

The 7 golden rules to introduce citizens' consultations at the EU level:

Reforming "Your voice in Europe"

Raphael Kies

Uni.lu

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The European project has probably never been so fragile as today. Russia's annexation of Crimea and invasion of eastern Ukraine in 2014 destroyed the idea that Europe's borders were fixed and that the cold war was over. The Brexit referendum and the proliferation of anti-European parties shattered the notion of ineluctable integration in the European Union. The inability of reaching a coherent policy for facing the refugee and euro crisis strongly points to the absence of a European solidarity. The recent declaration of the US republican candidate Trump putting into question the US commitment to automatically defending NATO allies if they are attacked further weakens the defenses capacity of Europe. More generally, the dominant picture of EU governance remains that of an opaque and technocratic process that involves civil servants and EU officials in a closed policy network, rather than a transparent process of deliberation and decision-making, open to broad participation of all those who have a stake in the outcome.

Well aware of that, many EU responsible have very recently reiterated the need to radically reform the EU machinery and project. One of the cardinal change promoted is to make it more functional, attractive and accessible to its citizens. This attempt is however not new. Ten years ago, in 2005, when the constitutional treaty was rejected by the French and Dutch referenda, the EU came to a similar conclusion and promoted several participative plans¹ with the aim to increase the citizens' information and involvement in Europe. This has led to the appearance of a large variety of innovative consultative experiments at different geographical levels (national, cross-border and pan-European), including virtual and face-to-face communication, deliberative consultation and polling. What these experiments of public participation share is the idea of exploring in a highly qualitative way the priorities and preferences of European citizens, to (re-)connect them with the rather elite-driven political sphere in Brussels and, more ambitiously, of including lay citizens in the EU decision-making process. For EU institutions, and in particular, the Commission these participatory experiments are clearly meant to be a remedy for the democratic or legitimacy deficit of the EU. In a recent analysis that reviewed several of these experiments, the authors came to the conclusion that these experiments are interesting and valuable from a civic and academic perspective, but not effective to become a tool that would allow a significant number of lay citizens to connect with the EU.² The main problems are that they remained at an experimental level, treated issues that are too general, concerned not enough people, and were not perceived to be

¹ See in particular: *Action plan to improve communicating Europe, Plan-D for Democracy, Dialogue and Debate, i2010 eGovernment Action Plan.*

² Kies, R. and P. Nanz (eds.), 2013, *Is Europe listening to Us? Successes and Failures of the European Citizen Consultations*, Ashgate/Roehampton University Press

sufficiently legitimate to influence the final decision. In other words, while these participative experiments are innovative and highly valuable as working material to project methods that could be integrated in the EU decision making process, their concrete implementation and institutionalization seem to face too many institutional, political and cultural hurdles to be effectively implemented. This explains that they have not been institutionalized or that remained marginal participative tool targeting an auto-selected “euro-passionate public”.

In this paper, I would like to draw some lessons from these failed attempts of democratization of the EU by proposing some rules that should be followed in order to envision a realistic deliberative and inclusive transformation of the EU-decision making process. By following their spirits, I will propose an ambitious renovation of *Your Voice in Europe*, the only EU public institutionalized system of consultation that however most of the citizens are not aware of.

Seven rules for promoting a more inclusive and deliberative EU participation

Rule 1: Any new measure aiming at reinforcing citizens’ legitimacy of the EU decision process should not imply transformation and complexification of the existing decision-making system.

The nature and functioning of the EU decision-making systems is already too complex to be correctly grasped by its citizens. Further complexification, by for example introducing a new assembly (see proposal of Graham Smith to introduce a European Citizens’ Assembly) or by introducing new participative procedures (ex: introducing an EU referendum), would make the system even more obscure and undemocratic. Moreover, such transformation would imply Treaties reforms, which require the signatures and the ratification of all member states a highly unlikely scenario in the existing climate of populism, nationalism and fear.

Rule 2: A further intermediary reinforcement of the legitimacy through the national parliaments is not sufficient.

Recent efforts, after the Lisbon treaty, to reinforce the EU legitimacy by increasing the EU monitoring power of the national parliaments did not reach a large outreach as initially hoped. Citizens are not aware of the new early warning mechanism, which assigns national legislatures the right to monitor whether initiatives for EU laws comply with the principle of subsidiarity. Moreover, its impact appears to be limited. As put by Tapio Raunio, “it will probably remain a rather harmless procedure, with only a marginal impact on the EU’s legislative process”³. The limited Legitimation capacity of the national legislatures is confirmed by the fact that in countries, such as the Denmark, where Parliament⁴ is very active in controlling the work of the Council, the citizens’ support and understanding of the EU and its politics is not significantly

³ Tapio Raunio (2010), “Destined for Irrelevance? Subsidiarity Control by National Parliaments (WP)”, Elcano Royal Institute, Working paper, 36/2010.

⁴ The Danish Parliament was the first national parliament in Europe to set up a negotiating mandate system, which requires the Government to obtain negotiating mandates from a parliamentary Committee, the European Affair Committee, before important deliberations in the Council.

different from the ones of countries where Parliaments are less active. To put it differently, the role of the national parliaments for curing the EU legitimacy crisis is marginal and could probably only become effective if combined with other measures - both centralized and decentralized.

Rule 3: A deliberative form of inclusion should be privileged to a purely aggregative form of inclusion.

The only recent noticeable progress in term of participative democracy is the introduction of the European Citizen Initiative (ECI) a purely aggregative participative tool that allows one million citizens from at least seven member states to submit a proposal to the Commission that falls into its competences. This method that became effective in April 2012, appeared however highly unsatisfactory compared to deliberative citizens' procedures (DCP) based on mini publics⁵. First, the ECI has a limited potential to include lay citizens' who are not interested in EU affairs. Rather, it concerns in the first place organized groups that have sufficient financial and human resources to gather one million signatures in just 12 months. On the opposite, the DCPs target precisely the lay people who are generally unaware of and detached from EU issues. Second, the ECI is not specifically designed to promote a truly pan European discursive space as expressed by most of its promoters. Some proposals may be discussed in different national public spaces but this type of debates will be restrained to national elites interested in EU affairs and is unlikely to reach the deliberative quality and civic benefits observed in most of the DCPs. In other words, it is not designed to promote a deliberative citizens cross-border debate on EU issues. Third, the ECI is not a more legitimate participative instrument than the DCPs for influencing the EU decision-making process for the fact of gathering one million signatures (out of 500 million EU citizens) under the impulsion of well-organized groups does not constitute a stronger democratic basis than the propositions deliberatively through the DCPs. One could even argue that the later are more legitimate in so far as attempt to implement solutions leading to qualitative and inclusive interactions. Lastly, the ECI that is generally presented as a unique opportunity to directly involve citizens in the EU affairs can also lead to frustrations if the majority of the proposals are considered non admissible or not relevant, if they are not followed by a legal act or if they appear to be unable to gathering one million signatures in just 12 months. This danger is confirmed by the fact that to date, only three petitions have been successful in passing all the phases of the ECI, from getting confirmation by the EC, to gaining signature and finally being transformed into EU law.

Rule 4: Any citizen participative procedure should be institutionalized.

A citizens' participative procedures is to be considered institutional under the following three cumulative conditions: 1) the participation should be based on fair and transparent regulation; 2) the participative

⁵ The mini-public is the generic term - originally inspired by the "minipolulus" of Dahl (1989: 340) - referring to the consultation procedures allowing a limited number of lay citizens to elaborate a considered judgment on a predefined topic through moderated discursive exchanges with other lay citizens and experts. The outcome can be the expression of a more informed opinion (like the outcome of the *deliberative opinion poll*) or the elaboration of propositions (like the *Citizens' assemblies*, *citizens' juries* or the *consensus conference*). From a normative perspective Goodin argues that the mini-publics are democratic instrument for they correspond to "groups small enough to be genuinely deliberative and representative enough to be genuinely democratic – although they rarely meet standards of statistical representativeness, and they are never representative in the electoral sense" (Goodin 2008: 11).

should be repeated in time, i.e. it cannot be limited to one event; and 3) the authority responsible for the final decision should at least justify its choice to take (or not) the citizens' input into consideration. The importance of organizing consultations on the basis of fair and transparent rules is confirmed by Your Voice in Europe, the official consultative platform of the European Commission that we will further be analysed in detail. The problem however is that Your Voice in Europe is essentially used by interest groups and that most of the other consultative processes targeting citizens are experimental and have a marginal impact (at best) which leads to frustration of its participants (and organizers) and to justified criticism of EU money waste.⁶

Rule 5: participative procedure should be inclusive

Probably the greatest difficulty to overcome for promoting participation at the EU level, is to find ways for involving the large majority of citizens who are detached from the EU and are not interested in learning more about it. This is a fundamental problem because the combination of ignorance, fear and populism, leads generally to a rejection of the EU as too well exemplified by the Brexit. Inclusion should be promoted by combining self-selection inclusion with mini-publics. The self-selection form of inclusion entails that all of the people interested should have the possibility to express their opinions both online and offline, and have the guaranteed to be heard. The more progressive form of inclusion requires that people who would not spontaneously take part in the consultation but whose opinions could benefit the outcome of the consultation should be encouraged to do so. This aspect of inclusion is particularly important in the context of the EU decision-making process that is perceived by a large majority of citizens as particularly distant and nebulous due to the complexity of the issues treated, the impenetrable nature of the decision-making mechanism and the absence of an appropriate communication policy. For this second type of inclusion it is necessary to elaborate a form of "participation by invitation"⁷ by promoting the implementation of minipublics.

Rule 6: The issues discussed by the citizens should be concrete and respond to a real need of expertise that only citizens can provide.

The topic should be restrained and concrete in order to obtain opinions and propositions that are useful to decision-makers. If lay citizens or even civil society organisations are invited to debate about broad topics such as the "social and economic future of Europe" (ex: ECC09), the "immigration policy in Europe" (ex: Europolis) or the "climate change" (ex: Ideal-EU or EU Agora), the opinions expressed can only be very general, useless for decision-makers and weak compared to the ones expressed by specialized groups (NGOs, lobbyists, ect.).

⁶ These can be methods privileging face-face group interactions (Ex: Europolis; European Citizens consultation; Cimulact) or the usage of social media and online forums (Ex: MEPs and institutional facebook sites; Debating Europe; Debates.eu).

⁷ This is the expression coined by Beate Kohler-Koch (2015) in "Participation by invitation Citizen engagement in the EU", in: Thomas Poguntke, Sigrid Roßteutscher, Rüdiger Schmitt-Beck, Sonja Zmerli (Eds.) *Citizenship and Democracy in an Era of Crisis: Essays in honour of Jan W. van Deth*. London, New York: Routledge.

Rule 7: EU deliberative procedures should not have a binding impact on final decision.

No matter how well and how often citizens' deliberative consultations are organized on an issue, they will never reach a sufficient level of legitimacy for justifying alone a decision that would concern a large group, not to mention all the EU citizens. Their power should therefore "just" be consultative power which certainly does not correspond to an absence of power. Indeed, the better mini-publics are organized (by representing the diversity of opinions, by providing relevant information and an ideal discursive setting), the more people they involve, and the more visibility they reach, the more influence they will have on the decision. In such conditions, it is realistic to believe that the opinions expressed by the citizens could counter-balance the often criticized influence of the interest groups in Brussel.

Promoting citizens deliberative participation through "Your Voice in Europe"⁸

Your Voice in Europe, is a website used since the early 2000's by the Directorates-General in order to allow stakeholders to contribute to the drafting of legal acts. Following the publication of the White Paper on European governance, the consultations has been opened to the general public and has started involving ordinary citizens in policy-shaping procedure. It was previously used by the Directorate-General Internal Market and Services as a cheap tool to improve feedback mechanisms from enterprises and consumers in the context of the building of a single market. In 2002, the Commission implemented new standards that imposed to all the various Directorates-General to consult stakeholders and citizens according to their domains of competency, by means of a single online mechanism. The website therefore had the role of putting into practice the new standards.

How does it work?

The consultations hosted on the platform have to follow some strict rules. The types of public aimed at, as well as the agenda for the unfolding of the consultation, have to be clearly stated. Its subject is defined with regard to an upcoming policy, and the consultation has to intervene upstream of the legislative process. The Directorates-General use two means to run their consultative process. They can first use the Interactive Policy Making, which is an information system that facilitates the management of questionnaires online: in this context the participants are asked to answer precise questions. They can also use e-mail, and thus a more direct exchange is made possible between the Directorate-General and the participants. After the consultation, the Directorate-Generale can organize public hearings. Citizens and stakeholders are invited to provide the Directorate-Generale with information concerning the acceptability of its policy, the definition of its objectives, and the tools to be mobilized in order to reach them. After the consultation, the Directorate-General has to provide participants with feedbacks, explaining how their contributions were taken into account.

The legal status of Your Voice in Europe, and the strict rules it follows favour a strong link between the consultation and the decision taken. However, the non-binding aspect of these consultations is also

⁸ This section describing your voice in Europe, is largely derived from the analysis Romain Badouard did of the consultation on the European citizens' initiative. See R. Badouard (2013), "Conciling inclusion with impact on the decision? The Commission's online consultation on the European Citizens' Initiative", in Kies R. & Nanz P. (dir.), *Is Europe listening to us?*, Dartmouth, Ashgate, p.153-172.

written in the texts. In other words, the Directorate-General which launched the consultation is free to consider whether a contribution is relevant or not. Badouard rightly observes that the impact of Your Voice in Europe on the decision-making results from two key factors. The first one resides in its institutionalization. The Commission recognizes Your Voice in Europe as an e-government tool which is used in the course of a public policy. This official recognition implies the establishment of a normalized process, which insertion into the decision-making process is legally defined. The second key factor, results from the organizers' needs, and from the perception they have of the utility of the consultation.

Main limits citizens' participation

While Your Voice in Europe appears to be much more efficient consultative tool than the ones that have been experimented so far, it still should be improved to become a proper European citizens consultative tool. Existing studies show that the participation of "ordinary" citizens during the on the platform is very low⁹. By taking the example of the consultation on the European citizens' initiative, Badouard observes that the success of a citizen consultation depends on whether the consultation object is translated in several languages and on the topic of the consultation. The more the topic is accessible and affects lay citizens directly, the more likely they are to feel interested and qualified for having their say in the matter. While this is true, it should be noted that even in cases where the topic is highly accessible, citizens' participation is limited to the ones who are already highly interested in EU matters. In other words, these are not ordinary citizens but members of the elitist cast of euro-specialists, such as academics or activists of interest groups. The second problem is that it does not provide a discursive arena where participants could exchange and build common proposals. It does not foster the emergence of European public around key issues, and does neither promote a transnational political identity, as most of e-participation experiences attempt to do. The third problem is the absence of education programs for facing the knowledge gaps that lay citizens face to make sense of the EU-decision making process and the issues raised by the topic under consultation. The fourth, is that there are not sufficient information and incentives and would encourage lay citizens to give their input on the platform. So far the platform is only familiar to specialists in EU affairs.

How could Your voice in Europe be improved?

A promising solution for solving these different obstacles to a broader inclusion, would be to combine on certain topics, the existing consultation method of Your Voice in Europe with the organisation of citizens' consultations, the so-called mini-publics. The main advantage of combining the Your Voice in Europe with mini-publics would be to have a European consultative process that would be more civic, inclusive, deliberative, and attractive. In this last paragraph, I will present some guidelines for reflection by taking inspiration of the citizens' consultation method implemented in state of Oregon for some ballots –

⁹ Badouard quotes the French Economic, Social and Environmental Council (CESE) study on the online consultations carried out by the Commission, for September 2008 and March 2009. During these two months, 31 consultations took place, and led to the production of 5553 replies. The breakdown of the origins of the contributions was as follows: 18.5% Public Authorities, 46.5% Civil Society Organizations, 7.3% Research Centres, Universities and "think tanks", 14.2% individual citizens, and 13.5% businesses.

Citizens' initiative review¹⁰- and by referring to recent citizens' constitutional conventions implemented in Ireland Iceland and Luxembourg for reforming their national constitutions¹¹. I will look at three aspects: 1) How should the consultation topics be selected? 2) How should be the EU minipublics be organized? and 3) How to guaranty a fair impact of these EU minipublics?

Selecting issues for EU minipublics

In Oregon, an independent and mixed commission selects the citizens' initiative that should be the object of a citizen initiative review before the organisation of a referendum. It is composed of political responsible, and moderators and citizens who have participated to the citizens' initiative review of the precedent year.¹² The commission selects the proposal that should be then discussed by a representative panel of ordinary registered voters on the basis of criteria reflecting the importance of the issues at stake (through its budgetary impact and whether it modifies the Oregon Constitution) and its feasibility (whether there are sufficient funds for organizing the panel). A similar method could be used for selecting the EU Commission proposals to be submitted to citizens' review. However, as the EU decision-making process is far more complex than the one of the State of Oregon, this selection committee should be composed by citizens but also by political representatives of the bodies that are involved in the co-decision process (Commission, European Parliament and Council). Excluding them to participating from the beginning would strongly decrease the influence citizens could have on the final decision. The example of the Irish convention - that was composed by one third of political representatives and two third of citizens - convincingly suggests that differently from what might think at first sight, the implication of politicians in the consultative process is not only necessary for guaranteeing its success but also beneficial for participants and the outcome of the consultation.¹³

Organization and impact of deliberation

Once the topic to be discussed has been selected, mini-publics should be organized in each member state. The number of panels should vary according to the size of the country, with however a minimum number of discussion groups that should occur in smaller EU member states. The national representations of the

¹⁰ Citizens' Initiative Review is an innovative way of publicly evaluating ballot measures so voters have clear, useful, and trustworthy information at election time. During the Citizens' Initiative Review, a panel of randomly-selected and demographically-balanced voters is brought together from across the state to fairly evaluate a ballot measure. The panel hears directly from campaigns for and against the measure and calls upon policy experts during the multi-day public review. For each measure reviewed, a new panel is convened. At the conclusion of the in-depth review, the panel then drafts a Citizens' Statement highlighting the most important findings about the measure. Each Citizens' Statement is published as a prominent page in the voters pamphlet as a new and easily accessible resource for voters to use at election time. See URL: <http://www.oregon.gov/circ/Pages/index.aspx> ; and Gastil, J., Richards, R., & Knobloch, K. (2014). Vicarious deliberation: How the Oregon Citizen s' Initiative Review influenced deliberation in mass elections. *International Journal of Communication*, 8.

¹¹ For a review of cases of Constitutional citizens convention in Europe see: Reuchamps, M. and Suiter, J. (2016), *Constitutional Deliberative Democracy in Europe*, ECPR Press: Colchester.

¹² The rules and the current list of the members of the Citizens' Initiative Review Commission can be consulted at the following URL : http://www.oregon.gov/circ/Pages/about_us.aspx

¹³ See: Suiter J., Farell D., Harris C., O'Malley E., « The Irish Constitutional Convention : a case of high legitimacy? », in Reuchamps, M. and J. Suiter, *Constitutional deliberative democracy in Europe*, ECPR Press.

Commission and the EP, would have the responsibility to organize and centralize these different national consultations.

In order to reach some valuable outcome, we suggest that, as it is the case for Oregon, the panel participants would receive information from opponents and proponents of legislative initiatives as well as from experts¹⁴. Using these sources, their own values and third party research, the panel members deliberate on the pros and cons of these propositions and equally communicate every viewpoint on the matter. The time of deliberation could be limited to two days and include around 30 to 60 citizens (that would be subdivided in groups of 10-12 participants) selected on the basis of representative socio-demographic criteria. The more citizens are involved the better it is to make EU action visible in the everyday life of its citizens. As it is the case today, any citizen should be allowed to express its opinion on the platform of your voice in Europe.

When the deliberations are concluded, the different viewpoints (pro and cons), the questions and recommendations for course of action, will be summarized in a report that will be public and to which the Commission will have to take an official and justified position before drafting its legislation proposal.¹⁵

Important efforts should be made during the entire process to make the consultation accessible and visible. It should be role of the national representation of the Commissions and the EP to organize it by promoting public events and building forms of collaboration with the national institutions, civil society organisations, schools, and media (in particular the national public media and social media). As it is the case for Oregon, an efficient way of communicating would be to invite citizens who participated at the consultations to debate about the topic in traditional media (television or radio). This would probably have a positive impact on the population that increasingly tends to identify more to the opinions expressed by other “ordinary” citizens than with the ones of “professional politicians” or “bureaucrats”.

¹⁴ Here the example of « Cimulact » is inspiring as it is the first Pan-European consultations that includes experts in the process of elaborating proposals. The project is summarized as follows: “Cimulact is a funded project by the horizon 2020 framework program aiming at engaging citizens, along with a variety of other actors, in redefining the European Research and Innovation agenda and thereby make it relevant and accountable to society. The project does so by having more than 1000 citizens in 30 countries in Europe to formulate their visions for desirable sustainable futures, to debate and develop them with other actors, and to transform them into recommendations for future research and innovation policies and topics.” (URL: <http://www.cimulact.eu/>)

¹⁵ Some examples of interesting videos on the functioning of the Oregon citizens initiative review can be found on youtube : <https://www.youtube.com/watch?v=Py8xFqt4Ds4>; <https://www.youtube.com/watch?v=DQvyPTxMiXM>

A limited but potentially significant impact

Making Your voice in Europe more inclusive and deliberative may not be the panacea for solving the multiples pathologies of the EU we listed in the introduction, but certainly constitutes one step in the right direction for reaching and decision-making process that is more transparent and responsive. If correctly implemented it allows citizens' voices to be heard when new EU rules are elaborated, a stage where generally only experts and interest groups are consulted. It is moreover a reform that - differently from many proposals that are disconnected from the reality of the EU - appears to be feasible as it does not require a transformation of the EU treaties and can be reasonably easily and rapidly be implemented thanks to an effective collaboration of the national representations of the Commission and the EP.