

## **Democratic Participation and the search for an institutional architecture that accommodates interests and expertise**

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**Abstract:** Participation seems to be the quintessential principle of democracy. Yet, it remains often poorly defined when reflecting on democratic architectures. It remains often confined to injecting some elements of direct citizen participation in the margins of political institutions based on either electoral representation or interest based politics. Acknowledging that modern governance is as much about knowledge based claims as about interest based claims puts a very different perspective on how to organise the participatory principle in democratic governance. Discussing the challenges that knowledge based claims governance poses to our predominant interest based models of democracy, the paper addresses whether directly deliberative polyarchy (DDP) is a more appropriate institutional architecture for EU governance, but concludes that bottom-up participatory governance does not emerge as easily as DDP claims, due to the subsystemic features of both interest based and expertise based networks. Reflexivity should therefore be taken seriously as a normative starting point.

**Keywords:** Participatory democracy, science and policy-making, interest representation, policy networks, directly deliberative polyarchy, reflexivity

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## **Introduction**

Participation seems to be the quintessential principle of democracy. Yet, it remains often poorly defined when reflecting on democratic architectures. The traditional focus on representative democracy has for a long time confined participation to the realm of elections. Many institutional architectures discussed in relation to the European Union (EU) copy that pattern, such as federalism or intergovernmentalism. However, over the last two decades, participation has become a key concept of EU institutional design, far beyond the electoral process, and discussed by both institutional actors and academics. The debate on participation has the advantage of opening up the scope of analysis and of normative argumentation about the multiple actors involved in EU policy-making, including not only the political representatives and citizens by way of the electoral process, but also interest representatives and experts, as well as citizens directly interacting in governance. At the same time, this debate has blurred the normative argumentation on the democratic added value of participation. This is particularly the case in the official discourses of the EU Institutions. Yet, the academic debate too has failed to provide an institutional architecture or normative democratic model for EU governance that puts participation convincingly centre stage. Directly deliberative polyarchy (DDP) has been suggested to play this role but, as I will show later in this paper, has strong shortcomings as a model for EU democratic governance.

Hence, rather than putting an institutional architecture or normative model upfront, this chapter takes as a starting point the different ways in which participation has been debated in relation to European governance. It identifies three main debates on participation in EU governance, which are analysed respectively in the three sections of this chapter. The first places participation in opposition to representation, the second is based on the dichotomy between participation and expertise, while the third focuses on the importance of participation in reflexive governance.

Each of these three debates has emerged as an interaction between institutional discourse and academic argument. Each of them also has shortcomings; either related to their focus or scope of analysis (regarding the actors who are participating, or the stages and modes of governance) or to their normative argumentation about the democratic added value of participation. By analysing the three debates together, this chapter allows for the identification of how each of them speaks to some shortcomings of the others. It also allows for the definition of several principles which should inspire any future attempt to reflect on EU institutional architectures that take participation seriously.

I argue that focusing on participation opens up opportunities to reflect on the democratic challenges and opportunities offered by the multiple types of actors active in EU governance in a way other democratic debates do not, such as those focused on the principle of accountability or architectures like federalism. At the same time, I argue that participation as such is not necessarily a democratic good. Direct citizens' participation can be considered a democratic good, but for most participatory mechanisms the democratic yardstick lies in the principle of representation. Representation though should not simply be thought of in terms of interest representation but also in terms of knowledge-based claims-making.

### **Participation versus representation**

The issue of participation appeared explicitly in EU official discourse during the 1990s. In 1992 the Commission adopted two linked Communications, one on 'An Open and Structured Dialogue between the Commission and Special Interest Groups' (EC 1993a) and one on 'Increased Transparency in the Work of the Commission' (EC 1993b), which had as objective increasing transparency of Commission work in order to facilitate the participation of interest groups in EU policy-making. However, it was only by the end of the 1990s that a discourse developed in which participation was presented as a key element for democratic governance, in particular by stressing the importance of civil society participation in European governance. This development has been sufficiently dealt with in the literature (Smismans 2003) and does not need detailed repetition here. In summary, we have witnessed a development from 'civil dialogue' as a way to include civil society organisations other than social partners (already profiting from a 'social dialogue') in social policy, to ad hoc sectoral references to the importance of civil society participation, to the general favouring of civil society participation in all policy areas as per the Commission's 2001 White Paper on European Governance. This debate has been framed in terms of civil society participation providing democratic input which supplements that of the institutions of representative democracy. The European Economic and Social Committee (EESC), for instance, itself composed of civil society organisations, defined its own role as guaranteeing 'the implementation of the participatory model of civil society, [enabling] civil society to participate in the decision-making process; and [helping] reduce a certain 'democratic deficit' and so [underpinning] the legitimacy of democratic decision-making processes' as a complement to the legitimacy offered by the European Parliament (EESC 1999). Inspired by the Commission White Paper's discourse on civil society, the Constitutional Treaty went as

far as constitutionalising both representative democracy and participatory democracy as part of the democratic foundations of the European Union. Although the Lisbon Treaty left out the concept of participatory democracy, the Constitutional Treaty article defining participatory democracy has been taken over entirely in what is now Article 11 of the Treaty on European Union (TEU), following the definition of representative democracy in Article 10 TEU. The dual democratic input in the EU, based on representative democracy and additional participatory mechanisms, has thus been constitutionalised in the Treaties.

However, during the European Convention debate leading to the Constitutional Treaty, the exact nature of participatory democracy was discussed. More precisely, some Convention members criticised the fact that the way participatory democracy was framed by the civil society debate had focused on the participation of intermediary actors and not of citizens directly (Smismans 2004: 133; Kohler-Koch 2011: 59). The final outcome of this debate led to Article 11 TEU including both elements of direct citizen participation and participation via intermediary organisations.

The citizen is addressed by the requirement that ‘the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action’ (para. 1), which appears mainly to be a reference to participation in the public sphere. Most importantly, paragraph 4 introduces the European Citizens’ Initiative (ECI) as a new instrument of direct democracy, allowing at least one million citizens from at least seven Member States to invite 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’. Intermediary organisations are further addressed by the requirement for all EU institutions to ‘maintain an open, transparent and regular dialogue with representative associations and civil society’ (para.2) as well as the obligation for the Commission to ‘carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent’ (para.3). Hence, under the title ‘provisions on democratic principles’, and linked to the concept of European citizenship (Article 9 TEU),<sup>1</sup> the TEU has constitutionalised the dual democratic basis of EU governance, namely representative democracy, and participation (both direct and via intermediary organisations).

This debate that centres around the participation/representation dichotomy, and which is the predominant way in which participation has been looked at in EU governance, has

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<sup>1</sup> On how this introduces a more participatory dimension to the concept of European citizenship, see Smismans (2009).

several shortcomings. The shortcomings are related to both the scope of the debate (and consequently the institutional arrangements proposed for participation) and the ambiguous way in which the added value of participation has been conceptualised.

### *Limits in the scope of the debate*

The civil society debate and the constitutionalising debate about participatory versus representative democracy have focused on participation at the initial stage of policy-making, and the legislative stage in particular. As a consequence, the institutional mechanisms proposed to strengthen participation are also focused on this stage of policy-making. This applies to both initiatives that aim at participation through interest intermediation and at direct citizen participation.

Initially, the civil society and participatory discourse led mainly to some Commission DGs organising broad forums, e.g. on an annual basis, inviting a wide range of civil society organisations to provide input on relatively broad agenda items. The main outcome of the civil society debate, however, is the Commission's Communication on General Principles and Minimum Standards for Consultation of Interested Parties by the Commission (EC 2002a), adopted in 2002, following promises made in the White Paper on European Governance (EC 2001), and slightly amended in 2012 after a public consultation (EC 2012).<sup>2</sup> While the principles and standards of consultation are applicable to all Commission Directorates-General (DGs), the title of the Communication is deceiving as it does not provide a general framework for Commission interaction with 'interested parties'. It excludes explicitly from its scope, among others, comitology—i.e. the implementation of legislation by regulatory action adopted in interaction between the Commission and comitology committees composed of representatives from national administrations—and more generally all consultation mechanisms set out in the Treaties or 'in other Community legislation'. Instead, the Communication focuses on 'applying the general principles and minimum standards to those initiatives that will be subject to an extended impact assessment' and on Green and White Papers. In fact, the main outcome of the Communication (and of the White Paper) is the increased use of open online consultations at the initial stage of new legislative initiatives (for which impact assessments are required). Hence, instead of providing a framework for the multiple ways in which interest groups participate at different stages of EU

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<sup>2</sup> The changes are minimal, leaving the original Communication as main reference document, with only some minor amendments provided by this Working Document.

policy-making, not least via a myriad of advisory committees, the Communication focused on increasing the participatory dimension of European governance by creating an additional way of participation at the initial stage of policy-making. It is beyond the scope of this chapter to provide a detailed empirical assessment of the extent to which such online consultations change participation and its influence in EU governance. Suffice it to note that online consultations are not a general practice for new policy proposals, with a diversity in practices among DGs (Quittkat 2013), and most Impact Assessments (IA) relying on targeted rather than general open online consultations (Bozzini and Smismans, forthcoming). Although most of the time open online consultations ensure a plurality of actor participation (Kohler-Koch 2013:117), comments about the limited added value of, in particular, late consultations have been made (Quittkat 2013: 99). At the same time, in terms of representativity, there are clear imbalances among the national backgrounds of participants and it has been argued that the lack of resources of NGOs has led to the online consultations replicating the predominance of industry in EU interest representation channels (Quittkat 2013: 106).

Central to the argumentation of this chapter is that the debate on civil society and participatory democracy has not changed the nature of participation in the underworld of advisory committees that constitute the heart of interest group participation in European informal governance. Moreover, its impact appears limited to the initial stage of new legislation, leaving, among others, delegated legislation and comitology untouched.<sup>3</sup> This is in sharp contrast with, for instance, the US, where participation in delegated legislation is highly regulated, (Smismans 2005 and forthcoming b). This is not a plea to copy the American model of dealing with interest group participation, but it confirms the picture of the EU's debate on civil society and participatory democracy as only dealing with part of the reality of interest group participation in European governance.

In relation to the instruments for direct citizen participation, the focus has been equally restrictive, with the consequence that the instruments which have been created are likely to contribute at best very modestly to the legitimacy of EU governance, and at worst may even undermine it. The two key new opportunities for direct participation that result from this debate are the European Citizens' Initiative and the increased use of open online consultations by the Commission, which also allows individual citizens and not only interest groups to participate. The ECI has the democratic added value of encouraging debate in the public sphere on EU issues. At the same time, its agenda-setting power is limited and likely

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<sup>3</sup> On the weakly regulated framework of interest representation in comitology, see Smismans 2005.

to frustrate citizens in a way that may undermine EU legitimacy as it creates high expectations with those signing up to an initiative. However, unlike nation states, the EU has only attributed powers, and the ECI cannot assign new EU powers. Moreover, to the extent an initiative falls within EU powers, the Commission is limited in what it can do in relation to a regulatory framework already carefully crafted in a difficult balancing act between Member States and the EU co-legislators (EP and Council). This is particularly so for high profile political issues, which are exactly those that are most likely to attract enough signatures for a CI.

The practice of the ECI until now is telling in this regard: of the 15 initiatives recorded and dealt with by the end of June 2014 (while 11 other are still pending),<sup>4</sup> only two reached the requirements to incite a response by the Commission. While some initiatives are tiny in scope (such as the proposal for an additional but minor funding stream under Erasmus) most initiatives deal with high profile or at least very political topics, such as ensuring media pluralism, allowing EU citizens to vote in national parliamentary elections in their country of residence, or ensuring dairy cow welfare. The two initiatives that did gather the required number of signatures equally deal with highly political topics, namely one requiring EU legislation to implement the human right to water and sanitation (including the request that water supply and management of water resources should not be subject to internal market rules and that water services are excluded from liberalisation) and one asking the EU to establish a ban on, and end the financing of, activities which presuppose the destruction of human embryos, in particular in the areas of research, development aid and public health (the ‘One of us’ initiative). In particular the latter shows the sort of hot potatoes that may be thrown on the plate of the Commission.

The Commission answered to the One of Us initiative by arguing that no new EU action would be taken in reply to the initiative (EC 2014b: 11). Its justification to take no action was based on references to the democratic majorities’ position on the issue in most of the Member States, the legislative majority for the EU regulatory framework and policy (expressed in both EP and Council), wider civil society consultations that had taken place on that regulatory framework, as well as the existing ethical governance mechanisms and scrutiny in place in research policy.. It is questionable whether one million signatures from seven Member States can counter that. Yet, the ECI creates the expectation that citizens would be able to ask the European legislator to take initiative or at least propose the European

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<sup>4</sup> The European Citizens’ Initiative Official Register, available at <http://ec.europa.eu/citizens-initiative/public/welcome> (last accessed 7 July 2014).

legislator to reconsider. Although the Commission is part of the European legislator (together with EP and Council), the justification for non action given by a non-elected body (the Commission) in reply to an ECI is unlikely to make the EU any more popular. The problem though is more fundamentally one of a tension between direct democracy and representative democracy.

This is also illustrated by the other ECI that acquired sufficient signatures. Unlike the topic of the ‘One of us’ initiative, the topic of the fundamental right of water and sanitation is unlikely to meet profound ideological opposition. Yet, the petitioners’ request for the EU to take legislative action to ensure this fundamental right met again with a lukewarm response by the Commission (EC 2014a). The Commission falls short of promising new (legislative action) and mainly justifies what the EU already does to ensure this right, promising only further implementation of its policy and organising and EU wide consultation.

The practice of the ECI so far suggests that all those who expected that this new instrument would allow the EU to take bold and very visible action upon the suggestions of its citizens are likely to be frustrated. It is difficult to identify topics on which the EU has competence but has not already acted within a regulatory framework that is the outcome of a very balanced exercise relying on national majorities, EU level representative institutions, and even wider society consultation and a scientific status quo. Hence, it is more likely that the ECI will lead at best to some technical tweaking or a gradual readjustment of a regulatory framework, in a way, though, that is unlikely to deliver the big legitimacy boost to European governance that some had hoped for.

The other instrument that has (also) aimed at direct citizen participation is equally faced with strong limitations regarding its potential impact. Data show that online consultations on new legislative proposals or on new broad agenda setting communications via Green and White Papers attract mainly responses from interest groups rather than from individuals (Quittkat 2013: 101). Moreover, following the Commission’s General Principles and Standards of Consultation, the Commission officials are also advised to take into account the representativeness of participants in online consultations. While it is not entirely out of the question that an individual with expertise might have some influence on the drafting of new policy initiatives through online consultation, it is difficult to herald the online consultation process as an excellent example of participatory democracy in terms of direct citizen participation. As the online consultations appear to be dominated by interest groups, one may wonder whether alternative strategies of direct citizen participation, such as deliberative polls, would be more effective both in terms of ensuring more influence (as they



may be likely to be taken into account because they are considered more representative of civil society) and in terms of facilitating debate and the so called advantages of participation as a 'school of democracy'. Moreover, focusing on online consultations at the initial stage of mainly legislative initiatives, the EU debate on participatory democracy has ignored direct citizen participation in other stages of policy-making and through more bottom-up and decentralised modes of governance.

### *Limits in conceptualising the democratic added value of participation*

The limits in the scope of the debate on civil society and participatory democracy go hand in hand with the ambiguous way in which the democratic added value of participation has been defined. Political theory has mostly linked the concept of 'participatory democracy' to ideas of 'direct democracy', although the two are not synonymous. 'Direct democracy' has mainly referred to the referendum model and the classical city-state democracy of Ancient Greece. 'Participatory democracy' emerged as a concept to revive the idea of direct participation in the complex society of the second half of the XX century (Pateman 1970; Barber 1984). It extended the idea of direct participation from the political world to other sectors of social life, such as the workplace, education and local public administration, and gave particular attention to 'self-realisation' and to deliberation in face-to-face relations, so stressing mostly a 'small-group' model of democracy (Sartori 1987: 112). Both direct and participatory democracy share the focus on democratic mechanisms in which individuals participate personally in the deliberations which concern them, in which there is no representation by intermediary bodies between those who make the decisions and those affected by them.

However, the conceptual use of 'participatory democracy' in EU official discourses is more ambiguous. The ECI comes the closest to the direct participatory ideal, clearly based on the referendum idea, although it fails to work as a real referendum, because its threshold (one million citizens from at least seven member states) is too low to trigger action by the EU legislator. At the same time, making the ECI binding would suit badly for a polity which has no single *demos* and democratic balance is consociational rather than majoritarian in nature.

Beyond the topic of the CI, the added value of direct citizen participation in EU governance has hardly been conceptualised in the EU's debate on participation. The precise added value of online consultations (on main policy initiatives) in which citizens can also participate as individuals remains unclear. Such participation does not allow any of the face-to-face deliberation and self-realisation heralded by theories of participatory democracy.

Neither does it offer any representative value in a way that e.g. deliberative polls and fora could offer. Hence, as its democratic added value is unclear, it is unlikely that EU decision-makers would take into account opinions raised through such online consultations, unless it was on the basis of the expertise they provided.

The major challenge, though, in conceptualising the added value of participation in the EU's debate on civil society and participatory democracy relates to the fact that the main focus of this debate has been on interest group participation rather than on direct citizen participation. Yet, unlike for direct citizen participation, there is no intrinsic democratic added value to participation by intermediaries. Such participation may simply constitute policy-making captured by narrow interests. However, EU official discourse over the last decade is filled with references that herald participation as intrinsically good: the more participation the better. Many of the statements that suggest 'the more participation the better' are built on the assumption that participation mechanisms ensure a pluralist system of interest intermediation. Yet, the yardstick to assess the democratic added value of such participatory mechanisms is representation, and this is so in two ways.

System representativeness refers to the extent to which the overall system of interest intermediation is representative of the interests concerned, while organisational representativeness refers to the way an intermediary organisation can claim to be representative of the interests it speaks for (Pérez-Solórzano Borragán and Smismans 2012). It is only more recently that the academic debate has looked at representation to assess the democratic added value of civil society participation (Jentgens 2012, Johansson 2012, Rodekamp 2012). The EU institutions themselves have only marginally dealt with the question of representation in the debate on civil society and participatory democracy. The EESC has attempted to come up with some criteria to define representativeness of civil society organisations, but has failed to define a realistic scope of application (Pérez-Solórzano Borragán and Smismans 2012). At the same time, the Commission's White Paper on European Governance proposed that civil society organisations would be granted 'privileged partnership arrangements' depending on their representative character, but it failed both to define representativeness criteria and to develop such partnership arrangements.

Soon after the White Paper the discourse changed from civil society organisations, which were said to have some particular representative character, to consultation with 'interested parties', which was the focus in the 2002 Communication on Principles and Standards of Consultation. The change was clearly exemplified by the European Transparency Initiative: rather than ensuring the representative character of interest

intermediation, the focus shifted to ensuring transparency of interest group participation. This shift presents interest group participation as a democratic good as long as the process is transparent. However, while transparency is a necessary condition for democracy it is, as such, no guarantee for equal participation.

Finally, in addition to the limits in scope of the debate on civil society and participatory democracy, and in the way the democratic added value of participation has been conceptualised, this debate has another shortcoming. Much in line with the predominant focus of democratic theory, this debate has looked at participation in terms of interest intermediation. The actors involved, whether interest groups or citizens directly, participate to defend their interest. However, insights from policy analysis and from science and technology studies have made clear that policy making is as much about knowledge-based claim-making as about interest-based claim-making. The question of how to organise participation in modern democratic governance can only be properly addressed by taking into account the relationships between these two. These relationships have in fact been discussed in (academic and official) debates about EU governance, but independently from the debate on civil society and participatory democracy. One such debate has focused on a dichotomy between participation and expertise, which will be discussed in the following section, while another debate has looked at the importance of participation in policy learning, which will be analysed in the final section of this chapter.

### **Participation versus expertise**

There is a second debate on participation in European governance which has developed rather independently (both institutionally and academically) from the one described above. Contrary to the civil society and constitutional participatory democracy debate, which focuses on the dichotomy of participation versus representation, this second debate is focused on the dichotomy of participation versus expertise. It emerged from a concern on how to regulate to use of (scientific) expertise and sound evidence in European (risk) regulation and European governance more broadly, and subsequently addressed the question of participation in this context.

Expertise has always been central to the European integration process. The functional approach to European integration considered the participation of actors with particular expertise in the areas of sectoral integration more important than wider public participation, with the initial parliamentary assembly not being directly elected and only having advisory power. However, as a topic of both institutional and academic debate, expertise only really

emerged during the 1990s. Particularly following the Bovine Spongiform Encephalopathy (BSE)-crisis, the EU's regulatory framework was strongly contested for not respecting scientific standards and being biased by the interests of member states. In fact, the comitology system is based on a collaboration between the Commission and comitology committees which are composed of representatives from the national administrations. In the case of the 'mad cow crisis', the UK had managed through comitology to keep the European market open to its beef, which would not have been the case if decision-making had relied more heavily on the available scientific evidence.

Both the institutional and the academic debates that followed have focused on the importance of 'independent expertise', which was assumed to be found in the creation of independent agencies. However, the European agencies, which multiplied from the 1990s onwards, have not taken the form of independent regulatory agencies. They have no regulatory powers but act mainly as information agencies, either giving advice to the European Commission and comitology, or as a network of exchange of information aimed at improving implementation at a national level. Nevertheless, insofar as European agencies have a role in European regulation, their creation is based on a distinction between risk assessment and risk management, which replicates the dichotomy between participation and expertise. Agencies are supposed to provide 'neutral' risk assessment, while it is up to the Commission and comitology procedures to ensure risk management and to take the political decisions. From this perspective, 'participation' should not be institutionalised via the agencies, which are supposed to gather 'neutral' scientific advice (although some agencies have some stakeholders on their board). It is up to the European Commission to organise wider participation by stakeholders and consultation; and it is up to the discretion of the Commission, and subsequently the EP and the Council (for legislation), or comitology committees (for comitology), to decide to what extent 'neutral' information gathered through agencies and interest-based arguments gathered through Commission consultation procedures are taken into account in the final political decision.

During the first decade of the XXI century, the debate on expertise in EU policy-making has shifted from the focus on agencies during the 1990s, to a debate on sound evidence in the context of the Better Regulation agenda, and the use of impact assessments more particularly. The debate on the European agencies, which function mainly as networks of national administrations rather than independent regulatory agencies, has now been framed in terms of the development of an 'EU's executive order', 'European administrative space', or 'European regulatory space' (Thatcher and Coen 2009), rather than in terms of their

centrality in providing independent expertise for European regulatory action. At the same time, with the Better Regulation debate, the attention for expertise has turned to EU legislative action, whereas it was previously focused on delegated legislation, with the critique on comitology, and then on the implementation stage as it became centred around the role of the European agencies.

Also, in relation to European legislative action, the debate has to a great extent been framed in terms of a dichotomy between participation and expertise. Following the White Paper on European Governance (EC 2001), the Commission adopted two separate communications, one on General Principles and Standards of Consultation by the European Commission (EC 2002a), and one on the Collection and Use of Expertise by the Commission (EC 2002b). Although the latter recognises that ‘expertise can result both from scientific knowledge and from practical experience’ and that ‘sometimes experts and representatives of interested parties are brought together in single groups’, or even that ‘complementary expertise may be gathered during open consultations such as the publication of green and white papers’ (EC 2002b: 6), the general approach is that when one Communication is applicable the other is not. ‘The Commission’s minimum standards on public consultation apply in consultations of the public at large, and also when the Commission seeks the views of civil society groups and other interested parties because of the constituencies they represent, rather than because of the expertise they possess’ (EC 2002b: 7). Unlike consultation of stakeholders, the key principle of the expertise communication is that expertise is independent: ‘It is a truism that no one is entirely ‘independent’: individuals can never entirely set aside all thoughts of their personal background—family, culture, employer, sponsor, etc. Nevertheless, as far as possible, experts should be expected to act in an independent manner’ (EC 2002b: 8).

The opposition between independent expertise and stakeholder participation is also present in the European Commission’s use of impact assessments. Compared to other countries and international organisations, the EU’s system of impact assessments pays more attention to ensuring participation of stakeholders during the drafting of impact assessments. Nevertheless, the EU system is also built on a distinction between ensuring ‘expertise’ on the one hand, and stakeholder evidence on the other hand.

The 2009 Commission guidelines on impact assessments distinguish between ‘internal expertise’ (ensured by creating a Steering Group with Officials from different DGs), and ‘external expertise’, for which it is said that ‘expert groups and, in particular, scientific committees set up by the Commission and EU Agencies are a prime source of scientific

advice’, while experts on the Commission expert website SINAPSE can also be used (EC 2009: 18). Paying attention to the ‘consultation with interested parties’ is a separate objective that is not listed as internal or external expertise. It is said to be ‘an essential tool for producing high quality and credible policy proposals. Consultation helps to ensure that policies are effective and efficient, and it increases the legitimacy of EU action from the point of view of stakeholders and citizens’ (EC 2009: 19) While it is acknowledged that stakeholders or ‘interested parties’ can provide evidence, and can contribute to e.g. ‘finding new ideas (brainstorming), collecting factual data, and validating a hypothesis’ (EC 2009: 19) their involvement also comes with the warning that ‘it is important to distinguish evidence from opinions’ (EC 2009: 20). Stakeholders are expected to provide non-objective interest-based information, and it is therefore said that DGs should ensure ‘peer-reviewing, benchmarking with other studies and sensitivity analysis’ in order to ‘significantly enhance the quality of data’ and ensure ‘the robustness of the results’ (EC 2009: 20). At the same time, DGs should be sure to ‘engage all affected stakeholders’ and ‘consult all relevant target groups’. Such wide involvement seems to have a representative dimension; it is only through wide participation of all stakeholders that the feasibility and legitimacy of policy proposals is ensured. Only wide stakeholder involvement ensures input-legitimacy. At the same time there seems to be an assumption that the category of external experts, namely expert committees, agencies and individual experts, ensure the gathering of ‘neutral expertise’, for which neither a cautious nor representative approach is required.

One can conclude that the debate on expertise in EU policy-making answers some of the shortcomings of the civil society and participatory democracy debate by taking into account the relationship between participation and knowledge in policy-making, and not just in terms of its importance for interest representation. At the same time, this debate also has some shortcomings.

In terms of the scope of the debate regarding stages and modes of governance, this debate has the advantage of dealing with both legislative action (impact assessment debate), and delegated legislation and implementation (comitology and agency debate). At the same time, the scope of the debate regarding the instruments for participation has been very limited. In the agency debate the focus has been on ensuring the independence of agencies, acknowledging that it is for the Commission to organise participatory procedures but without making clear proposals for the latter. In the debate on impact assessments, the importance of participation has been stressed; however, when it comes to proposing how to organise such participation, reference is made to the 2002 Principles and Standards of Consultation. Hence,

in terms of proposing institutional mechanisms for participation, the debate ends up pretty much the same as the debate ‘participation versus representation’ analysed above, i.e. relying on an increased use of online consultations on legislative and major policy initiatives without giving clear indications on how to organise participation at other stages of policy-making.

This lack of imagination about the institutional design for participation goes together with the limited reflection on the precise democratic added value of participation in modern governance that is also dependent on knowledge and sound evidence. Firstly, in this debate on expertise in EU governance, direct citizen participation has remained out of the picture. Arguments about the importance of participation have focused on including stakeholders or have been framed in vague terms not distinguishing between participation by intermediaries and direct citizen participation. Secondly, the insistent focus on the dichotomy between expertise and participation fails to acknowledge the many insights from science and technology studies, sociology of science and policy analysis that such a strict distinction does not stand the test of reality (Maasen and Weingaert 2009; Jasanoff 2005). Interest-based participants also possess knowledge and evidence and definitely make knowledge-based claims. There has also been an increased ‘politicisation of science’ as opposed interest groups make claims on the basis of contradictory scientific arguments using only those supporting their position (Maasen and Weingaert 2009:4; Everson and Vos 2009: 8). In turn, this development makes public that science does not provide the single truth.

As a consequence, the neutrality of science and expertise cannot be assumed, and there is plenty of evidence that science can be bent by special interests (MacGarity and Wagner 2010). The debate on the democratization of science has therefore proposed participatory mechanisms in the design and funding of research and development policies. This debate has been reflected in the EU’s research policy, with specific funding programmes ‘Science and Society’ in FP6, and ‘Science in Society’ in FP7, and the principle of Responsible Research Innovation (RRI) becoming a horizontal principle for the entire Horizon 2020 research programme. ‘RRI is an inclusive approach to research and innovation, to ensure that societal actors work together during the whole research and innovation process’ and ‘to better align both the process and outcomes of R&I, with the values, needs and expectations of European society’.<sup>5</sup> The challenge, though, goes beyond research policy. If we acknowledge that science does not provide the single truth, and the neutrality of expertise

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<sup>5</sup> HORIZON 2020 website, “Science with and for Society”, available at <http://ec.europa.eu/programmes/horizon2020/en/h2020-section/science-and-society> (last accessed 7 July 2014).

cannot be realized, it is not sufficient to organize participatory mechanisms in research (funding) policy. Instead, we need to address participation in relation to the use of expertise in all policy-making areas.

### **Participation in reflexive governance**

There is a third debate on participation in European governance, which appears to reply to many of the shortcomings of the two other debates. It does not limit the focus of analysis to a particular stage of regulatory decision-making but looks at participation in different modes of governance and throughout the entire policy-cycle. Moreover, this debate seems to overcome the rigid opposition between participation and expertise as it is framed in terms of learning, in which participation has a central place. It acknowledges that decision-making is about both interest representation and knowledge gathering, with participation playing a role in both and not limited to the first.

This debate has developed academically around arguments of reflexive governance and directly deliberative polyarchy (DDP).<sup>6</sup> Reflexive governance has been discussed in both policy analysis, particularly in environmental policy, and legal theory, particularly based on Gunther Teubner's autopoietic theory of reflexive law (Eriksen 2005; Vos, Bauknecht and Kemp 2006; De Schutter and Lenoble 2010). The common ground is the focus on policy and law-making as a cyclical and permanent learning process in which experience with the policy or law in practice leads to amendment of that policy or norm (first order learning) and in which the process of policy- and law-making itself can be revised (second order learning) (Vos, Bauknecht and Kemp 2006). Most authors on reflexive law and governance stress the importance of a wide decentralised participation in these learning processes. At the same time, theories on reflexive governance or law are often proposed as analytical, describing the changing nature of modern policy and law making. When they are more normative, it is mainly in proposing the conditions under which learning would best occur. Arguments about the democratic nature of reflexive governance are often made implicitly rather than explicitly.

The model of DDP is, instead, explicitly proposed as a design for modern democratic governance. DDP is a democratic ideal that is based on the idea that 'local-, or more exactly, lower-level actors (nation state or national peak organizations of various kinds; regions, provinces or sub-national associations within these, and so on down to the level of whatever

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<sup>6</sup> The authors of DDP have equally used the term 'democratic experimentalism' for their model.



kind of neighbourhood the problem in question makes relevant) are granted autonomy to experiment with solutions of their own devising within broadly defined areas of public policy. In return they furnish central or higher-level units with rich information regarding their goals as well as the progress they are making towards achieving them, and agree to respect in their actions framework rights of democratic procedure'. (Gerstenberg and Sabel 2002: 291). The system is 'directly-deliberative' since 'citizens must examine their own choices in the light of the relevant deliberations and experiences of others' (Cohen and Sabel 1997:314)—in contrast to other discursive ideas of democracy of deliberation by an administrative or political elite. The system is 'polyarchic' due to the permanent disequilibrium created by the grant of substantial powers of initiative to lower-level units (Gerstenberg and Sabel 2002:292). The democratic claims of DDP are akin to ideas of participatory democracy (Pateman 1970) and deliberative democracy in that it focuses on direct participation and deliberation in terms of rational argument. DDP aims at decentralization 'down to the level of whatever kind of neighbourhood the problem in question makes relevant' (Gerstenberg and Sabel 2002: 291), and postulates 'direct participation by and reason-giving between and among free and equal citizens' (Cohen and Sabel 1999: 1) as a normative ideal. 'There is a presumption in favour of equal membership for affected parties – open meetings, with equal rights to participate in discussion and decision-making for all affected parties' (Cohen and Sabel 1999: 15).

However, the debate on participation in reflexive governance is not merely a theoretical one. The EU institutions too have developed discourses on the importance of participation in reflexive governance and have set up institutional mechanisms for this. Two institutional designs in particular rely on this approach, namely the Open Method of Coordination (OMC) and, more recently, the European Commission's attempts to develop an 'evaluation culture' throughout the entire policy-cycle.

The OMC has been widely discussed in the literature and does not need a detailed description here. Kröger 2009). Instead of relying on binding EU intervention, the OMC is based on the definition of European guidelines, for which the Member States then have to set out national action plans explaining how they intend to and have realised these guidelines. These action plans are subsequently assessed at the European level (which may lead to revision of the guidelines) and may be combined with a process of specific recommendations addressed to the Member States. This cyclical process is combined with the definition of benchmarks and measurable indicators allowing comparison of best practice. Moreover, the OMC is said to be based on a 'fully decentralised approach', in line with the principle of

subsidiarity in which the Union, the Member States, the regional and local levels, as well as the social partners and civil society, are actively involved, using variable forms of partnership (European Council 2000).

The OMC has been described by the authors of DDP as an example of their model. However, empirical analysis of the OMC in different fields has shown that, although civil society participation is to a certain extent ensured in some OMCs, it is mainly national administrators and experts who participate in this mode of governance (Jacobsson and Vifell 2005; Léonard, Erne, Marginson and Smismans 2007: 70). The OMC guarantees direct citizen participation to an even lesser extent. The OMC can be described as a process of experience-driven revising of framework provisions as suggested by the authors of DDP (Sabel and Zeitlin 2008), but there appears to be very little in this mode of governance that would bring it anywhere close to the direct participatory dimension the normative claims of DDP are focused on.

One can argue that there will always be a gap between normative models and empirical reality. However, when the gap is wide and intrinsically impossible to be bridged it undermines the usefulness of the normative model as guidance for modern governance. I have argued elsewhere (Smismans 2010) that there is an intrinsic shortcoming in DDP which undermines its usefulness as a normative guide for European governance. Unlike theories of reflexive law, DDP underestimates the systemic nature of knowledge and society. As argued in systems theory, society is constituted of subsystems with their own language, making interaction between these subsystems not entirely impossible but very difficult. Gerstenberg and Sabel argue instead that ‘local knowledge is neither tacit nor fully and self-referentially systematic. Co-ordination among local collaborators is necessary because of the diversity of their views and possible because . . . the exploration of the ambiguities internal to each shades into exchange with the others. But as local co-ordination yields new ambiguities of its own, there is both need and possibility for inter-local exchange through a new centre that frames discussion and re-frames it as results permit.’(Gerstenberg and Sabel 2002: 340). However, the evidence of governance practices, in particular in the context of the EU, shows that the heterogeneity of participants (Cohen and Sabel 1997: 333) within local units emerges far less spontaneously than DDP seems to suggest given the systemic expertise that is required. Moreover, a new centre at a higher level that allows inter-local exchange may indeed provide opportunity to reframe discussion, but the (partial) self-referentiality of subsystems implies that, if not consciously institutionalised, there will be a tendency for such

a higher level centre to be created within the subsystem rather than creating deliberation across subsystems.

As the OMC illustrates, European governance tends to occur through auto-referential deliberation between functional actors structured by the language of each subsystem, rather than as a bottom-up process based on citizen participation and a rather spontaneous process of cross-system interaction. I have therefore argued that ‘reflexivity’ should also be used as a normative device to encourage the conscious crafting of institutional mechanisms that allow for cross-system interaction (Smismans 2010). However, while such reflexivity can be welcomed from a democratic perspective as it encourages deliberation towards the general interest rather than decision-making inspired by the rationale of one subsystem of functional actors, it does not answer the problem that such reflexive governance does not involve the citizens directly. Hence, one needs, on the one hand, to address the question of the representative nature of the functional actors involved in these processes (as discussed above) and, on the other hand, to identify how such modes of governance relate to institutions of representative democracy. Paul Magnette (2006) has rightly criticised DDP for not acknowledging the potential of representative democracy—as opposed to direct participatory processes of DDP—in fostering civic equality and civic education.<sup>7</sup> In relation to the OMC, many have therefore stressed the role national parliaments should play in this procedure, e.g. in the discussion of national action plans, while others have equally pointed to the added value of benchmarking procedures of the OMC in providing information and comparative evidence for strengthening political debate in representative democracy (De Schutter 2010; De Ruiter 2011). At the same time, these suggestions do not entirely overcome the weakness of participation (directly or via the institutions of representative democracy) in the drafting of guidelines at the EU level, which set out the normative framework in a rather technocratic or politically weakly participatory way by the Commission and the Council.

The second European institutional debate on participation in reflexive governance is far more recent than the OMC and still hardly discussed academically,<sup>8</sup> namely the European Commission’s attempt to develop an ‘evaluation culture’ throughout the entire policy-cycle. In 2010 the Commission proposed to turn its ‘Better Regulation’ agenda into a ‘Smart Regulation’ agenda (EC 2010). A key feature of this ‘smart regulation’ is to establish a real

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<sup>7</sup> Magnette (2006). In a comparable way, Rainer Schmalz-Bruns (2005: 65, 72) criticizes DDP for underestimating the normative force of the claim of a demos and the idea of an encompassing general public of citizens, and therefore unable to account for how the principles of democratic equality and solidarity would be realised.

<sup>8</sup> For an exception see Luchetta (2012) and Smismans (2015).

evaluation culture throughout the entire policy-cycle. Concrete proposals in that sense were not made until 2013 with a Commission Communication on improving evaluation (EC 2013a), followed by an online consultation process on a draft of new evaluation guidelines,<sup>9</sup> the outcome of which is under analysis by the Commission at the time of writing this chapter. Evaluation is not new to EU policy, but it has mainly focused on the ex post evaluation of EU expenditure programmes to ensure financial accountability and political control on the use of the EU budget (Hojlund 2015). With the Smart Regulation agenda, evaluation should become a process of learning throughout the policy cycle, and for all types of EU policy, whether expenditure policy or regulatory policy. Information and assessment about the impact of EU policies has to be gathered more systematically and has to feed back into the policy cycle. Ex ante impact assessments for new action should take into account feedback provided through ex post evaluation, as well as set out the options on how evaluation of such future action can be organised. The new draft guidelines on impact assessments (which not accidentally have been published for online consultation just when the Commission is finalising its new evaluation guidelines)<sup>10</sup> equally reflect this philosophy of linking ex ante and ex post evaluation.

The new ‘evaluation culture’ thus aims at reflexive governance for all types of EU intervention. Participation is said to play a central role in this. The draft evaluation guidelines state the following under the title ‘who contributes information to evaluation?’:

Member States, stakeholders, academics, citizens and a wide range of other parties are involved by providing data and opinion about interventions and wider policies. By *contributing to, reading and reacting to* evaluation reports, they provide further direct input to the decision making system. They play an important part in testing findings and driving independent and impartial evaluations. (EC 2013b: 26)

Although not explicitly stated in these terms, the evaluation guidelines thus envisage two ways in which participation processes contribute to the democratic decision-making conceived as a cyclical learning process. By referring to ‘reading and reacting to evaluation reports’ the guidelines envisage participation through interaction with the institutions of

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<sup>9</sup> European Commission, Consultation on the draft Commission Evaluation Policy Guidelines, launched on 12 November 13 and closed on 25 February 14. [http://ec.europa.eu/smart-regulation/evaluation/consultation/index\\_en.htm](http://ec.europa.eu/smart-regulation/evaluation/consultation/index_en.htm) (accessed 15 July 2014).

<sup>10</sup> European Commission, Public consultation on the revision of the Commission's Impact Assessment guidelines, launched on 1 July 14 and to be closed on 30 September 14. [http://ec.europa.eu/smart-regulation/impact/consultation\\_2014/index\\_en.htm](http://ec.europa.eu/smart-regulation/impact/consultation_2014/index_en.htm) (accessed 15 July 2014).

representative democracy at the EU level. The guidelines therefore stress the importance of the transparency of evaluation reports (to be published on a central website, together with the evaluation mandate and a Commission response on how it will follow up on the evaluation) in order to facilitate democratic deliberation on it.

The purpose of evaluations, namely to promote accountability/transparency and organisational learning, can only be achieved if the information produced by such evaluations reaches those to whom we are accountable to (general public, parliaments, etc.) or certain intermediaries (journalists) and those who should learn from the results. All evaluation reports of high quality should therefore be disseminated in a manner suited to the different audiences. Active discussion and debate on these findings should be encouraged. (EC 2013b: 43)

Stakeholders and citizens could not only make use of this information via public debate that could link (via the political parties) to parliamentary debate, they could also use this information when participating in online consultations for new EU action.

At the same time, participatory mechanisms have to play a role in the evaluation process itself. The draft guidelines provide a role both for stakeholders and individual citizens in this. Evaluation reports should be based on ‘a careful analysis of stakeholders' arguments and a double-checking against the arguments of other stakeholder groups and, where possible, against information from independent third parties or official statistics’ (EC 2013b: 37). The latter is a warning against simply copying stakeholder positions. At the same time, it is said that ‘quantitative data should always be complemented with and double-checked against qualitative information from other sources (interviews, etc.). This means for instance that an evaluation should not just present an econometric model, its results and limitations, but should always seek to get further confirmation by asking stakeholders in how far and why the results make sense to them.’ (EC 2013b: 37). Hence, the draft guidelines recognize the double role of stakeholder participation in gathering policy evidence; not only do stakeholders provide information (even if biased), they also play a role in contextualizing and assessing information provided through expertise models, as the neutrality and societal face-value of the latter cannot be taken for granted.

Moreover, the draft guidelines state that participation should not be limited to organized stakeholder groups (at national or European level).

To capture the "end-user perspective" in an evaluation, it needs to be carefully checked . . . whether it would be better to reach out directly to final beneficiaries or end-users (by interviewing a representative sample of

individuals - consumers, farmers, travellers, students, business owners, etc.) which we hoped would benefit from a policy or have had to bear its cost (EC 2013b: 37).

Compared to the other example of reflexive EU governance, namely the OMC, the debate on policy evaluation throughout the policy-cycle seems to provide at first sight an easier answer to the role of participation in democratic modern governance.

Firstly, participatory mechanisms can be more easily presented as a complement to representative democracy, since the EU representative institutions, and the EP in particular, play a more prominent role in regulatory and expenditure policy than in the case of the OMC. At the same time, one may note that the democratic value remains so strongly based on representative democracy that it is unlikely that authors of DDP would consider the new evaluation culture as an example of their model as it is hardly polyarchic in the sense of granting substantial powers of initiative to lower levels. Secondly, compared to the OMC debate, the evaluation debate appears to pay some more attention to individual participation. Although the language of ‘end-user perspective’ does not fit naturally with participatory theories, it does not require too much imagination to frame the organization of ‘representative samples’ in terms of deliberative polls, etc.

However, asking for imagination is indeed the weak point of the current debate as the proof of the pudding is in the eating. The challenge is twofold: how exactly will participation be organized, and how can it feed back into new EU action? Besides the vague reference to ‘representative samples’, the draft guidelines mainly focus on transparency as a way to encourage participation; by way of each DG publishing a five-year evaluation plan (EC 2013b: 17), assumingly to allow stakeholders to play some role in the evaluation process, and publication of the reports to encourage debate in interaction with the representative institutions which may feed back in new action. However, the main challenge in organizing participation in the new reflexive evaluation culture is in fact who is going to organize that participation. Traditionally ex post evaluations have been done by external consultancies, in particular to ensure independent financial accountability. However, such consultancies are ill-suited to organize the wide participation on which learning is based. This relates to the second problem; namely how participation can feed back into new action. Insights from the policy-learning literature have made clear that learning is more likely to occur if the actors involved in new policy initiatives were also involved with assessment of prior initiatives (Hojlund 2015). For the moment, however, the EU system is based on ex post evaluations being mainly outsourced to consultancies, while the ex ante impact assessments are done by

the Commission, while ensuring consultation. From a learning perspective, it would be more efficient for the Commission also to take care of ex post evaluations, but this stands in contrast to the accountability objective that has until now inspired such evaluations. From the perspective of creating participatory reflexive governance, the question remains how to create a link between participation in the ex post evaluation that feeds back into a participatory process related to new initiatives. For now, the EU's new evaluation culture raises more questions than answers.

## **Conclusion**

This chapter has analysed the three debates through which participation has been conceptualised in European governance. The most prominent debate, which developed mainly around the discourses on civil society and participatory democracy, has opposed participation to representation. It has been limited in scope in that it has focused on (instruments for) participation at the initial (particularly legislative) stage of policy-making. Moreover, the democratic added value of participation through interest groups and via the proposed mechanisms for direct participation, namely the Citizens' Initiative and online consultations, has been poorly justified. Finally, the debate has ignored that participation in modern governance is as much about knowledge-based claims-making as it is about interest-based claims-making.

The second debate seems to have answered partially to the shortcomings of the first. Focused on the role of expertise in policy-making, it has covered both the legislative (impact assessments) and the implementation stage of policy-making (comitology and agencies). However, while apparently wider in scope in terms of stages of policy-making than the first debate, the proposed instruments for participation are pretty much the same as those in the first debate. This is partially the consequence of the way in which this debate has framed participation in opposition to expertise. As expertise is 'externalised' and independent, ensuring participation is a task of the Commission, which has simply relied on the instruments developed within the first debate, particularly a wider use of online consultation at the start of new (legislative) initiatives. Not only has this debate thus failed to imagine participatory instruments in other stages and modes of policy-making, it has also failed to recognise that participatory procedures may be needed to 'democratise' the expert basis of policy-making as the independence and neutrality of the latter cannot be taken for granted.

The third debate again seems to answer part of the shortcomings of the other two debates. Dealing with both the OMC (where the EU has only a coordinating role) and all centrally organised EU interventions (expenditure and regulatory policy to be subject to evaluation), the debate on participation in reflexive governance appears to cover all modes of governance and stages of policy-making. Moreover, wide participation is conceptualised as having a central role in a cyclical process of policy-making where both interest-based arguments and knowledge-based arguments lead to learning. However, the practice of both the OMC and the evaluation culture raises important questions about how participation (and in particular direct participation) can effectively be realised, as well as questions about the relationship between participatory and representative democracy.

In the absence of a convincing normative democratic model that can realistically envisage a central role for participation in modern governance, the analysis of the three current debates allows at least the identification of some principles for any further reflection on future institutional architectures in which participation is key.

Firstly, participation has to be conceptualised throughout the entire policy-cycle and not simply by creating some participatory mechanisms at the start of it. Secondly, most of the debate on participation is about the participation of interest groups rather than direct citizen participation. Such a debate is welcome to the effect that it encourages democratic reflections on the complexity of modern governance rather than limiting the debate to the traditional institutions of representative democracy. At the same time, such participation is not inherently good, and should be democratically assessed from the perspective of representation, both relating to system representativeness and organisational representativeness. Moreover, one should take into account that modern governance is as much about knowledge-based as about interest based claims-making. Democratic theory has focused on the latter. More recent reflections in democratic theory, such as Saward's representative claims-making (Saward 2010), may be able to encompass both the place of knowledge and interests in democratic decision-making. Such a debate should acknowledge that knowledge and interests cannot be institutionalised in complete separation. Models based on a rigid dichotomy between participation and expertise are not only a fictitious reflection of reality but they also ignore the important role of participation in democratising expertise. At the same time, one cannot easily assume that bottom-up direct participation would lead to the automatic gathering of knowledge and definition of the general interest in a way DDP assumes. Expertise is often systemic and reflexivity should be used as a normative guide to



create an institutional framework that encourages ways for subsystems of functional actors to take each others' deliberations into account (Smismans 2010).

Thirdly, as participation is mainly about functional participation (to be assessed in terms of representation), one can wonder whether there is still an added value to the participatory principle. Citizens participate either in the electoral process or via direct instruments such as the ECI or online consultations. Magnette (2006) pointed to the importance of representative democracy in fostering civic equality and civic education, in a way many instruments of functional governance cannot. The same can be argued for direct participatory mechanisms, such as the ECI and online consultations, which provide equal access points for all, and allow for civic education (although the latter might be qualified in relation to online participation).

The EU's institutional design will thus be dependent on crafting a balance between representative, functional and direct democracy instruments. There is reason, though, to be modest in expectations in relation to direct participatory mechanisms. As the ECI shows they may well run into 'no *demos*' considerations, in a similar way to the representative democracy argument once one would intend to give them more force. Similarly, the lack of representativity of individual contributions to online consultations makes them unlikely to have an influence. Direct participatory instruments which take into account questions of representativity, such as deliberative polls, may therefore be more successful.

Finally, I would like to finish by stressing how important it is that democracy ensures the right for each individual to express herself. Even Machiavelli, who is mainly known for his view on power that pushes realism to cynical levels, stressed that in a republic citizens should be able 'to run wildly through the streets' to avoid domination by the elite (Brown 2009:42). In a contemporary interpretation, 'running wildly through the streets' can be ensured through the right to protest (also online) and the freedom of association. Such basic freedoms of citizen participation are no luxury when modern governance, dominated by functional representation and expertise, derails, as the financial crisis has illustrated. Neither can they be taken for granted, as recent limitations on them in, for instance, Hungary and Spain, in reaction to the financial crisis have shown. The EU, therefore, has been called upon, not only to ensure participation within EU decision-making, but also to play a more proactive role to ensure that such basic participatory rights are respected within its member states (Smismans, forthcoming a).

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