

Étude

A 'Democratic Deficit' in the European Union?

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Abstract: This article defines and conceptualises the academic debate about the term 'democratic deficit'. It examines further where and how the term can be applied to the EU institutional system and what its impact is on the system. We try to prove that the EU is a dynamic political system susceptible to changes and therefore also to democratisation, improving its structure and functioning.

I. Introduction

After more than fifty years of very dynamic evolution and deepened integration, the European project has come to a time when it needs to strengthen its democratic character in order to go on further.

The Union has evolved as a unique system (*sui generis*). It is much more than an international organisation, having supranational institutions such as the European Commission, the European Parliament, the European Court of Justice, the European Central Bank and different agencies, and a legal system, which has supremacy even over the national constitutions. Therefore, the EU cannot be democratically legitimised solely through the member states, participating in it, which is the case of every purely international organisation. At the same time, however, the European Union (EU) cannot be defined as a state, because crucial competences, typical for a state, such as a common army, an independent

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tax policy, education policy, fully-fledged and independent social policy, are not and are unlikely to be attributed to the European level of governance. Therefore, the EU cannot either be democratically legitimised by the model of a pure state.

In this context for more than two decades an academic and political debate has been developed, posing the question whether the EU, as currently designed, is a democratically legitimised system or not. Various authors have advanced the argument that there is a 'democratic deficit' in the EU, which causes serious problems to the system and questions its mere existence.

II. Definitions of 'Democratic Deficit'

For more than 15 years, the "democratic deficit" has been a widely used expression, a fashionable catchword of the debate around the EU. Why is this so?

It can be explained by the fact that the term 'democratic deficit' does not have a consensual and a clear-cut definition. It is used in the academic debate with different connotations and the various authors imply different meaning in it. In historical perspective the first appearance of the term was at the beginning of the 1970s when a British Labour Party Academic, David Marquand (*Parliament for Europe*, London: Jonathan Cape, 1979¹), used the expression to describe the weakness of the democratic legitimacy of the European Community institutions. He proposed to have direct elections of the members of the European Parliament (EP). However, when in 1979 EP elections with direct universal suffrage finally took place, the question of Europe's democracy not only did not phase out but it received even more attention from scholars and politicians. This was due to the fact that the EP increased its political stance as the only directly elected institution at EU level, but this did not immediately result in giving more powers to the EP.

The debate went further with the next strengthening of the European Community through its deepening and widening with the Single European Act, which introduced the consultation procedure and set a plan for completion of the Internal Market. With the Maastricht Treaty - envisaging the creation of Economic and Monetary Union, introducing the co-decision procedure and adding two more pillars (Common Foreign

1. Quoted in Mény Yves, *De la démocratie en Europe: Old Concepts and New Challenges*, *Journal of Common Market Studies* 2002, Vol. 41, No. 1, pp.1-13.

and Security Policy and Justice and Home Affairs) with no control by the parliament at all - the voices that the created EU lacked democratic legitimacy significantly raised. They were confirmed, however, by the public reaction to the Treaty, when on the first referendum in Denmark the treaty was rejected. It was accepted only with slight majority in favour in France, and there was a so-called Maastricht Judgement by Germany's Constitutional Court on the democratic nature of the EU. The democratic concerns about the EU system were further justified in 2001 when the Irish said 'no' on the first referendum on the Treaty of Nice.

In political perspective, one can find the term used by every group which participates in the European debate: the Eurosceptics as the Conservative Party in the UK and parts of the Gaullists in France, who find it useful in order to criticize the institutional framework of the EU; others as the 'convinced Europeans' refer to the expression, while trying to find ways of making the rather complex and obscure institutional system of the EU more transparent, efficient and democratic; finally, the Members of European Parliament employ it in order to justify further enhancement of the role of the European Parliament in the decision-making process².

The different legitimating solutions for the EU

Jachtenfuchs et al.³ have developed a typology of four different legitimating solutions for the EU, based on the answers of the European political elites: federal state, intergovernmental cooperation, economic community and network governance. Network governance version for legitimation will stay out of the scope of this article, as it does not have such a degree of influence on the process of European integration as the others. The first three legitimation beliefs have a significant impact on the historical development of the EU system. For the federal state solution legitimacy is split and shared through a dual popular sovereignty (state and union level) and is implemented thorough a system combining popular and state representation at the federal or union level (see table 1).

2. See Mény Yves, *De la démocratie en Europe: Old Concepts and New Challenges*, Journal of Common Market Studies 2002, Vol. 41, No. 1, pp.1-13 at p.8.

3. Jachtenfuchs M., Diez M. and Jung S., (1998) "Which Europe? Conflicting Models of a Legitimate European Political Order". European Journal of International Relations, Vol.4, No.4, pp.409-45 quoted in Rittberger B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, Journal of Common Market Studies, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.208.

Therefore, supporters of this solution are likely to stand for empowerment of the EP as a major source of legitimation and compensation of the weakening of national parliaments' legislative and control functions.

Conversely, the intergovernmental cooperation version of legitimation emphasizes the role of the national level as a source of legitimation, thus it is in favour of increasing the role of the national parliaments rather than the EP.

Finally, the economic community model separates the market from the state, where the European market coexists with the sovereign states without a strong political control over the economic integration. The supranational level derives its legitimacy from economic efficiency and respect of individual liberty, "*best served by the institutionalization of a market economy which among other factors assures free competition, a strong respect of private property and a strict anti-cartel legislation*"⁴. The supranational level is represented by non-majoritarian institutions like independent regulatory agencies. As the economic community is legitimized by efficiency and liberty, there is no need for democracy at EU level⁵. Democratic legitimation is relevant only to the political realm which has remained at national level. Economy, which is at EU level, is according to this concept apolitical and thus beyond the need for democracy.

4. Jachtenfuchs M., *Democracy and Governance in the European Union*, in Føllesdal, A. and Koslowski P. (1998), *Democracy and the European Union* (Berlin/Heidelberg: Springer Verl.), pp.37-80 at p.51.

5. Ibid, p.51.

Table 1: Legitimizing Beliefs and Readings of Democracy, Legitimate Governance and the Nature of the Community's Legitimacy Deficit

	Federal State	Intergovernmental Co-operation	Economic Community
Source of legitimacy	Popular sovereignty at state and union level of governance; communitarian and individualistic principles	National sovereignty (sovereignty indivisible); communitarian principle	Economic efficiency
Conception of democracy at the inter-/supranational level	Parliamentary assemblies at state and union level	Population size-adjusted intergovernmental institutions	No (procedural) democratic legitimacy requirement
Nature of the legitimacy deficit and remedies to reduce it	Delegation/pooling ⁶ procedures accountability gap weakening national parliaments, representative element at Community level is too weak. EP should be empowered	Delegation/pooling produces accountability gap weakening national parliaments. Legitimacy deficit has to be solved domestically (e.g. increasing scrutiny powers for national parliaments)	Economic effectiveness (substance) and efficiency (means) guarantee legitimacy/indifferent to EP empowerment as long as it does not hamper effectiveness and efficiency

(Source: Rittberger, B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, *Journal of Common Market Studies*, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.210.)

Undoubtedly, these legitimation beliefs are cornerstones in explaining the ideological background on which European integration has developed throughout the years. Moreover, they have shaped the way the democratic deficit is perceived and the means of solving it. It must be noted that these beliefs are the main reason why the term 'democratic deficit' has so many versions. One must not, however, stick only to these three concepts, when trying to explain the variety of the definitions of democratic deficit. This is true especially for the academic debate about the term: along with

6. Delegation describes the transfer of sovereignty from the domestic sphere to the supranational level; pooling refers to agreement between principals to share decision-making competences through adoption of (super) majoritarian decision rules. (cf. Rittberger B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, *Journal of Common Market Studies*, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.204).

the representatives of each concept, there are many other scholars who either apply a combination of these beliefs or do not follow them at all.

The academic debate on the term 'democratic deficit'

We will limit ourselves to several concepts, which have an essential impact on the discourse and the other theorists either identify their positions or at least compare them with these ones.

There is a so-called '*standard version*' of the term, which is very close to the 'federal state' concept of democratic legitimation. According to this version the basic problem of the EU is the fact that there is a shift of political control from the democratic parliamentary systems of government at national level to the executive-centred system of government at the European level⁷. The executive at European level consists of both the European Commission and the Council, which are not accountable to the national parliaments and take their decisions secretly and very often without referring to the wishes and the interests of the European citizens – as Andreas Føllesdal puts it: "*Pivotal parts of the decisions of the EU are subject to neither watch nor control by the citizens of Member States, neither directly nor by their representatives. Furthermore, what control and accountability there is runs counter to received democratic theory*"⁸. The standard remedy for this problem, backed by a great number of academics and politicians, is giving more competences to the European Parliament, making the European Commission accountable before the EP and increasing European Parliament's power in the decision making process in comparison with the Council. In this perspective the enhancement of the European Parliament's role is a direct compensation for the reduced competences of the national parliaments⁹.

7. e.g. Weiler Joseph, Ulrich Haltern and Franz Mayer (1995), *European Democracy and its Critique*, in Jack Hayward (ed.) *The Crisis of Representation in Europe*, London: Frank Cass quoted in Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research paper, April 2003 (http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf)(downloaded 20.02.2004).

8. Føllesdal A., "Democracy and the European Union: Challenges" in Føllesdal, A. and Koslowski P. (1998) *Democracy and the European Union* (Berlin/Heidelberg: Springer Verl.) p.2.

9. See Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, April 2003

Prominent representatives of the 'economic community' belief are Giandomenico Majone and Hans-Peter Ipsen. Majone argues that the EU is a 'regulatory state' or 'fourth branch of government', which shares the same characteristics as every specialised agency: it is established by statute as an independent administrative authority combining expertise with a rule-making and adjudicative function¹⁰. He points out that the agencies are not something new, their place of origin is the US, and they play a very important role in state governing, as they assure the implementation of long-term objectives, which are otherwise not possible to be achieved due to the changes of the policies of the governments caused by their change in the regular elections. Furthermore, at the European level there is another advantage of the supranational institutions as the European Commission: they can exercise competences with much better credibility than an intergovernmental agreement. In this sense the making of regulatory policies should be isolated from the standard democratic process and should resemble the courts and the central banks, which are independent from the legislative and executive powers¹¹. In the same context Ives Mény talks about a "second or constitutional pillar" of modern democracy, which is essential for guaranteeing the rights of the minority¹². In this second pillar Mény includes the Bill of Rights, the independence of judiciary, autonomous institutions as central banks, regulatory agencies, judicial review, territorial or functional distribution of power.

Majone, however, states that the EU lacks political accountability, which for him means that institutions must give reasons for their decisions, thus leading to ex post public participation and debate, peer review, complaint procedures and judicial review. Majone further argues that the Commission is the only institution of the EU, which takes into account the general interest of the Community in its work. The members

(http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf) (downloaded 20.02.2004), p.6.

10. Majone G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 at p.15.

11. Majone G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 and numerous publications of Majone G. quoted in Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper (http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf) (downloaded 20.02.2004), April 2003, p.6.

12. Mény Yves, *De la démocratie en Europe: Old Concepts and New Challenges*, Journal of Common Market Studies 2002, Vol. 41, No. 1, pp.1-13.

of the Council are inconsistent in their preferences because of their short-term participation in the process, while the European Parliament “*is not yet institutionally suited to develop a coherent legislative strategy to achieve the objectives laid down in the Treaties*”¹³.

If we compare Majone’s thesis with the ‘standard’ concept of democratic deficit, we can conclude that he does not consider that the increase of the competences of the European Parliament will diminish the democratic deficit, but it will rather enhance the so-called ‘Majoritarian or Westminster’ model¹⁴. For him the most important institution at EU level is the Commission with its unique capacity and interest to defend the Community interest as defined in the Treaties. Therefore, Majone focuses rather on the credibility and the legitimacy of the EU system than on its democratic problem¹⁵.

Similar to the thesis of Majone is the one of Hans-Peter Ipsen¹⁶. He defines the EU as a ‘Zweckverband funktioneller Integration’ (literally translated ‘Special Purpose Association for Functional Integration’). Ipsen argues that the EU was created for coping with the consequences of economic liberalization. “*This purpose legitimates the activity of the EU in a number of functional areas and at the same time limits the extension of EU competences to what is necessary to cope with economic interdependence*”¹⁷. In this case the activities of the EU have technical and organizational nature and therefore they must be exercised only by

13. Craig, *Democracy and Rule-making Within the EC: an Empirical and Normative Assessment* (1997) 3:4, *European Law Journal*, 105-130, at 118 quoted in Majone G., *Europe’s “Democratic Deficit”: The Question of Standards*, *European Law Journal*, vol. 4, No1, March 1998, pp.5-28.

14. This model supposes that the majority should control all government – legislative, executive and sometimes even judiciary. The system is typical for Britain and New Zealand.

15. See Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, April 2003 (http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf) (downloaded 20.02.2004), p.6.

16. Numerous works of Ipsen, e.g. Ipsen, H.P., *Zur Exekutiv-Rechtssetzung in der Europaischen Gemeinschaft*, in: Badura, P. and Scholz R. (eds): *Wege und Verfahren des Verfassungslebens. Festschrift fuer Peter Lerche zum 65. Geburtstag*, Muenchen (Beck) 1993, pp.425-441 quoted in Jachtenfuchs M., *Democracy and Governance in the European Union*, in Føllesdal A. and Koslowski P. (1998), *Democracy and the European Union* (Berlin/Heidelberg: Springer Verl.), pp.37-80 at p.53.

17. Jachtenfuchs, M. *Democracy and Governance in the European Union*, in Føllesdal A. and Koslowski P. (1998), *Democracy and the European Union* (Berlin/Heidelberg: Springer Verl.), pp.37-80 at p.53.

highly qualified experts without democratic legitimation. With the broadening of the scope of the competences of the EU, however, the EU can no longer count on the legitimacy of its member states. It must be legitimized through a democratic control, which the EP, however, cannot provide, as it does not represent one European people but different national peoples. Therefore, the increase of the competences of the EU weakens rather than increases its democratic legitimacy, as the EU does not have a supranational source of democratic legitimation and counts exclusively on the national level of democracy.

Other scholars – Fritz Scharpf, Wolfgang Streeck, Philippe Schmitter, Stephan Leibfried and Paul Pierson¹⁸ – find the reasons for the EU's democratic deficit in an utterly different perspective: they argue that the EU neglects the centre-left ideas, thus opening “*the door wide to a pure laissez-faire capitalism*”¹⁹. These authors find the *EU concentrated much more on negative integration*, i.e. ruling out the trade barriers and national regulations, which restrict free movement of goods, persons, services and capital, and distort free and equal competition within the Community. On the other hand, *the EU is relatively weak in positive integration*, i.e. legal harmonisation and re-regulation at European level, contributing only to the completion of the Internal Market, while leaving underdeveloped the social policy issue. Free competition in the internal market, the possibility for every enterprise to choose where to produce within the EU, without losing its national market, place the national governments and unions in a very complicated situation, being forced to cut their taxes, social benefits, non-wage labour costs and job guarantees in order to attract the companies and to erase local disadvantages in comparison with the other countries. This phenomenon is called

18. Steeck W. and Schmitter P. (1991), *From National Corporatism to Transnational Pluralism: Organized Interests in the Single European Market*, Politics and Society, 19(2), 133-64; Leibfried St. and Pierson P. (1995), *Semisovereign Welfare States: Social Policy in a Multitiered Europe*, in Leibfried St. and Pierson P. (eds), *European Social Policy: Between Fragmentation and Integration*, Washington, D.D.: The Brookings Institution, all quoted in Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper (http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf) (downloaded 20.02.2004), April 2003, p.7; Scharpf F., *Democratic Policy in Europe*, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155.

19. Von der Groeben, 'Probleme einer europäischen Wirtschaftsordnung', in J.F. Baur, P. Müller-Graft and M. Zuleeg (eds), *Europarecht, Energierecht, Wirtschaftsrecht, Festschrift für Bodo Börner* (Carl Heymanns, 1992) 123, quoted in Scharpf F., *Democratic Policy in Europe*, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155 at 143.

‘competitive deregulation’ and there is nothing provisioned in the Treaties to fight against it at Community level. The reason for that is the fact that the EU decision-making process has multiple veto-players - “*each country is trying to push through a different solution*”²⁰. The solution of the problem is ‘two-level politics’, which means increasing the EU’s ability to adapt social regulations through majority voting in the Council and flexible macroeconomic rules, allowing national governments to compensate the negative repercussions of the market integration at national level²¹. There are other measures, which, according to Scharpf, must be introduced, and which are questioning the unique character (‘*sui generis*’) of the Community: he proposes that certain competences, which are already transferred to Community level, must be returned to national level, when there is “*no agreement achieved so far and is unlikely to be achieved in the future*”²². Furthermore, he stands for the option that “*it should no longer be possible to derive directly applicable restrictions on Member State action from the primary law of the treaties*”²³. Then he goes further, proposing the division of the Treaties in ‘constitution-like’ and ‘implementing’ treaties with the aim to give the Member States the possibility to review in the ‘implementing’ treaty the extent of the direct applicability principle and to correct “*some of the excesses in the case law on negative integration*” in conformity with the current interests of the states.

It can be concluded that Scharpf is in favour not only of a more social Europe, but also of a limitation of the competences of the Community in the scope of the policies, which are already successful, and giving back to the national level problems, which did not find their solution at European level. He argues that it is unacceptable to have ‘supranational’ primacy of European law in the case that the EU is much less democratically legitimate than the nation- state. This concept can be considered as a big threat to the existing structure of the Union, jeopardizing important achievements the already achieved at this level. It is difficult to imagine

20. Scharpf F., *Democratic Policy in Europe*, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155 at p.151.

21. See Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, (http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End_of_Democracy_in_Europe.pdf) (downloaded 20.02.2004), April 2003, p.7.

22. Scharpf F., *Democratic Policy in Europe*, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155 at p.151.

23. *Ibid.*, p.151.

for example the EU to be able to achieve the goals, provisioned in the Treaties, without the doctrines of direct effect and direct applicability or without a Commission independent from the Member States and especially without an unbiased European Court of Justice. Furthermore, he stands for maintaining the social protection of richer countries like Germany, while the interests and citizens' positions in poorer Member States are not fully taken into account²⁴.

An influential representative of the *intergovernmental legitimation belief* is Andrew Moravcsik. He has one of the most radical views towards the 'democratic deficit' of the EU. He argues that there is no European superstate in the form of the EU, because it has one of the most elaborate constraints imposed by the European constitutional settlement. Moreover, the EU is competent in areas, which normally involve less direct political participation, and in policies like social welfare provision, defense, education, culture and infrastructure, which require high government expenditure, the EU has no or little competences. The EU's ability to tax is limited to about 2-3 per cent of national and local government spending (1.3 per cent of GDP) and is unlikely to change soon²⁵. In addition, its spending is only in common agricultural policy, structural funding and development aid, and the financial framework for it is set regularly by unanimous consent from the Member States. Furthermore, Moravcsik argues that the EU is also under constraint administratively – because it has restrained powers of implementation except in EMU, competition policy and external trade negotiations – and procedurally – by institutional checks and balances, namely the separation of powers, a multi level structure of decision-making and a plural executive. Thus in the past two decades the EU has developed only in areas which are consensual for all Member States. Even the supremacy of the Community law could not have been established without the nearly consensual support of the Member States²⁶.

Against the argument that the executive is unaccountable, Moravcsik points out that in the last decades the European Parliament got

24. Cf. Moravcsik A., *In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union*, *Journal of Common Market Studies* 2002, Vol. 40, No. 4, pp. 603-24 at p.619.

25. Moravcsik A., *In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union*, *Journal of Common Market Studies* 2002, Vol. 40, No. 4, pp. 603-24 at p.608.

26. Alter K.(2001) *Establishing Supremacy of the European Law* (Oxford: Oxford University Press) quoted in *ibid.* p. 609.

overwhelming power over the decision-making process, thus superseding the European Commission in its role in the legislative process. Considering the EP as a source of legitimation for the EU system, Moravcsik's concept does not comply fully with the intergovernmental co-operation belief, according to which the only source of legitimacy for the EU is the nation state and the national parliaments, in particular, when democratic control is concerned.

In contrast to Majone's concern about the legitimacy and credibility of EU regulators, Moravcsik points out that the EU policy-making process is as open to input from civil society and as transparent as the systems of the most developed states. Technocrats are obliged to take into account multiple societal interests, the European Parliament and the national parliaments exercise scrutiny control and the EU decisions are subject to judicial review both by the European Court of Justice and national courts. Finally, against Scharpf's argument that EU policy is too much in favour of the neo-liberal concept and deregulation, Moravcsik supports the thesis that the EU system, while deciding mainly with consensus, takes into account all kinds of interests. In addition, the EU "*permitted high standards and supportive institutional reform, and thus had tended to reregulate at a high level*²⁷".

After having reviewed the position of Moravcsik, we can conclude that in general he does not support the concept of a democratic deficit at the European level. On the contrary, he thinks that the system works well and is democratically accountable, thus deliberating results, which are in favour of the majority of the citizens. One can argue, however, how plausible the intergovernmental theory is.

It is true that national governments have the most important word in agenda setting, adopting legislation, and control on the implementation of the legislation at European level. Some authors also advance the argument that even in the areas, where decisions are taken by qualified majority in the Council, it is beforehand decided (in the European Council or in the Council) by unanimity that qualified majority should be applied. There are examples, however, where governments agree that a certain problem will be solved in not the best way for all of them or that a given question is to be tackled at European level, for which in response they receive another decision in their favour (the so-called "package

27. Moravcsik A., *In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union*, Journal of Common Market Studies 2002, Vol. 40, No. 4, pp. 603-24 at p.618.

deals²⁸). Furthermore, the supremacy of the Community law even on national constitutions has definitely exceeded the preferences of some governments throughout the history of European integration (e.g. de Gaulle's government or Thatcher's). Many other examples can be given to support the argument that governments do not fully control Community activities.

Therefore, the approach of intergovernmentalism does not explain the whole complexity and interconnection of the process of European integration.

There is, finally, another concept, explaining the 'democratic deficit' in the EU as *an incapability of the EU to increase input democracy*. Its main representative is Simon Hix²⁹. He accuses the above presented concepts of focusing almost exclusively on the output side of democracy, i.e. the results of the decision-making process, which are in the interests of the median citizen, whereas the input side, notably "*the contest between rival elites with rival policy agendas over the chance to control the reigns of power for a limited period*³⁰" is absent. He argues that it is exactly the input side of the process which distinguishes democracy from "enlightened despotism", where 'despots' can also generate policies close to the interests of the median citizen, i.e. outputs.

Hix argues that elections of governments and of the Members of the European Parliament are not contested on issues or directions of EU policies but rather on domestic issues: "*At no point do voters have the opportunity to choose between rival candidates for executive office at the European level, or to choose between rival policy agendas for EU actions, or to throw out elected representatives for their policy positions or actions at the EU level*³¹."

Moreover, because the EU restricts numerous policies on the national level (through EMU, the Single European Market, the Growth and Stability Pact, etc.), it has a powerful indirect impact on the process of

28. 'Package deals' play an important role in European integration. For example it is well known that France agreed to create a Single European market, even though it was threatened by the competition of the German goods, being assured that Common agricultural policy would be created and despite the fact that Germany was not very much in favour for such policy.

29. Hix S., *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, ([http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End of Democracy in Europe .pdf](http://personal.lse.ac.uk/HIX/Working%20Papers/Hix-End%20of%20Democracy%20in%20Europe.pdf)) (downloaded 20.02.2004), April 2003, p.8.

30. Ibid., p.5.

31. Ibid., p.9.

domestic political competition by making the left and the right parties incapable of promoting programs, which are not centrist. The result, Hix proves empirically, is that since the 1970s domestic party competition has declined and voters are no longer able to choose between alternative national policies and at the same time they are also unable to substantially influence policy-making at the EU level.

Hix argues that this situation leads to two major problems. First, voters become indifferent about which political group is in power, concentrating only on the personalities of the party leaders as the only visible differences between the parties. Second, restrictions on policy competition undermine policy innovations, which means that it is very difficult to change the status quo at the EU level and it is thus unlikely for the EU to find solutions for its long-term structural economic problems.

The only solution for these problems, according to Hix, is “*a genuine contest for political leadership at the European level*”³², which will enhance political debate, will promote and diffuse competitive alternatives and, hence, will result in the adoption of democratic decisions. In support of his thesis, he makes a number of proposals for institutional changes, which would promote this development. They are mainly in favour of introducing the majoritarian element as a means to increase the contest at European level.

The concept of Simon Hix is a rather plausible way of explaining the democratic dilemma the EU is confronted with, as he describes the democratization of the EU as a two-sided process: with input and output sides. Proposing to politicise the decision-making process at European level, thus making the issues dealt on that level ‘interesting’, salient and worth debating in public, Simon Hix searches for solutions of one of the most serious problems of the EU: the indifference of the public about the politics performed at EU level and the lack of public participation. Furthermore, he proves something crucial for understanding the democratic deficit at Community level: the fact that it influences directly the politics on national level, thus making them also uncontestable and unattractive for the citizens.

32. Ibid., p. 26.

III. The European Parliament - First Pillar for EU Democratic Legitimacy

There is a widespread consensus in the academic literature that the European Parliament is the only institution at EU level which has no lack of democratic legitimacy. Moreover, it is one of the institutions, along with the Council and the European Council, which provides potential solutions to the problems of democratic accountability and legitimacy facing the EU political system. Whether the EP can play a role in this sense “*fifty, or even 20, years ago the question would not have been taken seriously by most political scientists or political leaders in Europe*”³³. This is due to the fact that the EU has emerged as an ordinary international parliamentary assembly, where representatives were nominated by members of national parliaments, but has developed into an institution, which directly represents European citizens through direct universal suffrage. This case is not unique in the world – the Central American Parliament is also now directly elected³⁴. What matters here, however, are the powers that the EP has: supervisory, budgetary and legislative. They are unique in the world for such an international assembly. Its political weight and its range of competences were not instantly attributed to the EP with its creation, but they were constantly increasing throughout the years of its existence, especially in the last 25 years, thus making this institution into one with a most dynamic history. The EP has gradually evolved from merely consultative institution with symbolic importance into a fully-fledged institution with significant power and importance. Furthermore, it was exactly the EP which has been successfully pressing not only for the increase of its powers, but also for the overall enhancement of the other supranational institutions at EU level – the European Commission and the European Court of Justice. It must be noted that this success would of course not have been possible if not for the support of the Member States, either as a group, or individually. The EP has actively taken part in the amendments of the Founding Treaties. It has elaborated several constitutional projects – for example the Treaty for European Political Community in 1953 or the ‘Draft Treaty on European Union’ elaborated in 1984, which - even

33. Hix S., Tapio R. and Scully R., *Fifty Years On: Research on the European Parliament*, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, pp. 191-203 at p.192.

34. Corbert R., Jacobs Fr. and Schackleton M. (4. ed.) (2000), *The European Parliament* (London: Harper), p. 10.

though they failed to be ratified - gave new ideas which subsequently were included in the Founding Treaties. Moreover, since the Single European Act the EP has been informed about the future institutional changes during the IGCs and was able to express its opinion through its representatives in the groups preparing the changes in the treaties.

However, we cannot say that the success of the EP is complete for several reasons. First, now (after the Treaty of Nice) the EP is formally involved – through consultation, co-operation, co-decision or assent procedures – in only 66 per cent of all TEC and 37 per cent of all TEU matters³⁵. Strong powers of co-decision or assent have been attributed to the EP in only 25 per cent of all TEC articles³⁶. In my opinion, this participation is quite insufficient, having in mind that for the time being the EP is the only directly elected institution, which takes part in the decision-making process at EU level. Moreover, there are several cases when the Council takes decisions with QMV, but they do not require co-decision or assent procedure (e.g. in the field of EMU the Multilateral surveillance regarding the macroeconomic policy guidelines, where co-operation procedure is used, or Common agricultural policy, Border check and controls, appointment of ECB bodies, etc., where consultation procedure is used). There are even cases with QMV where the EP is not involved at all or is just informed³⁷.

Second, there are many cases where the EP must take its decisions with absolute or even qualified majority, which weakens its possibility for contesting ideas within the Parliament, as it should always search for the biggest possible consent. This leads to weakening of its party system and to a lack of public interest in its activities. Together with the big thresholds for QMV in the Council and the still weak powers of the President of the Commission, the politics in the EP result in enhancement

35. Maurer A., *Nizza in Perspektive – Vertragsänderungen im Lichte der institutionellen Dynamik der EG-EU*, Internationale Politik und Gesellschaft, No.4, quoted Wessels W., *Nice Results: the Millennium IGC in the EU's Evolution*, Journal of Common Market Studies, June 2001, Vol. 39, No.2, pp. 197-219 at p.210.

36. Wessels W., *Nice Results: the Millennium IGC in the EU's Evolution*, Journal of Common Market Studies, June 2001, Vol. 39, No.2, pp. 197-219 at p.210.

37. These cases are art. 99.2 ECT – adoption of broad economic policy guidelines, where QMV is used but there is no participation of the EP and art. 60.2 ECT – amendments or abolishment of unilateral measures taken by the Member States against third countries with regard to capital movements, when again QMV is used but the EP is only informed. Data about the Nice Treaty taken from Wessels W., *Nice Results: the Millennium IGC in the EU's Evolution*, Journal of Common Market Studies, June 2001, Vol. 39, No.2, pp. 197-219, table 1, p. 202, 203.

of the consensual democracy and weakening of the majoritarian features of the EU system. Thus the input side of democracy, as Simon Hix defines it: with contesting political ideas and programs in the political arena of the Union and the possibility to apply them for a certain period of time, is still underdeveloped and further efforts are needed to democratize the system.

Third, the EP faces also challenges of its legitimacy due to its elections. Held in the EU for five times since the first elections in 1979, the direct elections of the EP are still second order national party competitions where national parties compete only on national issues and over the record of the government in place. As a result, the European voters cannot choose between rival political agendas and have no power to change those who have political power at EU level. Nevertheless, there is a possibility to have fully-fledged European elections if national parties stop using the EP elections for another level of national contest and instead, questions of European integration prevail in the debate.

As far as the party system in the EP is concerned very positive trends can be observed. The EP's party system is highly developed: the parties are highly cohesive and increasingly so. Furthermore, there is a clear-cut left-right division rather than pro- and anti-European one. Unlike most of the parliaments, however, the EP is obliged to vote with extraordinary high majority. Despite that the main political parties in the EP compete in different policies, but they do have to collude when absolute majority is needed or when they have to protect the interests of the EP against the other EU institutions. Yet, competition between the parties and cohesion within each of them is encouraged in procedures like co-decision and co-operation, where the EP has bigger legislative powers. Therefore, more powers must be given to the EP in order to enhance political contest within it.

IV. The Council as the Other Pillar for EU Democratic Legitimacy

All political scientists who work on the political system of the EU agree unanimously that the Member States, represented both in the European Council and the Council (of Ministers), with their directly elected and parliamentarily accountable governments are the other source of democratic legitimacy of the EU along with the EP. National governments are appointed by the legislative for a certain period of time and their performance is contested in the regular democratic elections. In this sense intergovernmentalists even consider the Member States as the

major source of legitimacy of the EU system, as the Member States control and modulate the system as they wish to.

Indeed, the Council since the creation of the Communities has two main competences in the EC system: legislative and executive³⁸, in exercising of which it has shaped significantly the EC system –as Wolfgang Wessels defines the Council, it is the ‘decision-making centre’ of the Union³⁹. The Council shares its legislative competences with the EP (the right of initiative has the Commission) with a serious increase of the legislative powers of the EP at the expense of the Council since the SEA. There is no concern here, whether this process lessens the EU’s democratic legitimacy as the power is transferred to the directly elected EP. On the contrary, the empowerment of the EP strengthens the EU’s legitimacy. Moreover, the decision making process in the EU has been optimized as it is estimated that the consultation procedure lasts much more time than the co-decision procedure. In the consultation procedure the EP cannot amend the proposed legislation. Therefore, the EP uses the threat of delay as its only ‘weapon’ in order to receive the desired amendments and sometimes it has worked⁴⁰. That is why the co-decision procedure, in which the EP has the right to block a decision, allows quicker decisions even though the procedure itself is much more technically complicated.

What worries some authors in the legislative procedures is the fact that the Council takes decisions with qualified majority. This leads, it is argued, to underrepresentation of the democratically elected governments as not every interest is taken into account. Therefore, the democratic legitimacy of these decisions is insufficient. Theoretically one can agree that this presumption could be true, but let us examine it empirically. First, all the areas where QMV is applied have first been agreed upon with consensus by all Member states during the IGC, when signing or amending the Treaties. Therefore, decisions taken with qualified majority are always in the fields where an overall consensus exists between the

38. The division is made by Simon Hix, Hayes-Renshaw, Wallace, etc.

39. Wessels W. (1991), *The EC Council: The Community Decisionmaking Center*, in R.O. Keohane and S. Hoffmann (eds), *The New European Community: Decisionmaking and Institutional Change* (Boulder: Westview) quoted in Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press) p.25.

40. For example, in 1989 the EP threatened to delay a Commission proposal to start the first phase of EMU on 1 July 1990 because the Commission would not accept a stronger role for the committee of Central Bank governors. Eager not to jeopardize the EMU timetable, the Commission accepted the relevant EP amendments. Cf. Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.61.

states (at least about the goals pursued). As a result, areas where there is a 'significant national interest' for one or several states, unanimity is preserved⁴¹.

Second, Article 205 (3) of the Treaty provides that "Abstention should not prevent the adoption by the Council of acts which require unanimity". Therefore, when voting with unanimity, several states can abstain but still legislation can be adopted. As a result, under unanimity an abstention is equivalent to support the proposal⁴². This helps the governments, which abstained, to argue before their parliament and national voters that it did not support the legislation. This does not work, however, under QMV, when an abstention would mean a failure to adopt the legislation, because 62 votes out of 87 (after enlargement 169 out of 237) are still required in order to pass the legislation. The Council itself admits: "*This sometimes results in a paradoxical situation, where a decision for which a qualified majority voting cannot be reached...is taken more easily unanimously as a result of abstention by certain members of the Council who do not wish to vote in favour but who do not want to prevent the Act concerned from going through*"⁴³.

Third, the threshold for reaching an agreement under QMV has become higher in the Nice Treaty, requiring not only 169 votes out of a total of 237, but also they must be from a majority of the states. Finally, a demographic filter acts as a blocking mechanism, since any member of the Council may request verification that the qualified majority comprises at least 62 % of the total population of the Union (Art. 205.4 TEC as amended by Art.3 of the Protocol of the Enlargement of the European Union, attached in the Treaty).

In sum, QMV is not threatening the democratic legitimacy of the EU as it is very near to consensus rather than to real exclusion of one or several member states. On the contrary, it enhances efficiency as it is estimated that when a decision must be taken with QMV, the opposing minority feels pressed to concede in order to maintain consensus in the Council.

41. For example budgetary system of own resources, Structural funds until 2007, Treaty amendments, Cultural policy, etc.

42. Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press) p.69.

43. Council of European Communities (1990), *The Council of the European Community* (Luxembourg: Office of Official Publications of the European Communities), p.41 quoted in *ibid*, p.69.

Another major problem which the Council is facing is the fact that the negotiations both on the IGCs and in the Council meetings are held primarily in secret, off the record. Therefore, it is argued, the national parliaments and the national public are not informed about the actual position of their respective government. In this situation the governments can always claim that they have been the ‘winners’ of the meeting, managing to protect the national position. As Moravcsik notes: “International negotiations and institutions offer executives opportunities to form ‘political cartels’, in which they reciprocally reinforce their respective control over domestic initiative, institutions, information and ideas⁴⁴.” In other words, the national executives can use the Council and the European Council for making themselves more powerful and independent from the other national actors (the national parliaments in particular). The National Parliaments (NP) can influence the EU system mainly through the ratification of the Treaties, which is an important instrument, but not sufficient to include the NP in the deliberation at EU level. Only in Austria and Denmark there is a semblance of direct accountability with national parliaments controlling national ministers as far as their actions on the EU level are concerned. As a result, there is not only a significant lack of transparency, but also democracy on national level is threatened, because the importance of the national parliaments decreases significantly.

What can be done? One of the ways to increase the national parliaments’ control over their executives is to make the meetings of the Council public. This will lead, however, to a decrease of compliance in the Council and will reduce the amount of legislation adopted⁴⁵. Another solution is to include the National Parliaments in the legislative process or at least to inform them. Finally, one can also presume that at the European level the loss of the powers of national parliaments must be compensated through full empowerment of the EP. The EP already has the right to ask questions to the Council and to be informed over the decisions taken in the European Council. Nevertheless, national parliaments must maintain their powers over the national executive.

44. Moravcsik A., *Why The European Union Strengthens the State: Domestic Politics and International Cooperation*, Center For European Studies, Working Paper Series No.52, (downloaded 22.02.2004) (http://www.ces.fas.harvard.edu/working_papers/Moravcsik52.pdf), p.7.

45. Hayes-Renshal and Wallace (1997), *The Council of Ministers* (London: Macmillan), quoted in Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press), p.74.

V. The Commission – How Democratic Is It?

As we saw in the beginning of this paper, the 'standard' version of the democratic deficit perceives the Commission as the main source of a lack of legitimacy, as it is an independent supranational institution. The Commission is the very institution, which embodies the dual legitimation of the EU system: it derives its legitimacy both through the elected national governments, which appoint it and scrutinize its work within the comitology system, and through the EP, which also takes part in its recruitment and exercises control over its work. What is important for us here is how these procedures work and how effective the control over the executive indeed is.

As far as parliamentary scrutiny and control of the Commission are concerned the EP has a very elaborate system of asking both oral and written questions to the Council and the Commission. They enable the EP to receive information, to force the executive to make a formal statement relating to a specific action and to inform the Commission and the Council about problems that they might not be aware of⁴⁶.

The EP also controls how the Commission implements the Community budget, having the power to grant or refuse discharge to the Commission on how it has implemented the budget in the financial year under consideration. In this competence the EP is helped by the Court of Auditors, which draws up annual and ad hoc special reports on the implementation of the budget. On the grounds of these reports the EP makes its decision whether to discharge the Commission. The Commission is obliged to take into consideration any comments made by the EP and to provide additional information if requested⁴⁷.

The EP also takes part in the appointment of the Commission. It was only after the Treaty of Maastricht when the EP became involved in the Commission President's appointment by having the formal right to be consulted on the nominee for the President, proposed by the governments. Then the whole Commission would be subject to a vote of approval by the EP. The EP took this provision to mean that it was entitled to approve or reject the nominee. Surprisingly, this interpretation was approved by Germany as a President-in-office of the Council at the

46. Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press), p.48.

47. Corbert R., Jacobs Fr. and Schackleton M. (4. ed.) (2000), *The European Parliament* (London: Harper), p.253.

first occasion in 1994⁴⁸. After the selection of the future Commissioners the EP introduced ‘Commission hearings’, where they had to defend their candidature before the relevant committee of the EP. Then they were as a College subject to vote of approval by the EP. The treaty of Amsterdam formalized the Parliament’s interpretation.

The Nice Treaty changed further the procedure, requiring QMV in the European Council instead of unanimity when nominating the President of the Commission. In this way the EP’s powers increased, as it could more easily impose its own preferences on the candidature when not every country’s approval is needed⁴⁹. EP’s competences, however, are still very limited.

Since the Treaty of Rome, the EP has also the right to censure the Commission with a ‘double majority’ or ‘supermajority’: an absolute majority of the MEPs and two-thirds of the votes cast. This right is applied to force the Commission to resign as a College. There have been several proposals for motions of censure but none of them have succeeded. The reason for that is the fear of the EP to use this weapon as it may discredit the whole system and the EP in particular and because there is no possibility to censure individual commissioner due to the resistance to violate the Commission’s collegiality and to the fear that the nationality factor might abuse the system⁵⁰. In addition, before 1994 there was no guarantee that the heads of governments and states would not reappoint the same commissioners. More important is, however, the ‘solidarity’ between the Commission and the EP as the two supranational bodies in the institutional triangle against the Council. Simon Hix compares the EP’s right of motion of censure with the right of the US Congress to impeach the US president when violating the law or moral principles rather than with a political right to withdraw majority support for a government as it is in the parliamentary systems⁵¹.

However, in 1998 the EP used for the first time the threat of its right of censure to force the Santer Commission to change its policy in the food safety issues after the BSE crisis. In 1999 in the same way the EP forced the Commission to make a report about allegations of financial

48. Crum Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, (<http://www.ceps.be>) (downloaded 17.01.2004), p.3.

49. Ibid, p.3.

50. Crum Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, (<http://www.ceps.be>) (downloaded 17.01.2004), p.2.

51. Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press), p.47.

mismanagement, nepotism and attempts to hide information, which due to the disclosures eventually led to the resignation of the whole Commission, even though the censure of motion itself could not pass in the EP.

After these events, the Treaty of Nice introduced the power of the Commission President to force, with the approval of the majority of the College, individual Commissioners to resign. In practice, now the EP can initiate the resignation of individual Commissioners by addressing the Commission President while threatening to exercise a collective censure if he/she does not take into account the will of the EP⁵². However, formally the EP does not have yet the right to censure a commissioner, as it is the case in the national parliamentary systems.

Many scholars argue, however, that the political impartiality of the Commission is no longer effective, as with the completion of the internal market it has gained important powers, converting the impartial administrator into a body, which resembles much more a government⁵³. Both Crum and Hix find that in order to enhance democratic accountability and to increase participation of the citizens in the institutional system of the Union, the Commission must be further politicized, i.e. make its policies politically salient. In my opinion, several conditions must be observed when doing so. First, the Commission must become politicized but not 'partisanized'. This means to have the possibility to democratically change its political orientation, responding to the voters' affiliation, but at the same time it must always strive to stay as unbiased as possible, not favouring a certain member state or a group of member states, an interest group or alienating for good a certain public interest. It must keep its role as a promoter of the Community interests.

Second, the subtle institutional balance which guarantees democracy must be preserved, preventing for example the Commission President from abusing the power by exceeding the democratic legitimacy he/she would have been granted.

52. Crum Ben, *Staging European Union Democracy*, EPIN Working Paper No. 10, December 2003, (<http://www.ceps.be>) (downloaded 17.01.2004), p.2.

53. See for example Crum Ben, *Staging European Union Democracy*, EPIN Working Paper No. 10, December 2003, (<http://www.ceps.be>) (downloaded 17.01.2004); Hix Simon (1999), *The Political System of the European Union* (New York, St Martins Press), chapter 2.

VI. Conclusion

The EU has evolved in a political system with fully fledged and working mechanisms of democratic control. It faces, nevertheless, several problems. One of them is the fact that even though the European elites are actively participating and fully engaged in the EU policies, the latter lack public interest and public control. Indeed, the EU policies can hardly be the subject of a clear-cut left/right division, which the citizens tend to favour, and the EU does not have exclusive competences in policies which are topics of daily interest for the citizens such as taxes, internal and international security. It is thus quite difficult to bring the citizens close to the EU as it conducts relatively uncontested, so to say not politically 'salient' policies.

Secondly, despite the fact that the EP increases its powers of electing and censuring the Commission as a College and its President, in particular, it still cannot influence the political orientation of the Commission, a body, which, as we showed, is no longer politically impartial. Moreover, although the role of the EP increases significantly with every Treaty amendment, in some areas of legislation it still remains rather limited and must be further enhanced in order to guarantee the democratic life of the EU.

Last but not least, there must be found an adequate way to include the national parliaments in the decision-making process on the EU level as well as to increase their power on the national level, as they must have the instruments to shape and supervise national policies concerning the EU as well as the actions of the national ministers in this field.

All these questions must be perceived, however, in the context that the EU is an emerging political system with a unique structure and functioning, incomparable to anything which has existed before. Therefore, even though the EU must answer a certain number of general requirements for democratic legitimacy, the way they must be applied cannot resemble any classical, either national or international models.

Mihail Milev.