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European Union Legitimacy - Strengthening the EU legitimacy

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Abstract

European Union is an organisation considered by all as *sui-generis*, or supranational one. From its establishment till now it faced different challenges. One of them is the legitimacy which started to be a strong challenger immediately after Maastricht treaty. At the same time the debate about it became huge where different scholars explained their thoughts on what changes should be done to the EU in order to make it more legitimate. Consequently, our goal in this paper is to approach to the debate on the EU legitimacy, to examine the ideas of some of the well-known scholars whose contribution in this topic is very much appreciated. Also, a great role in this direction plays the new Lisbon treaty which included some changes and a citizen's initiative which are considered as a great step forward the legitimacy of the EU. The paper is closed up with a short summary of the Lisbon treaty changes that affect directly the debate on the EU legitimacy.

Key words: Legitimacy, Europeanisation, Lisbon treaty, Democracy, EU citizens

1. Citizens participation

Different sources say that the citizens involvement in decision-making processes contributes in strengthening of the EU legitimacy. This kind of inclusion of the citizens in political decisions in different times could be achieved through direct participation¹ elections. In this form, and through the independent or free vote, citizens are given the opportunity to express their opinion in different stages of decision, an aspect included in liberal concepts giving to the citizens the right of participation by electing its representatives to whom the executive is accountable. There are other concepts of citizens participation which are considered more democratic with more stressed role through which citizens become real sovereigns of their life.² One of these concepts is representative democracy when citizens hold accountable their leaders when exercising public power. This could be achieved through electing of competing parties based on their discussions, information, merits and plans which should be in the common welfare of citizens.³ In another way, this is understood as a kind of request to citizens to become 'the owners' of the Union, asking from them to become more active, especially in decision-making. For example, European Commission's Forward Studies Unit (FSU) has treated another alternative of conventional approach by negotiating a process of self-arrangement between social actors and European public authority.⁴ Public sphere is another aspect of providing citizens with participation rights which has huge implications in democratic legitimacy concept. So, those who bring decisions must face with public opinion, in order to justify the decisions they take. In this case, the support of public sphere helps the decision-maker to be legitimate. With other words, public debates have a power and right to legitimate⁵. Haberman considers this public sphere a kind of common room in society, which right now is divided in different kinds and categories. So, it could be an assembly, forum, arena, stage, or a point of meeting where citizens gather and discuss issues affecting directly their

¹ Andreas Føllesdal: "Survey Article: The Legitimacy deficit of the European Union", *The Journal of Political Philosophy* 14 (2006): 448

² Sandra Kröger: "The End of Democracy as We Know it? The Legitimacy Deficits of Bureaucratic Social Policy Governance", *European Integration* 29: 568-569

³ Andreas Føllesdal: "Survey Article: The Legitimacy deficit of the European Union", *The Journal of Political Philosophy* 14 (2006): 448

⁴ Christopher Lord: "Legitimacy, Democracy and the EU: when abstract questions become practical policy problem", *Policy Paper* 3 (200): 11

⁵ Erik Oddvar Eriksen and John Erik Fossum: "Democracy through Strong Public in the European Union?", *Journal of Common Market Studies* 40: 403-404

life.⁶ We can take as an example the Irish National Forum for Europe. But, the public debates about european issues should be organised with the participation of politicians and civil society. These could be different conferences for reconciliation, surveys, or establishment of cross-border networks between citizens. These steps have to be taken as very serious step toward citizens participation in national and especially European level of policy-making.⁷

2. Accountability

Western democracies use accountability as a very important aspect of legitimacy with which public authority is held accountable in front of elected assemblies, other consultative bodies and public thought. This means that governments are not legitimate only by elections, but also by being accountable to the voters during their activities in the direction offices.⁸ Accountability is a key feature of democracy which requires from those exercising public power to be accountable to the citizens. This means that being in a position of managing with public power is conditioned and means that citizens are able to ask for responsibility from those participating in the process of decision-making. From accountability we can derive some very important aspects. One of them is transparency for which we will discuss later. Other aspects include public debate which should be taken very seriously as a kind of valuable critic where decisions and other issues can be discussed.⁹ Elections are an important accountability holding because people elect their representatives in central and local level which also are used in European level.¹⁰

3. Transparency

The principle of transparency is a strong link between official political bodies and public. It helps to satisfy every critic and to process every political activity continuously. With other words, transparency represents the possibility of public deliberation and creation of public opinion for the processes reflecting the path to decision-making. This is very important because it gives to the citizens, civil society and other social and economic players free space and approach to the creation of the opinion in public sphere. Thus, this is considered an aspect of legitimacy.¹¹ Another legitimacy aspect of transparency is limitation of procedures to simple known rules. These restrictions should be impartial and not affected by any party. In this way the European Union could achieve political trust and support in order to improve the legitimacy. In this direction, Giandomenico Majone, argues that legitimate impact could be represented also by the difficulty of establishing elected institutions in Union level. Here the Union can be used as arena of rising and developing of independent agencies which will have delegated tasks. These agencies should function transparently; to provide full steady explanations for the decisions taken; to offer proper explanations and to be reachable by judicial challenges, loose of trust and political support, and the lose or improvement of delegated competencies.¹² Transparency goes together with information, so free access to information and institutional responsibilities should be without any obstacle – transparently because there is no legitimacy without this kind of right.¹³ In the end, we should conclude that the goal of transparency is the rise and strengthening of the support of european politics offering free access to the information about these policies. We should not forget that European legislative contains articles that provides with access to the information in the aspect of implementation of European legislative in member states administrations.¹⁴

4. Europeanisation

⁶ Erik Oddvar Eriksen: "Conceptualizing European Public Sphere, General, Segmented and Strong Publics", *Arena Working Paper* 3: 5

⁷ Sebastian Kurpas, Gaëtan Richard-Nihoul, José I. Torreblanca, Daniel Keohane, Martin Koopmann, Federik Langdal, Ben Crum, Marco Incerti, Justus Schönlau, Julia De Clerk-Sachsse, Anna de Klauman, Anne Mette Vestergaard, David Král: "A Citizens Compact: Reaching out to the Citizens of Europe", *EPIN Working Paper* 14 (2005): 5

⁸ Giovanni Grevi, John Palmer and Guillaume Durand: "Ratify the Constitution – Strengthening EU Democracy", European Policy Center, *Issue Paper* 30 (2005): 9

⁹ Sandra Kröger: "The End of Democracy as We Know it? The Legitimacy Deficits of Bureaucratic Social Policy Governance", *European Integration* 29: 569-570

¹⁰ Frederik Langdal and Göran von Sydow: "Democracy, Legitimacy and Constitutionalism" in Andreas Føllesdal, Andrew Moravcsik, Jo Shaw, Frederik Langdal and Göran von Sydow: "Why Europe? Possibilities and Limits of European Integration", *Swedish Institute for European Policy Studies-SIEPS*, 2 (2007): 5-6

¹¹ Anne Elizabeth Stie: "Assessing Democratic Legitimacy from a Deliberative Perspective", *Arena Working Paper* 6 (2008): 6-7

¹² Christopher Lord: "Legitimacy, Democracy and the EU: when abstract questions become practical policy problem", *Policy Paper* 3 (2000): 10

¹³ Jiří Šedivý and Petr Drulák, "Rethinking Europe", Prague Castle Conference, 6-8 September 2001: 31

¹⁴ Andrienne Héritier, "Elements of Democratic Legitimation in Europe: alternative perspective", *Journal of European Public Policy* 6 (1999): 271

Europanisation is one of the terms that is used recently by scholars regarding European issues. But, this has not still brought to a definition of this process and its effects. Some, also contest the meaning of ‘europeanisation’. Some authors determine it as institutional development and accumulation of competencies in european level.¹⁵ However, some authors argue europeanisation as local effect of EU enlargement, but particularly is understood as reflection of policies, practices or advanced priorities of EU system of governance in the orientation or formulation of national policies.¹⁶ For example, Lawton considers europeanisation a shift of national sovereignty to the European level, while he suggests that this is a power share between national governments and EU. Börzel determines europeanisation as a “process through which local political spheres are increasingly becoming topics of European policy-making”, whereas Caporaso, Green-Cowless and Risse determine it “as occurrence and development of particular governing structures in European level, which means political, legal and social institutions related to the political solution of problems that gives a particular shape interaction between actors and political networks specialised for authoritative rule”. Ladrech gives a more promising orientation to europeanisation as “a process in increase that re-orientates the direction and form of the policies in a level that political and economical dynamics of European Community become part of organisational logic of national policies and policy-making”¹⁷.

According to legitimacy perspective we conclude that applying europeanisation is very significant to the national governing systems. At the same time, this perspective rises the role of national state in a level of legitimate agent toward the level of supra-national governing.¹⁸

5. Strengthening National Parliaments

Inconsistency between parliamentary representation of national state governments and supra-national governing has affected in the argumentation of legitimacy crisis, whereas the evaluation of EU legitimacy has had as standard point democratic systems of member states.¹⁹ These systems holds their governments accountable through Parliaments in respect of political formulations in European level. But, the problem that these parliaments face regarding European issues has to do with its institutional composition. Thus, in order to escape this trap, some Parliaments – like Danish Folketing, or Tweede Kamer in Holland – has established Committees for European issues.²⁰ The role of these committees is to be sure that national state Parliaments are not overlooked during the process of European integration, hence a strengthening of this kind of national state Parliaments is not seen as integration obstacle, but as a contributor to the prevention of undermining democracy in national and European level.²¹ Therefore, trying to achieve this kind of strengthening of national parliaments, former British Prime Minister, Tony Blair, proposed a second chamber of European Parliament which would be consisted of members of national Parliaments that would review the activities of the EU based on a “Declaration of Principles”. Jospin, also suggested a “permanent conference” who would supervise the matching of EU institutions with the principles of subsidiarity.²² Maybe the proposal of Danish Folketing would be generalized with all member states; also establishment of inter-parliamentary networks between the European Parliament and national Parliaments would be contributory to the strengthening of EU legitimacy in general or adding another chamber to the EU Parliament would be a key point in strengthening of national Parliaments.²³ On the other side, it is thought that participation of national Parliaments in European policy-making stumbles policy-making in European level. So, a decision of national Parliament can hinder the government of the member state in negotiating a compromis with other governments of member states. This can bring to the failure of negotiations for a particular issue.²⁴ Therefore, European Convention has proposed an early warning system which will impact in strengthening of national Parliaments in EU decision-making which provides a formal structure where will be included all national

¹⁵ Andrienne Héritier, “Elements of Democratic Legitimation in Europe: alternative perspective”, *Journal of European Public Policy* 6 (1999): 271

¹⁶ Ian Bache: “Europeanisation and multi-level governance: Empirical findings and conceptual challenges”, *Arena Working Paper* 16 (2008): 2

¹⁷ Claudio M. Radaelli: “Whither Europeanisation? Concepts stretching and substantive change”, *European Integration Online Papers* 4 (2000): 2-3

¹⁸ Caitriona Carter and Andrew Scott: “Legitimacy and Governance Beyond European Nation State: Conceptualising Governance in the European Union”, *European Law Journal* 4 (1998): 438-440

¹⁹ Enrico Gualini: “Integration, Diversity, Plurality: Territorial Governance and the Reconstruction of Legitimacy in a European ‘Postnational’ State”, *Geopolitics* 9 (2004): 545

²⁰ Pieter de Wilde: “Designing Politicization, How control mechanisms in national parliaments affect parliamentary debate in EU policy-formulation”, *Arena Working Paper* 13 (2009): 1

²¹ Augustín José Menéndez: “Neither Constitution, Nor Treaty, A deliberative-democratic analysis of the Constitutional Treaty of the European Union”, *Arena Working Paper* 8 (2005): 38

²² Tanja A. Börzel and Madeleine O. Hosli: “Brussels between Bern and Berlin: Comparative Federalism Meets the European Union”, *Governance: An International Journal of Policy, Administration and Institutions* 16 (2003): 195

²³ Christopher Lord: “Legitimacy, Democracy and the EU: when abstract questions become practical policy problem”, *Policy Paper* 3 (2000): 12

²⁴ Arthur Benz: “Path-Dependent Institutions and Strategic Veto Power: National Parliaments in the European Union”, *West European Politics* 27 (2004): 876

Parliaments in European legislative process.²⁵ Furthermore, necessary and effective control of European governing policies is a key step that member states should take in order to strengthen the role of national Parliaments in European Level²⁶ becoming one of key sources of EU legitimacy.²⁷ In this direction, we must not consider European Parliaments as a rival of national Parliaments, but as ally of the second one having in their agenda same goals of effective reviewing of decision-makers.²⁸

6. Strengthening of European Parliament

Back in history, the role of EP had restricted competencies with consultative role and with the members from national Parliaments. In 1979 we had first direct election in EP which was a huge step forward EU legitimacy and strengthening of the EP, but still there was no impact in decision-making comparing to that of national Parliaments.²⁹ But the Treaty of Maastricht and Nice forced the EP but also complicated it approving the Qualified Majority Voting – QMV which gave kind of privileges to larger states.³⁰ Thus, the rejected Constitutional Treaty also included strengthening steps of European Parliament like previous Treaties strengthening the legitimacy of EU. It was clear that with these steps interests of the citizens of the Union ‘were consulted clearly and that there is a possibility of the opening of the debate in the future’.³¹

There are some proposals for strengthening of the EP, but we will discuss Christopher Lord opinion who is a researcher proposing two ways of supranational parliamentary strengthening of EU linking them with Western European parliamentary practices and US Congress practices. According to the first proposal, Parliament will have appointing and dismissal powers over executive of the EU, whereas the second proposal includes co-decision procedure. US practice has a priority because it allows to have different majorities that could be achieved in different levels of legislative, minimizing the division in ‘winners’ and ‘losers’³² in this kind of political system legitimacy of which is questioned. But, the lack of the debate clearly damages the capacity of EP to be considered as an important political factor in the Union.³³ But, this is not the end. Lisbon Treaty has something new for us regarding strengthening of European Parliament.

7. Legitimacy through federalisation

Issues on EU legitimacy are born considering it as a single political system, thus in last decades the Union has been described as a confederation, federation, superstate or a *sui generis* political system. But, all these theories have something in common that the EU is really unprecedented.³⁴

In a debate of former German foreign minister, Joschka Fischer, the European Union is described as “European federation”, a statement which provoked a huge debate regarding the separation of sovereignty between different levels of government inside EU.³⁵ However, with the federalisation concept we face some troubles regarding the separation of power in European and national level, which also asks for a constitution that will fix this separation including a limitation of EU competencies.³⁶ This perspective offers to EU some ways to escape from “legitimacy trap”. One opportunity is moving toward German model transforming the Council to a second chamber of European parliament, whereas the EP would be on the same level with the Council in legislative process. The Commission would

²⁵ Ben Crum: “Tailoring Representative Democracy to the European Union: Does the European Constitution Reduce the Democratic Deficit?”, *European Law Journal* 11 (2005): 459

²⁶ Giovanni Grevi, John Palmer and Guillaume Durand: “Ratify the Constitution – Strengthening EU Democracy”, European Policy Center, *Issue Paper* 30 (2005): 11

²⁷ Marcus Houthuijs: “No way out for the beast? The unsolved legitimacy problem of European governance”, *Journal of European Public Policy* 6 (1999): 262

²⁸ Giovanni Grevi, John Palmer and Guillaume Durand: “Ratify the Constitution – Strengthening EU Democracy”, European Policy Center, *Issue Paper* 30 (2005): 11

²⁹ Erik Oddvar Eriksen and John Erik Fossum: “Democracy through Strong Public in the European Union?”, *Journal of Common Market Studies* 40: 411-412

³⁰ Erik Oddvar Eriksen: “The EU and the Right to Self-Government”, *Arena Working Paper* 17: 3-4

³¹ Andreas Føllesdal: “Survey Article: The Legitimacy deficit of the European Union”, *The Journal of Political Philosophy* 14 (2006): 448-449

³² Christopher Lord: “Legitimacy, Democracy and the EU: when abstract questions become practical policy problem”, *Policy Paper* 3: 14

³³ Julia De Clerk-Sachsse and Piotr Maciej Kaczyński: “The European Parliament – More powerful, less legitimate? An outlook of the 7th term”, *CEPS Working Document* 314 (2009): 13

³⁴ Tobias Auberger and Krzysztof Iszkowski: “Democratic Theory and the European Union: Focusing on ‘Interests’ or ‘Reasons’, *European Integration* 29 (2007): 272

³⁵ Tanja A. Börzel and Madeleine O. Hosli: “Brussels between Bern and Berlin: Comparative Federalism Meets the European Union”, *Governance: An International Journal of Policy, Administration and Institutions* 16 (2003): 179

³⁶ Arthur Benz and Christina Zimmer: “The EU’s competences: The ‘vertical’ perspective on the multilevel system”, *Living Review in European Governance* 3 (2002): 6

be transformed to a real government with a directly elected President or by EP as first chamber on the new bicameral EU.³⁷ The other opportunity is swiss model which proposes further delegation of political competencies including those of macroeconomy from national to european level.³⁸

The wide discussion of the scholars recognises that EU is a combination of federal and confederal elements. Thus, Giandomenico Majone's opinion is that a mixed structure is a serious dilema for EU. While on the other hand, Fritz W. Scharpf thinks for a confederal Europe where the power is limited. But, bothe models cannot determine exactly the separation of competencies betwen national and European level of governance.³⁹

8. Referendums

Swiss model of referendums is a concret proposal to be includet at EU level challenging the laws with the citizen's vote, by gathering the signatures before bringin a decision for a referendum. In this way we give to citizens the right of control and in a way the right of co-decision. Swiss referendums are proposed also in those states where political system has no much alternative of including of all primary political parties in achieving a consensus for a particular law. Therefore, in European level, the referendums could be introduced as European citizen's election.⁴⁰

9. Lisbon Treaty

Lisbon treaty included institutional updatings of the EU, but of more importance are those changes that impact the legitimacy of the EU. The treaty changes the Treaty on the European Union and the Treaty Establishing the European Communities. The first one keeps the same labelling while the second one is named Treaty on the Funciton of the Euroepan Union. Other issues included in Lisbon treaty are those of inter-governmental through which the member states act according to the International Law, general principles, institutional regulations, treaty aproval, other changes and withdrawal from the EU.⁴¹ The goal of the treaty is to make the EU more effective, transparent, more functional and of course more legitimate, including development of particular policies for its citizens regarding international level, energetic, climate changes, social issues, security and immigration.⁴²

During our discussion we mentioned the strengthening of National Parliaments. Now, we must admit that these parliaments have gained strength by being included in direct debate toward the decisions taken in the EU. The treaty clearly determines the rights and obligations of the National Parliaments that has to do with information, evaluation mechanisms, and the principle of subsidiarity.⁴³ This means that these national institutions are no more just a spectator watching what is going on in the EU. Other important steps include qualified majority voting and co-decision procedure, both of which strengthens the input legitimacy giving to the citizens the opportunity of having clear view on the decisions, and achieving clear popular benefits which are important about output legitimacy.⁴⁴

A great step forward the legitimacy of the EU is strengthening of the European Parliament giving to it more legislative and budgetary power. Also, EP has a more role toward monitoring the European Commission. Co-decision mentioned above, is another key element of the EP bringing a decision together with the Council. Also, electing the persident of the Commision creates the link between citizens electing the memtrs of the EP and the European Council proposing the candidate.⁴⁵

Citizens of the EU are not left aside. With the new treaty they have European citizenship since the Maastricht, but now becoming additional to their own national one. This means that you need to have at least a citizenship of one of EU member states, then you can have the European citizenship.⁴⁶ The new tool of the citizens of the EU is citizen's initiative which is granted to them in order to have a direct impact in EU policy-making and decision-making. With a gathering of 1 million signatures, citizens can organize a referendum about a particular issue, but must be under the framework of the Commission.⁴⁷

³⁷ Tanja A. Börzel and Madeleine O. Hosli: "Brussels between Bern and Berlin: Comparative Federalism Meets the European Union", *Governance: An International Journal of Policy, Administration and Institutions* 16 (2003): 192-193

³⁸ Tanja A. Börzel and Madeleine O. Hosli: "Brussels between Bern and Berlin: Comparative Federalism Meets the European Union", *Governance: An International Journal of Policy, Administration and Institutions* 16 (2003): 192-193

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⁴¹ Research and Library Service: "The Lisbon Treaty – Application of the Principle of Subsidiarity", *Briefing Note* 47: 1

⁴² Jonas Sjösted: "The Lisbon Treaty – Centralisation and Neoliberalism", *Röda EU-tema* 10: 3

⁴³ The Lisbon Treaty: Information leaflet for the citizens of the European Union, www.europaforum.lu: 20-21

⁴⁴ Edward Best: "The Lisbon Treaty: A Qualified Advance for EU Decision-Making and Governance", *EIPASCOPE* 1 (2008): 7

⁴⁵ The Lisbon Treaty: Information leaflet for the citizens of the European Union, www.europaforum.lu: 19

⁴⁶ Christa Tobler: "The Lisbon Treaty", *Europa Institute* 2008: 36

⁴⁷ European Commission, "Proposal of a Regulation of the European Parliament and the Council on citizens' iniciative", 2010/0074 (COD), {SEC(2010)370}, pp: 2

Conclusion

Building of the European Union was very hard and it is achieved only with wisdom. The European integration is started from the idea of the unification of the people of Europe, but the national, lingual and cultural diversity has prevented the creation of the European identity which is very important in achieving the legitimacy. But, when there is no identity then the EU searched for new forms of legitimacy through different ways which are acceptable and determining when questioning its legitimacy. The topics discussed above are a contribution forward a better knowledge of what should be done in order to achieve this goal and the discussion about the Lisbon treaty reflects just what it is included from those proposals and how much is done in strengthening the legitimacy of the EU. And, if someone is doubt if the EU is more legitimate with the new treaty, then our answer is yes, the European Union is more legitimate. This is achieved through different ways such as the involvement of National Parliaments, co-decision procedure, qualified majority voting, citizenship and the new one – that of the citizen's initiative.

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