

# Chapter 28

## Citizen Participation in Law-Making in the European Union

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### ABSTRACT

*A regulatory policy based on the idea of smart regulation takes the view that legislation and regulations serve the economy, and therefore, laws must be intended to create the conditions to improve national economies and economic growth, as laid down by the OECD and the European Union itself. Such a regulatory policy is informed by a set of principles which apply to both regulatory institutions and regulations, such as transparency, cooperation, accountability, efficiency, effectiveness, participation, and openness. This regulatory approach takes the view that regulations are of better quality when they have been influenced by citizens. As a consequence, smart regulation results in participatory democracy. Citizens collaborate with the government in the lawmaking process at an early stage and throughout the lifecycle of a legislative act by means of consultations. This chapter focuses on consultation as the principal mechanism for participatory democracy in the context of smart regulation law-making in the European Union.*

### INTRODUCTION

The increase in the democratic participation of citizens has been a constant throughout the evolution of the European Union which has run in parallel with its progressive increase in competences as the states have ceded sovereignty to it in areas increasingly distant from those that justified the creation of the European Communities in the middle of the last century. The gradual expansion of the Community cosmos has made more evident the distance between the citizens, around whom the European Union orbits, and the institutions with the capacity to decide, which has accentuated the perception of the deficit of democratic legitimacy that has been attributed since its inception to this supranational organization.

To remedy this, the European Union has resorted to democratic participation, first through the mechanisms of representative democracy and the direct election of members of Parliament by the citizens and then by articulating integrated collaboration mechanisms in the field of so-called participatory

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democracy (Garcia, 2015). The legitimacy provided by the mechanisms of representative democracy is limited, and for this reason it is necessary to complement this system with other options that involve the use of participatory democracy. Such participation confers a greater degree of democratic legitimacy to the rules on which these mechanisms are projected, since, being exposed to the participation of citizens, who theoretically have been able to contribute to the contents of the rule, it is assumed that they have the support of the recipients (Prieditis and Karpen, 2002). On the other hand, the principles postulated in the White Paper on European Governance have also influenced the projection of the premises of participatory democracy on the normative procedure.

From a more general point of view, it is also necessary to refer to a trend that is gradually consolidating and that tends towards a growing recognition of the capacity of individuals and non-governmental organizations to act on their own at the international level. This implies a growing tendency for citizens to participate in the creation of international law, or in our case of European law, although this is far from recognizing the capacity to create this right themselves.

All these perspectives converge in the need to articulate mechanisms that allow citizens to participate in the creation of the European legal order, whether or not the resulting rules affect their rights and interests.

Well, the appeal to civic participation for legitimate democratically European standards has to be placed in the context of a regulatory policy that seeks to streamline the legal system by establishing procedures to conclude the character inexcusable of the standard, the needs and objectives that you are going to attend and that articulates at the same time formal channels to integrate the public interest and individual interests converging, usually financial, in its precepts. The result is the so-called “smart legislation”, a term that has been adapted to Spanish legislation and that comes from the literal translation of the expression “Smart regulation” (Baldwin, 2005), which arose in the scope of certain international organizations with economic projection, such as the OECD and the European Union. From the point of view of this regulatory trend, the exercise of regulatory power is a kind of last resort, so that before approving a new rule the need for it must be verified. The aim is to produce “quality legislation”, i.e. efficient, effective and proportionate legislation that is not unduly burdensome for its recipients, especially those with economic interests. The idea is that the legislation adopted should be able to promote growth and promote development without interfering with economic agents.

The so-called “smart legislation”, a term that we will adopt hereafter to simplify the references to this regulatory trend, makes use of the mechanisms of participatory democracy and reshapes and adapts them to their needs and objectives, integrating them into the regulatory procedures. The institutional proposals on the improvement of legislation call for streamlining the drafting of legislative acts, considering that it is not a matter of legislating more, but better. Precisely, the participation of citizens in the processes of production of law is one of the elements that characterize the call legislation intelligent, composed by rules whose approval has been planned in advance, that are intended to be effective and efficient by focusing on issues that really need a eu regulation, that they try to anticipate the effects of such regulation on the sector that is projected, and which are subject to a continuous process of evaluation to detect those contents that can be improved or that are even unnecessary.

Logically, in order to achieve some ambitious goals, it is necessary that the institutions involved in the process of production rules take into account and assess different sources of information, which should not overlook the importance of the contributions of the general public and those affected by the legislation. It can therefore be said that the use of the mechanisms of participatory democracy is one of the presuppositions of intelligent legislation and one of the elements that define such legislation.

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