

# 10. From participation to legitimacy: the new role of civil society in defining public interest

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## Investigating shifts in public and private enforcement responsibilities

Civil society organizations supporting public interest have started to leave their mark in public policy and decision-making processes at national and international levels. Some striking examples of this are 'Follow This', which, as a (very small) shareholder and with the help of a few institutional investors, is exerting pressure on Shell to commit to the Paris agreement, Oxfam Novib has encouraged Dutch supermarket chain Albert Heijn with its 'Behind the Barcodes' campaign to introduce a new policy in the field of human rights and sustainability, and the 2015 Urgenda Climate Case against the Dutch Government was the first in the world in which citizens established that their government has a legal duty to prevent dangerous climate change.

In recent years, we have seen a trend in the promotion of active citizenship by both governments and civil society organizations incentivizing individuals to play active roles in policy-making, decision-making and to an extent enforcement at the European and national levels. Through mechanisms such as European Citizen Initiatives (ECIs), complaining to ombudsmen about maladministration by public authorities, awareness campaigns, as well as starting legal actions against governments and corporations, private parties can, and are incentivized to participate in the norm setting as well as enforcement of public interests.

These developments come as a response to the multiple crises in civil society and as echo a willingness to make the voice of citizens better heard at local, national and European level, while also signaling important shifts in the division of labor of public and private enforcers and civil society organizations actively filling the gap left by the reshuffling of regulation and enforcement responsibilities. Moreover, modern models of governance and regulation appear to be increasingly dependent on such new forms of participation and the legitimacy associated with them.

Nevertheless, there are signs that the precise role of these new actors is still uncertain and under discussion. On the one hand, the 'toolbox' that enables citizens to actively participate in policymaking is expanded (eg ECI), on the other hand we see a counter-movement in which various legislative proposals to promote the voice of citizens (see, for example, the recently adopted and abolished Referendum Act in the Netherlands) excluded or taken under fire. It is clear that there is a shift in the relationships between public and private parties, with citizens and civil society organizations becoming important players who can directly and indirectly influence decision-making processes and governance models and can actively insist on

maintaining the public interest. This evolution raises a number of important legal and social questions.

## PhD project: from participation to legitimacy

Within this context the PhD project 'From Participation to Legitimacy' will scrutinize these developments and answer the following questions:

- Which (new) instruments enable civil society organizations to participate in the formulation and enforcement of policies supporting the public interest?
- How effective is this 'toolbox'?
- What are the effects of these new forms of participation on the norm-setting process and the safeguarding of public interests at local, national and European level, as well as the legitimacy associated with it?
- How and to what extent should the voice of civil society organizations be included in the policy-process?

The aim of this research is to study in-depth, using a case study approach and qualitative research methodology (e.g., interviews with stakeholders), the various instruments used by civil society in contributing to the formulation as well as enforcement of public interest by putting pressure on both businesses as well as governments. By mapping current developments and organizations this project will reassess the relationship between private and public parties in the formulation and enforcement of public interests and scrutinize the related legitimacy.