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Democratic Deficit of the EU after the Lisbon Treaty- Is There an Institutional Solution?

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Abstract:

The paper focuses on the current state of the democratic deficit in the European Union after the institutional reforms that have been introduced by the Lisbon Treaty. The key issue that is examined is whether the process of democratization and the reforms provided by the Lisbon Treaty have responded to the democratic demands of the citizens and if this process has created more efficient and closer Union to the citizens.

The democratic deficit has been identified in a number of ways, but most accepted concept is the *standard version* of the democratic deficit. According to this concept, the main problem of the EU is the fact that there is a shift of political control from the democratic parliamentary systems of government at national level to the executive-centred systems of government at the European level.

The paper addresses two main issues. First one refers to the elements of the standard version of the democratic deficit and whether they have been properly addressed and solved by the Lisbon Treaty. The second one is the issue of European identity, as a source of legitimization of a political community. There is a persistent absence of an awareness of or identification with the European Union as a political community by the citizens. The European identity was seen as a crucial factor for the development of the EU's successful supranational character by the supporters of the European integration, but this political goal hasn't succeeded as expected.

Key words: democratic deficit, institutional reforms, Lisbon Treaty, European identity, democratization.

Introduction

“...But I must give you a warning. Time may be short. At present there is a breathing-space. The cannons have ceased firing. The fighting has stopped; but the dangers have not stopped. If we are to form the United States of Europe, or whatever name it may take, we must begin now.”

-Winston Churchill

The Churchill's visionary idea of United States of Europe dating from 1946 was realized just a few years later, shaped into the concept of the European Union. It evolved into a unique, *sui generis* concept of regional economical and political integration. Today, EU is not a state; it is an organization of corporate bodies: the member states and the European Institutions¹. It has developed a new type of political system that goes beyond the traditional intergovernmentalism and has substantial elements of supranationality. Before it was established, it was almost impossible to construct a political system of democratic governance apart from the standardized nation-state model. The development of the Union has proved that it is possible to build a system based on the basic principles of liberty, democracy, respect for human rights and fundamental freedoms, the rule of law, respect and preservation of representative democracy etc. by integration of different European countries, different nations, cultural and linguistic diversities.

The economic integration and cooperation of the EU member states at the beginning, was a tool for further political cooperation. From a time distance, today it seems that the economic integration went further ahead compared to the political integration. The member states were wishing to integrate their national economies while preserving the core of national sovereignty. Since its establishment, the Union has grown in powerful decision-maker on European level, developer of common policies that are implemented in the member states, controller of its own budget and significant “player” on the international political scene.

Today, the size and complexity of the enlarged Union with 27 member states weakens the economic and political performance of the Union. The apparent process of alienation of its citizens creates a distance in the relation Union-citizen which is the key element for efficient functioning of any political system. Still, the communication between the Union and its citizens remains insufficient; there is lack on exchange of information between them. Citizens cannot understand the functioning of the EU and the citizens do not represent a “demos”. The Democratic theory presupposes a demos and polity. The EU is consisted of many “demoi”ⁱⁱ- multiple citizenships of its citizens- there is an existing citizenship of the Union, but only for persons already holding the nationality of a member state. Led by this problem of conceptualizing the demos, EU is facing the problem of *democratic deficit*- without demos there cannot be any democracy.

The study of the topic for *democratic deficit* became relevant as soon as the European Union achieved stronger impact on the life of its citizens. The democratic deficit becomes more obvious for the EU citizens as the European identity appears less prominent.

Policy makers and opinion leaders use different approaches to point out the reasons for the lacking of democratic legitimacy. The unique political construction of the Union cannot be compared to any other model of a nation state in order to use the comparison method to come closer to the reasons that cause the democratic deficit. Therefore, this paper will draw upon the reasons that have caused the appearance of the democratic deficit in the complex multi-level governance with diffuse mechanisms of democratic control of the Union. The main question that appears is whether this process of democratization may be observed in the European Union and could the mechanisms prove efficient to be called democratic?

It will focus on the following issues: elements of the standard version of the democratic deficit and their impact on the functioning of the Union, elaboration of the issue of European identity, as the primary source of legitimization of a political community and the process of democratization and the reforms provided by the Lisbon Treaty-whether they have responded to the democratic demands of the citizens and if this process has created more efficient and closer Union to the citizens.

1. Standard Version of the EU Democratic Deficit

The democratic deficit of the EU has been identified in a number of ways.

The most accepted concept is the *standard version* of the democratic deficit. According to this concept, the main problem of the EU is the fact that there is a shift of political control from the democratic parliamentary systems of government at national level to the executive-centred systems of government at the European level.ⁱⁱⁱ The executive of the European Union is consisted of the European Commission and the Council of Ministers. The only EU institution that is directly elected by the voters is the European Parliament. The Parliament is too weak to control the executive, and the Commission and the Council are not accountable to the Parliament, unlike the model of clear separation of powers. The decisions are taken without taking into account the citizens requests and interests.

In general the arguments of the standard version of the democratic deficit can be categorised into a few sets. According to Hix^{iv}, the current standard version of the democratic deficit in the European Union involves five main claims:

- Increased executive power/decreased national parliamentary control: EU decisions are made primarily by executive actors - the Commission and national ministers in the Council, meaning a reduction of the power of national parliaments as governments can either ignore them while making decisions in Brussels or be outvoted by QMV (Qualified Majority Voting) where it is applied.
- The European parliament is too weak: power increase of the European parliament is not enough to compensate the loss of national parliament control and the Council still more or less has the final say on the passing of the EU's legislation.
- No "European" elections: national elections are fought on domestic rather than European issues while the European Parliament elections, treated as mid-term national contest, are less about Europe either.
- The European Union is too distant: citizens cannot understand the EU- the Commission is somehow neither a government nor a bureaucracy while the Council more or less legislates secretly.
- Policy drift: as the result of all these factors, it is of large possibility that European Union adopts policies that are not supported by a majority of the citizens.

In the following lines, an overview will be given to the main claims of the standard version of the EU democratic deficit.

1.1. Increased executive power/decreased national parliamentary control

The first element of the standard version of the EU democratic deficit refers to the increased executive power and a decrease in national parliamentary control. It is perceived that here lies the heart of the "democratic deficit thesis". The policy making process of the Union is concentrated in its executive actors: the Commission and the Council of Ministers. This does not cause any implications by itself. The implications appear in the system because their actions are beyond the control of the national parliaments of the Member states. Unaccountability of the executives often results with ignorance of the voice of the national parliaments, consisted of legitimate representatives of the will of the citizens of the Member states that are at the same time citizens of the European Union. This has its own reflection in every level of the executive- permanent representatives in COREPER, Council ministers when voting and speaking in the Council, the national officials in the Directorates General of the

Commission are more isolated from national parliamentary scrutiny, than the national ministers or bureaucrats in the domestic policy-making process.

More accurately, in the process of European integration there is a significant loss of powers of the national parliaments as key institutions of democratic representation on national level. This loss was not compensated by transferred competences to the representative institutions of the European Union (i.e. the European Parliament). This means that by pushing the representative democracy aside there will be an apparent need for a substitute of it (if something like this exists). Although in Winston Churchill's perspective the representative democracy is presented as "the worst form of government, except for all those other forms that have been tried from time to time", it is a standard for maintenance of political order in modern societies. The central role in a representative democracy is given to the Parliament- it embodies the popular sovereignty by representation of people. On the European level, the representative democracy has to include the multi level governance- involving national democracies and at the same time building a whole new democratic system of the Union. The citizens delegate their political power to the European Parliament. This is why very often the development of the political system of the European Union is seen as taking part on direct expense of the national political systems. One of the hardest tasks coming out of this is to build institutions on both national and European level and incorporate them in one system where they will function in a complementary manner. The challenge that appears is how to maintain an empowered European Parliament as a representative institution on European level and at the same time to strengthen the role of the national parliaments instead of reducing their powers.

One more argument in addition to the thesis of decreased national parliamentary control is the dispersion of executive powers of the European Union. The executive control is complementary to parliament's legislative functions and of the same level of importance. There is no single institution of the EU that represents the executive- it is shared among the Commission, the Council secretariat, different agencies and they are consisted of national governmental representatives of the Member states of the Union. In addition, in the Area of Freedom, Security and Justice executive functions have been assigned to the special bodies Europol and Eurojust. The more the executive is dispersed, the more complicated the control over the executive becomes. Therefore, the legislative control over the executive can be done only if the national parliaments cooperate with the European Parliament in the process of control over the executive. This process is rarely done and the executive accountability is floating between the national and European level of control. European parliament is lacking the role of the main addressee of the activity reports of the executive organs and the right to question the executive institutions with an obligation to submit an answer. All these scrutiny actions should be backed up by sanctions and censures that the European Parliament may impose for effective control over the executives. Although some of these scrutiny actions are formally assigned to the European Parliament, they do not meet the required standards for regularity.

1.2 The European Parliament is too weak

Until 1979 the European Parliament was consisted of delegates from the national parliaments from the member states of the Union. By delegating national representatives, there was no existing link with the voters of the member states- the representative function by direct election of national representatives was not fulfilled. Since 1979 there is a directly elected

European Parliament consisting of 'representatives of the peoples of the States brought together in the Community' (Article 189 EC). Today, the European Parliament has become the only EU institution with directly elected representatives that reflects the will of the European voters.

The legislative powers of the European Parliament have been increased in the last 20 years, in the course of the treaty reforms, starting from the introduction of the co-operation procedure with the Single European Act (1987) and the co decision procedure introduced by the Maastricht Treaty (1993) and the Amsterdam Treaty (1999). It is clearly noticeable that the changes introduced with the Treaty of Lisbon, increasing the legislative powers of the European Parliament can be perceived as a big step forward in decreasing the democratic deficit of the European Union.

First of all, the Treaty of Lisbon changed the legislative procedure. The previously known co-decision procedure has been transformed into regular legislative procedure with the Treaty of Lisbon. Under this procedure one act cannot be adopted without the approval of Council and European Parliament which highlighted the achievement of the common text approved. The Treaty of Lisbon has significantly increased the number of areas in

which decisions are brought by regular legal procedure. That means that legislative proposals from the Committee cannot be adopted without the formal agreement of the European Parliament and the Council.

What is more important this regular legislative procedure applies to 40 new areas, 30 of which are permanent areas modified by co-decision procedure. As new, specifically indicating significant areas are the areas of freedom, security and justice where the regular legal procedure is extended on the borders control, asylum, immigration, judicial cooperation in criminal matters, issues of minimum sentences in defining organized crime, measures to encourage prevention of crime, Eurojust, police cooperation, Europol and civil protection.^v When it is specifically provided in the Treaties, the legislative acts to be brought in the so-called “special legislative procedure”, the Parliament shall decide independently, with participation of the Council or will participate in the decision making process with the Council in form of prior consultation, consent or approval of the act adopted by the Council.^{vi}

Secondly, the Treaty of Lisbon made significant changes in another area, increasing the political control of the Parliament over the Commission. Thus, under Article 17 paragraph 7 of the Treaty, the European Parliament shall elect the President of the Commission upon a proposal from the European Council by majority vote of its members, unlike before when the Parliament only gave consent for the proposed candidate. In this case if the candidate does not receive the required majority in the European Parliament, the European Council shall vote with qualified majority of its members within one month and propose a new candidate.

Additionally, the Council, together with the elected president of the Commission, prepares and approves a list of the other members of the Commission. In proposing a candidate for President of the Commission, the Council has an obligation to take into account the results of recent European Parliament elections and its dominant members’ political affiliation.

Some of the authors claim that this provision of the Lisbon Treaty allows the political parties, that have achieved electoral victory, to impose in an informal manner its own candidate for President of the Commission to the European Council^{vii} and therefore the authors deny the benefit that this provision has for the European Parliament.

Besides the newly introduced reforms and improvements for the European Parliament by the Treaty of Lisbon, the democratic deficit of the Parliament still remains to a large extent. This is due to the fact that the Lisbon Treaty does not provide a right to legislative initiative for the European Parliament which still belongs only to the Commission.

1.3 No “European” elections

Citizens of the European Union states have a right to vote and elect their national parliaments and to elect their representatives in the European Parliament. There is a significant difference among the national elections and the elections for the European Parliament.

First of all, the interest for the European elections is very low because the citizens are not voting for a change of a government, as it is a case at the national elections. At the national elections citizens elect their national parliaments and the majority forms a government. Governmental ministers represent the member states of the Union in the Council of ministers and the governments nominate Commissioners. This is a specific way of assigning representatives to the executive of the European Union and the national elections cannot be considered as “European elections”, neither can be the elections for the European Parliament. When citizens vote for the members of the European Parliament they are aware that the executive actors on the European political scene are not drawn from the EP and thus are not accountable to it. When the citizens vote for the European Parliament elections they don’t vote for the EU policy agenda, neither for a personalities or parties at European level. This is proved by the fact that there are no “big names” running for MEPs, although they are expected to shape Europe’s policies on vital issues such as climate change, immigration laws and banking rules. Sometimes the big names only top the party lists, as figureheads who have no intention of serving out their terms.^{viii}

The mainstream parties are also victims of the technical and consensual nature of the EU itself. Voters are turned off by the process-heavy way in which the Parliament operates: there is little difference among the policies proposed by the three biggest groups, the conservatives, liberals and socialists^{ix}.

Reif and Schmitt’s famous description of the First European Parliament - as “second-order national contests”^x - is as true of the seventh European elections in June 2009 as it was of the first elections in 1979. The voters turnout at the last European elections estimated on European level is 43.24% and in some countries there is a

serious decline of the voters' turnout (Slovakia's turnout for the European elections 2009 was 19.63%). This is the most prominent signal for the permanent decline of the voters' interest on European elections.

European Parliament elections are also not about Europe, as parties and the media treat them as mid-term national contests. The absence of a "European" element in national and European elections means that EU citizen's preferences on issues on the EU policy agenda at best only have an indirect influence on EU policy outcomes.^{xi} The elections will contain the "European element" as soon as the EU citizens have the right to vote for the "European government", imposing direct influence on the European leaders, whether they can continue doing the things they have started or take a different direction in the policy.

1.4. The EU is too distant

The fourth element of the EU democratic deficit refers to the fact that the European Union is "too distant" from the voters, regardless the European elections held in the EU members states and regardless of the increasement of the competences of the European Parliament.

The distance between the citizens of the EU member states and the EU political elite indicates permanent growth. Although absolute majority of the EU citizens believe that more decisions in a number of areas should be taken at the European level^{xii}, very large proportion of the legislation is made in the EU by unelected officials in Brussels.

The analysis from different surveys report that the EU institutions (European Commission) are perceived by the citizens as unfriendly, bureaucratic bodies, distant from ordinary people, driven by complicated, unclear and sometimes even unreasonable procedures.^{xiii} The surveys present the EU institutions in an unflattering light and reflect deep concern amongst the professional-level respondents over the nature of EU communications methods.

The citizen's participation in the domestic democratic institutions is directly influential on the decision-making process. This is not the case with their influence over the EU institutions and it creates a distance between the citizens and the Union. This is a distance to access the Union and is a result of the difficulties to understand how the system functions and to identify themselves with it. For instance, the European Parliament is a body that reflects the multi lingual and multi cultural background of its members and the debates cannot reflect a common political culture, as in the national parliaments. This results with a policy process that is fundamentally technocratic and distant from the ordinary voters, rather than political. It is also hardly understandable for the voters how the Council acts as legislature and decides behind the eyes of the citizens and at the same time carries out executive functions. There is no separation of power within the functioning of the European Union.

1.5 Policy Drift

The last element of the standard version of the EU democratic deficit refers to the produced "policy drift" from voter's ideal policy preferences by the Union. This element is a product of the four previously stated factors for the democratic deficit of the Union.

The policies of the European Union are created and adopted by the bureaucratic mechanisms concentrated in Brussels. The shift of the decision-making from the capitals of the EU member states to the "capital" of the EU is reflected into adoption of policies that are not supported by a majority of citizens in most member states.

The European Parliament, as a representative institution, does not have the main decision-making role in the European Union. The policy-making process is not as prominent as seen in the European Parliament, but is very present among the concentrated interests and multinational firms that have strong lobbyists at European level. They create the policies "behind the curtains" and are dominant, compared to smaller trade unions and consumer groups. European integration was always, and as the recent events have shown, continues to be, an elitist project. It is striking that even in countries like Germany where, for historical and geographical reasons, support for European integration was very strong, popular consensus never went beyond passive acceptance of the agreements reached in Brussels by the national government.^{xiv}

Governments are able to undertake policies at the European level that they cannot pursue at the domestic level, where they are constrained by parliaments, courts and corporatist interest group structures. These policy

outcomes include a neo-liberal regulatory framework for the single market, a monetarist framework for EMU and massive subsidies to farmers through the Common Agricultural Policy.^{xv}

2. European Identity

One of the greatest challenges faced by the European Union today is the absence of an awareness of or identification with the European Union as a political community. This is perceived as a challenge of democratizing a multilevel polity.

It follows from the fact that the European Union is not created *ex nihilo* but that it is created on top of the existing system of sovereign Nation States with a fully developed democratic political system of their own, and a strong sense of their own distinctive national history and identity. The development of the political system of the European Union is often seen as taking place at the direct expense of the national political systems.^{xvi}

The supporters of the European integration have been seeing the promotion of the idea for creation of European identity as one of the highest political goals. The European identity was seen as a crucial factor for the development of the EU's successful supranational character. At the beginning there was no ground for creation of strong European identity and this process went through the stages of strengthening of economic cooperation, promotion of euro-consciousness through presentation of the European symbols (flag, anthem), introduction of the European citizenship in the Maastricht Treaty and introduction of the common currency- the Euro.

In cultural and linguistic terms Europe is marked by diversity, but the integration is the common link that unites the member states and member nations in the Union. The integration should be perceived as a democratic act, because the process of integration is not antagonistically positioned towards the democracy. But it is very unlikely and undesirable that the integration will be a process of replacement of the national identities of the member states with the constructed European identity. As Habermas notes "It is neither possible nor desirable to level out the national identities of member nations, nor melt them down into a "Nation of Europe"^{xvii}". The process of integration of differences in the European Union is a long term and not easily achievable goal. The Churchill's idea for "United States of Europe" as a concept of federation was never achieved. Even if it was founded as a federation, fulfilling the criteria of a parliamentary democracy, it will not be able to attract and retain the loyalty of its citizens.

This is because there is an existing absence of the European *demos*, no European people with collective identity, joint interest and common history. Demos require subjective dimensions like a sense of social cohesion and collective self-identity that result in loyalty of the individuals to the system and are "sufficiently strong to override the divisive interests of subgroups in cases of conflict".^{xviii} These are, however, based on objective dimensions like common language, common history, common cultural habits and sensibilities, common ethnic origin and common religion^{xix}.

What makes demos problematic in relation to the European Union is that there is no clear idea of who should be governed- there is no clear idea of who constitutes the "people." As already argued, it is necessary for the citizens in a democratic system to be connected to each other by a feeling of common identity. "... The need for demos is related to the principle of a majoritarian decision-making, namely that members of a democratic political system must respect the decisions of a majority. In order for this to happen there needs to be a sense of shared political identity."^{xx}

Why it is of importance to develop European identity? Logical answer can be found in the quest for source of legitimization of the European Union. "A citizen's political identity can be defined as his sense of belonging to politically relevant human groups and political structures. (...) the emergence of a corresponding political identity can be considered as the primary source of legitimization of a political community..."^{xxi}

Citizenship of the Union is created as a concept towards strengthening the link between the EU and its citizens. It can be achieved by providing civic and political participation of the citizens in the EU decision making process. The Maastricht Treaty established the citizenship of the Union. European Union citizenship was to be derived from citizenship in each Member State, and was to complement, rather than replace national citizenship a point, which was further underlined in the Amsterdam Treaty. "Nationals of one member state residing elsewhere in the Union have a right to vote or to be a candidate in elections for the European Parliament and for municipal offices. They have the right to diplomatic and consular assistance from the representatives of other EU member states when travelling or living in a third country where their own country has no embassy or consular offices. They have the right to correspond with the institutions of the Union in any of its official languages, and they may petition the European Parliament and the Ombudsman according to certain procedures"^{xxii}

The EU citizenship has been regarded as major building block for the European identity, but there is still a long way to go to strengthen the democratic capacity of the Union.

3. Conclusions

After more than fifty years of very dynamic evolution and deepened integration, the European Union has come to a stage when it needs to strengthen its democratic capacities in order to go further. The Union evolved as a unique system (*sui generis*). It is much more than an international organization, having supranational institutions such as the European Commission, the European Parliament, the European Court of Justice, different agencies, and a legal system that has supremacy even over the national constitutions. Therefore, the European Union cannot be legitimized solely through its member states, participating in it, what is the case of purely international organizations. At the same time, the European Union cannot be defined as a state because the crucial competences of a state are missing and are unlikely to be attributed at the European level of governance.

The European Union, since it was founded, is facing the challenge of creating reliable institutions that can respond to the citizen's requests and preferences. The Union is created to be reliable partner in the citizen's requests and preferences and therefore its responsiveness contributes to strengthening the ties between the institutions and the citizens. This is the crucial link for building the trust and reducing the created distance. It remains as one of the greatest responsibilities for the future of the Union how to overcome the democratic deficit.

One of the attempts to overcome the democratic deficit, thus strengthen the 'unification' of Europe and its citizens, is the creation of a European Constitution, now modified into Treaty of Lisbon (Reform Treaty). The first version was rejected. There are different opinions of why the constitution was rejected, or rather wherein the 'problem' of the constitution lies. The Treaty of Lisbon is an improvement of the institutional status quo in terms of more democratic contestation. The Treaty increases transparency of the legislative process, increases the powers of the European Parliament, enables further enlargement and formally links the choice of the Commission President to European elections. The Lisbon Treaty also gives several new powers to national parliaments by expanding scrutiny-time and enabling them to jointly compel the Commission to review or withdraw legislation.

The changes that were introduced with the Lisbon Treaty are important in reducing the democratic deficit in the Union. Unfortunately the Lisbon Treaty should have gone a step further and provide the right for legislative initiative on the European Parliament and not to leave same right in exclusive jurisdiction of the Commission. When it comes a word for the changes that should have been introduced with the Treaty of Lisbon it have to be pointed out that the Treaty didn't introduced any mechanism for political control over the Council of ministers from any institution of the Union. So now we have a situation where important decisions are being made in an institution that is not responsible in front of any other institution except in front of the national voters.

Europe's democratic deficit- an underdevelopment of democratic institutions and practices- is the unavoidable consequence of a process within which economic and political integration not only move at different speeds but also follow different principles, supranationalism in one case, intergovernmentalism in the other. The disjunction of politics and economics was a necessary condition of market integration, but it prevented the development of majoritarian politics at European level, hence the trade-off between integration and democracy. The democratic deficit is the price we pay for pursuing regional economic integration while preserving the core of national sovereignty- in taxation, social security, foreign policy defence. This dual strategy is certainly problematic, but it seems to be supported by the great majority of European voters and their political leaders. It follows that Europe's "democratic deficit" is, paradoxically democratically justified.^{xxiii}

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