

Colliding visions of representation and participation
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Abstract:

The European Union is founded on the principle of representative democracy. But, obviously, the Constitutional Convention just like many scholars considered the representative functions of the European Parliament and the Council to be insufficient to ensure democratic European governance. Thus, the Constitutional Treaty embraced the principle of participatory democracy which is expected to complement democratic representation. The paper puts into question that participatory democracy has been institutionalized in the EU and explores whether or not the participatory instruments introduced by the Lisbon Treaty render the EU more democratic.

Complementary sources of democracy?

The Lisbon Treaty introduced an innovation. The new title “provision on democratic principles” still claims that the functioning of the Union shall be founded on representative democracy but in addition it obliges EU institutions to be open to citizens’ participation and it provides the legal basis for citizens’ initiatives. Does Article 11 TEU open the door to “postnational democracy beyond representation in the EU” as the title of the conference suggests? In my own reading the new provisions did neither in principle nor in practice establish “participatory democracy”. It introduced elements of participation but it did not lay the foundations of a second pillar of EU democracy. Further, these new elements may add to the democratic legitimacy of the EU but they may as well just produce a smoke screen of democratic governance and thus contribute to a further disillusionment of the European public. Hence, we need, at first, a thorough examination of the constitutional implications of the “provisions on democratic principles” and the conceptual links between representative democracy and upgraded participation. In a second step we have to examine context conditions and factors that may – or may not - turn participation into a democratizing force. Finally, the democratic potential of citizens’ participation in EU governance has to be put under empirical scrutiny.

The constitutional architecture of the EU is unambiguous and makes a clear distinction between the functions attributed to representative and participatory institutions. Political will-formation is the exclusive right of the representative institutions – the European Parliament directly representing citizens at Union level and the European Council and the Council being democratically accountable either to their national Parliaments or to their citizens. They are in charge of decision-making whereas direct participation of citizens or representative associations contributes to opinion forming.

Thus they have an important but limited role to play in the democratic system of the EU. Their role is adding to the diverse institutions of functional representation and it is similar to the role of political parties at EU level which are to “contribute to forming European political awareness and to expressing the will of citizens” (Art. 10, 4 TEU). The ways and means of direct citizens’ participation, except for the European Citizens’ Initiative (ECI), are kept very open in the Treaty. When comparing the provisions for citizens’ participation with the participation of functional interests the difference is striking: no formal institutions are envisaged, it is a political but no legal obligation to “give citizens and representative associations the opportunity to make known and publicly exchange their views” (Art. 11, 1 TEU), to “maintain an open, transparent and regular dialogue with representative associations and civil society” (Art. 11, 2 TEU), and to “carry out broad consultations with parties concerned” (Art. 11, 3 TEU). There is no mentioning of the potential effect such a dialogue or consultation may have on policy-making. The provisions for establishing an ECI are more precise by giving Member State citizens the right to become active but, again, it is just an incentive to opinion forming. With their initiative they can only invite the European Commission to submit an appropriate proposal (Art. 11, 4 TEU).

To put it in a nutshell: The constitutional design of the Lisbon Treaty strictly adheres to the principle of representative democracy and gives no room to participatory democracy. The Commission’s White Paper on European Governance is equally unambiguous: Involving civil society is meant to give citizens a voice but not a vote (Commission 2001).¹

Thus the core question is: how can voice be transformed into vote? There are no indications that the EU is moving into the direction of participatory democracy which would presuppose giving citizens the right to take decisions by themselves or in conjunction with elected bodies.² Therefore, we have to ask how citizens’ participation can have an impact on policy making. How can they make sure that decision-makers listen and take into consideration what citizens have to say? What are the specific conditions that make representative institutions responsive? In addition, we have to ask: On what grounds can we conclude that the responsiveness of decision-makers to direct citizens’ participation will render the European Union more democratic?

Representation in politics and participation in policy-making?

The standard account of representation as it has developed in the context of representative democracy is that it is based on electoral participation. Voting is an undemanding way of political participation and just because it only demands a limited commitment it is the kind of participation that comes closest to the democratic ideal of equality. Even though electoral turn-out has been declining in the established democracies and in the EU, electoral participation is far more widespread than any other kind of participation, far less biased in terms of social properties of citizens, and broadly accepted as the political activity that makes a “good citizen” (van Deth). The electoral process is the crucial mechanism to put politicians into office and make them responsive to public preferences. It stimulates party competition that highlights political cleavages and leads to the aggregation of interests. Voting is expressing political choice and it is an easy-to-use and efficient

¹ With the well-known exception of the agreements between the social partners.

² Not even in selected policy areas such as participatory budgeting (most famous Porto Alegre) or in combination of participation and electoral representation (as experimented concerning electoral reform in British Columbia). The concept of participatory budgeting has been copied in different parts of the world, including Europe, but in most cases moved away from participatory democracy. See Pateman 2012; Sintomer 2007/2008)

instrument to hold the representatives to account. Though voting is the conventional form of participation in representative democracies, other forms of participation such as addressing representatives directly, signing petitions, taking part in demonstrations, participating in and donating money to cause groups are widespread. All these political actions are citizens' centered and originate in a bottom-up process. They are supplemented by participatory activities on invitation. Not so often parliaments than governments and the administration create opportunities for citizens' participation or rather for the participation of citizens' associations. Whereas bottom-up participation mostly articulates opposition, participation by invitation concentrates on input in the interest of "better law-making", to use the Commission's expression. How does this fit into the model of representative democracy? According to Yannis Papadopoulos the "circular model of representative democracy" does not function any longer because, for a number of reasons, "a substantial amount of power is now in the hands of actors who evade democratic accountability" (Papadopoulos 2013: 4). According to his diagnosis we are confronted with a growing "disjunction" between "the spheres of politics and policy-making" both operating according to distinct logics: Political representation, above all parliamentary representation is dominated by partisan politics and electoral competition. Representative institutions present themselves as the focal point for decision-making and politicians convey the impression that they are still the key decision-makers. Policy-making, however, is dispersed in a system of multi-level governance, occupied by technocratic bodies and negotiated among a multitude of actors. In the sphere of policy-making the logic of problem-solving prevails. Decisions are supposed to be knowledge-based and, consequently, participation is subject to the functional needs of the policy-makers. Those who will be affected by a policy are invited to communicate their concerns and to bring in external expertise both on substance and on acceptability. Participation is addressed first of all to stakeholders and thus it differs from electoral participation in two essential aspects: The principle of representation is functional (who is affected and has something to contribute) and not democratic (egalitarian: one person, one vote) and the formal mechanism of democratic legitimation, namely elections to put representatives in power and to control that power, is substituted by very soft, if not to say illusive, mechanisms such as deliberation, the power of the better argument, and the blaming and shaming by advocacy groups.

From a normative point of view the disjunction of both spheres should not end up in divorce because it would produce a total loss of democratic legitimacy. If the democratic authorization to rule by elections does not really constitute the power to act, it is an empty promise and will erode legitimacy. If effective policy-making draws on the input and support of stakeholders' participation it violates the democratic principles of equality and accountability. Stakeholder participation may be pluralistic but it is not based on equal representation, stakeholders have no right to exert accountability and their own accountability is mostly questionable. Consequently, in the interest of a functioning democracy the coupling of both systems is mandatory. Can the provisions of Art. 11 TEU contribute to this aim and what are favourable and unfavourable conditions?

Participation – when will the window of opportunity be open?

Article 11 TEU can open a window of opportunity to further the democratic quality of the EU. When citizens are given the opportunity to make known and publicly exchange their views, when they are regularly involved in a dialogue with and consulted by EU institutions and when ECIs are spreading this may have a threefold effect:

- *Learning* - Enlighten representatives and stimulate deliberation: becoming aware of pressing concerns of citizens, of diverging views concerning problem definition and problem solving strategies among the public is one aspect; the other is that citizens' involvement may bring critical features of policy proposals to the attention of parliament and thus strengthen parliamentary control.
- *Publicity* - Reinforcing public discourse by creating publicity: the EU is far from an audience democracy and for structural reasons this will hardly change in the coming future. The lack of media attention to EU affairs is notorious and undermines public accountability. Citizens' voice and policy initiatives may further the publicity of EU policy-making and thus empower the electorate to make their vote an instrument of control.
- *Mobilization* - Activate participation: A vibrant democracy needs an active citizenry. As the European Citizens' Initiative demands at least one million signatures in a significant number of member states it is built on active participation of citizens and has the potential to mobilize citizens' readiness to get engaged in transnational political action.

It goes without saying that these positive effects will only materialize when the provisions of Article 11 TEU are put into practice and when they meet conducive conditions. Dialogue and consultations may serve very different purposes. Their use is subject to the interests of the participants on both sides; citizens and their representatives pursue their own mission and usually their mission is to push a cause, to empower their own constituency and/or to strengthen their organization. EU institutions are also self-interested actors and may use citizens' involvement as means to advance their policy ideas and strengthen their negotiating position with third parties. And they may get the upper hand because they have more resources available. But it is not only a matter of interest and power of the involved actors. Systemic conditions play an important role. Dominant belief systems give guidance on a meta-level and give citizens' participation direction. It makes a difference if voice, dialogue and consultation are meant to improve the substantive quality of policies or if they are appreciated for their contribution to democracy. Such belief systems are not just free floating ideas. They become institutionally effective in so far as they legitimize and bring about distinct modes of governing. The turn from government to governance and with it the disjunction between politics and policy-making is a telling example. Politics are considered to be the realm of parties and parliaments with elections and public communication as the essential mode of operation. Policy-making, in contrast, is pictured as tackling practical problems that demand expertise and value free judgments. Though institutions do not operate according to a single uniform logic, there are dominant modes of operation and these have an impact on the understanding of the tasks at hand. Accordingly, we have to ask in which kind of environment participation takes place. Last, and not least, the format of participation will have a significant effect on the outcome. It may be conducive to empowering citizens or just give voice to a small and maybe even privileged segment of society or may even turn participation into an instrument in the hands of those in power.

These reflections bring me to the following hypotheses which will guide the presentation of my empirical findings.

1. Principled beliefs:

- 1.1. When the concept of good governance and better law making prevails, participation will be used as an extension of technocracy.

- 1.2. When openness to civil society is the “*idée directrice*”, participation is meant to boost democratic legitimacy. However, it makes a difference if the unelected administrations aspire to be the beneficiaries of extra democratic legitimacy or the elected representatives.
2. Institutional context:
 - 2.1. When EU institutions set the frame and provide the resources, the result will be “participatory engineering”³ which serves first of all the interests of the supporting institution.
 - 2.2. When participation is a constitutional right and has a legal basis, it is more likely that it will give ownership to civil society.
3. Instruments:
 - 3.1. Participation that is part of consultations will adapt to the logic of functional interest representation and strengthen pluralism but not democracy.
 - 3.2. When participation has to be initiated and organized bottom-up, it will stimulate political action among citizens and has the potential to strengthen EU democracy.

Participation – servant of two masters⁴

When scrutinizing the official rhetoric of the EU it becomes quite evident that participation meant different things at different times and in different arenas. In the past two decades we can see the rise and decline of the appraisal of participatory governance.⁵ Civil society became the “great white hope” to render the EU more democratic (Kohler-Koch 2013a: 22). It was primarily the European Commission who propagated participatory governance and spread the message that involving citizens and civil society⁶ would give voice to the people and enhance political responsiveness. The effect would be an upgrade in the democratic legitimacy of EU policy-making and in the public support of European integration. It echoed a popular strand in the academic debate on the virtues of civil society and the importance of citizens’ participation in “post-national democracy”. The Commission became dedicated to open up to civil society involvement.⁷ It pledged to commit itself to the principles of participatory governance, above all openness, participation, transparency and accountability, though it also stressed the importance of effectiveness and coherence. The Commission’s commitment found expression in the way the Commission organized consultations and in the roles the Commission attributed to its consultation partners. Whereas in the past it responded on an ad hoc basis to the lobbying of interest groups, it started in the late 1980s to establish a “partnership” relationship with non-governmental organizations and with the turn of the century steadily transformed it into a “participatory consultation regime”.⁸ Though the principles, norms, rules and procedures which were established in the early 2000s (Commission 2002) are still valid today, the participatory zeal vanished over the years which is already manifest in the shift in terminology in official communications: from interest groups to consultation partners to civil society and back again to interest groups and lobbyists (Kohler-Koch; Saurugger 2010). Whereas in the high days of the White Paper on Governance even entrepreneurs ventured to be part of civil society, only

³ Participatory engineering in the sense of “purposive attempts on the part of political elites to affect political participation positively via the reform of the institutions of democracy” (Zittel/Fuchs, 2007: 1).

⁴ The empirical part referring to CSO participation is based on the findings of a collaborative research project with Christine Quittkat and Thorsten Hüller. The main conclusions are published in three books: Hüller 2010a and Kohler-Koch/Quittkat 2011a and 2013.

⁵ For a more detailed analysis see Kohler-Koch 2013a.

⁶ For a thorough analysis of the ambiguous use of the terms see Kohler-Koch/Quittkat 2011b.

⁷ See the Commission’s White Paper „European Governance“ (Commission 2001).

⁸ For a more detailed account see Kohler-Koch/Finke 2007 and Quittkat/Kohler-Koch 2013.

a few years later the name dropped out of use. When the Commission launched the Transparency Initiative, it subsumed all associations it had formerly qualified as “civil society” under the label of interest groups ().

With the swing to a more conservative Commission under the presidency of Manuel Barroso and the advent of the monetary and economic crisis the “dynamized concept of democracy” (Buchstein/Jörke 207: 195) became overshadowed by the “rationalization” of democracy (Buchstein/Jörges 2007: 186). Scholars and politicians alike turned from highlighting the democratizing effect of involving civil society to advocating its beneficial contribution to policy output. They propagate a concept of democracy that gives clear priority to efficient policy-making; “(...) political participation is no longer regarded as the goal, but as one of several possible ways of enhancing the rationality of collectively binding decisions.” (Buchstein/Jörges 2007: 186) With this turn from input to output legitimacy civil society still has a role to play. But its democratic credential do not stem from activating citizens, from fostering interaction between grass-roots and representatives and from exerting direct popular control over decision-makers. Rather, civil society participation is regarded as a meaningful contribution to democracy because it is credited to enhance the knowledge base and improve the deliberative quality of decision-making.

Dominant belief systems quite obviously fluctuate over time and are dependent on context conditions. Comparative research on democratic representation in the EU allows the firm conclusion that the crisis has had an adverse effect both on representation and participation. “The more vital the decisions at the EU level have become for the citizens of Europe, the more the distance between them and the European institutions seem to have grown.” (Castiglione 2013: 19) The watchword in difficult times is efficient problem solving. Safeguarding the viability of the European economies is the order of the day and this gives primacy to the executive.

Apart from changing overall context conditions, the policy-cycle and shifts in policy arenas go along with a modification of guiding ideas. Civil society participation does not stop with policy-formulation but is also institutionalized in the implementation of EU policies at national level. The Open Method of Coordination (OMC) is praised for being very open to civil society participation. However, when screening relevant empirical research publications, Sandra Kröger found little evidence to support this allegation (Kröger) and Corinna Wolff (2013) provides a convincing explanation. In her case study on the involvement of “affected groups” in European social policies she elaborates the Commission’s dominant belief system and demonstrates to what extent it affects the Commission’s behaviour and sets limits to representation and participation in social OMCs. The Commission’s Directorate General (DG) Employment, which coordinates the process, has specific ideas how the inclusion of third actors should and could provide democratic legitimacy. These ideas reflect a rather twisted notion of democracy suggesting that democratic governance is “working together” for the common good. Since in our own research we regularly encountered the same beliefs, it is worth quoting Corinna Wolff’s findings full length:

“In the vision outlined by the DG, the Commission as the promoter of the European general interest works for goals that are important to the citizens, and by involving organisations through which the latter actively advance these goals themselves, ‘we all’ ‘work together’ in a joint endeavour. Although the DG has a coordinating role, it does not impose anything on the people, but rather acts out what needs to be done (as agreed by the national executives too), and helps to extend the citizens’ engagement to the European level. In this

arrangement, there is no clear-cut division of principals and agents or governing and governed, but the main actor is 'we', embodied by the Commission. At the same time, by claiming to represent this 'we', the DG constructs this constituency, i.e. engages in the building of a European 'we', characterised as a participative civil society where social exclusion is a major concern that unifies people. This claim not only makes plausible the description of functional representation as partnership and contributing to a European project, but also sheds light on the absence of political accountability to the citizens. The concept of accountability rests on the dichotomy of account givers and account holders, and on their potential disagreement. If, however, the representative is defined as embodying the represented rather than governing them, and mainly helping to execute their wishes, this relationship of control can be seen as less important, and it is enough to ensure responsible conduct ('good governance'), i.e. that things are done properly and fairly. The frame of 'working together' does not evoke the possibility that some groups could have opposed views; instead, there are only those aware of the common project and those not yet aware." (Wolff 2013: 270)

By conceptualising democratic governance as 'working together', 'participatory democracy' is nothing but an extension of technocratic rule. Principled beliefs have a strong impact when the believers have power and the beliefs work in their interest.

Setting the frame and providing resources

The Lisbon Treaty sets the course for institutionalizing citizens' participation (Art. 11, 1 - 3 TEU) and the Citizens' Initiative (Art. 11, 4 TEU). The setting, however, is quite different: In the first case the EU institutions only have a political obligation and, consequently, it is up to them to decide how they will give citizens and representative associations voice, how they will organize consultations and with whom and how they will maintain a dialogue. In contrast, the ECI is a constitutional right.

Already before the Lisbon Treaty came into force, the Commission and also the European Parliament experimented with direct citizens' participation by initiating citizens' conferences and citizens' forums. Participatory programmes and projects have been developed with the declared objective to make the EU more democratic. The intention was to create a trans-national public sphere and to give citizens the opportunity to make known and publicly exchange their views on core policy issues and on the future of Europe's integration, respectively. One format was to bring a carefully selected group of citizens in direct face-to-face interaction; the other one was open to everyone who was interested to get engaged in online communication. The assessment of these instances of "participatory engineering" provided mixed results (references).

It is generally agreed that representativeness in terms of descriptive representation has been achieved in the face-to-face meetings though not in the online forums where the self-selection of participants had the expected distorting effects. Representation was heavily biased both in terms of territorial and social origin: over-representation of the central regions and of the better educated and well-to-do parts of society. Other concerns evaporated. Open communication and deliberation proved to be feasible despite cultural differences and language barriers. However, the representation of divergent opinions was partially flawed by internal procedures. They were geared at avoiding clashes of opinion and had the effect that a harmonious view rather than dissenting voices prevailed in the final reports. Nevertheless, scholars who did a careful micro analysis of the individual participatory events come to an overall positive conclusion in terms of transparency,

representativeness, and deliberative quality. The assessment is far more critical in a macro perspective (Friedrich 2013). The impact of the citizens' forums and conferences on the decision-making process and public opinion was marginal, not to say non-existent. Most of the activities passed unnoticed and because they lacked media resonance the ordinary citizen could not even have an idea whether she or he was fairly represented. In general, EU institutions were inattentive, except those who had initiated these experiments directly. Even the latter were mostly passive recipients. Some were ready to engage in face-to-face presentations of the outcome of the deliberations; others were content to just receive the forums' written reports. In each case the citizens' output had no traceable policy impact (Hüller 2010b).

With the phasing out of the programmes the EU institutions lost interest so that for some years now no new experiment in direct citizens' participation has been launched. It is open to debate whether the reason is a disappointment with the instrument or a lack of interest resulting from the shift in belief systems.

The Commission has also been the trend setter for the institutionalization of civil dialogues and consultations. It developed a wide array of consultation instruments - online-consultations, policy forums, platforms, hearings, conferences - and deliberately designed them in a way so that they facilitate participation of citizens and citizens' associations. This is especially true for online consultations which provide easy access and have become widely used by most Directorates General. Even though most of them are public consultations and also address the individual citizen, associations are the true target groups. Several provisions support the openness, transparency, and representativeness of EU consultations. On top of that the Commission has invested efforts and money to support "weak interests" in order to achieve a balance in interest representation. However, a careful examination of the consultation practice reveals⁹ that the Commission is firmly in the driver's seat and that despite the unbroken reference to the values of participatory democracy, in essence, consultations are about delivering "better law-making". They boost the position of the Commission vis-à-vis the Council and the EP and still support the claim of improving democratic legitimacy because the Commission equates more efficient policy output with democracy.

The European Citizens' Initiative differs in many respects from the provisions for citizens' participation. Whereas giving opportunity for voice, dialogue and consultations is just a political obligation, the ECI is a legal right and thus the realization is not at the discretion of EU institutions. Basic norms, rules and procedures are laid down in the Treaty and have been formalized by law, i. e. in a regulation adopted by the European Parliament and the Council.¹⁰ Thus citizens can take political action irrespective of the support or guidance of EU institutions. It is up to them to choose and flesh out the issues they want to take up though the Commission has the right to check whether the proposed initiative fulfills the formal requirements. It is a bottom-up process of activating citizens in order to participate in EU affairs. As the ECI has to be backed by at least one million EU citizens, coming from at least 7 member countries and requires a minimum number of signatories in each of them¹¹, it is most likely that it will generate public attention. It is important to note, however, that the ECI is asking citizens to get engaged in political action but does not give them the right to decide. The Initiative can only "invite" the European Commission "to submit any appropriate proposal". The

⁹ For more details see chapters 3, 4, 5, and the concluding chapter 8 in Kohler-Koch/Quittkat 2013a.

¹⁰ See Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative. Official Journal of the European Union, L 65/1, 11.3.2011, § 20.

¹¹ See <http://ec.europa.eu/citizens-initiative/public/basic-facts> (15.11.2013).

impact of the ECI is further hedged in by the legal provision that the Commission will only act “within the framework of its powers” and with “the purpose of implementing the Treaties” (Art. 11, 4 TEU). If the Commission is ready to put forward a legislative proposal it will be subject to the decision-making procedure specified in the Treaty.

The provision on implementing the ECI shows striking parallels with the operation of dialogues and consultations namely that it is up to the Commission to take action. The difference is that in the case of the ECI there is a legal obligation for feed-back and open debate. The Commission has to meet the organizers and within a time frame of three months it has to give a formal response. In the response the Commission has to “explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action.”¹² In addition, the organizers are entitled to present the initiative at a public hearing at Union level. “Feed-back” and “reason giving” have been an insistent request by representatives of civil society in EU consultations. In many instances the Commission gave the political pledge but never accepted a legal obligation and in practice has been hesitant to fulfill the promise (Quittkat 2013).

To sum up, the European Citizens’ Initiative just because it is a constitutional right and has a legal basis gives ownership to civil society but only within the limits of making a political proposal that may or may not be taken up by EU institutions.

Instruments for inviting participation

The hypothesis that the very properties of participatory instruments make a difference is plausible but only rarely has been put to comparative investigation. In our project on “democratic legitimacy via civil society involvement”¹³ we thoroughly examined the full range of consultation instruments of the European Commission in order to assess their participatory potential (Kohler-Koch/Quittkat 2013a; Hüller 2010a). We explored the variety of instruments offered, their desired purpose, their openness and inclusiveness and their actual use by civil society organizations. We were particularly interested in the structure and quality of participation and therefore focused on the representativeness in access and voice and the likelihood to have impact. We further analyzed whether or not civil society organizations could exert accountability and whether their contribution enhanced the deliberative quality of interest intermediation.

All consultation instruments are at the disposal of the Commission and serve the Commission’s prime interests: to submit an acceptable proposal, to gain legitimacy and bargaining power to bring the legislative initiative to a successful conclusion. In pursuit of these interests the Commission cannot always act in accordance with participatory standards but will be selective when targeting consultation partners and it will more often than not avoid to be taken up on its promises. The instruments employed serve three main purposes: (1) expert seminars and expert groups serve to gain expertise and gather an exclusive group of participants, (2) consultative and advisory groups¹⁴, policy forums, and platforms serve stakeholder consultations, and (3) conferences and online-consultations are mainly addressed at the (interested) general public.¹⁵ Expert consultations are in

¹² Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative. Official Journal of the European Union, L 65/1, 11.3.2011, § 20.

¹³ For the list of publications see <http://www.mzes.uni-mannheim.de/d7/en/projects/democratic-legitimacy-via-civil-society-involvement-the-role-of-the-european-commission-demociv>.

¹⁴ The use of terminology is not uniform.

¹⁵ For the following see Quittkat 2013a

general not open to public participation whereas stakeholder consultations usually include representatives of civil society organizations (CSOs). Depending on the practice of the individual Directorate General consultative groups meet at more or less frequent intervals and give CSOs the opportunity to comment on ongoing issues and learn about new initiatives. Sometimes it looks to be just “a general and rather noncommittal exchange of opinions” but in the assessment of CSOs “meetings can be used as a moral suasion” depending on context and personalities (Quittkat 2013: 65). When consultative groups are more issue specific and market-oriented the participation of general interest groups (NGOs) is reduced to close to zero. The Commission always has the say. Even when a consultative group was established with the clear intention to act as a source of information and a sounding board on Community action as it is the case in the European Consumer Consultative Group (ECCG) (Commission 2009a), it is fully under control of the Commission. This is manifest in the group’s working procedures. The Commission convenes and chairs the meetings, sets the agenda and requests comments. Comments may be submitted not only on request by the Commission but also on recommendation by a member but this may only happen on consent of the Commission (Quittkat 2013a: 66).

Policy forums mostly have a more limited life span and their mandate is usually very specific. They are meant to support the European Commission in the search for appropriate problem solving strategies. Normally, selected CSOs representing various areas meet for a given time and then present a report.¹⁶ Platforms are another instrument composed of various stakeholders to advise the Commission. But whereas the original idea of policy forums was to gain the aggregate view of EU-level CSOs and thus decrease transaction costs in communicating policy interests, platforms reach across the different levels of the EU system and ask stakeholder participants to support specific EU projects. As platform members they undertake a commitment to achieve a specific policy objective such as the spread of healthy diet and take on the obligation to initiate action and monitor the battle against obesity (Quittkat 2013a: 68).

The networking initiatives of the Commission are another instrument which heavily relies on the active participation of stakeholders. Especially when it is used for rising public aware as was the case in the campaign “For Diversity - Against Discrimination”. The Commission acts in alliance with various groups of stakeholders among them very prominent NGOs. The less formalized the campaign the more NGOs have the opportunity to exercise influence on the programmatic orientation of the campaign and on its policy substance.

In contrast to the above described consultation instruments, conferences and online consultations are essentially directed towards the general public. They differ, however, in terms of openness and purpose. Though usually everybody can participate, NGOs with limited staff and budget and even more so citizens must have a strong motive to take the effort to attend. Consequently, stakeholder organizations and above all those residing in Brussels are present. For most of them it is a mere act of physical presence since the conferences are tightly scheduled and except for the pre-selected speakers give very little time to present an argument and thus are unsuitable for in-depth discussions. They are rather intended to support and promote “the propagation of ‘mainstream positions’.” (Quittkat 2013: 64)

¹⁶ Not all forums follow this pattern; some of them rather have the format of a conference series like the European Health Forum; in this format the forum not only gives the Commission a broader information base, but also functions as “critical observer”; see Quittkat 2013a: 67, 68-69.

Online consultations explicitly mention whether they are addressed to a specific target group, a range of stakeholders or to the interested public. When compared to other consultation instruments, the threshold of access is comparatively low¹⁷ and transparency is high because submissions have to be put online, and the Commission is committed to publish a consultation report summarizing the significant positions and providing comments at the end of the consultation process.

Did the expansion of the Commission's consultation instruments benefit political participation? First, it is apparent that except for online-consultations the consultation instruments are not designed to support direct citizens' participation and, in fact, it is not the ordinary citizen but rather citizens' association which participate. Advocacy of citizens' interests is a difficult job because consultations are meant to provide input for EU legislation and to fit smoothly into the policy-making process in Brussels. Accordingly, also NGOs are treated as stakeholders who supply expert knowledge and contribute to "better law-making". Consultations are geared towards the Commission's interests and this is why NGOs often feel manipulated and misused for mainstreaming EU policies. Furthermore, consultations are the arena for interest representation and NGOs which strive to advance the interests of citizens have to play the game according to the rules of efficient lobbying in order to be successful. This puts them under the pressure to find the right balance between professionalization and grass roots orientation (Kohler-Koch/Buth 2013).

It is interesting to note that NGOs back the Commission in expanding opportunities for consultations and welcome that online-consultations, policy forums, platforms and conferences have become widely used by most Directorates General. However, like all other stakeholders they consider them to be less useful than the traditional instruments of interest representation such as personal contacts and submitting position papers. NGOs differ in their assessment only in so far as they attribute higher importance to participation in policy forums and in platforms than all other interest representatives (Kohler-Koch/Quittkat/Kurczewska 2013: 22). This is not surprising since policy forums and even more so platforms rely more extensively on the participation of NGOs and offer them opportunities to become active in their own interest.

From the perspective of political participation¹⁸ the assessment of the Commission's instruments of consultation has little to cheer about. Participation is voluntary, but it is – though to different degrees – participation by invitation and only in the case of conferences and online-consultation open to the "uninvited outsider" (Miessen 2011: 191). Even though the Commission is dedicated and has taken efforts to redress biased representation, equal representation has not been achieved and for structural reasons is unlikely to occur. Focused interests are better organized and carry a stronger voice than diffuse interests and this holds true for self-interested economic actors as well as for cause groups. Societies with a long tradition in citizens' associations are better represented than those in the Southern and Eastern periphery of Europe. And above all, it is the educated few who as individuals take part in EU consultations or are organized and active in political associations.

So far it is the same old story that has been told about political participation in European democracies at the national level (xxx). What is different is the degree to which it is participation by invitation. Except for the more or less passive audience in conferences and for online consultations the composition of the participants is largely determined by the Commission. Participation as it is

¹⁷ Language is a restrictive factor as the relevant publications and the questionnaires are most of the time only available in English.

¹⁸ For core criteria of political participation see Fox 2013 and van Deth forthcoming.

provided for in Art. 11, 1-3 TEU is a far cry from participatory democracy last, not least, because it is mediated by association which are for many reasons part of the “Brussels circles” and “caught by the momentum of the European political agenda” (Kohler-Koch/Buth 2013: 138, 144). Their presence in EU consultations has invigorated pluralism but not democracy.

The conclusion is sobering: When participation is part of consultations it will adapt to the logic of functional interest representation. Without any mechanisms that empower citizens and give them the equal chance to have a voice and to exert accountability both on the associations which claim to represent them and via these associations take EU institutions to account, we should not expect an improvement in EU democracy (Kohler-Koch 2010).

Initiating participation bottom-up

Does the picture look brighter when we turn to the European Citizens’ Initiative as laid down in Art. 11, 4 TEU? After all, when participation has to be initiated and organized bottom-up, it gives well-founded hope that it will stimulate political action among citizens and has the potential to strengthen EU democracy.

So far we have no valid experience because it took years to draft the necessary regulations so that the ECI came only into force in April 2012. By November 2013 eight European Citizens’ Initiatives arrived at the end of their collection period and only three of them¹⁹ were successful in so far as they declared to have reached the target of one million signatures and the necessary quota of signatures in at least seven member states. They are not yet formally submitted to the Commission because the competent national authorities still have to verify the statements of support. Only then the next steps – meeting the Commission, a public hearing organized by the European Parliament, examination and answer by the Commission – will follow.

Thus we should concentrate on the first pertinent question: does an initiative get citizens ready to become engaged? Contrary to the wording of the Treaty, not individual citizens but organizations take the lead. This is the case in each of the more than two dozen pilot initiatives and all the 14 (?) initiatives that have been registered by the Commission according to the regulation. Apparently, the necessary but not sufficient condition for successfully launching an initiative is to have a compelling cause. A strong normative concern and emotional appeal are at the heart of the three successful initiatives. “One of Us” advocates the juridical protection of the dignity, the right to life and of the integrity of the human embryo and demands that the EU should establish a ban and end the financing of research activities which violate this principle.²⁰ “Stop Vivisection” is calling on the Commission to revoke an existing directive and to initiate legislation that will stop once and for all animal experimentation.²¹ “Right2Water” claims that water and sanitation are a human right and that member state governments should be required by EU legislation to provide it as a public service for all.²²

In addition, it needs organizational strength to implement the procedure step by step and to meet the requirements of collecting and verifying the statements of support of a million people from at

¹⁹ Right2Water, One of Us, and Stop Vivisection; see http://europa.eu/rapid/press-release_IP-13-1012_en.htm (15.11.2013).

²⁰ <http://www.oneofus.eu/> (13.11.2013).

²¹ www.stopvivisection.eu (14.11.2013).

²² <http://www.right2water.eu/> (15.11.2013).

least seven EU countries with a given minimum number of signatories per member state. Only actors who can combine efficient transnational organization and grass roots presence can succeed in such an effort. This assumption is verified when examining the initiative that was the first to collect the necessary support. The “Right2Water” initiative is “supported” - the phrasing is necessary to obscure the fact that not citizens but organizations are in charge of the initiative - by the European Federation of Public Service Unions (EPSU) representing 275 trade unions which on their part represent over 8 million workers in all kinds of public services in Europe. The strong trade union support is easily comprehensible because the initiative is a move against on-going trends of privatization of water resources. The initiative is also supported by other European organizations that are all umbrella associations with numerous national member associations (the European Anti-Poverty Network (EAPN), European Public Health Alliance (EPHA), European Environmental Bureau (EEB), Women in Europe for a Common Future (WECF), and by Public Services international, EPSU’s sister organization at global level. In addition, many national organizations support the ECI independently.²³ Thanks to this overwhelming organizational power the initiators managed to collect close to two million signatures (1,857,605).

The crucial relevance of organizational support becomes even more obvious when we draw lessons from one of the pilot initiatives which also built on ethical issues and had a strong emotional appeal. The animal welfare “8hours” initiative was launched before the ECI came into force.²⁴ It aims at a revision of current EU legislation to the effect to prohibit transportation of animals destined for slaughter for more than 8 hours. The initiative was first started by a member of the European Parliament and then joined by a German animal welfare organisation with many years of experience in working on the ground across borders. The accumulated experience which had resulted in well-documented reports made the NGO a trustworthy partner and the close cooperation with committed individuals and local groups in many European countries was essential for the mobilization of support. By the beginning of July 2012 more than 1,1 million signatures had been collected. Such a result could not have been achieved just by setting up a Facebook community and launching a website, even not if it is translated into 18 languages. Rather, the success is due to the engagement of animal welfare organizations and other voluntary groups at national and local levels as well as individual supporters. They spread participation by disseminating information material and contacting potential supporters and they organized the collection of signatures in the streets. In addition to the 8hours ECI campaign, supporters in the European Parliament have been rallied to sign a Written Declaration to support a review of existing legislation. This way a citizens’ initiative managed to closely link direct citizens’ participation with the political engagement of the democratic representatives. The initiative’s only flaw is the biased representation in terms of country origin and political affiliation. When examining the list of supporters of the 8hours campaign – organizations and members of the European Parliament - biased representation in terms of geographic scope becomes evident. Thus, it would not have met the criteria stipulated in the ECI provisions.

Recent empirical research (Van Brussel 2013) has confirmed that organizers face tremendous difficulties to meet the requirements despite technical and organization support provided by the Commission. The story Annelies Van Brussel can tell on the basis of her interviews reveals not just the complexity of the process but also how difficult it is to fit the ECI into the EU system. Even though organizers appreciate the engagement of the responsible EU officials and agree that the Commission

²³ For more information see <http://www.right2water.eu/> (15.11.2013).

²⁴ The following paragraph is – with slight revisions – taken from Kohler-Koch 2012.

as an institution is well-intentioned, dissatisfaction exists on both sides and is widely spread. One reason is that the Commission adheres to the logic of efficient and legally watertight administrative rules and thus imposes cumbersome procedures which narrow down the organizers' scope of action. The main reason, however, is that expectations differ widely. The Commission as guardian of the existing constitutional system pays due regard to support the functioning of the ECI but sees to it to stay a neutral facilitator. The organizers, on their part, would rather like to see the ECI as giving momentum to participatory decision-making and thus expect EU institutions to be more co-operative and ready to provide support.

So far we have no indication how the Commission may respond to the demands put forward by the individual initiatives. The experience with the pilot initiatives is not encouraging. The 8hours initiative set a sobering example: When the more than million signatures were presented to the Commission, the Commissioner in charge promised to act accordingly but revoked his commitment only one week later. Even though the relevant directive is under review, the Commission will not change it but supports the Councils view that "the main focus should be on ensuring proper enforcement of the current legislation"²⁵. Even though it is to be expected that an official ECI will build up more public pressure, it is evident that advocating and decision-making are apart. The ECI is giving voice but not a vote to people and, consequently, is not an instrument of participatory democracy.

Nevertheless, the ECI might qualify as device of activating citizens' participation. The success of an ECI rests on the mobilization of a large number of European citizens. This can only be achieved when the organizers manage to activate "the politically less engaged" that is those who are interested in politics and go voting but would never think of joining a party or an association or take part in a demonstration. They are the "peripheral participants" as Eline A. De Rooij (2012) has called them. Their engagement is temporary, ad hoc with a low level of engagement. Nevertheless, we need these "citizens on call" (Amna) because they are the backbones of civil society and we need organizations and events to call on them again and again to keep them engaged. Even the partial activation of civil society gives hope that the spark leaps over to the European Parliament. In this way the ECI might link participation and democratic representation in the EU.

Further empirical research is needed to make a sound judgment on this presumed activating effect of the ECIs.

Conclusion

Citizens' participation in EU governance is not a stepping stone for participatory democracy. Under specific conditions it has the potential to render representation in the EU more democratic. The limits are manifold as demonstrated in this paper. Neither the dominant belief system nor the prevailing interests of the institutional actors work in favour of strengthening participation as an empowerment of citizens. And most instruments have an adverse effect. A main obstacle that impedes participation to make the EU system more democratic is the inbuilt tendency to invite people "in" and treat them as "consensual facilitators" (Miessen 2011) of good governance.

(A more elaborate conclusion will be added after the conference)

²⁵ Statement of the Commissioner in charge in a meeting of the EP Intergroup on the Welfare and Conservation of Animals, 20 September 2013; see <http://www.animalwelfareintergroup.eu/wp-content/uploads/2011/08/9-Report-working-group-meeting-T-Borg.pdf> (16.11.2013).

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