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CALL FOR PARTICIPATION: HOW THE EUROPEAN UNION ATTEMPTS TO RESPOND TO NEW SOCIETAL CHALLENGES THROUGH ENGAGING WITH CIVIL SOCIETY ORGANISATIONS

Abstract

The changing social environment prompted the European Union (EU) to rethink its strategies towards its citizens. Phenomena such as distrust towards government institutions, nationalist movements and the alleged democratic deficit are the reasons why the EU aims at engaging with the civil society in its public policy, ranging from agenda setting to decision-making via instruments such as consultations. This paper intends to analyse the rationale behind implementing and pursuing this strategy. As the EU tries to increase its legitimacy, it needs to be evaluated if the EU meets the demands of citizens. For this analysis, a structured literature review will be conducted. This article desires to demonstrate that civil society organisations undergo processes of professionalization and transformation into providers of knowledge and expertise; therefore, ordinary citizens are not represented adequately in the EU via CSOs. Hence, the EU has desired to get closer to its citizens; however, with the current strategies the importance of membership has decreased and the opportunities for engagement have become more elitist. Further research is needed to evaluate the reasons behind this trend for the EU to draw appropriate conclusions and re-formulate its policy towards including its citizens.

Keywords: civil society, participation, European Union, stakeholder

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Introduction

Grande's statement from 1996, saying that the European Union (EU) is a 'master of fate' rather than a 'victim of pressure' is perhaps truer than ever before.¹ As the EU desires to establish a European civil society, the basis for this undergoing needs to be first and foremost fostering EU citizenship, EU identify and feeling connected to the EU institutions. However, this is highly challenging in times of growing nationalism and Euroscepticism in the media, parties and the public² as well as the hotly and prolonged discussion around the alleged democratic deficit.³ After many years of standstill, recent debates about challenges and prospects of improving as well as legitimizing the decision-making process of the EU have led to normative changes. Surprisingly, these changes did not result from demands of citizens or grass-root organisation, however, the European Commission (EC) has stimulated initiatives to open the policymaking process to civil society.⁴ The EC's strategic move towards the wishes of the broader public aimed to build its reputation for being a representative and responsive policy initiator, a competent regulator and a legitimacy maximiser.⁵ As the institution with the strongest relationship with civil society organisations (CSOs) and the main target of lobbying, the EC has a broad range of policy benefits out of this relationship, such as support for drafting legislation, means of testing policy proposals and technical expertise.⁶

¹ E. Grande, *The State and Interest Groups in a Framework of Multi-level Decision-making: The Case of the European Union*, "Journal of European Public Policy" 1996, No. 3(3).

² S. Schneider, *EU'S Democratic Deficit, Democratic Innovations, and Social Inequality: Assessing Participation in the European Citizens Initiative*, Conference Paper for IPSA World Congress Montreal, Canada, 19–24 July 2014.

³ A. Moravcsik, *In Defense of the "Democratic Deficit": Reassessing Legitimacy in the European Union*, Center for European Studies Working Paper No. 92, 2002.

⁴ J. van Deth, *European Civil Society: The Empirical Reality in the Multi-Level System of the EU*, [in:] *Opening EU-Governance to Civil Society. Gains and Challenges*, B. Kohler-Koch, D. de Bièvre, W. Maloney (Eds.), "CONNEX Report Series", Mannheim 2008, pp. 326–327.

⁵ A. Bunea, *Regulating European Union Lobbying: In Whose Interest?* "Journal of European Public Policy" 2018, No. 4(33), p. 3.

⁶ J. Greenwood, *Interest Representation in the European Union*, Palgrave, London 2017, pp. 6–7.

Although in the literature the definition of CSOs is highly discussed, in this paper CSOs are characterized by six pivotal elements: not-for-profit, non-governmental, voluntary organisations, which operate publicly and peacefully and do not have a desire to run for office.⁷ In contrast, Greenwood claims that in EU parlance the term CSOs means all types of interests ranging from producers to citizens, which are clearly external to political institutions.⁸

The analysis will focus on the participation of CSOs as an instrument for citizens to influence the work of the European Commission (EC) as the most targeted institution by interest groups. This paper aims to evaluate the EC's strategy for engaging with CSOs. A structured literature review will be conducted in order to demonstrate that CSOs undergo a process of professionalization and transformation into providers of knowledge and expertise; therefore, ordinary citizens are not represented adequately in the EU via CSOs. This article will highlight the main normative changes within the EC, subsequently the main findings of the outcome of participation will be analysed and then discussed.

1. The altering of the European Commission's framework for participation

EU decision-makers and interest groups are very interdependent. The EC is the focal point of lobbying, in particular, in the early stages of the policy cycle, as different groups attempt to influence and impact directives. Due to its relatively small size of the EC, it relies heavily on technical information, support, policy feedback and legitimacy. This, in turn, entails the issue of resource dependency. Therefore, the EC encourages all interest groups into an open dialogue and has a broad variety of instruments for groups to participate in the policy-making process. Due to resource and time constraints, interests and information need to be grouped into collective positions and alliances. The EC attempts to manage the interest representation in order to prevent direct political pressure and to enhance the cooperation on consultation.⁹

Therefore, the EC faces a dilemma: on the one hand, the EC favours unregulated and informal rules as it would otherwise limit or lower the frequency and quality of interaction with interest groups. The rationale behind this approach was presented

⁷ B. Kohler-Koch, C. Quittkat, Kohler-Koch B., Quittkat C., *De-Mystification of Participatory Democracy: EU-Governance and Civil Society*, Oxford University Press, Oxford 2013, p. 5.

⁸ J. Greenwood, *op.cit.*, p. 6.

⁹ A. Broscheid, D. Coen, *Business Interest Representation and European Commission Fora: A Game Theoretic Investigation*, MPIfG Working Paper No. 02(7), Max Planck Institute for the Study of Societies 2002, p. 6.

in the EC communication on consultation from December 2002.¹⁰ Firstly, the EC stated that consultations launched by the EC before the proposal adaptation cannot interfere with the subsequent work to take decisions. Secondly, with informal rules the legislative proposals cannot be challenged in the European Courts with the argumentation that consultation lacked. Moreover, another approach would imply prolonged procedures of policies and this would be incompatible with the expectation of citizens.¹¹ Also the EC, as a collegiate body, grants the Directorates-General (DG) the discretion to formulate own approaches to participation rather than formalizing from above accountability commitments.¹² On the other hand, a policy-making process that is characterized by accountability, legitimacy and transparency, which regulates transparently interest groups' access to the process is urgently needed.¹³

This dilemma can be traced back to the EC's communication on 'an open and structured dialogue' in 1992, in which the transparency for access of interest groups was aimed at. The establishment of a code of conduct was suggested to rebalance the openness of the EC towards CSOs as the institution was considered to be inclined towards economic interests. The conclusions of the above-mentioned communications as well as the subsequent documents, the *White Paper* on Governance in 2001 and the *Green Paper* on the European Transparency Initiative in 2006 demonstrate the EC's fear of such a system of accreditation and granting the consultative status would be that only the most resourceful groups would be privileged. Therefore, the voluntary code of conduct and self-regulation was encouraged by the EC. This in turn means, on the one hand, minimalization of management costs for the EC, and on the other hand, protection of links with interest groups which are allies vis-a-vis the European Council.¹⁴

In 2016 the approach of the EC shifted in introducing a proposal for the Interinstitutional Agreement on a Mandatory Transparency Register (TR). The aim of the Agreement was to expand the regulatory scope of the TR in order to strengthen and institutionalize the regulation of lobbying at a supranational level, which would lead to increasing transparency, enhancing enforcement mechanisms, better data provision quality and improving management structures.¹⁵

¹⁰ COM(2002) 704.

¹¹ P. Bouwen, *The European Commission*, [in:] *Lobbying the European Union: Institutions, Actors, and Issues*, D. Coen, J. Richardson (Eds.), Oxford University Press, Oxford 2011, pp. 27–28.

¹² B. Kohler-Koch, *How to Put Matters Right? Assessing the Role of Civil Society in EU Accountability*, "West European Politics" 2010, No. 5(33), pp. 1126–27.

¹³ A. Bunea, op.cit, p. 4.

¹⁴ S. Sarugger, *The Professionalisation of Interest Representation: A Legitimacy Problem for Civil Society in the EU?*, [in:] *Civil Society and Legitimate European Governance*, S. Smismans (Ed.), Edward Elgar Publishing, Northampton 2006, s. 1281.

¹⁵ A. Bunea, op.cit, pp. 1–2.

With this change, the EC attempted, on the one hand, to increase its legitimacy for interinstitutional negotiations and, on the other hand, to enhance its reputation for being a competent regulator, representative and responsive policy initiator. By designing this proposal, the EC acted congruently according to the wishes of the public to be more responsive to participatory and societal demands. The civil society, which are reflection of the 'will of the people' by advocating authentic preferences of the community, can participate in the policy-making process. With instruments such as consultations, the functional interest representation through CSOs has become a form of democratic legitimization.¹⁶

There are several possibilities for CSOs to engage in the policy-process of the EC. The main and most common three types are: expert consultation, stakeholder consultation and public consultation.¹⁷ A new consultation instrument are online consultations via the EC's internet portal *Your Voice in Europe*.¹⁸ An additional form to involve CSOs are conferences, seminars and forums.¹⁹

2. Main findings on civil society organisations' contribution to the EU policymaking

CSOs are seen as a mediator between business, politics, science and the rest of the society. Therefore, they play a crucial role in the EU's everyday policy-making as they represent deliberation and sustainable long-term policies.²⁰ Although the benefits of the EC's close cooperation with CSOs, in particular, the acquisition of ideas, information, intelligence input and specialist knowledge, are clear, the literature review demonstrates that the participation of CSOs does not live up to the claims. Disillusionment has risen amongst stakeholders and employees of institutions and others feel left out.²¹ In the subsequent part, the main findings of the literature review on CSO participation in the EC's working area in the phases of agenda-setting and

¹⁶ A. Bunea, op.cit, p. 8.

¹⁷ C. Quittkat, B. Finke, *The EU Commission Consultation Regime*, [in:] *Opening EU-Governance to Civil Society. Gains and Challenges*, B. Kohler-Koch, D. de Bièvre, W. Maloney (Eds.), "CONNEX Report Series", Mannheim 2008, p. 195.

¹⁸ Ibidem, pp. 205–210.

¹⁹ A. Rasmussen, D. Toshkov, *The Effect of Stakeholder Involvement on Legislative Duration: Consultation of External Actors and Legislative Duration in the European Union*, "European Union Politics" 2013, No. 3(14), pp. 369–370.

²⁰ A. Frane, *Civil Society Organisations in a Knowledge Based Society*, [in:] *Opening EU-Governance to Civil Society. Gains and Challenges*, B. Kohler-Koch, D. de Bièvre, W. Maloney (Eds.), "CONNEX Report Series", Mannheim 2008, p. 308.

²¹ M. Reed, *Stakeholder Participation for Environmental Management: A Literature Review*, "Biological Conservation" 2008, No. 10(141), p. 2417.

policy formulation will be evaluated, in particular, membership, accountability and legitimacy, professionalisation and funding.

Membership, accountability and legitimacy

Although CSOs are seen as a remedy for the alleged democratic deficit, they are not an authentic representation of citizens as they claim it is due to the fact that they do not get elected and programmes as well as leadership are not established by legally binding procedures. Very often they represent only partial interests such as ideological or material and are founded by private initiative.²² Similarly, although at the local and perhaps even national level membership plays an important role of a CSO, at the EU level there is great pressure towards efficiency and leadership in order to influence politically the decision-making process.²³ CSOs are not the citizen-initiated, bottom-up organisations that they like to portray itself. They offer access into politics only to a few rather than the majority.²⁴ Therefore, the better organized and structured a CSO is, the easier it gets access to the EU due to the acquisition of necessary information in order to offer the expertise needed. This, in turn, makes the members feel less represented.²⁵

Consultations, as a widely used instrument, are not suitable to be held accountable by CSOs as there is no arena for asking questions and demanding explanations.²⁶ However, the EC is not legally obligated to render accounts to CSOs, whereas the CSOs are responsible for rendering accounts to their constituencies and members.²⁷

Professionalisation

The decreasing importance of membership and the need for leadership is depicted by the process of rising professionalisation of CSOs. The Brussels-based organisations are in hands of scientists, lobbyists, lawyers and specialized public-relations and fund-raising/campaigning staff. Maloney characterizes CSOs as 'protest business-type organisations'.²⁸

²² A. Frane, op.cit, p. 308.

²³ Ibidem, p. 313.

²⁴ S. Saurugger, *Interest Groups and Democracy in the European Union*, „West European Politics” 2008, No. 6(31), p. 1279.

²⁵ Ibidem, p. 261.

²⁶ B. Kohler-Koch, op.cit, p. 1127.

²⁷ Ibidem, p. 1136.

²⁸ W. Maloney, *The Professionalization of Representation: Biasing Participation*, [w:] *Opening EU-Governance to Civil Society. Gains and Challenges*, B. Kohler-Koch, D. de Bièvre, W. Maloney (Eds.), “CONNEX Report Series”, Mannheim 2008.

The grass-root membership has mutated into solely mobilizing finances.²⁹ Therefore, Finke describes CSOs to be elitist.³⁰ As providers of knowledge and expertise, nowadays in order to impact policies, professionalism is needed instead of a vast membership. Researchers are disunited as some regard this trend highly critical, others comprehend it as a logical result of transnationalisation and the inclusion of actors such as civil society in a complex policy framework of consultation.³¹

Funding

Theoretically, the EC grants equal access for all interest groups to its participatory mechanisms, regardless of social and financial resources. However, as interest groups differentiate highly in size, resources and types, the EU has implemented mechanisms to raise the less well-endowed groups.³² Several scholars such as Saurugger demonstrate how the EC desires to strengthen general interest groups capacities by co-financing several associations and granting them privileges such as access to consultative committees.³³ Therefore, Maloney underlines that through incentives such as payments, direct subsidies and grants, the EC can influence policy outcomes³⁴. For example, certain groups receive up to 90% of their income from the EC such as the European Network Against Racism and the European Social Platform. However, the EU funding constitutes for NGOs an average of 43% of their total funding.³⁵ By funding CSOs, the EU aims to acquire policy support but also to involve EU-critical groups, the so-called outsider groups, into the decision-making process.

The funding of groups might lead to even greater distortion between general interests and economic groups. Some members or entire general interest groups do not approve to be allegedly influenced by the EC through funding.³⁶ However, leading organisations claim in fact that the EU funding is a source of independence. Otherwise, these organisations would have to turn to businesses for funds, which would rather depict a dependency according to them. CSOs which enjoy EU funding are not more likely to be compromised with the EU but tend to have a rather positive view of the EU.³⁷

²⁹ Ibidem, p. 71.

³⁰ B. Finke, *Civil Society Participation in EU Governance*. "Journal of European Public Policy Living Reviews in European Governance" 2007, No. 2.

³¹ Adam Frane, op.cit, p. 312.

³² S. Saurugger, op.cit, p. 1282.

³³ Ibidem, p. 1284.

³⁴ W. Maloney, op.cit.

³⁵ J. Greenwood, op.cit, p. 208.

³⁶ S. Saurugger, op.cit, p. 1284.

³⁷ J. Greenwood, op.cit, p. 118.

It is noteworthy that Amnesty International and Greenpeace decline EU funds with the argumentation that it might create the perception of constraints.³⁸

Conclusion

The EC's changing approach to formalize rules regarding lobbying and participation are an important step towards transparency and openness to the diversity of interests. The collaboration of the EC and interest groups has lifted up from the shadow and obscure lobbying practices. Nevertheless, the much-needed reconnection with European citizens for the sake of democratic governance has not occurred. It can even be argued that due to professionalisation and CSOs being elitist, the distance between ordinary citizens and their democratic representation has grown. Although numerous CSOs are aware of this fact, they believe in their mission and act accordingly and in the best interest of the constituency. Especially NGOs have the important role of being the opponent in the check and balance system while advocating minority and general interests, which would be otherwise left unheard.

It cannot be expected that European citizens will be politically emancipated through the participation of CSOs in the EU's policy process. Similarly, the sole participation of interest groups in the EU will not make it democratic. However, allowing and funding CSOs allows for readdressing biased representation in order to guarantee that policymakers face a broad range of diverse interests. Also, CSOs help to improve the publicity of the EU policy process. In spite of the broad range of literature regarding participation in the EU, there is a lack in empirical studies to analyse the concrete impact of the new participatory mechanisms.

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³⁸ Ibidem, p. 208.

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