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Union Citizens and the European Parliament

Perception, Accessibility, Visibility and Appreciation

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1. Introduction

Several readers of this volume will be familiar with the caustic remark of Charles de Gaulle: ‘Of course, we could start jumping up and down on our seats, exclaiming ‘Europe, Europe, Europe!’, but that leads to nothing and signifies nothing. (...) We should take things as they are.’¹ The present times are obviously different from those of *Le Général*, yet the average Union citizen does not necessarily maintain a higher estimation of the European institutions, nor is he likely to have abandoned all cynicism. For instance, a recent poll reveals that less than half of those questioned are satisfied with the functioning of democracy in the EU, expressing the belief that their views are insufficiently heard.²

Over the past fifty years, politicians have however not left things as they were, and gradually expanded the powers of the European Parliament (EP). With the entry into force of the Lisbon Treaty in December 2009, the EP finally became a fully-fledged co-legislator. In addition, it obtained a principal right of consent in the conclusion of international treaties by the EU, whereas in the past, it was largely side-lined on that front.³

The Parliament has been able to make full use of these new opportunities in the last decade, which could possibly have led to a correspondingly more favourable perception, and a stronger bond between the electors and the elected. After all, by virtue of their enhanced powers, the Members of the European Parliament (MEPs) were able to accomplish more for their supporters than ever before. In this light, the results of the aforementioned survey may be sorely disappointing, and require a plausible explanation. As Elspeth Guild, to whom the current *liber amicorum* is dedicated, was regularly consulted by the Parliament during her distinguished career, it seems appropriate to explore the matter further – with some of the insights perhaps feeding into future advice she may still be asked to deliver, despite her academic *otium cum dignitate* now having commenced officially.

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1 ‘Bien entendu, on peut sauter sur sa chaise comme un cabri en disant “l’Europe! l’Europe! l’Europe!”. Mais cela n’aboutit à rien et cela ne signifie rien. (...) Il faut prendre les choses comme elles sont’, Charles de Gaulle, *Discours et messages, Pour l’Effort*, août 1962-décembre 1965, Paris: Librairie Plon 1970, p. 425.

2 European Parliament, D-G Communication, Eurobarometer, ‘Democracy on the move’, May 2018, p. 129 and p. 133.

3 See inter alia Art. 294 and Art. 218 of the Treaty on the Functioning of the European Union (TFEU).

The working hypothesis of the present contribution is that the limited appreciation for European democracy is partly attributable to the limited accessibility and visibility of the EP, and to the quality of the impressions that citizens get when the institution *does* makes headlines. To test the hypothesis, we shall rewind the film of the past five years, analyse the extent to which the citizen was involved or taken seriously in salient dossiers and procedures, and the likely impact thereof on his overall perception. Hereby, we successively look at the accessibility of the Parliament in the most literal sense (par. 2); the active and passive right to vote (par. 3); the right to petition and the European Citizens' Initiative (par. 4); transparency and the EU decision-making process (par. 5). A concluding section brings the key findings together and sketches a cautious way forward (par. 6).

2. Accessibility *Sensu Stricto*: The Geographical Dimension

Citizens who want to have access to Parliament in a literal sense need to head to its official place of establishment. For over 60 years, the shoe has been pinching terribly here. Once a month, the institution meets in plenary in Strasbourg. All other meetings and committee meetings take place in Brussels. The relocation circus is an absolute nightmare from a logistical perspective, not to mention the pressures put on scarce national infrastructures and the environment. The price tag is said to be EUR 114 million per year, the accumulated CO₂ emissions between 11 and 19 thousand tons. This egregious waste of time, money and energy is a fact of common knowledge, producing a horrendously effective anti-advertising campaign. *Pour comble de malheur*, the Parliament's secretariat is located in Luxembourg – a detail lost on the larger public, yet reducing accessibility in a literal sense further: it renders MEPs, their staff, other staff and interested outsiders critically dependent on services located at a significantly greater physical distance than is desirable. Since the arrangement is laid down in a protocol that can only be amended unanimously, and since even the reform-minded Mr Macron has shown no inclination to give up Strasbourg, all calls to bring an end to the threefold split proved fruitless so far.⁴

For the sake of completeness, we should not neglect to mention a cunning attempt at delivering change, when the Parliament itself decided to organise two subsequent plenary sessions in the capital of Alsace, so that the caravan was at least spared one back-and-forth. In the proceedings brought by the French Government before the European Court of Justice however, the manoeuvre was condemned by the Union's judiciary, preserving the grand stasis.⁵ Consequently, the negative image of the institution overall was maintained too, and one dare not speak of optimal accessibility in the most literal sense. The cumbersome geographic disposition, and the unwillingness to

4 See e.g. Cécile Barbière, 'France Continues to Block Debate on Strasbourg Seat', *EurActiv* 6 July 2017, <<https://www.euractiv.com/section/future-eu/news/france-continues-to-block-debate-on-strasbourg-seat>>.

5 Judgment in Joint Cases C-237/11 & C-238/11, *France v. Parliament*, for a similar challenge undertaken in the mid-1990s, see the judgment in Case C-345/95, *France v. Parliament*.

concentrate every component and activity in a single location, has also had a continuing negative impact on the approval rating of the EU as a whole.⁶

3. Accessibility *Sensu Politico*: To Choose and Be Chosen

The EP does not have a single franchise, meaning that there is no uniform arrangement for the election of the 751 MEPs. The reason lies in the fact that electoral law is still principally considered a national matter, leaving it by and large up to the Member States to decide how to shape the electoral process. Although the timing and the number of seats per country are fixed, as well as the right of both nationals and citizens from other EU Member States to cast their votes, registration rules and minimum thresholds may be maintained at a country's discretion. Remarkably, the Member State in which Elspeth is domiciled herself, the United Kingdom, has opted for a system of (qualified) proportional representation from the outset, while sticking to the first-past-the-post approach in all other elections.

The reader will be familiar with the criticism that, largely due to these national differences, 'European' elections have never actually taken place. The final result has always been a sum of the parts, with campaigns being mainly played out to domestic audiences, and each Member State designating its own factions, which eventually link in with an 'umbrella' party family. Proposals for a supranational franchise based on transversal lists, entailing that citizens across the EU could vote for at least a few candidates who do not stand in their own country, have crashed.⁷ Consequently, it has neither become easier for citizens to gain access *sensu politico* in the exercise of their active right to vote, by enjoying a greater measure of control over the composition of the institution; nor has such access become easier through an extension of their passive right to vote, whereby the possibility of running in a pan-European constituency could have increased their chance of winning a seat.

In this respect, the innovation of the *Spitzenkandidaten* did not make an honest difference either: the irony is that Jean-Claude Juncker, who triumphed in 2014, failed to appear on any ballot paper – not even in his native Luxembourg. Moreover, it remains a hard legal fact that the European Council is under no obligation to appoint the person who 'won' the elections on behalf of his party family.⁸ Also, the self-proclaimed 'political' Commission led by Juncker did not differ as much from its predecessors in its objectives and methods as was initially trumpeted. Besides, that peculiar task definition does not come without risks for its authority, and need not be upheld by future leaders of the institution. For this reason too, the citizen could hardly have had the feeling that,

6 Compare the aforementioned Eurobarometer, indicating that 48% of those quizzed places trust in the EU, with only 40% stating that their general impression of the Union is positive.

7 See e.g. Catherine Hardy, 'EU Parliament Rejects Transnational Lists', *Euronews* 7 februari 2018, <<https://www.euronews.com/2018/02/07/eu-parliament-rejects-transnational-lists>>.

8 Matthias Kumm and Kenneth Armstrong amusingly crossed swords on this issue in their contributions to the *Verfassungsblog*: see inter alia 'Why the Council is under a Legal Duty to Propose Juncker as a Commission President' and 'Why the European Council is NOT under a Legal Duty to Appoint Jean-Claude Juncker' on <<https://verfassungsblog.de>>.

with the Parliament as his central conduit, he managed to exert a bigger influence than before on the choices made by the EU's executive.

4. The Right to Petition and the European Citizens' Initiative

Of course, there is more to life than mobility, and in her many publications, Elspeth invariably chose to keep an eye on the position of the 'sedentary class'.⁹ For those who refuse to travel to Brussels or Strasbourg, or who wish to be heard outside the election cycle, the right to petition and the European Citizens' Initiative offer interesting alternatives. Every citizen of a Member State of the Union has the option, either individually or jointly with others, to address a petition to the EP.¹⁰ The subject however must concern the applicant directly and fall within the EU's fields of activity. The setup thus deviates from e.g. the Dutch system, wherein everyone may address the Upper or Lower Chamber with regard to every conceivable theme. In the EP, the petition is handled by a special committee of the Parliament that goes by the name 'PETI', frequently inviting applicants to elaborate 'live' on their motions.

In the last five years (2014–2018), a total of 7496 petitions were submitted. 4764 of these were declared admissible in light of the aforementioned conditions. Some of these received an individual reply, others were referred to other bodies or organs. For example, petitioner No. 1170/2015, arguing for the creation of European nuclear waste storage facilities, was ultimately re-directed to the Member State level, as the desideratum was found to lie outside the remit of the supranational institutions. Petition No. 298/2016, of which the author complained that the EU does not do enough to ensure the well-being of livestock in transit to third countries, was forwarded to the ENVI (environmental) committee. Files are also closed when the PETI committee (or, in exceptional cases, the Parliament in plenary) decides not to engage in further follow-up. This was, for example, the fate of petition No. 355/2017, the author of which called for the criminalisation of sexual acts with animals. The same was true of petition No. 2021/2014, calling for peace in Europe, and the refusal to grant asylum to religious fanatics.

A significant part of the petitions submitted has been suspended, and is open to additional signatories – often the result of there being no consensus on the most appropriate response. However, petitions equally give rise to the posing of questions to the Commission, or even to the launching of infringement proceedings against Member States, something that has also occurred in the last five years. An illustration is a series of petitions from 2016, alleging a violation of the rights of holders of maritime concessions in Italy. In addition, petitions such as No. 389/2017, of which the petitioner calls for the introduction of a 'Made in Europe' label for certain goods, have inspired (discussions about) future legislation. Therefore, to dismiss the instrument as a toothless, purely symbolic instrument would definitely not do it justice.

9 Take e.g. the paper *Pathways towards Legal Migration into the EU* (Brussels: CEPS 2017), which she co-edited with Sergio Carrera, Andrew Geddes and Marco Stefan, or the seminal *The Reconceptualisation of European Union Citizenship* (Leiden: Brill 2014), co-edited with Cristina Gortázar Rotaeche and Dora Kostakopoulou.

10 Currently codified in Art. 20 sub d and Article 227 TFEU and Art. 44 of the EU Charter of Fundamental Rights.

Anyone who analyses the petition register quantitatively is struck by the fact that the number of petitions seems of late to have decreased significantly. While there were still 2836 submitted in 2013, we see only half of that total being lodged in 2016, as well as in 2017. In 2018, the decline amounts to over 60%. This could boil down to incidental deviations, so that we best not sound alarm bells here without committing an exhaustive background study. Relatively less popular anyhow is the European Citizens' Initiative (ECI), which enables one million citizens from at least seven Member States to ask the Commission to prepare a legislative proposal on a specific topic.¹¹ If such a campaign is successful, a public hearing will take place in the Parliament. So far, only four ECIs have reached the finish line, of which only one (requesting that the right to water be properly entrenched in EU law) has triggered genuine follow-up. The initiatives to better protect human embryos, phase out animal testing and ban the use of glyphosate did not receive any notable response. Although the ECI has an undeniable potential to boost the support for the Union and its legislation, the strict procedural conditions and tight deadlines constitute serious obstacles, which have probably dimmed its attractiveness. The reforms enacted in mid-2019 are laudable, yet do not eliminate all bottlenecks.¹² In practice, one is advised not to entertain too high expectations, as neither petitions nor citizens' initiatives have ever succeeded in bridging the gap between the governing 'elite' on the one hand and 'the man on the Clapham omnibus' on the other.

5. Transparency and EU Decision-Making

Has the European *demos* perhaps gained more insight into the functioning of the Parliament and its members in recent years, or a superior access to information about the decisions it takes? It seems that the answer has to be in the negative on both counts. For instance, the rules governing the reimbursement of expenses of MEPs continue to raise questions, despite attempts to increase transparency here. A watertight oversight on how they spend the lump sum awarded for travel, accommodation, office equipment and personnel remains absent. Investigations by the Parliament's internal audit service nonetheless led to Nigel Farage and Marine Le Pen having to reimburse funds used for hiring assistants employed to carry out non-EP-related tasks. The Dutch members Judith Merkies and Annie Schreijer-Pierik shamelessly refused to justify their monthly expenses, despite being subjected to considerable pressure from their parties. Only in 2011 did the EP adopt a Code of Conduct featuring a mandatory registration of ancillary positions and financial interests. The huge variety of side-jobs and handsome remunerations cast formidable doubts on the parliamentarians' independence nevertheless. The list of 'big earners' is stunning, and many of the activities these persons undertake create at least a semblance of conflicted interests. In 2018, the practices were exposed and denounced in a detailed report by Transparency International.¹³

11 Art. 11 paragraph 4 of the Treaty on European Union (TEU).

12 Extensively on this Ellen Mastenbroek & Henri de Waele, 'Fulfilling High Hopes? The Legitimacy Potential of the European Citizens' Initiative', *Open Political Science* 2018, p. 75.

13 Transparency International, *Moonlighting in Brussels*, July 2018, <<https://transparency.eu/wp-content/uploads/2018/07/TIEU-Moonlighting-in-Brussels-MEP-incomes.pdf>>.

Initiatives to make registration of lobbyists compulsory registration were derailed repeatedly, barring citizens from acquiring insight into the influence of the latter on EU decision-making.

Traditionally, the absence of a real debating culture makes it patently unattractive for the average voter to spend time in the public gallery at Brussels or Strasbourg. In recent years, there has noticeably been more liveliness than usual, inter alia during the session in which the turbo-charged appointment of Martin Selmayr as secretary-general of the Commission was discussed, on several occasions where MEPs defended sanguine positions pro and contra Brexit, and at the historic showdown with the Hungarian Prime Minister, in which a two-thirds majority voted in favour of firing up an Art. 7 TEU sanctioning procedure. As regards the adoption of controversial international trade agreements such as the CETA, or proposed compacts on the exchange of passenger name records, the Parliament has expressed itself forcefully, and added bite to its barking.¹⁴ The interest of the media also grew accordingly.

On the whole however, these developments appear to be the exception rather than the rule. In the vast majority of cases, any pre-existing interest of the broader public evaporates rapidly pursuant to the complexity of most topics, reducing the incentives for a kerfuffle. Another factor is likely to be the incremental popularity of the ‘trilogue method’, with legislation being concocted in sinister backrooms by delegations of the Commission, Parliament and Council, reducing the official decision-making procedure to a formality. Moreover, the dominant role of the Heads of State and Government in the European Council regularly confronts the only directly elected assembly with *faits accomplis* – something that is equally bound to stir up mixed feelings in the hearts and minds of the average spectator.¹⁵ In short, looking back at the last *quinquennat*, we cannot justifiably speak of an increase in transparency, a greater (sense of) accountability, or a more open form of decision-making towards the citizen.¹⁶

6. Conclusions and Perspectives

In an interview in late 2018, Jan Zielonka noted the paradox that, while Parliament has over time been given more and more powers, fewer and fewer people could be bothered to vote, and Eurosceptic parties managed to win more and more seats.¹⁷ These data underscore the citizens’ unfavourable perception of the institution, of the EP’s functioning, and of the EU as a whole. The present contribution proceeded from the hypothesis that the limited appreciation for European democracy is partly attributable to the still limited accessibility and visibility of the Parliament, and partly to the quality of the impressions citizens get when the institution *does* make headlines. In the previous

14 See e.g. B. Kleizen, *Mapping the Involvement of the European Parliament in EU External Relations – A Legal and Empirical Analysis*, CLEER Working Papers 2016/4, The Hague: T.M.C. Asser Institute 2016.

15 On this, see Deirdre Curtin & Päivi Leino, ‘In Search of Transparency for EU Law-Making: Trilogues on the Cusp of Dawn’, *Common Market Law Review* 2017, p. 1673.

16 Naturally the judgment of the General Court in Case T-540/15, *De Capitani*, should not be neglected, but a (non-absolute) duty to disclose multicolumn tables can hardly be said to have opened up the black box entirely.

17 Maria Grazyk, ‘Academic: A Vision for Europe is Desperately Needed’, *EurActiv* 22 November 2018, <<https://www.euractiv.com/section/future-eu/interview/academic-a-vision-for-europe-is-desperately-needed>>.

sections, we have looked at the extent to which Union citizens have been involved in the past five years, and taken seriously in salient dossiers and procedures. The findings seem to confirm the hypothesis. For example, we may conclude that the accessibility of the parliamentary process has not increased in a literal or technical-metaphorical sense. The ‘traveling circus’ remains a source of frustration, and the design of the active as well as the passive right to vote remains suboptimal. Attempts at reform stalled or failed altogether. On the same footing, both the right to petition and the European Citizens’ Initiative leave many a citizen dissatisfied – a pitiful conclusion, but *prima facie* supported by a numerical analysis. Various scandals surrounding the use of public funds, and well-founded suspicions of conflicts of interests fuel the dissatisfaction further. To this, we must unfortunately add the byzantine structure of the decision-making and the shady role of lobbyists. The less frequent moments when the Parliament pops up in the news positively are probably insufficient to counter the cascade of dubious habits, defective procedures and bad publicity. Although the European Ombudsman’s proactive stances are to be applauded, her critical reports on e.g. ‘Selmaygate’ or the lack of transparency in trilogues serve to confirm the negative perceptions – certainly if such damning assessments do not manage to effect lasting changes in policy, law and practice.¹⁸

Should we then, in accordance with the advice of Charles de Gaulle in 1965, cling to our seats, and take things as they are? First of all, it deserves emphasis that the picture does not necessarily look rosier nowadays with regard to the confidence citizens place in their *national* parliaments. In comparison though, due to the opacity of the subject-matter that is usually discussed there, the EP will always experience a greater difficulty in appealing to the imagination of the masses.

In terms of solutions, the introduction of a coalition–opposition model has often been touted to make the system more transparent and intelligible. The elections in mid-2019 brought us a bit closer to that ideal, producing a larger ‘anti-EU bloc’. It is doubtful however whether the setup truly heightens the interest of the citizens, or makes them feel that their concerns and interests will be addressed better. In a globalised world, a stagnant Europe can never be a Europe that protects. Fostering disagreement merely prompts the vicious circle of a Union that is less effective than before, suffering an additional loss of legitimacy exactly because of its waning prowess.

That the EP does not possess a general right of initiative, and is dependent on the Commission’s willingness to propose new legislation, continues to puzzle the outsider and the layman alike. While no miracles are to be expected from Treaty amendment here, it would be a major step in the right direction of a mature parliamentary architecture. However, if the other deficiencies flagged in this chapter are not addressed simultaneously, European integration will not be rid of its discontents anytime soon.

Arguably, the main challenge lies not in the pushing through of drastic institutional innovations, but in the devising of targeted communication strategies in order to build a solid case for such innovations, and to sell them convincingly afterwards. After all, the distance between voters and their elected representatives decreases the easier it

18 See ‘Recommendation of the European Ombudsman in Joint Cases 488/2018/KR and 514/2018/KR on the European Commission’s appointment of a new Secretary-General’, 31 August 2018, respectively ‘Decision of the European Ombudsman setting out Proposals following her Strategic Inquiry OI/8/2015/JAS concerning the Transparency of Trilogues’, 12 July 2016.

becomes for the former to stay in touch with the latter, and so long as the latter take care to explain their every (in)action to the former. Social media are perhaps *the* modern tools for improving the perception, accessibility, visibility and appreciation of the Parliament. When deployed cleverly, they might even help to shore up the image in the United Kingdom of the EU's most democratic institution – something that is sure to please the person this *liber* seeks to honour.