

The Citizens' Right of Initiative in the European Constitution: A Second Chance for Democracy?

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Introduction

The ambitions of the European Union (EU) have changed considerably since its creation; from the purely economic union at its beginnings, it has evolved into a complex structure with a wider vocation. Today, there is little in the daily lives of EU citizens which is not affected directly or indirectly by Community law. The flipside of the ubiquitous presence of the EU is a popular feeling that Brussels is an unaccountable policy-maker and that the benefits of EU citizenship are not obvious, as evidenced by the ever-falling turn-out rates in the European Parliament elections.

The right of citizens to have their voices heard and taken into account is an essential element of good governance. But how can this be achieved in the European Union? The work of the Convention on the Future of Europe attracted a lot of public attention, primarily from civil society groups: could a European Constitution, they wondered, bridge the legitimacy gap in the activities of the EU?

While the Constitution *per se* may or may not eliminate all the accumulated problems, there may be a “magic” clause for democracy: Article I-47.4 providing a citizens' right of initiative. [1] Although commentators have so far largely ignored this small clause in the Constitution, this paper argues that the new provision has a huge potential to bring the Union closer to its citizens. The citizens' right of initiative could significantly contribute towards a more lively European political landscape, where there will be a genuine dialogue between institutions and citizens. At last citizens voice can be counted.

Reaching the parts

Arguably, instilling elements of direct democracy in the existing representative system could reinvigorate the Union's democratic life. [2]

The Constitution extends the co-decision procedure, previously reserved only for a handful of areas, to the vast majority of EU policies. The European Parliament will therefore be granted equal legislative powers to the Council of Ministers. [3] This is a welcome attempt at enhancing accountability and transparency in the EU's decision-making process, since the European Parliament is the only directly elected body.

Yet how legitimate or representative is the European Parliament (EP) in reality, considering there is so little interest in EU affairs among the public that millions of voters cannot be bothered even to vote for their representatives? In other words, the representativeness of the EP may be compromised by the alarmingly low election turn-outs.

By contrast, the evidence over the last few years indicates that voter participation in direct consultations, such as referenda, has been much higher than participation in elections to choose representatives. According to a study conducted by the Initiative and Referendum Institute, an average two thirds of the electorate (67 per cent) took part in the European referendums since 1979. This compares with an average of 55.75 per cent turnout in elections to the European Parliament since 1979. [4]

People apparently prefer an opportunity to get personally involved in an issue to voting for someone else to make a decision for them. This momentum needs to be seized.

There has been plenty of room for livening up existing forms of participative democracy in the EU Treaty towards a more direct model. While the former concept requires policy-makers to consult on a regular basis with representative associations and civil society, direct democracy gives citizens an actual right to initiate legislative action. Article 194 of the EC Treaty, for instance, gives any person residing in a member state the right to address individually or in association with others, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him/her directly. A Committee on Petitions was therefore established in 1987 for the specific purpose of dealing with citizens' complaints on, for instance, the failure to apply Community Law correctly, or drawing attention to shortcomings in EU legislation. The Committee's workload has steadily grown, and very occasionally, citizens' complaints have indirectly led to the introduction of new legislation. This has been the case of a Commission's Communication on silicon breasts implants, responding to petitions calling for a ban. [5]

However, the right to petition (in the very few instances where petitions are at all deemed admissible) is essentially a negative right: a right to complain about the existence of a provision, rather than a positive right to initiate a better

provision. Citizens need a positive line of communication with European politicians and institutions. A regular and meaningful mechanism to carry dialogue with civil society is particularly important. Research has shown that while political party membership is a turn off, people seem to be increasingly attracted to single-issue organisations focusing on practical and/or local concerns. [6] In the UK for example, while, in the late 1990s only 1.92 per cent of the population belonged to a political party (a 50 per cent decline since the early 1980s), 47 per cent of the adult population engaged in formal volunteer work. [7]

The Commission and the European Parliament have acknowledged that non-governmental organisations (NGOs) and various interest groups are a channel between the EU and its citizens, and have as a result endeavoured to ensure regular consultation and exchange of information as part of the decision-making procedure. [8] Significantly, Article I-47.1-3 of the European Constitution reiterates the principle of participatory democracy as a principle of good governance.

The role of civil society in bringing European debates to the people is indeed considerable. Yet success of NGOs in fighting political fatigue should not be overrated. Some lobby or interest groups can be just as distant from citizens as politicians and bureaucrats they seek to influence. In order to be truly successful at creating and strengthening a new European political identity - the European *demos* - the right of initiative needs to be available to the broadest public across the community, and not just privatised by select NGOs or lobby groups.

Starting a European conversation

Article I-47.4 of the European Constitution will provide citizens with a right of initiative analogous to the European Parliament's right to propose legislation to the Commission. [9] The clause allows EU citizens, upon collecting a minimum of one million signatures, to invite the Commission to submit a legislative proposal. In other words, it will be possible for EU citizens to "press the legislative button".

Although this is the first form of direct democracy in the EU decision-making system, such initiatives are not unknown in Europe. Some member states (Germany and the Netherlands at a local level, for example), drawing inspiration from federal models such as Switzerland and the USA, have already devised various forms of citizens' right of initiative. [10] Experience with direct democracy in individual member states has shown that the success of those mechanisms depends very much on their accessibility: the more user friendly, the better.

In practice, two elements might be prohibitive. First, an excessively high qualifying threshold could inhibit the use of the initiative. Second, the right of initiative will lose its appeal and efficacy if too many issues are excluded from its scope.

Clearly, in the EU, the European dimension of the initiative ought to be preserved. Thus the Constitution's requirement of one million signatures, coming from a "significant" number of member states, probably at least eight, is both a reasonable and attainable condition.

Article I-47.4 also contains some restrictions on the scope: the initiative must be taken within the framework of the powers of the Commission and only when an act would be required for the purpose of implementing the Constitution. Indeed for the first time the European Constitution seeks to clarify the field of responsibilities conferred on the Union. [11] In a context of perceived "creeping expansion of powers" in Brussels, a right of citizens' initiative could hardly be perceived a threat to this newly acquired repartition of competences.

In any case, an initiative right is not in essence a groundbreaking innovation in terms of decision-making; it is very much issue-centred. The subject of an initiative, to be workable, will have to be clear, precise and of direct interest in the people's minds. It seems likely that topical issues centring around fair trade or animals' rights will be popular, as suggested by the amount and the nature of constituents' letters regularly received by MEPs. It must be recalled that a successful initiative will have to be consistent with the aims and the objectives of the European Union. An initiative conflicting, for example, with the provisions of the Charter of Fundamental Rights would therefore be deemed to be inadmissible.

A valid initiative, gathering a million signatures, will carry considerable moral weight. The exercise of gathering the signatures across member states will of itself start a European discussion on a subject of direct interest to a large and active body of citizens.

People's initiative: challenges ahead

Article I-47.4 provides that European laws shall determine procedures and conditions required for a citizens' initiative. The provision is indeed rather succinct and leaves open many questions regarding the structures and procedures to be set up, the nature and the future of direct initiatives.

Although it is unlikely that an initiative will bind the Commission, a citizen's initiative backed by million votes across Europe will carry way too much moral weight to be ignored entirely. Therefore, the Commission will need to devise an admissibility procedure, possibly through the establishment of a specific unit, in the same way the European Parliament has created a Committee on Petitions. For reasons of transparency and accountability, the Commission's decisions on admissibility will have to be reasoned and subjected to – perhaps, judicial – review. A European framework law will have to define qualifying thresholds and possible time limits: the absence of a final deadline might indeed weaken the process of signature gathering.

Most significantly, there is the question of the possible outcomes of a successful initiative. The role of EU institutions must be clearly defined with a view to develop dialogue between policy-makers and the citizens they are meant to represent. A valid initiative could for example be submitted to the European Parliament for positive input before the proposed legislation takes its final form. Whilst not in any way filtering or blocking the initiative process, the Parliament or an individual parliamentarian or groups of parliamentarians could take on the role of championing a particular initiative. In this way, the Parliament's and the people's right to initiative could form a significant and persuasive alliance.

Devising comprehensive procedural framework will be central to the successful implementation of a citizens' right of initiative. Nonetheless, the EU institutions and EU law commentators alike seem to have so far underrated the potential of Article I-47.4. By contrast, the prospect of proposing direct initiatives has aroused a lot of interest amongst NGOs for obvious reasons. Civil society groups will have an important role to play raising a million signatures across 27 member states. [12] It could even be that *ad hoc* organisations will be set up for the specific purpose of gathering signatures and then dissolve once the petition has gone through the admissibility procedure. However, a direct initiative right should not become a tool for the exclusive benefit of select influential lobby groups. It is vital that Article I-47.4 gain exposure. While the role of the media in relaying information on emerging petitions will be determinative, it will also be essential for policy-makers at all levels to give citizens' right of initiative the credit it deserves.

In a context of referendum campaigns, the benefits of Article I-47.4 could certainly constitute a powerful argument in favour of the ratification of the European Constitution.

Conclusion

Participatory democracy in the EU is to be welcomed as a positive attempt at promoting dialogue between policy-makers and various stakeholders. However, the last paragraph of Article I-47, by introducing elements of direct democracy, goes further. There are good reasons to believe that the development of a direct right of initiative in the EU could well increase public participation and contribute some much-needed excitement to the EU decision-making process. In any case, a right of initiative will bring considerable added legitimacy to EU law making. More importantly, it will for the first time ensure a bottom-up approach. This is still at a very early stage, however, and a lot of substance needs to be given to Article I-47.4 before its potential can be fully realised.

Should it be effectively implemented, the provision can increase the transparency of decision-making and contribute to the emergence of a European *demos*. This is a first step towards direct democracy “EU style”, a step that deserves much more attention and nurturing to move us finally and convincingly away from the old style of inter-governmental Europe into a real “citizen's Europe”.

Footnotes

[1] Draft Treaty establishing a Constitution for Europe, available on:

<http://www.europeanconvention.eu.int/DraftTreaty.asp?lang=ENG> (hereafter, “Constitution”).

[2] See: Bruno Kaufmann and Theo Schiller, *Initiative for Europe into new democratic territory*, Initiative and Referendum Institute Europe, October 2004, available on <http://www.iri-europe.org> (accessed 25 February 2005).

[3] Constitution, art. I-34 and III-396.

[4] See: Bruno Kaufmann and Dane Waters, *Direct Democracy in Europe* (2004), available on http://www.iri-europe.org/documents/almanac_content.pdf (accessed 25 February 2005).

[5] Communication on community and national measures in relation to breast implants, COM [2001]0666.

[6] Mair Peter and Van Biezen Ingrid, “Party Membership in twenty European democracies 1980-2000”, in *Party Politics*, Vol. 7, No. 1 (2001), pp. 5-21.

[7] See: findings of Institute for Volunteering Research, available on <http://www.ivr.org.uk/nationalsurvey.htm> (accessed 25 February 2005).

[8] See, for example, European Governance: A White Paper COM [2001]428, exploring the way in which the Union uses the powers given to it by its citizen; available on <http://europe.eu.int>.

[9] Article I-47.4: “Not less than one million citizens coming from a significant number of Member States may take the initiative of inviting the 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 Constitution. A European law shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which they must come”. Constitution, art. I-47.4.

[10] See, for example: Nicolas Beger, “Participatory democracy: organised civil society and the 'new' dialogue”, in *Federal Trust Online Constitutional Papers*, No 09/04 (July 2004), available on: <http://www.fedtrust.co.uk> (accessed 25 February 2005).

[11] Constitution, art. I-11 to I-18.

[12] By the time the Constitution enters into force, Bulgaria and Romania are also expected to join, bringing the total number of the EU's members to 27.