



Pathways for Citizens to Engage in EU Policymaking

Sophia Russack

Summary

This contribution analyses all pertinent participatory instruments available to EU citizens and investigates how meaningful these instruments are in influencing EU policy and decision-making. It finds that most forms of participation are not suitable for 'ordinary' citizens, but instead for organised interest and expert communities. The Commission supports and promotes top-down instruments more than bottom-up tools, thereby putting greater importance on instruments to improve policy outcomes than on allowing citizens to make their voices heard. Citizens are in fact unable to challenge the decision-making of the political elite, as their input is almost entirely limited to the consultative phase of policymaking. This leads to the conclusion that the EU continues to be legitimised through output as opposed to input.

Sophia Russack is a Researcher at CEPS.

This paper is a chapter in the book *Direct Democracy in the EU: The Myth of a Citizens' Union*, which will be published with Rowman & Littlefield International in January 2019, as part of the "Towards a Citizens' Union" (2CU) project of the European Policy Institutes Network (EPIN), co-funded by the Erasmus+ Jean Monnet Programme of the European Commission.

CEPS Policy Insights offer analyses of a wide range of key policy questions facing Europe. As an institution, CEPS takes no position on questions of European policy. Unless otherwise indicated, the views expressed are attributable only to the author in a personal capacity and not to any institution with which she is associated.

978-94-6138-709-7

Available for free downloading from the CEPS website (www.ceps.eu)

Contents

Introduction: direct democracy at EU level?	1
1. The European Citizens' Initiative (ECI)	2
1.1 Background.....	2
1.2 EU citizens.....	5
1.3 EU institutions	5
1.4 Effects of the instrument.....	8
2. Petitions to the European Parliament.....	11
2.1 Background.....	11
2.2 EU citizens.....	11
2.3 EU institutions	11
2.4 Effects of the instrument	13
3. Complaints to the European ombudsman.....	14
3.1 Background.....	14
3.2 EU citizens.....	15
3.3 EU institutions	15
3.4 Effects of the instrument.....	16
4. Public Consultations.....	16
4.1 Background.....	16
4.2 EU citizens.....	17
4.3 EU institutions	18
4.4 Effects of the instrument.....	18
5. Citizens' Dialogues	18
5.1 Background.....	18
5.2 EU citizens.....	19
5.3 EU institutions	19
5.4 Effects of the instrument.....	19
6. Conclusion and Key Findings	20
References	22

Pathways for Citizens to Engage in EU Policymaking

Sophia Russack

CEPS Policy Insights No. 2018-14 / November 2018

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. 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

These five instrument 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.

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.

¹ 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.

This paper 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 1 – 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 6).²

1. The European Citizens' Initiative (ECI)

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.

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.

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).

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 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.

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

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_Sl_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>.

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

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).

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 is formulates its legal and political conclusions.¹⁴ No stronger legislative follow-up mechanism is foreseen.

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.

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. 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.

1.2 EU citizens

To date, 68 initiatives were submitted to the Commission, of which 46 were registered.¹⁵ 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, 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.

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

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/>.

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>.

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 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

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.

visible within the 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 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

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).

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

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).

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

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.

discretionary nature of this instrument has not changed: the Commission remains the ultimate gatekeeper, 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

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>.

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

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).

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? 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).

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

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).

This 'expectations-delivery gap' generates popular frustration and constitutes the main problem of the ECI.

The restrictive registration and heavy procedural requirements of this instrument are more suited to a law-making than an agenda-setting 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.

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,

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>.

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.

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).

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.

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

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).

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. Petitions to the European Parliament

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 (Dougan, 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 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

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

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>.

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>.

(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 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-

³⁹ Responding to petitions on tackling precariousness and the abusive use of fixed-term contracts (2018/2600(RSP)): <http://www.europarl.europa.esides/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.

implementation of EU law by member states and draw attention, for 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).

2.4 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

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

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.

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.

3. Complaints to the European ombudsman

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).

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

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).

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).

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.

People who might contact the ombudsman are for instance: current or potential future EU staff on employment issues or contractors and others who are in any way beneficiaries of the EU. Journalists, NGOs, researchers and think tanks might contact the ombudsman, on EU funding received or on matters of transparency of institutional procedures; 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.

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 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.

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>.

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

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).

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.

4. Public Consultations

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.

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.

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

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

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.

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 “vener 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).

5. Citizens’ Dialogues

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

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.

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 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.

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

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.

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.

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.

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.

6. Conclusion and Key Findings

This contribution assessed all pertinent 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, 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.

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).

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. 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.

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.

References

- Böttger, K., M. Conrad and A. Knaut (2016), *Bridging the Gap?: Opportunities and Constraints of the European Citizens' Initiative*, Baden-Baden: Nomos Verlag.
- Catt, H. and M. Murphy (2003), "What voice for the people? Categorising methods of public consultation", *Australian Journal of Political Science*, 38(3): 407–421.
- Cheeseman, G. and H. Smith (2001), "Public consultation or political choreography? The Howard Government's quest for community views on defence policy", *Australian Journal of International Affairs*, 55(1): 83–100.
- Dougan, M. (2011), "What are we to make out of the Citizens' Initiative?", *Common Market Law Review*, 48: 1807–1848.
- Greenwood, J. and K. Tuokko (2017), "The European Citizens' Initiative: the territorial extension of a European political public sphere?", *European Politics and Society*, 18(2): 166–181.
- Guckelberger, A. (2004), *Der Europäische Bürgerbeauftragte und die Petitionen zum Europäischen Parlament: eine Bestandsaufnahme zu Beginn des 21. Jahrhunderts*, Berlin: Duncker & Humblot.
- Hobolt, S.B. (2006), "Direct democracy and European integration", *Journal of European Public Policy*, 13(1): 153–166.
- Kaufmann, B. (2012), "Transnational 'Babystep': The European Citizens' Initiative", *Citizens' Initiatives in Europe*, Palgrave Macmillan, London.
- Korinek, K. (1977), *Das Petitionsrecht im demokratischen Rechtsstaat*, Tübingen: Mohr.
- Kostadinova, P. (2015), "Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman", *JCMS: Journal of Common Market Studies*, 53(5): 1077–1093.
- Lindner, R. and U. Riehm (2011), "Broadening Participation Through E-Petitions? An Empirical Study of Petitions to the German Parliament", *Policy & Internet*, 3(1): 63–85.
- Organ, J. (2014), "Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens Initiative Proposals", *European Constitutional Law Review*, 10(03): 422–443.
- Organ, J. (2017), "EU Citizen Participation, Openness and the European Citizens Initiative: The TTIP Legacy", *Common Market Law Review*, 54: 1713–1748.
- Radaelli, C.M. (1999), "The public policy of the European Union: whither politics of expertise?", *Journal of European Public Policy*, 6(5): 757–774.
- Scharpf, F.W. (2009), "Legitimacy in the multilevel European polity", *European Political Science Review*, 1(02): 173.

- Schmidt, V.A. (2006), *Democracy in Europe: The EU and National Politics*, Oxford: Oxford University Press.
- Tsadiras, A. (2008), “Unravelling Ariadne’s Thread: The European Ombudsman’s investigative powers”, *Common Market Law Review*, 45: 757–770.
- Tsakatika, M. (2005), “Claims to Legitimacy: The European Commission between Continuity and Change*”, *Journal of Common Market Studies*, 43(1): 193–220.
- Tuokko, K. and J. Greenwood (2017), “Despite teething problems, the ECI stimulates European-wide debates”, p. 3.
- Vogiatzis, N. (2017), “Between discretion and control: Reflections on the institutional position of the Commission within the European citizens’ initiative process”, *European Law Journal*, 23(3–4): 250–271.
- Yasseri, T., S.A. Hale and H. Margetts (2013), “Modeling the Rise in Internet-based Petitions”, *Oxford Internet Institute* (<http://arxiv.org/abs/1308.0239>).