

ARTICLE

## Europe's Democracy Challenge: Citizen Participation in and Beyond Elections

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### A. Introduction

For more than two decades, there has been a widespread, intensifying belief that without greater involvement of citizens the European Union is condemned to fail. As time goes by, this prophecy is becoming self-fulfilling.

The unexpected choice and *rocambolesque* confirmation of Ursula von der Leyen by the EU Parliament, hereinafter EP, as the next EU Commission President has left many EU citizens with a bitter aftertaste. A record high number of EU voters came to vote in the EU elections after being reassured their vote would matter.<sup>1</sup> Yet their vote—that of more than 200 million EU citizens—had little direct impact on the political color and direction of the new EU administration.

True, the EU is not a parliamentary democracy and its president is not a prime minister relying on a permanent parliamentary majority.

Yet, since 2009, the EU Treaties have required that the president of the EU Commission be elected by the European Parliament by a majority of its component members,<sup>2</sup> upon the proposal of the European Council. This nods in the direction of a system of parliamentary democracy, in which the European Commission—like a national executive—sets its political priorities and is accountable to the EP and EU citizens for its performance. That's what Jean-Claude Juncker already did in his self-proclaimed first political Commission.<sup>3</sup> That's what Ursula von der Leyen failed to do with her new EU Commission. It is her inability to follow a parliamentary democratic logic, not the fact of not being a *Spitzenkandidaten*—a mere device to operationalize the former—that represents von der Leyen's original democratic sin.<sup>4</sup> This has profound and long-standing implications for EU democracy—and von der Leyen's inability to reform it—in the years to come.

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<sup>1</sup>The European Parliament's Post-Election Eurobarometer, September 2019 (unveiling a positive mutual dynamic, whereby a greater sense of motivation and empowerment among EU citizens has helped to increase voter turnout, which then reinforces the sense of empowerment).

<sup>2</sup>See Treaty of the European Union, October 26, 2012, 2012 O.J. (C 326) 17.

<sup>3</sup>See Mark Dawson et al., *Evaluating Juncker's Political Commission: The Right Idea in the Wrong Hands?*, VERFASSUNGSBLOG (Sept. 10 2018), <https://verfassungsblog.de/evaluating-junckers-political-commission-the-right-idea-in-the-wrong-hands/>.

<sup>4</sup>See Alberto Alemanno, *Die demokratische Sünde Ursula von der Leyens*, HANDELSBLATT (Aug. 15 2019), <https://www.handelsblatt.com/meinung/gastbeitraege/gastkommentar-die-demokratische-suedne-ursula-von-der-leyens/24904376.html?ticket=ST-9763686-bUFjAAFbPhR2LAcgw2qW-ap2>) and Alberto Alemanno and Stefan Seindorf, *Le Parlement européen peut perdre toute crédibilité à des jeux de politique politique*, LE MONDE (Oct. 23 2019).

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In an effort to remedy her sin, von der Leyen immediately announced the launch of a two year “Conference on the Future of Europe,” in which citizens shall “play a leading and active part.”<sup>5</sup> This initiative—which noticeably lacks a well-defined mission, methodological foundation and political leadership at the time of writing—is expected to centralize and inevitably monopolize all EU democratic functioning reforms to come. These range from a new EU electoral system to a new EU public consultation system.<sup>6</sup> More broadly, these reforms touch upon the question of what role citizens should play in EU democratic life and may ultimately require Treaty reform.

Yet, as similar EU-sponsored endeavors showed, these one-off initiatives are cosmetic at best—think of the 2018 Citizens’ Consultations for tomorrow’s Europe<sup>7</sup>—and recipe for failure at worst—think of the 2003-2005 Constitutional Convention.<sup>8</sup>

The EU needs to move away from such ad hoc participatory processes that are designed as quick, often patronizing, fixes to the original democratic puzzle of the Union. It must instead urgently embrace, under the current Treaties, a new systemic approach to EU democratic reform agenda, aimed at empowering citizens to both set and monitor agendas on a permanent basis. This is key insofar as, unlike its member states, the EU draws its democratic legitimacy and accountability, not only from representative democracy, but also from participatory democracy.<sup>9</sup> Under the former, citizens take part in the political process through their elective representatives—the European Parliament and the governments gathering in the Council—whereas under the latter, citizens participate directly via a multitude of channels of participation.<sup>10</sup>

Ten years after the introduction of participatory democracy as one of the democratic foundations of the Union, this Article discusses whether and how Europe’s democracy challenge can be addressed.

## B. Making EU Representative Democracy Pan-European

When it comes to political representation, unless a clear link between the vote cast by citizens and the formation of the next European Commission is established, it will be quite difficult to explain to voters what the purpose of them going to the EU ballot is, and what will be in the future.

To many, it might appear unrealistic to transform a union of demographically and economically heterogeneous states into a fully-fledged parliamentary democracy, where a transnational parliament matters as much as the states. Yet, one of the major lessons of the last decade of EU integration is that those who make decisions having a transnational impact must emerge from a transnational electoral process. In other words, in a union made of states and citizens, decision makers must represent both.

The creation of a single EU-wide cross border constituency, as opposed to the actual twenty-eight used to select the members of the EU Parliament, might lead to a Europeanisation of the

<sup>5</sup>Ursula von der Leyen, *Opening Statement in the European Parliament Plenary Session by Ursula Von Der Leyen, Candidate For President of the European Commission*, EUR. COMMISSION (July 15 2019), [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_19\\_4230](https://ec.europa.eu/commission/presscorner/detail/en/speech_19_4230).

<sup>6</sup>See for an initial proposal for the organization of the Conference on the Future of Europe, the Franco-German non-paper on key questions and guidelines, November 2019, <https://www.politico.eu/wp-content/uploads/2019/11/Conference-on-the-Future-of-Europe.pdf>

<sup>7</sup>For an initial assessment, see Paul Butcher & Corina Stratulat, *The European Citizens’ Consultations - Evaluation report*, EUR. POL’Y CENTRE (Nov. 16 2018), [https://www.epc.eu/pub\\_details.php?cat\\_id=1&pub\\_id=8839](https://www.epc.eu/pub_details.php?cat_id=1&pub_id=8839).

<sup>8</sup>See IS EUROPE LISTENING TO US? SUCCESSES AND FAILURES OF CITIZEN CONSULTATIONS (Raphael Kies & Patrizia Nanz eds., 2013).

<sup>9</sup>See Treaty of the European Union art. 10.

<sup>10</sup>See Annette Schrauwen, *European Union Citizenship in the Treaty of Lisbon: Any Change at All?*, 15 MAASTRICHT J. OF EUR. & COMP. L., 55, 55 (2008); S. Besson & A. Utzinger, *Introduction: Future Challenges of European Citizenship*, 13 EUR. L. J. 573, 586 (2007).

EU political party system. A fully harmonized electoral system may prompt genuine European political parties to present one political manifesto and one list of candidates to all EU citizens across the territory of the whole Union.

The creation of genuinely transnational Euro-parties would suddenly render intelligible to the voter how her national political force of reference is situating itself along the EU political spectrum. Only this could make her aware of the EU-level consequences of her vote.

The convergence between the EU and national party systems through a gradual process of Europeanization may pave the way to the emergence of an EU public space. This may be capable of presenting citizens with opposing views on pan-EU policy issues across the continent and translate into an embryonic EU public sphere.

Any attempt at politicizing the EU Commission, however, through a gradual Europeanization of the electoral competition is set to inevitably incur the constitutional and institutional limitations surrounding the operation of the Commission itself. As the Treaties significantly circumscribe the areas in which the EU can act, the Commission's responsiveness to concerns of voters when proposing new initiatives is inherently constrained. In particular, parliamentarism may not address the two main systemic constraints within the EU: the demographic asymmetries between its member states and the national differentiation between their citizens. As Sergio Fabbrini highlighted over the years, given these systemic constraints, "it would be unacceptable to recognise only the European Parliament as the source of governmental authority in the EU, if not as the source of the EU's democratic legitimacy.<sup>11</sup>

To overcome this, a top-down institutional reform of the EU electoral system will not suffice. This must be accompanied by a bottom-up participatory agenda, capable of complementing—not substituting—representative democracy. Participatory innovations may foster the pressure exercised through public opinion by distributing it between the EU and its member states in an incipient EU political space.<sup>12</sup>

### C. Complementing and Enhancing EU Representative Democracy

As people increasingly perceive the transnational nature of the challenges facing the Union, there is a growing, yet undetected, demand for participation beyond elections within European societies. Citizens explicitly mentioned in roughly half of the European Citizens' Consultations ("ECCs") that they expected to influence EU policy and also being offered consultation opportunities in decision-making.<sup>13</sup>

The challenge for the Union is to be able to capture such a popular, fluid demand, and accommodate it within its rigid institutional framework. Today's panoply of EU participatory channels, as epitomized by the EU Commission public consultations, are not intended to have direct impact on the decision-making process, but rather to legitimize existing political priorities and policy approaches.<sup>14</sup> While there exist embryonic forms of citizen participation at virtually every stage of the policy cycle, ranging from the right to petition to the European Parliament<sup>15</sup> and the right to

<sup>11</sup>Sergio Fabbrini, The European Union and the Puzzle of Parliamentary Government, *Journal of European Integration* (2015), 37:5, 571–586.

<sup>12</sup>See, e.g., WOLFRAM KAISER & PETER STARIE, *TRANSNATIONAL EUROPE: TOWARDS A COMMON POLITICAL SPACE* (2009) and ALBERTO ALEMANNO & JAMES ORGAN, *DEMOCRATIC PARTICIPATION IN A CITIZEN'S EUROPE: WHAT'S NEXT FOR THE EU?* ECPR Studies in European Political Science (2020).

<sup>13</sup>See Corina Stratulat & Paul Butcher, *Citizens expect: Lessons from the European Citizens' Consultations*, EUR. POL'Y CENTRE (2019), [https://www.epc.eu/documents/uploads/pub\\_9227\\_lessons\\_from\\_eccs\\_consultations.pdf?doc\\_id=2173](https://www.epc.eu/documents/uploads/pub_9227_lessons_from_eccs_consultations.pdf?doc_id=2173). In several countries including Finland, Lithuania, Luxembourg and Slovenia, people even called for the ECCs to become a permanent mechanism in the EU.

<sup>14</sup>See JOANA MENDES, *PARTICIPATION IN EUROPEAN UNION RULEMAKING: A RIGHTS-BASED APPROACH* (2011).

<sup>15</sup>See ECJ, Case C-589/15 P, Alexios Anagnostakis v. European Commission, ECLI:EU:C:2017:663, Judgment of 12 Sept. 2017.

access to documents,<sup>16</sup> to the right to complain to the EU Ombudsman and European Citizens' Initiatives ("ECIs"), they remain unknown, scattered, and underused by the average European citizen.<sup>17</sup>

The EU inability to open up to and accommodate public input appears all the more startling when contrasted with the countless democratic innovations taking shape across the continent. A panoply of new, participatory innovations, such as citizens' assemblies, have been taking place all across the continent.<sup>18</sup> For instance, the city of Madrid and the parliament of the German speaking region in Belgium have adopted models in which randomly selected citizens join consultative bodies that are an established part of the political decision making process.<sup>19</sup>

What is worse, existing EU participatory channels also tend to be disconnected from day-to-day decision-making. The Stop Glyphosate ECI, which demanded that the usage of this pesticide cease, exemplifies such a trend. Despite reaching well above the required one million signatures, this ECI could not formally be taken into account into the ongoing EU decision-making process. There is no explicit link between an ECI request relating to an upcoming EU decision and that actual ongoing process.<sup>20</sup> Under the current Treaty framework, the participatory and representative components of EU democracy are like ships in the night.

Therefore, EU participatory avenues must be not only revamped and democratized, but also better connected with representative democracy. Treating EU democracy as a system means to recognize that each democratic channel carries its own democratic value and that its weaknesses can be compensated for elsewhere.<sup>21</sup>

## D. Towards an EU Participatory Framework

The three major institutions—the European Commission, Council, and Parliament—involved in decision-making should commit to creating an informal participatory framework aimed at embedding public input into their day-to-day operations. This could take the name and form of a European Question Time, similar to the British institution but adapted to the EU context. In its simplest form, this might consist of a triologue-type, informal committee meeting charged with receiving and publicly discussing preselected input presented monthly by citizens living and residing in the Union.

This input—be it informal letters on a specific issue, comments on a registered ECI, a complaint to the EU ombudsman, a petition to the European Parliament, or an informal call for action or inaction directed to the EU as a whole—would have to be submitted through a dedicated, user-friendly, comprehensive one-stop-shop platform.<sup>22</sup> Each submission would be shareable and would organically attract visitors who would be able to support the most relevant items.

To be discussed publicly during European Question Time, each public item would have to meet one of the following requirements: Collect a given number of votes—well below the amount of

<sup>16</sup>See ECJ, Case C-52/05 P, Sweden and Turco v. Council, ECLI:EU:C:2008:374, Judgment of 1 July 2008; ECJ, Case T-233/09, Access Info Europe v. Council, ECLI:EU:T:2011:105, Judgment of 22 Mar. 2011.

<sup>17</sup>See Alberto Alemanno, *Unpacking the Principle of Openness in EU Law: Transparency, Participation and Democracy*, 39 EUR. L. REV. 72 (2014).

<sup>18</sup>GRAHAM SMITH, *DEMOCRATIC INNOVATIONS: DESIGNING INSTITUTIONS FOR CITIZEN PARTICIPATION* (2009).

<sup>19</sup>For a brief summary, see Graham Smith, *Institutionalizing deliberative mini-publics in Madrid City and German Speaking Belgium—the first steps*, CONST. NET (28 Mar. 2019), <http://constitutionnet.org/news/institutionalizing-deliberative-mini-publics-madrid-city-and-german-speaking-belgium-first>.

<sup>20</sup>See Commission Regulation 2017/2324 of Dec. 12 2017, renewing the approval of the active substance glyphosate in accordance with Commission Regulation 1107/2009, O.J. (L 309), and amending annex to Implementing Regulation 540/2011 O.J. (L 153).

<sup>21</sup>See DELIBERATIVE SYSTEMS (J. Parkinson & J. Mansbridge eds., 2012).

<sup>22</sup>A good, user-friendly template is AskTheEU.eu.

signatures required for an ECI—from the general public; be voted for by one-fifth of members of the European Parliament; or be proposed and/or selected by a majority of members in a European Peoples' Assembly, consisting of EU citizens randomly selected from across Europe every six months. This citizens' assembly would build upon the experience gained locally and be informally integrated into the institutional architecture of the EU.

Regardless of the chosen institutional set up, this new participatory framework could overcome the currently inaccessible and fragmented EU institutional apparatus by creating a space for all citizens “to participate in the democratic life of the Union.”<sup>23</sup> The recent case law of the EU Courts, notably the line of cases dealing with the conditions governing the registration of ECIs,<sup>24</sup> supports such an interpretation of EU level citizen participation as an instrument allowing citizens to take part to—and possibly control—the process of governance to which they are subject.<sup>25</sup>

An EU Question Time combined with a European Peoples' Assembly would force EU policy-makers to be exposed on a regular basis to public input from all corners of Europe. This would in turn foster a Europeanized debate on matters of common interest across the continent that would, in turn, shape the legislative and ultimately electoral conversation. More critically, given the resulting public salience of the issues debated, this participatory framework would incentivize the EU institutions and representatives to take public input seriously.

Eventually, the aim pursued by this participatory and performative framework would be to grasp the most relevant and promising proposals coming from the citizens and then have them discreetly influence the daily work of each institution. How this will occur depends on the competences as well as political sensibilities of each institution and their respective roles within the policy cycle. Thus, the European Commission might incorporate some inputs into its own legislative working program, or it might even drop or accelerate some pending initiatives.<sup>26</sup> The members of parliament—who, since 2009, represent both their electors and all EU citizens—might commit to a plenary debate, turn some of these grassroots inputs into their own initiative reports, or should there be a majority within the European Parliament, into a legislative initiative under Article 255 TFEU. Also, the members of the Council of the EU might flag some of these citizen-driven inputs, which might also influence their voting behavior and ultimately might also feed into the European Council debates.

## E. The Perils of a Reformed EU Democracy

Even the best possible institutional design—both electoral and participatory—might not suffice to overcome one of the major obstacles to meaningful EU citizen participation today: Unequal access to EU power. Economic inequality and disparities in political behavior and power are intertwined. This is just as true in the EU as anywhere else.

In reforming itself, the EU can no longer presume that all stakeholders—notably citizens and civil society groups—are equally active politically, equally vocal, and influential. Therefore, to unleash EU participatory democracy requires supporting unorganized citizens and facilitating their access to electoral and participatory opportunities within and outside EU channels. It is only by lifting up particular constituencies that a reformed EU democracy could mitigate political inequalities.

While the implementation of such a framework may provide many citizens with a vital experience of EU sovereignty, it could also raise new, largely untheorized challenges.

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<sup>23</sup>See Treaty of the European Union art. 10(3).

<sup>24</sup>See ECJ, Case C-418/18 P, Puppinck and Others v. European Commission, ECLI:EU:C:2019:640, Opinion of 1 July 2019.

<sup>25</sup>See PAUL CRAIG, EU ADMINISTRATIVE LAW 296 (3rd ed. 2018).

<sup>26</sup>This idea is embryonically contained in the “Lighten the Load” platform, which in turn operationalizes the European Commission’s regulatory fitness and performance (“REFIT”) platform of ex post evaluation.

In the event that participatory mechanisms, such as the European Peoples' Assembly or European Question Time, start playing a role in EU decision-making, their operation might soon raise major legitimacy and methodological questions so as to render their acceptance difficult and contested.<sup>27</sup>

## F. Conclusions

The proposal is for EU democracy to reform its dual system of representative and participatory democracy in order for these channels to become more complementary and more effectively engage with the citizenry. While it will not magically treat the EU democratic malaise, it could make the system more intelligible, accessible, and ultimately responsive to citizen-driven issues—without necessarily undertaking Treaty reform.

As the EU enters a new politico-institutional cycle, the immediate priority is therefore to ensure that EU citizen level participation appear prominently in the agenda of the new Commission without being totally appropriated by the ad hoc Conference on the future of Europe.

Europe will not find its democratic soul in a large-scale, stand-alone, and pre-framed deliberation exercise. It is instead through the creation of an accessible, equalizing, and safe space, which accommodates public input on a daily basis, that the EU will overcome its own chronic democratic malaise.

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<sup>27</sup>See, e.g., D. Burks and R. Kies, A Gradualist Path Toward Sortition, in JOHN GASTIL & ERIK OLIN WRIGHT, LEGISLATURE BY LOT: TRANSFORMATIVE DESIGNS FOR DELIBERATIVE GOVERNANCE, Verso, 2019.