

## **THE LISBON TREATY – A STEP FORWARD TO A MORE DEMOCRATIC EUROPEAN UNION?**

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The Lisbon Treaty promises to improve European Union policy making in three aspects: more democracy, more efficiency and more transparency. I will concentrate on the democratic aspect in my paper. It is a widespread and very popular common saying that the European Union is suffering from a democratic deficit.

I will discuss the democratic quality of the EU and will analyse which innovations with respect to democracy have been offered by the Lisbon Treaty. I will therefore proceed as follows:

- First, I will describe some characteristics of the assumed democratic deficit of the EU.
- Secondly, I will refer to some controversial theoretical interpretations of the democratic deficit – but will do so very concisely, of course.
- Thirdly, I will recap the historical developments which led to the Treaty of Lisbon.
- Fourthly, I will present and evaluate the innovations of the Lisbon Treaty which have an impact on the democratic quality of the European Union.
- And finally, I will draw some conclusions.

## 1. THE “STANDARD VERSION” OF THE DEMOCRATIC DEFICIT

Even if we concede that the EU is not a state, democratic norms are relevant for the Union. This implies that democracy must be adapted to the distinctiveness of the EU. As the nation state does not seem to be a correct and sufficient benchmark for the EU, the question arises: What is the EU? Obviously the EU is more than a loose confederation but less than a strong federation. Therefore the German Constitutional Court argued that the EU must be understood as a *Staatenverbund*; this means an organizational form between a federation and a confederation. As it is argued in the literature, the EU can be interpreted as an entity *sui generis*.

Many scholars and policy makers argue that the EU is characterized by a democratic deficit. Andreas Føllesdal and Simon Hix have referred to the “standard version” of the democratic deficit. What does this argument imply?<sup>1</sup>

- First, it is assumed that executive powers are strengthened and legislative powers are weakened. The institutional setting of the EU has increased the influence of the *European Commission* and the *Council* whereas the national parliaments have lost the power to control the executive institutions. National parliaments are no longer in a position to monitor and control decision making in the EU effectively. Ministers who are part of the national executive power structures dominate decision making at EU level. And the European Council is not subject to democratic control. Simon Hix has presented this argument in the following statement: “Governments can ignore their parliaments when making decisions in Brussels or can be out-voted in the Council.”
- Second, the *European Parliament* is perceived to be too weak. Increases in the powers of the European Parliament have not sufficiently compensated for the loss of national parliamentary control, as the Council dominates decision making in the EU. Citizens are not really connected to their MEPs.

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<sup>1</sup> For the following, see Hix, Simon, *The Political System of the European Union*, Oxford 2005, p. 177 and Føllesdal, Andreas/Hix, Simon: *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik* (European Governance Paper 2, Oslo, 14.03.2005 (<http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-02.pdf>))

- Third, *European elections* do not stand up to the promise implied by the name. European elections are not about European affairs but are characterized by national disputes and policy profiles. Parties as well as the media treat them as mid-term national contests.
  
- Fourth, for *citizens*, the EU is too complex to comprehend. In line with this argument, the distance between citizens and the EU is too great. The citizens do not participate in the appointment of the European Commission, and the European Parliament's influence on this appointment is restricted. Debates in the EP are not followed by the citizens. One of the problems is multilingualism. Policy processes in the EU are interpreted as "technocratic rather than political".<sup>2</sup>
  
- Fifth, a final criticism is related to so-called "*policy drift*". As political responsiveness is limited at the European level, decisions do not reflect voters' priorities. The EU adopts policies that are not supported by a majority of citizens. As Andreas Føllesdal and Simon Hix have argued, governments are able to pursue policies that they cannot pursue at the domestic level, where they are constrained by parliaments, courts and interest groups. As a result the EU is dominated by *neoliberal* policies for the single market and a *monetarist* framework for European monetary union. Entrepreneurs' associations are assumed to be more influential than others.<sup>3</sup> A "race to the bottom" is the perceived outcome in many cases.

These, then, are the main criticisms of the EU's assumed democratic deficit.

## 2. THEORETICAL ASPECTS

When we turn to theoretical aspects, an initial question arises: What is decisive for the democratic quality of the EU? Is it the national or the supranational, i.e. the European level? Is it sufficient when politics are legitimated on the national level or

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<sup>2</sup> Hix 2005, p. 178.

<sup>3</sup> Follesdal, Andreas/Hix, Simon: Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik (European Governance Paper 2, Oslo, 14.03.2005 (<http://www.connex-network.org/eurogov/pdf/egp-connex-C-05-02.pdf>))

do we need democratic legitimacy on the supranational level as well? Two different “schools” can be identified.

*Firstly*, the “standard version” of the democratic deficit, as described above, demands that the EU meet democratic standards of policy making. Føllesdal and Hix favour a *supranationalist* approach which implies that the EU institutions are interpreted as state-like institutions to some extent. Policy making in the EU is understood to be independent from the national level to a large extent.

*Secondly*, on the other hand, the democratic deficit hypothesis has been criticised by other scholars. *Andrew Moravcsik*, for example, has argued that the standard version of the democratic deficit is not a convincing one:

- Against the argument that power has been centralized in the executive, Moravcsik points out that national governments are the most directly accountable politicians in Europe.
- Against the critique that legislative power is weak in the EU, he points out that the most significant institutional development in the EU in the past two decades has been the increased powers of the EP in the legislative process and in the selection of the Commission.
- Moravcsik also argues that EU policy making is more transparent than most domestic policy-making and that the national parliaments have increasing powers of scrutiny.
- And finally, against the critique that EU policies are systematically biased against the average voter, Moravcsik argues that the EU’s elaborate system of checks and balances ensures that an overwhelming consensus is required for any policy to be agreed.

Moravcsik’s arguments are based on a *liberal-intergovernmental* theory. According to this approach, member states run the EU, and the Commission simply acts as an agent of national governments. EU policy making is reduced to intergovernmental

negotiations. And as national governments are elected ones, Moravcsik does not see any evidence that the EU is undemocratic.

When the question is raised whether people are satisfied with the EU, it is important not only to discuss the democratic quality of the Union but also to ask to which extent policy making in the EU can be perceived as being legitimate. If political systems are accepted as legitimate, decisions by policy makers are accepted by citizens even if these decisions run counter to their own interests. Two kinds of legitimacy are differentiated: input and output legitimacy.<sup>4</sup>

- Input legitimacy asks whether citizens have the chance to participate in decision making. It is government *by* the people. “In the input-oriented tradition, shaped by the ideals of participatory democracy in the Greek polis and of the French Revolution, the starting point is the Rousseauian equation of the common good with the “general will” of the people.”<sup>5</sup>
- Output legitimacy, on the other hand, asks to which extent people are satisfied with the results of policy making. Output legitimacy refers to government *for* the people.

The controversy between the supranational and the intergovernmental schools on the democratic deficit is obviously focused on the input dimension of legitimacy. As far as the output dimension is concerned, the following can be noted with respect to the EU:

- In the past the EU could rely on its output to secure acceptance by the people. European integration brought peaceful neighbourhood to countries like France, Germany and others. And the internal market was broadly accepted as the basis of post-war prosperity.

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<sup>4</sup> Scharpf, Fritz, *Regieren in Europa: Effektiv und demokratisch?* Frankfurt a. M./New York 1999, p. 16.

<sup>5</sup> Scharpf, Fritz W.: *Problem Solving Effectiveness and Democratic Accountability in the EU* (IHS Reihe Political Science Series 107), Vienna, February 2006 ([http://www.ihs.ac.at/publications/pol/pw\\_107.pdf](http://www.ihs.ac.at/publications/pol/pw_107.pdf)).

- That was the time when a “*permissive consensus*” was attributed to the EU. People did not know much about the EU but did not question its modes of governance.
- The times of the permissive consensus were obviously gone when the “post-Maastricht crisis” occurred after 1992.<sup>6</sup> The intention of deepening the integration process was criticized and led to negative referenda in Denmark and Ireland. People in France accepted the Maastricht Treaty by a small majority only.
- The results of the Mannheim Eurobarometer Trend File demonstrate that the output acceptance of European integration has declined in the long run. It was equivalent to nearly 40% in 1979 and declined to around 33% in the 1990s.<sup>7</sup>

The end of the permissive consensus reinforced the demand to improve the democratic quality of the EU. To put it another way: As output legitimacy eroded, the call for strengthened input legitimacy for a more democratic EU became louder and louder. This led to the Lisbon Treaty.

### 3. HISTORICAL ASPECTS

What have been the decisive steps towards the Lisbon Treaty?<sup>8</sup>

The Treaty of Nice, signed in 2001, demonstrated the limits of policy makers’ scope to improve the democratic quality of the EU. Only modest institutional reforms were introduced. Therefore the European Council, meeting in Laeken, adopted a Declaration on the Future of the European Union on 15 December 2001, committing the Union to becoming more democratic, transparent and effective.

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<sup>6</sup> Føllesdal, Andreas, Legitimacy Theories of the European Union. Arena Working Paper 04/15, Oslo 2004, p. 5 ([http://www.arena.uio.no/publications/working-papers2004/papers/04\\_15.xml](http://www.arena.uio.no/publications/working-papers2004/papers/04_15.xml)).

<sup>7</sup> See Mannheim Eurobarometer Trend File ([http://www.mzes.uni-mannheim.de/sprache.php?oben=titel\\_d.html&links=n\\_daten\\_d.php&inhalt=/projekte/eurotrend/Home\\_page\\_d.html](http://www.mzes.uni-mannheim.de/sprache.php?oben=titel_d.html&links=n_daten_d.php&inhalt=/projekte/eurotrend/Home_page_d.html) )

<sup>8</sup> cf. Cini, Michelle/Pérez-Solórzano Bottagán, Nieves, European Politics, Oxford 2010, pp. 48-66.

In February 2002 the European Convention held its first plenary session. Although in a spirit of openness and transparency, the Convention posted all its papers on the web and its plenary sessions were open to the public, it failed to attract much media or popular attention. In July 2003, the Convention presented the complete draft treaty which was accepted by the European Council in June 2004. The Treaty establishing a Constitution for Europe was signed in October 2004. It promised an EU which would improve its democratic character. However, the French people were not convinced and rejected the Constitutional Treaty in May 2005. The Dutch followed suit in June 2005. After a “period of reflection”, the Reform Treaty was signed in Lisbon in December 2007. And finally, the Lisbon Treaty entered into force on 1 December 2009.

#### **4. THE LISBON TREATY AND ITS DEMOCRATIC POTENTIAL**

What are the main innovations of the Lisbon Treaty regarding the democratic quality of the EU?

- As was the case in the past, the European Parliament can be considered to be a winner of the treaty reform. Article 14 of the Treaty on European Union (TEU) contains very strict provisions: “The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.”
- The ordinary legislative procedure, which is the successor to the former co-decision procedure under the Treaty of Nice, is now the regular mode of decision making (Art. 289 TFEU). The ordinary legislative procedure establishes the EP and the Council on an equal footing. In the event that the EP and the Council do not agree on a legal act they must look for a compromise in a Conciliation Committee (Art. 294 TFEU).
- In the past the EP’s competences to decide on the budget were restricted. The Lisbon Treaty puts an end to these restrictions. As stated in Art. 314 TFEU, “The

European Parliament and the Council ... shall establish the Union's annual budget ...”

- Whereas the appointment of the President of the European Commission was dominated by member states and their representatives in the past, the Lisbon Treaty has upgraded the EP's position significantly. Now, the European Council proposes to the European Parliament a candidate for President of the Commission. The European Council must take into account the elections to the European Parliament. The candidate will be elected by the European Parliament by a majority of its members (Art. 17 TEU).
  
- Just as the Lisbon Treaty has strengthened the competences of the EP, the same can be said of the rights of national parliaments. In the past they were often regarded as the losers of the European integration process. Quite often, national parliaments started their consultation on legal acts of the EU after these acts were already in force. Now, Article 12 TEU determines that draft legislative acts of the Union have to be forwarded to the national parliaments. As laid down in Protocol No. 1, “an eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption...”
  
- The principle of subsidiarity and its control have been strengthened significantly: Protocol No. 2 grants any national parliament the right to state a reasoned opinion why it considers that a draft of a legal act does not comply with the principle of subsidiarity. In the event that one third of all the votes allocated to the national parliaments are of the opinion that a draft legislative act is not in compliance with the principle of subsidiarity the draft must be reviewed.
  
- A form of direct democracy has been introduced by the Lisbon Treaty. If one million citizens of a significant number of member states are of the opinion that a legal act should be submitted by the European Commission they have the right to enforce a citizens' initiative (Art. 10 TEU).

- Regarding the criticism that the distance between citizens and the EU is too great, the Lisbon Treaty envisages more transparent procedures: Art. 15 TFEU states: “The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.”
  
- And finally the institutions of the EU are requested to “maintain an open, transparent and regular dialogue with representative associations and civil society” (Art. 10 TEU).
  
- Referring to the criticism that European elections must be regarded as second order or national mid-term elections, Article 10 TEU demands that “political parties at European level (shall) contribute to forming European political awareness and to expressing the will of citizens of the Union.”

## **5. CONCLUSIONS**

My presentation makes it clear that policy makers have understood the lesson that the EU has to react to the criticism that it is characterized by a democratic deficit. This was done mainly by strengthening the competences of parliaments.

The European Parliament has been upgraded to the role of a genuine co-legislator which in nearly all cases acts on an equal footing with the Council. As we can see already, the EP is using its increased competences with respect to the budget to strengthen its position in other fields of EU policy making as well. The fact that the EP will elect the President of the Commission may help to increase voters’ interest in European elections as parties are invited to present candidates for the Commission President. That may lead to some form of “politicization” and personalization. The EU will have a face, or several faces. So far, the Treaty of Lisbon has followed a supranational concept of EU democratization.

The introduction of the citizens’ initiative may help to construct some form of European public which, although not equivalent to a European “demos” of course, could strengthen transnational ties between citizens.

In the same way, the Lisbon Treaty respected the necessity to increase the competences of national parliaments. The intergovernmental school has been effective as well. The future will show whether national parliaments will make use of their new rights.

Although it is not yet possible to make a final judgement, it is clear that the Lisbon Treaty and its predecessors leave one question open: What is the “finality” of the integration process? There are some arguments that the EU is strengthening its supranational basis, while others argue that intergovernmentalism has been reinforced. Both arguments must be taken seriously. Only one thing seems to remain undisputed: with the Lisbon Treaty, European integration has followed a strategy of incrementalism once more. The integration process is proceeding step by step.