

# CITIZEN RIGHTS

A STATE OF  
DEMOCRACY:  
TOWARDS  
CITIZEN RIGHTS  
PROTECTION  
IN THE EU

**The Citizen Rights toolkit has been produced by European Civic Forum and European Alternatives as part of the Citi-rights Europe project.**

**The European Civic Forum is a transnational network that brings together over 100 associations and NGOs across 27 countries in Europe, actively working on issues such as citizenship education, defence of human rights and the advocacy of democracy.**

**European Alternatives is a transnational civil society organisation and citizen movement promoting democracy, equality, and culture beyond the nation state.**

**This publication has been produced with the financial support of the Fundamental Rights and Citizenship Programme of the European Union. The contents of this publication are the sole responsibility of European Alternatives and European Civic Forum and can in no way be taken to reflect the views of the European Commission.**

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This project is funded by the Fundamental Rights and Citizenship programme of the European Union

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# EXECUTIVE SUMMARY

**The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.**

## **Article 2, Treaty on European Union (TEU)**

Article 2 has a prominent place in the EU treaties, yet a vast gap exists between the rights guaranteed by the EU and the exercise of these rights. Unclear laws, disempowerment or fear of reprisal can prevent people from knowing and enjoying their rights.

The EU's main response to ensure that these values are upheld are through Article 11 TEU and its mechanisms to encourage citizen participation in its policy development processes, and Article 7 TEU, allowing the Union to react to systematic threats to fundamental values by Member States.

It is clear however that these processes are not enough. Participation tools are often weak or non-existent, denying citizens of the EU the opportunity to engage in the EU's work, while Article 7 and its pre-processes are unlikely to be used. Proposals to close this gap and build EU oversight of Member States that violate fundamental rights and values also heavily lean towards technocratic or political decisions rather than citizen participation.

Concluding this report, we assess active citizenship and propose a radical overhaul of the way European institutions include citizens in EU level decision making and protection of human rights. This includes:

- Putting citizens' rights and the common good at the centre of European policies
- European institutions, and particularly the Commission, as guardian of the treaties, becoming a driving force in creating a more enabling environment for participation
- Building a clear and structured framework for regular dialogue with civil society
- Putting the respect and the promotion of the fundamental values of the Union and the core European requirements of democracy and the rule of law at the forefront of the Institution's actions
- Establishing participatory mechanisms and tools to secure rights protection throughout Member States
- Protecting the rights – including the right to participation – of third country nationals



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# Introduction

In the past five years people across the EU have seen large scale attacks on social and cultural rights, discrimination, attacks and violence against minorities, mass surveillance, and challenges to democratic rights.

Of particular concern have been the on-going challenges to democratic rights in Hungary, leading in 2013 to the Tavares report<sup>1</sup> presented to the European Parliament, outlining options for addressing EU member states that fail to respect the EU fundamental values listed in Article 2.

Hungary is far from being the only EU Member State where fundamental rights are in danger however, with other high profile examples in recent years including the UK's mass surveillance programmes<sup>2</sup>, anti-protest laws enacted in Spain<sup>3</sup>, and the forced eviction of Roma in Bulgaria and France<sup>4</sup>.

The most recent example of the Polish governments' moves against media freedom and judicial independence unfortunately perfectly illustrate the current challenges. Limitations to the independence of the judiciary undermining the system of checks and balances and violations of the constitution, restrictions on the autonomy of the public media and a challenge to basic individual rights are direct threats to the values lying at the heart of European democracy.

On the EU level, 2015 saw over 3,400 people drown in the Mediterranean Sea<sup>5</sup>, an increase on the 3,279 people who died in 2014<sup>6</sup>, while a 2015 report prepared for the European Parliament found that austerity in the EU is having a fundamentally negative effect on the protection of both economic, social and cultural rights and civil and political rights.<sup>7</sup>

On the other hand, the engagement of civil society and citizens at the European level remains weak. This includes both at the level of citizens being able to approach the EU on national level threats to fundamental and citizenship rights, beyond legal action – which is not always possible – and importantly to engage the EU on the policy decisions it takes, including those that affect fundamental values.

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<sup>1</sup> Rui Tavares, Report on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)), Committee on Civil Liberties, Justice and Home Affairs, A7-0229/2013

<sup>2</sup> Amnesty International, Amnesty International Report 2014/15: The State of the World's Human Rights, 25 February 2015, p. 392

<sup>3</sup> Eden Blake, Spain Gag Law: Protesters Rally Against New Public Demonstration Laws, International Business Times, 07 January 2015

<sup>4</sup> Office of the High Commissioner for Human Rights, Zeid urges France, Bulgaria to halt forced evictions of Roma, 11 September 2015

<sup>5</sup> International Organization for Migration, Mediterranean Update – Migrant Deaths Rise to 3,329 in 2015, 30 October 2015

<sup>6</sup> AFP, More than 2,000 migrant deaths in Mediterranean in 2015, says monitoring group, The Telegraph (UK), 04 August 2015

<sup>7</sup> Aleksandra Ivanković Tamamović, Milieu Ltd., The impact of the crisis on fundamental rights across Member States of the EU Comparative analysis, Study for the LIBE Committee, 2015.



Through the following sections, we will explore firstly the possibility of citizens to engage with the EU in defence of their rights, then look at the proposals that have been made to establish a mechanism that would go further than current mechanisms in holding EU Member States to account for violations of EU fundamental values, before returning to look at active citizenship as a way to further engagement and making recommendations for reform.



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# EXISTING PARTICIPATORY MECHANISMS FOR CITIZENS TO STAND UP FOR THEIR RIGHTS:

## STATE OF PLAY AND LIMITATIONS

Protecting, defending, and claiming rights in the European Union and its Member States is a constant struggle for citizens and for organised civil society. At the European level, while citizens and civil society do benefit from growing participation mechanisms in order to ensure EU policies are designed and implemented in line with the values and rights enshrined in the treaties and to ensure they can protect and access their fundamental rights, national policies implemented by Member States, as shown recently by the examples of Hungary, Spain and Poland, can heavily impair fundamental rights as well. Finding the way to raise awareness and fight violations of these rights at the Member State level could though also be taken up EU mechanisms - this will be explored further in this report.

### At the European level

The right for EU citizens to participate in the EU decision making process is enshrined in the European Treaties. Article 11 of the Treaty on European Union gives flesh to this right to active participation:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens

consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 21 of the Treaty on the Functioning of the European Union.

This right to “have a say”, that is made concrete in participation mechanisms is not only a right to influence European policies, but also a means to ensure these policies are made in accordance with the values enshrined in the European treaties. Thus, they are an integral part of available tools for citizens to defend their fundamental rights and, as such, should be further developed.

In integrating Article 11, the European Institutions have however diverged widely in function and practice. Looking at the different mechanisms and formal and informal practices implemented by the European Commission, the European Parliament and the European Economic and Social Committee gives a picture of this diversity in engagement and in the following we will explore recommendations to improve these. It should be noted that these practices do not solely address the opportunities offered to individual citizens but also the opportunities for citizens to actively participate through organised civil society. It should also be noted that these institutions are the most open to citizen engagement, while the Council of the EU and institutions such as the European Central Bank and FRONTEX give virtually no space for participation.

# European Commission

## Consultations

Since the adoption in 2002 of the Commission's Communication on minimum standards for consultation<sup>8</sup>, the European Commission has widely developed the process of consulting with citizens, civil society organisations and various stakeholders at different stages of the policy-making process. Under this Communication, to ensure transparency and coherence the Commission has to respect the following minimum standards:

- > All communications relating to consultation should be clear and concise, and should include all necessary information to facilitate responses;
- > When defining the target groups in a consultation process, the Commission should ensure that relevant parties have an opportunity to express their options;
- > The Commission should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences.

In 2015, 77 consultations covering all fields of European Union action were opened to the public on the platform Your Voice in Europe<sup>9</sup>. This is the most used mechanism of consultation by a European institution towards individual citizens and organized civil society. Consultations specifically related to rights initiated by DG Justice covered topics such as the European

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<sup>8</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:en:PDF>

<sup>9</sup> [http://ec.europa.eu/yourvoice/consultations/index\\_fr.htm](http://ec.europa.eu/yourvoice/consultations/index_fr.htm)

Citizens' Initiative (2010), data protection (2009), EU citizenship and democratic participation (2012, 2015) and gender equality (2015).

The opportunity given to individual citizens and to organised civil society to make their voice and opinions heard on many fields of action and on many specific initiatives of the European Union is a welcome advancement to the fulfilment of the right to active participation. However, this mechanism is not flawless and has a number of limitations.

> The user-friendliness and dissemination of the platform itself, as well as consultations is a first limitation. The vast majority of consultations are only available in English, already limiting the potential for respondents. The platform Your Voice in Europe, while gathering all past and present consultations in a rather easily accessible format, re-directs to DGs specific websites. Each DG then presents the topic in its own format and level of information. No streamlining across DGs is offered in order to facilitate the process. Promotion of the platform also remains rather limited and, if many European NGO networks are very well aware of its existence, it only marginally reaches individual citizens.

> The required level of expertise is another obstacle to wider citizen participation in these consultations. While some consultations can be labelled as easily accessible regarding the language used, the topic addressed or the questions asked, others can appear much less accessible. From the inherent complexity of some areas of EU policy, to the use of overly technical language, individual citizens who don't possess specific knowledge or expertise may be left puzzled when trying to answer many of the consultations. As an example the recent consultation on "*impacts of maximum remuneration ratio under Capital Requirements Directive 2013/36/EU (CRD IV), and overall efficiency of CRD IV remuneration rules*"<sup>10</sup> which was addressed at all citizens, can hardly be labelled as clearly accessible.

> The transparency and responsiveness of the European Commission is also often questioned in the case of public consultations. Results of past consultations are not all equally available. In addition, it remains unclear to what extent the input gathered through consultations is integrated in the next stages of the policy-making process. Notably, the results of the 2012 Consultation on "EU Citizens: Your rights, your future" that served as a basis for the 2013 EU Citizenship report, were not published.

### Structured dialogue

The increased efforts since the 1990s to establish consultation procedures and a more or less structured form of sectoral dialogue with civil society organisations bear witness to a growing awareness of EU institutions of the importance of giving organised civil society the opportunity to participate in European policy-making.

Since then, structured dialogue has developed in different areas of EU action and is taking very diverse forms. As the examples given below demonstrate, the concept of structured dialogue covers a wide range of practices and action. Their common feature is to gather civil society around topics of interest for them, to allow political dialogue, exchange of opinions and in the best cases the formulation of policy recommendations shaped in cooperation between the European Commission and civil society.

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10 [http://ec.europa.eu/justice/newsroom/civil/opinion/151015\\_en.htm](http://ec.europa.eu/justice/newsroom/civil/opinion/151015_en.htm)

Where structured dialogue mechanisms are in place, civil society organisations have found a ground to coordinate, to draw up common positions and thus to gain legitimacy in their relations with European institutions. However while the effort initiated by European institutions to establish sectoral structured dialogues in different fields can be praised, once again, there are clear limitations.

> There is no common framework across the different Directorates General of the European Commission. Therefore methods and practices, and even the existence of structured dialogue mechanisms themselves depend on the political will of each DG.

> In addition, the level of involvement and engagement offered to citizens and civil society organisations through the existing structured dialogue processes also varies greatly: from expert-oriented dialogue and consultation in the case of the Fundamental Rights Platform to the much wider and more developed structured dialogue in the field of youth, which is the closest EU political practice to co-decision making, a large spectrum of involvement can be seen.

### Example 1 - Structured dialogue in the field of youth

Structured dialogue in the field of youth, which will enter its 5<sup>th</sup> cycle in 2016, is the best known and most developed example of sectoral dialogue at the EU level.

Structured dialogue with young people serves as a forum for continuous joint reflection on the priorities, implementation, and follow-up of European cooperation in the field of youth.

It involves regular consultations of young people and youth organisations at all levels in EU countries, as well as dialogue between youth representatives and policy makers at EU Youth Conferences organised by the Member States holding the EU presidency, and during the European Youth Week.

Thematic priorities are decided every 18 months for each Trio Presidency of the EU by the Council of Youth Ministers who consults with youth organisations in order to define the thematic priority.

Wide consultations are conducted with young people and youth organisations at the national level during the 18 month cycle. A dedicated EU budget line under the Erasmus+ programme budget supports the implementation of these consultations in all EU Member States. At the European level, the European Youth Forum, the main coordination platform for youth organisations in Europe, also receives funding to carry out EU-wide activities related to the structured dialogue process. The EU Youth Portal<sup>1</sup>, the official EU platform for youth information has also been used to gather input.

In the Member States, the participatory process is organised and ensured by National Working Groups comprising, amongst others:

- > representatives of youth ministries;
- > national youth councils;
- > local and regional youth councils;
- > youth organisations;
- > young people from diverse backgrounds;
- > youth researchers.

The specificity of the structured dialogue in the field of youth resides in its very wide scope and outreach. It aims at gathering inputs from a very large number of young people across Europe and doesn't limit itself to expert opinion.



## Example 2: The Fundamental Rights Platform (FRP)

The European Union Agency for Fundamental Rights (FRA) is an independent advisory body of the European Union. It provides expertise and evidence to help in the formulation of policy and legislation at both the EU and national levels (when and where Member States are acting within the scope of EU law).

The FRA engages in structured dialogue with civil society through the Fundamental Rights Platform (FRP). The FRP is the agency's channel for cooperation and information exchange with almost 400 civil society organisations, working on numerous fundamental rights issues across the EU. The platform brings together a diverse group of actors on the European, national and local levels. It is a unique forum that allows for a European debate on fundamental rights. The platform meets once a year.

Through the FRP, civil society organisations are directly informed about the agency's work, explore synergies with their activities, and provide valuable input into the FRA's Annual Work Programme and Annual Report, helping to better tailor the agency's work to the real needs of European citizens.

The platform allows participants to:

- > get first-hand information about FRA's work;
- > provide feedback and suggestions for the agency's Annual Work Programme and Annual Report;
- > participate as stakeholders at different stages of FRA thematic projects;
- > take part in the annual Fundamental Rights Platform meetings, which discuss issues of mutual concern and are also opportunities to share knowledge and become acquainted with topics;
- > regularly exchange information on the e-FRP, an online communication platform;
- > elect an advisory panel that assists FRA's director in coordinating FRP activities.

The FRP seeks to address a range of objectives:

- 1) Raise public awareness of fundamental rights;
- 2) Enhance the impact of FRA output at the EU, national and local levels;
- 3) Connect civil society organisations and enable dialogue and exchange of good practices;
- 4) Break the silos between different fundamental rights stakeholders and actors;
- 5) Understand the capacities and constraints of civil society organisations;
- 6) Explain the capacities and constraints of FRA in relation with its mandate and resources.

The role of the FRP remains extremely limited. The FRA itself is an advisory consultative body that doesn't hold a political role. The FRP is similarly a consultative body within the FRA. While NGOs' opinions can contribute to FRA's recommendations and opinions, it is very unlikely that this will lead to any substantial policy changes. Some NGOs within the FRP also make the critique that the agency cannot receive complaints regarding threat to fundamental rights.

## European Citizens' Initiative (ECI)

The ECI is the most recent participation tool offered to European citizens. It stems directly from Article 11 of the Lisbon Treaty which entered into force in 2009. However, the first registered ECI, *Fraternité 2020*<sup>11</sup>, was only launched in 2012.

The European Citizens' Initiative allows one million EU citizens to participate directly in the development of EU policies, by calling on the European Commission to make a legislative proposal in one of the areas where the Member States have conferred power to the EU.

A few figures can help to better understand the current use of the European Citizens' Initiative. Since 2012, 56 European Citizens' Initiatives were submitted to the European Commission. 20 of them were refused at an early stage by the EC mostly under the assessment of the Commission that they "fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties." 16 initiatives were carried out but didn't gather sufficient support; 11 were withdrawn by the organisers during the process; 6 are currently gathering signatures or have recently closed.

These figures leave 3 successful initiatives that gathered more than 1 million signatures and were answered by the Commission:

- > *Stop vivisection*, an initiative aimed at phasing out animal experiments;
- > *One of us*, which aimed at ending the financing of research that destruct human life before birth;
- > *Water and sanitation are a human right! Water is a public good, not a commodity!* aiming at protecting and developing the right to water as a fundamental right and public service accessible to all.

After 4 years of experience, it is clear that the ECI is limited as a participatory tool. The "*ECI Campaign, for a European Citizens' Initiative that works*"<sup>12</sup> has identified 12 flaws and suggested accompanying recommendations in order to make this direct democracy tool more efficient and accessible to citizens. Their 12 recommendations are as follows<sup>13</sup>:

- 1. Make the registration procedure less restrictive.**  
Nearly half of proposed ECIs have been declared "legally inadmissible" by the Commission and refused registration – sometimes due to rigid legal interpretations and political pressure. To ensure its legitimacy and engage citizens, ECI topics should not be so strictly limited.
- 2. Allow ECIs that require treaty amendments to implement.**  
Many topics important to citizens require changing EU treaties. The Commission may propose treaty changes on its own initiative. So ECIs should be able to ask it to do so.
- 3. Ensure that the Commission takes successful ECIs seriously.**

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<sup>11</sup> <http://www.fraternite2020.eu/>

<sup>12</sup> <http://www.citizens-initiative.eu/>

<sup>13</sup> <http://www.citizens-initiative.eu/12-ways-to-build-a-european-citizens-initiative-that-works/>

None of the first successful ECIs have led to concrete policy proposals. Yet campaigners will only use the ECI if they are likely to impact policy. The Commission should therefore always strive to respond to successful ECIs with concrete actions, including legislative proposals.

**4. Simplify and harmonise personal data requirements and procedures.**

Each Member State determines the personal data its nationals and residents must provide, forms to use and data protection procedures to follow. The result is a nightmare for campaigners. Furthermore, EU citizens living outside their country of nationality often cannot support an ECI. Member States should strive to use common forms, data protection rules and personal data requirements limited to name, address and nationality. A single EU-wide coordinating body could simplify signature verification.

**5. Eliminate ID number requirements.**

Many potential supporters have refused to sign an ECI when asked to share ID numbers. The European Data Protection Supervisor determined that it was not necessary to collect ID numbers, yet 18 countries still require them. Some never use the ID numbers they collect.

**6. Redesign the online signature collection system.**

Significant and persistent online signature collection problems have led every ECI campaign to lose signatures and collection time. The software needs to be redesigned from scratch with the participation of campaigners, stakeholders and civic IT specialists. It must be user-friendly, accessible to people with disabilities, allow for electronic signatures, incorporate online campaigning best practices, respect data protection regulations and facilitate safe data sharing with national authorities. In addition, the technical regulation should be simplified and all ECIs given the option of using Commission hosting services.

**7. Allow the collection of e-mail addresses within the ECI support form and permit ECI organisers to contact signatories.**

ECI campaigns do not have access to the email addresses of their ECI's signatories. This limits the ECI's ability to mobilise Europeans and facilitate transnational debate. To allow two-way communication, email addresses need to be collected within the ECI support form.

**8. Let ECI campaigns choose their own start date.**

An ECI's 12 month signature collection period begins the day the Commission registers it, within two months of its submission. Without a known start date, campaign planning and media outreach are challenging. Campaigns should be allowed to choose their own launch date, within six months following registration.

**9. Lower the age of ECI support to 16.**

The same age limits apply to the ECI as to EU elections. But the ECI only proposes, but does not directly impact, policy. Many ECI topics are relevant to youth, helping to engage them in European public affairs. The Austrian model allowing 16-17 year old ECI supporters should be expanded to all Member States.

**10. Offer an ECI support infrastructure with legal advice, translation and funding.**

Most grassroots ECI campaigns struggle to fund needed legal advice, translation services and campaigning guidance. As a democratic tool, the ECI is a public good that should benefit from a public infrastructure for practical and financial support.

**11. Provide a legal status to protect citizens' committee members and allow fundraising.**

ECIs need a European legal status that shields citizens' committee members from personal liability and allows for more efficient and transparent management of finances.

**12. Increase public and media awareness of the ECI.**

Public awareness of the ECI is so low that campaigns must educate the public about both the ECI and their topic. The ECI thus needs to be promoted as an official EU instrument to raise public awareness and overcome citizen distrust of sharing required personal data.

**Citizens' dialogue<sup>14</sup>**

Citizens' dialogues made their appearance in 2013 within the framework of the European Year of Citizens under the initiative of Viviane Reding, vice-president of the European Commission in charge of citizenship.

One of the key objectives of the European Year of Citizens was to stimulate a debate with EU citizens on European issues. Citizens' dialogues were one of the tools to achieve this objective, alongside the partnership with civil society through the European Year of Citizens Alliance – EYCA.

The concept of the Dialogues originates from the model of “town hall meetings” or local fora and boils down to an ancient format of discussion between citizens and decision-makers in the context of a democratic system.

The final report of the European Year of Citizens<sup>15</sup> expressed a positive evaluation of the Citizens' Dialogue. It highlighted the openness and transparency of the dialogues both in their construction and in the answers given by policy-makers. In addition, the report noted that the dialogues “helped in addressing a pedagogic message on the breakdown of responsibilities between EU politicians and institutions and national politicians.” The wide outreach thanks to dissemination efforts was also noted.

However, despite the rather wide and diverse audience, it was noted that the participants to the Citizens' Dialogues “cannot be considered a representative sample of the EU population as a whole. They had been globally more exposed to EU issues and thus already had a viewpoint, whether positive or negative.” The overall number of direct participants in the Citizens' Dialogues remains quite limited to a mere 0.003% of the whole EU population.

Citizens' Dialogues are a welcome information and dialogue mechanism but their effect both on citizens' and on policy-making remains at best unclear. To what extent do participants feel more involved and concerned about European policies? To what extent are policy-makers using the

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<sup>14</sup> <http://ec.europa.eu/citizens-dialogues/>

<sup>15</sup> <http://europa.eu/citizens->

[2013/sites/default/files/content/publication/EYC%20evaluation%20final%20report%20FINAL\\_0.pdf](http://2013/sites/default/files/content/publication/EYC%20evaluation%20final%20report%20FINAL_0.pdf)

inputs received during the dialogues in their work? These are questions that remain to be answered.

# European Parliament

## Public hearings

European Parliament Committees can organise hearings with experts where this is considered essential to their work on a particular subject. Hearings can also be held jointly by two or more committees. Most committees organise regular hearings, as they allow them to hear from experts and hold discussions on key issues.

In addition, Members of the European Parliament can host various events within the European Parliament allowing civil society organisations to discuss topics of interest for them and exchange their views with a diverse range of stakeholders or individual citizens.

While this is a welcome mechanism for civil society organisations and represents an opportunity to advance views and causes at the heart of one of the European Institutions, it remains a very restrictive and limited process. It is virtually inaccessible to individual citizens as it requires a level of knowledge and expertise, relevant networks and resources that can only make it a limited mechanism for active interaction between citizens and policy makers.

## Petitions Committee

The right to petition the European Parliament is granted in the European treaties.

### Article 227 – TEU

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

A petition may take the form of a complaint or a request and may relate to issues of public or private interest.

The petition may relate to an individual request, a complaint or observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter. Such petitions give the European Parliament the opportunity to call attention to any infringement of a European citizen's rights by a Member State or local authorities or other institution.

The European Parliament's committee on petitions decides on the admissibility of submitted petitions and on the course of action to be taken regarding admissible petitions. The European Parliament cannot go to the court as a follow-up of petitions, but can take action (reports, informing other institutions, etc.) that leads in several cases to legal or judicial action.

This mechanism presents the advantage to be quite clear and to be available on a user-friendly online platform. However, its very limited outreach to citizens is its main limitation. The required

knowledge about EU fields of action and competences, as well as the legal competences, drastically limits its use.

## EESC

The European Economic and Social Committee (EESC) Liaison Group was established in 2004 as a measure to foster stronger and more structured cooperation between European civil society organisations and the EESC.

The Liaison Group functions as both a communication channel and a forum for dialogue, enabling the EESC to be more effective as intermediaries between the EU institutions and civil society, and permitting organisations to cooperate better on matters of common interest. All major sectors of civil society are represented through one or two organisations, usually large coordination platforms.

As both a liaison body and political dialogue structure, the EESC Liaison Group has allowed European civil society to advocate for its claims and demands and to pass it to other institutions through the EESC. The Liaison Group is unique among all EU Institutions.

During the NGO Forum organised in 2015 by the Latvian Presidency of the EU, the EESC adopted a *Roadmap for the implementation of Articles 11(1) and 11(2) of the Treaty on European Union. Towards better EU civil dialogue and involvement of citizens for better policymaking.*<sup>16</sup> This roadmap offers a set of recommendations and good practices towards improved practices for civil dialogue at the EU level.

Its limitation resides in the limited role of the EESC as a consultative body that holds no legislative, executive or judiciary power. This limitation can be seen in the follow up of the roadmap. Other EU institutions are not required to react and to take action following the publication of EESC reports and opinions.

## European Ombudsman

The European Ombudsman is an important body that serves as a direct interface between EU citizens and EU institutions in the field of rights protection. It is an independent and impartial body that holds the EU administration to account.

The Ombudsman investigates complaints about maladministration in EU institutions, bodies, offices, and agencies. Only the Court of Justice of the European Union, acting in its judicial capacity, falls outside the Ombudsman's mandate. The Ombudsman may find maladministration if an institution fails to respect fundamental rights, legal rules or principles, or the principles of good administration. This covers administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, and unnecessary delay, for example. Any citizen or resident of the EU, or business, association, or other body with a registered office in the EU, can lodge a complaint.

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<sup>16</sup> <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-ngo-forum-riga-documents>

However, the Ombudsman does not have enforcement powers to compel other EU institutions to accept its findings and recommendations, rather its ultimate power is to refer the case to the European Parliament through a special report.<sup>17</sup>

## Conclusion

The development and improvement of participation mechanisms offered to citizens and civil society organisations is a long standing struggle of organised civil society. While the Lisbon Treaty provided a new field of opportunities and while the practices implemented by the different institutions are evolving in a positive way, change is still very slow. The limited access and outreach, complexity of mechanisms, and the hardly measurable translation into policy decisions are still much too significant. Recommendations expressed as an outcome of the European Year of Citizens by the European Year of Citizens Alliances are yet to be taken up by EU policy makers.<sup>18</sup>

Noticeably, the Council of the European Union is not mentioned in this report. The Council, representing Member States' interests, has been labelled as the least accessible and least transparent European Institution. Often associated with its 'closed doors' practices in decision making, the Council has not yet integrated significant participation mechanisms. Other European agencies are also notably absent, including FRONTEX and the European Central Bank, which have not set up mechanisms for participation despite Article 11's clear requirement to do so.

The aforementioned participation mechanisms are not designed directly to protect fundamental rights in the EU or in Member States. In their current form, they represent a minimal insurance that European policies will be designed for the respect of these rights. When serious breaches and violations to EU values and fundamental rights occur in Member States, other mechanisms are necessary to protect them. Proposals that have been made to strengthen the EU's role in directly protecting these rights are explained in the following section.

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<sup>17</sup> [http://europa.eu/about-eu/institutions-bodies/ombudsman/index\\_en.htm](http://europa.eu/about-eu/institutions-bodies/ombudsman/index_en.htm)

<sup>18</sup> <http://civic-forum.eu/publication/view/its-about-europe-its-about-us>





3

# PROTECTING DEMOCRACY, RULE OF LAW AND CIVIL LIBERTIES IN MEMBER STATES: PROPOSALS FOR REFORM

Particularly since the publication of the Tavares report<sup>19</sup> in 2013, academics and civil society have also been looking at the question of what kind of mechanism at the EU level could address violations of democracy, the rule of law and fundamental rights by Member States that moves away from reliance on Article 7 and the pre-Article 7 mechanism.

Article 7 allows the EU to warn and ultimately suspend the membership rights of a Member State in cases where there is a clear risk of serious breaches of the values laid out in Article 2.<sup>20</sup> This procedure can be initiated by one third of Member States, the Commission or the European Parliament and allows a four fifths majority of the Council, after receiving the Parliament's consent, to determine that there is a clear risk of a serious breach of Article 2 values and set out recommendations for reform. It also allows the Council acting unanimously, after either the Commission or 1/3rd of Member States have initiated the process and the Parliament has consented, to determine the existence of a serious and persistent breach of Article 2 values and suspend membership rights of that Member State.<sup>21</sup>

While theoretically having teeth and having once been used against Austria, Article 7 is considered by most commentators as holding currently little to no potential of being used against Member States. A number of reasons have been put forward for this, however the most often cited ones are that it requires a political decision by Member States to enact a process that they are potentially afraid could be applied against them and would affect the ability of the EU to in the future take decisions based on mutual compromise and trust.<sup>22</sup>

What has been proposed by the European Commission and European Council and actually

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<sup>19</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0229+0+DOC+PDF+V0//EN>

<sup>20</sup> European Commission, Promoting and safeguarding the EU's values, Last updated 10.03.2015, accessed 10 December 2015

<sup>21</sup> Treaty on European Union, Article 7

<sup>22</sup> Jan-Werner Müller, Safeguarding Democracy inside the EU: Brussels and the Future of Liberal Order, Transatlantic Academy, 2012-2013 paper series No. 3

established are two dialogue mechanisms, neither of which has direct enforcement powers. The Annual Rule of Law Dialogue, established in 2014 by the European Council, is a once-per-year discussion on the status of the rule of law in Member States and is not linked to any sanctioning powers. The first session took place in November 2015<sup>23</sup> and can be seen as limited at best, with the post-meeting minutes listing discussions on the Commission conference on anti-Semitism and anti-Islam hate in Europe, best practices and challenges from national contexts, and the rule of law in the digital era<sup>24</sup> and reports indicating that a soft approach was taken, with Member States being encouraged to open up on issues rather than face criticism from other members.<sup>25</sup>

The Rule of Law Framework was the alternative or complementary option set up by the European Commission in 2014. Its focus is to address systematic threats to the rule of law in EU Member States and act as an early warning and resolution system before an Article 7 level 'clear risk of a serious breach' of fundamental values would be reached.<sup>26</sup> It relies on continuous dialogue between the Commission and the Member States on the issue involved and is made-up of three stages: an assessment by the Commission, dialogue with the Member State and a 'rule of law opinion', or warning; a public recommendation on issues to be resolved by the Member State, if they do not address the problems outlined in the warning; monitoring of follow-up and possible referral to the Article 7 procedures if the problems are not resolved.<sup>27</sup> This procedure has been praised by some commentators as a compromise process that neither alienates Member States nor requires a difficult-to-obtain treaty change. However its weaknesses are substantial, including being based on the presumption that Member States who have systematically breached the rule of law wish to enter into dialogue and resolve the issue, rather than having taken the decision to breach the rule of law,<sup>28</sup> and it is still very heavily dependent on Article 7 as the ultimate sanction, which – as discussed – is very unlikely to be used. The most recent developments in Poland have led the European Commission to activate the Rule of Law Framework to monitor clear indications of systemic threat and, engage in dialogue with its government to remedy to the situation.<sup>29</sup> Ultimately whether this would reach the level of sanctions under the Article 7 procedure is an open question.

As such, Article 7 remains the only way currently to address threats to Article 2 principles. In light of on-going threats to fundamental rights and democracy in the EU, the risk is high that relying on Article 7 means that the EU itself is not and will not be able to address threats to its own founding values by Member States.

A wide range of proposals have been developed, however most discussion has fallen around the following options, some of which have been proposed in conjunction with each other.<sup>30</sup> What is

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<sup>23</sup> [http://eu-un.europa.eu/articles/fr/article\\_17135\\_fr.htm](http://eu-un.europa.eu/articles/fr/article_17135_fr.htm)

<sup>24</sup> [http://www.consilium.europa.eu/en/meetings/gac/2015/11/st14185\\_en15\\_pdf/](http://www.consilium.europa.eu/en/meetings/gac/2015/11/st14185_en15_pdf/)

<sup>25</sup> Israel Butler, Wary EU governments hold first rights talk, E!Sharp, December 2015

<sup>26</sup> [http://europa.eu/rapid/press-release\\_IP-14-237\\_en.htm](http://europa.eu/rapid/press-release_IP-14-237_en.htm)

<sup>27</sup> [http://ec.europa.eu/justice/effective-justice/files/com\\_2014\\_158\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/com_2014_158_en.pdf)

<sup>28</sup> Dimitry Kochenov and Laurent Pech, Upholding the Rule of Law in the EU: On the Commission's 'Pre-Article 7 Procedure' as a Timid Step in the Right Direction, EUI Working Papers, RSCAS 2015/24, [http://cadmus.eui.eu/bitstream/handle/1814/35437/RSCAS\\_2015\\_24.pdf?sequence=3](http://cadmus.eui.eu/bitstream/handle/1814/35437/RSCAS_2015_24.pdf?sequence=3)

<sup>29</sup> [http://ec.europa.eu/news/2016/01/20160113\\_en.htm](http://ec.europa.eu/news/2016/01/20160113_en.htm)

<sup>30</sup> See for example the ALDE group in the European Parliament's EU Democratic Governance Pact, which encompasses expanding the FRA's mandate with enhanced European Commission litigation and a dialogue focussed European semester for Democratic Governance, Rule of Law and Fundamental Rights (DLR):

notably absent, and will be taken up again at the end of this section and the following, is that the link between Article 11 and citizen participation and measures to enhance EU action on protecting fundamental EU values has not been made.

# EU accession to the European Convention on Human Rights

The European Convention on Human Rights (ECHR) has, since 1950, been the primary way for citizens in Europe to legally protect their civil and political human rights when their national legal systems fail to do so, particularly through the ability to bring cases to the European Court of Human Rights. This court accepts around 60,000 cases per year and had 70,000 pending cases as of the end of 2014.<sup>31</sup> Every EU Member State is a member of the Convention and the EU itself is explicitly required to join the ECHR, under Article 6 of the Treaty on European Union.<sup>32</sup>

The EU has faced difficulties in joining though, with the Court of Justice ruling in 2015 that a draft agreement to join the Convention was not compatible with EU law. The reasons it gave for this included that joining would give the European Court of Human Rights power to externally review EU law, including the Charter of Fundamental Rights – a task the Court of Justice is tasked with doing, while also undermining the principle of mutual trust between EU Member States and diminishing the effectiveness of the Court of Justice to give definitive preliminary rulings on EU law to national courts.<sup>33</sup> The European Convention on Human Rights is also much less extensive in its protections than the EU's Charter of Fundamental Rights and Article 2 TEU: the Convention does not cover economic, social and cultural rights, nor does it explicitly require members to be democratic.

One suggestion to address this shortcoming in terms of scope has been to set up a human rights monitoring body in conjunction with accession to the ECHR, with a consultative role for the Venice Commission in providing advice. The Venice Commission is part of the Council of Europe – so outside the EU structures - and provides legal advice to States on constitutional matters, particularly with respect to democracy, rule of law and human rights.<sup>34</sup>

While the Venice Commission is well-respected, critics of this idea have highlighted that a body outside of the EU is likely to find dealing with highly technical EU issues a challenge in terms of traditional competence, for example on data protection, and that, while the Venice Commission could issue reports on issues such as the rule of law, the EU would still need a mechanism to

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<http://www.alde.eu/documents/publications/>

<sup>31</sup> European Court of Human Rights, Annual Report 2014, 2015, p. 167

<sup>32</sup> Treaty on European Union, as amended by the Lisbon Treaty, Art. 6 (2).

<sup>33</sup> Georgi Gotev, *Court of Justice rejects draft agreement of EU accession to ECHR*, Euractiv, 19 Dec 2014

<sup>34</sup> Council of Europe: For democracy through law - The Venice Commission of the Council of Europe, [http://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](http://www.venice.coe.int/WebForms/pages/?p=01_Presentation) [accessed 11 December 2015].

require it to act on these reports.<sup>35</sup>

# Copenhagen Commission

Creating a Copenhagen Commission is perhaps the most well-known proposed mechanism to close the gap around the rule of law and fundamental rights. Its name comes from the Copenhagen criteria used to assess eligibility to EU membership, which include democracy and human rights requirements. This proposal was taken up in the Taveres report<sup>36</sup> as a possible option to resolve the gap and has been elaborated on by a number of actors.

The initial idea of the Copenhagen Commission, as originally elaborated by Jan Werner-Müller, would be to establish an institution separate to the European Commission, tasked to monitor democracy and quality of a political system of EU Member States and provide “comprehensive and consistent political judgements.”<sup>37</sup> Werner-Müller also envisaged it having an enforcement role - investigating breaches of the EU’s founding values by EU member states and having the power to trigger sanctions, which could include cuts to EU funding or the imposition of fines.<sup>38</sup>

This approach has been well received by a number of actors, but would involve developing an entirely new institution which, to have enforcement powers, would need to have an explicit legal basis, requiring a treaty change.<sup>39</sup>

# Fundamental Rights Agency+

Expanding the role of the Fundamental Rights Agency (FRA) to encompass monitoring national fundamental rights situations, beyond its current mandate to look only at the European situation, has been floated by Commissioner Reding<sup>40</sup> and was briefly mentioned as an alternative by

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<sup>35</sup> Closa, Carlos and Kochenov, Dimitry and Weiler, J. H. H., Reinforcing Rule of Law Oversight in the European Union (March 4, 2014). Robert Schuman Centre for Advanced Studies Research Paper No. 2014/25. Available at SSRN: <http://ssrn.com/abstract=2404260>, pp. 17-18.

<sup>36</sup> <http://www.europarl.europa.eu/sites/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0229+0+DOC+PDF+V0//EN>

<sup>37</sup> Jan-Werner Müller, Safeguarding Democracy inside the EU Brussels and the Future of Liberal Order, Transatlantic Academy, 2012-2013 paper series, no. 3, p. 25, [http://www.transatlanticacademy.org/sites/default/files/publications/Muller\\_SafeguardingDemocracy\\_Feb13\\_web.pdf](http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf)

<sup>38</sup> Jan-Werner Müller, Safeguarding Democracy inside the EU Brussels and the Future of Liberal Order, Transatlantic Academy, 2012-2013 paper series, no. 3, [http://www.transatlanticacademy.org/sites/default/files/publications/Muller\\_SafeguardingDemocracy\\_Feb13\\_web.pdf](http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf)

<sup>39</sup> Closa, Carlos and Kochenov, Dimitry and Weiler, J. H. H., Reinforcing Rule of Law Oversight in the European Union (March 4, 2014). Robert Schuman Centre for Advanced Studies Research Paper No. 2014/25. Available at SSRN: <http://ssrn.com/abstract=2404260>, p. 20

<sup>40</sup> [http://europa.eu/rapid/press-release\\_SPEECH-13-677\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm)

Werner-Müller.<sup>41</sup> As opposed to most discussions around a Copenhagen Commission, proposals to change the role of the FRA have not been as clear on whether they see the FRA having enforcement powers. Some proposals have rather opted more for the FRA having a more investigatory role and providing information for the European Commission to take action in the form of infringement proceedings or other enforcement measures.<sup>42</sup>

This would involve a change in the mandate of the FRA and would have implications on both its resources and thematic approach, particularly if it were given an enforcement role. It is also unclear if Member States would be willing to expand the role of the FRA.<sup>43</sup>

# European Commission Fundamental Rights Litigation Strategy

A proposal by the Open Society European Policy Institute would be to look into the European Commission cataloguing its existing powers relating to the rule of law and fundamental rights and developing a strategy to bring infringement procedures against Member States for violations of Article 2 values.<sup>44</sup> The Bingham Centre on the Rule of Law on this point has suggested it may be possible for the European Commission to argue that Article 2 TEU on the EU's founding values has direct effect, thereby allowing it to bring infringement proceedings against Member States.<sup>45</sup> Whether the Commission would be willing to take this role on and whether the Court of Justice would accept that they have the competence to bring cases based on violations of fundamental

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<sup>41</sup> Jan-Werner Müller, *Safeguarding Democracy inside the EU Brussels and the Future of Liberal Order*, Transatlantic Academy, 2012-2013 paper series, no. 3, p. 25, [http://www.transatlanticacademy.org/sites/default/files/publications/Muller\\_SafeguardingDemocracy\\_Feb13\\_web.pdf](http://www.transatlanticacademy.org/sites/default/files/publications/Muller_SafeguardingDemocracy_Feb13_web.pdf)

<sup>42</sup> Lucy Moxham & Justine Stefanelli, *Safeguarding the Rule of Law, Democracy and Fundamental Rights:*

*A Monitoring Model for the European Union*, Bingham Centre for the Rule of Law, pp. 25-28, [http://www.biicl.org/files/6758\\_main\\_report\\_15\\_11\\_2013\\_commission\\_consultation.pdf](http://www.biicl.org/files/6758_main_report_15_11_2013_commission_consultation.pdf).

<sup>43</sup> Lucy Moxham & Justine Stefanelli, *Safeguarding the Rule of Law, Democracy and Fundamental Rights:*

*A Monitoring Model for the European Union*, Bingham Centre for the Rule of Law, p. 25, [http://www.biicl.org/files/6758\\_main\\_report\\_15\\_11\\_2013\\_commission\\_consultation.pdf](http://www.biicl.org/files/6758_main_report_15_11_2013_commission_consultation.pdf).

<sup>44</sup> Lucy Moxham & Justine Stefanelli, *Safeguarding the Rule of Law, Democracy and Fundamental Rights: A Monitoring Model for the European Union*, Bingham Centre for the Rule of Law, pp. 27-28, referring to Israel Butler, Open Society European Policy Institute, 'Policy Brief: How to monitor the rule of law, democracy and fundamental rights in the EU' (August 2013) at page 4, available at: <http://www.opensocietyfoundations.org/briefingpapers/how-monitor-rule-law-democracy-and-fundamental-rights-eu.pdf>

<sup>45</sup> Lucy Moxham & Justine Stefanelli, *Safeguarding the Rule of Law, Democracy and Fundamental Rights: A Monitoring Model for the European Union*, Bingham Centre for the Rule of Law, p. 28, [http://www.biicl.org/files/6758\\_main\\_report\\_15\\_11\\_2013\\_commission\\_consultation.pdf](http://www.biicl.org/files/6758_main_report_15_11_2013_commission_consultation.pdf).

rights is however unclear.<sup>46</sup>

# New Network of Independent Experts

The Network of Independent Experts used to monitor and issue opinions on fundamental rights protection and Article 2 compliance in EU Member States, before the creation of the Fundamental Rights Agency. The proposal made would be to reactivate this network and enable it to gather information needed for relevant institutions to bring Article 7 procedures against member states.<sup>47</sup> While the Commission has noted that this might be useful,<sup>48</sup> this proposal would suffer from the same limitations as outlined above with the Article 7 procedure – while the information gathered may indicate widespread violations of fundamental rights, enforcement would be dependent on political will from Member States.

# Mechanism for Cooperation and Verification of EU Values

The Mechanism for Cooperation and Verification is a procedure instituted by the European Commission towards Bulgaria and Romania to allow it to monitor their commitments on joining the EU and formed part of their accession agreement, as it does with the 10 previous member states that joined. Under this mechanism the Commission has the power to suspend funding to Member States. The proposal suggested here would be to create a similar mechanism for EU values that applies to all Member States. As outlined by the Bingham Centre, this mechanism would enter into dialogue after collecting information on EU values in a Member State and produce recommendations for reform, possibly with a fund to support changes. Any failure to implement the recommendations would be sent to the Commission for infringement proceedings.<sup>49</sup>

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<sup>46</sup> Lucy Moxham & Justine Stefanelli, Safeguarding the Rule of Law, Democracy and Fundamental Rights:

A Monitoring Model for the European Union, Bingham Centre for the Rule of Law, pp. 27-28, referring to Israel Butler, Open Society European Policy Institute, 'Policy Brief: How to monitor the rule of law, democracy and fundamental rights in the EU' (August 2013) at page 4, available at:

<http://www.opensocietyfoundations.org/briefingpapers/how-monitor-rule-law-democracy-and-fundamental-rights-eu.pdf>

<sup>47</sup> Lucy Moxham & Justine Stefanelli, Safeguarding the Rule of Law, Democracy and Fundamental Rights:

A Monitoring Model for the European Union, Bingham Centre for the Rule of Law, pp. 23-24.

<sup>48</sup> As above, quoting Olivier De Schutter, 'The EU Fundamental Rights Agency: Genesis and Potential' (Working Paper Series: REFGOV-FR-23) (European FP6 – Integrated Project, Coordinated by the Centre for Philosophy of Law – Université Catholique de Louvain)

<sup>49</sup> Lucy Moxham & Justine Stefanelli, Safeguarding the Rule of Law, Democracy and Fundamental Rights: A Monitoring Model for the European Union, Bingham Centre for the Rule of Law, pp. 29-30.

# Conclusion

While these summaries represent only a small number of the on-going discussions for addressing fundamental rights protection on a European level, each has gathered a range of supporters and detractors. At the official level however, the issue has remained largely static since the Tavares report, with only the Annual Rule of Law Dialogue and Rule of Law Framework having been established by the European Institutions, both of which – as mentioned above - are relatively weak and do not solve the problem of enforcement, particularly in a climate where Article 7 proceedings are very unlikely.

Evident in each of the proposals beyond EU accession to the ECHR is also the high degree of dependence on technical decision making. Unlike human rights enforcement at the national level or through the Council of Europe system, none of the proposals include a role for citizens to play an active role in protecting and extending their rights. Therefore, the following section addresses active citizenship and citizen engagement as a tool to protect fundamental rights in Europe.



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# TOWARDS AN ACTIVE EUROPEAN CITIZENSHIP

Although the European project started in the 1950s and the introduction of a European form of citizenship with precisely defined rights and duties was considered as long ago as the 1960s, European citizenship became a reality only with the Maastricht Treaty in 1992.

Since 1993 every citizen of an EU Member State has also been considered a citizen of the Union i.e. an EU citizen. This citizenship is provided directly via the Treaty on the Functioning of the European Union and is something additional – EU citizenship does not replace national citizenship. In addition, since the entry into force of the Lisbon Treaty in 2009, the Charter of Fundamental Rights has gained a legally binding status of equal value to the European Treaties.

European treaties do not only reaffirm the central position of citizens as rights holders but they also give responsibility to the EU to put citizens and their fundamental rights at the heart of all its political processes. From the participation of citizens to the elaboration of policies, to the mainstreaming of fundamental rights in policies areas and in evaluating impact of policy measures at EU and Member States levels, European citizens should be able to actively protect their rights. However, the concept of the EU citizenship needs to be clarified.

## General considerations on EU citizenship

As an EU citizen, each person is entitled to enjoy the rights included in the EU treaties. In particular, the following rights are explicitly mentioned in the text:

- > the right to move and reside freely within the Union;
- > the right to vote and to stand as candidate in elections to the European Parliament and in municipal elections in the Member State of residence;
- > the right to consular protection from the embassy of another EU member state, when outside the EU;
- > the right to petition the European Parliament, to apply to the European Ombudsman (a complaints mechanism of the EU), and to address the EU institutions (including the European Parliament, Commission and Council) and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

There are also other rights EU citizens are entitled to, for instance:

- > the right to access the registers of European Parliament, European Commission and Council

documents;

> the right of equal access to the EU Civil Service.

Since the entry into force of the Lisbon Treaty in 2009 a new mechanism, the European Citizens' Initiative (ECI), has been created, which allows EU citizens to request the Commission to legislate in one of its areas of competence, once enough signatures have been gathered from a range of member states and a number of further conditions have been satisfied (see Section 2).

This right is enshrined in the article 11 of the Lisbon Treaty and is part of a larger right that could be called the "right to have a say". It opens the door to **a wider set of political rights** linked to active participation and participatory democracy.

## Active European Citizenship

Moving beyond and realizing participation and fundamental rights protection at the European level requires active citizenship. "Active citizenship means primarily active involvement of citizens as participation in the life of their communities, and thus in democracy, in terms of activity and decision-making. Active citizenship is more than giving to charity, voting at elections or volunteering."<sup>50</sup>

Definitions of participation that focus on political participation or a narrow understanding of volunteering fail to capture the diversity of people's engagement across Europe. To give active European citizenship its full meaning and scope, and to help reduce the gap between citizens and the EU institutions, it is necessary to take account of the new prospects opened up by Article 11 of the Treaty on the European Union for citizens' participation in the democratic life of the European Union.

Europe is part of the daily life of its citizens, but the rights and benefits stemming from this "single market citizenship" are at present essentially limited to mobility. Thus, they become effective only when "abroad". What about those who do not travel, study or work abroad and for whom the European citizenship can then be only an abstract and meaningless concept? What about residents who work, pay taxes, are involved in social or community activities but don't have an EU Member States' passport?

These very challenging questions reflect the fact that the concept of citizenship encompasses a two-way relationship between a community and its members. The Lisbon Treaty provides a broader framework for the development of European citizenship rooted in a «community of values», and reinforces its social and political dimensions by giving to the Charter of Fundamental Rights the same legal value as the European Union treaties and by creating the conditions for citizens and civil society organisations to be fully involved in the European processes,<sup>51</sup> but its full potential still needs to be realised.

For us, active citizenship is a democratic citizenship, which:

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<sup>50</sup> Excerpt from the EYCA – European Year of Citizens 2013 Alliance Manifesto

<sup>51</sup> Idem

> is based on citizens' status and includes all aspects of life in a democratic society relating to a vast range of topics such as, inter alia, education, culture, sustainable development, non-discrimination, inclusion of ethnic minorities, participation in society of people with disabilities, gender equality including the equal representation of women and men in decision making;

> guarantees that citizens have a say in the EU policy-shaping and decision-making processes by electing their representatives to the European Parliament. When we are facing an ever growing gap between the European Union and its citizens, as confirmed by the turnout in the latest European elections and by surveys which repeatedly show citizens' lack of awareness of European citizenship and identity, the stakes could not be higher;

> implies that European institutions enjoy public confidence and can secure active involvement of citizens and organised civil society players in the decision-making processes at all levels, from local and national levels to the European one; therefore, the adoption of an inter-institutional agreement for a structured framework for European civil dialogue would give a permanent practical substance to such an active and participatory citizenship alongside the provisions of the Lisbon Treaty and the European Citizens' Initiative.

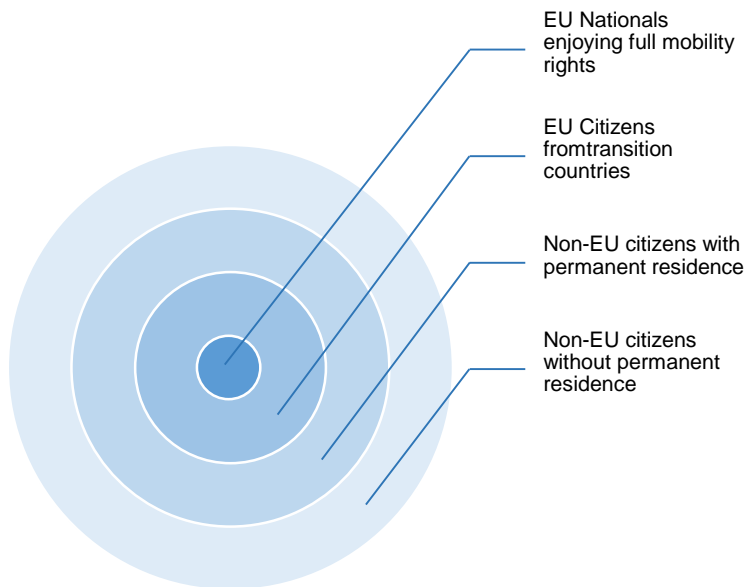
> must also operate at the Member State level, so that the structures for citizen engagement are accessible and form part of every citizen's experience;

> guarantees that all citizens can participate in the life of their communities and the shaping of public policies, including the most disadvantaged groups, which are more than often the most remote from the European building process. People cannot exercise their civic and political citizenship rights unless in capacity to enjoy the social and economic citizenship rights and the European Union should not exclude the contribution of the most disadvantaged.

### **Citizenship's circles: unequal access to rights for vulnerable groups**

When it comes to fundamental rights, European citizenship is not a homogeneous concept. Citizens living on European soil don't benefit from the same level of access and protection of their rights. European citizens' belonging to Member States within the Schengen zone are entitled a wider set of rights than their peers in other countries. Residents from non-EU countries, and migrants to an even more significant extent, represent categories of citizens who face additional obstacles in access to rights and protection of fundamental rights.

The image of citizenship circles can be used to describe the ambivalence of the concept of EU citizenship and help give a clear picture of the issue.



EU nationals enjoying full mobility rights, the inner circle, benefit from a wide set of economic, social and political rights given by their national citizenship. The second circle, citizens from non-Schengen countries or countries under transitional provisions related to enlargement, also benefit from rights associated to EU citizenship given by national citizenship. However, the third and fourth outer circles, made of long term residents and migrants, are facing numerous restrictions to the access to their fundamental and participation rights. They comprise of a group of vulnerable citizens that should be given tools to defend their fundamental rights as well.

Notwithstanding the existence of various European directives which aim to ensure equality and non-discrimination in the EU, the rights of vulnerable, marginalised and excluded groups remain far from ensured at the national level due to a lack of commitment or reluctance on the part of certain Member States to ratify or implement existing EU legislative framework.

The EU and its Member States should ensure that fundamental rights of these vulnerable groups are respected and protected and that they too can participate as active citizens.

### Gibraltar: Voting rights for non-EU citizens

While the rights and duties of EU citizenship are regulated on the EU level, the European Court of Justice found in 2006 (Case C-145/04) that it is conversely member states who determine who has the right to vote in European elections. In a case brought by Spain, the Court found that it was legal for the United Kingdom to extend the right to vote in EU elections to nationals of Gibraltar, despite Gibraltar being outside of the EU and nationals of Gibraltar not having EU citizenship. The Court ruled that the definition of persons entitled to vote and stand as a candidate in elections to the European Parliament falls within the competence of each Member State in compliance with European Union law and that relevant articles of the EC Treaty did not preclude the Member States from granting that right to vote and to stand as a candidate to persons who have close links to the member states, but who are not their own nationals or citizens of the Union resident in their territory.

In this case, Gibraltar residents and Commonwealth citizens who are not EU citizens can vote for and stand to become MEPs, despite not being EU citizens. This shows the fluidity of the concept of electoral participation in the EU, which is tied to Member State's own conception of who is eligible to participate in elections and the potentiality of EU citizenship to become a broader concept, that encompasses more of those subject to EU rules..

# Conclusion

What this section has tried to show is that the citizen should be at the heart of the EU's processes, policies and in protecting and extending rights. The EU thus far has established a citizenship that is passive – a truly additional citizenship – with limited options for people to interact with the institutions and to claim their rights.

What is needed is an active citizenship, one where people can claim their rights and participate in shaping policy at the EU level. This should include not only those with a strong voice, but also those who are in a more vulnerable position when it comes to claiming rights. Recommendations for how to do this are found in the next section.





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# CONCLUSIONS AND RECOMMENDATIONS<sup>52</sup> FOR EU POLICIES AND ACTION UPHOLDING FUNDAMENTAL VALUES AND HUMAN RIGHTS

Since the introduction of the concept of citizenship of the European Union in the Treaty of Maastricht in 1992, a political dimension has been added to the primarily economic nature of the European Community. The Lisbon Treaty provides a broader framework for the development of European citizenship rooted in a «community of values», and reinforces its social and political dimensions by giving to the Charter of Fundamental Rights the same legal value as the European Union treaties and by creating the conditions for citizens and civil society organisations to be fully involved in EU processes.

But despite its official recognition in the Treaties, EU citizenship is now in crisis. The multi-layered challenges facing Europe today seriously undermined the belief of citizen in the EU's ability to secure collective well-being and solidarity with those facing social exclusion and to design policies which reflect its very founding values. Democracy is at stake both when policies don't illustrate the values of the common project and when the process of discussing them is too distant from the people.

As we have seen from the above sections, none of the existing or planned measures to protect fundamental rights and enable participation truly puts citizens at the heart of the process. Existing EU participatory measures tend to be fragmented and complex, while protection of fundamental rights at the European level is lacking in teeth and proposed solutions for this favour technocratic processes.

Addressing these issues requires reimagining the role of the citizen – in its broadest meaning – and putting active citizenship at the centre of EU policy making and rights protection.

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<sup>52</sup> These recommendations emerge from discussions within the CITI-rights project activities and, more broadly, build upon the work and experience of our organisations over the years, especially in the frame of collective initiatives such as the [European Year of Citizens Alliance](#) or [Civil Society Europe](#).

# Recommendations

## 1. Citizens' rights and the common good should be at the centre of European policies, by means of:

- > measuring the social and environmental impact of all EU policies and legislation and streaming fundamental rights as a cross-cutting dimension and a key priority in all areas of the Union's action
- > giving civil society the opportunity to voice concerns about those policies and the extent to which they reflect the EU founding values
- > taking citizen rights and the common good into account when discussing political strategies, framing policy proposals, implementing policies.

The European institutions, and particularly the Commission, as guardian of the treaties, should be a driving force in creating a more enabling environment for participation, especially in terms of civil and social dialogue, transparency, accessibility of the information, education and capacity building to use these tools.

## 2. Establish a clear and structured framework for civil society dialogue

Despite the political and legal recognition of the principle of participatory democracy introduced by Article 11 of the Lisbon Treaty, a clear and structured framework for regular dialogue with civil society is still lacking, a gap still remains between the applicable rules and the reality of citizens and civil society organisations' involvement in decision-making in Europe. The potential of Article 11 is still to be fully understood and implemented by the EU institutions so as to build a really "open, regular and transparent dialogue with civil society and its representative associations" (art. 11§3 TEU).

- > EU Institutions should ensure that the voice of civic associations and movements is heard, on an equal footing, alongside the voice of the social partners and corporate interests at all levels of decision-making process.
- > Mechanisms for European civil dialogue should be fully integrated by all European Institutions in their decision-making tools and practices, in particular in the current discussions about the inter-institutional agreements on better regulation and transparency.
- > Along the same rationale, a European Observatory for Civil Dialogue included all interested parties should be established to monitor civil dialogue and civic engagement across the EU.
- > An EU Commissioner for Civil Dialogue, with corresponding human resources, should be appointed to allow its effective implementation within all the European Institutions.

## 3. Protect citizen rights through active citizenship

Further to the design and implementation of EU policies more respectful of the fundamental rights and values enshrined in the treaties, the EU institutions should implement all necessary

measures that allow every citizen of Europe, by birth, by choice or by circumstances, to benefit from those rights.

> EU institutions should put at the forefront of their action, as Guardians of the Treaties, the respect and the promotion of the fundamental values of the Union and the core European requirements of democracy and the rule of law and establish participatory mechanisms and tools to secure rights protection throughout European countries, especially in case of systemic breaches of those rights and values by Member States.

> The EU Member States should comply with the rule of law and the European democratic standards, and implement the European Commission recommendation to implement collective redress mechanisms allowing citizens to seek court orders ceasing infringements of their rights granted by the EU law and claim damages for harm caused by such infringements<sup>53</sup>.

> The European Council should put urgently on its agenda an open and transparent debate on the respect of the Union's fundamental values, state of democracy and the rule of law also as a response by concerns raised by the UN and the Council of Europe and that include the voice of civil society.

> The European Parliament should adopt in its own forthcoming initiative report on an EU mechanism on democracy, rule of law and fundamental rights, a stringent and transparent proposal for the review of the implementation of fundamental rights through country reports that collect information from all relevant stakeholders.

> The European Commission should develop a regular review of fundamental rights and values in all European countries with the involvement of civil society through the provision of reports and hearings (similar to the UN Human Rights Council Universal Periodic Review), ensure transparency of the process and an inclusive dialogue.

> The rule of law mechanism should be activated in any case when clear evidence indicates risk of national legislation breaching EU law and democratic standards. The EU institutions should explore and adopt, in consultation with civil society and allowing for maximum citizen engagement, a mechanism to enforce recommendations resulting from a breach of fundamental values beyond Article 7. An innovative and complementary approach to this mechanism, as first proposed by the Center for European Policy Studies in 2010 would consist in giving the European institutions the power to freeze the proposed legislation initiated by Member States in cases where there is evidence that certain national measures are in violation of EU law and the EU Charter of Fundamental Rights. This freezing enforcement procedure would allow timely intervention and could be launched upon evidence provided (for instance) by the European Agency of Fundamental Rights (FRA) along with its Fundamental Rights Platform (FRP) of Non-Governmental Organizations, which could be also tasked 'to alert' any suspected breaches of EU law and fundamental rights by EU member states.

#### **4. Enable active protection of rights, particularly for vulnerable citizens**

> EU institutions and Member States should promote an effective and inclusive

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<sup>53</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013H0396>

dialogue in order to make sure that the experience and perspective of the most vulnerable, marginalised and excluded groups, such as people experiencing discrimination because of their socio-economic condition, are taken into account when developing policies and strategies at all levels of decision making.

> EU and national authorities should ensure that the right to good administration and the right of access to documents, as guaranteed by Article 41 and Article 42 of the Charter of Fundamental Rights of the European Union, are realised in practice and that all residents, including vulnerable, marginalised and excluded groups and new residents, are made aware of their rights and enabled to challenge improper decision-making processes and outcomes with which they are confronted.

> All residents, including vulnerable, marginalised and excluded groups, should be able to enjoy their basic human rights and have access to justice and legal aid, in particular when their human rights are violated.

> Member States should ensure accessible and effective access to justice for every individual, including migrants, during all stages of the judicial process, from the preliminary stages such as initial investigations to the court hearings. In addition, all information and communication processes regarding legal rights, legal aid and judicial proceedings should be accessible to all. Sign language interpretation and information in Braille, among others, should be available for all participants in the justice system.

> EU institutions, Member States and other relevant stakeholders should take all appropriate measures to ensure just and favourable conditions of residence and work and an equitable standard of living for third country nationals residing and working in the European Union.

> Every EU resident visiting another EU Member State, including vulnerable, marginalised and excluded residents, should receive essential services provided by the Member State in question on equal terms with nationals. The principles of non-discrimination and equal treatment should also be mainstreamed throughout all EU programmes.

> EU institutions and Member States should reform existing legislation and policy regarding entry, the EU asylum system, and residence in order to ensure the proper implementation of the international, regional and Community obligations in respect of human rights for all residents.

> EU institutions should review the conditions for enabling access to European citizenship and, notably, to extend and harmonise the conditions in the EU Treaties under which long term residents have access to the rights and obligations of European citizenship.

> EU institutions, Member States and other relevant stakeholders should take all appropriate measures to ensure equality, non-discrimination and accessibility for all, with a particular attention to the needs of vulnerable, marginalised and excluded groups, in relation to participation in political and public life, in particular regarding the right to vote.

> Alongside with ensuring the right to vote to all citizens residing in the EU, the political and public participation, notably representation, of vulnerable, marginalised and excluded groups needs to be improved significantly at all levels of decision-making in Europe.

> Member States that are party to the Convention of the Council of Europe on the "*Participation of foreigners in public life at local level*" should guarantee to regularly resident foreign nationals the "classical rights" of freedom of expression, assembly and association (including the right to vote and to stand in local authority elections) on the same terms as they guarantee those rights to their own nationals.

