



Institute for the
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- Minutes of the panel discussions -

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**N.B. this is not a verbatim transcript*
but a reported summary of the questions and answers

Panel Session I: Citizen Conventions and Referendums

- Chair: Nick Bernard, Senior Lecturer in EU Law (Queen Mary University of London)

Panellists:

- Ms Sophia Russack, Researcher Centre for European Policy Studies, Brussels – CEPS
- Dr Davor Jancic, Lecturer in EU Law (Queen Mary University of London)
- Ms Beth Wiltshire, European Programs Officer (The Democratic Society)
- Professor Dr Jukka Snell, Professor of EU Law (Turku University)

Q&A

Q1: Is the actual purpose of democratic conventions deliberative democracy or did academics understand these conventions differently from what President Macron meant? This is because there are arguments against the democratic legitimacy of consultations, which include the limited timeframe, politicisation of the process, and the lack of money.

A1 (Beth): The purpose of democratic conventions is a combination of all three. The idea behind Macron’s democratic conventions was that the national governments would organise them, but the lack of funding from the EU and national governments and their lack of interest to distribute the funds that they have to these campaigns had an adverse effect on the efficiency of these consultations. Considering the recent examples, there was not a significant period of time for their organisation and the Member States (MS) had the discretion to decide the timeframe (8 months/3 weeks/1 year). Although this was problematic because there were no limitations or a uniform approach across all MS, I think that this was not a major factor. A

more significant factor was that the democratic conventions were mainly used by the governing parties to 'make a good impression' about themselves.

A2 (Davor): The question is actually whether the involvement of the citizens is possible without having an intermediary (e.g. the organisers of the consultations/referendums/MS/governing parties/national parliamentarians, etc). The citizens want more contact with the existing institutions, and I agree that democratic conventions are still understood as a link between MS and citizens for the purpose of European governance.

Q2: I would like to make a comment about the European Ombudsman (EO). I think that some of the shortcomings concerning the monitoring of maladministration, access to documents and transparency are wider than the institution of the EO and concern deliberative democracy and participation in general.

A2 (Sophia): The current EO has reshaped the Office and her responsibilities. The EO places great importance on enquiry investigations, which are crucial. Before, there was a lack of transparency but nowadays, when a complaint arises, she gets involved and manages to address the issue in order to start a political debate, especially when the matter is a politically sensitive issue. However, the downside is that her power is limited. She can start the debates, but she has no power to tell the Commission how to appoint the civil servants, for example. To link this to participation, the EO's actions relate to participation (e.g. through the significance of debates for the citizens), but the EO does not channel the powers of the citizens in the policy-making process, which does not equate with participation.

Q3: How can the European Commission publicise the consultations? What kind of avenues can it use? I think the current problem is that the EU relies on the MS to distribute information, which sometimes failed.

A3 (Beth): I agree that relying on national governments to distribute information is not necessarily working all the time and sometimes it is not very wise to do so. Better avenues would be to use the existing networks, which are in touch with citizens to spread messages about the consultation (e.g. NGOs, the civil society, the already existing platforms which also work with EU institutions). The media also have a very important role in the society and, if used for good purposes, they can have a significant impact on the citizens' involvement. This would require for the EU to establish more connections with media channels.

A3 (Davor): The role of the media is crucial. It is unlikely that many people would follow, for example, a TV program established by the European Commission. Therefore, the traditional media, which are already well-known and well-established in the member states, would be the optimal and most effective way to go. The bigger question, which has been touched upon by the Juncker Commission, is whether the issue of citizen participation is about democracy itself, or about communication which would help to improve democratic legitimacy if it is successful.

A3 (Jukka): The lack of information was the main reason why people did not vote in situations where the EU was involved. Examples include the Dutch referendum on the Constitutional Treaty, the Irish referendum on the ratification of Treaty of Lisbon, and Brexit. A lot of people declared that they did not know much about the EU. The reasons for this are the complexity of institutions, substantive initiatives, and what the EU generally means to citizens in terms of added value. These are hard to explain in the Treaties and difficult to briefly and clearly present to the public. I underline the negative impression that the word 'constitutional' gave off, which is the most likely reason why Dutch people voted against the Constitutional Treaty, along with

the fact that the media did not focus at all on substantive explanations of the reform, so the debate was not brought out enough in the public eye. The Commission is continuously dealing with these problems (e.g. the European Pillar of Social Rights) and now the Commission's website includes factsheets, reports and videos which can also be found on social media. This clearly demonstrates that the Commission is trying to engage the citizens. These initiatives were adopted also by other EU institutions, notably the Council and European Parliament (EP).

A3 (Beth): I agree that people do not really understand the EU. One of the best things about consultations is that people spread the word by giving the positive feeling of engagement. This could finally lead to building a culture of engagement that becomes a usual and normal state of affairs.

A3 (Jukka): From my personal experience, at the height of the crisis, I was asked by a national (Finnish) radio station about the summer time directive and how it was possible to attract people's attention to this but not to other initiatives. I think this is because people are probably mainly bored and disengaged. This directive was a measure that was supposed to affect their lives, it was relatable, easy to understand and people were able to see its immediate impact.

Q4 (Mario): I would just like to make a comment on the French referendum and treaty revision processes. Given the consequences of the treaty revision process after the 2005 French referendum, one needs to deal first with the consultations. This is the reason why we do not open up treaty revision processes and instead apply 10-year old rules laid down by the Treaty of Lisbon. It is widely seen that EU institutions know that an attempt to amend the Treaties could possibly fail due to lack of disengagement for the same reasons why these had failed previously. Brexit is an example: people are not educated enough about the matters involved, what the WTO rules mean, what the customs union entails, etc.

A4 (Jukka): I agree with these comments because constitutional requirements should not be underestimated. Referendums may be seen as problematic from a European perspective, because they address national issues and not necessarily European values.

A4 (Davor): Informing the citizens is crucial. But then, the question of expertise also arises: who is informing the citizens and what are the consequences of giving false information? The paradox is reflected in the following. The citizens' first concern expressed in the citizen consultations is migration (e.g. Brexit). But the results of the Eurobarometer to the question 'what do you want from an ideal EU?' is for people to be able to move and reside freely in other MS while earning the same wages. This means that economic integration is taken for granted. The problem here is that the citizens do not have sufficient information about the connection between these economic and social aspects of EU integration and what exactly is needed to make sure that what they want eventually happens.

Q5 (Nick): Another important question is why we want to involve the citizens? Do we want them to become another stakeholder, to influence the outcome in terms of output (e.g. for the policy to be better), or to please them by giving them an opportunity to express themselves so as to add more legitimacy to the process?

A5 (Davor): I agree entirely. In the context of citizen participation, identity is also very important, particularly the connection and mutual relationship between national and European identity.

Panel Session II: Citizens' Initiatives and Legitimacy

- Chair: Dr Davor Jancic, Lecturer in EU Law (Queen Mary University of London)

Panellists:

- Professor Dr Justin Greenwood, Professor of European Public Policy (Robert Gordon University)
- Dr Mario Mendez, Reader in Law (Queen Mary University of London)
- Dr James Organ, Assistant Professor in EU Law (University of Liverpool)
- Dr Luis Bouza García, Assistant Professor of Political Science (Universidad Autónoma de Madrid/College of Europe)

Q&A

Q1: Does the ECI work at the national level? What are the lessons that we have learnt from the ECI attempts?

Q2: It can be observed that the failed ECIs mainly concerned controversial problems that cannot be addressed in legislation, for which the Commission does not necessarily have enough competence, or that addressed unexpected areas such as minority conflicts. Do you think that mechanisms to involve the citizens in EU governance would prove more efficient if such problems are dealt with through public consultations while clear, technical and substantive ideas for lawmaking stay with ECIs thus improving the quality of EU lawmaking?

Q3: Does the Commission have an additional responsibility to consider the likelihood of the success of ECIs?

To James: The ECI is presented as a right. How did the CJEU deal with this question?

To Luis: What are your thoughts on the likelihood of success of the new ECI reforms?

A1+A2+A3 (Luis): The ECI tends to enable the organized interest to channel ideas in the policy-making system, so this is not necessarily an initiative for the ordinary citizen. An ECI is considered successful based on the extent to which it provides a channel to address issues and raise awareness, so its success is not determined by the degree of policy change (e.g. how many ECIs resulted in the Commission acting on them). I acknowledge that it is difficult to assess this conclusively, but the fact is that the ECI is a helpful tool because it acts as a bridge between the Commission and citizens. Successful ECIs in terms of protest/movements were rather seen as a crisis, for example 'One of Us' concerning abortion, 'Stop TTIP', 'Stop Brexit' – sending new demands from the movement.

A1 (Mario): I mainly agree with Luis' observations. An ECI is characterised by a rushed process. There have been a significant number of registration refusals due to requirements not being met. It is time for valuable lessons to be learnt from the last decade regarding the initial regulation that introduced the ECI. The lesson is the following: it can be harmful for the EU and not helpful to achieve the purpose of an ECI if ECIs are used as national agenda initiatives to change policy at the EU level. The MS should therefore learn from the EU how to involve the citizens (now with the 2019 Regulation on the ECI reform), not the other way around as it has been the situation previously (Regulation (EU) No. 211/2011). A few more points referring to the 'Minority SafePack' ECI: with regard to partial registration, there is scope for more clarification, relevant ramifications for external relations and other subjects. The Commission

has usually refused to acknowledge criticism against it when it did not act based on ECIs. Although it has discretion to refuse the proposal/consider the ECI, I think that it can do more to manage citizens' expectations in case of unsuccessful ECIs. However, I am mostly optimistic about the future of ECIs. It is a 7-year old initiative which has proved more successful than national initiatives have ever been and looks even more promising after the reform effected by the 2019 Regulation.

A1 (Justin): The point is that an ECI does not have to be judged based on the change of policy, namely whether an ECI leads to a change in EU legislation. I agree with the points mentioned and I would like to reiterate the importance of the fact that the ECI, the world's first transnational initiative, has proved more successful than national initiatives.

Q4: I have a few questions concerning the managing expectations in the context of ECIs. Namely, there were some ECIs that addressed issues falling outside the competences of EU institutions. Is it not crucial in the registration process to make sure that the topic dealt with in the ECI falls under the competence of EU institutions? Is partial registration a way forward or a solution to this problem? Particularly because courts have continuously used the argument that the ECI is a right.

A4 (James): One thing is for sure: expectations are difficult to manage. Both sides – citizens and the Commission – involved in the process make a considerable effort in this regard but the process has started to be linked with other participatory mechanisms that exist, such as recommendations and consultations of people from different groups.

Q5 (Sophia): The EU Regulations on the ECI involve public hearings in the EP. Has this been successful?

A5 (Luis): So far, there has been little debate in the EP. Movers were disappointed by it and it could be said that the ECI is based on the idea that that it should not be more authoritative than the EP, meaning that there should be no obligation for the EP to act but only to consider the debate.

A5 (Mario): Future hearings are going to look different than the current ones. In particular, there is going to be more public attention and national parliaments will also be involved. Following the public hearing, the EP should follow the response of national parliaments. However, there is a possibility of a conflict arising between the involvement of the actors shaping the public sphere and the necessary political support in the EP.

Q6: How has the Commission's review of ECIs evolved?

Q7: When would the Commission feel obliged to act? Should there be a threshold regarding signatures? The Commission is 'invited' but maybe this is desirable when we talk about abortion campaigns. Should the Commission be politically exposed when it does not take any action? Why should there be an obligation since this is not necessarily a political priority?

A7 (Mario): Lately, the burden of proof has increased for the Commission. Partial registration is an example that the Commission's refusal is limited. A strict review by the Commission of the ECI involves an obligation to consider the public plenary debate and those between EU institutions and the citizens. As to when the Commission should be obliged to act and whether there should be a relevant threshold to compel action, steps could perhaps be taken in the

future, for example, for the Commission to take up ECIs that have gathered over 10 million signatures and oblige EU co-legislators to start debates. It remains to be seen what the future will bring concerning the ECI reform. It could also be significant for the Commission to give greater consideration to ECIs in policy areas in which the Commission undoubtedly has competence to propose legislation.

A6 (James): It is very likely that the Commission's duty to give reasons as to why it did not consider the ECI would be highlighted by the CJEU again, depending on the way in which the ECI reforms evolve.

A6 (Luis): The Commission is probably just waiting for an ECI to be in line with its competences and agenda. For example, an initiative to improve the Erasmus scheme would be more likely to be successful than something as political as 'Stop Brexit'.

Q8 (Davor): What is the relationship between big and small MS when it comes to ECIs? To what extent do larger MS have an advantage in the ECI due to their larger population?

A8 (Justin): Certainly, Germany has dominated the start of the ECIs. But there are certain examples like the topics in Bulgaria and Ireland that have been started and proved successful in the end.

A8 (Mario): The procedure is based on degressive proportionality, i.e. larger MS need a lower number of signatures and the other way around for smaller MS. So, it is an initiative that demonstrates that consideration has been given to all MS depending on their population.

Panel Session III: Citizen Access to EU legislative and accountability processes

- Chair: Dr Mario Mendez, Reader in Law (Queen Mary University of London)

Panellists:

- Dr Natassa Athanasiadou, Assistant Professor of EU Law (Maastricht University)
- Dr Nikos Vogiatzis, Lecturer in EU Law (University of Liverpool)
- Dr Robert Zbiral, Associate Professor, Department of Constitutional Law and Political Science (Masaryk University)
- Mr Tiernan Mines Hello Lamp Post on "Using On-Street Engagement Platforms to Empower Citizens in the Brexit Debate"

Q1: Why did the ECJ find in *De Capitani* that no extreme pressure on the Commission was found since there were a lot of examples to the contrary?

A1 (Natassa): Commission is always affected by pressures applied by different groups. But the Court in that case decided that under the circumstances, there was no extreme pressure that would justify non-disclosure of the documents. The ECJ has also been somewhat inconsistent because it sometimes mentioned that no evidence was needed and sometimes that justifications were insufficient.

Q2: I have a question concerning the summer time initiative. Why did it get so many responses? Why did the Commission decide to proceed so quickly with the change in legislation? And is it a problem that public consultations are too technical?

A2 (Robert): 70% of the responses came from Germany. The problem is that people do not give the responses on their own but are rather influenced by the narrative prevalent in their country, which depends on the way in which an initiative is portrayed at the national level. I think that there is merit in opening public consultations even when very few responses are received instead of targeting a certain group of lobbyists that might be perceived as selective. So, in the example of the summer time directive, the fact that 70% of the responses came from Germany can be seen as an attempt to pursue a national goal at the EU level.

Q3: If the two purposes of public consultations are getting feedback from experts and business groups and receiving views from the citizens, is there really a conflict between experts and citizens' participation?

A3 (Robert): The Commission is already doing this in two rounds, and, through observation, it can safely be said that the Commission attaches greater value to the opinions' of the citizens at large rather than to an insignificant number of opinions from experts irrespective of the quality of the advice. I think that public consultations fail even at the national level for much the same reasons.

Q4: I have a question about cases where the consultation/impact assessment processes are outsourced: do we have any evidence that this is general practice or does it happen in just a limited number of circumstances? How does this affect the outcome? Also, who is accountable in the end for the selection of the voices considered by the EP Committee on Petitions?

A4 (Robert): Impact assessments should be objective, but this may not be the main problem. The evaluation of them is also outsourced. This should not be problematic if you have a closed questionnaire. From my own research, I noted that when I was looking at the responses for a certain topic, the repetitive responses would be filtered out by a software. If similar or same responses were the result of a collective campaign, this would be identified. I am not sure how the algorithm works, but even if there was a campaign, what does this say about the democratic process and what kind of impact does that have?

A4 (Nikos): It is worth looking into whether or not the approach taken by the EP Committee on Petitions in relation to the processing of petitions is systematic.

A4 (Natassa): Concerning impact assessments, the process is outsourced because it is both the responsibility of the Commission and it is done on a case-by-case basis. There is no general approach, and various components could be analysed, for example, budgetary, economic, social, etc.

Q5 (Davor): If we were to delete the clause in the Treaty that gives citizens the right to petition the EP, would we lose anything?

A5 (Nikos): Efforts have always been made to prevent the removal of this right. This is an established right. Although it has not always been successful, we can see that we have positive examples in certain MS that citizens sometimes engage with petitions, especially in the online environment. To take full advantage of this initiative, we should instead focus on how the right should be shaped based on the existing positive precedents. If the effort is made, this would also increase the visibility and democratic legitimacy of the process.

Q6 (for Natassa): Why did you put a question mark in your presentation when considering the 'space to think' argument put forward by the Commission in *De Capitani*? How wide should this EU institutions' 'space to think' be and how significant is it at the end of the day?

A6 (Natassa): Regarding the institutional space to think, the Commission's argument was that impact assessments are disclosed when they are final and the same goes for trilogues. The position in this case was for the document to be disclosed at the end although the Ombudsman's recommendation was to be disclosed when the trilogue is finalized and as early as possible. 'Space to think', in my opinion, is significant to enable EU institutions to have enough time not to reach a conclusion but to have a clear understanding of the results. The question remains whether this is good or bad. Of course, it is not good to have closed proceedings/deliberations for months but, certainly, a balance should be found. Take the example of Brexit and how inconclusive information presented too early could decisively influence masses.