

EU Democratic legitimacy and Multilevel Constitutionalism in the Digital Age?

by
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INTRODUCTION

The financial crisis and the measures taken by the European authorities to tackle the problems at least provisionally have led to a considerable shift of power to the executives. Some 'economic dialogue' with the European Parliament and the possibility for the national parliaments to invite the relevant Member of the European Commission to explain and discuss their views on the draft budgetary-plans or the recommendations to a Member State within the framework of the European Semester, as well as the creation of the 'European Parliamentary Week' and the work of the 'Interparliamentary Conference under Article 13 of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG, or 'Fiscal Compact')' are attempts to include the parliaments into the process, but the relevant powers are concentrated with the European Council, the ministers of the Euro-group as well as the Commission. There is no direct democratic control, and if we can talk about legitimacy, its sources are supposed to be the accountability of the national governments to their respective parliaments. As all the relevant discussions within the institutions are led in private, and given the practical limits of effective control of the ministers by their respective national parliaments, legitimacy of the decisions of the European Council and the Council is more theoretical than real. We have to acknowledge this fact, while we observe that the subjects and contents of the decisions taken progressively reach into salient issues like economic, fiscal, social and re-distributional policies.

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This is a new situation. Instead of having found a remedy to what is called the democratic deficit of the European Union, we are facing new and serious challenges. Granted, all the decisions of the European institutions are taken in the interest of the citizens of the Union. But citizens would be less concerned if they and their direct representatives had a say and, at least, some knowledge of how what decisions for which reasons have been taken by whom, to hold the decision-makers accountable.

If the proposals made by the five Presidents in their Report of June 2015 'Completing Europe's Economic and Monetary Union'¹ for new powers and responsibilities of the European institutions based on enhanced democratic control can be understood as an important step towards improving the situation,² the question may be asked whether the legitimacy of the European Union's decision-making and, thus, of the European Union can benefit from the new information technologies in the digital age³. I have explored some of the existing and possible further applications of the internet for bringing the citizens closer to the European authorities and to further strengthen their ownership of the Union. The results have been presented at a conference of ECLN in Saloniki this Spring.⁴ Today, it is time to go one step further and look at the question in the light of 'multilevel constitutionalism' more generally.

Surprisingly, so far none of the existing papers, programs or agendas of the European institutions on ICT or internet policies seem to address the question of democracy and legitimacy in the Union. These two words do not appear in the Commission's Communications on 'A Digital Agenda for Europe' of August 2010⁵ nor on 'A Digital Single Market Strategy for Europe' of May 2015.⁶ Even the Commission's website called 'Digital Agenda for Europe' does not refer to texts or issues regarding democracy in the EU. Nor do the general strategies of the EU on growth or on the future of the EMU, from the EU-2020-Strategy⁷ and the Commission's 'blueprint for a deep and genuine economic and monetary union',⁸ to the five Presidents Report already mentioned, develop ideas on possible uses of the internet for enhancing democracy and legitimacy of the Union.

The blueprint, in particular, does underline democratic legitimacy as a condition for establishing, in a longer term perspective, a move towards 'a full banking union, a full fiscal union, a full economic union':

'All the different steps mentioned above imply a higher degree of transfers of sovereignty, hence responsibility at the European level. This process should be accompanied by steps towards political integration, to ensure strengthened democratic legitimacy, accountability and scrutiny'.⁹

¹ Five Presidents' Report 'Completing Europe's Economic and Monetary Union', 22 June 2015, <http://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf>, visited 16 October 2015.

² See the analysis by I. Pernice, 'Die Vorschläge der Fünf Präsidenten zur Reform der EU. Eine neue Verfassungsdebatte der Europäischen Union im Lichte der fortwährenden Krise', in A. Epiney (ed.), *Die Schweiz und die europäische Integration. La Suisse et l'intégration européenne, 20 Jahre Institut für Europarecht der Universität Freiburg 20 ans Institut de droit européen de l'Université de Fribourg* (2015 forthcoming).

³ A study by IBM found that 74 percent of participating elected representatives believe in the possibility to enhance democracy by using information technology, see J. Caldwell, *The Virtual Ballot Box: A Survey of Digital Democracy in Europe* (1999), <www-01.ibm.com/industries/government/ieg/pdf/ddreport.pdf>, visited 8 September 2015, p. 6.

⁴ I. Pernice, 'E-Government and E-Democracy: Overcoming Legitimacy Deficits in a Digital Europe', in L. Papadopoulou and I. Pernice (eds.), *Challenging the Legitimacy of Europe. Dimitris Tsatsos in memoriam* (2016 forthcoming).

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52010DC0245R%2801%29>. See also the Website of the Commission titled 'Digital Agenda for Europe' including all kinds of new initiatives and information without even mentioning the issues of democracy.

⁶ http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf.

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>.

⁸ A blueprint for a deep and genuine economic and monetary union, Launching a European Debate, COM(2012) 777 final/2 of 31 November 2012, http://ec.europa.eu/archives/commission_2010-2014/president/news/archives/2012/11/pdf/blueprint_en.pdf.

⁹ Ibid., p. 30, 33-34.

The five Presidents Report is less explicit about the amendments to the treaties needed, but clearly stresses the need for enhancing democratic legitimacy too. No reference, however, exists to how ICT could be used to this end. Are democracy and legitimacy, accountability and scrutiny not related to ICT or to the internet? Let me try to show that there are good reasons for bringing the two issues together, particularly in the light of multilevel constitutionalism, so developing e-democracy in the EU. To do so I will first explain the constitutional context in which e-democracy could play a major role (infra A.). This may open our eyes, second, for the opportunities offered by the internet for enhancing paths towards enhanced democratic ownership and control of Union's policies by the citizens of the Union (infra B.).

A. MULTILEVEL CONSTITUTIONALISM AND E-DEMOCRACY

Let me be short on 'multilevel constitutionalism'. This normative theory for explaining the relationship between national constitutions and EU primary law conceptualises the EU as a composed constitutional system.¹⁰ The key assumption is that the legitimacy of the European Union is being rooted in the will of the citizens of the Member States. Not the Member States, not abstract bodies are the 'masters of the Treaties', but their citizens. They are represented by their governments negotiating and concluding, and, in the absence of a referendum, by their respective parliaments ratifying the treaties on their behalf, with a view to achieve in common, at the Union level and through Union institutions, what their respective state is unable to achieve, or to do effectively. This is what the principle of subsidiarity, understood as a structural foundation of a democratic Union, is about. The 'integration-clauses' of the national constitutions, such like Article 23 of the German Basic Law, not only allow conferring the relevant powers to the institutions established by the treaties, but also lay down the limits, conditions and procedures for the effective operation of this contractual 'constitution' of supranational public authority. The so established authority builds upon, is additional and complementary to the national authorities. It is rooted in the same people as the authority of each of the Member States respectively. By the constitution and further development of the European Union these citizens give themselves the political status as citizens of the Union, a citizenship understood as additional and complementary to their national citizenship the same way as the supranational authority is added to the authority of the national authority – and as the constitution of the Union is based upon and complementary to the constitutions of the Member States. As Article 9 (1) TEU stipulates, the citizenship of the Union is a status of equality with regard to Union law. And we can learn from Articles 10 to 12 TEU that it is a democratic status, as these provisions establish in broad terms how citizens would exercise their democratic and participatory rights through national and European channels.

At this stage the internet comes into play. For most of the citizens of the Union Brussels is geographically and politically 'remote'. The institutions of the Union are often

¹⁰ I. Pernice, 'Constitutional Law Implications for a State Participating in a Process of Regional Integration. German Constitution and „Multilevel Constitutionalism"', in E. Riedel (ed.), *German Reports on Public Law Presented to the XV. International Congress on Comparative Law* (Nomos 1998) p. 40-65. See also: I. Pernice and F.C. Mayer, 'La Costituzione integrata dell'Europa', in G. Zagrebelski (ed.), *Diritti e Costituzione nell'Unione Europea* (Laterza 2003) p. 43-68. Contrary to the understanding presented in the excellent book of G. Martinicchio, *The Tangled Complexity of the EU Constitutional Process. The frustrating knot of Europe* (Routledge 2013) p. 19-36, it is meant to be a pluralistic approach, see F.C. Mayer and M. Wendel, 'Multilevel Constitutionalism and Constitutional Pluralism', in M. Avbelj and J. Komaràrek (eds.), *Constitutional Pluralism in the European Union and Beyond* (Hart 2012) p. 127-151. And it gives a normative answer to the question of constitutional conflicts, see: I. Pernice, 'Autonomy of the European Legal Order – Fifty Years after Van Gend & Loos', in A. Tizzano et al. (eds.), *50ème Anniversaire de l'arrêt 50th anniversary of the judgment in Van Gend en Loos, 1963-2013, Actes du Colloque Luxembourg, 13 mai 2013 – conference proceedings Luxembourg, 13 May 2013* (Luxembourg 2014) p. 55-80. For further clarification: I. Pernice, 'Multilevel Constitutionalism and the Crisis of Democracy in Europe', in *EuConst* (2015), forthcoming.

regarded as anonymous opaque bureaucratic entities intruding with their acts and legislation the autonomy of national policies without even allowing the individual to understand and to have a say in what is decided. Today, it is the internet that allows to bring the EU and its policies as close to the citizen as we are used to see national, regional or even local authorities. Except for physical contact and a face-to-face conversation, to get informed about relevant issues and views, to take part in a consultation or conversation, to make your voice heard and even to vote in elections at the Union level does not require, ideally, more efforts as to do this at the local, regional or national level.¹¹ The EU 'is just one click away'. Here is what e-democracy is about, and why e-democracy seems to offer new and great opportunities for

1. ensuring transparency and open access to information and knowledge as a basis for any participation in the political process,
2. contributing to the development of a European public sphere and participating in a European-wide public discourse on specific issues,
3. organising European citizen's initiatives (Article 11 (4) TEU) and, in particular, collecting the million of signatures required for it,
4. participating in consultative or even decision-making procedures at the European level, and
5. holding political leaders accountable in what they have promised and how they perform.

The more these five elements of e-democracy and for effective democratic participation are met, the greater are the chances of a constitutional system composed of diverse levels of government acting in the interest of the citizens respectively concerned, to function properly. As a result, for the citizens of the Union to take ownership of their Union would not be more burdensome as taking ownership of their national, regional or local government.

Yet, all this does not seem to have happened in real so far. Contrary to the opportunities offered by the internet, there is an increasing scepticism towards the European Union, and people seem rather to take distance from the Union than to take ownership. The financial crisis and the measures taken to overcome it and to stabilize the Euro, in particular, seem to have played against democratic ownership and involvement of the people in European politics.

B. ENHANCING CITIZEN'S OWNERSHIP OF EU POLICIES

It is inappropriate, however, blaming the EU for the crisis. It is the political hesitation of the national governments to provide for the adequate powers and structures at the EU level for making the EMU function. As long as the asymmetric architecture of the EMU is not changed into a full fledged Union including common economic, fiscal and – in part – social policies supporting the centralised monetary policy of the ECB, the Member States and their governments only can be held accountable for the failures we are dwelling with. And, to stick with the concept of multilevel constitutionalism, it is for us, the citizens of the Member States and of the Union, not to blame the Union but to take the

¹¹ Concerning public services on the European level, 'outward-facing' networks that learn from users feedback would help to bring government closer to the people by meeting their expectations regarding convenience, accessibility and timeliness, see A. Chadwick, Bringing E-Democracy Back In. Why It Matters for Future Research on E-Governance, 21 *Social Science Computer Review* (2003) p. 443 at pp. 445 and 447.

responsibility and initiatives needed to improve the situation. The five Presidents Report suggests important steps to be taken, but it remains remarkably vague regarding the constitutional setting for a complete EMU including meaningful procedures to ensure meaningful democratic legitimacy and, in particular, accountability. Is e-democracy the solution? Let me mention some problems (infra I.) before developing my views on the possible uses of the internet for enhancing democracy in the EU more concretely (infra II.).

I. CONDITIONS FOR E-DEMOCRACY IN EUROPE: ACCESS, SECURITY AND TRUST

We may hesitate, from the outset, to consider a positive answer, as soon as we remember Snowdens outraging revelations on mass-surveillance, or the criminal abuses of the internet and risks for privacy and cyber-security. The benefits of the internet would also remain empty promises as long as the programs for establishing equal access to high-speed internet through a European-wide broadband resilient infrastructure are implemented and the digital competence of people across the Union has reached a sufficient degree.¹²

European initiatives, namely the Digital Agenda for Europe and the Digital Single Market Strategy for Europe, already mentioned, envisage important steps towards this goal. The EU legislation on data protection¹³ as well as the 2013 Cybersecurity Strategy of the European Union¹⁴ and the establishment of the European Union Agency for Network and Information Security¹⁵ show that these issues are taken seriously. More concrete visions and proposals for how the internet can enhance democratic legitimacy of the EU are wanted. If it is clear that they would support transparency, democratic participation and accountability as needed, in particular, in the field of European economic, fiscal and social policies, this might also serve as an incentive, beyond economics, to progress more quickly in implementing the conditions for the internet to unfold its full potentials for the empowerment of the citizens to take ownership of the Union. However, we have to keep in mind, that accessibility to the internet is a subject with exterior aspects. Progress on the European level may extend the digital divide in relation to other countries, and the quasi-monopolistic power of providers of key ICT services impend to lock developing countries into a new form of dependency on the West.¹⁶

II. ENHANCING DEMOCRATIC LEGITIMACY IN THE EUROPEAN UNION

The program of our conference observes a 'shrinking of legitimacy and efficacy of European institutions to satisfy the needs of European citizens'. The five Presidents report, in turn, paves the way for the EU to act more efficiently and more democratically, while we can observe that the more the report touches items to be implemented in phase 2 by amendments of the Treaties, the more the proposals are becoming general

¹² Some also propose to use digital TV as a simple interactive and informational service: see J. Hancer, Digital TV is coming of age and local government is starting to take note, 58 *Aslib Proceedings* (2006) p. 429; more sceptical towards digital TV as an alternative platform with the suggestion that there would be a need for different orientation towards the set from that which normally characterises customary viewing: B. Gunter, Advances in e-democracy: overview, 58 *Aslib Proceedings* (2006) p. 361.

¹³ In particular Regulation (EC) 45/2001 and Directive 95/46/EC, <http://ec.europa.eu/justice/data-protection/law/index_en.htm>, visited 26 October 2015.

¹⁴ Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace, JOIN(2013) 1 final, 7 July 2013, <<http://ec.europa.eu/digital-agenda/en/news/eu-cybersecurity-plan-protect-open-internet-and-online-freedom-and-opportunity-cyber-security>>, visited 26 October 2015.

¹⁵ See <<https://www.enisa.europa.eu/>>, visited 26 October 2015. For the follow-up see <<http://eeas.europa.eu/policies/eu-cyber-security/>>, visited 26 October 2015.

¹⁶ F. Amoretti, International Organizations ICTs Policies: E-Democracy and E-Government for Political Development, 24 *Review of Policy Research* (2007) p. 331 at p. 338.

and vague. The message of the report, though, is very clear: New powers are needed at the EU level, and, as a counterpart, new instruments and procedures enhancing democratic legitimacy. This democratic requirement is all the more fundamental, as salient issues like economic, fiscal and re-distributional policies are at stake, policies that are reserved, so far, to the almost exclusive competence of the Member States.

In the light of multilevel constitutionalism and on the basis of the principle of subsidiarity, conferring new powers to the Union, as such, is not a threat to, but it can even be required by the principle of democracy itself. Let me refer insofar to the theories of Jürgen Habermas in his book on "The crisis of the European Union":¹⁷ The new powers at the EU level in the field of economic and fiscal policies would provide the citizens with an instrument to tackle more effectively problems that are beyond the reach of isolated national policies or even of traditional forms of cooperation and coordination.

The most important changes envisaged by the five Presidents relate to the convergence process, the fiscal stabilisation function and joint decision-making in fiscal policy. They all mean 'sharing more sovereignty over time',¹⁸ but if organised properly, strengthen the Union as a whole for the benefit of all citizens. What we need to ensure, however, is all potentials are exhausted for giving the citizen, to follow Albert O. Hirschman's concepts,¹⁹ more voice in the exercise of these new powers at the European level for the impact they have on their daily life, before they choose for exit.²⁰

How can we put this into practice? The abovementioned five elements of e-democracy and for effective democratic participation through the internet are met at the European level already to a considerable degree. There is a lot of potential, however, for improvement in particular with regard to the specific new responsibilities of the EU in a full-fledged Economic and Monetary Union (infra 1.). Beyond such more traditional measures and with a view to the increasing responsibilities of the European Parliament in the future EMU, e-voting should be considered for European elections and new forms of direct democracy in the EU (infra 2).

1. Improving the conditions for e-democracy in the EU

E-democracy means all kinds of applications of ICT to enhance democratic processes, reaching from transparency and open access to information through participation, interactive policy-making,²¹ e-petitioning up to electronic forms of voting and joint decision-making.²² In an important study of 2003 for the OECD Stephen Coleman from the OII has elaborated 'a number of policy objectives' on e-democracy among which he mentions:

¹⁷ J. Habermas, *The crisis of the European Union. A Response* (Polity Press Cambridge 2012) p. 15: 'In view of a politically unregulated growth in the complexity of world society which is placing increasingly narrow systemic restrictions on the scope for action of nation states, the requirement to extend political decision-making capabilities beyond national borders follows from the normative meaning of democracy itself.'

¹⁸ Five Presidents' Report, *supra* n. 1, p. 5.

¹⁹ A.O. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Harvard University Press 1970).

²⁰ Applying the concept of exit and voice see also J.H.H. Weiler, *The Constitution of Europe. 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge University Press 1999).

²¹ See <<http://ec.europa.eu/idabc/en/document/7397.html>>, visited 26 October 2015 (The site was closed in 2009)..

²² See OECD, *Promise and Problems of E-Democracy. Challenges of online citizen engagement* (2003), <<http://www.oecd.org/gov/public-innovation/35176328.pdf>>, visited 26 October 2015; K. Curran and E. Nichols, 'E-Democracy', 1 *Journal of Social Sciences* (2005) p. 16; A.-V. Anttiroiko, 'Building Strong E-Democracy – The Role of Technology in Developing Democracy for the Information Age', 46 *Communications of the ACM* (2003) p. 121, with a useful distinction of the different phases of the democratic process, *ibid.*, at p. 122; C. Lee et al., 'Testing the Development and Diffusion of E-Government and E-Democracy: A Global Perspective', *Public Administration Review* (2011) p. 444; For a critical view on the relationship between e-government and e-democracy see already: L. Anderson and Patrick Bishop, 'E-Government to E-Democracy: Communicative Mechanisms of Governance', 2 *Journal of E-Government* (2005) p. 5; Pleading for a 'more deliberative approach to e-democracy policy and practice': G. Moss and S. Coleman, 'Deliberative Manoeuvres in the Digital Darkness: e-Democracy Policy in the UK', 16 *The British Journal of Politics and International Relations* (2014) p. 410.

'the creation of trusted online spaces for democracy; integration of e-democracy into constitutionally recognised channels; the cultivation of meaningful interactivity between representatives and represented; the recruitment of traditionally excluded voices to online public debate, which entails seeing information as a common resource and ensuring just representation of all parts of the globe'.²³

This is not the place for rehearsing what instruments and procedures the EU has set up to reach such objectives so far. But it seems to be worth to draw attention to some of them and explore how they could be further developed with a view to enhance the legitimacy of the exercise of new powers to be conferred to the European Union.

a. Transparency and open access to information

With the provisions of Article 15 TFEU on openness, access to information and transparency of the proceedings of each institution, body, office or agency, and with the specific right of access to documents in Article 42 of the Charter of Fundamental rights we find a constitutional guarantee as well as basis for an active information and transparency policy of the Union with all instruments, including the internet. Though certain difficulties are known with regard to the implementation of these principles, in particular with regard to the negotiation of international treaties, like TTIP,²⁴ the relevant provisions are of high relevance, in particular, when Union bodies act in the area of economic, fiscal and social policies.

Formalising the convergence process, as the five Presidents propose, means 'strong decision-making at euro area level'. As far as different policies can lead to similarly good performance, this can also mean 'country specific solutions'.²⁵ Where legally binding 'common standards', as envisaged, would 'focus primarily on labour markets, competitiveness, business environment and public administrations, as well as certain aspects of tax policies',²⁶ such decisions are highly political, and openness as to the information on what they will be based seems to be as crucial for democratic legitimacy as full transparency of the decision-making process. The same seems to apply to the joint decision-making in fiscal policies. For the decisions to be accepted by the citizens as democratically legitimate, there cannot be confidentiality neither of the relevant documents nor of the relevant meetings at the Council or the parliamentary commissions involved.²⁷ Public streaming of the meetings, as already practiced at the Council in legislative matters, would have to be extended to preparatory meetings at all levels; documents including submissions from national governments or interested civil society will have to be publicly accessible.

b. A European public sphere

Full information is the basis for valid deliberation and active involvement. As Coleman suggests already in 2003, an e-democracy policy should in particular 'create new public spaces for political interaction and deliberation;' and the internet 'offers significant advantages for the cultivation of effective public discussion and deliberation areas'.²⁸ It

²³ S. Coleman, 'The Future of the Internet and Democracy Beyond Metaphors, Towards Policy', in OECD, *supra* n. 22, p. 143, 159-160.

²⁴ See the critiques of the Corporate Europe Observatory, 'Black-out on tobacco's access to EU trade talks an eerie indication of TTIP threat', 25 August 2015, <<http://corporateeurope.org/international-trade/2015/08/black-out-tobaccos-access-eu-trade-talks-eerie-indication-ttip-threat>>, visited 26 October 2015.

²⁵ Five Presidents' Report, *supra* n. 1, p. 9.

²⁶ *Ibid.*

²⁷ For some experience and proposals regarding openness and access to information in legislative processes see: A. Papaloi and D. Gouscos, 'Parliamentary Information Visualization as a Means for Legislative Transparency and Citizen Empowerment?', 5 *JeDEM* (2013) p. 174.

²⁸ Coleman, *supra* n. 23, p. 159; see also Moss and Coleman, *supra* n. 22, p. 411, emphasising that in particular deliberation is 'warranted

is particularly appropriate for giving the creation and development of a European public sphere a chance.²⁹ Given the far-reaching impact of the new common policies on national interests, it is a fundamental condition of legitimacy that they are considered and discussed throughout the European Union – across borders and across languages. Social networks can be used as forums for topic-oriented debates. But also independent online forums³⁰ or official discussion platforms to be offered by the institutions, including translations and additional information, as needed, could serve as tools for enhancing Europe-wide deliberation of European policies.

c. European citizen's initiatives

The European citizen's initiative provided for in Article 11 (4) TEU has been organised by secondary law³¹ also to allow the electronic collection of signatures (Article 5 (2) and 6 of Regulation 211/2011). The Commission's website on the European Citizens Initiative gives guidance for an electronic registration and management of the initiatives.³² Yet, the conditions for a initiative to be successful are as narrowly defined as the impact is limited. In case the initiators have mobilised the one million signatures in seven Member States needed, the Commission is under no legal obligation to act as asked for. It only has to consider proposing the legal act in question; if it estimates that the act in question is not opportune, there is no remedy for the initiators, except political pressure through internet campaigns, media or through lobbying at the European Parliament.

Thus, the experience so far with the initiative is little encouraging.³³ Three initiatives are closed, but there was no follow-up in the form of a proposal as provided for in Article 11 (4) TEU.³⁴ What seems to be needed, in particular with regard to the new powers to be conferred to the Union, is a simplification of the formal and procedural requirements as well as a broadening of the application. Not only formal proposals for legal acts should be the possible object but any relevant measure to be taken eventually by the institutions within the framework of their competences.

d. Consultation and (pro)-active participation (e-petition)

Article 2 of the Subsidiarity-Protocol requires the Commission to 'consult widely' before proposing legislative acts. The Union's consultation system is elaborated and ICT based. Already in 2001 the IPM (Interactive Policy Making) website was established 'to evaluate existing EU policies and to facilitate open consultations on new initiatives' and, in particular,

because it alone can realise the democratic norm of achieving inclusive, informed, and negotiated policy formation and political decision-making'.

²⁹ Discussing these potentials of social networks and public consultation platforms on the Internet more generally: Edoardo Magrani, 'Política e Internet: Internet como Ferramenta Político-Democrática em dois Vetores. Internet and Politics: Internet as a Tool for Democratic Participation in Two Ways', CT 11: DIREITO E NOVAS TECNOLOGIAS, at: <http://www.publicadireito.com.br/artigos/?cod=f8e8b1feff822753> (visited 29.11.2015).

³⁰ On online-forums in the British e-democracy policy see Moss and Coleman, *supra* n. 22, p. 414-416.

³¹ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65.

³² European Commission, European Citizens Initiative, <<http://ec.europa.eu/citizens-initiative/public/how-it-works/registration>>, visited 26 October 2015; An official guide is available under: <<http://ec.europa.eu/citizens-initiative/public/guide>>, visited 26 October 2015.

³³ Sceptic remarks by R. Hrbek, 'Die Europäische Bürgerinitiative: Möglichkeiten und Grenzen eines neuen Elements im EU Entscheidungssystem', *integration* 1/2012, p. 35; see also M.J. Duinkerken, 'Die Europäische Bürgerinitiative. Ein effektives Instrument direkter Partizipation?', *Münchener Beiträge zur Politikwissenschaft* (2013) p. 43, qualifying it as a powerless paper-tiger ('EBI als machtloser „Papiertiger“') with a limited effect on citizens participation in European politics.

³⁴ See the report on the Commission's website <<http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/answered>>, visited 26 October 2015.

'to give voice to the opinions of citizens and enterprises about new policy initiatives and to help the EU institutions to enhance the impact assessment of existing legislation'.³⁵

Today IPM was replaced by a new portal, called 'Your Voice in Europe', where the Commission offers, in accordance with its 'Better Regulation Agenda', to 'listen more closely to citizens and stakeholders from the first idea, to when the Commission prepares a proposal, through the adoption of a proposal and its evaluation'.³⁶ This instrument would reach its full potential also regarding the new powers of the Union if it became more interactive as an open platform ensuring that citizens who take position also receive an answer and that the conversation is published so to allow others to comment.³⁷

The application of the website could also be widened to include political crowd-sourcing and so be used as an instrument of collaborative democracy.³⁸ It could become a useful 'bottom-up' tool for an open collection of ideas already on how the upcoming reform of the EU and the EMU might be prepared and how democratic legitimacy can be improved. But it should also serve for stimulating participation in discourses on the appropriate political choices in sensitive areas like labour markets and social rights.

Another important instrument for allowing citizens (pro-)actively to participate in the political process and eventually initiate a debate or movement is the petition to the European Parliament, as provided for in Article 227 TFEU and in 44 of the Charter of Fundamental Rights. The use of the internet is made possible here, people can file online-petition through the specific portal of the European Parliament.³⁹ E-petitions are widespread throughout the globe,⁴⁰ they are rightly understood as an instrument for 'enhancing democratic empowerment'⁴¹ giving voice to the citizen at the European political level.

e. Accountability of political leaders

One of the reasons for the 'democratic deficit' of the Union is the lack of political accountability. As *Joseph Weiler* puts it: 'to throw the scoundrels out',⁴² to vote against a party or person responsible for a policy that is not in conformity with one's political views, is not possible with regard to Union policies and leaders. Transparency of the decision-making procedures and access to information allows public scrutiny and critique, but the impact on real politics is almost null. As long as other sources of legitimacy can be identified and may be considered sufficient, the problem is limited. But as soon as policies touch salient issues for the daily life of citizens, the lack of direct accountability is difficult to tolerate.

Direct elections of the President of the Commission, perhaps of a double-hatted

³⁵ See the IPM website (2005) with explanations <<http://ec.europa.eu/idabc/en/document/7397.html>>, visited 26 October 2015 (The site was closed in 2009).

³⁶ <<http://ec.europa.eu/yourvoice>>, visited 26 October 2015; concerning the different stages in policy-making process see A. Macintosh, Characterizing E-Participation in Policy-Making, Proceedings of the 37th Hawaii International Conference on System Sciences - 2004 <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.98.6150&rep=rep1&type=pdf>>, visited 28 September 2015, at p. 3; Å. Grönlund, 'e-Democracy: in Search of Tools and Methods for Effective Participation', 12 *J. Multi-Crit. Decis. Anal.* (2003), p. 93, at p. 96.

³⁷ Endorsing the use of Decision Support Systems for more participation, Grönlund, *ibid.*, p. 93.

³⁸ Moss and Coleman, *supra* n. 22, p. 420-422; For the term and a definition see also: <<http://www.collaborative-democracy.com/cdDefinition.cfm>>, visited 26 October 2015.

³⁹ EP Petitions Web Portal, <<http://www.petiport.europarl.europa.eu/petitions/en/main>>, visited 26 October 2015.

⁴⁰ See R. Lindner and U. Riehm, 'e-petition: Electronic Petitions and Institutional Modernization. International Parliamentary E-Petition Systems in Comparative Perspective', 1 *JeDEM* (2009) p. 1.

⁴¹ A. Glencross, 'E-Participation in the Legislative Process Lessons from Estonia for Enhancing Democratic Empowerment', 1 *JeDEM* (2009) p. 21.

⁴² Weiler, *supra* n. 20, p. 266.

president of the Commission and the European Council, might be one way out. But neither the Commission nor the European Council finally have the power to take legislative decisions. This is the role of the European Parliament together with the Council. Can the internet, can tools of direct democracy be a solution, e-voting or electronic citizens initiatives with the effect of blocking a legislative procedure or revisiting a political decision?

2. E-voting in European elections and direct democracy

There is not much experience with e-voting, except for Estonia where people can choose between personal and e-voting. However, according to a study by IBM, 50.4 percent of elected representatives from national, regional and municipal levels of government in Europe would support introduction of online voting alongside traditional methods, although only 4.8 percent report online vote capability in their legal systems.⁴³ This propensity increases at higher level. The study also showed that nationally elected leaders are more “digitally advanced” than regional or municipal ones.⁴⁴

With more salient powers exercised at EU level, and with increased responsibilities of the European Parliament, as envisaged by the five Presidents already for the operation of the European semester, probably the interest of people in European policies will increase and so entail broader participation in European elections.⁴⁵ This, however, is not enough. Many practical reasons exist for citizens to abstain from participating in the European elections. It is worthwhile to facilitate voting by electronic means.

A condition is obviously that the system is safe against any attempt of manipulation, that the secrecy of the vote is guaranteed and that people have equal access to voting Europe-wide.⁴⁶ Many technical problems need to be solved before such a system can be in place, but the advantages are not negligible, in particular with a view to the place the internet has gained in the life of citizens. Why should voting not benefit from the same technologies as other services provided by the internet, like online-banking, -commerce, -education and e-government?

CONCLUSIONS

If the official programs, agendas and strategies of the European Union do not contain ideas for a beneficial role of the internet in a democratic Union, there are nevertheless voices in politics and literature calling for a more proactive approach. Let me just mention the stimulating book of Sylvie Goulard and Mario Monti, ‘De la démocratie en Europe. Voir plus loin’, published in 2012, where you find a little chapter on the internet, part of the section regarding the aspect of ‘la démocratie pour le peuple’, and in the conclusions titled ‘les idées qui nous tiennent à cœur’ the paragraph 4:

‘Le développement d’Internet (qui offre un accès interactif au savoir et à l’information et relativise territoires et appartenances traditionnelles) accroît aussi la demande de participation à la vie politique’.⁴⁷

This is what should be achieved, together with a meaningful institutional reform of the

⁴³ Caldow, *supra* n. 3, p. 16.

⁴⁴ *Ibid.*, p. 5.

⁴⁵ However experiences so far showed, that e-voting does not increase turnout but merely replaces other means of voting, see Grönlund, *supra* n. 36, p. 93 with further references.

⁴⁶ See also the requirements of The Electoral Commission, Key issues and conclusions, May 2007 electoral pilot schemes, August 2007, at p. 4.

⁴⁷ S. Goulard and M. Monti, *De la démocratie en Europe. Voir plus loin* (Flammarion 2012), p. 90-93, 239.

EU so to ensure that the EMU and the EU altogether has a good chance to function better in the future.