



ISSN: 2036-5438

European Citizens... Mind the Gap! Some Reflections on Participatory Democracy in the EU

by

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Perspectives on Federalism, Vol. 5, issue 3, 2013





Abstract

Since 1957, the European Economic Community (EEC) has undergone profound constitutional changes, dictated by the geographic and functional expansion of the EU, but also by the need to heal its original sin: the “democratic deficit”.

Despite these innovations, the “democratic deficit” still exists as a deficiency with regard to “input legitimacy”, i.e. as a “discrepancy between the pervasive effects of the regulative power of the EU and the weak authorization of this power through the citizens of the Member States who are specifically affected by those regulations”.

Even though the democratic value of the involvement of people and civil society in decision-making remains contentious, more than a decade after the publication of the 2001 White Paper on European Governance, the method of increasing “input legitimacy” still means the improvement of citizens’ participation, in compliance with Art. 11 TEU.

This essay, building on the extensive academic scholarship on participatory democracy, discusses channels for citizen and civil society participation in the EU. It attempts to critically contrast and compare formal participatory tools, i.e. those provided for in the Treaties or regulated by secondary EU legislation, with soft or informal channels (e.g. consultation, work fora, platforms) for citizens’ involvement and their actual contribution in terms of “input legitimacy.” In particular, drawing inspiration from Smismans’ discourse on “decentralism”, this essay confronts the issue of multifold horizontal (non-territorial) participation, focusing on the involvement of CSOs, i.e. of transnational, non-territorial “organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens”, as well as multi-level territorial (vertical) dimensions of participation. It then contrasts the role of (horizontally or vertically) organized civil society’s participation with the participatory role of EU citizens *uti singuli*.



Key-words

Participation, participatory democracy, civil society organizations, citizens, European Citizens' Initiative, European Economic and Social Committee, Committee of the Regions



1. Introductory Remarks

Since 1957, the European Economic Community (EEC) has undergone profound constitutional changes. The “institutional triangle” composed of the Commission, the Council and the European Parliament (EP), already enshrined in the foundational Treaties, has remained intact. However, the architecture and practice of EU governance have been substantially modified. These changes have been dictated by the geographic and functional expansion of the EU, but also by the need to heal its original sin: the “democratic deficit”.

David Marquand first used the term “democratic deficit” in 1970 (Mény 2003). Then, for over forty years, scholars, journalists and politicians have claimed that the EU suffers from such a deficit, making it an ambiguous *cliché* (Pech 2008: 93), but the substance of the “democratic deficit”, its profound reasons and the ways to eliminate it have been differently theorized.^I The “democratic deficit” has mostly been identified as a disjunction between power and electoral accountability (Craig 2011: 30) or, as recently expressed by Raphaël Kies and Patrizia Nanz, is primarily (although not exclusively) conceived as the “discrepancy between the pervasive effects of the regulative power of the EU and the weak authorization of this power through the citizens of the Member States who are specifically affected by those regulations” (Kies and Nanz 2013: 1). This essay embraces this view and contends that the “democratic deficit” denotes a lack of procedural or “input legitimacy” (Scharpf 1999: 7), which can be identified as the participatory quality of the procedure leading to laws and rules as ensured by the “majoritarian” institutions of electoral representation.^{II}

The EU has explored different and complementary strategies to reduce the abovementioned “discrepancy” and to improve its input legitimacy. The relative weakness of the EP, which is the only directly legitimated European institution, has progressively been reduced. The Lisbon Treaty has further increased the EP’s power in the law-making process through the extension of both the co-decision procedure, renamed “ordinary legislative procedure”, and the political control over the Commission (Lupo and Fasone 2012). In addition, the Lisbon Treaty has given formal recognition to national parliaments’ contribution to “the good functioning of the Union” (Art. 12 of the Treaty on European Union, TEU). It has also provided for an involvement of national parliamentarians in the



ordinary legislative procedure through the “Early Warning System”, whereby national parliaments are to check for and enforce compliance with the principle of subsidiarity in EU legislative proposals.^{III}

The expansion of the EP’s competences and the enhanced role of national parliaments went hand in hand with the development of various forms of participatory democracy.^{IV} In line with a global trend, the EU has made the participation of civil society to in the decision making process a key objective of its action and a constitutional principle (Cuesta López 2010; Ferri 2012).

In 2001, participation was recognized as one of the pillars of “good governance” in the notorious Commission White Paper on European Governance (hereinafter “White Paper”).^V The White Paper highlighted the importance of a wide participation throughout the whole policy chain to ensure the quality, relevance and effectiveness of EU policies. That same year, Declaration No. 23 on the future of the Union annexed to the Treaty of Nice addressed the democratic challenge of the EU and acknowledged “the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States”. Finally, even though, in line with the Court of Justice of the European Union’s (CJEU) case law,^{VI} the Lisbon Treaty affirms that the EU is founded on representative democracy,^{VII} it also introduced several references to participation. Art. 10(3) TEU explicitly recognizes that “every citizen shall have the right to participate in the democratic life of the Union”. Art. 11 TEU makes clear that the EU institutions must give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of EU action and that they must “maintain an open, transparent and regular dialogue with representative associations and civil society”. Furthermore, Art. 11(3) TEU adds a legal dimension to the existing and extensive practice of consultations by providing that the European Commission “shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent”. Art. 11(4) TEU provides for the European Citizen Initiative, and confers to EU citizens the power of inviting the European Commission to present a legislative proposal. Art. 15 of the Treaty on the Functioning of the European Union (TFEU) also mentions civil society and prescribes that “in order to promote good governance and ensure the participation of civil society, the



Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible".

Despite these innovations, the EU is still a democratically legitimate entity with democratic shortcomings (Pech 2008: 94).

On the one hand, the conferral of larger powers on the EP and national parliaments has been accompanied by the consolidation of intergovernmentalism in a sort of "schizophrenic" institutional evolution (Dehousse and Magnette 2006: 33). On the other hand, the overall idea of solving the "input legitimacy" problem by giving more powers to the EP "rests on a fallacious analogy with the institutions of parliamentary democracy at the national level" (Majone 2010: 151). Regardless of contrary predictions advanced by EU Commissioner Viviane Reading,^{viii} the EU is not a state (not even a quasi-federation or federation *in statu nascendi*) (Sadurski 2013: 43). EU democracy is not founded on the principle of popular sovereignty, usually proclaimed in national constitutions and inspired by the social contract tradition. The German Constitutional Court, in its renowned decision of 30 June 2009 on the constitutional profile of the Treaty of Lisbon and its ratification in Germany, clearly stated that, even with the new Treaty, the EU retains its identity as a complex organisation, its character of *Staatenverbund*.^{ix}

Moreover, there is a growing disaffection with supranational integration, well shown by a declining turnout in European elections. This negative trend, likely to be confirmed in the forthcoming 2014 vote, can be explained by the fact that the process of political representation does not operate properly within a supranational context (Cuesta López 2010: 123; Monaghan 2012: 290). Therefore, the more general concern of representative democracy in the national context can be seen as an additional factor of poor participation in the European elections (Cassese 2012: 606). From this perspective, the enhanced role of national parliaments does not represent a solution to the "democratic deficit", as defined above.

Even though the democratic value of the involvement of people and civil society in decision-making remains contentious, more than a decade after the publication of the White Paper, the main method of increasing "input legitimacy" is still the improvement of citizens' participation, and the implementation of Art. 11 TEU.

Building on the extensive academic scholarship on participatory democracy in the EU, this contribution aims to discuss, in light of Art. 11 TEU, the channels for citizen and civil



society participation in EU governance. For the purpose of this analysis, participation is the deliberative process by which interested or affected individual citizens and civil society organisations (CSOs) are involved in decision-making processes before a political decision is taken (*Inter alia* Alemanno 2014; Mendes 2011a; Nanz and Dalferth 2010).

Drawing inspiration from Smismans' discourse on "decentralism" (Smismans 2004),^x this essay confronts multifold horizontal (non-territorial) participation, focusing on the involvement of CSOs, i.e. transnational "organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens", as well as multi-level territorial (vertical) dimensions of participation. It then compares the role of (horizontally or vertically) organized civil society participation with the participatory role of EU citizens *uti singuli*. Having characterized the democratic deficit as a "weak authorization" of EU powers, this contribution also aims to evaluate how different forms of citizen involvement contribute to foster "input legitimacy."

First, the role of the European Economic and Social Committee (EESC, or simply the "Committee") is examined (Section 2), then informal mechanisms for CSO participation are analysed (Section 3). This analysis does not include new modes of governance (e.g. the Open Method of Coordination), and does not consider the participation of civil society within EU agencies (although agencies have put in place interesting participatory channels). Second, this essay discusses the multi-level territorial (vertical) dimension of participation, focusing on the involvement of regions and other sub-national entities in EU governance, in particular the role of the Committee of the Regions (CoR) (Section 4). It then examines the role of EU citizens *uti singuli* regardless of their territorial belonging (Section 5).^{x1} Finally, a few concluding remarks are provided.

2. The Role of the European Economic and Social Committee in enhancing Civil Society Organizations' Participation

The involvement of trans-nationally organized civil society occurs mainly through a permanent and institutionalised advisory body, the EESC, and through informal channels. This section focuses on the EESC, highlighting its features as a transnational participatory forum, trying to infer whether the EESC is likely to increase the EU's "input legitimacy".



It is well known that the EESC was created by the Treaty of Rome as a body with advisory functions, and that it still maintains its character as advisory body composed of members of the civil society. Currently, according to Article 300(2) TFEU, the EESC consists of representatives of organisations of employers and employees as well as of other representatives of civil society, notably from socio-economic, civic, professional, and cultural areas. Since Croatia has joined the EU in 2013, the EESC has 353 members drawn from economic and social interest groups, nominated by national governments and appointed by the Council of the European Union (Art. 302 TFEU). The EESC's members are divided into three main groups: (I) employers' organisations; (II) trade unions; and (III) various interests. The Employers' Group brings together businesspersons and representatives of entrepreneurs and associations working in industry, commerce, services and agriculture in the Member States. The Workers' Group comprises representatives from national trade unions, confederations and sectorial federations, the vast majority of them affiliated with the European Trade Union Confederation (ETUC).^{xii} In line with Art. 300 TFEU, Group III is made up of "other representatives and stakeholders of civil society, particularly in the economic, civic, professional and cultural field". The wide formulation of this provision implies the involvement of a large variety of categories: farmers' organisations, small businesses, the crafts sector, the professions, social economy actors (mutual societies, cooperatives, foundations and non-profit associations), consumer organisations, environmental organisations, and associations representing the family, women and gender equality issues, youth, minority and underprivileged groups, persons with disabilities, the voluntary sector and the medical, legal, scientific and academic communities.^{xiii} Group III seems to mirror the increased complexity of contemporary society, including a patchwork of minority interests.

Although the members of the EESC are nominated by national governments and appointed by the Council of the European Union, the territorial dimension remains "hidden" in the EESC's internal organization. National groups are disaggregated and re-aggregated on the basis of the interests they represent. Fascinatingly, the EESC includes business interests alongside "weaker interests" and/or "non-economic interests", in line with a trend well established at the national level.^{xiv}

One could argue that the EESC is a representative body in the sense that it represents citizens' interests (even though it is not elected). By contrast, we include it in the



participatory discourse: as mentioned above, this body is an institutional setting for CSOs to participate in the EU governance. According to Article 304 TFEU, the EESC must be consulted by the EP, by the Council or by the Commission where the Treaties so provide, or in all cases in which they consider it appropriate. In addition, the Committee may issue an opinion on its own initiative. Hönnige and Panke (2013: 454) underline that the EESC is consulted in nearly all market-creating and market-correcting policies (which include areas such as the internal market, environment and sustainable development, agriculture, employment, social policy, cohesion policy, youth and education, vocational training, research and innovation, culture, health, transport and energy, consumer policy and trade). Legislative proposals are dealt with in six sections (similar to parliamentary committees) structured according to connected policy areas.

Since 1999, when it adopted its own-initiative Opinion on “The role and contribution of civil society organisations in the building of Europe”,^{xv} the EESC has claimed to be the primary forum of civil society and to play a legitimacy function through the involvement of social and economic players to effectively shape EU decisions.^{xvi} Currently, Group III is the driver of a more participatory EU: being itself composed of CSOs, it has set itself the task of supporting the development and democratic function of CSOs. It should not appear naïve that Group III’s motto is “Achieving real participatory democracy in the EU, through civil dialogue”.^{xvii}

Escaping the rhetoric which surrounds EESC’s talks, the EESC is a participatory tool in the sense that it allows CSOs to participate in EU decision-making and synthesises different components of European society. It plays the role of intermediary between citizens and EU institutions. However, even though it is undoubtedly pluralistic, it is not open, since members are pre-selected at national level.

As regard the question whether and how (and how much) the EESC influences the EU decision-making process, it is hard to say. Recently, Hönnige and Panke attempted to measure, through an empirical analysis, the influence of the EESC and the Committee of Regions and concluded that both of them do have influence on policy-making, even though their recommendations are not binding on the addressee (Hönnige and Panke 2013). They nevertheless concluded that this influence is still restricted.

On 5 February 2014, the EESC has opted to “move closer” to the European Parliament and to consolidate its relations with the Committee of the Regions through an



inter-institutional agreement.^{xviii} The aim of this agreement is to reinforce the “democratic pillar” of the EU, achieving two objectives: ensuring that legislative action is more effective, and making the best possible use of available resources. In practice, the agreement should nurture a “cooperation upstream”, through own-initiative opinions, and a “downstream” consisting in assessments of the impact of European directives and programmes on the ground. The vague idea behind the agreement is to counter-balance the weight of the Commission and the Council in the legislative process, and to remedy the “weak authorization” of EU powers through the CSOs, i.e. to increase the EU’s “input legitimacy”. Indeed, the ambiguous language of this document alludes not only to input legitimacy, but also (and probably even more) to output legitimacy. Although it is unclear what (legal) effects (if any) the agreement will display, more “visibility” for the EESC should produce more intelligent outcomes: by giving the EESC a stronger role in EU decision making, EU legislation should benefit from their expertise and information.

Reading through the text, what is even more evident is the administrative component in terms of coordination in translation, research and documentation services. While this component is relevant in terms of efficiency and can, to a certain extent, improve transparency, it is not *per se* increasing input legitimacy, nor output legitimacy.

The enhanced role of the EESC in conjunction with the EP and the Committee of the Regions combines all of the institutionalized electoral and non-electoral forms of citizen participation. It also encapsulates, in a sort of institutional circle, horizontal and vertical dimensions of citizen participation, but it is too early to predict its effects. All we can do is to monitor the tangible developments that this agreement will bring about.

3. “Informal” Channels of Participation for Civil Society Organizations

Art. 11 TEU prescribes that EU institutions must give CSOs the opportunity to make known and exchange their views on EU action, as well as maintain within them an open, transparent, and regular dialogue. In addition, the Commission must consult parties affected by a decision concerned.

It has been underlined that Art. 11 TEU does not contain a systematic and coherent set of norms and seems to be a “shopping list” where the participatory traits of current EU governance are included (Mendes 2011b: 1851). This probably is true, but the provision is



clear and wide enough to allow the Commission (and other institutions) both to continue using well-rooted instruments, such as the “civil dialogue” and consultations, and to experiment with other participatory tools.

Indeed, after the entry into force of the Lisbon Treaty, CSOs’ involvement still sticks to dialogues and consultation as core channels. In addition, any such involvement is primarily a monopoly of the Commission. The reasons behind this monopoly are two-fold.

First, the Commission has tried to gain in legitimacy itself. As noted by Greenwood, “the Commission’s focus on interest groups as potential agents of input legitimacy historically developed in the time when the European Parliament was an assembly without popular election or extensive powers, when the traditional strengths of interest groups as checks and balances on both political institutions, and upon each other, could provide another contributory avenue of popular legitimation” (Greenwood 2007: 343).

Secondly, the Commission has been the most important target for lobbying activities since the very beginning, due in particular to the control of legislative initiative, and it has tried to handle the pressure of lobbies through instruments which itself “directs”, such as dialogues and consultations (Tasanescu 2009: 55).

The “civil dialogue” is a practice that the Commission has developed for more than two decades. The term “civil dialogue” was coined in 1996 by the Directorate General responsible for social policy to plead for increased interaction with CSOs, further to the “social dialogue” (with social partners). Whilst the social one has been strongly institutionalised since the Maastricht Treaty,^{xix} the dialogue with other associations was envisaged in the Commission’s ‘Plan D’,^{xx} but lacked formal recognition until the entry into force of the Treaty of Lisbon. Art. 11 TEU, however, does not give a clear definition of “dialogue,” nor does it define its scope, procedures, or players. It has been claimed that Art. 11 TEU should imply a certain evolution of current practice: the “civil dialogue” should become a widespread participatory channel used by all the institutions and would require more openness and clarity (Cuesta López 2010: 132). Even though this opinion can be shared, no relevant changes have occurred yet. The Commission continues to engage in informal, unregulated dialogues which vary considerably from one DG to another and whose effects are quite unclear.

The EP has also tried to set up civil dialogues, primarily through informal public hearings. Annex IX of the Rules of Procedures regulates the access of citizens and



members of “interest groups” to the EP and establishes a code of conduct to be respected. This internal regulation, however, neither grants regular contacts nor reciprocal communication. In addition, it is not clarified what effects these contacts would and should bring about.

The least open of all the EU institutions is still the Council of the European Union. Berger, in 2004, noted that CSOs were “kept beyond the crowd control barriers that protect Ministerial meetings” (Beger 2004). Only after ten years and in selected sectors only have some CSOs (usually from the social sector) occasionally been invited to Council meetings to enjoy speaking rights (Cuesta López 2010: 132).

Consultations, in turn, are soft tools mainly used by the Commission to receive technical knowledge and identify the interests and needs of interested parties before developing legislative proposals. Analogously to the dialogue(s), they pre-date the Lisbon Treaty.

Consultations are formally open to all stakeholders, interested parties and the wider public, allowing for a wide range of actors that include public authorities, businesses, associations of different kinds as well as individual citizens, but participation patterns and rates vary greatly from one consultation to another. However, Quittkat notes that there are also selective consultations which address well defined groups, handle mostly technical issues, and are especially used by DG Enterprise and Industry and DG Taxation and Customs (Quittkat 2011: 659).

Currently, in most cases consultations are carried out through an online forum created by the Interactive Policy Making (IPM) system.^{xxi} Although online consultations have become almost regular instruments, not all DGs use them. The format of these consultations can vary considerably, but they often take the form of simple surveys or contain questions which are *in se* conducive to an answer. The impression is that the Commission demands approval for decisions which already have been taken, without offering adequate space and time to provide meaningful input. Standardized questionnaires *per se* hardly leave room for “qualitative or innovative input”, while flexible formats incentivize more complex comments.

Like dialogues, consultations have not undergone any relevant changes after Lisbon. However, there has been a steady and constant move towards a more extensive use of the IPM system and a considerable shift towards standardized consultations. As highlighted by



Quittkat, “[t]his development bears the risk of emphasizing participation (quantity) at the expense of input (quality) as there exists a trade-off between format and participation: the more open the format and thus the higher the probability to receive qualitative input, the lower the number of participants” (Quittkat 2011: 663).

From an overall perspective, in comparison to dialogues, consultations seem to produce more significant effects and contribute towards shaping a legislative proposal. What remains quite unclear is how much single contributions are taken into account (or disregarded), and how they are assessed (Quittkat 2011: 661). In addition, there are no legal criteria to weigh different contributions and to evaluate the representativeness of CSOs (Fazi and Smith 2006: 29).

A general observation that applies to both dialogues and consultations is that they aspire to involve a widespread number of (representative) CSOs in EU decision-making processes in view of increasing “input legitimacy”. Nonetheless, they fail to do so primarily because they are open and transparent only to a limited extent.

The composition of civil society that participates in dialogues and consultations at EU level is largely dictated by which groups and associations the Commission chooses to fund and, often, creates (Sánchez-Salgado 2007). A prominent example of the latter are European “platforms”, which are preferred interlocutors in dialogues. These are collective subjects composed of umbrella organizations which constitute fora for discussion and provide a synthesis of the positions of different actors in a specific field on a named topic. Platforms are not themselves participatory tools. Rather, they are networks of CSOs (Ferri 2012: 522). Indeed, platforms are not directly funded but at the very least incentivised by the EU, as the CSOs that form a part of them are heavily subsidized through EU funds. The European Social Platform (which is probably the first one to have been established) arose from the DG EMP’s activism and was created together with the European Parliament with a direct remit to campaign for a European civil dialogue and subsequently given an elevated status in funding (Greenwood 2007). Other platforms cover every range of activities and subjects: for example, the Platform for Intercultural Europe,^{xxii} the EU platform for action on diet, physical activity and health,^{xxiii} or the European Civil Society Platform on Lifelong Learning (EUCIS-LLL),^{xxiv} to name but a few.

In a recently released booklet, Snowdon claims that citizens are not consulted directly, “but are instead ventriloquised through NGOs, think tanks and charities which have been



hand-picked and financed by the Commission”, and that, in return, these civil society groups frequently campaign for the EU to extend its reach into areas of policy in which it has no legal competence and lobby for their own budgets (Snowdon 2013).

The concept of civil society is rooted in the independence from political institutions, but truth be told the Commission’s efforts to create a trans-national civil society have ended up in undermining CSOs’ very independence.

Snowdon’s harsh reproach can be reinforced if we consider that there is nothing intrinsically democratic about CSOs, that no control on CSOs’ “internal democracy” is purported, and that the Commission has never formally (and explicitly) excluded a CSO on the basis of its lack of internal democracy.

This criticism is not even damped by the strong efforts that have been made towards increasing transparency through the “Transparency Register” (TR). The TR was set up in 2008 by the EP and the Commission through an interinstitutional agreement^{xxv} and represents the latest initiative aimed at increasing the transparency of EU-CSOs contacts. It fits within the flow of action under the banner of the European Transparency Initiative (ETI)^{xxvi} and contains information about organizations “engaged” in the EU decision-making process. It discloses which interests are being pursued by these organizations and what resources are invested in these activities. A Code of Conduct has also been approved to regulate communication between the institutions and CSOs. Registrants must agree to adhere to the provisions of the Code of Conduct, and breaches of the Code will result in an organization being temporarily suspended or excluded from the register.

Greenwood and Dreger note that registration is highly incentivised, and that these incentives include “the (in-theory) possibility to exclude non-registered organisations from selective consultation meetings, where there are other consultation opportunities (such as public consultations) in place; instructions to Commission staff to issue invitations to register in meetings; 12 months accreditation for a 1-day access pass to the EP; naming and shaming nonregistered organisations; and the option in the Register to sign up to consultation alerts for nominated policy fields” (Greenwood and Dreger 2013: 142).

However, registration remains voluntary and the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU)^{xxvii} coalition pointed out earlier this year that thousands of organisations remain outside the voluntary lobby register.

With regard to the civil dialogue, it is unclear whether registration is a significant factor



to include a CSO. It is even more uncertain whether a CSO “excluded” from the dialogue, because unregistered or for a different reason, might experience some judicial protection. The institutions do not have any legal obligation to explain how and why they choose their interlocutors. This wide discretion could hardly be challenged in front of the CJEU. In addition, since the effect of the dialogue on the actual adoption of an EU act are minimal, it is more than unlikely that a CSO excluded from the dialogue challenges the final act in front of the Luxembourg judges on the basis of an infringement of Art. 11 TEU. Even in the event that a CSO should file such a case, the results are still uncertain. In this respect, it is worth recalling that the CJEU has ruled on the principle of democracy in the EU in different contexts and perspectives (*inter alia* Lenaerts 2013). However, it has never focused on CSO (or citizens) participation. If we do not consider the series of “Aarhus cases” in which in any event the Court had a different focus (and, in general, where the cases arose in the context of preliminary rulings), the CJEU came across a CSO’s claim only in *UEAPME*, and only with regard to the social dialogue.^{xxviii} The CJEU has ruled extensively on the right to access to documents, driving general conclusions on the principle of transparency, but such case law does not offer a secure basis to ensure participation in the manner envisaged in this short contribution.

Consultations are virtually open, but they end up being dominated by the best resourced (regardless of registration), i.e. by those subjects that have been most generously financed by the Commission.

The road to improve the openness and transparency of these participatory tools is also the way to make them more effective in terms of increasing input legitimacy and inevitably seems to coincide with the enactment of a regulation which defines the procedures and rights of participants. This should happen beside a mandatory TR. In this respect, it must be noted that the EP Parliament reiterated its support for a mandatory TR several times. In February 2014, a few deputies working on the joint transparency register asked the European Commission to put forth a proposal to make it mandatory in 2016, after a resolution was presented in May 2011.^{xxix} But the Commission seems reluctant to make serious efforts as regards reforming the register and regulating participatory channels, even in a mid-term perspective.



4. The Committee of the Regions

The Treaty of Lisbon has given a firmer recognition to sub-national entities. Article 4(2) TEU states that the EU will “respect regional and local self-government” when legislating, and Article 5 TEU refers to the need to consider local and regional competences. Under Protocol 2, the Commission is obliged, before proposing a legislative act, to take into consideration the regional and local dimensions of the envisaged act, and every EU draft legislative act must include an assessment of its potential impact upon local and regional levels. But despite the undoubted prominence of sub-national public authorities in the post-Lisbon constitutional framework, they are still conceived as “vertically” and territorially organized civil society to involve in European governance through channels of participation, rather than constitutional entities to include in the multilevel institutional decision-making process. These channels of participation are consultations and a dictated advisory body, the Committee of the Regions (CoR).

Quittkat underlines that sub-national communities play a pivotal role in European policy formulation via consultation processes: public authorities not only regularly participate in consultations, but they are also represented in it through a considerable number of associations like Eurocities, the Association of European Border Regions (AEBR), the Association of Finnish Local and Regional Authorities or the Local Government Association for England and Wales (LGA).

Despite this involvement in consultations, the Committee of the Regions has looked suspiciously upon informal participatory channels and upon a civil dialogue involving associations of regional and local authorities, trying to affirm its exclusive legitimacy as institutional discussion partner for local and regional authorities of the Union (Smismans 2003: 485). As a result, sub-national entities’ participation in EU governance (with regard to the EU side) is still relatively underdeveloped.

The CoR was established in 1993 by the Maastricht Treaty along the model of the EESC to strengthen the role of regions and local authorities within the EU decision-making process, to which they had previously not had access. Art. 13(4) TEU defines the role of the CoR as assisting the EU institutions in an advisory capacity. More precisely, the Commission, the Council and the Parliament must consult the CoR before adopting legislation in fields which touch upon local and regional competences. Analogously to the



EESC, the CoR can also voluntarily submit opinions in response to the Commission's legislative proposals. The CoR currently has 353 members from all the EU countries, appointed for a five-year term by the Council, acting on proposals from the EU Member States. The CoR's members are elected members in local or regional authorities or "key" political players in their home region.

This "mixed" composition is highly questionable because it creates uncertainty and internal imbalances. By contrast, it might be perceived as pluralistic and eventually (attempts to) mirror constitutional diversity. The internal organization and subdivision into political groups according to trans-national party orientations (e.g. the European Peoples Party, the Party of European Socialists (PES), the Group of the Alliance of Liberals and Democrats for Europe and the European Alliance) is also questioned. In this respect, Hönnige and Panke affirm that the CoR should be considered more as a sort of political committee, rather than as a participatory body (Hönnige and Panke 2013: 454). We contend, by contrast, that these trans-national political cleavages (as well as the fact that the CoR is torn apart into national delegations) do not alter the CoR's constituency and, consequently, do not distort its role as a participatory forum for territorially organized civil society.

Whether or not the CoR increases "input legitimacy" is a challenging question. As recalled above, Hönnige and Panke attempted to measure the influence of both the EESC and the CoR and concluded that they do have (limited) influence on policy-making. A different study, conducted by Neshkova, had already examined how often the Commission responded to subnational preferences by incorporating them into EU legislation, and arrived more or less at the same conclusions (Neshkova 2010). This author tracked 60 legislative proposals initiated by the Commission between 1996 and 2007 and estimated the change made in response to requests by the CoR. She found that, albeit subnational interests influence supranational regulation, this influence is quite unevenly split across policy areas. It is quite predictable that the Commission values the Committee's expertise more when it comes to regional issues, but overall it seems that the CoR slightly increases the EU's "input legitimacy".

According to Cygan, the CoR might play a more relevant role in the future through the assessment of the potential impact of a legislative proposal upon local and regional levels, but this does not offer a universal solution for improved legislative legitimacy (Cygan



2013). However, a supposed limited impact in terms of “output legitimacy”, such as that alluded to by Cygan, does not blur the CoR’s contribution in terms of “input legitimacy”, which might also be increased by the abovementioned inter-institutional agreement with the EP and the EESC.

5. “Informal” Channels of Participation for Individual Citizens

As mentioned above, Art. 11(1) TEU obliges the EU institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”, and expressly pull citizens and CSOs along.

Mendes highlights that there is no definition of “public exchange of views”, and no clear boundaries can be traced between this exchange and dialogue and consultations, respectively provided for in Art. 11(2) and (3) (Mendes 2011b: 1852). Although from the legal point of view the difference (if any) between these participatory channels is unclear, it can tentatively be affirmed that Art. 11(1) TEU alludes to a patchwork of “soft” participatory tools, including consultations which, generally speaking, pre-date the Lisbon Treaty.

The “exchange of views” is now ensured through the website “Your Voice in Europe”, which is the “European Commission’s ‘single access point’ to a wide variety of consultations, discussions and other tools which enable you to play an active role in the European policy-making process”.^{xxx}

As discussed in Section 3, consultations aim to include the interests of the addressees of policies and legislations and, although formally open to individual citizens, are substantially directed to, and “used” by, CSOs.

The website section labelled “discussions” redirects to EU blogs and social networks. Despite the inviting slogan of the session (“[h]ave your say in debates on the European Union and its future, discuss issues directly with leading figures and exchange views with other citizens interested in the same topics”), these instruments do not allow for participation in the meaning explained in the Introduction. Rather, they are informative channels to offer a “window” for looking inside the EU institutions, to know better Brussels’ bureaucracy. Citizens may acquire information, but they do not influence the decision-making process.



The section “Other Tools” redirects to advisory bodies (Committee of the Regions and the European Economic and Social Committee) and allows for other tools for contacting institutions. One of them is the European Business Test Panel (EBTB),^{xxxI} a panel of companies regularly consulted on European Commission policy initiatives. None of these tools can be considered participatory, and the EBTB itself is essentially an online platform through which companies are required to respond to consultations.

Beside these online tools, between 2001 and 2009 (before the entry into force of the Lisbon Treaty) the European Commission, the technocratic body *par excellence*, has become an active advocate of “participatory engineering” (Abels 2009), creating what Mundo Yang refers to as Deliberative Citizens Involvement Projects (DCIPs) (Yang, 2013). The Commission funded and organized several projects to foster “public exchange of views” and, namely, the involvement of individuals. The Commission attempted to test which of the wide range of available methods^{xxxII} would be best suited for transnational and multilingual participation. RAISE, a project funded by the European Commission in the 6th Framework Programme for Research, brought together 26 citizens from all Member States to develop a vision for tomorrow’s city. The participants were to represent the “average citizens” from the different countries of Europe and were selected among people who had submitted their application to participate through the RAISE website.^{xxxIII} The European Citizens Panel on the role of rural areas combined several regional and one pan-European citizens panel.^{xxxIV} At the regional level the panels, made up of citizens randomly selected, discussed rural questions and formulated recommendations for relevant regional public authorities. The panels were supported by the provision of wide-ranging and balanced information, supplied at the request of the citizens by witnesses and experts, and by professional facilitation of their debates and deliberations.^{xxxV} At the EU level, 87 citizens from the regional panels met in Belgium for three days to discuss and debate – each in their own language – a large range of European challenges for rural spaces. A similar project, “European Citizens’ Panel – New Democratic Toolbox for New Institutions”, was conducted by a consortium of CSOs, financed by the Commission, in order to test methods of engaging citizens with the European Union.^{xxxVI}

Most recently, taking into account the previous projects, and probably with the intention of more effectively implementing Art. 11(1) TEU, the DG for Communication of the European Commission has appointed a consortium of companies to carry out a study



on the establishment of a “European House for Civil Society”,^{xxxvii} and to examine whether there is a need for such a “space” of participation by EU citizens.^{xxxviii} The survey was completed in January 2014 and, ideally, from 2015 onwards the “European House for Civil Society” should be a focal point for citizens and CSOs not yet represented in Brussels, and should aim to engage “the unengaged” EU citizens.

The rather incomplete excursus provided above attempts to show that the soft tools available to individual citizens are only to a limited extent “participatory”, and that their contribution to the improvement of “input legitimacy” is quite doubtful. The online consultations are open to individuals, but are to a large extent a tool used by CSOs. In many cases, “ordinary citizens” are not knowledgeable enough to complete the questionnaires prepared by the Commission, especially when a consultation concerns niche areas or technical issues. Other tools (e.g. EU blogs) constitute a “way to be informed” about the EU, but are not participatory channels *strictu sensu*, as they are not aimed at including the will of the people in decision-making and then translate it into political decisions.

The participatory projects are extremely interesting in terms of revitalising democracy among EU citizens. However, they highlight the difficulties in transposing, in a supranational setting, participatory democracy methods and practices that have been used (even successfully) in local or national contexts. The questions that accompany every participatory process appear even more difficult to answer: Who participates? Are the participants to be selected randomly or recruited from different societal subgroups? Should the participatory arrangement remain open to all those who wish to attend? Should regional and local communities be included? How are discussions linked to policy action?

The fact that these questions are still unanswered is the reason why participatory projects represent single and distinct experiments. It is not yet clear whether they can be replicated on a larger scale, periodically, and on a broad range of topics. Their costs are uncertain and, in times of harsh economic crisis, it is not obvious that such participatory processes are sustainable. In addition, the actual influence on the decision-making processes by these participatory experiments has been negligible (Boussaguet and Dehousse 2002): it is safe to affirm that they have not increased “input legitimacy”. The “European House for Civil Society” is more of an idea than a concrete project and it is not even clear whether and how it will become a “stable” participatory tool.



6. The European Citizens' Initiative

In 2012, the European Citizens' Initiative (ECI), provided for in Article 11 TEU and regulated by Regulation (EU) No. 211/2011 (hereinafter “the Regulation”),^{XXXIX} has become a concrete tool for citizens to instigate the adoption of legislation.^{XI} Citizens cannot present a proposal to the legislative institutions (i.e. EP and Council), and cannot place a proposal directly onto the EU political agenda for debate and decision. However, they can request the Commission “to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties” (Art. 2(1) of the Regulation).

The European Citizens' Initiative (ECI) was first provided for in the Draft Treaty establishing a Constitution for Europe, and then included in the Lisbon Treaty.

Art. 11(4) TEU states that “[n]ot less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties”.

According to Art. 24 TFEU, “[t]he European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come”.

On 11 November 2009, the European Commission published a Green Paper on the citizens' initiative^{XLI} and launched a consultation in view of preparing a legislative proposal. Following this public consultation, the Commission submitted a proposal for a Regulation on 31 March 2010, which lays down the requirements and the procedure to submit an ECI. In February 2011, the European Parliament and the Council adopted Regulation 211/2011 (hereinafter “the Regulation”). Without exploring the content of that Regulation in great detail, it suffices here to briefly highlight the main steps to present an ECI.

The first step is the formation of a sort of multinational “organizing committee”: according to Art. 3 of the Regulation the organizers (natural persons who are Union



citizens and of the age to be entitled to vote in EP elections) must form “a citizens’ committee of at least seven persons who are residents of at least seven different Member States”. The organizers must then register their proposed initiative with the Commission (Art. 4). The request for registration must specify the title and subject matter of the ECI, its objectives, any relevant provisions of the Treaties, and details about both the citizens’ committee and their sources of support and funding. Within two months from its receipt, the Commission must register the proposed ECI, provided that four conditions are satisfied: namely that (a) the citizens’ committee has been formed and its contact persons have been duly designated; (b) the proposed citizens’ initiative does not manifestly fall outside the framework of the Commission’s powers; (c) the proposed citizens’ initiative is not manifestly abusive, frivolous, or vexatious; and (d) the proposed citizens’ initiative is not manifestly contrary to the values of the EU (Art. 4(3)). Following a successful outcome, the organizers may commence the collection of statements of support from individuals entitled to endorse the proposed ECI. All necessary statements of support must be collected within a maximum period of 12 months after the registration. The signatories of a citizens’ initiative shall come from at least one quarter of Member States (Art. 7). Art. 8 provides that after collecting the necessary statements of support from signatories, the organisers shall submit these statements, in paper or electronic form, to the relevant national competent authorities for verification and certification. Having obtained the certification, the organizers submit their ECI to the Commission and then have the opportunity to present their ECI at a public hearing organized at the European Parliament (Art. 11). After that public hearing, and within three months of having received the valid submission, the Commission has to “set out in a communication its legal and political conclusions on the citizens’ initiative, the action it intends to take, if any, and its reasons for taking or not taking that action” (Art. 10(1)(c)).

The ECI is certainly an open participatory tool. As highlighted by Dougan, the only restriction concerns age (Dougan 2011: 1820): “an age threshold was certainly not required under Article 11(4) TEU, but it can probably be seen as falling within the Union legislature’s discretion under Article 24(1) TFEU”, but doubts have been raised on the compatibility of this limit with the principle of non-discrimination (Ferraro, 2011: 282) and, in any event, a lower age limit would have been the occasion to involve younger citizens in EU governance. The regulation, however, in compliance with the TEU, includes an



element which reflects the supranational identity of the EU: signatories must come from at least 1/4 of Member States, although no particular geographic or demographic requirement is mentioned. According to Article 7(2) of the Regulation, signatories comprise at least the minimum number of citizens set out in Annex I to the Regulation and those figures correspond to the number of MEPs elected in each Member State multiplied by 750. Although scholars highlight the drawbacks of this system of “geographic” (re)distribution, it might be argued that no system is perfect and that, regardless of certain imbalances, the ECI allows for broad transnational citizen participation.

Though proceduralized, the ECI is relatively “user-friendly” (Bouza García 2012: 269). Criticism has been raised on a few requirements: for example, Szeligowska and Mincheva affirm that it is “restrictive, and overly formalistic, to require citizens to choose a particular structure for the initiation of an ECI rather than leave them the freedom to organise themselves in a different manner” (Szeligowska and Mincheva 2012: 276). These authors highlight that it is “overly burdensome and somewhat disproportionate” to conceive this organizational structure as a compulsory condition sanctioned by refusal of registration (Szeligowska and Mincheva 2012: 273). By contrast, however, the establishment of such a committee can be seen as a means of protection from ‘spamming’ and as a tool to prevent interest groups from denaturing the ECI (De Witte et al. 2010).

The concrete impact of the ECI in terms of “input legitimacy” is debatable. The ECI allows EU citizens to request the Commission to submit a proposal,^{XLI} and the Commission has wide discretion on whether to register a proposed ECI and on whether to put forth a proposal. On the one hand, it seems highly unlikely that the Commission refuses registration of a proposal on the basis of its substance: the criteria laid down in Article 4(2) provide that there must be manifest incompetence of the Commission or that the ECI is “manifestly abusive, frivolous or vexatious” or “manifestly contrary to the values of the Union”. It is apparent that Art. 4(2) covers “extreme” situations, in which there is an evident contrast between the rationale of the proposal and the objectives and the values of the Treaty. On the other hand, it is undeniable that there is no obligation whatsoever on the side of the Commission to bring forward any formal proposals based on a valid ECI. The Commission might refuse to adopt any concrete action or cherry-pick certain elements of the proposed ECI whilst ignoring others, or might even react with measures other than those called for by the ECI (Dougan 2011: 1822). However, the fact



that the Commission must explain the reasons behind its choices constitutes a vital constraint on its discretion and, arguably, the decision of the Commission can also be challenged before the Court of Justice under Article 263 TFEU.

The ECI is “primarily an agenda-setting tool” (Kaufmann 2012), and both EU civil servants and CSOs do not expect it to have any meaningful impact on EU affairs and regards it as a weak device in terms of its capacity to oblige the Commission to act (Bouza García 2012: 259 and 269). At present, this rather pessimistic view cannot be contradicted, and whether or not the ECI ultimately strengthens EU democracy will eventually rest on how the ECI will be used. Certainly, the procedural warranties that constrain the Commission’s discretion seem sufficient to allow the ECI to display its potential and contribute to healing the EU’s “democratic deficit”.

At the end of December 2013, the Commission officially received the first successful ECI, with validated support from at least one million European citizens:^{XLIII} the “Right2Water ECI” (Water and sanitation are a human right! Water is a public good, not a commodity!)^{XLIV} invites the Commission to propose legislation implementing the human right to water and sanitation, as recognised by the United Nations, and to promote the provision of water and sanitation as essential public services for all. It will be interesting to see whether the Commission decides to propose a legislation or policy measure, or not to act at all.

For other ECIs, the period of collection of signatures is over, but they have not (yet) been submitted to the Commission. Interestingly enough, one of these concerns a “Central public online collection platform for the European Citizen Initiative [...] to enable all European Citizens to participate in the European politics” through a lower barrier which works instantly and without technical expertise.^{XLV} This ECI demonstrates that there is a portion of citizens willing to make full use of this participatory tool, and willing to make it as open and accessible as possible. It is unclear from the proposal whether this is an attempt to further regulate the ECI or to amend Regulation 211/2011. It is likely that the organizer of this ECI just wanted the Commission to take a policy action. Hence, what the reaction of the Commission will be, whether the Commission will follow up on this ECI and whether it will pursue a legislative act, an amendment or, by contrast, whether it will proceed through policy action and soft law remains to be seen.



7. Tentative Conclusions

Despite the entry into force of the Lisbon Treaty, the dominant (although probably non majoritarian) picture of EU governance remains that of a “muddy” and technocratic process far removed from citizens. The recent economic crisis has contributed to reinforcing the idea of unpopular political decision taken regardless of the will of EU people, or even against the determination of citizens. This picture has been largely endorsed by the so-called anti-EU parties (mainly right-wing populist/nationalist parties), which claim that there is a huge and almost unbridgeable “democratic deficit”. This appears bold rhetoric. Whether one considers that the EU suffers from a “democratic deficit” depends on the factors one prioritizes when assessing the EU’s democratic legitimacy (Craig 2011: 30; Sadurski 2013). This paper is based on the assumption that there are democratic shortcomings in the EU, and that the democratic deficit still exists if we conceive of it as deficiency in terms of “input legitimacy”. It is also based on the postulation that a means of increasing “input legitimacy” in the EU is the improvement of citizens’ participation, and the implementation of Art.11 TEU (and Art. 10(3) TEU).

Relying on these assumptions, and building up on the wide and varied academic scholarship, this article has endeavoured to highlight a double paradox. First, while EU institutions have opened up to citizens and CSOs, the multi-centred and heterogeneous forms of participation in EU governance are still insufficient and somewhat questionable in terms of openness and transparency. Second, Art. 11 TEU has a great significance *per se*, and Art. 10(3) TEU, as highlighted by Alemanno, “has led to a Copernican change in the legal nature of the participatory component of openness” (Alemanno 2014). However, up to now, they displayed little effects in terms of advancing the system of participation, with the exception of the ECI which represents the only novelty among the available participatory tools.

Informal horizontal participation has been reduced to CSOs’ participation, but the brief discussion of consultations and civil dialogue has underlined these channels’ deficiencies. There is still a significant gap between what these informal participatory channels (should) pursue (i.e. open up the decision-making process to EU citizens and make them actors of EU governance) and what is actually achieved in terms of openness and transparency, and ultimately also in terms of “input legitimacy”.



To find the correct method to ensure an open and balanced channel of participation for citizens appears quite problematic, but it seems unescapable. As Medes underlines, “[b]y Treaty determination, participation is an aspect of democratic legitimacy. This postulates a normative shift in the way participation in EU law and governance is approached. Participation practices under Article 11 TEU can no longer be viewed only as a manifestation of participatory governance – which focuses on problem-solving capacities and on efficiency of regulatory decisions – but need to be assessed in the light of their broader democratic meaning.” (Mendes 2011b: 1859)

If we consider the right to participate in the democratic life of the EU as a fundamental right, EU institutions can no longer rely on consultations and on what Abels calls “democratic experimentalism” (Abels 2009). A legal framework should establish both clear procedures for public participation, thereby enhancing transparency, and predictable rules on the “effects” that participatory tools display.

Art. 11 TEU (unlike the ECI) does not require any binding law to regulate participation. It is also true that citizens’ participation requires a certain degree of flexibility and the use of different techniques and/or channels. But, even though “one fits all” does not seem a good solution, the soft mechanisms examined here fall short in terms of the requirement of openness and transparency. A legal framework, though leaving a certain degree of flexibility, should foster equal access to the public, specifying how and to what extent outcomes of participatory processes influence decision-making processes.

There has been a failure on the part of EU institutions in avoiding any opportunity to regulate these channels. The TR is a puzzling example of how the lack of any binding act and mandatory registration undermines the very objective of the registry itself.

Horizontal and vertical participation has also taken the form of advisory committees (CoR and EESC). These committees bring together civil society organizations and the EU: they are well-rooted bodies, but their contribution in terms of input legitimacy is still limited, though not negligible.

The ECI is the only channel that has been regulated and proceduralized. Leaving aside participatory experiments, it is also the first participatory channel really dictated to EU citizens *uti singuli*. Some scholars contend that the ECI will eventually empower more CSOs than citizens, because only CSOs have the resources and network necessary to produce the required number of signatures (Smith 2012: 289). This is not without truth, but “the ECI



does provide a new avenue for citizen engagement” (Smith 2012: 285). Regardless of any criticism that can be directed at Regulation 211/2011, if put into practice, the ECI has great potential to increase EU “input legitimacy”.

Overall, although, as affirmed by the German Constitutional Court in its Lisbon Treaty decision, the mere deliberative participation of citizens and CSOs cannot replace the legitimizing of connections based on elections and other votes,^{XLVI} the lesson that could be learnt from all these participatory instruments is that they could and should complement representative democracy. EU institutions probably should engage more in creating participatory tools, not in continuing the democratic experimentalism but through building upon the experience gained, regulating where possible what already exists.

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I am grateful to Giuseppe Martinico and Paolo Addis for their support, and to the anonymous peer reviewers for useful comments. All errors are my sole responsibility.

^I The literature on the EU’s “democratic deficit” is extensive. *Inter alia* see Majone 1998, Majone 2005, Majone 2010, Bellamy 2006, Decker 2002, Hix 2008. For a critical overview, among others, see Moravcsik 2002. For a critical review and assessment of most prominent literature see Piattoni 2013. For a general overview of the amendments introduced by the Treaty of Lisbon to heal the democratic deficit see Pinelli 2008. For a wider perspective on EU governance and regulatory theories see Bredt 2011.

^{II} The concepts of output and input legitimacy as applied to the EU have their origins in the work of Fritz Scharpf: *inter alia* see Scharpf 1999: 7 ff. Although Scharpf found both input and output necessary for democratic legitimization, he concluded that, for the EU, the focus must be on institutional output, because the EU lacks not only the majoritarian institutional inputs (direct elections for a government) but also its constructive preconditions, a European demos. Schmidt has recently discussed the the concept of “Throughput legitimacy”: see Schmidt 2013.

^{III} In particular, any national parliament may, within eight weeks of transmission of the Commission’s proposal to it, issue a reasoned opinion stating why such a legislative proposal does not comply with the principle of subsidiarity. This opinion must be taken into account by the EU institutions. If the responsible institution decides to maintain, rather than to amend or withdraw, the contested legislative proposal, it must respond to the “yellow card” by giving its reasons, thus increasing the overall democratic accountability of the EU. National Parliaments also participate in the Treaty revision procedure (via the Convention method which includes parliamentarians from the Member States in the drafting of treaty amendments), and in the simplified treaty revision procedure (each national parliament may veto a European Council decision to change a European legislative procedure; Art. 48 TEU).

^{IV} In this contribution we do not indulge in the meaning and features of participatory democracy, nor in the difference between participatory and deliberative democracy. For a definition of participatory democracy we refer, among many others, to Allegretti 2006.

^V COM (2001) 428 def. On the White Paper see, among others, Palermo 2009, Tiberi 2002, Armstrong 2002, De Schutter 2002.

^{VI} CJEU Judgement of 29 October 1980 Case C-138/79 *Roquette Frères v Council* [1980] ECR 3333.

^{VII} Art. 10(1) TEU.

^{VIII} <http://euobserver.com/political/123183>.

^{IX} BVerfG, 2 BvE 2/08 of 30.6.2009. In this contribution, we do not dwell on the complexity of this decision. See on this judgement Palermo and Woelk 2009.



^X Smismans combines a multi-level territorial (vertical) dimension and a transnational (horizontal) one. In Smismans' work, decentralism refers to the respect of the autonomy of lower or smaller decision-making levels, the procedures privileging these decision-making levels (subsidiarity), and the involvement of these decision-making units when policy-making is defined (and implemented) at a more central level. Vertical decentralism defines these processes with regard to territorial decision-making levels and actors. Horizontal decentralism consists in processes with regard to functional levels and actors, in particular CSOs and private organisations.

^{XI} In line with Habermas's definition (Habermas 1996: 367), and with the notion adopted by the European Economic and Social Committee (EESC) ([1999] OJ C 329/30), we rely a wide conception of civil society which includes trade unions and employers' organisations (social partners), non-governmental organisations, professional associations, charities and grass-roots organisations (interest groups).

^{XII} See at <http://www.etuc.org/>

^{XIII} See at <http://www.eesc.europa.eu/?i=portal.en.group-3>.

^{XIV} See for example the French *Conseil Économique et Social* (CES).

^{XV} OJ C329, 17/11/99

^{XVI} EESC, 'The EESC: a bridge between Europe and organised civil society', (2009) at <http://www.eesc.europa.eu/resources/docs/eesc-2011-08-en.pdf>.

^{XVII} <http://www.eesc.europa.eu/?i=portal.en.group-3>.

^{XVIII} Cooperation Agreement between the EP and the EESC at <http://www.eesc.europa.eu/resources/docs/cooperation-agreement-between-the-eesc-the-ep-and-the-cor.pdf>.

^{XIX} Article 155(1) TFEU provides that '[s]hould management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.' Article 155(2) TFEU specifies that, in matters covered by Article 153 TFEU, at the joint request of the signatory parties, those agreements may be implemented by a Council decision on a proposal from the Commission.

^{XX} Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. "The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate" COM(2005) 494 final.

^{XXI} http://ec.europa.eu/yourvoice/ipm/index_en.htm.

^{XXII} <http://www.intercultural-europe.org/site/content/page/about-platform-intercultural-europe>. On this and other cultural platforms see Ferri 2011.

^{XXIII} http://ec.europa.eu/health/nutrition_physical_activity/platform/index_en.htm

^{XXIV} <http://www.eucis-lll.eu/>

^{XXV} OJ L 191/29

^{XXVI} COM (2007)127 def.

^{XXVII} <http://www.alter-eu.org/>.

^{XXVIII} CJEU Judgement of 17 June 1988, Case T-135/96, *UEAPME v Council* [1998] ECR II-2335.

^{XXIX} <http://euobserver.com/institutional/123096>.

^{XXX} http://ec.europa.eu/yourvoice/index_en.htm

^{XXXI} See at http://ec.europa.eu/yourvoice/ebtp/index_en.htm.

^{XXXII} Participation may be conducted by a vast array of methods which allow citizens to deliberate about collective problems: citizens juries, deliberative polls, consensus conferences or 21st century town meetings. These methods differ significantly in their organization and way of operating. On these methods see the King Baudouin Foundation's (KBF) publication *Participatory and Deliberative Methods Toolkit, How to Connect with Citizens, A Practitioner's Manual*, (2005) http://www.ezd.si/fileadmin/doc/4_AKTIVNO_DRZAVLJANSTVO/Viri/Participatory_toolkit.pdf.

^{XXXIII} <http://www.raise-eu.org/about.html>

^{XXXIV} <http://www.citizenspanel.eu/>

^{XXXV} http://carpathianfoundation.eu/files/ECP_FINAL_REPORT_en.pdf

^{XXXVI} <http://www.ecas-citizens.eu/content/view/293/311/>

^{XXXVII} <http://www.citizenhouse.eu/>

^{XXXVIII} http://ec.europa.eu/citizenship/news-events/news/18122013_surveyehcs_en.htm

^{XXXIX} Regulation (EU) No. 211/2011 of the European Parliament and of the Council 16 February 2011 on the citizens' initiative (2011) OJ L65/1.

^{XL} Even though few scholars consider the ECI an instrument of "direct democracy" (see Dougan 2011), see



embrace the view that it is a “formalized” and fully regulated participatory tool. See Allegri 2010, Allegri 2012; Petraru 2011, Ferraro 2011.

^{XLII} COM(2009) 622 final.

^{XLIII} ECI are not limited to calls for the Commission to initiate a legislative procedure. The ECI may also call upon the Commission to submit proposals for the adoption of non-legislative measures or indeed any other form of Union legal act (such as non-binding recommendations).

^{XLIII} <http://europa.eu/rapid/midday-express-23-12-2013.htm>

^{XLIV} <http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/details/2012/000003>

^{XLV} <http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/details/2012/000011>; see also <https://www.openpetition.de/>

^{XLVI} BVerfG, 2 BvE 2/08 of 30.6.2009.

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