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A Democratic Deficit in the European Union?

M.A. Dissertation in Advanced European and International Studies

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Introduction

“Rien ne se crée sans les hommes . Rien ne dure sans les institutions”

Jean Monnet

We have come to a time when the famous words of the one of the Founding Fathers of the European Communities must be probably inverted to *Rien ne se crée sans les institutions. Rien ne dure sans les hommes*. Indeed, after more than fifty years of very dynamic integration and ever-changing Union, the European Project 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 national constitutions. Therefore, it cannot be democratically legitimised solely through the member states, participating in it, which is the case of every purely international organisation. In the same time, however, the European Union (EU) cannot be defined as a state, because crucial competences, typical for a state, such as common army, independent tax policy, education policy, fully-fledged and independent social policy, are not and are unlikely to be attributed to the European level of governance. As a result, 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. As a result, a concept (or concepts) have been elaborated that there is a democratic deficit in the EU system, which causes serious problems to the system and questions its mere existence.

This work is an attempt to define and conceptualise the debate about the term 'democratic deficit' and to examine where and how the term can be applied to the EU system and what its impact is on the system. Furthermore, my goal is to explore the remedies that have been taken or must be taken in order to solve the problem. Thus, I try to prove that the EU is a dynamic political system susceptible to changes and therefore also to democratisation, improving its structure and functioning.

For these purposes my work is structured as follows. The first chapter explores the various definitions of the phenomenon 'democratic deficit' in the EU as part of a scientific and political debate. Then I examine the general criteria, which are used in order to define a system as democratic and legitimate. In the second chapter my focus shifts to the application of these criteria on the system of the EU with the aim to understand the actual status of democracy in the EU. I start with the European society and the public opinion as essential sources of democratic legitimacy. Then I examine the thesis that there should be a European social welfare state in order to enhance the democratic character of the EU system. My work goes further with the European institutions, examining the democratic legitimacy of each of them. The stress is put on the European Parliament as a major source of democracy at the EU level, but with some distinctive problems, which it faces. Finally, I examine the Convention on the Future of Europe as a new model for enhancing the democratic legitimacy of the institutional reforms and, reviewing the achievements of the Convention, I argue to what extent this model is really functional.

The overall approach of my work is analytical and empirical, focusing predominantly on the academic debate on the problem and on the functional implication of the theory on the structure of the EU.

Chapter One

The Concept of Democratic Deficit in the European Union as a Scientific Debate

1. Definition(s) of democratic deficit

“...over these past fifteen years the notion of a "democratic deficit" continues to be associated with European construction. This sensational concept has even become a real slogan...”

/Ives Mény/¹

Ives Mény’s words come to illustrate that even though the concept of democratic deficit in the European Union is relatively new, it has already become a favourable expression, a fashionable catchword. But why ‘democratic deficit’ is so famous?

It can be explained with the fact that the term ‘democratic deficit’ does not have a consensual and clear-cut definition. It is used in the academic debate with different connotations and the various authors imply different meanings 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, 1979)², used the expression

¹ Mény, Yves, Europe and democracy, No40, 07/2000, French Ministry of Foreign Affairs, internet source

² quoted in Mény, Yves, De la démocratie en Europe: Old Concepts and New Challenges, JCMS 2002, Vol. 41, No. 1, pp.1-13

to describe the weakness of the democratic legitimacy of the European Community institutions. He proposed to have direct elections of the then appointed by the respective national parliaments indirectly elected 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 and Security Policy and Justice and Home Affairs) with no control by a parliament at all - the voices that the created EU lacks 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 'Anti-Europeans' /the Conservative Party in the UK and 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 process³.

Jachtenfuchs et al.⁴ 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 governance⁵. 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 through a system combining popular and state representation at the federal or union level (see table 1). 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 function.

Conversely, 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*"⁶. The supranational level is represented by non-majoritarian institutions like independent regulatory agencies. As the economic community is legitimised by efficiency and liberty,

³ see Mény, Yves, De la démocratie en Europe: Old Concepts and New Challenges, JCMS 2002, Vol. 41, No. 1, pp.1-13 at p.8

⁴ 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, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.208

⁵ Network governance version for legitimation will stay out of the scope of our research, as it does not have such a degree of influence on the process of European integration as the others.

⁶ 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

there is no need for democracy at EU level⁷. Democratic legitimation is relevant only to the political realm and it has remained at national level. Economy, which is at EU level, is according to this concept apolitical and thus beyond the need for democracy.

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 ⁸ 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, JCMS, 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 democratic deficit is perceived and the means of solving it. It must be noted that these beliefs are the

⁷ *ibid*, p.51

⁸ 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, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.204)

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 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.

Let us have a look now at the academic debate itself on the term 'democratic deficit'. The definitions about the phenomenon are so numerous and various that it is beyond the capacity of the paper to focus on all of them. For that reason we will limit ourselves to several concepts, which have 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 level.⁹ 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.”*¹⁰ 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

⁹ 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, internet source, April 2003

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 parliaments¹¹.

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 independent administrative authority combining expertise with a rule-making and adjudicative function¹². He points out that the agencies are not something new, their place of origin is the US, and they play very important role in the 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 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 powers¹³. In the same context Yves Mény talks about "second or constitutional pillar" of modern democracy, which is essential for guaranteeing the rights of the minority¹⁴. 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.

¹⁰ 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

¹¹ See Hix, S. *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, internet source, April 2003, p.6

¹² Majone, G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 at p.15

¹³ 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, internet source, April 2003, p.6

¹⁴ Mény, Yves, *De la démocratie en Europe: Old Concepts and New Challenges*, JCMS 2002, Vol. 41, No. 1, pp.1-13

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 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”*¹⁵

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’ model¹⁶. 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 problem.¹⁷

Similar to the thesis of Majone is the one of Hans-Peter Ipsen¹⁸. 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*

¹⁵ 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

¹⁶ 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.

¹⁷ See Hix, S. *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, internet source, April 2003, p.6

¹⁸ 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

to what is necessary to cope with economic interdependence"¹⁹. In this case the activities of the EU have technical and organizational nature and therefore they must be exercised only by highly qualified experts without democratic legitimation. With the broadening of the scope of the competences of the EU, however, the EU could 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 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 Pierson²⁰ – 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”*²¹. (Moravcsik defines Scharpf's theory as *“the most empirically and theoretically nuanced criticism of the EU democratic deficit that currently exists”*²²). 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

¹⁹ 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

²⁰ Streeck, 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, internet source, April 2003, p.7; Scharpf, F., *Democratic Policy in Europe*, *European Law Journal*, vol. 2, No. 2, July 1996, pp.136-155

²¹ von der Groeben, 'Probleme einer europäischen Wirtschaftsordnung', in J.F. Baur, P. Müller-Graff 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

²² Moravcsik, A., *In Defence of the “Democratic Deficit”: Reassessing Legitimacy in the European Union*, *JCMS* 2002, Vol. 40, No. 4, pp. 603-24 at p.616

re-regulation at European level, contributing only to the completion of the Internal Market, while leaving underdeveloped the social policy issue²³. Free competition in the internal market, the possibility for every firm to choose where to produce within the EU, without losing its national market, place the national governments and unions in 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 ‘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”²⁴. 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 level²⁵. 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”²⁶. 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”²⁷. 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

²³ For the debate whether there must be a European social welfare state see chapter 2.

²⁴ Scharpf, F., Democratic Policy in Europe, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155 at p.151

²⁵ See Hix, S. *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, internet source, April 2003, p.7

²⁶ Scharpf, F., Democratic Policy in Europe, European Law Journal, vol. 2, No. 2, July 1996, pp.136-155 at p.151

²⁷ Ibid., p.151

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. It can be found in this concept a big threat to the existing structure of the Union, marginalizing the already achieved at this level. It is difficult to imagine 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 an independent from the Member States Commission 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 account²⁸.

Andrew Moravcsik is an influential representative of the intergovernmental legitimation belief. 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 face 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 soon²⁹. In addition, its spending is only in common agricultural policy, structural funding and development aid and the financial framework for them is set regularly by unanimous consent from the Member

²⁸ cf. Moravcsik, A., *In Defence of the “Democratic Deficit”: Reassessing Legitimacy in the European Union*, JCMS 2002, Vol. 40, No. 4, pp. 603-24 at p.619

²⁹ Moravcsik, A., *In Defence of the “Democratic Deficit”: Reassessing Legitimacy in the European Union*, JCMS 2002, Vol. 40, No. 4, pp. 603-24 at p.608

States. Furthermore, Moravcsik argues that the EU is also constraint administratively – because it has constraint 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 States³⁰.

Against the argument that the executive is unaccountable, Moravcsik points out that in the last decades the European Parliament gets 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 of 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 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"*³¹

³⁰ Alter, K.(2001) *Establishing Supremacy of the European Law* (Oxford: Oxford University Press) quoted in *ibid.* p. 609

³¹ Moravcsik, A., *In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union*, JCMS 2002, Vol. 40, No. 4, pp. 603-24 at p.618

After having reviewed the position of Moravcsik, we can conclude that in general he does not support the concept of democratic deficit at European level. On the contrary, he thinks that the systems 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 give also 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 deals”³²). 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 in favour of the fact 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 Hix³³. He accuses the above presented concepts that they are 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*

³² ‘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.

³³ Hix, S. *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, internet source, April 2003, p.8

rival policy agendas over the chance to control the reigns of power for a limited period,"³⁴ is absent. He argues that exactly the input side of the process democracy 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 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.'*³⁵

Moreover, because the EU restricts numerous policies on national level (through EMU, Single European Market, Growth and Stability Pact, etc.), it has powerful indirect impact on the process of 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 make democratic choices about the national policies and in the same time they are also unable to influence enough 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 on 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 the status quos, which are already at EU level, are very difficult to be changed and it is 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"*³⁶, which will enhance political debate, will promote and diffuse competitive alternatives and, hence,

³⁴ *ibid.*, p.5

³⁵ Hix, S. *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, Research Paper, internet source, April 2003, p.9

³⁶ *ibid.*, p. 26

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.³⁷

I find the concept of Simon Hix as a rather plausible way of explaining the democratic dilemma before the EU, as he describes the democratization of the EU as 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.

After having presented and discussed some basic theories about the democratic deficit in the EU, let us explain now what exactly democracy and legitimacy mean, as this will help us to add more clarity to the concept of democratic deficit.

2. Criteria for Democracy and Legitimacy

It must be noted that many scholars separate the concepts of democracy and legitimacy. A legitimate government, it is argued, is “*not necessarily linked to parliamentary democracy*”³⁸. For example an authoritarian regime could be well legitimate since it is lawful and produces policies favourable for the majority of the citizens /for example the case of the Third Reich/ without having any signs of democracy. Still this approach is irrelevant to the development of the EU system in the last 50 years if we bear in mind the fact

³⁷ The proposals for electing the European Commission are examined later in the paper.

³⁸ Jachtenfuchs, Markus, *Die EU – ein Gebilde sui generis?* quoted in Maurer, Andreas (2002) *Parlamentarische Demokratie in der Europäischen Union: der Beitrag des Europäischen Parlaments und der nationalen Parlamente* (Baden-Baden : Nomos-Verl.-Ges.), p.31 (translation mine)

that representative democracy, though imperfect, is deeply rooted in this system.

Therefore, I adhere to a second concept according to which these phenomena must stick together; they are interrelated and overlapping. The two concepts must be united as one criterion for a state for a system like the EU.

Legitimacy can be defined as a broad recognition of a political system by the citizens. In addition, the institutional framework of this system must be representative in order to assure constant proof of its legitimacy through the various means of contesting the system by the citizens (elections, referenda, opinion polls, lobbying, etc.). Therefore, the legitimacy of a system is not in a constant, unchallenged status, but it is rather a dynamic process, developing through history and leading to different results. Thus legitimacy is the *“capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society”*³⁹

David Betham advocates for an approach, according to which the legitimacy of the state in liberal democratic societies⁴⁰ has three dimensions:

- performance - effective policy answering the needs and values of the citizens;
- public control through representative institutions with political equality;
- a sense of common identity, which creates the sense of community and increases further the credibility of the institutions of the unit.⁴¹

The first one is viewed as the output (or consequentialist) side of legitimacy, whereas the second and the third ones refer to input (or procedural) side of legitimacy. I find that these requirements must be relevant to the case of the EU, because the EU must have no lesser legitimacy than the nation-state as

³⁹ Lipset, Seymour: Political Man. The Social Bases of Politics, quoted in *ibid*, p. 32

⁴⁰ Liberal Democracy can be explained as a system, which attempts to assure the ability of the state to keep the peace and to be mediator between group or individual interests, while assuring the liberty of the individuals and the group to choose how to live without challenging others' interests.

⁴¹ Lord, Chr. and Beetham, D., Legitimizing the EU: Is there a “Post-parliamentary Basis” for its Legitimation?, *JCMS*, September 2001, Vol. 39, No.3, pp. 445

the role of the Union in the life of the citizens of the Member States is too important and the competences given to the Union concern many (very essential) domains of the public life. Furthermore, it influences the domestic policies of the states.

Democracy, on the other hand, does not go very far from the definition of legitimacy in the context of liberal democratic societies. On the contrary, its definition is interconnected and overlapping with the one of legitimacy.

Andreas Maurer proposes, in my opinion, an exact and complete definition of the principles and the practices, which must exist in a given society in order to characterize it as democratic:

- principle of political equality, expressed mainly by universal direct suffrage;
- principle of sovereignty of the people, according to which every use of political power must be directly or indirectly derived from the will and the decision of the people;
- principle of political pluralism, which is expressed by the right to form political (parliamentarian) opposition, by protection of political minorities and by a temporally limited political power;
- existence of free, pluralistic mass media, which must ensure the transparency of the decision making and the clarification of the aims of the contesting political parties;
- broad control over the exercise of political power by means of , on one hand, judicial review, exercised by independent Courts, and, on the other hand, political review through the representation of the people;
- existence of common values (as the one expressed in art. 6 /ex art.F1/ of the TEU⁴²) acknowledged by the whole community⁴³.

⁴² Art 6 of TEU says “1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States; 2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law; 3. The Union shall respect the national identities of its Member States; 4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

⁴³ Maurer, Andreas (2002) *Parlamentarische Demokratie in der Europäischen Union: der Beitrag des Europäischen Parlaments und der nationalen Parlamente* (Baden-Baden : Nomos-

Comparing the definitions of legitimacy and democracy, it could be concluded that democracy includes in its nature the input side of legitimacy: participation (representation) of the citizens and the existence of common values which are undoubtedly part of the common identity of a society. Yet democracy, according to the above quoted definition, does not fully imply performance /the output side of legitimacy/. One can argue that in a democratic society performance is regularly sanctioned by the citizens by means of elections and by the judiciary through judicial review. There are, however, quite many examples where governments, democratically elected and executing without any violation of the law, either do not manage to fulfill their pre-election promises or their policies are not resulting in the desired effect. If the problem persists for example for several mandates of the institutions, then it becomes, in my opinion, a problem of the democratic system as a whole. Therefore, output democracy is also important.

After defining the criteria for democracy and legitimacy, I will try now to apply these general criteria of democracy and legitimacy to the structure and functioning of the EU in order to find to what extent they are fulfilled and where are or could be the weak sides of the democratic life of this system.

Verl.-Ges.), p.39 (translation mine) based on Parliamentary Assembly of the Council of Europe, 35th Ordinary Session, Resolution 800 1983 on the principles of democracy: text adopted by the Standing Committee, acting on behalf of the Assembly on 1.7.1983

Chapter Two

Democracy and Legitimacy at EU level

1. The European Society as a Source of Democratic Legitimacy for the EU.

Legitimacy at EU level consists of two forms: direct through the directly elected European Parliament and indirect through the indirectly elected national representatives in the Council and in the European Council.

Both of these forms of legitimacy derive from the 'European society', which, according to the criteria for democratic legitimacy quoted above, must have a sense of common identity and common values. When people do not associate themselves with a unit, they can perceive the decisions taken by the unit as inadequate interference in their lives, hence not all as a way of self governance by a well-defined community. Only in the case of a sense of community full and uncontested democratic legitimacy can be assured. This counts especially in the case of majority decisions which require high level of trust between the citizens in order to overcome the feeling of threat for the interests and identity of the outvoted minority. The questions to be researched here are, first, to what extent such 'European society' exists and, second, how much and whether this society is in favour of or against European integration.

1.1. European Society or European Societies?

There is a wide spread consensus in the academic literature that Member States, therefore also their societies, share common values: democracy, liberty, respect of human rights and fundamental freedoms and rule of law. To these political values one can add also some economic values, which undoubtedly are deep rooted in the tradition and practices of all Member States: functioning market economy /inevitably linked to prosperity/ and social welfare state (the last one with different versions in every county). The fact that most of these principles (except social welfare state) are criteria for membership in the EU prove that they are, first, common for all of the Member

States and, second, they apply also to the Union as a whole. Moreover, they are also inscribed in Art. 6 of TEU.

The European society is currently divided in 25 nations and has 20 official languages with a high degree of heterogeneity and diversity. The nation - with its common territory, historically grounded common myths, mass education, culture, language, symbols and economy - plays an overwhelming role in the identity of the European citizens and the situation is unlikely to change, in my opinion, even in long-term period. As a result, the society of the EU is 'segmented' along national lines: between the EU Member States, within which most of the individual social interactions and experiences take place and identifications are formed⁴⁴. This national cleavage is manifested at EU level when a decision must be taken which favours the interests of one nation at the expense of another. Therefore, we can speak of European societies in plural as the only realistic mode.

Still, there are some signs that European identity also develops in parallel with the national one. First, the European construction started after the Second World War when there was a widespread consent that it is beyond the ability of the nation-state to guarantee peace and stability on the continent – in fact this role became and still is one of the major sources of legitimacy for the European Community/Union. During these 50 years of integration there was always the goal of 'ever closer Union among the peoples of Europe', as inscribed in the Preamble of the Treaties, which provides the EU with "*a forward looking identity and a common enterprise*".⁴⁵ Another key expression of the preambles of the Treaties is 'united in its diversity', which is an attempt to embrace and to solve the conflict between the two concepts.

Second, since the first direct elections of the European Parliament in 1979 there is one institution which directly represents all the citizens of the EU. The elections not only contribute to the democratization and legitimization of this system, but they also provide a sense of equal participation of all European

⁴⁴ Lijphart, A. (1977) *Democracy in Plural Societies: a Comparative Exploration* (New Haven: Yale University Press) quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.134

⁴⁵ Anderson, J. (ed) (1999) *Regional Integration and Democracy* (Lanham/Oxford: Rowman and Littlefield), p.36

citizens in the fate of the Union, thus creating a feeling of shared future. It must be noted, however, that this result of the elections is only partially visible since the national parties control significantly the pre-electoral debate.⁴⁶

Third, the EU has developed the concept of European citizenship, which of course does not replace the national citizenship but provides some distinguished rights: the right to move and reside freely within the territory of the Member States; the right to vote and to stand as a candidate at municipal elections if the citizen is in another Member state; the right to vote and to stand as a candidate for elections of the European Parliament; the right to protection by the diplomatic or consular authorities of any Member State in a third country, in which the country of which s/he is a national, is not represented, on the same conditions as the nationals of that State; the right to petition to the EP, to apply to the Ombudsman, to write letters to every institution or body of the EU in one of the official languages and to receive the answer in the same language (Art. 17-22 of TEC). The European citizenship, introduced with the Treaty of Maastricht, contributes significantly to the idea of European identity of the nationals, because, even in limited areas, it gives unique rights, which are granted only to the Union's citizens.

Fourth, the EU was given a powerful instrument for creating common identity: the existence of a single currency. This gives the power to the Union to be omnipresent and tangible in the everyday life of the ordinary European citizens, thus reminding constantly of its existence and its political authority. In this case the EU received one of the most important competences for the state's sovereignty: monetary control. It must be noted, however, that the introduction of the euro was a very difficult process. The Member states feared that a strong public resistance against the single currency could emerge and cause serious political problems. Therefore, they adopted an expensive campaign to promote the single currency.⁴⁷ This example shows that such a significant interference in the traditions and the national symbols is a quite risky undertaking and it can

⁴⁶ The issue of Parliament's elections will be more profoundly examined in the chapter about the Democratic Legitimacy of the European Parliament.

⁴⁷ See Anderson, J. (ed) (1999) *Regional Integration and Democracy* (Lanham/Oxford: Rowman and Littlefield), p.40

face the rejection of the citizens. On the other hand, the case proved to be successful, showing that there are favourable conditions for launching common European projects with great impact on every citizen.

Fifth, there are certain groups and individuals in the EU, whose interests and preferences are not identical with the national dimension and surpass the national borders. For example, the German and French farmers have common interests to defend the Common Agricultural Policy, which differ from the interests of the consumers in both of the countries. The transnational cleavage is not only based on class division, but also on post-material values, age, education, information and so on. Simon Hix finds that *“these transnational divisions tend to be less salient in EU politics than the national-territorial cleavage, but they become increasingly important as the EU agenda shifts to questions of economic redistribution between functional rather than territorial groups (such as EU social policy) and questions of social and political values (such as EU environmental policy).”*⁴⁸

Sixth, the EU has developed some symbolic features, which distinguish the community from the outside world: the flag and the anthem and Brussels as alleged capital of United Europe. The Schengen area, in my opinion, can also be perceived as a distinguishing feature of the Union since it stipulates the harmonization of the rules regarding conditions of entry and visas for short stays of nationals of third states for the whole EU.

After having presented these arguments, we can conclude that the EU has managed to promote and develop some features, which help the citizens of the Member States to identify themselves as belonging to this unit. European destiny, European citizenship, European elections, European currency, European symbols: these are all signs that the EU can offer a viable and tangible version of identity formation. However, this identity cannot and must not harm national identity – the fundamental and principle identity of the Europeans. Thus, *“the Union shall respect the national identities of its Member States”* as it is written in art.6 of TEU. As a result, the European society can be perceived as a two-level society, within which citizens can identify themselves

as both nationals and European citizens. In what follows, I will examine how the Europeans evaluate the EU, to what extent European integration is justified through the public opinion.

1.2. The Public Opinion as a Source of Democratic Legitimacy

Lindberg and Scheingold⁴⁹ argued that following the Treaties of Paris and Rome in the 1950s and 1960s there was a ‘permissive consensus’ among the citizens in favour of European Integration. It was either an active support by the citizens for their governments to deepen and widen integration, or a lack of interest in this issue about their governments’ actions.

Since 1973, when European opinion polls started, Eurobarometer has asked two questions: whether the citizens are against or for European integration and an evaluation of the membership of their country in the Common Market/European Community/European Union. According to the figures⁵⁰, in the early 1970s, during the so-called ‘euro-sclerosis’⁵¹, just over 50 per cent of the EU public was in favour of their country’s membership of the EU, and slightly more were in favour of European unification: the difference presumably is due to those who are in favour of European integration but not through the EU. In the 1980s the support for European integration rose steadily thanks to the popularity of the programme for completion the Internal Market⁵². The support reached its zenith in 1990-1991 with a high of 72 per cent in favour of their country’s membership of the EU and 82 per cent in favour of European unification. Then the support started falling drastically, reaching 48 per cent in 2001 and after a slight increase (up to 54 per cent) in

⁴⁸ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.134

⁴⁹ Lindberg, L. and Schengold, S. (1970) *Europe’s Would-Be Polity: Patterns of Change in the European Community* (Harvard: Harvard University Press) quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.134

⁵⁰ Eurobarometer surveys quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.135

⁵¹ A term used to describe the lower speed in European integration caused by various factors: the oil crises in the 1970s, the use of the Luxembourg compromise, political reluctance to engage with further integration and so on. The ‘euro-sclerosis’ was overcome only with the Single European Act in 1986.

⁵² Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.136

the next years, for year 2003 and for February-march 2004 it goes back to 48 per cent⁵³. Widespread opposition first emerged in the process of ratifying the Maastricht Treaty, in 1992 and 1993: in the referenda in France, Denmark and Ireland, the series of votes in the House of Commons in Britain, and the Constitutional court challenge in Germany. This opposition continued in votes for anti-European parties in the 1994 European elections, in the 1994 referenda on EU enlargement in Austria, Finland, Sweden and Norway (with a loss in Norway), in the European elections in Austria, Sweden and Finland, and the opinion polls in 1996 and 1997 on EMU⁵⁴. Other major challenges to EU public support were the sanctions of the EU against Austria in 1999-2000 following the entry into government of the right-wing extremist Austrian Freedom Party (FPÖ), which caused a serious decrease in Austrian public support for the EU, and the referendum in Ireland for the Treaty of Nice in 2001. *“Clearly, if a permissive consensus had existed in the first few decades of European integration, it no longer existed in the 1990s”*⁵⁵

Nevertheless, in 2004 almost half of the citizens continue to believe that their country’s membership of the EU is a good thing (48%). Less than one-fifth (17%) considers membership to be a bad thing⁵⁶. This is not the case in the accession countries which are less supportive for EU membership than the current member states – 43% think it is ‘a good thing’. This rapid decline in the support for the EU in the accession countries with 15 % for only one year (in comparison with 2003) is due to the fear of negative economic consequences of EU membership⁵⁷. Nevertheless, the figures show that in 2004 the EU and the United Nations are more trusted than are national governments and parliaments both in current and future member states⁵⁸.

⁵³ Eurobarometer No 61, First Results, Spring 2004, published May 2004: http://europa.eu.int/comm/public_opinion/archives/eb/eb61/eb61_first_res_en.pdf

⁵⁴ cf. Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.137

⁵⁵ *ibid*, p.137

⁵⁶ Eurobarometer No 61, First Results, Spring 2004, published May 2004

⁵⁷ Eurobarometer CCEB 2004.1 - Spring 2004, published May 2004

http://www.europa.eu.int/comm/public_opinion/archives/cceb/2004/cceb_2004.1_first_anx.pdf

⁵⁸ *ibid*.

It should be noted that more than a half of the citizens trust the European Parliament (54% for 2004) and nearly half (47%) trust the European Commission (in accession countries the figures are 53% and 48% respectively). The fact that the EP has much more credibility in the eyes of the public and, even though there is little understanding of what the EP does, it has uncontested legitimacy for the European citizens, must be explained with the public attitude that it is a 'parliament'.

1.2.1. Affective and Utilitarian Support

There is one type of division of the support towards the EU which reveals the inclination of the people to identify themselves with the values of the Union. It is based on a theory created by Easton⁵⁹, according to which two types of support can be distinguished: affective and utilitarian. 'Affective' support refers to ideological support, or identity – whether an individual can identify him/herself with the values of the political system. 'Utilitarian' support, on the contrary, is connected with the political or economic benefit(s) one can have from integration. Analysing data from Eurobarometer, Simon Hix concludes that affective and utilitarian support are not necessarily interrelated, as there are periods when utilitarian support increases and affective support decreases (as in the late 1980s with the programme for the Single Market), but during the 1990s, for example, both of the supports decreased.⁶⁰ However, affective support (identity) is relatively constant in 1990s, whereas utilitarian support is changing rapidly in correspondence with the European political agenda.⁶¹ As a result, utilitarian support has currently bigger importance when examining the overall support for the Union.

Now let us have a look at the public opinion, determined by national and transnational cleavages.

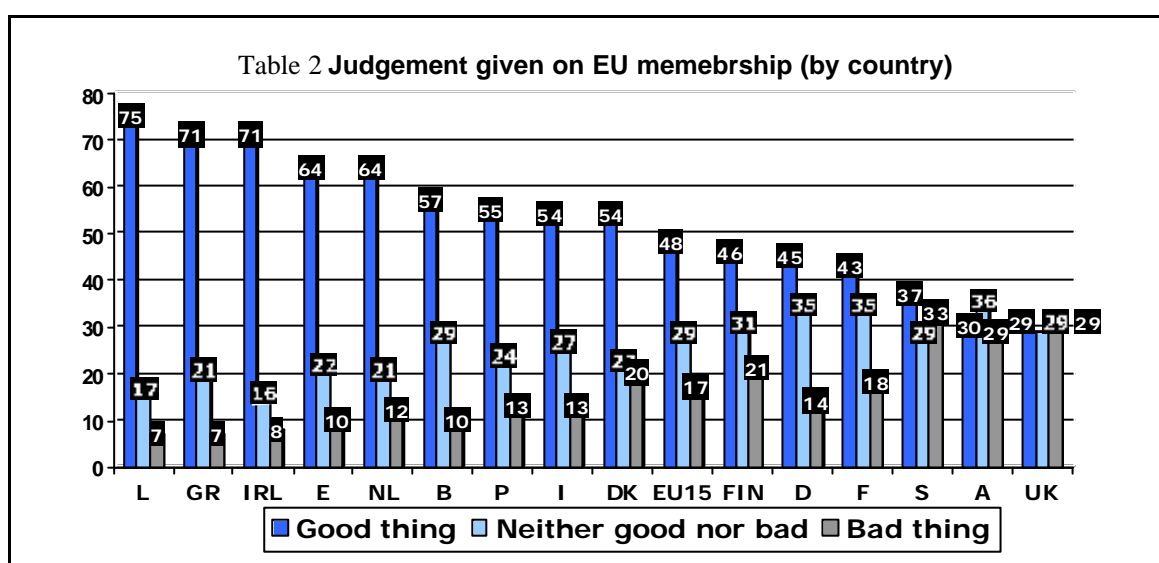
⁵⁹ Easton (1965) *A Framework for Political Analysis* (Englewood Cliffs: Prentice Hall) quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.138

⁶⁰ *ibid*, p.138

⁶¹ *ibid*, p.138

1.2.2. National Cleavage

Table 2 clearly shows that public support for the EU in the different countries is quite contrasting. Currently the citizens of Luxembourg, Greece and Ireland are the biggest supporters for EU membership are, whereas those of Sweden, Austria and the UK are the lowest supporters. Among the accession countries Lithuania and Malta join the first group, whereas Latvia and Estonia join the club of euro-skeptics⁶².



Source: Eurobarometer No 61 First Results, Spring 2004, published May 2004

If we apply several indicators (support for membership, unification, utilitarian and affective support), we will see that in the late 1990s the nationals of Ireland, Luxembourg, Italy and the Netherlands are the most consistently pro-European, whereas Austria, Denmark, the UK, Finland and Sweden are the most euro-skeptic.⁶³

The European public within the national cleavage is divided culturally (e.g. Religion, Latin vs German, North vs South, East vs West, Homogenous vs multi-ethnic societies and so on), economically (e.g. rich vs poor, urban/industrial vs rural/agricultural, service-based vs manufacturing-based,

⁶² Eurobarometer CCEB 2004.1 - Spring 2004, published May 2004

⁶³ Data taken from Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.140, based on Eurobarometer data

etc.) and politically (e.g. big vs small countries, social democratic vs conservative governing traditions, majoritarian vs consensual, Anglo-Saxon vs socialist/Christian Democratic welfare states)⁶⁴.

What is important here is that the societies of the original Member States are much more in favour of European integration and share a feeling of a Community, which was developed throughout the years after the Second World War. On the other hand countries which joined later are much more skeptical and sensitive about national sovereignty. From this group of countries must be excluded the four 'Cohesion countries' – Ireland, Greece, Spain and Portugal, which due to their economic interests are very much in favour of integration.

This support, however, cannot be taken as granted, which was the major mistake in the first referendum in Ireland about the Treaty of Nice, held in June 2001, when the turnout was the second lowest in the history of referenda in Ireland - only 35% (in comparison, in the second referendum, held in October 2002, it was 49%). In this case Irish politicians underestimated the need of 'yes' campaign, counting on the constant till then support for EU membership, expressed in previous referenda. As a result, people in favour of the Treaty did not show up on the first polls, but those against were very active. Figures show, however, that the activity of voters against the Treaty was almost the same in both of the referenda, thus making the voters in favour the one who changed the results between the two referenda (the first time 46% were in favour and the second – 63%).⁶⁵ The Treaty of Nice was allegedly threatening Irish long-protected neutrality and their profit from the structural funds, which will focus on the new members.

1.2.3. Transnational Cleavage

After having discussed national cleavage, we will have a look now on the transnational cleavage, as it increasingly determines the public support for the EU. Transnational cleavage, as we already noted above, is not only based

⁶⁴ Criteria based on various authors, quoted in *ibid.*, p.141

on class division, but also on post-material values, age, education, knowledge, and region. Data from Eurobarometer shows that doctors, lawyers and accountants, students, employers (directors) and white-collar employees are the most in favour for European integration. Hix explains this fact with the bigger career possibilities (either future as in the case of students or current for the rest) offered by integration⁶⁶. Conversely, manual workers and unemployed are least favourable of integration. Some of the groups (e.g. farmers and directors of large companies) are united and protect their rights at EU level against the interests of the member states in the form of lobbying, whereas others like workers are divided and underrepresented⁶⁷. Furthermore, data show that people with post-materialist values (i.e. environment protection, women's and minorities' rights, democratic participation and nuclear disarmament), with higher education and with age between 15-24 are most in favour than the others. In addition, people with better knowledge about the EU are much more pro-European than those with less knowledge⁶⁸, which is against the argument that people might be less supportive when they are aware of the problems of the EU.

The conclusion that can be drawn after having examined the European society is that it remains plural and divided between the nation-states, *“but it is not impossible to achieve and maintain stable democratic government in a plural society. In a consociational democracy, the centrifugal tendencies inherent in a plural society are counteracted by co-operative attitudes and behaviour of the leaders of the different segments of the population”*⁶⁹. Before 1990s there was a ‘permissive consensus’ among the European public which allowed national elites to promote European integration, *“yet preventing the*

⁶⁵ Doyle, Peter, *Ireland and the Nice Treaty*, ZEI, Discussion Paper, C115, 2002, internet source, p.1

⁶⁶ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press)

⁶⁷ *ibid.* p.148

⁶⁸ Eurobarometer no.44.2bis, 1996, quoted in *ibid.* p.150

⁶⁹ Lijphart, A. (1977) *Democracy in Plural Societies: A Comparative Exploration* (New Haven: Yale University Press) p.1, quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.164

erosion of national interests that provided their own legitimacy."⁷⁰ However, this consensus has gone, but still national elites remain in their overwhelming majority in favour of European integration. In the same time these elites are obliged to find ways how to follow the trends of the society, because they cannot confront their public opinion, as they regularly need it in elections. Furthermore, the EU must also find ways to mobilize and 'Europeanize' the public – to make the debate for its politics salient for the overall European public. One of the ways to do it, it is argued, is to promote European welfare state – this is the question to be analysed below.

1.2. Non-existence of "Europeanised" Social Europe – a Reason for Lack of Democratic Legitimacy?

Another problem, which is also seen as essential for the lack of legitimacy of the European Community, is the fact that there is no strong social policy on European level. Indeed, the EC is far from creating a European welfare state or having key role in the transnational redistribution of income. The problem here is about the negative repercussions of the "*competition between the national welfare regimes which could lead to regime shopping, social dumping and far-reaching deregulation of labour markets*".⁷¹

It is argued that a fully introduced social policy would prevent these negative developments. Moreover, it will enhance the legitimacy of the EC just as it became crucial source of democratic legitimation of the nation state in the years after the Second World War when national solidarity, common education and health services contributed to the public consensus about the democratic values and legitimized the process of integration of the national market.⁷²

During the last 50 years the European integration has developed mainly in the economic sphere, creating "a constitutional asymmetry between policies promoting market efficiencies and policies promoting social protection and

⁷⁰ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.164

⁷¹ Majone, G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 at p.13

⁷² see Majone, G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 at p.13

equality.”⁷³ The signing of the Treaty of Rome was linked to political commitment of the governments to increase the social protection on national level – condition requested by the French government⁷⁴. The Treaty gives a limited legal basis for Community actions in the field of social policy – title XI chapter 1 and 2 of the TEC – enumerating social field related matters (art.137) and creating European Social Fund (art. 146-148). The only spheres where economic integration and social protection went together were the Common Agricultural Policy, which treated also the social problems of the policy⁷⁵ as well as social security regime for migrant workers⁷⁶.

However, every deepening and widening of the European integration had a big impact on the national policies in general and on the social policy in particular. The Single Act introduced qualified-majority voting, it required the liberalization of hitherto protected, highly regulated and often state-owned services, public industries and infrastructure functions⁷⁷.

The limitation of the national policies became even stronger with the entering into force of the Maastricht Treaty and the completion of the Internal Market. The creation of Economic and Monetary Union made impossible the intervention of the member states in the exchange rates and delegated the monetary policy to the European Central Bank. Moreover, the further creation of the Growth and Stability Pact imposed strong restrictions on the public spending at national level.

As a consequence the European integration restricts the possibilities of the national governments to “influence growth and employment in the economy for whose performance they are politically accountable.”⁷⁸ Fritz Scharpf points out that a possibility for further harmonization of national welfare policies exists but the impediments for that are the following. Firstly,

⁷³ Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

⁷⁴ Moravcsik 1998,; Küsters 1980; Loth 2002 quoted in Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

⁷⁵ Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

⁷⁶ Majone, G., *Europe’s “Democratic Deficit”: The Question of Standards*, *European Law Journal*, vol. 4, No1, March 1998, pp.5-28 at p.13

⁷⁷ *Ibid.*

the national welfare states differ significantly, having developed separately and differently from each other after the 1950s. The existence of so divergent systems makes the question of their harmonization or even integration politically sensitive, with very narrow support among the national governments.

Secondly, both Majone and Scharpf evoke the argument that the European citizens will not agree to have integrated social and health security systems. This is due to the fact that citizens make their life plan on the basis of the already existing systems of social protection and taxation and will oppose major changes in them. Majone quotes Eurobarometer data according to which for the period 1992-1995 only the majority of Greeks and Portuguese favour changes in the systems whereas the average support of the other nationals vary between 44 and 34 per cent and this opposition is long-standing.⁷⁹

Majone argues that further development of the European welfare state may lead actually to aggravating the legitimacy problem of the Community, because both the governments and the citizens for the time being clearly oppose it⁸⁰.

Majone is right that further development of a European welfare state will face the critics and resistance of some of the countries and some of the groups of the European citizens but I find that this process must continue for several reasons. First, as was shown above, the logic of integration presupposes the emergence of stronger European social policy because the dynamics of the European integration puts constraints on the inner policies of the nation state, depriving it from the capability to manage a successful national social policy.

Second, even though the philosophy of the TEC is that competition and market forces will lead to economic growth and therefore to better employment and social development in general, we have seen in the chapter about the public opinion that economic integration does not lead to equal benefits for all members of the society. Therefore, I think that there must exist guarantees on

⁷⁸ Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

⁷⁹ Majone, G., *Europe's "Democratic Deficit": The Question of Standards*, European Law Journal, vol. 4, No1, March 1998, pp.5-28 at p.14

⁸⁰ *ibid*, p.14

Community level (because the phenomenon occurs on this level) that as many social groups as possible will be able to profit from the economic integration.

But how can we achieve further development of the European welfare state? Fritz Scharpf gives several solutions, which must be used simultaneously. To begin with, the “Open Method of Coordination” introduced on the Lisbon European Council⁸¹. This is a method, which “leaves effective policy choices at the national level, but it tries to improve these through promoting common objectives and common indicators and through comparative evaluations of national policy performance”⁸². This method, he suggests, must be combined with another method, i.e. “differentiated ‘framework directives’-which though addressed to subsets of member states, would still have the status of European law”⁸³. I will not go further into details because this issue is beyond the scope of the present work, but these examples show that a workable and politically acceptable solution could be found.

After having sketched out the problem, it can be concluded that social policy on European level can be essential for the further legitimation of the EU, as this field has always been left to the sphere of competences of the nation state but becomes more and more influenced by the policies of the EU, making it inefficient and insufficient on national level. In this case a European welfare state would fill the constantly existing gap between the well-developed economic integration and the social integration, which is still in its rudimentary state. However, this process will be very difficult because of the historically and structurally divergent national social systems, because of the resistance of the majority of the citizens, insisting on the predictability and stability of the national welfare systems.

2. The European Parliament - First Pillar for EU Legitimacy?

⁸¹ Lisbon European Council, 23 and 24 March 2000. Presidency Conclusions

⁸² Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

⁸³ Scharpf, F., *The European Social Model: Coping with the Challenges of Diversity*, MPIfG Working Paper 02/8, July 2002

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 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.’*⁸⁴ This is due to the fact that the EU has emerged as an ordinary international parliamentary assembly, where representatives are nominated from members of national parliaments, but has developed in 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 elected⁸⁵. 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, thus making this institution with one of the most dynamic history.

In this section we will make an overview of the history of the EP as it will help us to understand how the EP competences has grown and what was its role in this process. Then we will focus on party system and elections of the EP, as they are crucial for the exercise of democracy in the EP.

2.1. Historical Development of the European Parliament – A Story of Success

2.1.1. Constituting the Common Assembly

The treaty of Paris, signed on 18 April 1951, created a unique institution - the independent executive High authority (forerunner of today's

⁸⁴ 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

Commission) with the power to make decisions binding on Members States. It raised the question of its accountability as a supranational organ but it was not logical to make it accountable before the states – from which it had to be independent in the same time. On the other hand, however, the governments of the six did not have a common vision who would control the executive. Germany and France, on one hand, were for the creation of an international parliamentary assembly (federal state legitimating belief)⁸⁶ and Benelux, on the other hand, argued that the Community must concentrate on its efficiency and performance and there is hardly need for an Assembly (economic community legitimating belief).⁸⁷ In this context the German delegation to the IGC proposed unicameral or bicameral ‘Montan-Kongress’ which should be the counterweight to the executive High Authority and possess real (budgetary and legislative) powers⁸⁸. The French were not in favour of this proposal as they had a lack of familiarity with federal institutional structures and they were strongly for largely unconstrained High Authority. Benelux, on the other hand, agreed with the idea to have an assembly only if it does not impede efficiency – therefore with no legislative powers that could otherwise affect policies in a potentially unpredictable manner. In addition, Benelux stood for a significant role by the national governments in a ministerial council which had to restrain the High Authority from interfering in domestic policy.⁸⁹ As a compromise between these visions was created a parliamentary institution which possessed only ‘executive’ control powers – the right of censure motion over the High Authority - without budgetary and legislative competences. Therefore, the Common Assembly, as it was called, was expected to play negligible role in the Community’s institutional framework.⁹⁰

⁸⁵ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper) p. 10

⁸⁶ See chapter one about the different legitimating beliefs.

⁸⁷ See Rittberger, B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.212

⁸⁸ AA/PA.SFSP (Auswärtige Amt, Sekretariat für Fragen des Schuman-Plans), Historical archives of the European Communities (Florence), 102, 10 August 1950 and AA/PA SFSP – 103, 20 July 1950 quoted in *ibid.* (footnote 88) p.212

⁸⁹ AAPD (Institut für Zeitgeschichte. Akten zür Asuwärtigen Politik der Bundesrepublik Deutschland München: Oldenburg) – 1949/50, No. 84, 3 July 1950 and AA/PA.SFSP – 62, 11 July 1950 quoted in *ibid.* (footnote 88), p 213

⁹⁰ *ibid.* (footnote 88), p 213

However, even on its very first session in 1952 the Common Assembly called itself European Parliament (its became official name only with the Single European Act) and with the invitation of Chancellor Adenauer, on behalf of the Council, to draft a Treaty for a European Political Community, the EP began its active participation in the constitutional changes of the EC system. The Treaty was under the direction of the President of the Assembly - Paul-Henri Spaak – who interpreted the task as to create a constitutional project with the humble name ‘statute’. Although the project for this Treaty failed with the demise of the European Defense Community in 1954, many of the proposals prepared by Parliament were used in the negotiations of the EEC Treaty two years later.⁹¹

The Treaties of Rome, European Economic Community and Euroatom, signed on 25 of March 1957, provisioned in article 138 direct elections of the Assembly, which had to be held in the future with decision of the Council after consultation with the Parliament. Making a compromise between the Member States, the Treaty provisioned that a consultation procedure will be used within which the EP has the right only to express its opinion without any binding impact of it on the decisions taken in the Council. Thus the EP gained minimum competences in legislating. Once again no budgetary competences were given to the Assembly.

2.1.2. First Empowerment of the Assembly

Only with the Luxembourg Treaty of 1970 did the EP receive competences in the field of Community Budget. This was a logical result of the fact that national parliaments had little control on the drafting of the Community budget. The creation of ‘own resources’ system instead of national contributions in a common market for agricultural products required, according to Commission’s proposal presented to the Council in March-April 1965, a revision of the budgetary procedure laid down in Article 203 EEC (now 272), in particular provisions affecting the EP’s role in the procedure. France was strongly against the enhancement of a supranational assembly in this field and

⁹¹ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament*

the result was the ‘empty chair crisis’ from 30 June-1 July 1965.⁹² The intergovernmental approach of the French Gaullist government was opposed to the ‘Five’ which were supporting the idea of shared sovereignty - both on national and European level. This shared sovereignty required the establishment of European level democratic control and accountability mechanisms, hence strengthening of the EP. With de Gaulle’s resignation in summer 1969 and the softer position of the new president Pompidou was reached a compromise on the meeting in The Hague on 1-2 December 1969. A final agreement was reached which led to the signing of the Luxembourg Treaty on 22 April 1970 amending the original Treaty. It provisioned the creation of Community’s own resources from 1 January 1975 onwards: ‘all agricultural levies and customs duties will be paid directly to the Communities’ budget’.⁹³ A reform of the budgetary procedure took place, giving four major powers to the EP: first, the right to reduce or increase Community expenditure within certain limits without having to obtain the approval of the Council; second, the right to redistribute spending from one sector of the budget to another; third, the power to reject the budget en block, to approve or not the way in which the Commission spends the money voted in the budget. Furthermore, there was accepted a distinction introduced by the French between expenditure items that followed directly from Community legal acts (compulsory expenditure) and expenditure that did not, such as administrative expenses (non-compulsory expenditure). In this way, however, the EP had final say only for 45 per cent of the entire Community expenditure, because it cannot change the compulsory expenditure in the second reading of the procedure.⁹⁴ There is another Treaty revision from 1975, which consolidated

(London: Harper), p. 295

⁹² Rittberger, B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.214

⁹³Rittberger, B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.214

⁹⁴ Data from *ibid*, p. 217. It must be noted, however, that the division between compulsory and non compulsory expenditure is not fully technical but rather political (e.g. salaries of officials belong to noncompulsory expenditure even though there is a legal obligation to pay salaries). The EP has fought successfully to change the extension of the non-compulsory expenditure and now they are 50 % of all expenditure due to the fact that the structural funds reached 35 % of the total budget in 2000.

and increased EP's powers in the budgetary drafting and created the Court of Auditors.

2.1.3. First Direct Elections

On the Paris Summit, held on 9-10 December 1974, the Heads of Government decided to institutionalise their meetings in the form of the European Council, and to meet three times per year. To balance this reinforcement of the intergovernmental side of the Community, they also agreed that direct elections of the EP "should be achieved as soon as possible". It was planned that the elections had to be held in or after 1978, based on an EP proposal and Council decision in 1976.⁹⁵ The plan was fulfilled with a delay of one year (the elections were held in 1979), but the Treaty requirement for a uniform electoral procedure was not realized and the temporal solution each country to use its own procedure for the first elections has not yet been changed 25 years afterwards. This led to considerable differences between the rules and procedures applied in these elections in the Member States (even the date for the elections was not one and the same, explaining, in my opinion, the lack of feeling in the European citizens that they take part in supranational elections.

Nevertheless, the elections of the EP resulted in strong increase in its legitimacy as the only directly elected European institution, which could fill the gap in the national parliaments' control over the delegated sovereignty at European level. Not surprisingly, it was exactly after the first elections when the EP set out to press for specific institutional changes with the following objectives⁹⁶:

- to strengthen the competences and responsibilities of the Community, applying the principle of subsidiarity⁹⁷;

⁹⁵ Council decision 76/787 (OJ 278 of 8.10.1976) accompanied by an "Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage", see Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 11

⁹⁶ See Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 296

⁹⁷ The principle of subsidiarity means that the EU must have competences only when they can be exercised more effectively at EU level than at national level. This principle was introduced

- to make the decisions at EU level carried out more effectively. This must be achieved, it argues, particularly through changing unanimity voting (described as ‘dictatorship of the minority’) and the right to block a decision by a particular state. Another goal is a stronger role of the Commission in carrying out policies;

- to have a better democratic control and accountability at EU level. The loss of parliamentary power at national level must be compensated by an increase in parliamentary power at European level. The hegemony of the Council must be constrained.

These goals, as we will see, have been and are still dominating the debate about the future of the European integration, showing the great impact the EP has had and still has on the development of the European construction since the first direct elections.

2.1.4. The EP as an Actor in the Integration Process and the Single European Act

The first big and influential project the EP drafted was made in 1984 – the ‘Draft Treaty on European Union’. It was initiated by Altiero Spinelli, one of the founders of the federalist movement at the end of the World War II and former member of the Commission. The draft Treaty was adopted in February 1984 with overwhelming majority of the MEPs and it provisioned introduction of subsidiarity principle and communitisation of the European political cooperation. In the subsequent European council of Milan in June 1985 was decided with unprecedented majority vote to convene an intergovernmental conference (IGC) – UK, Denmark and Greece were against. The EP influenced the negotiations on the IGC with mainly informal contacts, but also the President and Spinelli were invited to two of the ministerial level meetings.⁹⁸ The IGC submitted the results of its work to the EP. Italy even announced that it would not ratify the treaty if it were rejected by the EP, which did not

for the first time with the SEA (1986) in the field of environmental policy and then its scope was widened to the whole treaties with the Treaty of Maastricht (1992)

⁹⁸ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 298

happen, even though the EP was not fully satisfied with the project. As a result, the Single European Act /SEA/ was signed in February 1986 (the three opposing states finally took part in the IGC because of fear of exclusion). The precedent to invite the EP at IGC and to submit the results of the IGC became gradually a tradition and, along with yearly written report on the progress achieved by the Union, it was formally written in the TEU in 1992.

The SEA introduced the co-operation procedure, which finally gave the EP the power to influence legislation after being up to then only consulted. Now the EP had the power in the second reading of the procedure to adopt amendments which could lead to agenda change if the Commission supported them. In this case for the Council it was easier to accept with qualified majority than to reject it with unanimity. The program, set by the SEA, for a completion of the internal market until 1992 with passing almost 300 pieces of Community legislation, required the acceleration of the legislative process, thus making it more difficult to block progress in the council⁹⁹ and the enhancement of the legitimacy of the process as more power was given to the Community. As a result, qualified majority voting was introduced for virtually all matters relating to the internal market and the power of the EP was strengthened.¹⁰⁰ The SEA also introduced the assent procedure, according to which the EP can either accept or reject a proposal but cannot amend it. Yet if the European Parliament does not give its assent, the act in question cannot be adopted. It was introduced for the accession of new Member States and association agreements and other fundamental agreements with third countries.

2.1.5. The Maastricht Treaty Establishing the European Union

The European Parliament immediately after the SEA started pressing for further reforms. The European Council in Madrid in 1989 agreed to the principle of a new IGC on Economic and Monetary Union (EMU) to begin at the end of 1990. In June 1990, the Dublin meeting of the European Council agreed to the principle of a second IGC to run parallel to that on EMU, but

⁹⁹ Rittberger, B., *The Creation and Empowerment of the European Parliament*, pp. 203-227, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty, p.217-218

without defining in details its subject. The EP played crucial role in this moment. It adopted a resolution in November 1989 for the agenda of the IGC and began to prepare numerous proposals for Treaty amendments. Especially important were the proposals of the Labour MEP David Martin, which gave detailed description of a new co-decision procedure and a mechanism for involving the Parliament in the appointment of the Commission.¹⁰¹ Of great importance were the direct dialogue the EP established with Council in an inter-institutional conference and the first and for the time being the last conference of all national parliaments and the EP in Rome in November 1990¹⁰². The national parliaments provided two-thirds of the delegates and the EP – one-third. This unique conference, held before the IGCs, adopted a declaration in which ‘*was included all of the European Parliament’s main proposals for treaty revision.*’¹⁰³ The inter-institutional conference continued in parallel with the IGCs, involving monthly meetings between 12 ministers, 12 MEPs, and four Commissioners. The President of the Parliament also attended several ministerial level meetings of the IGCs and EP’s delegations were pressing for the Parliament’s vision in the national capitals.

These initiatives of the EP show clearly, in my opinion, not only the significant increase of EP’s activities and its continuing efforts for promoting the goals it defined after being directly elected, but also the reinforcement of its reputation, overall stance and recognition as legitimating factor not only by the other Community institutions - the Council and the Commission - but also by the national parliaments. This indicates the national parliaments’ willingness to back up the EP’s position in the institutional framework of the Union even before their governments have had their say about this issue.

The results of the EP’s efforts were far from futile. The Maastricht Treaty can be generally assessed as a big success for the EP with significant increase of its importance. The Treaty introduced in 15 areas the proposed by the EP co-decision procedure, which gave the EP full possibility to adopt legislation

¹⁰⁰ *ibid.*, p. 218

¹⁰¹ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 299

¹⁰² *ibid.*, p. 299

¹⁰³ *ibid.*, p.300

jointly with the Council, the approval of both being necessary. If, after two readings both in the Council and in EP the two institutions have not agreed the same text (which usually happen), the matter is sent to a conciliation committee, composed by equal members of both institutions which has the job of negotiating a compromise text to be submitted for final approval by the EP and the Council. Furthermore, the cooperation and assent procedures were extended, the EP became involved in the appointment of the Commission and the Commission's term of office was changed to coincide with that of Parliament, some small changes were introduced which increased Parliament's powers of scrutiny and control.

2.1.6. Further Enhancement of the Role of the EP – the Amsterdam Treaty

In correspondence with the agreement written in the Maastricht Treaty, the Corfu meeting of the European Council in June 1994 decided to constitute a “Reflection Group” to prepare the next IGC, which was planned to amend the Treaties. This Reflection group was composed of a representative of each foreign minister and two MEPs.¹⁰⁴ Therefore the EP had the possibility to participate directly in the preparation of the IGC.

The EP did not push for radical extension of the field of competence of the EU, as most of its objectives were incorporated in the Maastricht Treaty. Instead, it insisted on integration of the social protocol into the Treaty, for communitising part of the third pillar – Home and Justice affairs and Schengen, and for a new Employment chapter with the aim to coordinate better this policy and to make it more visible. All these proposals were consequently agreed by the IGC.¹⁰⁵

It was exactly the EP which called for better transparency and openness, simplification and codification of the Treaties and empowerment of the EU with a role in human rights and anti-discrimination protection, with the goal to bring the EU closer to the citizens after the end of the permissive consensus,

¹⁰⁴ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 301

¹⁰⁵ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p. 301

showed in the ratifications of the Maastricht Treaty. Moreover, the EP argued for a formal vote in Parliament of the President of the Commission along with strengthening of President's powers to choose and reshuffle Commissioners, for the extension of majority voting. The EP was also in favour of extension of the co-decision procedure to all legislation going to the Council and of modifications of it, which would give more independence of the EP, e.g. elimination of the possibility for Council to adopt a text unilaterally if there is no agreement in conciliation.

The representatives of the EP in the Reflection Group managed to gain broad support and many of the EP's proposals were included in the Group's Report.¹⁰⁶ As a result with the Treaty, signed on 2 October 1997, after difficult discussions, the use of co-decision procedure was more than doubled (20 new areas, 38 areas total) and the procedure itself was modified in favour of EP's proposals¹⁰⁷. Moreover, the Treaty changed the consultation into a confirmation by the EP in the election of the President of the Commission, it gave the right to public access to EU documents and required publication of the voting in Council; it enabled the Union to suspend a Member State that ceases to be democratic or to respect human rights (based on the Spinelli draft treaty)¹⁰⁸; qualified majority voting was extended to 14 areas, thus 10 major areas remaining under unanimity.

An important step forward the involvement of the national parliaments was the Protocol on the role of national parliaments in the EU, attached to the Treaty. The protocol provisioned procedure in which the national parliaments must be informed about consultation documents and Commission proposals for legislation. Moreover, the Conference of European Affairs Committees, called

¹⁰⁶ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), 302

¹⁰⁷ The possibility under the Maastricht Treaty for the Council to adopt an act if it has failed after the Conciliation committee but the EP does not explicitly reject it by a majority of its members was erased with the Amsterdam Treaty.

¹⁰⁸ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p.303

COSAC¹⁰⁹, was formally recognized and it was allowed to address any ‘contributions’ to the EU institutions, which it deems necessary.

However, the Treaty did not prepare the Union for the planned enlargement as it did not solve the questions of the size and composition of the Commission, the weighting of votes in the Council and the extension of co-decision procedure and qualified majority voting in the Council. Furthermore, the Treaty itself contained a Protocol on the Institutions, in which it was written “*At least one year before the membership of the European Union exceeds twenty [a new IGC shall be convened to] carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions*”.

2.1.7. The Treaty of Nice – Preparing for Enlargement

The new IGC with the aim to amend once again the Treaties started its work on 14 February 2000 and completed it on 7-11 December 2000 under the French Presidency at the Nice European Council. The EP had once again two representatives in a Group of Representatives of the governments of the Member States, which prepared the work of the ministerial meetings, and attended all of the meetings of the Group, by contrast with the Amsterdam IGC, and were always able to intervene in order to express EP’s position. Moreover, each ministerial session was preceded by an exchange of views with the President of the EP.

A significant improvement of transparency could be seen as all the documents submitted to IGC were available on the Council’s website. Furthermore, the Commission, in partnership with the EP and the Member States, issued an active dialogue with the civil society and a number of Commissioners took part in debates and meetings with national parliaments concerning the institutional reform. This opened the possibility for more

¹⁰⁹ COSAC is a co-operation between committees of the national parliaments, dealing with European affairs as well as representatives from the European Parliament. It was created in May 1989 at a meeting in Madrid, where it was decided to strengthen the role of the national parliaments in relation to the community process. The first meeting took place in Paris on 16-17 November 1989. Six members represent each parliament and there are three representatives of the candidate countries.

participation of the public, bringing decisions ‘closer to the citizens’ – a trend largely developed in the next few years through the Convention for the Charter of Human Rights and the Convention on the Future of the EU.

The Nice Treaty extended further the qualified majority voting (QMV) in 31 new cases and 7 more after further unanimous decisions by the Council¹¹⁰. The most important extension is QMV used in nomination of the President of the Commission and the College of Commissioners (Art. 214 TEC) and the Secretary-General of the Council. Three thresholds were introduced in the weighting of votes in QMV. First, 169 votes out of 237 are needed for a decision to be taken. Second, they must come from a majority of the member states. Finally, 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). These thresholds lead to limitation of the supranational procedures as they introduced various possibilities for blocking minorities.¹¹¹

The co-decision procedure was introduced in seven new articles and the power of the EP was further increased by giving it the right to challenge the other EU institutions’ decisions before the European Court of Justice and to obtain an opinion of the Court as to whether an international agreement is compatible with the provisions of the Treaty. However, the EP stayed outside of several traditional majority voting areas (like the Common Agricultural Policy) and its members increased to 732 against the Resolution of the Parliament (from 3 February 2000) to limit the MEPs up to 700.

As far as the Commission is concerned, the Treaty provisioned an increase of its size up to 27 Commissioners until the Union reaches 27 member states, but there are no details how the rotation must be set afterwards. Still the President cannot dismiss a member of the Commission without the approval of his/her colleagues, *‘even more s/he has few means of finding a replacement from the respective Member States whom s/he might like to have’*¹¹²

¹¹⁰ Wessels, W., *Nice Results: the Millennium IGC in the EU’s Evolution*, JCMS, June 2001, Vol. 39, No.2, pp. 197-219 at p.204

¹¹¹ *ibid*, p. 209

¹¹² *ibid*, p.210-211

After having sketched out the history of evolution of the EP, we can conclude that the EP has gone through a major change from its creation till the Nice treaty. During the last 25 years the EP has significantly increased its stance and importance. From merely consultative institution with symbolic importance, the EP has gradually evolved in a fully-fledged institution with legislative, budgetary and control powers. 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 not have been of course possible if not for the support of the Member States, either as a group, or individually.

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 – in only 66 per cent of all TEC and 37 per cent of all TEU matters¹¹³. Strong powers of co-decision or assent have been attributed to the EP in only 25 per cent of all TEC articles¹¹⁴. 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 the 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 it is just informed¹¹⁵.

Second, there are many cases where the EP must take its decisions with absolute or even qualified majority, which weakens its possibility for

¹¹³ 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*, JCMS, June 2001, Vol. 39, No.2, pp. 197-219 at p.210

¹¹⁴ Wessels, W., *Nice Results: the Millennium IGC in the EU's Evolution*, JCMS, June 2001, Vol. 39, No.2, pp. 197-219 at p.210

contesting ideas within the Parliament, as it should always search for the biggest possible consent. This leads, as we will see in the next section, to weakening of its party system and to uninterested public. 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 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 on 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.

2.2. Party System and Elections in the European Parliament

2.2.1. Party System

EP's party system is an essential component of the EU democracy as in every democratic political system. As early as 1978, David Marquand¹¹⁶ – the inventor of the term “democratic deficit” – argued that in order to be democratic Europe must shift from “Europe des patries”, based on national affiliations and identities, to “Europe des partis”, where a party system will prevail in EU politics.

Many authors argue that a democratic and effective party system in the EP would mean two things. *‘First, the party groups would have to behave in cohesive way, so that voting would be driven by transnational party membership rather than national affiliation. Second, parties must compete for political office (such as EP President) and in the EU policy process rather than form ‘grand coalitions’. Also to translate citizens’ policy preferences in the domestic arena into policy actions at the European level, and to build*

¹¹⁵ data about the Nice Treaty taken from *ibid* (fn 113), table 1

¹¹⁶ Marquand, D. *Towards a Europe of the Parties*, vol.49, no.4, 1978, pp. 425-45 quoted in Hix, S., *A Supranational Party System and the Legitimacy of the European Union*, *The International Spectator* 4/2002, pp. 49-59 at p.50

*functional rather than territorial majorities, this competition would need to be along left-right lines rather than between 'pro' and 'anti' Europe positions"*¹¹⁷

Does the European party system actually fulfil these requirements? When we try to answer this question, we must bear in mind that the EP is an evolving Parliament and in its struggle for power in the institutional framework of the EU it often needs the support of almost all of the MEPs.

Since 1979, two major parties have been dominating the EP (66% in 1999-2004 parliament): the European People's Party (EPP) on the centre-right and the Socialists (PES) on the centre-left. There have been also three more parties in all five directly elected parliaments: the Liberals (ELDR), the Radical Left and the French Gaullists. One more party – the Greens – has been presented in all parliaments since 1984. All these parties compose 93 % in the current EP¹¹⁸. Moreover, a constant rise in the participation of the MEPs in the cast of votes can be observed (73% now), reaching the participation rate in the national parliaments and the US Congress¹¹⁹.

Regarding party cohesion, Simon Hix, using 'Agreement Index' for how members of the parties vote, proves that it is relatively high and it is higher in the three major parties – PES, EPP and ELDR – making the vote in the EP more politically oriented and less nationally oriented¹²⁰. It is argued that cohesion is easier in a Parliament, where decisions are taken with a big majority of over 75 % average, because of the requirements for absolute majority voting of all MEPs. This trend in the EP, however, has changed over the time and until 1988 it has been decreasing¹²¹. Simon Hix argues that even though this party cohesion is lower than for parties in most domestic parties in Europe, where governing parties can control their parliamentary supporters, the

¹¹⁷ Hix, S., Kreppel, A. and Noury, A., *The Party System in the European Parliament: Collusive or Competitive?*, pp. 309-333, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty at p.310

¹¹⁸ data from Hix, S., *A Supranational Party System and the legitimacy of the European Union*, *The International Spectator* 4/2002, pp. 49-59 at p.52

¹¹⁹ *ibid*, p. 52

¹²⁰ *ibid*, p. 53

¹²¹ *ibid*, p.53

European party system resembles much more the US Congress case, where executive and legislative powers are separated as in the EU¹²².

Examining the competition of the parties, one can notice that the phenomenon of grand coalitions between the two major parties is not typical for the EU as much of the exiting research literature suggests. Conversely, this coalition of parties could be seen clearly only in the third parliament (1989-94) and in general the left-right dimension of competition prevails.

This growing cohesion and competition can be explained mainly by the fact that the political system in the EU resembles the presidential separation-of-powers system where the executive does not depend on the support of a majority in the legislature, it is directly elected and it cannot dissolve the Parliament. In this system the executive does not impose pressure on its supporters in the parliament to vote in block and therefore legislative coalitions are formed on a case-by-case basis¹²³. Cohesion is due to the fact that the MEPs need to group in order to have more chances to influence the agenda and as a result, a division of labour is established, where every MEP specializes in a certain area and determines the way the whole party group will vote on this issue. What must be noted is that Simon Hix et al. find that cohesion and competition increase in co-decision and co-operation procedures than under the consultation procedure or even when voting on non-binding resolutions. Furthermore, there is bigger participation of MEPs in the vote in co-decision and cooperation procedures, which can be explained with the fact that they give more power and reason to vote.¹²⁴

A further question is how the EU citizens elect these parties at European scope.

2.2.2. Elections of the European Parliament

¹²² *ibid*, p.54

¹²³ *ibid*, p.56

¹²⁴ Hix, S., Kreppel, A. and Noury, A., *The Party System in the European Parliament: Collusive or Competitive?*, pp. 309-333, JCMS, April 2003, Vol. 41, No. 2, Special Issue: The European Parliament at Fifty at p.326

Direct elections have been already held in the EU for four times since 1979 and the fifth election campaign will be held on 10-13 June 2004. However, the belief of many academics in the past (such as Marquand, Walter Hallstein, etc.) that the direct elections will lead to ‘truly European politics’ was not proved in all the elections till now¹²⁵. Instead, the EP elections have always been ‘*second order national contests*’¹²⁶. In other words the national political parties use the EP elections as another occasion to compete on national issues and for national government office, the national executive elections being the ‘first order’ contests. The consequences, in my opinion, are very negative for the EU democracy. First, the second order status of the EP elections leads to lower turnout in European than in national elections. People do not consider worth voting in EP elections, not so much because the EP does not have significant powers, but rather because the elections would not change national politics¹²⁷.

Second, approximately 20 % of all voters change in EP elections their preferences, using the occasion either to punish governing parties in the Member States, or to reward opposition parties, or to support parties “*that they might consider would be a wasted vote in a more important elections*”¹²⁸. The worst in this case is that almost never the contested policy is connected with European integration questions but rather with national ones¹²⁹. Moreover, Reif¹³⁰ argues that even if the EP had full possibilities to select the Commission president, the EP elections would be still second-order national elections as long as national parties still use them to compete for national government office.

However, many scholars think that things can change if national parties do not use these elections for national contest. Then, it is argued, the voters

¹²⁵ see Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), chapter 6

¹²⁶ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.180

¹²⁷ Frankilin, van der Eijk and Openhuis (1995) “*The Institutional Context Turnout*” in van der Eijk and Frankin (eds) *Choosing Europe? The Electorate and National Politics in the Face of Union* (Ann Arbor: University of Michigan Press) quoted in *ibid*, p.181

¹²⁸ *ibid* (fn129), p.183

¹²⁹ *ibid*, p. 183

will concentrate on European issues, because there are no inherent cultural differences between the voters that would stop them to do so. But it will happen only if European wide parties participate in these elections, there is a possibility to choose European executive, and to contest European policy agenda.

Another solution, it is argued, is to change the electoral system. Up to now the national electoral procedures have been harmonizing for the EP elections. In 2002 the Council with the assent of the EP amended the act concerning elections, stipulating the principle of proportional representation. The elections are still, however, carried in different conditions, even the date of the elections is not yet the same, but they are held during four days. There are several possibilities to improve the system. First possibility is to create regional districts, from which several candidates would be elected¹³¹. This would link better, it is argued, the candidate to his constituency and separate him/her from the national level. However, this is not very probable, because the national parties will still dominate the elections, as they dominate municipality or regional elections in the Member States. Second suggestion is to have pan-European lists for at least 10 or 20 % of the MEPs¹³². The Council resisted to incorporate this proposal, but the Parliament hopes that it will be reexamined for the elections in 2009.

It can be concluded that elections at EU level challenge the democratic legitimacy of the EP, as they are second order national party competition where national parties compete only on national issues and over national government office. 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 European elections if

¹³⁰ Reif, K. (1997) *Reflections: European Elections as Member States Second-Order Elections Revisited*, European Journal of Political Research, vol 31, no 1, pp.115-24, quoted in *ibid*, p183

¹³¹ Jospin, L. (2001), Speech on the Future of an Enlarged Europe, Paris, 28 May and Hulter, M. van and N. Clegg (2003), *Reforming the European Parliament*, Network Europe Policy Brief, London, May

¹³² European Parliament (1998), Resolution on a draft electoral procedure incorporating common principles for the election of Member of the European Parliament, *Official Journal of the European Communities* C 292/66 and Commission of the European Communities (2002), For the European Union; Peace, Freedom, Solidarity. Communication of the Commission on the institutional architecture, Brussels, 11 December, COM (2002) 728 (fn 135 and 136 quoted

national parties stop using the EP elections for another level of national contest and instead, questions of European integration prevail in the debate.

Another positive trend is the fact that EP party system is highly developed; 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 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.

3. The Council - Second or First Pillar for EU Legitimacy?

All political scientists who research 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 accountable before the national parliaments governments are the second 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 executive¹³³, 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 Union¹³⁴. As we saw in

in Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source, p.6)

¹³³ the division is made by Simon Hix, Hayes-Renshaw, Wallace, etc.

¹³⁴ Wessels, W. (1991) *The EC Council: The Community Decisionmaking Center*, in R.O. Keohane and S. Hoffmann (eds), *The New European Community: Decisionmaking and*

the chapter about the EP, the Council shares its legislative competences with the EP (the right of initiative has the Commission) with 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 from indirectly elected governors to directly elected EP. On the contrary, it strengthens EU legitimacy and even optimizes the decision making process as it is estimated that in the consultation procedure the only 'weapon' of the EP is time (the EP cannot amend the proposed legislation). Therefore, the EP used the threat of delay in order to receive the desired amendments and sometimes it worked¹³⁵. Whereas the co-decision procedure, even though it is much more technically complicated, allows quicker decisions as the EP has real powers.

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 been first agreed with consensus by all Member states on 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 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 preserved¹³⁶.

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

Institutional Change (Boulder: Westview) quoted in Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.25

¹³⁵ 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. /Taken from Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.61/

but still legislation can be adopted. As a result, under unanimity an abstention is equivalent to support the proposal¹³⁷. 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.”*¹³⁸

Third, the thresholds for reaching an agreement under QMV have become higher in the Nice Treaty, requiring not only 169 votes out of total 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 is pressured to concede to maintain consensus in the Council.

The Council plays also very important role in the executive of the Union along with the Commission. First, the European Council sets the long – term policy goals of the EU in treaties and reforms and delegate powers to the Commission for the pursuit of these goals. Second, it sets the medium-term policy agenda. This is the political aspect of the Council’s executive power.

¹³⁶ For example budgetary system of own resources, Structural funds until 2007, Treaty amendments, Cultural policy, etc.

¹³⁷ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press) p.69

There is also an administrative aspect of its powers: first, member states are responsible for implementing EU legislation at national level and, second, through the ‘comitology’¹³⁹ system the EU governments control the implementation of the EU policies together with the Commission¹⁴⁰. We will constrain ourselves only to the so-called political functions as there are some practices that might evoke democratic deficit.

First, during the IGCs the member states set the long-term objectives of the Union and usually delegate the responsibility for the implementing of these goals to the Commission or first High Authority as the only ‘regulatory’ institution which can assure effective and unbiased results. Moreover, it can generate new policy ideas. However, when delegating competences, the member states cannot be hundred per cent sure how these competences will be exercised, as the supranational body always strives to accomplish a decision as closest as possible to its own preferences which are presumably much more pro-integrationist than any government¹⁴¹. Though the extension of these competences might be very limited, once given to the Commission, “*they are unlikely to be overturned in subsequent treaty reforms as at least one member state will feel that they benefit from Commission discretion*”¹⁴². Moreover, governments cannot be sure about the precise implications of treaty provisions and new decision-making rules when introducing them. As a result, an ‘unintended consequences’ of delegation occur. One can argue that they can be regarded as lacking democratic legitimacy, because the governments did not provision them. However, I think that the problem is much softened by the fact that the Member States exercise a certain control on the Commission through the comitology system and through the implementation of the EU legislation at national level. Therefore, the implications of the case are very limited.

¹³⁸ 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

¹³⁹ A system of committees, composed of national experts, which controls how the Commission implement EU legislation. It was created with Council decision in July 1987 (87/373/EEC) and is composed of three sets of committees – advisory, management and regulatory committees.

¹⁴⁰ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.25

¹⁴¹ Based on numerous theories, presented in *ibid.*, p. 22-23

Second, the negotiations both on the IGCs and in the Council meetings are held primarily in secret, off the public records. 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 ideas’*¹⁴³ 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 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 decrease of compliance in the Council and will reduce the amount of legislation adopted.¹⁴⁴ Another solution is to include the National Parliaments in the legislative process or at least to inform them¹⁴⁵. Finally, one can also presume that at 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

¹⁴² *ibid*, p.28

¹⁴³ Moravcsik, A., *Why The European Union Strengthens the State: Domestic Politics and International Cooperation*, Center For European Studies, Working Paper Series No.52, internet source, p. 7

¹⁴⁴ 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

Council and to be informed over the decisions taken in the European Council. Nevertheless, national parliaments must maintain their powers over the national executive.

The Council has another very important competence, which raises concern for democratic accountability – according to article 202 of TEC it can reserve to itself the powers for implementation of the legislation. It has done so with the Maastricht Treaty in the field of Justice and Home Affairs (JHA) and in Common Foreign and Security Policy (CFSP). Although with the Amsterdam Treaty the Commission was attributed with the right of initiative along with the Council in JHA, it did not happen in the CFSP. On the contrary – the Member States delegated responsibility for policy initiative and monitoring of the CFSP issues to a new ‘task force’ located in the Council secretariat¹⁴⁶. However, in JHA the executive tasks are also assigned to specialised bodies such as Europol and Eurojust. These two ‘pillars’ are not subject to judicial review by the Court of Justice, the EP is only informed about their development and national parliaments have once again only control over their respective government, but not over the overall implementation of these policies. Therefore, these fields derive their legitimacy from the national governments with the above-mentioned problems of their democratic control. But the two pillars’ legitimacy problem is aggravated, because they are not under the control of the checks and balances within the institutional system of the EU¹⁴⁷.

In conclusion, we can say that the Council and the European Council derive their democratic legitimacy from the national executives, which are directly elected by the national voters. Moreover, QMV in the Council does not decrease its democratic legitimacy as the Member states always strive to reach consensus even when QMV is allowed to under the provisions of the Treaty. On the other hand, QMV enhance the effectiveness of the decision-making

¹⁴⁵ We will further examine this solution when discussing the proposals for amendments in this direction in the Draft Treaty Establishing a Constitution for Europe

¹⁴⁶ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.28

¹⁴⁷ for detailed discussion of this problem see Koenig-Archibugi, M., *The Democratic Deficit of EU Foreign and Security policy*, *The International Spectator* 4/2002, 61-73

process. The Member States' participation, control and implementation are crucial for the existence and the legitimation of the EU system. However, the EU 'strengthens the state', which means that the EU actually weakens the positions of the national parliaments regarding the national executive, which has a dominant role at the EU level. This dilemma can be solved in two ways: through increasing the role in legislation of the national parliaments at EU level and through further empowerment of the EP.

4. The European Commission – How Democratic is it?

Although the Council has also executive functions, as we saw in the previous section, the 'real' executive in the Union is the Commission with major executive powers accorded under the Treaties. The Commission has the following responsibilities: "to develop medium-term strategies for the development of the EU; to draft legislation and arbitrate in the legislative process; to represent the EU in bilateral and multilateral trade negotiations; to make rules and regulations, for example in competition policy; to manage the EU budget, and to scrutinize the implementation of the Treaties and secondary legislation".¹⁴⁸ In short, the Commission has the powers of a government, exercised in the limited areas of the Treaties, and also of a regulatory or executive body when acting in such fields as the competition policy.

As we saw in the beginning of this paper, the 'standard' version of the democratic deficit perceives the Commission as the main source of decrease of legitimacy at EU level, as it is an independent supranational institution. The Commission is exactly the EU institution, which emanates 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 indeed is the control over the executive.

¹⁴⁸ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.32

4.1.Parliamentary Scrutiny and Control of the Executive

Not only the Council but also the Commission is subject to parliamentary scrutiny. This kind of parliamentary control is a very important source for enhancing transparency and accountability in the EU system. The Commission President presents the annual Commission Work Program to the EP, commissioners and civil servants in the DGs regularly answer to question in the responsible parliamentary committees. The Commission submits annual general report on the activities of the EU, two three-yearly reports, nine yearly reports and several other kinds of reports¹⁴⁹. Moreover, the heads of the EU agencies and the president of the European Central Bank also regularly appear before the EP committees.

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 of¹⁵⁰.

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 grant or not discharge to the Commission. The Commission is obliged to take into consideration any comments made by the EP and to provide additional information if requested.¹⁵¹

Generally, since 1994 the Commission has been trying to promote more transparency and in its administrative operations. In this year the Commission

¹⁴⁹ see Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p.251

¹⁵⁰ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.48

¹⁵¹ Corbert, R., Jacobs Fr. And Schackleton M. (4. ed.) (2000) *The European Parliament* (London: Harper), p.253

changed the time when it publishes its Annual Work Programme and instead of January it started publishing it in October in order to give time to the Council and the EP to give proposals and generally to review the draft programme before it is adopted in January. The Commission adopted a new code of conduct, according to which all the documents of the Commission must be published, “*except minutes of Commission meetings, briefing notes, the personal opinions of its officials and documents containing information that might ‘damage public or private interests’*”¹⁵². Moreover, the Commission uses more instruments to make its work transparent: Green and White Papers, public hearings, information seminars and so on.

For example, after the resignation of Santer Commission and the first Irish Referendum on the Treaty of Nice, the new Commission with President Romano Prodi published White Paper on European Governance¹⁵³. In the White Paper the Commission proposed a reform of the governance that would promote openness, participation, accountability, effectiveness and coherence, “*establishing more democratic governance*”¹⁵⁴. In order to realize these reforms, the ‘Community method’ must be revitalized, which means that every institution must concentrate on its core tasks: the Commission initiates and executes policy, the Council and the Parliament adopt legislative and budgetary acts and the Parliament controls the execution of the budget and of the Union’s policies.¹⁵⁵ As a whole the White Paper promotes strengthening of the Commission, giving it bigger legislative powers to adopt secondary legislation, the comitology system will become useless¹⁵⁶, and qualified majority must be applied in the Council without pursuing unanimity/consensus.

Fritz Scharpf accuses the White Paper that it does not focus on the real problems of the EU, which he sees in EMU, in the interest rates policy of the

¹⁵² Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.49

¹⁵³ Commission of the European Communities (2001) *European Governance. A White Paper*, COM (2001) 428 final, Brussels, 25.7.2001

¹⁵⁴ *ibid*, p.10

¹⁵⁵ *ibid*, p.29

¹⁵⁶ *ibid*, p.31

European Central Bank and in the impact of enlargement.¹⁵⁷ Moreover, he is critical about the provisioned enhancement of the role of the Commission, lessening significantly the indirect legitimacy of the EU with the end of consensus seeking in the Council and with the abolishment of the comitology system, without strengthening the EP powers – the direct legitimacy of the EU¹⁵⁸. He argues further that the ‘civil society involvement’ is rather obscure perception since the Commission includes in it literally everyone and it would not have the capacity to consult all the organizations possible.

Anyway, a positive trend in the White Paper is the debate (primarily online/ which was initiated and conducted by the Commission not only about the content of the Paper but also about the Future of Europe and Commission’s policy-making, a debate, which lasted more than a year after publishing the Paper¹⁵⁹.

4.2. Appointment and Censure of the Commission

Until 1994 the Commission President was chosen unanimously by the heads of governments or states in the European Council without any role of the EP. Thus at this stage the Commission derived its legitimacy only indirectly through the national governments. This is the kind of legitimacy every head of an international organisation has (such as the secretary-general of NATO or WTO) and does not correspond to the role the President of the Commission exercises as ‘first among equals’ in a political cabinet¹⁶⁰. With the Treaty of Maastricht the EP became involved in his appointment by having the formal right to be consulted on the nominee for the President, proposed by the governments. Then the full 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

¹⁵⁷ Scharpf, F., *European Governance: Common concerns vs. The Challenge of Diversity*, MPIfG Working Paper 01/6, March 2001

¹⁵⁸ *ibid.*, p. 8

¹⁵⁹ see http://europa.eu.int/comm/governance/index_en.htm

¹⁶⁰ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.46

as a President-in-office of the Council at the first occasion in 1994¹⁶¹. 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 needed.¹⁶² 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 Commission’s collegiality and to the fear that nationality factor might abuse the system.¹⁶³ In addition, before 1994 there was nothing to 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 governments as it is in the parliamentary systems¹⁶⁴.

¹⁶¹ Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source, p.3

¹⁶² *ibid*, p.3

¹⁶³ Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source, p.2

¹⁶⁴ Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), p.47

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 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 with the Treaty of Nice was 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 EP¹⁶⁵. However, formally the EP does not have yet the right to censure a commissioner, as it is in the national parliamentary systems.

After having presented the evidence above, we can conclude that the Commission, especially its staff, is mainly controlled by the national governments with increasing participation and influence of the EP, especially its veto right over the election of the Commission President. Moreover, the Parliament has the right to censure the Commission, but this right is more or less technical, not political. This situation derives directly, in my opinion, from the fact that the Commission is designed to be independent, politically impartial. Its neutrality is inscribed in the Treaties (Art. 213.2 ECT)¹⁶⁶ and it is crucial for its protection from the national interests when it sets the agenda of the EU and implements the legislation¹⁶⁷.

¹⁶⁵ Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source, p.2

¹⁶⁶ Art. 213.2 ECT says: "The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek, nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties..."

¹⁶⁷ cf. Dehousse, R. (1995) *Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue?* In Jack Hayward (ed.) *The Crisis of Representation in Europe*, London: Frank Cass; Majone, G. (2002) *The European Commission: The Limits of Centralization and the Perils of Parliamentarization*, *Governance* 15: 375-392 etc. quoted in Hix, S., Noury, A. and Roland, G., *How to Choose the European Executive: Counterfactual Analysis, 1979-1999*, *Cahiers Européens de Sciences Po*, 1, 2003, internet source, p.18

However, many academics argue 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 government¹⁶⁸. As Ben Crum states “*not only does the Commission wield significant executive power, but it undeniably makes important political choices in the exercise of these powers. Even more so, if the Commission is effectively to implement the executive tasks assigned to it, it needs to confront political choices and to be able to do so openly rather than to hide behind a technocratic disguise.*”¹⁶⁹ Furthermore, Simon Hix notes that even up to now the Commission has had its political affiliations, according to the affiliation of the majority of the governments, which elect it and according to the political beliefs of the Commission President. For example, the centre-left majority in the Council in the late 1990s produced a centre-left majority in the Prodi Commission, which has 55% of Commissioners on the left (Socialist or Green), and 45% of Commission on the right (Liberal, EPP or non-EPP Conservatives).¹⁷⁰ Moreover, the single market project was driven by centre-right majority both in the Council and in the Commission, even though the President of the Commission was a socialist.¹⁷¹

However, both Crum and Six 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. The options to do so are as follows.¹⁷² First, there are two versions - which link the election of the Commission President with the EP elections, where each party group nominates a candidate and these candidates compete in rounds until someone gets absolute majority of the votes— either with roll-call voting (the party leaders can follow how the party members vote) or with secret voting. A third and fourth scenario suppose the election of the

¹⁶⁸ see for example Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source; Hix, Simon (1999) *The Political System of the European Union* (New York, St Martins Press), chapter 2

¹⁶⁹ Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December 2003, internet source, p. 7-8

¹⁷⁰ Hix, S., Noury, A. and Roland, G., *How to Choose the European Executive: Counterfactual Analysis, 1979-1999*, *Cahiers Européens de Sciences Po*, 1, 2003, internet source, p.6

¹⁷¹ *ibid.*, p.7

whole Commission by the EP either with absolute majority, or with two-thirds of the votes. Finally, there is a fifth version, in which the national parliaments elect the Commission President in the same year of EP elections through an ‘electoral college’ system, proportional in its nature.

Simon Hix gives proofs that only the fifth scenario can work without destroying the equilibrium between the EU institutions¹⁷³. This is due to the fact that, as we saw in the chapter about the elections of the EP, they are ‘second-order national elections’ and normally the voters punish in them the parties already in power in the respective member state. As a consequence, the party majorities always differ between the Council and the EP. Therefore, in the case when the EP elects the Commission President or the College, the political composition of the Commission would be very different from the political composition of the Council, which would lead to clashes between the Commission and the Council. Hix argues further that the election of the Commission by the national parliaments would increase the independence of the Commission both from the Council and the EP, which would keep the current crucial independence of the Commission and in the same time would make it politically salient. Moreover, this model, he argues, could be easily replaced later with direct elections of the President of the Commission.

There are other proposals for making the system completely parliamentary, where the candidate for President of the Commission would be also member of the EP¹⁷⁴ or to elect him or her by electoral college, composed both from MEPs and members of the national parliaments.

Whichever scenario is chosen, however, several conditions must be observed, in my opinion. First, the Commission must become politicized but not ‘partisanized’. This means to have the possibility democratically to change its political orientation, responding to the voters’ affiliation, but in 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

¹⁷² versions taken from *ibid*

¹⁷³ *ibid*, p.16-18

¹⁷⁴ for example Miguel Maduro

alienating for good a certain public interest. It must keep its role as a promoter of the Community interests.

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

After having sketched out the forms and procedures that assure the democratic accountability of the Commission, we can conclude that the Commission is subject to numerous constraints imposed by the two sources of democratic legitimation of the EU system: the Council and the Parliament, which promote transparency and accountability in Commission's work. Moreover, the Commission is also striving to promote debate and participation of wider social groups. However, it is argued that new ways must be found in order to make the Commission politically accountable mainly through its appointment. On the other hand, the Commission as a body must remain as independent as possible (though promoting a certain political programme for the time it is elected) in order to maintain its role as a promoter of a common interest, and must not violate the subtle institutional balance in the EU, which guarantees democracy.

Chapter Three

The Convention on the Future of Europe – A New Model for Deliberation in the European Union*

The Convention on the Future of Europe, held between 26 February 2002 and 18 July 2003 (when the President Valérie Giscard d'Estaing submitted the final text to the European Council in Rome), gives a new model or method for developing the European integration, which is alternative to the IGC: the debate does not take place in a secret, traditional diplomatic method, between the heads of the Member states, but includes representatives of all the institutions concerned - MEPs, members of national parliaments, members of the Commission and of course members of the national governments. Furthermore, it was constantly opened to the public through a forum, held mainly online.

Hartmut Marhold argues that the Convention must be perceived not only as a means to carry out a certain, defined in advance objective, but rather as an objective itself, as “*an organ, which shapes democratically a political community*”¹⁷⁵. As Andreas Maurer notes: “*The result cannot be the only criterion for evaluating the work of the Convention [...] The Convention has a sense [...] because its methods of deliberation are more transparent for the public, and hence more democratic, more oriented towards consensus and more rational than the intergovernmental conferences.*”¹⁷⁶ In other words, the Convention provides with a new approach, which has bigger democratic legitimacy, involving much more participants and binding them through the consensual method of its decision-taking. As a result, the Convention promotes a method that is more appropriate to deal with institutional crises and to offer legal texts (constitutional texts) with a higher democratic legitimacy than a purely intergovernmental conference. However, it is questionable how much

* cf. Maurer, A.: Die Methode des Konvents – ein Modell deliberativer Demokratie?, in: Integration 2/2003, iep Berlin, pp.130-152

¹⁷⁵ Marhold, H. *La méthode de la convention*, L'Europe en Formation, No 2, Année 2003, p.42

¹⁷⁶ Maurer, A., *Die Methode des Konvents – ein Modell deliberativer Demokratie?*, Integration 2/03, S.130-140, hier S.131, quoted in *ibid*, pp. 42-43

this model is workable when the issued text by the Convention must still be discussed, amended and adopted by the Member states, which as we saw in December 2003 is not an easy task¹⁷⁷ Still a considerable part of the constitutional text proposed by the Convention is not disputable at all.

In this chapter we will examine the background of the Convention, its composition and the result of its work – The Draft Treaty Establishing a Constitution for Europe – in the light to what extent its proposals for amendments could make the EU system more democratic and legitimate.

1. Elaborating the Concept of Convention

The Convention on the Future of Europe was not the first one in the history of European integration. There were other examples when the European integration was driven forward not by intergovernmental conferences but by parliamentary bodies, drafting ‘constitutions’ for Europe. The first one was the already mentioned Treaty on the European Political Community from 1953, which was prepared by the first Common Assembly with Paul-Henri Spaak as its President. Another example is the Draft Treaty on European Union, initiated by Altiero Spinelli in 1984. Although both of these projects failed to be adopted as constitutional treaties, they became bases for changes in the Founding Treaties.

Among all previous models, however, the Convention, which elaborated a Charter of Fundamental Rights, has the biggest relevance for the constitutional convention. It is due to the fact that this Convention introduced models of representation and work, which were very successful, and this determined the creation and the way of work of the constitutional convention. The Convention on the Charter of Fundamental Rights was exactly the one, which introduced the principle of representing both the executive and the legislative powers in a same forum, which prevents from a collision between them – a major reason for the failure of the projects in 1953 and in 1984.

¹⁷⁷ On 12-13 December 2003 there was a European Council meeting in Brussels which failed to adopt the Constitutional Treaty, because Spain and Poland were against the double majority system of voting in the Council.

Furthermore, it brought together the political elite of the national and European level, which made them part of the European political process and the decisions taken with consensus on this forum – morally binding for all the participants. The inner organization, especially the principles of public debates, consensus building and the creation of ad hoc working groups, were fully incorporated in the work of the next Convention. But how and why the Constitutional Convention was convened?

I agree with Marhold that in order to answer to these questions one must look at the European Council¹⁷⁸. The Convention is a product of the experience of the European Council, it was created by it and the results of its work had to be presented back to the Council afterwards. Exactly on the same European Council in Nice, where the Charter on Fundamental Rights was officially proclaimed, there was inscribed in the treaty of Nice in the “Declaration on the Future of the Union”¹⁷⁹ that a wide range discussion on the future of the EU must be opened, which will include representatives of national parliaments and all those reflecting public opinion, namely political, economic and university circles, representatives of civil society, etc. It is important to note that the declaration defines the aims of institutional reforms, which must lead to improvement of democratic legitimacy and transparency of the Union and its institutions, “*in order to bring them closer to the citizens*”. Therefore, the mandate of the future Convention was defined – though too largely – on this European Council, as another effort to overcome the deadlock of intergovernmental conferences.

In fact, the actual mandate of the Convention was given only with the Declaration on the future of the Union of the Laeken Summit on 15 December 2001¹⁸⁰. Every country will have two deputies from the national parliaments and one representative of the government. The EP will have 16 deputies and the Commission – two representatives. The Convention will have a Chairman – V. Giscard d’Estaing and vice chairmen G. Amato and J.L. Dehaene. They will be central figures in the work of the Convention. A key role will also play the

¹⁷⁸ Marhold, H. *La méthode de la convention*, L’Europe en Formation, No 2, Année 2003, p.46

¹⁷⁹ 23. Declaration on the Future of the Union in Treaty of Nice (OJ C80 of 10 March 2001)

¹⁸⁰ Annexes to the Presidency conclusions – Laeken, 14 and 15 December 2001

Praesidium of the Convention, which is composed of representatives of the member states, the Commission, national parliaments and the European parliament (see annex I). A very important step towards enhancing the legitimacy of the Convention was the invitation of the candidate countries to take full part in the proceedings, having the same structure of representation as the member states, but without the right to “prevent any consensus, which may emerge among the Member States”.

The broad lines of the tasks of the Convention were also defined in the Laeken declaration, among which the enhancement of democracy, transparency and efficiency in the EU were key goals. They included the questions of how the institutional framework must be reformed to answer to these goals, how the national parliaments must be involved in the decision-making process and in terms of efficiency whether QMV must be extended.

When the Convention started its work on 26 February 2002, it was decided that the goal would be to elaborate one consolidated constitutional text. This would help the Convention to have better chances its proposals to be taken into account on the following IGC¹⁸¹ than a multitude of different versions and options that will give the possibility to the Member States to ‘pick and choose’ without big public pressure. Furthermore, decisions would be taken with consensus with the same aim: to enhance the political and moral value of the constitutional text. This shows that the participants were fully aware of the limitations imposed by the following IGC, without wanting, however, to minimize the results of their work and to lower their ambitions.¹⁸²

The result was the elaboration of the Draft Constitutional Treaty, but what changes it proposes for enhancing the democratic legitimacy of the EU?

2. Towards a Fully Democratic European Union?

The Draft Constitutional Treaty accomplishes several important steps towards more democratic and efficient EU, but it is arguable whether the reforms are the optimal ones. The changes are as follows. First, a very positive

¹⁸¹ see Marhold, H. *La méthode de la convention*, L’Europe en Formation, No 2, Année 2003, p. 49

change is the fact that there is a whole title dedicated to the ‘Democratic Life of the Union’ (Part I, Title VI). It defines explicitly the principles of representative democracy, fundamental for the Union, which stress on the double legitimacy of the Union and on the importance of the political parties and the direct participation of the citizens. Furthermore, the text promotes transparency, social partners participation and protection of personal data. However, in my opinion, these definitions have predominantly symbolic rather than practical importance.

Second, the Convention succeeded to simplify the constitutional basis of the Union, as the Treaties were gathered in one, more comprehensive and reader-friendly text. However, Ingolf Pernice argues that the division in two parts¹⁸³ is not very successful, because it introduces unnecessary repetitions, ambiguities and complexities¹⁸⁴.

Third, the Constitutional Treaty introduces further changes in the decision-making process, which enhance the already started trends. It increases the fields where QMV is used in the Council by 24, to a total of 156 articles¹⁸⁵. The QMV itself has been changed from triple to double majority, valid from 1 November 2009 on, where decisions must be taken by the majority of the member states, which represent 60 % of the total EU population. This requirement is looser than the triple majority from the Nice Treaty, where the threshold was higher (62%) and not only majority of the member states was required, but also qualified majority of the votes cast. As a result, this QMV reduces complexity and makes the voting more transparent. But it also enhances the weight of the bigger states. On the other hand, unanimity and the right of veto still exist in certain areas.

Furthermore, the co-decision procedure is defined as “the ordinary legislative procedure” and it is extended to 85 fields, an increase of 30 as

¹⁸² *ibid*, p.49

¹⁸³ The Text is divided in Part I – Constitutional Structure (without official name) , Part II – The Charter on Fundamental Rights, Part III – The Policies and Functioning of the Union, Part IV – General and Final Provisions

¹⁸⁴ Pernice, Ingolf, *Constitution for the European Union. Comments to the Draft Articles for Title IV of Part I of the Constitution*, WHI Paper

compared to the Nice treaty.¹⁸⁶ Thus the QMV, coupled with the co-decision procedure, have become a leading, if not yet exclusively procedural pattern. However, the areas where consultation or non-participation of the EP are applied, are still a significant part of the treaty provision (total 143 cases). A positive trend is the abolishment of the cooperation procedure. Furthermore, the European Council is empowered in art.24 to decide with unanimity to change the procedure used in fields like ‘area of freedom, security and justice’ in ‘ordinary legislative procedure’.

Fourth, the powers of the EP have been increased not only through the co-decision procedure, but it has also gained full budgetary powers, without any distinction between obligatory and non-obligatory expenses and a stronger role in the nomination of the Commission president, as the EP election results must be taken into account. In article I-19 it is written also “that the EP shall elect the President of Commission”. However, this is not exactly the case in art. 26, where the procedure is spelled in detail. The EP is obliged to elect a candidate, proposed by the European Council with qualified majority. The only manoeuvre of the EP could be rejection of the proposed candidate, which would lead, however, to only a new candidate from the European Council. Still the EP lacks an important constitutional right: parliamentary consent is not necessary in matters of amending the Treaty establishing the Constitution (Art. IV-7)¹⁸⁷. At the same time, however, the EP’s competences were extended with its possibility to submit own draft proposals for amendments and participate through the Convention in the preparation of recommendations to the IGC (Art.IV-7 Para1 and 2).

Fifth, the executive role of the Commission was further reinforced, as well as its political affiliation. This is due to the fact that the President of the Commission is no longer *primus inter pares*, but has the power to force any commissioner to resign without the approval of the other members of the College. This might help to safeguard the effectiveness of the Commission’s

¹⁸⁵ data from Wessels, W. and Traguth, T., *The constitutional Treaty within a Fusion Trend?*, article based on Wessels, Wolfgang: “Der Verfassungsvertrag im Integrationstrend: Eine Zusammenschau zentraler Ergebnisse” in: *Integration* 2/2003, iep-Berlin

¹⁸⁶ *ibid*

¹⁸⁷ *ibid*

everyday work, having in mind another institutional change: the College would consist of 'European Commissioners' with voting rights and there would be also 'Commissioners' coming from all other countries. As a result, most probably the EP will focus more and more its pressure on the figure of the Commission President¹⁸⁸ but still it cannot censure only the President itself.

Sixth, a major change was introduced in the European Council with the creation of a President, who would be elected for a term of two and a half years, renewable once. His/her duties are mainly in the field of organizing and coordinating the work of the European Council, but s/he will ensure also the Union's external representation, concerning the CFSP. These duties, however, may interfere in the competences of another new figure – the Union minister of Foreign Affairs. In general, many academics fear that the creation of the office of President of the European Council will lead to institutional clash in the Union, as s/he will be to some extent a competitive figure with the President of the Commission. As the Constitutional Treaty defines the two offices, the Commission President would have much bigger democratic legitimacy, being elected both by the Member States and the EP and being subject to vote of censure within the College, whereas the legitimacy of the President of the European Council would be lower as s/he would be elected only by the heads of states. Moreover, the fact it would be done by qualified majority actually lessens further his/her legitimacy, because there is no other source of legitimation. As a result, in principle the President of the Council would have to be much more restrained in its actions and bound to the tasks s/he is given by the Treaties, without interfering in the other offices' competences as s/he would be with lesser legitimacy. Whether this will be really the case, however, can only be proved in practice when (if) the treaty enters into force.

Furthermore, the European Council became a proper organ of the Union, but its decisions are still not subject to judicial review by the European Court of Justice. It is important to note that the decisions in the European Council must be taken generally by consensus – an important requirement for maintaining the legitimacy of the institution.

¹⁸⁸ Crum, Ben, *Staging European Union Democracy*, EPIN Working Paper No10, December

Seventh, a new Union Minister for Foreign Affairs was created, who must assure the ‘consistency between the different areas of its external action and between these and its other policies’ (Art. III-193 Para 3). S/he functions at the same time as one of the Vice-Presidents of the Commission and as president of the Foreign Affairs Council. Therefore, he must manage to reconcile different political interests and might be in strong inter- and intra-institutional tension.¹⁸⁹ In the same time, the Union Minister for Foreign Affairs could count on relatively big legitimacy, as s/he is first elected by qualified majority by the European Council with the agreement of the Commission President and then s/he also subject to approval by the EP together with the whole staff of the Commission.

Eighth, the Council of Ministers also is subject to a reform - there would be a separation of the executive and legislative functions of the Council as the Council will meet in two formations: (1) Legislative and General Affairs Council and (2) Foreign Affairs Council. The European Council can decide to have other formations. Furthermore, there will be rotation of the presidency of at least one year, while Union Foreign Minister will chair the Foreign Affairs Council.

Last but not least, the national parliaments will be finally included in the decision making process at EU level through an ‘early warning system’, which allows them to enter the debate on proposed legislation with reservations or objections on the grounds of the principle of subsidiarity. If they are not satisfied, they can proceed to have the validity of their positions judged by the ECJ¹⁹⁰. Although this system attributes at the end some sort of influence of the national parliaments over the decision-making in the EU, Wessels argues that it *“increases further the procedural complexity – with the consequence that the precise locus of political responsibility for a legislative act is further obscured”*¹⁹¹. He continues in this direction, noting that in this way the

2003, internet source, p.3

¹⁸⁹ Wessels, W. and Traguth, T., *The constitutional Treaty within a Fusion Trend?*, article based on Wessels, Wolfgang: “Der Verfassungsvertrag im Integrationstrend: Eine Zusammenschau zentraler Ergebnisse” in: *Integration* 2/2003, iep-Berlin

¹⁹⁰ *ibid*

¹⁹¹ *ibid*

oppositions in the national parliaments may also gain access to the European legislative process, which breaks with the parliamentary logic of the Member states.¹⁹²

What follows, as a conclusion of the review made above, is that the Convention on the Future of Europe gave a new model for elaborating a Constitutional Text, which is more transparent, more democratic and more rational than the classical diplomatic model of IGCs. As a result, it created a Constitutional Treaty with high public expectations (because of the public involvement in the process) and moral stance. Although its proposals for changes are much more rational, based on clear arguments for more efficiency, transparency and democracy, the Convention as a whole was deeply aware of the national interests involved and did not hesitate to take them into account. Therefore, the deliberated text does not go much further into consolidating the supranational character of the EU, but makes rather ‘cosmetic’ changes, not touching the general principles of institutional balance in the EU, which aims to enhance democracy, legitimacy, efficiency and transparency of the system. Nevertheless, there are certainly important improvements in the institutional system of the EU – for example extension of the QMV and the co-decision procedure, simplifying and unifying the Treaties, politicizing further the election of the President of the Commission, inclusion of the national parliaments in the decision-making process, etc – which can be estimated as a crucial step forward the democratization of the EU institutional system.

¹⁹² *ibid*

Conclusion

The goal of this work was to conceptualize the term 'democratic deficit' and to see where and how this concept can be applied to the EU system. The first chapter showed the variety of the definitions of this phenomenon, which depend on the way the EU is perceived: as a federal state, an international organization, an economic community, etc. The EU must have both input and output democratic legitimation. What the EU really lacks is public interest and public control of its policies. This is due to the fact that they are in the interest of the median citizen and there is a very low rate of participation of the public in elaborating these policies.

The EU does not dispose of a consolidated European society, which could be an essential source of legitimation. Nevertheless, the EU is based on common values and is visible in the everyday life of the citizens. The end of permissive consensus of the public has led to serious questions whether the system is still legitimate and the EU must find how to mobilize the public opinion in order to get public support.

In the institutional framework of the EU the EP has a major role for the legitimation of the system, despite the fact that its elections are second order national contests and that there is a big consensus between the parties. However, although the role of the EP increases significantly with every Treaty amendment, in some areas of legislation it still remains rather limited.

The Council is the other source of legitimation for the EU and is a key player in both the executive and legislative processes in the EU. We proved - contrary to some arguments - that voting with qualified majority does not decrease its democratic legitimacy. What we regard as a problem, however, is the limited control of the national parliaments on their executives. The changes

introduced in the Draft Constitutional Treaty in this respect might not solve the problem.

As we saw, the Commission is not democratically unaccountable, but it is rather scrutinized by both the EP and the Council. Moreover, the EP increases its powers of electing and censuring the Commission as a College and its President, in particular. However, the Commission is still not officially politicized, e.g. it cannot change its political orientation, responding to the affiliation changes of the citizens.

All these problems 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.

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Annex I

Composition of the Convention on the Future of Europe, according to the Declaration of Laeken

The Convention is composed of 105 full members:

- Chairman: Mr Valéry Giscard d'Estaing, former President of France
- Vice-Chairman: Mr Giuliano Amato, former Prime Minister of Italy
- Vice-Chairman: Mr Jean-Luc Dehaene, former Prime minister of Belgium
- 15 representatives of the Heads of State or Government of the Member States (one from each Member State),
- 13 representatives of the Heads of State or Government of the candidate States (1 per candidate State),
- 30 representatives of the national parliaments of the Member States (two from each Member State),
- 26 representatives of the national parliaments of the candidate States (two from each candidate State),
- 16 members of the European Parliament,
- 2 representatives of the European Commission.

There are alternates for each full member, who can participate in the Convention only when the full members are not.

The Praesidium comprises of 13 members: The Chairman and the two Vice-Chairmen, the representatives of the three Member States holding the Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives, one representative of the candidate countries.

13 Observers take part in the work of the Convention:

3 representatives of the Economic and Social Committee

3 representatives of the European social partners

6 representatives of the Committee of Regions

the European Ombudsman

The President of the European Court of Justice and the President of the Court of Auditors will be invited to have a speech in front of the Convention

The Praesidium will be assisted by a Convention Secretariat, to be provided by the General Secretariat of the Council, which may incorporate Commission and European Parliament

The Economic and Social Committee (three representatives), the Committee of the Regions (six representatives), the social partners (three representatives) and the European Ombudsman are invited to attend as observers.

The Laeken Declaration provides for the candidate States to take a full part in the proceedings without, however, being able to prevent any consensus, which may emerge among the Member States.