

Participatory Democracy in the EU: Obstinate or Obsolete?

Luis Bouza García

Executive Summary

- > The EU is the first supranational organisation to have attempted to use participatory democracy mechanisms to engage its citizens, but these mechanisms have failed to channel the dissatisfaction with the management of the euro crisis.
- > The institutional attention shifted from an original emphasis on focused dialogue with a reduced number of civil society organisations to an attempt to engage with more actors and use all mechanisms to communicate after the failure of the European Constitutional Treaty in 2005.
- > Despite some achievements, both approaches have fallen short of ambition. Civil society dialogues have not been able to associate national and individual members of the organisations, whereas new approaches like the European Citizens' Initiative fail to create sufficient public attention.
- > Before giving up on participatory mechanisms altogether, the EU could try to establish a stronger relation between direct dialogue with organisations and an evaluation of their role in the European public sphere.

The EU is not the first supranational organisation to establish structured relations with civil society – the United Nations, the Council of Europe or the Organisation for Economic Co-operation and Development (OECD) have all established fora of civil society interaction –, nor the first polity to try to address its problems of legitimacy by

institutionalising mechanisms of citizen participation. Calls to reinvigorate representative democracy by strengthening direct participation are topical since the 1970s. However, the EU is the only supranational institution to have used the notions of participatory democracy and to have created mechanisms allowing for individual citizens' direct participation in policy-making in addition to dialogue with civil society. This paper reviews the agenda on participation in the last 15 years in its first section, attempts to conceptualise the evolving goals and limited results the EU has sought in section two and provides some ideas for bringing the focus towards what these mechanisms can actually produce in section three.

And yet the assessments of civil society organisations and the academics interested in participatory democracy at the EU level are far from positive, and not very optimistic with regard to the future. Their criticisms can be summarised in three main arguments: (i) the participation mechanisms are too weak to offer real opportunities to influence debates, (ii) these mechanisms are elitist in nature and unable to reach beyond the 'Brussels policy bubble', and (iii) the implementation of the mechanisms has lost momentum since the agenda peaked in the years between the demise of the Santer Commission (1999) and the adoption of the European Constitutional Treaty (2005), which was never ratified. The best evidence of the weakness of the participatory agenda lies in the fact that despite the increased attention to and contention on EU affairs during the euro-crisis the participatory mechanisms have not served to launch a significant debate on policy alternatives to austerity, not to say formulate credible alternatives.

Participatory mechanisms: institutionalisation without implementation?

The EU has had more or less established relations with interest groups since its creation in the 1950s and the institutions have found allies in these organisations when it came to extending the EU's competences. However, it was

only in the 1990s that the Commission launched a reflection on its relation with interest groups and on how these groups could be a proxy for direct contact with European institutions. It is not a surprise that these reflections coincided with two key instances of the EU's democratic legitimacy problems: the first popular rejection of the Maastricht Treaty in a referendum in Denmark and perceptions of maladministration following the resignation of the Santer Commission in 1999.

In the 15 years since the 2001 White Paper on Governance there have been incremental attempts to transform organised civil society input into policy-making into a form of participatory democracy or interactive policy-making. The goals have been to re-balance the playing field among representatives of different interests, increase the transparency of policy-making, provide citizens with opportunities of contact with and influence on policy-makers, increase the quality of policy-making and foster a pan-European debate on European policy alternatives. Article 11 TEU has been considered as the confirmation of this strategy, since it entitles citizens to exchange views on the EU (art 11.1), stipulates dialogue between institutions and civil society (art 11.2), stakeholders consultation before policy proposals are made by the Commission (art 11.3) and calls for citizens participation in policy initiation (art 11.4). However, the narrative on the design of a participatory strategy by the institutions needs to be challenged, as the adoption of the concrete participation instruments is not directly related to the adoption of the Treaty article, highlighting the incremental nature of this agenda.

The European Commission mentioned participatory democracy for the first time in a 2000 policy consultation on a stronger partnership with NGOs, followed by the White Paper on Governance (which provides a general framework and strategic orientation on how to bring the EU closer to the citizens) and the 2002 Guidelines on dialogue and consultation. This 2002 Communication, together with the series of 'better regulation packages' launched in 2005 and updated in subsequent communications, is still the reference document on the ways in which policy dialogue with civil society and stakeholders is organised, stating which proposals must be open to consultation or deadlines for reply. In this context, the 2004 Constitutional Treaty included article 47 under the heading 'Participatory Democracy'. After the 2005 rejection of the Treaty, the article was turned into article 11 TEU in the Lisbon Treaty with the same phrasing except that the 'Participatory Democracy' title was dropped.

The aftermath of the failure of the Constitutional Treaty illustrated that the participation agenda is not the result of a masterplan derived from the Treaty. In 2006 the Commission launched a transparency initiative whose most salient aspect is a register of lobby groups. The register was reformed in

2011 and it is currently under review in order to discuss whether registration should be mandatory instead of voluntary. Since 2007, the Commission and the European Parliament engaged in the 'Europe for citizens' programme, inspired by the reflection following the failed referenda and which aimed among other things to use participation opportunities to communicate on Europe. In 2011, the EU regulated the European Citizens' Initiative (ECI), allowing 1 million citizens to request the Commission to initiate legislation.

A change in the focus of participation

The regulation of the ECI in 2011 is the confirmation that the agenda on participation has changed since its inception between 2000 and 2004. Whereas, as mentioned above, the Treaty has four provisions, the EU has only acted explicitly upon art. 11.4 on the ECI. When it comes to the provisions for dialogue with civil society - the core of the original strategy - the attitude of the institutions is that the actions mandated by the Treaty are already in force and thus no further action on precepts 1 to 3 in art 11 TUE - referring to dialogue with citizens, civil society and stakeholder consultation - is necessary. However, this argument has some significant limitations. Whereas the Commission may argue that it has a policy for stakeholder consultation and a dialogue with civil society carried out at the DG level, the organisations that promoted the institutionalisation of these practices such as the Social Platform consider that a horizontal civil dialogue - a general dialogue with high ranking officials on top of policy-specific consultation - is lacking. As the European Economic and Social Committee has indicated regularly since 2009, art 11.2 seems to mandate all EU institutions to establish dialogues with civil society, and this is far from achieved: the Parliament has irregular contacts - even though it has evolved from sceptical positions seeing civil society participation in competition with its representative role - and the Council has no policy on this matter.

The disinterest for the precept on dialogue with civil society since the entry into force of the Lisbon Treaty is further proof that the EU agenda on participation has lost ground. This stands in contrast to the recent attention devoted to the reviews of the transparency register (2016) and the regulation (2011) and the review of the ECI (2015). Indeed, it rather seems that the agenda on participation is being reformulated: the attention has moved away from dialogue with EU-level civil society to mechanisms favouring the participation of a wider range of organisations, interests and citizens, and potentially contributing to a wider attention of the public.

This turn must be understood with reference to the evaluation of the effects of participation as implemented since 2000. Participation was incrementally built on existing

relations with organised civil society and lobby groups in the assumption that in the absence of a public sphere these organisations could act as a proxy for the preferences of the European publics. The consequence was that EU policy consultations provided incentives for the participation of organisations with a good record of involvement and expertise in EU matters rather than those able to consult their own members or to articulate campaigns or raising awareness. This is the result of institutional factors - short consultation deadlines, notions of representativeness emphasising pan-European membership - and the high degree of competition in the pluralistic EU policy-making, which enhances a type of reputation requiring a long term involvement in the European field and a strong technical capacity.

Whereas this system contributes to achieve a fairer equilibrium of interests - civil society groups can balance business organisations even with fewer resources - the debate on the European Constitution provided evidence of its limits in enhancing better knowledge and ownership of EU policy-making by ordinary citizens, as the organisations that achieved influence in the Constitutions were not heard during debates on the ratification of the Treaty. The 'Europe for citizens' programme is directly related to the reflection plan D launched by the Commission in the aftermath of the French and Dutch referenda. This document proposed for the first time to coordinate civil society consultation and the communication agenda and also considered for the first time consulting national organisations. All the subsequent policy instruments (such as the better regulation packages, the transparency initiatives and the regulation of the ECI) have moved away from semi-corporatist inspirations of civil dialogue with a small group of well-informed and representative organisations to emphasise that EU institutions should be accessible to all types of organised interests, stakeholders and individuals. Visible steps in these directions have been the increased usage of open online consultation including questionnaires for individuals (in opposition to dialogue with focused organisations), the creation of a lobbying transparency register that is open to individuals and national organisations on the condition that they declare their interests and funding - implying that there are no checks on "Europeanness" or representativeness - and the regulation of the European Citizens' Initiative whereby a group of seven citizens can ask the Commission to act on a policy proposal if they collect the signatures of one million citizens. It is important to note that the Commission took pride in launching the regulation of the ECI it as one of the first offsprings of the Lisbon Treaty whereas it has not acted on paragraphs 11.1, 11.2 and 11.3, which confirms the new orientation of the participatory agenda.

There is thus a clear evolution from a 'closed' system emphasising representation and expertise to an 'open' one

stressing transparency, diversity and communication. However 'participatory democracy 2.0' as enforced since the late 2000s does not seem to have achieved much either. First, online policy consultations have not overcome some of the well-established biases in EU policy-making - the presence of more business organisations and groups from Northern Europe than civil society groups and Southern European organisations. Second, the transparency register has created tensions of its own such as the evidence provided by a bogus registration in 2012 that showed that entries were not properly checked, followed by the debate about its status since it emerged as a voluntary register in 2006. The Commission is only considering mandatory registration after its third review in 2016. Finally, the European citizens' initiative is failing on its promise to make EU policy-making more accessible to ordinary, individual citizens. In its four years of existence more than 50 initiatives were launched, only 31 registered - the others being considered as outside the Treaty - and only three met the one million signatures threshold. Furthermore, the promoters of two of these initiatives were highly disappointed with the policy response to their proposals, with one of them even going to the European Court of Justice to seek for redress. Even more, not only is the ECI failing to achieve policy influence, but its usage is dramatically dropping over time, as every year since 2012 has seen fewer proposals than the previous ones.

Design a policy oriented to the public sphere by coordinating existing mechanisms

It clearly appears that participatory instruments have not met their ambitious objectives. However it would be a paradox that the EU - an early promoter of participation - would simply abandon opportunities for citizens' direct input into policy-making at a time when the EU project is more contested and when citizens - especially younger ones - demand new forms of political participation.

The incremental development of participatory mechanisms has created a two-tier system: on the one hand, the institutions wish to maintain close contacts with organisations that can provide state-of-the-art expertise that is formulated as feasible EU policies, whereas on the other hand they wish to keep the channels of participation open. Political capital and initiative seem to have moved from the first to the second, but both stay in place. However, the full potential of these mechanisms could actually be realised by attempting to combine both tiers.

Before attempting any reforms it would be important to avoid an inflation in the terminology and be clear about the real potential of these mechanisms. They are not a form of direct democracy as they give citizens no say about the results, but rather modest mechanisms of involvement in agenda-setting. They do however have a potential to diversify

the number of points of view, bring new issues onto the agenda, increase the transparency of the policy process and foster pan-European campaigns.

The achievement of these goods is limited by the current configuration. The ECI has a strong potential to bring issues to the agenda and eventually politicise some debates. Yet, some of the most controversial issues - prostitution, abortion, regional secessionism - have been averted or not directly addressed. The ECI also does have potential to diversify the type of civil society actors and campaigns since signature collection is more feasible for actors which are not necessarily so strongly involved in EU affairs.

One of the ways in which civil society involvement could be made more participatory, diverse and vibrant would be by establishing linkages between an involvement in direct dialogue with the institutions and the usage of mobilisation tools such as the ECI. In fact this is what the ECI regulation somehow attempted by giving successful ECI promoters a right to be heard in the European Parliament - a hearing which, as recently suggested by the European Ombudsman, could be held together with the Council in fulfilment of the

general predicament of article 11 TEU. In addition to this, the institutions could consider measuring the social representativeness of causes or organisations involved in civil dialogue by assessing how often they take part in ECIs or other forms of awareness-raising. This would give the Brussels-based organisations strong incentives to reach out in support for their campaigns.

Participatory democracy in the EU has not achieved its goals, and yet it remains one of the clearest attempts to involve citizens directly in policy making. The principle is not obsolete yet, but the consistent focus of civil society and the institutions on these mechanisms seems more obstinate than results oriented. The suggestions made above are compatible with the incremental approach taken so far and require few or no new regulations. They however depart from it by pointing out that instead of presenting contacts with civil society as a genuine form of participatory democracy they take a more modest step of recognising that there is a deficit of diversity and controversy in policy-making and design opportunities fostering new debates and associating new actors in policy-making.

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About the Author

Luis Bouza García is Assistant Professor of Political Science at the University of Salamanca and is the Academic Coordinator of the European General Studies courses of the College of Europe in Bruges. He is a graduate of the Universidad Complutense de Madrid and has a PhD from the Robert Gordon University in Aberdeen and an MA from the College of Europe. He has also held research and teaching positions at the University of East Anglia and Universidad Carlos III Madrid, and has been a guest lecturer at different European Universities like Pantheon - Sorbonne (Paris 1), Maastricht and Exeter.

His main field of interest is the sociology of the emergence of European debates in the public sphere, with particular attention to the interactions between the EU institutions and civil society.