



## **Closing the Democratic and Legitimacy Gaps in the European Union: the Role of the European Elections**

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## Abstract

After the successive enlargements, the European Union now hosts populations of twenty-eight Member States. The Lisbon Treaty was implemented with the objective to deal with the institutional balance of power in an enlarged Union, set on new legal order created by the Union's treaties, to enhance its democratic character and its legitimacy before its "peoples". The Treaty has confirmed important functions conquered by the Parliament all over its history, has attributed more functions to national Parliaments and has opened interesting opportunities for the participations of citizens in its processes to increase the representativeness of its citizens at the European level. As fundamental aspects of democracy and, consequently, of the legitimacy of the Union are the European elections for the European Parliament and how these are perceived by the European citizens. Despite of the efforts in this direction, the European elections still have not responded with the same enthusiasm. As the turnout rate has been dropping, the problem of the democratic deficit persists. This may compromise the Union's legitimacy and its capacity of acting efficiently in the supranational sphere.

**Keywords:** European Union, European Parliament, European Elections, Democratic Deficit, Legitimacy of European Union

## Resumo

Após os sucessivos alargamentos, a União Europeia agora abriga populações de vinte e oito Estados-Membros. O Tratado de Lisboa foi criado com o objetivo de lidar com o equilíbrio institucional do poder numa União alargada, inserida numa nova ordem jurídica criada pelos tratados da União, para reforçar seu caráter democrático e a sua legitimidade perante os seus "povos". O Tratado confirmou funções importantes conquistadas pelo Parlamento ao longo de sua história, tem mais funções atribuídas aos Parlamentos nacionais e abriu oportunidades interessantes para as participações dos cidadãos nos seus processos para aumentar a representatividade dos seus cidadãos a nível europeu. Como aspectos fundamentais da democracia e, consequentemente, da legitimidade da União são as eleições europeias para o Parlamento e de que forma o pleito é visto pelos cidadãos europeus. Apesar dos esforços empreendidos neste sentido, as eleições europeias ainda não têm respondido com o mesmo entusiasmo. À medida que a taxa de participação eleitoral vem caindo, o problema do déficit democrático persiste. Isso pode comprometer a legitimidade da União e a sua capacidade de agir de forma eficiente na esfera supranacional.

**Palavras-chave:** União Europeia, Parlamento Europeu, Eleições Europeias, Déficit Democrático, Legitimidade da União Europeia

## Introduction

The European Union (EU) is the direct result of an Executive branch action. Especially in its first years, the participation of parliaments was not required or even necessary because the decisions used to happen on a governmental level. However, the bigger in importance and in size the Union became, the louder were the critiques to its so-called democratic deficit.

It was David Marquand, a former member of the British Parliament and of the Commission, who first used this expression. In 1979, in his work "Parliament for Europe" he argued that it was for the European Parliament (EP) to fill the democratic gap to be left by an eventual end of the unanimity vote system at the Council, which, in his view, would deprive the Member States of their right to overview Community's (Union's) policy. To him, further integration could only be achieved by securing the democratic accountability of the European institutions<sup>1</sup>.

Currently, the expression "democratic deficit" represents the generally perceived difficulty of democratic access to the Union. It is clear that this issue has many dimensions, which must be distinguished in order to better comprehend the problems that it generates to the Union and what has been done to overcome them.

In this sense, this essay will briefly address the history of reform of the EU, considering the most important features of its treaties reforms. With this historical introduction, the intention is to give the reader the proper dimension of the Union and the reason to study the democratic issue. After, the discussion will turn to specific dimensions of the democratic deficit and the effect of the institutional reforms to minimize it, especially concerning the representation of the European citizens in this level.

## Part I. From the Community to the Union

In 1957, when Belgium, France, Germany, Italy, Luxembourg and Netherlands representatives signed the Treaty of Rome and created the European Economic Community<sup>2</sup>, one could not imagine that in fifty years the Lisbon Treaty would rule a Union of twenty-eight Member States with purposes rather than only economical.

There were distinct theories and objectives influencing the path and the pace of the European integration. Initially, the creation of the Community related to economic purposes and neofunctionalists ideas<sup>3</sup>. This theory argues for the promotion of integration starting from non-sensitive political issues (economic and trade relations, for instance), in which national governments enjoy great autonomy and, later, to move to the ones that require more coope-

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1. Stephen C Sieberson, "The Treaty of Lisbon and Its Impact on the European Union's Democratic Deficit," Available at SSRN 1628869 (2007): 446. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1628869](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628869).

2. Paul Craig and Gráinne Búrca. *EU law: text, cases, and materials*. Oxford University Press, 2011, 2.

3. Craig and De Búrca. *EU Law: text, cases, and materials*, 2.

ration and centralized command<sup>4</sup>. At that point, the idea of positive cooperation through economic interaction, bringing together countries that have been fighting wars against each other in a recent past, was considered more effective to achieve peace and stability than keeping them apart.

There were other theoretical influences on the development of the Community in the following decades. These created an intergovernmentalism vs. supranationalism dichotomy concerning how and who would conduct the integration process. The main issue was if the Community should evolve as an intergovernmental organisation, in which Member States would act based on their sovereignty or if it should rather be a strong and independent supranational authority, conducted by its own institutions. This debate was only suppressed in the 1990's, when the ideas of multi-level or network governance emerged on a doctrinal level<sup>5</sup>.

The European system as a governance network presupposes that different actors play equally important roles in the conduction of the European politics. As such, Member States, institutions and European bodies have more or less influence in decision-making processes and in definition of policies and practices depending on the level or stage in which it happens. This, in combination with the functions that national parliaments and of European agencies play in such processes, creates a very complex web of authority and decision<sup>6</sup>.

To carry out such level of organization, it was necessary for the Community to engage in several treaty reforms, to delimitate the boundaries of Community and Member States' action, to establish clearer decision-making processes and to arrange the Community to function in a tangible way that the ordinary European citizen could comprehend. Besides, considering the claim of the democratic deficit within the Community, the reforms also would have to enhance the democratic character of its mechanisms and structures.

In this context, the decade of 1990 represented a crucial period for the development European Community and for the improvement of its pitfalls. Due to the aim of completing the internal market by 1992, the institutional role in defining the legal and political agendas of the Community<sup>7</sup> had to be reinforced. The first step in this sense came with the Single European Act of 1986 (in effect in 1987). This was "the most important revision of the Treaties since they were first adopted"<sup>8</sup>, once it established the Qualified Majority Voting for the Council, banishing the veto power in practice, and the Cooperation Procedure with the European Parliament in some areas of legislature.

In line with the institutional reform, in 1992 the Maastricht Treaty (in effect in 1993) transformed the Community into a Union and empowered the EU institutions, especially the European Parliament by establishing the co-decision procedure with the Coun-

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4. Juliet Lodge. "The European Community and the challenge of the future." (1989). *apud* Craig and De Búrca. *EU Law: text, cases, and materials*, 2.

5. Craig and De Búrca. *EU Law: text, cases, and materials*, 3.

6. More about multi-level governance and the evolution of the EU in: Marks, Gary, Liesbet Hooghe, and Kermit Blank. "European Integration from the 1980s: State-Centric v. Multi-level Governance\*." *JCMS: Journal of Common Market Studies* 34, no. 3 (1996): 341-378.

7. Joseph HH Weiler. "The transformation of Europe." *Yale Law Journal* (1991): 2454. *apud* Craig and De Búrca. *EU Law: text, cases, and materials*, 12.

8. Craig and De Búrca. *EU Law: text, cases, and materials*, 12.

cil, even if restricted to some areas. The Treaty of Amsterdam (1997) and the Nice Treaty (2001), which followed Maastricht almost immediately, deepened the reforms by transforming the co-decision procedure in the ordinary legislative procedure.

In the aftermath of the Nice Treaty, the following Intergovernmental Conventions and European Council meetings reached the conclusion that not only the reform was not yet finished, but it also had to go deeper in order to make the future of a larger Union possible. In this sense, a more diverse Union would have to become more functional and to be able to unite millions of inhabitants under a European unity ideal. The consensus was that a constitutional treaty could accomplish this aim.

Thus, in 2004 the Constitutional Treaty was available for ratification. It represented a massive change in the structure of the European Union by presenting a constitutional design to replace the existing treaties of the Union: one part for division of competences, law-making processes and division of powers; another for a Charter of Rights; a third one concerning the policies and functions of the Union and, finally, final provisions.<sup>9</sup> Despite of the expectations created by its signature, the Constitutional Treaty never became law due to the rejection in the French and Dutch referendums in 2005<sup>10</sup>.

The denial of the Treaty by the populations of two founding members of the Union was quite of a shock and heralded a period of reflection and debate about the possibilities for the reform<sup>11</sup>. Still, it was consensual among the Member States that the work undertaken in drafting the Constitutional Treaty should not be in vain. In this context, the European Council promoted a new Intergovernmental Conference in 2007 with a specific mandate to draft a reform treaty in order to enhance “the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action”<sup>12</sup>, considering the theoretical achievements of the previous conferences.

Because of the combined effort, the reform treaty was signed in Lisbon on December of 2007 and have entered in force in December of 2009. Borrowing the name of the place of signature, the Lisbon Treaty resembles to the 2004 Constitutional Treaty, but it keeps some fundamental distinctions, mostly by not attributing constitutional status to its dispositions. Besides, the reform attempted to give the Union a unified identity by clarifying the competences’ division between Union and Member States and instituting the position of High Representative of Foreign Affairs, to deal with the Union’s external relations, for instance.

Institutionally, the main result of the Lisbon Treaty was establishing a shared regime of Legislative and Executive functions between different institutions, maintaining some aspects from the past treaties, but differing in detail<sup>13</sup>. Therefore, it can be said the Treaty was able to fully assess the institutional balance needs required at first. However, as its implementation is

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9. Craig and De Búrca. *EU Law: text, cases, and materials*, 23.

10. Ibid.

11. Youri Devuyt, “European Union’s Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The,” *Geo. J. Int’l L.* 39 (2007): 259. [http://heinonlinebackup.com/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/geojintl39&section=15](http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/geojintl39&section=15).

12. Council of the European Union. 2007. IGC Mandate. [www.consilium.europa.eu/en/.../2007/pdf/st\\_11218\\_2007\\_init\\_en\\_pdf/](http://www.consilium.europa.eu/en/.../2007/pdf/st_11218_2007_init_en_pdf/)

13. Craig and De Búrca. *EU Law: text, cases, and materials*, 23.

quite recent, the actual results of reform are to be seen in the near future. This also includes the democratic deficit issue, which will be better portrayed in the next section.

## Part II. Democratic Deficit: what is it and why does it matter?

The years between the Treaty of Rome and the Treaty of Lisbon represented a transformation of the original setting of European integration – from merely economical to political and global. Even if the Constitutional Treaty had never become effective, the legal character of the EU no longer can be seen as *sui generis*<sup>14</sup>. The ideas of constitutional pluralism<sup>15</sup> and multi-level constitutionalism<sup>16</sup> especially sponsor the constitutional character of the Union.

These conceptions provide the theoretical background to classify the European system as constitutional, since they admit the possibility of constitutionalism to come in different versions and formats<sup>17</sup>. Accordingly, the EU system, as consistent of a “set of legal arrangements binding upon sovereign states, into a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within the sphere of application of EC law”<sup>18</sup> is also constitutional.

The constitutional status fits the concept of new legal order developed by the European Court of Justice (ECJ) in the Case 6/64 – Flaminio Costa v ENEL. In this opportunity, the Court expressly recognizes that the treaties, due to the transfer of sovereignty from States to the Community in limited fields, created the Community’s own legal system that is a component of the Member States’ legal system. It also confirmed that the limitless duration of the Community, its institutional organization, legal capacity and international representation are factors that built a body of law to which the Member States subordinated themselves.

In this sense, differently from ordinary international law, the EU is not only a soft law mechanism. On the contrary, the constitutional pluralism theory in combination with the Court’s construction of the Union’s own legal system resulted in a legal rigidity and power in its application among national parliaments, governments, national courts and the legal community as a whole<sup>19</sup>.

Recalling the intergovernmental and supranational debate mentioned and series of institutional reforms experienced, the realistic conclusion is that the political structure of the Union is a hybrid result between an intergovernmental organization model and a suprana-

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14. Joseph HH Weiler and Joel P Trachtman, “European Constitutionalism and Its Discontents,” *Nw. J. Int’l L. & Bus.* 17 (1996): 355. [http://heinonlinebackup.com/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/nwjilb17&section=15](http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nwjilb17&section=15).

15. M Maduro, “Three Claims of Constitutional Pluralism,” *Constitutional Pluralism in the European Union and ...* (2012), <http://www.wzb.eu/sites/default/files/veranstaltungen/the-promise-of-constitutional-pluralism/migueldmadurothreeclaimsofconstitutionalpluralismhu-collmay152012.pdf>

16. IEA Pernice, “The Treaty of Lisbon: Multilevel Constitutionalism in Action,” *Columbia Journal of European Law* (2009), [http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=1326114](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=1326114)

17. Weiler and Trachtman. “European constitutionalism and its discontents,” 356.

18. Alec Stone Sweet apud Weiler and Trachtman. “European constitutionalism and its discontents,” 356.

19. Weiler and Trachtman. “European constitutionalism and its discontents,” 356.



tional one. This status represents a centralization of authority in certain areas, while others remain on national level<sup>20</sup>, as drawn by division of competences in the articles 3, 4 and 6 of the Treaty on the Functioning of the European Union (TFEU).

The assessment of the democratic deficit and its impact becomes immediately relevant when considering the relation between the mentioned constitutional and centralized character of the EU with and the Member States own systems. The influence and importance of the European legislation on standards, services regulations and rules on free movement of persons, goods, services and capital, to refer to daily issues only, with the ordinary citizen is undeniable. As such, democratic features are not only desirable, but also extremely necessary<sup>21</sup>.

Within matters that are outside the scope of the Member States, even though the Union has attempted to recreate institutional mechanisms similar to the ones existent nationally, the low level of control by individuals is persistent. Thus, the integration represents at the end of the day an extra layer of decision that separates the democratic government from its subjects<sup>22</sup>. Such a phenomenon, referred as Inverted Regionalism, not only diminishes the democratic character of the Union by the means of individual disempowerment, but also undermines its legitimation before its "peoples".

Democracy and political legitimacy are not necessarily coexistent requirements for a government. History has shown that some undemocratic regimes can survive with high rates of legitimacy and that democratic ones can perish due to tremble legitimacy<sup>23</sup>. However, in the context of the EU, the de-legitimation is harmful because it interferes in the Union's action in the areas symbolically perceived as state functions or as individual and local concern, in which government as such should not operate. On top of that, as there is no effective way to evaluate Union's ability to act in the mentioned areas, the effectiveness of eventual move of the EU in this arena depends of how legit the Union's action is considered to be<sup>24</sup>.

For this, decision-making emerges as the core aspect of the functioning of the Union. It is also one of the most criticized because of its democratic gap and complexity, even though a historic overview shows a slow decentralization of the prominent roles in the process. It happens that among the institutions that take part in the process, only the EP is democratically elected. Therefore, an eventual change in the composition of the Parliament may not necessarily reflect a policy shift in the EU<sup>25</sup>.

There has been a transference of tasks, and consequentially of relevance, from the institutions part of the Member States' control such as the European Council, with presence of the heads of State, and the Council of the European Union (Council), counting with government ministers from the Member States, to the Commission and to the EP. This has made the process more democratic, but not less complex.

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20. Sieberson. "The Treaty of Lisbon and Its Impact on the European Union's Democratic Deficit," 447.

21. *Ibid.*

22. HH Weiler, UR Haltern, and FC Mayer, "European Democracy and Its Critique," *West European Politics* (1995): 6 <http://www.tandfonline.com/doi/abs/10.1080/01402389508425089>.

23. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 7.

24. *Ibid.*

25. Craig and De Búrca. *EU Law: text, cases, and materials*, 150.

Besides the decision making, the democratic deficit has other features that reinforce the view of the EU as unresponsive to popular pressures. A second aspect is the claim of executive dominance<sup>26</sup>, represented by the unbalance concentration of government functions on the Executive branch of the EU in detriment of national parliaments and by the technocratic aspect of the Union's governance.

In this context, the involvement of mainly Executive character's institutions, such as the Council and the European Council, in the decision-making processes and in the public policy definition, in addition to the complexity, volume and duration of the processes, compromises the national parliaments' function of democratic control of State representative. In practice, this system may reduce their power to affect and contest the choices made by them in the EU level<sup>27</sup>.

Considering the little influence of national legislatures in European processes, the European Parliament could represent an alternative to enable civil society's access and control to the Union's agenda, via democratic elected representation. However, it is commonly argued that the EP, in its actual format, cannot effectively exercise the role of public forum<sup>28</sup>. Due to its limited functions, meaning that the most relevant ones concern to legislative process only, to the low turnout in the European elections and to the absence of a developed party system at EU level<sup>29</sup>, the EP has not been able to play a significant role in policy design and in representing its electorate<sup>30</sup>.

Its action is also frustrated by fact that the European parliamentary elections, instead of being a tool to express dissatisfaction with a current government and of criticising its policy's choices, have become a mere extension of national political agendas<sup>31</sup>, which are not related to the Union's competences.

The problem of representation and lack of (decisive) power of the EP compromises the voice of diffuse and fragmented national interests in the network governance scheme to which the EU has been turning to. As this system presupposes the interaction of public and private parties with the Executive and Legislative branches of the Union and, among private actors, there are distinct lobby capacities, the parties that can better organize themselves in a trans-national level have a greater chance of moving their interests forward. Consequentially, as the main source of political influence of diffuse and fragmented interests comes, precisely, from electoral power, they already start the race behind<sup>32</sup>.

The concept of supremacy of EU law and the centralization of issues at EU level also contributes to some extent to the democratic deficit. The supremacy of European legislation over national legislation is a concept originated from the ECJ as a direct consequence of the new legal order established in the EU treaties. It presupposes that national courts must not apply national provisions conflicting with EU measures and prevents a new national measure that would conflict with the EU ones to be adopted<sup>33</sup>.

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26. *Ibid.*

27. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 7.

28. *Ibid.*

29. Craig and De Búrca. *EU Law: text, cases, and materials*, 150.

30. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 5.

31. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 8.

32. *Ibid.*

33. Craig and De Búrca. *EU Law: text, cases, and materials*, 264.



In this sense, national courts which, in theory, were to perform judicial control considering the compatibility of legal measures with the constitution, had their scope of revision reduced in favour of the ECJ because of the centralization of EU powers. The Court, however, does not necessarily substitute the national courts in reviewing the legislation because of its own way of interpreting the limits of Union's competence<sup>34</sup> and of the practical barriers imposed to individual standing for impugning EU acts before that court<sup>35</sup>.

Lastly, other fundamental dimension in addressing the democratic deficit is the claim of lack of transparency in the EU processes, especially concerning the policy choices in the Council and under the Comitology system. As the citizens of the Union cannot easily access the content of the meetings of committees or the Council, a great part of the network governance system is not subjected to public scrutiny.

The democratic deficit is an issue that permeates the whole structure of the Union. The successive Union's reforms have attempted to mitigate the vicious effects of the lack of democratic access. So far, most of the work was concentrated in the reorganization of the EP's competences and power, but also in the creation and clarification of governance aspects. Thus, the next section will address specifically the current mechanisms of the Union to increase its democratic channels.

## Part III. Closing the Democratic Gap

### a) The Empowerment of the European Parliament

Noteworthy to mention that the European Parliament experienced an evolution in terms of competences and status within the Union. Founded in 1952 as the Common Assembly under the European Coal and Steel Community (ECSC) Treaty, it had in its composition delegate members of the national parliaments<sup>36</sup>. The Common Assembly was not supposed to exercise any legislative function, only consultative and supervisory competences<sup>37</sup>.

The initially weak role of the Assembly did not last for long. Already in the decade of 1970, it acquired budgetary functions. After the direct elections were instituted in 1979, the SEA of 1986 made the now European Parliament part of the legislative process via the cooperation procedure<sup>38</sup>. Before the Act, the EP had solely the right to be consulted on the legislation adopted by the Council, where the Treaty would specify. Already in the nineties, the Parliament became the co-decisional partner of the Council in several areas of the legislative

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34. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 9.

35. Federico G Mancini and David T Keeling. "Democracy and the European Court of Justice," *The Modern Law Review* 57, no. 2 (1994): 182. <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1994.tb01931.x/full>.

36. Devuyst. "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The," 304.

37. Craig and De Búrca. *EU Law: text, cases, and materials*, 51.

38. *Ibid.*

process<sup>39</sup>. Under the co-decision procedure, EP and Council must agree on the exactly same text before the legislation is adopted. In case of disagreement, the proposal is submitted to a Conciliation Committee formed by members of both institutions. After reaching a consensus, the text passes through a new reading in both bodies.

With the Lisbon Treaty, the Functioning Treaty confirmed the co-decision system as the ordinary legislative procedure of the Union<sup>40</sup>. Besides, even in areas requiring decision by the special legislative procedure, in which the Council acts as a sole legislator, the EP retains the right to be consulted or to approve the legislation, depending on the case. The Treaty also expanded the competences of the EP in regards to budgetary issues involving non-compulsory expenditure, which corresponds to fifty-five percent of the EU budget<sup>41</sup>.

Apart from the new legislative and budgetary functions, the treaties' revisions empowered the EP with supervisory powers to monitor the activities of other EU institutions through inquiry committees. Specifically, it is possible for the EP to censure the Commission, requiring its resignation. As well, Council must consider the EP's opinion in the appointment of the President of Commission<sup>42</sup>.

The reforms consolidated by the Lisbon Treaty, for some<sup>43</sup>, have made the EP inarguably able to fill the democratic requirement, eliminating an eventual source of democratic deficit due to a system of checks and balances, and have established a set of substantive, fiscal, administrative, legal and procedural constraints on EU policy-making, preventing arbitrary and unaccountable decisions<sup>44</sup>.

In fact, on one hand, the EP acquired a relevant role in the decision-making process due to the co-decision procedure, on the other; the lack of democratic representativeness issue persists. The absence of a truly European electoral system is one of the main reasons for that. As it is today, the election of the members of the European Parliament (MEP) takes place without fundamental elements such as European political parties or debates about the European policy agenda<sup>45</sup>. It is also common that the national parties and the mass media portrait the European elections are as "second-order national contests"<sup>46</sup>.

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39. Craig and De Búrca. *EU Law: text, cases, and materials*, 54.

40. Relevant Treaty provisions: Article 289 and 294 TFEU.

41. Devuyt. "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The," 307.

42. Craig and De Búrca. *EU Law: text, cases, and materials*, 55-56.

43. Devuyt. "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The," 304.

44. Andrew Moravcsik, "Reassessing Legitimacy in the European Union," *JCMS: Journal of Common Market Studies* 40, no. 4 (2002): 606-607.

45. A Follesdal and S Hix, "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik," *Journal of common market studies* (2006): 535-536. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=924666](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=924666).

46. Follesdal and Hix. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik," 536.

The low relevance of the European elections gets clear when observing the declining turnout rate. It went down from 61.99%, in 1979, to 42.61% in 2014<sup>47</sup>, when the latest election were held. Likewise, it is common for opposition and small parties to win these elections despite of the participation of the governing and larger ones, as consequence of their second-order character<sup>48</sup>. In this current format, the elections merely serve to influence indirectly the Union's policy outcomes, but not necessarily to transmit the citizen's message for change or permanence of policies<sup>49</sup>.

The representativeness critique also relates to the proportional representation of Member States within the EU institutions, including the EP. According to this rule, the 750 chairs plus the presidential position must be digressively shared among the twenty-eight Member States based on their population. The threshold varies between six and ninety-six members per Member State, so the EP's members of populous Member States do not represent more citizens than the members from a less populous Member States, nor does a less populous State have more seats than a more populous one<sup>50</sup>.

This system boosts the importance of the voices of citizens of small Member States while harming the voices from the populations of larger states<sup>51</sup>. However, this aspect is mitigated by the fact that, once in the Parliament, the members organize themselves by political orientation, rather than by the nationality. This brings coherence to the EP's functioning<sup>52</sup> and helps to establish the tendency that the members will rather follow the political groups' ideologies rather than the national party instructions<sup>53</sup>.

Considering a modern concept of democracy, the current European arrangement faces a democratic problem in some extent. This concept includes among the relevant features a favourable environment for competition, based on deliberative processes, over the control of public authority<sup>54</sup>. As the European elections are mostly ignored and European policies are not discussed nationally, there is little to no room for a political debate, which should happen primarily during the electoral competition for political leadership or policy definition<sup>55</sup>.

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47. European Parliament. 2015. European Elections 2014. Turnout. <http://www.europarl.europa.eu/elections2014-results/en/turnout.html>

48. Follesdal and Hix. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik," 536.

49. *Ibid.*

50. Devuyst, "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The," 306.

51. Weiler, Haltern and Mayer. "European Democracy and Its Critique," 7.

52. Follesdal and Hix. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik," 552.

53. *Ibid.* 553.

54. *Ibid.* 547.

55. *Ibid.* 552.

#### b) Inclusion of National Parliaments

With the introduction of direct elections to the European Parliament, the national assemblies have lost a closer link to the Union. They also lost the possibility to exercise direct political control over acts of the government ministers in the Council<sup>56</sup>. To overcome this condition, the Treaty of Amsterdam imposed the obligation to inform national parliaments about legislation's proposals. The Lisbon Treaty, by its turn, went even further and involved them on the legislative procedure in some degree and in other EU activities<sup>57</sup>, as part of the governance scheme.

In this sense, the Treaty establishes six specific attributions to national parliaments. First, National Parliaments must receive from the Commission information on the EU's legislative process for consultation of the drafts and planning with a deadline of six weeks (eight if there is no urgency) for manifestation. Besides, National Parliaments may interfere in the legislative procedures for the defence of the principle of subsidiarity. This would lead to the revision of the act in discussion before the Commission and to an eventual consideration of the Council and the EP<sup>58</sup>, in case the Commission decides to keep with the controversial version of the act.

Outside of the legislative scope, National Parliaments also participate in specific mechanisms in the area of freedom, security and justice, play a role in the Treaties' revision procedures and in the application for accession to the EU and are required to engage in inter-parliamentary cooperation<sup>59</sup>.

In this context, the National Parliaments enjoy great relevance and access to the legislative procedure. This, in one hand, enhances the democratic control of the public policies, in the other, compromises its efficiency and the duration of the decision-making process, which is not necessarily democratic. Besides, when national parliaments intervene in the legislature, they are suppressing the competence of the EP regarding the citizens' representation and the competence of the Council and European Council of safeguarding Member States interests.

#### c) Citizen's Initiative and Improvements on Transparency

One of the innovations of the Lisbon Treaty was to authorise the citizen's initiative for proposal of new legislation. According to the article 11(4) of the Treaty on the European Union (TEU), not less than one million European citizens, nationals of a significant number of Member States, may submit to the Commission, any appropriate proposal on matters in a legal act of the Union is required. The Regulation (EU) No 211/2011 on the topic provides that the proposal must include citizens of at least one quarter of the Member States<sup>60</sup>. In terms of participatory mechanisms, the Treaty also confirmed the previously existent right of citizens to petition the EP on any matter related to the Union's competences or of direct impact on them.

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56. Devuyst. "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The," 309.

57. *Ibid.* 310.

58. *Ibid.* 312.

59. *Ibid.* 313-314.

60. Craig and De Búrca. *EU Law: text, cases, and materials*, 849.

Although the Commission has no legal obligation to forward the citizen's proposals to the legislative procedure, a political pressure on the Commission for response is certainly expected<sup>61</sup>. In this context, the mechanism represents undoubtedly a step closer to more a democratic Union, once it fills the gap concerning the representation of citizen's interests in the decision-making process and in policy choices and creates a public arena for debate on European politics<sup>62</sup>.

The remaining paragraphs of article 11 TEU make explicit recommendations for transparency at the Union level. It is noteworthy that transparency is regarded as a general principle of EU Law<sup>63</sup> and it is part of the title of on democratic principles in the TEU. The Lisbon Treaty has incorporated several meanings of the principle, for instance, the right of citizens to access documents and the obligation for the European institutions to perform their functions under publicity, coherence and dialogical requirements.

In this context, the European Ombudsman has become an asset for the development and consolidation of transparent practices within the Union<sup>64</sup>. As a rule, citizens may apply to the Ombudsman, as established in articles 24 and 228 of the TFEU, on maladministration instances in the Union's institutions (of any kind) activities, which could obviously include the denial of access to information or documents.

However, on its own-initiative, the Ombudsman had conducted inquiries on public access to information before EU institutions. In the procedure, it concluded that the failure of adopting rules on information access and of making them publically available constituted a maladministration. This attitude made some European institutions to implement, without prior request, their own rules on documents' access<sup>65</sup>, consolidating the importance of promotion of the principle.

## Conclusion

Democracy is a core feature for the EU to ensure the legitimacy of its decisions before national systems. However, democracy, especially for an entity such as the Union cannot be analysed only under the perspective of democratic elections. More than elections, there must be a real chance for political debate and the perception that the electorate can influence the governmental policies by vote. The claim of democratic deficit becomes relevant precisely because the EU have provided weak alternatives for the full exercise of political debate and citizens' representation at EU level.

The Lisbon Treaty and the previous reforms have undeniably improved the democratic channels of the Union. This was possible due to the empowering of the only democratically

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61. *Ibid.*

62. Elizabeth Monaghan, "Assessing Participation and Democracy in the EU: The Case of the European Citizens's Initiative," *Perspectives on European Politics and Society* 13, no. 3 (2012): 293. <http://www.tandfonline.com/doi/abs/10.1080/15705854.2012.702573>.

63. Craig and De Búrca. *EU Law: text, cases, and materials*, 549.

64. *Ibid.* 544.

65. Craig and De Búrca. *EU Law: text, cases, and materials*, 544.

elected institution, the European Parliament, especially considering its role in the decision-making process, to the enhancement of the transparent character of its procedures, to the expansion of political participation of the National Parliaments and to the inclusion of the civil society's interests on its governance mechanisms.

Paradoxically, the moment when the EP is more powerful than ever is also the moment when the electoral turnout has never been so low. This, as exposed, can be explained not only by the phenomenon of Inverted Regionalism, but, also by the low relevance of the European elections. As the Union is distant from its citizens, representing an extra layer of decision, the elections, which were supposed to stimulate public debate of Union's policies, happen in an environment of little prestige, preventing the public deliberation, the proper instrument that designs the public opinion. As a result, the legitimacy of Union's decision is compromised.

Despite of these circumstances, there is room for increasing the importance of the European elections. As transnational coalitions start to take place, battles for European policies are already seen in the Council and in the EP. In this context, this trend could be improved by polarizing the European society as whole around potential policy agendas. In creating potential winners and losers in the public arena, this gives the citizens a reason to get involved in the debate<sup>66</sup>.

One way of implementing the politicisation of the EU agenda is to connect the outcomes of parliamentary elections with the choice of the President of the Commission and to spur party leaders to run for European elections, stimulating competitiveness and, consequently, their relevance before the civil society<sup>67</sup>.

Hence, a reform in the electoral system, enhancing its importance in national politics and before the ordinary citizens, may represent an easier route for closing the democratic gap in the Union, avoiding, especially, the political and social costs of a Treaty revision. A competitive electoral process may also contribute to bring UE and the UE's citizens closer: instead of an extra layer, the EU could be an extra arena for fighting for rights.

## Bibliography

Bast, J. "New Categories of Acts after the Lisbon Reform: Dynamics of Parliamentarization in EU Law." *Common Market Law Review* (2012). <http://www.kluwerlawonline.com/abstract.php?area=Journals&id=COLA2012034>.

Corbett, Richard, Francis Jacobs, and Michael Shackleton. "The European Parliament at Fifty: A View from the Inside\*." *JCMS: Journal of Common Market Studies* 41, no. 2 (2003): 353–373. doi:10.1111/1468-5965.00426.

Craig, Paul, and Gráinne Búrca. *EU law: text, cases, and materials*. Oxford University Press, 2011.

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66. Follesdal and Hix. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik", 557.

67. *Ibid.*



Devuyst, Youri. "European Union's Institutional Balance after the Treaty of Lisbon: Community Method and Democratic Deficit Reassessed, The." *Geo. J. Int'l L.* 39 (2007): 247. [http://heinonlinebackup.com/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/geojintl39&section=15](http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/geojintl39&section=15).

Follesdal, A, and S Hix. "Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik." *Journal of Common Market Studies* (2006). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=924666](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=924666).

Granlund, M. "A Democratic Union in the Making: An Assessment of the European Parliament's Evolution in Relation to Narrowing the Democratic Deficit." *Duke Political Science Standard* (2013). [http://polisci.duke.edu/uploads/media\\_items/politicalsciences-standardvol3.original.pdf#page=65](http://polisci.duke.edu/uploads/media_items/politicalsciences-standardvol3.original.pdf#page=65).

Maduro, Miguel. "Three claims of constitutional pluralism." *Constitutional Pluralism in the European Union and Beyond* (2012): 67-84.

Mancini, Federico G, and David T Keeling. 1994. "Democracy and the European Court of Justice." *The Modern Law Review* 57 (2): 175-190. doi:10.1111/j.1468-2230.1994.tb01931.x. <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2230.1994.tb01931.x/full>

Marks, Gary, Liesbet Hooghe, and Kermit Blank. "European Integration from the 1980s: State-Centric v. Multi-level Governance\*." *JCMS: Journal of Common Market Studies* 34, no. 3 (1996): 341-378.

Monaghan, Elizabeth. "Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative." *Perspectives on European Politics and Society* 13, no. 3 (2012): 285-298. doi:10.1080/15705854.2012.702573

Moravcsik, Andrew. "Reassessing Legitimacy in the European Union." *JCMS: Journal of Common Market Studies* 40, no. 4 (2002): 603-624. doi:10.1111/1468-5965.00390.

Pernice, IEA. "The Treaty of Lisbon: Multilevel Constitutionalism in Action." *Columbia Journal of European Law* (2009). [http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=1326114](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=1326114).

Siebers, Stephen C. "The Treaty of Lisbon and Its Impact on the European Union's Democratic Deficit." Available at SSRN 1628869 (2007). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1628869](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628869).

Weiler, JHH, Ulrich R. Haltern, and Franz C. Mayer. "European Democracy and Its Critique." *The Crisis of Representation in Europe* 18 (1995): 4

Weiler, Joseph HH, and Joel P. Trachtman. "European constitutionalism and its discontents." *Nw. J. Int'l L. & Bus.* 17 (1996): 354.

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