensure a vote on the final Brexit deal. Theresa May rejected the idea, anxious that being seen to override 'the will of the people' would be toxic for her party's image and its political ratings. But the campaign has drawn support across the political divide from around 100 MPs.⁸ Its supporters argue that voters were insufficiently informed in 2016, and that they should have the opportunity to revisit the question in light of new facts (People's Vote, 2018). The Labour party recently argued that it could envisage another vote if Theresa May's Brexit deal is rejected by Parliament and if Labour fails to force through a snap election.

The growing power of populist movements such as the right-wing UK Independence Party (UKIP) has no doubt influenced mainstream parties' stance on direct democracy. UKIP has

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President Jacques Delors promised to make social protection a central principle of European integration.

⁷ The only parties to have made another referendum their official policy are the Liberal Democrats and the Green Party.

⁸ Prominent members of all major parties have backed the campaign. Some names include: Chuka Umunna and Stella Creasy from Labour; Anna Soubry and Justine Greening from the Conservatives; Vince Cable and Tim Farron from the Liberal Democrats; Caroline Lucas from the Greens (McDonald, 2018).

been an enthusiastic supporter of direct democracy since its inception in 1991. It has proposed giving citizens the right to initiate referendums on matters of national significance, as well as the right to recall MPs. Under Farage's leadership, UKIP went from being an irrelevant fringe party to a source of real electoral anxiety for both the Labour and Conservative parties. UKIP's idea of recalling MPs was diluted and taken up by the coalition government in 2015. Its popular brand of Euroscepticism also exerted pressure on David Cameron to call the EU referendum in 2016. UKIP's influence has, however, waned since the vote and the party has thus far struggled to shape the debate about Brexit.

20.4 The people, referendums, and participation

Whilst referendums were driven by politicians' calculations, they tended to attract quite impressive public interest and contributed to increased citizen participation in public life. Some 64% voted in the 1975 referendum (House of Commons Library, 2015), 72.2% cast a vote in the 2016 referendum (BBC, 2016) and 84.6% of the Scots went to the polls in the 2014 independence referendum (BBC, 2014a).

This section examines these three votes and aims to establish what drives British voters to participate in referendums and whether they are sufficiently knowledgeable about national and European politics to use these instruments effectively. It also investigates whether direct democracy increases citizens' knowledge and participation; and whether referendums contribute to a policy outcome.

20.4.1 Case study no. 1: the Scottish independence referendum

The Scottish National Party (SNP) promised to hold a referendum on Scotland's independence in its 2011 election manifesto. After the SNP won a majority of seats in the Scottish Parliament, the central government in Westminster could not easily dismiss these calls. In October 2012, the UK and Scottish governments concluded an agreement enabling Holyrood to legislate for an independence referendum (House of Lords, 2012). The Scottish Independence Referendum Act was passed by the Scottish Parliament in 2013, and on 18 September 2014 Scottish citizens went to the polls to answer

the following question: “Should Scotland be an independent country?” The three main UK political parties, Labour, the Conservatives and the Liberal Democrats joined together to campaign for No. Some 55.3% of voters listened and opted to remain in the UK, while 44.7% voted for independence (BBC, 2014a).

What drove voters?

Disaffection with Westminster and the desire for sovereignty were key issues for supporters of Scotland’s independence. Fear and uncertainty surrounding the economy and public spending motivated No voters (Ashcroft, 2014). Class was a significant marker of voting intention, with working class citizens traditionally supportive of independence (Maxwell, 2011). In January 2012, 58% of citizens in the most deprived parts of Scotland supported independence, whilst just 27% of those living in wealthy areas did so (Ipsos Mori, 2012). This class division was also present in the 1979 and 1997 referendums on Scottish devolution, where the majority of working class citizens voted for a Scottish legislative assembly and the majority of middle class people voted against (Denver, 2003).

The referendum aimed to determine Scotland’s relationship with the UK. But Scotland’s potential secession from the UK would have affected its place in the EU, so European matters surfaced during campaigning. Scottish citizens are generally more pro-European than British citizens as a whole (they voted to remain in the EU in the 2016 referendum); the No camp hoped that by arguing that an independent Scotland would have to re-apply for EU membership, it would sway undecided voters. Then First Minister of Scotland Alex Salmond initially argued that Scotland would automatically “inherit” membership. But the Scottish government position gradually shifted towards an acknowledgement that Scotland would have to negotiate its EU accession. Interestingly, however, EU membership per se was a low-ranking concern for referendum voters. A poll from the month of the referendum found that just 12% of Yes voters and 15% of No voters listed it as a top priority

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(Ashcroft, 2014). This chimes with another survey conducted by 'What Scotland Thinks', where just 3% of respondents felt that EU membership was the most important deciding factor (What Scotland Thinks, 2014). Voters on both sides of the argument were significantly more concerned by the National Health Service (NHS), public spending and jobs. EU membership was linked to voters' notions of economic security, however.

Did voters take an informed decision?

There is no data available on citizens' actual knowledge of the issues at stake, but people's estimations of their own knowledge are revealing nonetheless. Ninety per cent of citizens voting in the Scottish referendum felt they knew a great deal or a fair amount about the issue (ICM Research, 2014). Scottish citizens had three years' notice of the referendum, at least informally, beginning with the inclusion of a referendum in the SNP's election manifesto followed by their victory in 2011: ample time to familiarise themselves with all the arguments for and against independence.

Self-reported knowledge varied according to class and education. The Electoral Commission found that affluent citizens from the highest social classes were more confident in their understanding of the Scottish referendum than those from lower classes. There is a direct link between class, education and participation in the referendum: citizens who felt they understood the issues at stake were more likely to turn out to vote (ICM Research, 2014).

The media can help campaigners to educate citizens. Its coverage of the Scottish referendum was significantly less partisan and vitriolic than the 2016 EU vote. A study found that the majority of headlines on the referendum were neutral, at 61.8%. But those headlines that were not neutral, however, showed a 4:1 bias against independence (Patrick, 2014).

Did the referendum contribute to greater public knowledge and civic participation?

The referendum boosted public engagement in Scotland. Turnout at the referendum was 84.6% (BBC, 2014a), compared to 65.1% in the 2010 Scottish general election (BBC, 2015). Scottish citizens became

more politically engaged than in previous years, with engagement rising far beyond the national average. The percentage of Scottish citizens turning out to vote in the 2015 general election rose to 71.1% (BBC, 2015). There was a huge increase in membership of Scotland's pro-independence parties after the vote in 2014, including the SNP and the Greens (BBC, 2014b). The Scottish independence referendum in particular stimulated young people to participate. Turnout was 75% among 16 to 17-year-olds who had just been given the vote, significantly higher than for 18-24 year olds, which was 54% (Electoral Commission, 2014, p. 64). This triggered a UK-wide debate about enfranchising 16-year-olds, a debate that has only intensified following the increased youth turnout during the 2016 Brexit referendum (where 16 and 17-year-olds were not allowed to vote).

The referendum also facilitated participatory and deliberative democracy. Engagement took the form of dramatic head-to-head debates between campaign figures, or participatory forms of democracy (Mitchell, 2016). Local groups organised phone canvassing and door-stepping, and community meetings to educate citizens. However, two years on from the Scottish referendum, engagement levels have now declined in line with the national average (Hansard Society, 2017).

Did the referendum contribute to a policy outcome?

Since Scotland voted to stay in the Union, there was no fundamental policy change: the majority held the status quo. Changes did, however, emerge from the referendum, just not what was specified on the ballot paper. In the final weeks of the campaign, David Cameron had promised that more powers would flow to Scotland if it voted to remain in the UK. After the Scottish referendum, he set up the Smith Commission and charged it with further Scottish devolution. The Commission's work resulted in two bills on devolution; they gave greater legislative control to Scotland on a number of issues, including the Scottish electoral system; income tax and rail franchising. The Commission received over 400 submissions from civic organisations and groups, and over 18,000 submissions (such as emails, letters and petitions) from individuals across Scotland (Smith Commission, 2014).

20.4.2 Case study no. 2: referendums on Europe

The British people have twice been asked whether they would like the UK to remain a member of the European bloc (first the EEC, then the EU); on 5 June 1975 and on 23 June 2016.

What drove voters?

The two Europe referendums attracted a variety of socio-political grievances not always directly related to the EU. Before the 1975 and 2016 referendums, the market research company Ipsos Mori asked voters what they saw as the decisive issues facing the UK. In 1975, the top five issues were: price inflation and the cost of living; food prices and shortages; unemployment; sovereignty; and Britain's role in the world. In the 2016 survey immigration came first by far; followed by the NHS; the economy; the EU; and education (Worcester, 2016).

The two Europe referendums attracted a variety of socio-political grievances not always directly related to the EU.

The EU referendum in 2016 attracted those who felt forgotten by the political establishment. Turnout at elections among working class citizens has declined. In the 2010 general election, there was a 23% gap in turnout between the wealthiest and poorest citizens (Flinders, 2014). Labour, originally the workers' party, alienated voters with its pro-European stance and liberal immigration policies (Evans and Mellon, 2016). The appearance of UKIP drew lapsed voters back to the ballot box. But these voters were not rewarded with change. The British electoral system is divided into constituencies, which means that small parties whose votes are distributed across many constituencies rather than concentrated in a few struggle to gain parliamentary seats. In the 2015 general election, UKIP won 12.6% of the vote (BBC, 2015), but just one seat, adding to voters' sense of marginalisation. The majority of their votes came from working class, older white voters (Ipsos Mori, 2015). On the 22 June 2016, Nigel Farage described the referendum as "the people versus the establishment" (Heffer, 2016), hoping that the referendum would turn into a protest vote against status quo.

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However, a poll by Lord Ashcroft shows that voters were driven by EU issues rather than by a desire to 'stick it' to the political elite. After the referendum, almost half of Leave voters said that their biggest motivation in voting was "the principle that decisions about the UK should be taken in the UK". A desire to take back control over immigration drove 33% of Leave voters, and unease about the EU's expansion of its powers motivated 13% of them (Ashcroft, 2016).

Did voters take an informed decision in the referendum?

When the UK first joined the EEC in 1973, there was an initial wave of educational communication with citizens. But this educational drive was neglected, and by 1975, three-quarters of the British public said they needed more information about British membership of the EEC in order to take an informed decision (Talking Humanities, 2016). When British citizens were asked about their perceived knowledge of the EU in 2011, 82% felt they knew little or nothing (European Commission, 2011). A questionnaire by Ipsos Mori a month before the EU referendum found that although the public answered certain EU-related questions correctly, in general they were misinformed. For instance, citizens vastly overestimated the number of EU immigrants in the UK and were rarely able to correctly attribute several popular regulations to the EU, such as statutory holiday entitlement (Ipsos Mori, 2016b). Such misconceptions about the EU can be traced back to the British media, which turned Eurosceptic under Prime Minister Margaret Thatcher in the 1980s. Where journalists could have served to educate citizens, all too they often opted for Eurosceptic rhetoric and myth-making, which they found sold papers.

Where journalists could have served to educate citizens, all too they often opted for Eurosceptic rhetoric and myth-making, which they found sold papers.

Limited knowledge of the EU and its actual powers played into hands of the Leave campaign, which blamed the EU for problems such as the under-resourcing of the NHS or housing shortages, which largely result from the British government's policy choices. The Remain campaign also made exaggerated claims about the immediate economic impact of Brexit, earning it the name

‘Project Fear’ (Full Fact, 2016). However, the most misleading and influential claims came from the official Vote Leave campaign, which stated that the UK sent £350 million per week to the EU – money that could be better spent on the NHS. Nigel Farage and businessman Arron Banks, who ran the unofficial Leave.EU campaign, launched a successful Twitter and Facebook operation, posting emotive but false content: “Dave [Cameron] wants to give 75m Turks access to your #NHS!” read one Tweet.

Despite this climate of dishonesty, a survey by the Electoral Commission after the referendum found that 62% of respondents felt they had enough information from both campaigns to take an informed decision on how to vote in the 2016 referendum (Electoral Commission, 2016). Self-reported knowledge does not necessarily equate to actual knowledge, however. The 2016 referendum campaign triggered a wider debate in the UK about ways of promoting honest discussion and holding lead campaigners accountable for disseminating false information.

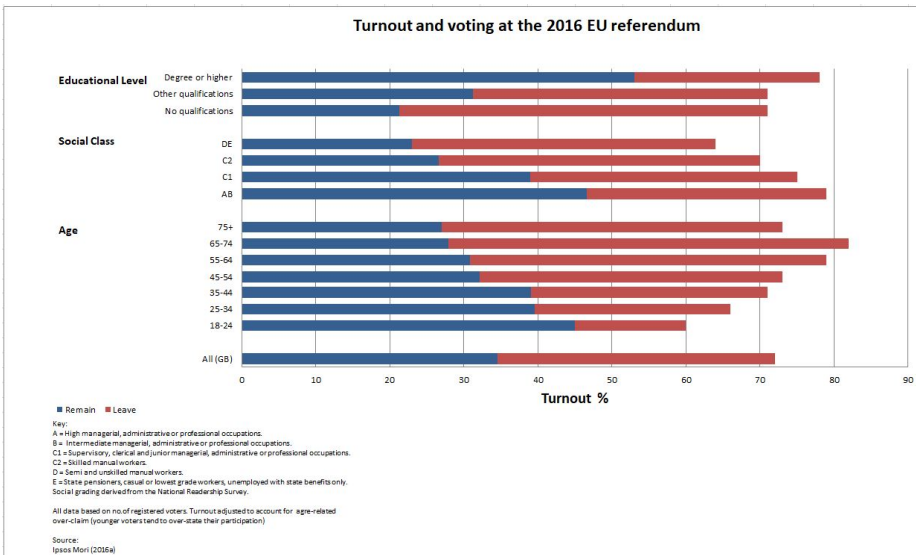
In the aftermath of the referendum, 50 MPs supported the establishment of the independent Office of Electoral Integrity, which would verify campaign claims and fine those who deliberately spread falsehood (Parliament UK, 2016). But the Independent Commission on Referendums, which was set up by the Constitution Unit and which has reviewed the role of referendums in the UK, came to a different conclusion: it argued that no official body should make a “definitive judgment” on the truth of the arguments disseminated in the campaign and that this role should be left to academics, experts, fact-checking organisations and broadcasters. The Commission also suggested that the fight against online disinformation should be tackled jointly by the government and technology companies; the platforms should not decide themselves on what is illegal as this could have negative implications for freedom of speech (Constitution Unit, 2018).

Did the referendum contribute to greater public knowledge and civic participation?

The referendum captured the attention of people who had not voted for decades and had lost faith in politics. Some 5.7 million citizens who had not voted in the previous general election turned out for the referendum (Pickard, 2016). It was these new or returning voters

who swung the vote: 60% voted for Brexit (Swales, 2016). But the engagement of new demographics can be overstated. Whilst turnout was high among all social classes, there was a gap of fourteen percentage points between the wealthiest and poorest citizens (Ipsos Mori, 2016a). In 1975, a survey conducted shortly before the referendum found that 42% of those from the least wealthy demographic said they were either unsure if they would vote, or that they would not vote (Gallup Poll, 1975). In both referendums, education and class played a crucial role. In 2016, higher education corresponded with Remain votes (Antonucci, 2017), and in 1975, those educated beyond school age and the more economically secure tended to support membership (Clements, 2017).

Figure 20.1 Voter turnout and Leave-Remain share, 2016 EU referendum



Like the Scottish independence referendum, the 2016 referendum increased political engagement; 30% of people surveyed after the vote said that they were now more active in a political or civic cause; nine million people reported that they would be more likely to volunteer in their local community; membership of political parties increased; and voter registration increased

(House of Lords, 2017). But, as in Scotland, this engagement has abated over time.

It is less clear if the referendum has contributed to increased knowledge about the EU. Indeed, a 2017 Eurobarometer report on the UK found that over a period of one year, there had been a 5% increase in respondents claiming to understand how the EU works, from 55 to 60% (European Commission, 2017). But the 2017 Hansard Society audit was less optimistic:

although more people than ever in the life of the Audit now claim to be knowledgeable about the EU, at 43%, that is still barely more than four in 10 people (Hansard Society, 2017).

Did the referendum contribute to a policy outcome?

The 2016 referendum has had a significant impact on policy. A victory by the Leave campaign pushed David Cameron, who advocated Remain, to resign and led to his replacement by Theresa May. Prime Minister May triggered Article 50 of the Treaty on the European Union, which sets out the procedure for leaving the EU, setting the Brexit clock for 29 March 2019. British parliamentarians, many of whom favoured Remain, gave their consent to triggering the Article 50 negotiations despite concerns about the consequences. But many have argued that the decision to leave the EU does not correspond with the direction set by the Conservative government. British citizens were simply asked whether they wanted the UK to remain in the EU or to leave it. Cameron's cabinet did not sketch out how it would implement the outcome of the referendum. If voters had been clearer on the details of departure or on the UK's future relationship with the EU, they might have voted differently.

20.5 Referendums on Europe: domino effect?

The UK may be an island, but as part of a bloc of 28, its fortunes have been intimately bound up with its fellow member states. Euroscepticism in one country bleeds into the next, as does populist enthusiasm for referendums. A referendum in one country might have repercussions elsewhere.

The decisions of Denmark, Ireland and Norway to hold referendums on their accession to the EEC inevitably contributed to

the British debate about the public vote on its own membership (Westlake, 2017, p. 9). These countries were due to join the EEC alongside the UK in 1973. Whereas Denmark and Ireland voted to join, Norway opted to remain outside.⁹ The British decision not to hold a popular vote on its own accession in 1973 has haunted political elites in London and influenced Labour's decision to eventually legislate for the referendum in 1975, two years after the UK's accession.

Since then member states and third countries such as Switzerland and Norway have held 49 referendums on EU membership and other Union policies (European Parliament, 2016). The 2016 referendum campaign also coincided with the public plebiscite held in the Netherlands on the EU's association agreement with Ukraine. Nigel Farage endorsed the No campaign there, arguing that a rejection of the agreement would help Brexit. Although it is difficult to measure the exact impact of the outcome of the Dutch referendum on voters' motivations in the UK, the Dutch 'Nee' provided the Leave campaign with some impetus. Dutch activists who instigated the referendum admitted that the EU's agreement with Ukraine was an excuse to promote the idea of the Netherlands' departure from the EU.¹⁰

The Scottish independence referendum in 2014 and the Brexit referendum in 2016 also made waves elsewhere on the continent. The Scottish referendum was closely followed in Spain where the central government has tried to suppress independence initiatives in Catalonia; supporters of Catalan independence hoped that a Yes vote in the Scottish referendum would embolden their movement. The central government in Madrid attempted to calm this enthusiasm, arguing that while a referendum in Scotland was legal, a Catalan one would be in breach of the Spanish constitution. Like London, it claimed that an independent Catalonia would have to

⁹ France, a founding member-state, also held a referendum on the first enlargement; more than 68% of French citizens supported it (European Parliament, 2016).

¹⁰ Interestingly, research shows that Dutch voters did not necessarily treat the referendum as a way to express their dissatisfaction with the EU (Jacobs, 2018).

reapply for EU membership and that it could take years before it could re-join the EU.

Whilst the reverberations of the Scottish referendum were mostly confined to Spain, the 2016 vote was felt across the member

Whilst the reverberations of the Scottish referendum were mostly confined to Spain, the 2016 vote was felt across the member states. For the first time in European history, the citizens of a member state decided that their country should leave the EU.

states (Oliver, 2018). For the first time in European history, the citizens of a member state decided that their country should leave the EU. Populist politicians such as France's Marine Le Pen or the Netherlands' Geert Wilders celebrated; they have long called for similar referendums. The risk of a domino effect encouraged the leaders of the EU-27 to adopt a tough negotiating stance vis-à-vis the UK; fearing that if

the UK were allowed to pick and choose the policy areas it wanted to participate in post-Brexit, Eurosceptics elsewhere would press their governments for similar concessions. But since the British referendum, trust in the EU has increased and neither Le Pen nor Wilders has gained power.¹¹ Where populists did gain power, their calls for public votes on crucial European matters abated; the populist Five Star Movement and nationalist League, which formed the coalition government in Italy, have dropped their calls for referendums on eurozone membership for now. Public opinion polls show that citizens of the remaining five EU largest member states are wary of following in the UK's footsteps; polling by the Bertelsmann-Stiftung shows that around 80% of Poles and Spaniards would vote to remain in the EU if their country held a referendum (Bertelsmann-Stiftung, 2018a).

It would, however, be premature to say that Euroscepticism has been defeated on the continent. In this context, the 2016 referendum offers a valuable lesson for pro-European forces: direct democracy can be a meaningful tool in engaging citizens in the EU decision-making but only if it is underpinned by an education campaign about the EU. Otherwise, it risks being hijacked by those

¹¹ A public opinion poll by the Bertelsmann-Stiftung conducted in August 2016 in the six largest EU member states showed increased support for the EU (Bertelsmann Stiftung, 2016).

who are not interested in helping the public to take an informed decision, but only in advancing their own political agenda.

Conclusions and recommendations

The British have at times seen direct, participatory and deliberative democracy as threats to representative democracy and the principle of parliamentary sovereignty. But all these forms of democracy can interact and complement each other. E-petitions, public consultations and citizens' juries can usefully inform the government's policy proposals.

Referendums can help to foster political engagement. Responsibility for direct policymaking can awaken citizens' sense of duty and encourage self-education. The Scottish referendum in 2014 and the referendum on EU membership in 2016 boosted political engagement. But this increased interest in public life tends to wane after a while. The central government, local authorities and political parties should therefore nurture a climate of vibrant participatory democracy and ensure that this is not neglected after the critical moment has passed.

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As this chapter has attempted to show, a decision to hold a referendum that is not preceded by wide public consultation but simply driven by divisions in the ruling party can do more harm than good. If the British government decides to hold a referendum on the final withdrawal agreement, it should consider organising a citizens' assembly on this topic. The assembly could help the public to understand the implications of a Yes or No vote, and could prepare a clear one-page document laying out the pros and cons of each perspective, which would be distributed to the wider public.

In the past, participants in government-designed citizens' juries were sceptical that their recommendations would be implemented. The Constitution Unit's Citizens' Assembly, for

example, had no government backing or interest from the start. But if the government promised to publicly respond to the assembly's recommendations, this could be powerful. There have been successful examples of governments commissioning citizens' juries in other countries, for instance Ireland's Constitutional Convention, which was established in 2012 and led to the government accepting three of the proposed reforms to the constitution (Chwalisz, 2017a). This demonstrates that citizens take such a task seriously and come up with concrete solutions when given the time and resources to deliberate and when they know that their contribution is given proper consideration.

One of the challenges with referendums is that they can become a repository for all manner of malaises; decades of

One of the challenges with referendums is that they can become a repository for all manner of malaises.

Eurosceptic arguments by mainstream political parties, the low level of EU education in the UK, compounded by irresponsible media coverage and campaigning, made British voters vulnerable to myths about the EU. Any further use of the instrument in the UK therefore requires careful review. One idea is to create an authority that would hold unscrupulous campaigners to account for their claims. This could prove helpful if the UK decides to hold another referendum on the outcome of negotiations with the EU.

In the case of another referendum, the government should explain how it intends to implement its outcome. In 2016, the absence of any proposal for leaving the EU meant that citizens were taking a blind decision, ultimately leaving the mandate open to interpretation and hijacking by the politicians in charge of implementing the result of referendum.

The 2016 referendum has not resulted in a domino effect for other member states. On the contrary, support for the EU increased in some European capitals immediately after the referendum. Pro-Europeans should grasp this opportunity and better educate citizens about the European project and the benefits associated with membership. This would help to lay solid foundations for engaging citizens in the EU decision-making process, be it either through direct, participatory or deliberative forms of democracy.

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PART IV.
CONCLUSIONS

21. GETTING EUROPE'S DIRECT DEMOCRACY RIGHT

RICHARD YOUNGS

Debates about how to revive European democracy involve starkly contrasting views on direct democracy. For some, a greater use of direct democracy is vital to successful democratic innovation. For sceptics, the very concept is dubious; the direct democracy tools that have been used in recent years have proved profoundly damaging.

Getting European direct democracy right is fundamental. Currently, both support for direct democracy and resistance to it are growing. On the one hand, analysts routinely point to the increasingly evident shortcomings of indirect, representative democracy and to the burgeoning possibilities that digital technology gives citizens to exercise more direct forms of accountability. Enthusiasts see direct democracy as an inevitable and desirable pillar of an impending post-representative politics that moves channels of accountability and participation away from parliaments and political parties.

On the other hand, Brexit and other EU-related referendums have clearly been polarising experiences that have unduly simplified policy choices. They have failed in practice to engender high quality democratic deliberation. Particularly in the wake of the Brexit referendum, many writers have advocated more circumscribed forms of popular engagement and a tighter curtailment of direct democracy. As citizens make what experts consider to be 'wrong' populist-fuelled choices,

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sympathy has resurged for the classical concept of *epistocracy* or elite-mediated governance.¹

There is some merit to both sides of this argument. Many recent European referendums have indeed distorted accountability rather than improved democratic quality. Yet bottom-up citizen interest in more direct forms of political control is a genie that cannot easily be put back into a bottle of elite-crafted, managerial democracy. Across Europe, direct democracy needs to be improved rather than suppressed.

21.1 Direct democracy evolving

Direct democracy has become more widespread around the world over the last decade² and polls suggest that demand for direct democracy is on the rise across Europe.³ Our project has shown that people's interest in exploring direct democracy has increased in the wake of the EU's polycrisis of recent years – although this trend is far from overwhelming and is even absent in some countries. In Germany, traditionally one of the countries most sceptical about national-level direct democracy, polls are showing some support for its use. In June 2018, the new Italian coalition government came to power promising more direct democratic voting, in what may become the most significant test yet of whether direct democracy helps revive European democracy, undermines it or proves to be an over-hyped, unrealisable promise.

A standard distinction is between mandatory referendums, plebiscites called at governments' behest and bottom-up citizens' initiatives. A further distinction is that different varieties of citizens' initiatives entail differing degrees of direct democracy. Some argue that petitions and citizens' consultations are not full direct democracy if they do not lead to a competitive vote; they are

¹ A.C. Grayling, *Democracy and its Crisis*, 2017; D. Runciman, *How Democracy Ends*, Profile Books, 2017.

² D. Altmann, *Direct Democracy Worldwide*, Cambridge: Cambridge University Press; B. Kaufmann and J. Mathews, "Democracy doomsday prophets are missing this critical shift", *Washington Post*, 8 May 2018.

³ Pew Research Center, "Globally, broad support for representative and direct democracy", October 2017, pp. 22-4.

sometimes referred to as ‘agenda initiatives’ that get issues onto government or parliamentary agendas without leading to a popular vote.⁴

An important change is underway in the balance between these different types of direct democracy. Until recently, debates were almost exclusively focused on governments calling referendums, especially on determinant and exceptional questions like EU accession. In recent years, this has been supplemented by a focus on the large number of citizens’ initiatives that have been introduced across Europe. Even if it is an exaggeration to talk of a groundswell of popular engagement, these initiatives have begun to inject direct democracy with a much more bottom-up, locally rooted ethos. Some of these emerging initiatives are ‘agenda initiatives’, some offer direct democratic votes.

Even if it is an exaggeration to talk of a groundswell of popular engagement, citizens’ initiatives have begun to inject direct democracy with a much more bottom-up, locally rooted ethos.

Finland introduced enhanced citizens’ initiative provisions at the national level in 2012 and the municipal level in 2015, and Denmark followed suit by creating a similar tool in early 2018; these are widely used in both countries. The UK government introduced an e-petition provision in 2015. The current Czech government is on the verge of reforming the country’s restrictive provisions to make it easier for citizens to trigger national referendums. Similar changes have been made in 2018 in Austria to foster greater use of citizens’ instruments – which, apart from petitions, include randomly selected ‘wisdom councils’ at a local level.

In Romania, a push for less restrictive conditions for the use of direct democracy is one result of the ongoing mass protests against corruption. Latvia’s *Manabalss.lv* online petitioning platform has become a widely emulated leader in the field. Estonia has similar provisions and is the country that has inserted such direct citizen engagement, most notably into formal decision-making processes. A number of local-level referendums have been organised in Bulgaria in recent years. While Spain has some of the

⁴ International IDEA, *Direct Democracy: The International IDEA Handbook*, 2008, p. 10.

most restrictive conditions limiting direct democracy – and has seen debates over referendums become unhelpfully embroiled in the heated polarisation of the Catalan conflict – municipalities across the country have pioneered direct engagement tools within local decision-making, influenced in particular by new movement-style parties such as *Podemos*.

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the ECI is normally presented as the EU's main direct democracy tool, it is a device for petitioning, not for direct popular votes.⁵ The virtues and shortcomings of the ECI have been exhaustively covered and are not the subject of this chapter;⁶ suffice it to say here that the ECI's limited

impact is one among many factors that have galvanised pressure for direct democracy at the national level. One example: German citizens have accounted for a disproportionately high number of signatories to three of the four ECI petitions so far accepted by the Commission, yet in these cases the German government was against the demands of its own citizens, heightening their frustration.⁷ The growth of citizens' initiatives at the national and local levels across Europe is in part related to the absence of well-developed and accessible forms of EU-level direct democratic accountability.

The utility of direct democracy in Europe is likely to hinge on the wave of new citizens' initiatives. Many studies have focused on the case for EU-wide referendums, to be invoked through EU-level legal triggers.⁸ However, a focus on harnessing the faint stirrings of momentum that now exist at local level may prove more productive. While in many EU states concerns have grown over governments using referendums for political advantage, a more

⁵ A. Lieninger "Direct democracy in Europe: potentials and pitfalls", *Global Policy*, May 2015, p. 5.

⁶ See chapter 2 by Sophia Russack.

⁷ See chapter 12 on Germany by Erik Brandes, Nicolai Von Ondarza and Felix Schenuit.

⁸ One good example of such a plea is F. Chevenal, "European Union and Direct Democracy: A Possible Combination?", BEUCitizen project, 2016.

benign and citizen-led interest in democratic engagement may open the way to a more organic form of direct democracy across Europe.

21.2 Only for populists?

A familiar critique is that citizens use referendums simply to gainsay and punish elites for reasons unrelated to the subject matter ostensibly under consideration. In recent years in Europe, EU-related referendums in the UK, the Netherlands, Denmark and elsewhere have unleashed such contrarian dynamics more than they have promoted better-informed and well-reasoned debate. Some experts even fear that national referendums are the instruments most likely to sink the European project.⁹

A familiar critique is that citizens use referendums simply to gainsay and punish elites for reasons unrelated to the subject matter ostensibly under consideration. In recent years in Europe, EU-related referendums have promoted better-informed and well-reasoned debate.

It is undoubtedly the case that anti-EU and populist parties have recently been the strongest advocates of direct democracy – even if most referendums have not been related to EU affairs. Italy's Five Star Movement has been an emblematic innovator of online tools for democratic participation and voting. In Denmark, the rise of the Danish People's Party has been the main factor in pushing politicians to widen the use of direct popular votes. In Germany it is the AfD that is resisting the country's historically rooted distrust of referendums the most, while in Austria it is the Freedom Party that presses most strongly for direct democracy. In the Czech Republic, populist parties explicitly focus on direct democracy as an absolute priority and one part of the far-right has even named itself the Freedom and Direct Democracy Party.

The Polish Law and Order governmentally proposed to hold a multi-question referendum in November 2018 expressly as a means to help it fight back against EU criticism of rule of law infringements. In Romania, conservative groups are agitating for direct democracy in order to enshrine a 'traditional' definition of the family in the constitution, against EU liberal norms.

⁹ I. Krastev, *After Europe*, 2017.

Our project charts how most European governments have put obstacles in the way of referendums proposed by citizens under constitutional procedures.

Our project charts how most European governments have put obstacles in the way of referendums proposed by citizens under constitutional procedures. Often, this seems to have backfired, inadvertently fuelling populism further. Two illustrative examples can be given. In Germany, the constitutional court has more than once generated public frustration by decreeing that European integration is still not deep enough to warrant a referendum.¹⁰ In Italy, the rate of failure of citizens' initiatives is especially dramatic, indeed almost absolute. Then Prime Minister Matteo Renzi lost the 2016 referendum on constitutional change partly because many voters saw this is a cynical attempt to disadvantage the new populists. In both countries, the populist challenge has intensified, not abated.¹¹

Elite resistance to participatory democracy means that when EU-related referendums do take place, they tend to be framed around frustration with the Union and 'the elite' rather than enthusiasm for new ideas about European integration. A vicious circle thus forms: political parties and state institutions increasingly try to reach deals on EU issues that avoid having to call a referendum, each time deepening citizens' feelings of democratic disenfranchisement and dissatisfaction with EU and national elites. 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.

A vicious circle thus forms: political parties and state institutions increasingly try to reach deals on EU issues that avoid having to call a referendum.

A key question is whether direct democracy can be 'reclaimed' from populists. There is no logical reason why calls for more direct democracy should be the preserve of anti-EU populists.

¹⁰ Op cit. chapter 12.

¹¹ See chapter 14 on Italy by Eleonora Poli.

Considering the fears about these emergent forces, it is easy to be sneering and dismissive of direct democracy. Elites can readily denigrate citizens as too ignorant to understand the complexities of EU issues. In practice, the evidence is mixed on this. The UK's experience unquestionably provides some stark warnings. Yet the Danes are both the best informed of all European populations and the people most likely to vote critically in EU-related referendums; in Denmark negative voters come from the educated middle class, which means that it is too easy to dismiss referendums as simply a chance for uneducated 'losers' to vent their spleen.¹²

21.3 Participatory fusion

These two trends – the burgeoning of local citizens' initiatives and the populist surge – set the parameters for improving European direct democracy. The key link is with the quality of democratic participation.

Many experts make what is now the fairly widely accepted point that direct and representative democracy should be seen as complementary – lamenting that in practice most direct democracy initiatives try to circumvent not nurture representative channels.¹³ One example from our project: the UK has tried various forms of citizens' juries and consultations since the mid-2000s, but these have run out of steam partly because they were disconnected from other measures of democratic reform.¹⁴

The call for the direct and the representative to be fused needs to be taken further: the real imperative is to fashion a prudent use of direct democracy that flows from more meaningful citizen *participation*. More influential citizen participation is the catalyst needed to revive both indirect and direct democracy. Good direct democracy is not just about allowing citizens to trigger a referendum. It is about the quality and inclusiveness of the process

¹² See chapter 10 on Denmark by Catharina Sørensen.

¹³ B. Kaufmann and J. Mathews, "Democracy doomsday prophets are missing this critical shift", *Washington Post*, 8 May 2018.

¹⁴ See chapter 20 on UK by Agata Gostyńska-Jakubowska and Beth Oppenheim.

that shadows direct popular votes. This is the qualitative change that is needed to get European direct democracy right.

The key relationship is not just direct-versus-indirect democracy, but between direct democracy and the incipient growth

Good direct democracy is not just about allowing citizens to trigger a referendum. It is about the quality and inclusiveness of the process that shadows direct popular votes.

of citizen consultations. Many say that randomly selected groups of citizens are the key to reviving democracy.¹⁵ In practice, they are often conceived as an *alternative* to high-level, one-off referendums. While there is much debate about high-profile cases of plebiscites held at governments' behest, there are many more unreported examples of the inverse

problem: governments refusing to hold votes on matters previously deliberated in detail in citizens assemblies and the like – denials that disillusion citizens who have given up time to participate in such forums yet see no change. There could be more benefit to be had from a tighter tandem of citizen participation and other levels and forms of direct democratic voting.

To move beyond being a heavily instrumentalised wrecking-ball, direct democracy would need to meet certain participatory preconditions. This is not to say that direct democracy should be suppressed simply to exclude EU-critical voices – these have as much right to be heard as any other positions. But it does mean that direct democracy should grow more organically out of current efforts across Europe to strengthen citizen participation around practical, day-to-day matters. Direct democracy is a responsibility that citizens need to learn incrementally – a lesson that emerges from the most successful case of Switzerland.

This would entail loose deliberative forums leading into more decisive popular voting – the challenge is to develop these new instruments for petitions and consultations into a direct form of democracy with more bite. It would see a more tailored use of deliberative-participatory forums to prepare the ground for popular votes. Such developments would help structure direct democracy around citizen engagement in pursuit of positive and constructive

¹⁵ D. van Reybrouk, "Against elections"; C. Chwalisz, "The People's Verdict".

policy options. They may also help to ensure that votes come from a more representative cross-section of the population. Our project reveals that direct democratic instruments have so far failed to include all sections of the electorate equally.

The challenge is to fashion a direct democracy that stresses its positive and generic contribution to democratic process – and move away from it being used for predetermined political agendas, especially in EU debates. While anti-EU populists see direct democracy as the best way to break through the elite-consensus upheld through the indirect representative channels of current parliamentary procedures, it is the overall quality of democracy per se that is most likely to address populism's underlying causes. Direct democracy needs to work as a means of incentivising ongoing and constructive citizen participation, not simply as an occasional means for giving national and EU elites a figurative kicking.¹⁶

Alongside participation, one other precondition is crucial to getting direct democracy right. Amidst Europe's wave of populism, direct democracy must categorically distinguish itself from unrestrained majoritarianism. The use of direct democracy must not allow a majority to infringe upon the core liberal protection of minorities – this is a key part of breaking the link with populism.¹⁷ Where this condition is met, direct democracy need be no more dangerous than representative democracy. Indeed, recent illiberal trends show that the protection of liberal rights is a challenge for representative democracy as much as direct democracy. In fact, where basic rights are ring-fenced, direct democracy tools can actually work in favour of minorities, as it allows them to get issues

The use of direct democracy must not allow a majority to infringe upon the core liberal protection of minorities – this is a key part of breaking the link with populism.

¹⁶ The recommendations of the UK Independent Commission on Referendums that reported in July 2018 point in a similar direction. Independent Commission on Referendums, Report of the Independent Commission on Referendums, Constitution Unit, UCL, London, 2018.

¹⁷ A. Lieninger, "Direct democracy in Europe: potentials and pitfalls", *Global Policy*, May 2015, p. 16.

onto the agenda despite the existence of quasi-permanent majorities in representative institutions.¹⁸

Conclusions

Getting European direct democracy right will involve difficult balancing acts. Events in recent years have both strengthened the case for direct democracy and heightened its risks. The challenge of populism begs for more direct democracy, while also rendering more acute the danger that it could produce deeply disruptive and illiberal outcomes. Many citizens do seem to want more rather than less direct influence over decisions that affect their lives, even as many experts have pushed in the opposite direction of warning that EU integration must not be held ransom to the 'passions of the rabble'.

Direct democracy is neither a panacea nor an unmitigated ill to be shunned. At most, it merits a modestly widened usage if used in the

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right way and if combined with other areas of democratic reform. The challenge across Europe is to conjoin better direct democracy with more effective indirect and participative democracy – not to have any of these displace the others. Each dynamic – indirect representation, direct popular influence and deliberative citizen participation – has its rightful place in democratic renewal. On this basis, the

policy dilemma will be whether a denser web of direct democracy at the local level could be extended upwards to have more constructive relevance for EU-level matters.

¹⁸ Idea Handbook, p. 23.

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