



The Chances for Participatory Democracy and a Citizen-Powered Europe Conclusions from the European Year of Citizens 2013

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Die Erwartungshaltung von Staat und Gesellschaft an den Beitrag der organisierten Zivilgesellschaft zur Lösung sozialer Probleme ist spürbar gestiegen – seien es die Herausforderungen des demografischen Wandels, Probleme bei Zuwanderung und Integration oder die ausweglos erscheinende Finanzschwäche der öffentlichen Haushalte. Das gilt nicht nur für Deutschland, sondern europaweit. Bürgerschaftliches Engagement soll bei der Daseinsvorsorge mehr und mehr ehemals staatliche Leistungen ergänzen oder ersetzen, öffentliche Angebote garantieren und nicht zuletzt zur Stärkung und Wiederbelebung der Demokratie beitragen. Dabei wird bürgerschaftliches Engagement von Seiten der Politik zunehmend als Ressource betrachtet. Vereine und Verbände geraten unter den Druck von Privatisierungstendenzen auf der einen und staatlichen Instrumentalisierungsversuchen auf der anderen Seite. Damit droht der »Eigensinn« bürgerschaftlichen Engagements verloren zu gehen.

Als Reaktion auf diese Entwicklung haben sich in vielen europäischen Ländern bereits Organisationen der Zivilgesellschaft in Netzwerken oder Dachverbänden zusammengeschlossen, um eben diesen Eigensinn der Gemeinnützigkeit gegen alle Instrumentalisierungsbestrebungen zu verteidigen. Sie fordern eine stärkere Einbindung in politische Entscheidungsprozesse, Zugänge zu Information sowie transparente Vergabekriterien im Zuwendungsrecht. Dies hat in einer Reihe europäischer Länder bereits zu tiefgreifenden Veränderungen ordnungspolitischer Art geführt, in deren Verlauf das Zusammenwirken von Staat und Zivilgesellschaft in Rahmenabkommen, sogenannten »Compacts«, festgeschrieben wurde. Diese Compacts legen partnerschaftliche Prinzipien und Standards fest, die sowohl die Einbindung in politische Entscheidungsprozesse als auch die Bereitstellung von Dienstleistungen im öffentlichen Interesse regeln. Aber auch zahlreiche internationale und europäische Institutionen haben Standards bzw. Kodizes für ihre Zusammenarbeit mit der Zivilgesellschaft formuliert, darunter die EU, der Europarat und die OECD.

Dieser Beitrag stellt ausgewählte Kodizes der europäischen Ebene vor und beschreibt gemeinsame Grundsätze und Prinzipien unterschiedlicher nationaler Rahmenabkommen. Zugleich untersucht er die Chancen des Artikels 11 des Lissabon-Vertrags und die Bedeutung seiner Umsetzung für die organisierte Zivilgesellschaft und für ein Europa der Bürgerinnen und Bürger. Er analysiert die Semantik des Artikels 11 für eine partizipative Demokratie mit der Absicht, der deutschen Debatte um eine faire, transparente und partnerschaftliche Kooperation zwischen Staat und Zivilgesellschaft neue Impulse zu geben.

In times of economic crises, austerity measures, and the rise of extremism and populism across the European continent, we believe now more than ever is the time for the EU-institutions and governments of the Member States to invest their efforts in developing and maintaining effective and diverse channels that enable civic participation in government to take place, and to have a real measurable impact on decision-making. Governments and the institutions of the EU must make themselves easily accessible to civil society in order to bring them closer to the citizens and thus deplete the alienation of European politics from the citizens.

We believe that civic participation in governance goes beyond consultations on government-defined topics, or a check-box survey filling exercise, with a one-way information exchange. We affirm that civic participation must be a deliberative exercise where representative organisations and citizens can make their views known during all stages of the legislative and administrative process. Enabling civic participation does not always need to lead to a longer decision-making process, and even if it were the case, the reward is a greater sense of ownership and acceptance of decisions taken by decision-makers, thereby reinvigorating support for our political democracies and in particular the democratic legitimacy of the European project. It is in this context that the European Parliament has to be strengthened too in its role to control the European Commission and the Council in its unjustified manner to decide single-handedly over the fate of the European Union and its citizens. For this purpose the European Parliament and the organised civil society should move closer together.

Against the background of the positive experiences of the formation of a unified voice of the European civil society within the EYV2013-Alliance (1), it is ENNA's (2) view that truly participative government means enabling stakeholders to help draft, amend, develop, execute, and evaluate government initiatives so that initiatives can truly be the result of a participative citizen-driven exercise. It means creating clear entry points, providing sufficient frequency of these, allowing enough time for stakeholders to react, and ensuring that civil society organisations and citizens have seats at negotiating tables. It is critical that stakeholders are self-defined, rather than government defined in order to enable new actors to participate in full.

With the Lisbon Treaty, in particular Article 11, a participatory addition of parliamentary democracy is at hand. More and more civil society organisations and academic institutions in Europe take the challenge to spell out this instrument and to examine the conditions of its implementation. For the first time the possibility exists for establishing legally binding agreements between the institutions of the EU and the organised European civil society. At the same time however a certain hesitation becomes obvious among EU-institutions to look after a profound implementation of Article 11's participatory provisions. This might partly be due to a lack of ideas how to establish a framework beyond already existing instruments such as structured dialogues, consultation processes or hearings, or implementing minimum standards of consultation.

In order to establish a consistent framework defining the relations between civil society and the European Union and defining concrete participatory instruments, lessons could be learned from »Compacts« or other framework agreements signed between civil society and political authorities in the Member States. Such in-

struments have been developed in the recent past, containing mutual commitments and thus enabling the participation of civil society in political decisions. (3)

This Discussion Paper explores the prospects of Article 11 of the Lisbon Treaty and the benefits of its implementation for a citizen-powered Europe. It analyses the provisions for a participatory democracy within the Treaty and looks at already existing instruments in view of its accessibility for civil society. By taking into account experiences with Compacts and framework agreements on national level, profound recommendations are elaborated that can enter into the discussions of the civil society alliance EYCA and the further debate about a reliable and consistent dialogue of civil society and the EU-institutions. (4)

The prospects of Article 11 of the Lisbon Treaty and the benefits of its implementation: Four principles of participatory democracy

Undoubtedly, the Treaty of Lisbon has significantly driven forward European democracy. The Provisions on Democratic Principles (Title II) point out that the »functioning of the Union shall be founded on representative democracy« (Art. 10 TEU), based on direct and indirect public participation. But furthermore, through its Article 11, the treaty extends the European democratic model and goes beyond the provisions of parliamentary democracy. For the first time, elements of participatory democracy are explicitly enshrined in primary legislation.

Looking at these participatory provisions closely, Art. 11 describes four dimensions of participatory democracy, each in its four paragraphs: Public Politics; Civil Dialogue; Consultations and Civic Participation (through the European Citizens' Initiative). In the following, each of these dimensions is looked at closely (5) with the interest to explore the concerned stakeholders (Conceptual Questions: Who is meant with the terms used like »civil society«, »stakeholders«, »representative associations« etc.) and the instruments already in place. The European Citizens' Initiative (Paragraph 4) is the only paragraph of Article 11 that received strict interpretation even by consulting all governments of the Member States (6) – it is therefore not considered in the following analysis.

1. Public Politics: Expression and exchange of views (Art. 11.1 TEU)

The institutions of the Union have to give citizens and representative associations »the opportunity to make known and publicly exchange their views in all areas of Union action« (Article 11 §1 TEU) and have to arrange the »appropriate means« of doing so. What is generally intended within this first dimension of participatory democracy is the emergence of a »European public opinion«. Participation here means: Expression and exchange of views which involves, on the one hand, all the institutions of the European Union and, on the other hand, citizens and representative associations. It is clear that the exchange of views in all areas of Union action has to be consistent with the European treaties and need to fall into the authority of the European Commission. Not clear and open to interpretation is the meaning of »appropriate means«.

Conceptual Questions: In conceptual terms, the definition of »representative associations« addressed through this paragraph is the key question. This leads to an in-depth discussions regarding representativeness. In 2000, the Commission issued a Discussion Paper on »The Commission and NGOs: building a stronger partnership«.

Through this, the Commission defined the common characteristics of all NGOs, as well as the main functions of NGOs in the democratic decision-making process of the Union and their representativeness. (7)

The Commission also set criteria to select representative NGOs such as transparency of the organisation and the membership, experience through previous participation in committees and working groups, competence to advise in a specific field, capacity to work as a catalyst for exchange of information and opinions between the Commission and citizens. (8) But it rejected an official consultative status and an accreditation system like the U.N. and the Council of Europe system. Instead it declared to be more in favour of self-selection by the NGO community and that the setting-up of networks or platforms could be a useful alternative. On the other hand however, the Commission de facto favoured certain associations or networks through their funding policy.

In this tradition we continuously experience the certain instability of representative structures and networks of civil society in Europe: While in certain policy areas clearly representative structures have emerged like for example the Social Platform, the Green10 or the European Youth Forum, networks with cross-cutting issues and general interests have a difficult position. Civil society has not succeeded in forming a strong combined voice as the examples of the Civil Society Contact Group and the Liaison Group at the EESC demonstrate. As a rather new development, civil society alliances are being established around the issues of European Years, most of the times however they remain issue-related and weak in their structure and ability to transfer political content. The EYC2013-Alliance might for the first time be a new grouping with sufficient representativeness to form a combined civil society voice in Europe.

Instruments: Transparency and access to information are the central conditions for civil society to express and exchange their views. Article 255 TEU already grants a right of access to European Parliament, Council and Commission documents to any Union citizen and to any natural or legal person residing, or having its registered office in a Member State. What is rather at stake on European level is the question of transparency in a way that firstly citizens can understand and follow decision-making processes and thus gain a better ownership of the EU and secondly civil society organisations can fulfil their function as participants in this decision-making process and transmitters from EU-level to citizens. Apart from this, different instruments need to be taken into the analysis that fosters a European debate and the exchange of information. These include the mobility programs such as Europe for Citizens, Youth in Action or Grundtvig (the last two now joint within the new Erasmus+) but also the general communication of the European institutions.

2. Civil dialogue (Art. 11.2 TEU)

According to Article 11 §2 TEU, the institutions of the European Union must maintain an »open, transparent and regular dialogue with representative associations and civil society«. This provision is widely defined as civil dialogue and has quite a history on European level. Here, civil dialogue is considered as an addition to political dialogue with national authorities and to social dialogue with the social partners. It means that the European Institutions have to take into account the views of civil society and, in return, civil society associations have to intervene positively into European integration by organising communication to the citizens from the Union



level to the national level. As mentioned above, the European Commission as well as the European Economic and Social Committee (EESC) set criteria for selecting representative associations.

Conceptual Questions: In one of the key documents on civil dialogue, the White Paper on European governance (2001) (9), the Commission conceptually switched from the dialogue with »representative associations« or »NGOs« to the dialogue with »civil society organisations« and with »concerned parties«. In this document, civil society appears to be a wider concept than representative associations. This conceptual shift mainly goes back to the preceding and continuing efforts of the EESC to define European civil society in a way appropriate to its own constitution as a consultative European organ consisting of representatives from business associations, labour unions and other interest groups. Here, the Commission adopted the view of the EESC first spelled out in the draft opinion on »the role and contribution of civil society organisations in the building of Europe« (10), where the EESC tried to define the concept of civil society in the light of the political changes in an enlarged European Union, where there was no dominant theory on civil society. Civil society had thus to be considered as »a collective term for all types of social action, by individuals or groups, that do not emanate from the state and are not run by it« and the development of civil society as »a cultural process«, which had to be associated with values like pluralism, autonomy, solidarity, public awareness, participation, education, responsibility and subsidiarity. Thus, organised civil society was defined in abstract terms as »the sum of all organisational structures whose members have objectives and responsibilities that are of general interest« – determined by a democratic process based on discourse and consensus – »and who also act as mediators between the public authorities and citizens«. This also includes the so-called labour-market players, i.e. social partners. This view has in the latter become the dominant interpretation of all EU-institutions and was reinforced by the EESC opinion on the representativeness of the European civil society. (11)

Instruments: In contrast to the partly well defined »social dialogue«, »civil dialogue« as it appears today comes along as an unstructured catch-all term containing all forms of existing and foreseen interaction between the institutions and civil society. It exists in parallel with the representative democratic bodies (Council and Parliament), the advisory institutions (EESC and Committee of Regions) and the social dialogue. The institutions themselves have not yet adopted a common approach how to structure civil dialogue. The European Commission has only referred to civil dialogue within its Consultation Standards (see below), where it is not distinguished between civil society organisations and other interest groups. The Commission consults »interested parties«, which comprises all those who wish to participate in consultations run by the Commission. While in many DGs and around different policy areas »structured dialogues« with stakeholders were established, there is no overarching model or rule for these forms of interaction. As a consequence, structured dialogue in the youth field is completely different to the structured dialogue in development policy. In recent years it seems that the Commission prefers more and more to carry out open dialogue formats, in which any citizen and organisation, from anywhere in the EU, can take part without qualification. The European Parliament on the other hand has adopted a Report on the perspectives for developing civil dialogue under the Treaty of Lisbon



(2008/2067), calling for the establishment of a structured civil dialogue between the EU institutions and civil society.

Civil Society has on many occasions expressed its expectation on a structured civil dialogue. To name only two examples: In its 2006 report »Civil Dialogue: Making it Work Better«, the Civil Society Contact Group defines civil dialogue as follows: Civil dialogue involves an interaction between public institutions and civil society organisations, rather than a unilateral relationship. It thus goes beyond information and communication, and is based on mutual recognition and responsiveness; Civil dialogue covers various degrees of formalisation, ranging from informal to legally recognised structures, from ad hoc to continuous exchange; Civil dialogue also covers different degrees of involvement from civil society organisations, ranging from information to consultation and active participation; Civil dialogue takes place alongside the whole policy-making process which includes the following phases: Agenda setting, Policy definition/decision-making, Implementation, Evaluation, Feedback; It involves civil society organisations acting in the public interest. CEDAG, the European Council of Associations of General Interest, has in the past campaigned for the adoption of a European Charter for civil dialogue. (12)

3. Consultations (Art. 11.3 TEU)

The Commission, as the only European Union institution, has to »carry out broad consultations with concerned parties in order to ensure that the Union's actions are coherent and transparent« (Article 11 §3 TEU). This third dimension of participative democracy is in line with the Commission's right of initiative of taking action and its approach regarding open dialogue and consultation (»open governance«), or even direct contacts with interested parties beyond organised civil society. As stated before, in the White Paper on European governance (2001) the Commission made a proposal to renew the European method by implementing a less top-down approach and to increase the involvement of the interested parties, without defining this concept. At that period, it already consulted interested parties through different instruments, such as Green and White Papers, Communications, advisory committees, ad hoc consultations and public hearings. Its guiding principle was »to give interested parties a voice, but not a vote«. It decided also to put in place a code of conduct setting minimum standards. (13) In some policy sectors, where consultative practices have been already well established, the Commission wished to conclude partnership arrangements, which meant that it would commit itself for additional consultation compared to the minimum standards and, in return, it would ask civil society organisations »to guarantee openness and representativeness and to prove their capacity to relay information or lead debates in the Member States«. As a consequence, the Commission's view is twofold: on one hand, it favours »open consultations, within the framework of a global and non-exclusive approach« with all concerned parties (Article 11 §3 TEU); on the other hand, it intends to institutionalize privileged contacts, going beyond the minimum consultation standards by selecting players of civil society organisations on the basis of certain (untransparent) criteria.



Conceptual Questions: Although the Commission had a long history of consulting external experts to compensate for its own limited resources, its consultation regime and the role of civil society within it changed against the background of the governance turn. In particular, the normative move to participatory democracy implied a redefinition of the Commission's view on how to include whom in which processes. Quittkat and Finke (14) show that there has been a gradual extension of the approach that was also reflected in official terminological change from notions of consultation in the 1960s and 70s, to partnership in the 1980s and 90s, and finally to participation in the later 1990s and 2000s (15). In parallel, the approaches moved beyond the reference to civil society as partners for dialogue to the idea of ›participatory democracy‹, which implies the aim of increasing the democratic quality of EU policy-making.

Against this background the EESC, in its Opinion on the representativeness of European civil society organisations on civil dialogue (2006), also made a clear distinction between consultation and participation. Consultation has to be »open in theory to all organisations having expertise in a given field«, whereas participation is »an opportunity for an organisation to intervene formally and actively in the collective decision-making process, in the general interest of the Union and its citizens. This process, which is underpinned by democratic principles, enables civil society organisations to be part and parcel of policy framing and preparing decisions on the development and future of the Union and its policies«. Nevertheless, the EESC considered that »the right to participate«, which had been claimed by civil society and organisations active at European level, requires relevant representativeness as a precondition for participation. Many organisations highlight participation in a multi-level governance, namely within the »Open Method of Coordination« (OMC), which promoted, on the one hand, the participation of people affected by certain policies and, on the other hand, dialogue and partnership between all relevant bodies in the respective policy arena.

Instruments: The most important policy tool introduced in the follow-up of the White Paper was the establishment of an online consultation system. To date, the Commission advertises all ongoing consultation procedures across basically all policies on the website »Your Voice in Europe«. In its own words, ›Your Voice in Europe‹ is the European Commission's ›single access point‹ to a wide variety of consultations, discussions and other tools, which enable you to play an active role in the European policy-making process. The public provision of basically all policy proposals hence offers formally the opportunity for all interested groups – recorded in the respective EU registers – to express their views during the Commission's policy formulation phase.

However, taking a closer look at who participates in these procedures, it shows that despite the outreach to a European civil society at large, organised, professionalized groups remain the standard representation of civil society in EU policy-making. This is mainly due to the demands for expertise and resources – ranging from language skills, access to information and time availability – needed to contribute in the procedures offered by the Commission's traditional consultation regime. A potentially major change is the introduction of new media, which the Commission applies in its online consultation procedure. Reducing the resources insensitivity and in particular the geographical focus on Brussels, online consultations have been massively expanded and opened participation options to a much wider civil society basis. Yet the full impact of this tool is not yet observable.

Furthermore, the Commission sustains the exclusive right to initiate legislation, even though it has been disputed to which degree the Commission acts really fully independently from the other EU institutions. Whether, in which way, and to which degree the Commission incorporates inputs from the various consultation procedures is fully up to the Commission's undisclosed appraisal; civil society has no formal decision-making role. It is therefore difficult to assess systematically the impact of the consultation regime, but agreement exists that CSOs' impact varies between policy fields and the resources to provide expertise, information, or lobby special interests. The image of civil society in EU policy-making is that of an expert, partner, and professional organisation. CSOs have supportive functions, mainly for the Commission but cannot effectively control accountability of the Commission. Moreover, almost all CSOs receive funding from the Commission to support their work. Although most organisations do not estimate this to limit their independence, hardly any CSOs really act in the civil society sense of 'opposing' public policy-making.

What the European level can learn from the success of national Compacts and framework agreements

Compacts are non-legally binding agreements between the government and the non-profit sector, but nonetheless with a strong morally binding commitment for both sides. These agreements are meant to have an inclusive approach to the non-profit sector and to be operative on a national, regional or local level. Compacts lay the foundations to the respect and recognition of each partner's indispensable role, establishing a more horizontal relationship between the government and the non-profit sector. By taking into account the variety of stakeholders involved in policy making, the introduction of a Compact has been seen by academics as marking the move from a contract culture to a partnership culture between civil society and the government. Formally, a Compact can either be driven by the two contracting parties (mutual) or be government-driven (although always negotiated with the non-profit sector). Given its voluntary nature, the subscription of the Compact is discretionary – although recommended.

There are a number of published analyses of national Compacts by now. (16) Following the essence of these analyses will help to design a European framework agreement what should be the goal of future dialogues with the institutions of the EU. The findings of a recent research undertaken by CNVOS comes to the conclusion that all different kind of documents, such as policy documents, pro-grams for cooperation or targeted strategies which help strengthen the cooperation and support on national level in Europe, differ in terms of purposes and goals; however »they all outline the basic principles of the cooperation and promote active measures that should be undertaken by the government to support the development of the sector and foster cooperation«.

(17) They all share the following sections:

- »A statement of representation (bodies that represent the two sectors in drafting, adopting and implementing the document),

- A statement of principles (roles and functions of the two parties in developing democratic society, including recognition of their autonomy, their basic rights and obligations, the legal and logical constraints they may face in fulfilling these obligations, and their commitments to mutually respected values defined in the document),
- A general outline of the areas of cooperation, such as delivery of services, legislation and other decision-making processes, the environment, international development aid, access to information, national policy formulation in various areas, decentralisation, and development of social enterprise; and specific instruments of cooperation, including public debates, consultations, joint consultative and decision-making bodies, partnership agreements for the joint delivery of services, exchange of information, and right to legislative initiative.
- Funding-related issues can include obligations to develop codes of good funding practices (...), descriptions of funding mechanisms to support the voluntary sector (long-term or short-term), commitments to establish a tax system that directly and indirectly encourages third-sector activities (...), and commitments to develop legislation supporting the self-sustainability of the third sector and the financing of organizations of disadvantaged persons (...).
- Implementation elements include a timeline covering short-term and long-term objectives, allocation of responsibilities to public institutions involved in implementation, and potentially such elements as a proposed monitoring and evaluation tool, provisions for review and revision, and a mechanism for settling disputes.« (18)

The CNVOS study ends with a number of important and lucid recommendations for establishing Compacts on a national level and distinguishes them into three groups: policy documents on cooperation, bodies that support the cooperation and citizens participation in legislative process. Their relevance makes it appear sensible to quote them en bloc.

Policy documents on cooperation:

- »type of the document – experiences from other countries show that there is no recipe for success regarding the type of the document. Some decision-makers are more in favour of bilateral documents, others are more in favour of strategies. When there is no existing cooperation, a good starting point could be a mutual agreement that would set basic principles of cooperation and institutional mechanisms of cooperation. In short, the agreement could define a process how to develop a more specified document (strategy), establish bodies to support cooperation, etc.
- legal nature and body that confirms the document – the general opinion is that the legal nature of the document is very important for implementation. However, the majority of documents on cooperation is not legally binding. Furthermore, experiences show that the legal nature is not the key issue for success. On the



other hand, experiences also show that changes in the government can hinder the process of drafting or implementation severely (...).

- drafting process – the document should be drafted in a very participatory manner. Firstly, drafting process sets a basis for future cooperation and is therefore very important for both sides to get to know each other. Secondly, with an open, transparent and inclusive process both sides get ownership of the document and responsibility for its implementation. Thirdly, to avoid negative aspects of the changes in the government, it is useful to include coalition and opposition political parties (...).
- content – apart of the general principles that underpin the document, it is very important to include clear commitments as well. It is also very useful to have issues of implementation in mind from the very early stages of drafting – keep goals and activities realistic, divide tasks and responsibilities (...).
- implementation – in order to assure implementation of the document, include an action plan with clear goals, activities, responsible bodies, deadlines and needed resources. If the government will not assure minimum funding for the implementation of the document, its success will be rather questionable. It is useful to identify other (additional) sources of funding as well. To assure monitoring and evaluation of implementation it is useful to appoint either governmental body or cross-sector body (advisory council) for this task. Funding should be assured for monitoring and evaluation activities as well.

Bodies that support the cooperation and development of CSOs:

- Bodies that support cooperation and development of CSOs can be established before policy document exists (...) – the two processes are not directly linked. The offices for cooperation between the state and CSOs can play an important role in cultivating and advancing cooperation. They should be recognized as mechanism, which can contribute not only to communication and exchange of information, but a vehicle for participation, education of the two sectors, and leader of the broader policy aspects which are embraced in the collaboration (...).

There are different types of support bodies. They can be established in the scope of the government's secretariat or in the scope of some ministry or they can be an independent agency. All possibilities have positive and negative aspects. In either case when proposing such an office one needs to have in mind its political influence. The independent agency sets its own agenda and can be more proactive, but on the other hand it does not have direct link to the government's sessions and its influence on the other ministries is also somewhat limited. If the office is established in the scope of some ministry, it has an access to the government's sessions, but it may happen that CSO development is not very high on the ministry's agenda. Founding statutes need to give clear responsibilities and authorities to the office, as well as commit other administration bodies to cooperation with the office, to sending data for statistical monitoring, etc.

Apart from the office for cooperation it is very useful to have liaison officers at all ministries, which are responsible for the communication with the office and with CSOs.



Advisory bodies:

- Advisory bodies support the work of the responsible office and assure cross-sector promotion of CSOs. Advisory bodies should not only discuss the matters directly affecting the CSO development (e.g. strategy for development, law on CSOs), but should also have the possibility to comment or propose other legislation (e.g. propose different solutions when respective ministry is passing legislation that is affecting CSOs only in the respective field). When establishing the advisory body one should have in mind the political influence of the government's representatives (senior officials instead of public officials), participation of representatives of ministries important for CSOs and equal representation of CSOs (equal number of ministries' and CSOs' representatives). Some advisory councils include representatives of trade unions, employers and academia as well.

If the establishment of the advisory council is envisaged in the law, this is also one of the factors that can help long-term work without government's interference (for example, when the new government was appointed in Slovenia in 2012, one of its first decisions was to abolish more than 100 advisory councils that were not established on the basis of a law).

Citizens participation in legislative processes:

- Country should have clear guidance on public participation in decision-making process. It is useful if the guidance is set in a legally binding document, however some argue (...) that the legal nature of guidance is not crucial for its implementation.

In any case the guidance should cover:

- »State administrative bodies that have to respect it,
- Acts that are included with clear (closed) list of exceptions,
- Obligation to inform the public at the beginning of each year, which legislation will be prepared in the respective year,
- Obligations to include stakeholders in early stages of drafting (e.g. working groups) and obligation to publish all drafts with supporting documents (analysis, RIA, etc.) on the Internet,
- Sufficient time for consultations (at least 15 working days, although we recommend 30),
- Obligation to prepare feedback reports (report on the received comments, their consideration and arguments why were they or were not taken into account).« (19)

It is self-evident that none of the existing Compacts meet all the stated criteria and it is foreseeable that even new framework agreements set up in the future will hardly be able to satisfy all parties concerned. But it is also comprehensible that ideal typical norms are needed to assess given agreements and enhance chances for their

improvement. Using these recommendations for sketching a European framework agreement would be of tremendous help to avoid typical mistakes.

Recommendations: Towards a participatory democracy and a citizen-powered Europe

We agree with all major civil society associations in the EYC 2013 Alliance, that

»participative democracy meets the present-day needs of European democratic governance across the Union by supplementing and reinforcing representative democracy. Involving organised civil society in policy-shaping and the preparation of decisions strengthens the democratic legitimacy of public institutions, of their work and activities. The quality of civil dialogue is an indicator of the state of health of our democracies.« (20)

We recognize that with Article 11 TEU this conviction has found entry to EU's constitutive foundation and that over the past years numerous participative instruments have been established fostering civil dialogue and giving civil society a stronger voice within the European decision-making process.

We are convinced that Article 11's provisions for participative democracy in its four dimensions – Public Politics, Civil Dialogue, Consultation and Citizens Participation – acknowledge the need for the European Union to become ever more open to contributions from organised civil society and citizens throughout its decision-making process, and has – if executed fully – the potential to make Europe in fact more citizen-powered. However, we have to realise that with the practice of its implementation at present we are still far from this reality.

We do not concur with the European Commission's perspective that the implementation of Article 11 can be satisfactorily described as maintaining »structured dialogue groups,« where the ability to engage in in-depth analysis of European Commission proposals and initiatives remains limited. For us, the spirit of Article 11 goes beyond structured dialogue groups or minimum-standard-consultations. It calls for a Europe-wide »raising-the-game« when it comes to providing more frequent opportunities to interact and engage with European officials in their legislative and administrative tasks.

In particular, we state

- As underlined by the EESC's Opinion on Article 11 (21), a gap still remains between the applicable legal rules and the reality of citizens and civil society organisations' involvement in decision-making in Europe. We agree with the EYCA stating that the potential of Article 11 is still to be fully understood and implemented.
- The image of civil society in EU policy-making is that of an expert, sometimes partner, and professional organisation. CSOs have supportive functions, mainly for the Commission, but cannot effectively control accountability of the Commission. The partnership principle needs to be established horizontally and verti-



cally throughout the decision-making process across Europe, including guidelines for civic participation in the whole legislative process from agenda-setting to evaluation and revision.

- In addition, civil society organisations need to be better supported within the guiding principle of an enabling environment in order to fulfil their function as transmission belt between the EU-institutions and the citizens. We agree with the EYCA that today their existence is sometimes jeopardised by repeated threats to freedom of association and the lack of financial sustainability with which they are confronted, particularly in the current times of crisis.

1. What shall be done? A structured framework agreement for civic participation!

Like the EYCA, we are therefore convinced that despite the political and legal recognition of the concept of citizen participation introduced by Article 11 of the Lisbon Treaty, to fully achieve this »a clear and structured framework for European civil dialogue that would allow a permanent and transversal dialogue is still lacking.« (22) We believe that the time is now to spell out concretely what such a »structured framework« could look like.

We need better standards for civic participation within such an agreement. We therefore agree with the EYCA that the European Commission should initiate an immediate review of the »Minimum Standard of Consultation« (23) at the European level. But we believe furthermore, that even if such a document would contain »a view to the inclusion of better standards of participation for civil society in the European decision-making process by including systematic, organised and financially supported mechanisms and opportunities for consultation« this would not be enough. We stress that consultation is not participation, but just a single dimension of participatory democracy.

We furthermore support the demand of the EYCA in its initial Manifesto for an Interinstitutional Agreement for a structured framework for European Civil Dialogue as well as the call on the European Commission to adopt a Green Paper »in which a clear policy proposal is developed to establish a permanent and stable framework for vertical, transversal and horizontal civil dialogue.« However, we remark that such documents will only be comparable to a unilateral framework putting institutions in the role of defining their civil society relation top-down. We in contrast prefer a bilateral partnership approach for a framework agreement where the principles and rules itself are subject to discussion between government and civil society.

Taking into account the elaborated conditions for successful Compacts on national level, we underline that such a framework agreement will need to include following dimensions:

- a reference to and integration of the basic principles of civic participation and common understanding of partnership as outlined in the Council of Europe's Code of Good Practice for Civic Participation (24), the OECD's Handbook on Information, Consultation and Public Participation in policy making (25), the UNDP 5 Principles of Good Governance (26) and other related documents as well as the experiences and principles of successful compact models on national level



- the main areas of cooperation and their principles, including among others service delivery questions, legislation and other decision-making processes, access to and sharing of information, specific instruments of cooperation
- the general principle of an enabling environment and good framework conditions for a vivid civil society, i.e. principles of funding and mutual support, including specific demands like the recognition of voluntary activities as co-funding, tax-related issues for the voluntary sector, participation in the design and implementation of EU-funding-programmes, better access to EU's structural funds for charities, a European Statute for Associations, etc. This also includes the guarantee of good framework conditions for volunteering as the main and natural form of civic engagement
- Implementation elements and bodies.

2. How shall it be done? A negotiation process based on partnership and trust!

We support the demand for a Treaty Revision process and the idea of a new European Convention process »in order to reinforce especially participative and representative democracy and to put citizens back at the heart of the European integration process and to restore the legitimacy of the European projects by increasing democratic control by citizens.« (27) This process should include all the relevant stakeholders and be used as a tool to raise awareness about European integration for the general public. But we also underline that the process of a European Convention should not be confused with the process for the elaboration of a framework agreement on participatory democracy.

For the latter, we propose the establishment of a European Forum for Civic Participation as a temporary governance tool with delegates from the EU-institutions and civil society. (28) Within such a forum – for the duration of 12 months – a European framework agreement shall be drafted including the above listed dimensions: Basic principles of civic participation, main areas of cooperation, framework conditions for a good partnership, and implementation elements. The Forum itself would need to be composed of working groups concerned with these principal areas for such a document.

This process would also need to ensure that ongoing such a document will not remain as a stand-alone document, but will receive support- and implementation structures within civil society, the EU institutions and intermediary. Only by those structures a truly civil society policy with a thematically crosscutting and horizontally resort-coordinating approach will have a sustainable chance. Those developments will need to be discussed within the Forum, but it could include the position of a Commissioner for Civil Society within the European Commission, a Committee on civil society issues and civic participation within the European Parliament, a support and advice center for the framework agreement within civil society and a reform of the EESC.

3. Who is meant to be stakeholder in this process? Let's be precise on what we mean by civil Society!

Looking again at the four dimensions of participative democracy with a focus on the addressees named in Article 11, it becomes obvious that we face a certain confusion of ideas and terms of what is meant by civil society. This is partly due to the historical development of dialogue and consultation processes between the Institutions and stakeholders addressed. We underline that with reference to civic participation and the aim to create a more citizen-powered Europe, a clear statement on the nature of civil society organisations in this understanding is needed.

We support the demand of numerous European civil society networks and the EYCA that the European institutions should adopt the Statute of European Association and the Statute of European Foundation to ensure higher recognition, visibility and legitimacy of civil society organisations and to facilitate their work at a European level and on a Europe-wide scale, thereby formalising one of the inherent rights of democratic citizenship: the right of association. This would also help to get a better understanding of the nature of civil society organisations. In terms of representativeness and access we propose to take into consideration again the question of a consultative status and accreditation system on EU-level.

Last but not least the EESC needs to be looked at as a hub for the aggregation and transmission of general interests. The present set-up of this body reflects an understanding of cooperation from the early days of the Single European Market. Despite the undoubted success and achievements of the EESC in view of highlighting the interests of the European civil society, it is questionable if under its current structure it can still meet the challenges of today. We agree with the EYCA's point of view that the European Economic and Social Committee should be structured in such a way that transparency and clarity is ensured in the appointment of its members, and that all sectors of society are properly represented. Furthermore, a discussion about its role of representing European civil society should be launched and needs to be central to the debate of a framework agreement on civic participation. We could imagine the EESC to be extended by a fourth pillar for a veritable civil society representation. With the extension of the European Year of Citizens into 2014, the organised European civil society should with great efforts work on the chances for a truly participative democracy.

Anmerkungen

(1) The European Year of Citizens Alliance (EYCA) is an open network of European and national civil society organisations willing to promote active citizenship as a core element of the European democracy in the frame of the European Year of Citizens 2013. The 62 European members of the EYCA represent more than 4000 individual organisations in 50 European countries. For the results of the debates, conferences, screenings, workshops, exhibitions etc. of the EYCA 2013 members see: It's about us, it's about Europe! Towards democratic European citizenship, <http://ey2013-alliance.eu/itsaboutusitsabouteurope/>.

(2) The European Network of National Civil Society Associations (ENNA) is a membership organisation, bringing together organisations, platforms, and associations that work at a national level to promote the cross-sectoral interests of the not-for-profit/public benefit/civil society sector. The present paper is based on a request from the ENNA board to bring together the recommendations of the EYCA 2013 with the experiences of the ENNA members during this year. Nonetheless the paper reflects predominantly the position of the authors.

(3) It shall not be concealed that the Council of Europe has already delivered a quite consistent framework blueprint. The »Code of Good Practice for Civil Participation« adopted by the Conference of INGOs on 1 October 2009 offers principles and guidelines for NGO participation in decision-making processes and the involvement of civil society within the policy cycle that could be used as a reference document for the spelling out of Art. 11 TEU, http://www.coe.int/t/ngo/code_good_prac_en.asp.

(4) See also: ENNA position paper Civic Participation in Governance, Seeking Common Ground in Europe, February 2013, http://www.ennaeurope.org/ennaws/publications/view/1:36:Civil_Participation_in_Governance.html.

(5) This analysis takes up ideas and findings from the BBE-workshop »Partizipative Demokratie in Europa – Chancen für Bürgerbeteiligung nach dem Lissabon-Vertrag« on 5 November 2012 in Berlin, www.b-b-e.de as well as from a previously unreleased study paper »Participatory democracy and European governance in social policy« drafted by Nicole Kerschen and Morgan Sweeney.

(6) See: REGULATION (EU) No 211/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 February 2011 on the citizens' initiative.

(7) The Commission expected NGOs to fulfil especially the following functions in line with the principle of participative democracy: foster a more participatory democracy based on the right of citizens to form Associations in order to pursue a common purpose beyond the involvement in political parties or trade-unions; represent the views of specific groups of citizens, such as very poor people; contribute to policy making by providing expertise input through their links at European, national, regional and local level; and feedback on the implementation of policies.

(8) It must also be noted that the European Economic and Social Committee (EESC), which is one of the Union's advisory bodies and which claims to represent civil society in broad, raised a debate on representativeness of Associations during the First Convention on organised civil society at European level (1999). It proposed to select organisations by using two main criteria, one regarding the existence of a basic organisational machinery and another concerning representativeness in their particular sector in a quantitative and qualitative way. Some years later, it published an Opinion on the representativeness of European civil society organisations in civil dialogue (2006).



(9) Communication from the Commission of 25 July 2001 »European governance – A white paper«, http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi%21celexplus%21prod%21DocNumber&lg=en&type_doc=COMfin al&an_doc=2001&nu_doc=428 final - Official Journal C 287 of 12.10.2001.

(10) EESC, The Civil Society organised at European level. Proceedings of the First Convention of organised civil society at European level. Brussels, 15 and 16 October 1999, http://www.eesc.europa.eu/resources/docs/actes_sco_en.pdf.

(11) European Economic and Social Committee (2006), Opinion SC/023 of 14 February 2006 on »The representativeness of European civil society organizations in civil dialogue«.

(12) It must also be noted that the EESC has taken up the demand for a structured dialogue framework in its interpretation of Art. 11 TEU in the document: OPINION of the European Economic and Social Committee on Principles, procedures and action for the implementation of Articles 11(1) and 11(2) of the Lisbon Treaty.

(13) Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission; Commission communication, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0704:EN:NOT>.

(14) Quittkat, Christine and Finke, Barbara (2008): The EU Commission Consultation Regime, http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/BookSeries/Volume_Five/Chapter08_Quittkat_Finke.pdf.

(15) The authors distinguish between three generations of the consultation regime: (1) the phase of European economic integration marked by intense, informal, ad hoc dialogue between the Commission and primarily economic experts and (2) from the mid 1980s the move to »partnership« in EU policies that led to a vitalization of the Social Dialogue (between social partners) that was incrementally extended to dialogues with NGOs in certain policy areas such as the environment or human rights. From the social and policy-specific dialogues, the wider approaches to a »civil dialogue« and »social platform« developed. From 2001 (3), they embraced those initiatives the present article considers.

(16) See ECAS, European Citizen Action Service, A European Framework Agreement with Civil Society for a less distant European Union, Elisabeth Victoria Lasky, 2011; EUROFOUND, Framework agreements, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/frameworkagreements.htm>

(17) CNVOS, Center for Information Service, Code of Conduct for Civil Society – Public Dialogue/Relations in the EU and the World, Tina Divjak, 2012, p. 7. This study also contains a good country overview of the different framework agreements. Most of the existing Compacts in Europe follow the English model. It was the first model at the end of 1990's years. In 2001, France introduced its Charte d'Engagement. Since the middle of the



last decade many countries in Central and Eastern Europe followed; Sweden and Denmark presented their agreement two years ago.

(18) Ibid., p. 8.

(19) Ibid., pp. 68ff.

(20) EYCA 2013: It's about Us, It's about Europe! Towards Democratic European Citizenship!, <http://ey2013-alliance.eu/national-alliances/us-europe-towards-democratic-european-citizenship/>.

(21) OPINION of the European Economic and Social Committee on Principles, procedures and action for the implementation of Articles 11(1) and 11(2) of the Lisbon Treaty.

(22) Ibid.

(23) Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission; Commission communication, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002DC0704:EN:NOT>.

(24) http://www.coe.int/t/ngo/code_good_prac_en.asp.

(25) http://www.oecd-ilibrary.org/governance/citizens-as-partners_9789264195578-en.

(26) http://www.undp.or.id/programme/governance/intro_glg.pdf.

(27) EYCA 2013: It's about Us, It's about Europe! Towards Democratic European Citizenship!, <http://ey2013-alliance.eu/national-alliances/us-europe-towards-democratic-european-citizenship/>.

(28) For such a process, the instrument of the German »National Forum for Engagement and Participation« could be a blueprint. The German National Forum gathered around 350 Third Sector experts, political advisors, administrators and CSR-specialists from various businesses and delivered a comprehensive agenda for civil society policy in Germany between 2009 and 2011. The documentation of the process can be downloaded from the BBE-website, <http://www.b-b-e.de/themen/engagementpolitik-foerderung1/engagement-strategisch/>.

Hinweis

Diese Studie erschien erstmals im April 2014 auf der Internetseite des Bundesnetzwerks Bürgerschaftliches Engagement (BBE) unter folgendem Link: <http://www.b-b-e.de/aktuelle-meldungen/21485-bbeenna-studie-the-chances-for-participatory-democracy-and-a-citizen-powered-europe/1/>.



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