

# Editorial

## *House of Europe, but for Whom?*

**Henk van Arendonk**, Professor of Tax Law at the Erasmus University, Rotterdam

On Monday, 16 May this year, the House of Europe was officially opened in The Hague by Queen Beatrix of the Netherlands at a ceremony attended by the President of the European Commission, José Manuel Barroso. According to the website, the House of Europe is a meeting place to which citizens can turn if they have questions about Europe. It is primarily intended to serve as an information office for EU citizens on all sorts of European matters. In this way, the European Parliament is seeking to increase its visibility among citizens. But, after 54 years of European cooperation, is the House of Europe that has been built really a house for its citizens?

European cooperation began as a form of economic cooperation, with all the attention being directed towards creating the internal market and achieving the free movement of goods, persons, services, and capital. As far as the free movement of persons was concerned, the primary focus was on economically active people (in other words, employees and businesses), with no attention being devoted to citizens who were not economically active. Indeed, the European Economic Community (EEC) Treaty included no provision to this effect.

During the 1980s, however, it became increasingly clear that European cooperation needed broadening. The Maastricht Treaty provided for this in the second and third pillars of European cooperation, as well as by introducing the concept of Citizenship of the Union (Articles 17–22 European Commission, now Articles 20–25 Treaty on the Functioning of the European Union (TFEU)). It had previously been agreed that, from 1979, members of the European Parliament (MEPs) would be directly elected by EEC citizens. Elections have since been held every five years. Although EU citizens certainly come across the work of the MEPs during this period, most MEPs are largely invisible to their electorates during their five-year periods in office, while the media in the Member States continue to be dominated by national politics. It is hardly surprising, therefore, that citizens show little enthusiasm for European cooperation and that the turnout at European elections is very low.

There has been little change in this situation in recent years. The financial and economic crises in the last few years have evolved into a euro crisis. Even though only seventeen Member States are part of the eurozone, the crisis is affecting the whole of the

European Union as its impact extends to each and every taxpayer. And that makes now an excellent time to involve citizens in the process of European cooperation. The political mist consistently surrounding this topic means that citizens long ago stopped understanding what was at issue and now show little, if any, interest in Europe. Many of them simply think that yet again, as in every crisis, they are going to be the ones footing the bill.

Following the opening of the House of Europe, Barroso gave an interview to *NRC Handelsblad*, a Dutch daily newspaper. The interview focused primarily on the euro crisis, even though this was surely an occasion when we could have expected to hear praise for the benefits that European cooperation has had for the citizens of the Union. However, explaining the benefits of European cooperation to citizens in straightforward terms still seems to be extremely difficult. On the one hand, there is the technocratic side of the EU, while on the other hand, there is the political jousting at a supranational level. And this means that Europe is as remote from its citizens as ever. It is certainly good that Article 11.4 Treaty on European Union (TEU) grants citizens the right to request the European Commission to take action in a specific field. At least one million citizens who are nationals of a significant number of Member States may take this initiative (see the first paragraph of Article 24 TFEU). Given, however, that the degree of citizens' organization is already low at a national level, let alone cross-border, I am very curious to see whether and when such a request will actually materialize and indeed be honoured by the Commission.

Another way in which we can seek to involve citizens more in the House of Europe is to arrange for the EU to have tax resources of its own and, specifically, taxes that have to be paid by EU citizens. In an Opinion by the European Parliament's Committee on Budgetary Control in 2007, it was proposed introducing a new system of own resources for the EU, based on taxes that are already levied in the Member States. One of the arguments in favour of this is that it would increase the EU's visibility among its citizens. On 19 October 2010, the European Commission published a Communication on the EU budget review (COM(2010) 700 final), together with a staff working document of technical annexes (SEC(2010) 7000 final). This proposed replacing the current system of Value Added Tax transfers by own resources in the form of a tax on

air travel, on carbon dioxide emissions, or on banks or even a European corporation tax. Even though, from a democratic perspective, one could support the idea of the EU having tax resources of its own, this form of cooperation would move Europe very much in the direction of a federal state. While the lack of clarity on the ultimate form of cooperation persists, I see no prospect of the EU being able to levy its own taxes. Citizens and businesses alike are certainly not keen to see any increase in their tax burden. Allowing the EU to levy taxes of its own would irrevocably require coordination at European and national tax levels, comparable to that seen in the Member States at both centralized and decentralized levels. Failure to reach proper agreements in this respect would be bad for Europe and certainly not help citizens feel more positive about Europe. Given the continuing economic problems, any call by the European Commission or the European Parliament for more financial resources and EU taxation will simply be grist to the mill of the EU sceptics.

Introducing a form of European taxation will not increase the citizens' commitment to Europe. The first fifty years of European cooperation focused primarily on businesses, and this is understandable. It is to be hoped, however, that the next fifty years will see a shift towards greater attention for citizens. There are many different opportunities in this respect, with a recent development being the adoption of the Charter of Fundamental Rights. Article 6.1 TEU states that this Charter has the same legal value as the treaties and so constitutes primary EU legislation. In the past, the ECJ has taken the general principles of law and the European Convention for the Protection of Human Rights into consideration in its judgments, and it will be no surprise if the Court's judgments over the coming years take serious account of the fundamental rights provided for in the Charter. An indication for this can be seen in the judgment of 1 March 2011 in *Association Belge des Consommateurs Test-Achats ASBL* (C-236/09) relating to differences in the insurance premiums charged to men and women. The Court considered that Articles 21 and 23 of the Charter prohibited any discrimination based on grounds of gender. On objective grounds of justification, the Supreme Court of the Netherlands would not have upheld the invoking

of the principle of equality in this situation. Over the coming years, I expect more and more citizens to seek to invoke the Charter. The European Commission has set itself the task of actively assisting citizens in this respect, including by means of the e-Justice Portal, where citizens can obtain detailed information on the legal remedies available to them in the event of violations of their fundamental rights.

The concept of Citizenship of the Union can also, however, help make Europe more visible for its citizens. ECJ case law on Citizenship of the Union over the past eighteen years shows that the Court has interpreted this concept very widely, as evidenced, for example, in the *Zambrano* judgment of 8 March 2011 (C-34/09, PB C 130/2). However, limits on this concept were introduced in the *Shirley McCarthy* case (5 May 2011, C-434/09), in which the Court ruled that the matter was a purely internal situation and therefore rejected the invoking of Article 21 TFEU. The EU Citizenship Report 2010 of 27 November 2010 (COM(2010) 603 final) states that EU citizenship confers upon all EU citizens an additional set of rights, guaranteed by the EU treaties, that lie at the heart of their everyday lives. The report also states that the European Commission would launch an initiative in 2010 on 'removing tax obstacles for EU citizens'. The relevant Communication was published on 20 December 2010 (SEC(2010) 1576 final). The intention is for EU citizens to be able to contact the European Commission if they believe any aspects of tax legislation to be incompatible with EU law. The fact that the Commission is taking its supervisory task increasingly seriously is very much to be welcomed. The question, however, is whether the Commission's Communication will actually reach the European citizens for whom it is intended. The Commission needs to make far more use of national and local media if it is to reduce the distance between Brussels and the EU citizens and so get closer to those citizens.

Even though there are signs of a change in mentality at both the European Parliament and the Commission, much still has to be done to bridge the chasm between Brussels and the EU citizens. My advice to Brussels would be to come down from the ivory towers and mingle among the people of the EU. Only then will the House of Europe be able to become a house for all the citizens of the EU.