Sanders, D. and Bellucci, P. (eds) (2012) *The Europeanization of National Polities? Citizenship and Support in a Post-Enlargement Union* (Oxford: Oxford University Press) This book offers interesting insights into top-down Europeanization.

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Thomson, R. (2011) *Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement* (Cambridge, Cambridge University Press) This book provides insights into bottom-up Europeanization with and without the new member states.

🌐 WEBLINKS

https://ec.europa.eu/info/publications/annual-reports-monitoring-application-eu-law_en   This website contains the European Commission's Annual Reports on the application of European law in its member states (top-down Europeanization).

http://ec.europa.eu/prelex   The European Union hosts a website on decision-making and the preparation of EU policies. This provides insights into bottom-up Europeanization.

http://www.sv.uio.no/arena/english/research/publications/arena-working-papers/   The Arena Working Papers is an online collection of working papers that analyse and document new European orders of governance and in which much innovative theoretical work is showcased for the first time.

http://europeangovernance.livingreviews.org/   *Living Reviews in European Governance* is an e-journal, publishing solicited state-of-the-art articles in the field of European integration and governance research. The main focus of the articles is on European integration and European governance, and it reflects the whole spectrum of Europeanization research.

https://ec.europa.eu/info/departments/taskforce-article-50-negotiations-united-kingdom_en   The European Commission's Taskforce on Article 50 negotiations with the United Kingdom is in charge of preparing and conducting the negotiations with the UK, by taking into account member states' preferences.

9

Democracy and Legitimacy in the European Union

Stijn Smismans

Chapter Contents

Reader's Guide

This chapter discusses the extent to which decision-making in the European Union can be considered democratic and legitimate. The chapter clarifies the concepts 'democracy' and 'legitimacy', and describes how, although initially the legitimacy of the European polity was not perceived as a problem, it became more problematic as the EU gained more competences. The European democratic deficit became an important issue of debate only during the 1990s after the Maastricht Treaty had transferred considerable powers to the EU. The main solution to the democratic deficit has been inspired by the parliamentary model of democracy and involves strengthening the European Parliament (EP), while also paying attention to the role of national parliaments and regional and local authorities. The chapter also shows how the governance debate at the start of the twenty-first century broadened the conceptual understanding of democracy in the EU by addressing the complexity of European governance (see also Chapter 7). By looking at different stages of policy-making and different modes of governance, while dealing with issues such as transparency and the role of civil society, the chapter discusses a wider range of issues associated with the democracy and legitimacy of the Union. It assesses the impact on EU democracy of the Constitutional Treaty and the Lisbon Treaty. The chapter concludes by warning that three main crises, namely the economic, migration, and security crises, have revived nationalist and populist movements exacerbating the challenges to the EU's legitimacy.

Introduction

When one thinks about democracy, it is usually the political institutions of nation states that first come to mind. Yet democracy can apply also to the case of the European Union. Addressing this question in the EU is particularly challenging because the European Union is a **supranational** polity: it is less than a state, but more than an international organization.

To help us to address this question, we first need to distinguish between two terms: democracy and legitimacy. According to Bobbio (1987: 19), 'a "democratic **regime**" is . . . a set of procedural rules arriving at collective decisions in a way which accommodates and facilitates the fullest possible participation of interested parties'. Therefore, democracy does not concern only states, but can also apply to any regime arriving at collective decisions. It can therefore also be applied to a supranational or multilevel polity such as the EU.

Whereas 'democracy' refers to a set of procedures guaranteeing the participation of the governed, 'legitimacy' refers to the generalized degree of trust that the governed have towards the political system. Broadly speaking, this generalized degree of trust can result from two elements. On the one hand, people might find a political system legitimate because they are sufficiently involved in the decision-making even if the outcome of those decisions is not always what they desire (**input legitimacy**). On the other hand, people might find a political system legitimate because they are satisfied with the policy outcomes produced by the political system (**output legitimacy**), even if they are not sufficiently involved in decision-making. The first aspect of legitimacy can be identified with the democratic process; the second with performance and **efficiency**. Input and output legitimacy are normally combined, but one may be emphasized more than the other. For example, it is often argued that the EU has primarily been built on output legitimacy. However, as the EU has become involved in more and more policy areas, it has become increasingly difficult to base the legitimacy of the European polity on policy outputs alone.

From 'permissive consensus' to 'democratic deficit'

Back in 1957 when the **European Economic Community (EEC)** was first set up, democratic **accountability** was not high on the Community's agenda. At that time, the European Community could be considered a 'special purpose association' to which a limited number of well-defined functions were **delegated**. The democratic nature of the Community was not a matter of serious concern and could, at this point, be guaranteed by the democratic credentials of the member states. The '**Monnet method**', the sector-by-sector approach to **European integration**, was based on the idea of a strong (technical) European Commission, composed of independent Commissioners representing the general interest of the Community. The Commission held the exclusive right of initiative and played a central role as the **executive** body (see Chapter 10), while the Council of Ministers acted as the final decision-maker (see Chapter 11). The Parliamentary Assembly was only indirectly elected and had only consultative powers. As such, it had only as much importance as the advisory Economic and Social Committee (ESC), which was composed of representatives from national **interest groups** and **stakeholders** in the areas of EEC competence (see Chapter 14).

This functional approach to European **integration** (see Chapter 4) was based on the idea of involving actors with particular expertise in the specific fields for which the EEC had been given competence. Functional expertise, rather than democratic participation, was the central issue of concern. The initial stages of European integration were thus said to be based on a '**permissive consensus**' (Lindberg and Scheingold, 1970: 41). There was little popular interest in this elite-driven and technocratic project, and this coincided with a diffuse support for the idea of European integration—or, put differently, the legitimacy of the EEC was based on its output, without raising particular concerns about input legitimacy.

However, as the Court of Justice defined more clearly the features of the European legal order, based on principles such as supremacy and **direct effect** (see Chapter 13), and with the Community acting in new policy areas, the daily impact of the European integration process became ever more evident and the functionalist approach became insufficient as a way of addressing the legitimacy of the European project. In this context, the concept of the 'democratic deficit' refers above all to the idea that the transfer of policy-making power from the national level to the EU has not been accompanied by sufficient democratic control at the European level. At the national level, European integration had strengthened executives to the detriment of parliaments (Moravcsik, 1994) because European policy issues are decided and debated by the government (represented at EU level in the Council) rather than by national parliaments. At the same time, the European Parliament (EP) was institutionally too weak to ensure democratic accountability at the European level.

Framed in these parliamentary terms, there were two possible solutions to the EU's **democratic deficit**. Either one could democratize European decision-making by increasing parliamentary **representation** at the European level by way of the EP (the supranational or federal solution), or one could argue that democratic accountability can reside only in the national parliaments, in which case the priority had to be to limit the transfer of powers to the EU—and in as much as such transfer took place, national parliaments should have the means of ensuring the accountability of their minister in the Council (the **intergovernmental** solution).

As the EEC's influence grew during the 1970s and 1980s, political decision-makers opted for the first solution, and thus the further parliamentarization of the European level. In 1979, direct elections to the European Parliament (EP) were introduced to strengthen the direct democratic input at the European level. The Parliament subsequently received increasing powers in the budgetary and legislative process (see Chapter 12). In that way, the EU began to resemble a **bicameral** parliamentary democracy in which legislative power is shared by two branches: one representing the population of the Union (the Parliament), and the other its member states (the Council).

However, democratizing the EU by strengthening the role of the EP faces two main difficulties. First, the parliamentary model of democracy—in which government is accountable to the will of the people expressed in a directly elected parliament—does not see the role of parliament only as that of a legislature, but also expects a parliament to have control over the executive through its involvement in the appointment of the government and/or its use of a vote of censure. While the EP has gained important legislative powers, its control over the Commission is more limited. Although the **Treaty of Rome** already allowed the Commission to be dismissed by the then Assembly, this possibility remained theoretical because Parliament was deprived of any real power in the appointment of a new Commission. The Commission is appointed by the Council from candidates proposed by the member states and thus tends to reflect the parliamentary majorities in power at the national level at the moment of appointment (see Chapters 10 and 11). As such, when European citizens vote in European elections, their opinion finds expression in parliamentary representation, but this does not automatically affect the composition of the Commission, which together with the Council forms the EU's 'executive'.

Second, the EU is neither a traditional international organization nor a state. It is a *sui generis* political system, which is best described as a supranational polity (see Chapter 7). Yet it has been repeatedly argued that this polity has no **demos**—that is, a 'people' with some common identity or shared values that might provide the basis for a parliamentary expression of democracy. The parliamentary model is based on the expression of the general will in parliament. The general will is (mostly) expressed by parliamentary decisions based on majority voting. In order to get these **majoritarian** decisions accepted by the minority, the governed represented in a parliament need to have a certain level of social unity, a common identity. However, it is argued that there is no such common identity in the EU, which, as Article 1 TEU states, is still based on a process of integration 'among the *peoples* of Europe'. Contrary to that, some have argued that there does exist a certain common cultural basis in Europe (Kaelble, 1994), that there is general acceptance of the 'idea of Europe' and 'a commitment to the shared values of the Union as expressed in its constituent documents' (Weiler, 1997: 270). This process could strengthen the loyalty of European citizens vis-à-vis the European polity in a similar way to that in which state action strengthens the loyalty of national citizens vis-à-vis the state, reinforcing the national demos. However, the shift in loyalty to the European level and the creation of some common identity seems to emerge very slowly (Risse, 2002). There is no European '**public sphere**' in which citizens are informed on, and take part in, political discussions. There is no European media. Communication on European issues is nationally coloured and split into different languages (see Chapter 15). Although interest groups have started to lobby and organize at the European level, their activities in Brussels remain rather invisible to the wider public and do not create broader debate on European issues (see Chapter 14). European political parties are weak and European parliamentary elections are '**second-order elections**', thus citizens do not participate and when they do most voters consider the

European political arena to be less important than the national one so they use their votes to express feelings of satisfaction or dissatisfaction with domestic parties or to bring about political change in their own country. Hence, despite the increased legislative powers of the EP, the Parliament struggles to engage European citizens in a political debate that they can understand as the democratic expression of their concerns and interests.

KEY POINTS

- The democratic character of the European Economic Community was not a major issue of concern at its creation, but became an issue of concern as more competencies were transferred to the Community.

- The preferred solution to the European democratic deficit was to parliamentarize the European level by directly electing the European Parliament and increasing its powers.

- Parliamentarization faces two problems: the absence of a European demos and a weak European public sphere.

- European citizens do not participate in a shared debate about European politics and there is no direct connection between voting preferences in the EP elections and the composition of the Commission.

Maastricht and the debate during the 1990s

The debate on the European Union's democratic deficit over the course of the 1990s continued to be inspired by the parliamentary model. While this remained the conceptual reference point used to frame democracy in the EU it also included an additional dimension with the introduction of 'European citizenship'. Potentially, this could encourage the development of a common European identity and partially address the 'no demos' problem.

The **Maastricht Treaty** strengthened the legislative power of the European Parliament by introducing the **co-decision** procedure (now the **ordinary legislative procedure**, or **OLP**); the Maastricht, Amsterdam, and Nice Treaties attempted to create a better link between the EP election results and the composition of the Commission by ensuring that the Commission's term of office coincided with that of the Parliament. Moreover, although proposed by the European Council,

both the Commission President and subsequently the entire Commission have to be approved by the EP. The latter has used this new power to question and even oppose the appointment of new Commissioners (see Chapter 12). Parliamentary democracy at EU level has thus been strengthened, although the latter is still far from a system in which the government is the direct expression of the political majority in parliament.

The Maastricht Treaty also acknowledged the criticism of those arguing that democratic accountability is best guaranteed at the national level by introducing the principle of **subsidiarity**. This meant that, with the exception of areas for which it has **exclusive competence**, the EU can now act only if, and in so far as, the objectives of the proposed action cannot be sufficiently achieved by the member states. Moreover, the 1990s also saw attempts to strengthen the role of national parliaments in EU political decision-making. Member states tightened their domestic regulations to increase parliamentary control over their ministers in the Council, and the EU began to provide a better and more direct information flow to national parliaments so that they could fulfil this function effectively.

The Maastricht Treaty also addressed the role of regional and local authorities in European decision-making. While many European countries had witnessed a process of devolution of political power from the national to the regional level, some of these newly acquired competences were diluted as the EU began to operate in those policy areas. The member states agreed that regional and local actors also needed a place in European decision-making, and as such the Maastricht Treaty created an advisory **Committee of the Regions (CoR)**, representing both regional and local authorities. It also allowed member states to be represented in the Council by a regional minister in policy areas for which the regions held legislative competence.

Citizenship was also introduced in the Maastricht Treaty as a way of framing democracy (see Box 9.1). Citizenship has traditionally been defined in the context of the nation state, and built on three elements: a set of rights and duties; participation; and identity. By introducing the concept of 'European citizenship', the Maastricht Treaty made it clear that the EU provides citizens with a set of rights and duties that means that they belong to the same community. They can participate democratically in this community by voting in the EP elections, for example, and through acquiring rights that they would not otherwise be able to

BOX 9.1 EUROPEAN CITIZENSHIP

According to Article 20 TFEU, 'every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship'.

European citizenship provides European citizens with extra rights that they would otherwise not possess if they were only citizens of their state. Article 20 TFEU sets out a list of such rights:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular

authorities of any Member State on the same conditions as the nationals of that State; and

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

However, this list is not exhaustive. The narrow interpretation of the concept of European citizenship refers only to the rights mentioned in Article 20 TFEU, but that Article itself states that these are only examples of European citizenship rights. The broad interpretation of European citizenship thus refers to all of the rights and duties that the European citizens enjoy or to which they are subject as a result of the legal provisions of the European treaties and European legislation. The Court of Justice of the European Union (CJEU), for instance, has used the concept of European citizenship to ensure the respect of the principle of non-discrimination of a European citizen when residing in another member state.

exercise, such as the right to reside in another member state. European citizenship is therefore expected to strengthen the feeling of a common European identity and to provide some extra fuel to make parliamentary democracy at EU level work. However, the Maastricht Treaty and all subsequent treaties explicitly state that European citizenship is complementary to national citizenship, and is therefore not at odds with the idea that democratic legitimacy can reside at the same time in the European, national, or even sub- national parliaments.

The citizenship debate has focused primarily on output legitimacy rather than on input legitimacy (although European citizenship also provides participatory rights) (Smismans, 2009). The expectation is that if citizens are better aware of all of the benefits that the EU provides, they will identify more with the Union (see Chapter 15). This link between European rights and belonging to a European 'community' has also been exemplified in the debate at the end of the 1990s about the **Charter of Fundamental Rights** of the EU. With the adoption of the Charter, the EU wanted to make a clear statement of the fundamental rights and values for which it stands and with which its citizens can identify (Smismans, 2010). The way in which the Charter was drafted was also supposed to strengthen the sense of citizens' identification with the Union by

making the drafting process more participatory. The latter took place in the first **European Convention**, which brought parliamentarians from the EP and national parliaments together with representatives from governments. Online **consultations** and debating activities made it not only a more parliamentary, but also a more open and participatory, process even if this mainly reached an elite of informed and interested citizens, and failed to witness the involvement of the broader citizenry.

KEY POINTS

- The European Union's democratic deficit was strongly debated during the 1990s. **Representative democracy** remained the central frame of reference.

- After the Maastricht Treaty, the European Parliament was further strengthened, and national, regional, and local authorities were given a role in European policy-making. At the same time, subsidiarity set a limit on the further transfer of powers to the EU.

- The introduction of European citizenship and the Charter of Fundamental Rights of the EU offered a way of developing a common European identity and thus partially addressed the 'no demos' problem.

EU democracy and the governance debate

Despite all previous efforts to strengthen European democracy on the basis of the parliamentary model, the European Union was still not perceived as more legitimate by European citizens. Events, such as the resignation of the Commission in 1999 (see Chapter 10) after it faced accusations of nepotism and financial management, made it ever more evident that democracy was not only about the role of parliament, but also about **good governance** and the parts played by other actors in policy-making (see Box 9.2). Thus, at the turn of the new century, the debate on democracy and legitimacy in the EU became more diversified.

Some scholars argued that the only way in which to resolve the EU's legitimacy problem was to strengthen the parliamentary model, further politicizing European decision-making. This could be achieved by creating a more direct link between the outcome of European parliamentary elections and the composition of the European Commission. European citizens could be offered a clear choice between different (ideological) policy positions, while at the same time the composition of the Commission could reflect the parliamentary majority and its ideological orientation. European citizens would therefore be able to elect their 'executive' on the basis of a European-wide public debate about policy choices. European decision-making would no longer be technocratic and ignored by European citizens.

> ### BOX 9.2 GOOD GOVERNANCE ACCORDING TO THE EUROPEAN COMMISSION
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> The European Commission established its own concept of good governance in the White Paper on European Governance (WPEG). The WPEG was adopted in 2001 by the European Commission in order to improve both the efficiency and legitimacy of European governance. Five principles underpin good governance and the changes proposed: openness; participation; accountability; effectiveness; and coherence. Each principle is important for establishing more democratic governance. The principles underpin democracy and the rule of law in the member states, but they apply to all levels of government—whether global, European, national, regional, or local.
>
> *Source:* European Commission (2001a).

This strategy was built on the assumption that if European elections were about clear ideological and political choices reflected in the composition of the Commission, European citizens would engage more with the European debate and identify themselves as active participants in the EU polity. However, what if European political choices were still translated into purely national interpretations through national media? If this were to happen, the effect could be the further delegitimization of the EU, which would be depicted as imposing European-level policies at the national level. This could be particularly problematic where the national government had a different ideological orientation from the parliamentary majority in the EP and the Commission. At the same time, this strategy would fundamentally change the role of the Commission from a motor driving European integration and representing 'the European interest' to an explicitly political body. If a European public sphere were not to emerge as a result of this strategy, such a supranational political body would be criticized on the basis of nationally defined interests and debates. As such, political leaders have been reluctant to adopt such a radical approach (see 'The Constitutional Treaty and the Treaty of Lisbon').

Another argument is that framing EU democracy exclusively in terms of the role of parliament and parliamentary accountability is too much of a simplification and may even be misguided. First, when comparing the EU to a parliamentary democracy at the national level, the perfect functioning of the latter is too easily assumed. The EU is often criticized because the EP does not have the right of legislative initiative (which is the prerogative of the Commission), while assuming that this is always a central feature of parliamentary democracy. Yet, in many countries, legislative initiatives emerge de facto from the government.

Second, by focusing on representative democracy, the debate addresses only part of the problem and neglects other aspects of democratic accountability in European decision-making. The assumption is that democratic decision-making is guaranteed by means of parliamentary input, while the 'neutral' implementation of the parliamentary mandate is guaranteed by government and administration. However, this **normative** ideal has always been a fiction and is increasingly so in modern governance, in which the implementation of the parliamentary mandate is the result of the complex interaction of many actors deploying a multitude of policy instruments. If we want

to conceptualize democratic accountability in modern governance, it is not enough to think in terms of parliamentary mandate; rather, we must address the question of who is involved in direct interaction with government and administration in the setting of the policy agenda and the drafting of new policy measures, as well as during the implementation process.

Third, there are multiple ways of conceptualizing democracy. While 'representative democracy' focuses on the electoral process and the representative role of parliament, theories of **'participatory democracy'** stress the importance of more regular and direct citizen involvement in collective decision-making. This could involve referendums or more decentralized governance mechanisms. Theories of **'deliberative democracy'** pay more attention to the quality of deliberative processes, rather than focus on who represents whom or ensuring direct citizen participation.

All of these arguments informed the debate on European governance that emerged at the end of the 1990s and the early twenty-first century. The so-called **'governance turn'** in EU studies (see Chapter 7) argued, among other things, that European policy-making is not only about intergovernmental bargaining among member states and power struggles among the European institutions, but also involves many different actors at different stages and in different modes of policy-making. This governance debate resets in several ways the terms of the discussion about legitimacy and democracy in the EU. First, it is attentive to the different stages of policy-making. Democracy and legitimacy are not only about the legislative process and the power of parliament in legislative decision-making; what happens at the initial stage of policy-making, when the European Commission consults widely and interacts with many actors when drafting legislative proposals, matters too. Moreover, once legislative acts have been adopted, the EU often adopts further regulatory measures by way of **delegated legislation** (see Chapter 16). If one wants to assess democracy and legitimacy in the EU, a closer look is required at this process as it affects the majority of EU decisions (see Box 9.3).

Second, the governance debate has made clear that there are different modes of European governance, and that democracy and legitimacy may be addressed differently for each of them. Traditionally, the legitimacy debate has focused on the **'Community method'**, based on legislative decision-making and a central role for the EP. However, many 'new modes of

governance' (NMGs), such as the **open method of co-ordination (OMC)**, hardly involve the European Parliament at all. The OMC was created in 2000 to allow the EU to coordinate the policies of the member states in particular policy fields, such as employment policy or **macro-economic policy**, but without adopting binding legislation at the European level. The OMC procedure is based on the adoption of European guidelines by the Council, on proposal of the Commission, addressed to the member states. While such guidelines are not binding, the member states have to adopt national action plans to explain how they intend to reach the targets set in the guidelines. They have to report to the European Commission on their initiatives, after which the Commission and Council can propose new guidelines and (for some policy areas) send recommendations to the member states. It has been argued that the legitimacy of the OMC resides in its participatory and decentralized character. Since the EU only adopts guidelines and not binding measures in the OMC, the absence of the EP is regarded as non-controversial. In the end, it is up to the member states to take decisions to implement such guidelines and, in that case, democratic accountability is guaranteed by national parliaments. Moreover, the drafting of European guidelines and the national measures that implement them are said to be participatory, given the involvement of stakeholders. However, in reality, the stakeholder involvement is often patchy and national parliaments are not always well informed. By contrast, European guidelines, despite the fact that they are not binding, may have a decisive influence on policy options. Although there remain doubts about the impact of the OMC, the democratic claims made in relation to this mode of governance need to be nuanced (Smismans, 2008).

Third, three concepts have been particularly central to the debate on the legitimacy of European governance—namely, **'participation'**, 'civil society', and 'transparency'. Democracy is not simply about participation in elections and representation through a parliament, but it is also about the participation of multiple actors, such as interest groups, experts, representatives from national administration, and individual citizens. These actors are involved in many different stages of policy-making, from the drafting of a new legislative proposal to participation in the implementation of the OMC at national level.

Since the end of the 1990s, the EU institutions have often encouraged the participation of civil society

BOX 9.3 DELEGATED LEGISLATION

Delegated legislation is a common feature of modern governance. Because adopting legislation often takes time, legislators may decide to delegate secondary or implementing decision-making to governments. While delegated legislation allows for speedier and more effective policy-making, it also takes decision-making out of the hands of the elected representatives in parliament; this may raise concerns about democratic accountability.

At the European level, delegated legislation is adopted through the so-called 'comitology' procedure. The EU Council (and the EP) delegate decision-making to the Commission. This does not mean that the Commission can act alone, however, because it needs to interact with a 'comitology committee' composed of representatives from the member states. Sometimes, the Commission only has to take into account the advice of the comitology committee; on other occasions, it can be overruled by it.

Comitology has often been criticized from a democratic point of view. It is a rather technocratic process driven by Commission officials and representatives from national administrations, normally without the involvement of elected politicians (although there are some exceptions to this rule under which there is some of involvement by the Council or the EP). Moreover, comitology is a rather opaque process, with few knowing where, how, and why the decisions have been taken. However, some scholars have described comitology as 'deliberative supranationalism' (Joerges and Neyer, 1997) indicating that it is not simply a technocratic process, but a process that allows for informed deliberation at the EU level

on the basis of expertise and representation of interests in the comitology committees. Over the last decade, the Commission has also taken some initiatives that are intended to make the system less opaque by providing online information on comitology.

The Lisbon Treaty sought to strengthen the democratic character of delegated legislation. Legislative acts, which set out the most important provisions by way of the ordinary or special legislative procedures (thus involving the EP), have now two options to delegate to the Commission to take further action. The Commission is allowed to adopt either **delegated acts** or **implementing acts**. Delegated acts can set out provisions of a general scope, but cannot define the most important provisions, which can only be set out in legislation. The Commission can adopt delegated acts on its own, but given that they are still rather important provisions, the EP and the Council have the right to oppose such a decision, thus allowing some democratic control over the process by elected politicians. For the less generic and more technical provisions, the Commission can adopt implementing acts. Such acts are adopted through the comitology procedure, without involving the Council or the EP. Compared to the situation prior to the Lisbon Treaty, the new system of delegated legislation thus increases democratic control because of the new category of delegated acts. However, it can also be argued that, as far as the implementing acts are concerned, democratic control may actually have weakened, since neither the Council nor the EP can intervene any more in comitology, in situations in which they occasionally had a role under the previous system.

in European governance. The Economic and Social Committee (ESC) has presented itself as the ideal institutional form of representation for civil society, while the Commission has taken measures to ensure wider consultation at the initial stage of policy-making. The EU institutions have mainly sought the involvement of representatives from civil society organizations in policy-making, although the Commission has also taken initiatives to broaden general online consultations in which individual citizens can also participate. This has been referred to as '**participatory democracy**' or 'participatory governance'.

The way in which the EU provides consultative processes at the initial stage of policy-making is often more extensive than in many of its member states. However, talk of civil society and online consultations do not ensure equality of access to European

decision-making, because those with most resources and money are bound to be the most effective lobbyists (see Chapter 14). The debate on participation and civil society is therefore linked to that on transparency. One can distinguish *ex post* and *ex ante* dimensions of transparency when talking about EU legitimacy. Thus, by ensuring the transparency of the activities of the EU's institutions, one can ensure *ex post* democratic accountability. For example, this might involve the EP scrutinizing the Commission, national parliaments controlling the action of their ministers in the Council, or citizens voting for a particular party or group during EP elections. Many initiatives have been taken to increase transparency of this kind. For example, this has involved increasing the information sent by the Commission to both European and national parliaments, and by ensuring that Council meetings are

public when dealing with legislative issues. Moreover, the EU institutions, and in particular the Commission, increasingly provide information during the drafting of policy measures. Such *ex ante* transparency allows for improved participation by civil society actors and stakeholders, and would thus also allow for better informed policy-making (and thus increased output legitimacy). Compared again with the transparency provided at the national level by many countries, even within the EU, the EU's initiatives on transparency are relatively far-reaching. However, the EU governance system is so complex and remote that it remains the preserve of an informed elite. With the **European Transparency Initiative (ETI)**, introduced by the Commission in 2005 to increase openness, transparency, and accountability of European governance, the EU also aims to shed some light on this elite when they participate in European policy-making. It does this by providing for a Transparency Register that contains information on interest groups' lobbying of the EU institutions (see Chapter 14).

KEY POINTS

- By 2000 the debate on democracy and legitimacy in the European Union had become more diversified.

- It was argued that a further parliamentarization and a politicization of the European Commission may not be a suitable or practicable response to the EU's democratic deficit.

- The governance debate broadened the conceptualization of democracy and legitimacy in the EU beyond the legislative process, the electoral process, and the power games that persist among the EU's institutions.

- Participation by multiple actors and civil society, as well as transparency, are key elements in the conceptualization of democracy.

The Constitutional Treaty and the Treaty of Lisbon

The debate surrounding the Constitutional Treaty (CT) between 2001 and 2005 added another layer to the conceptualization of EU democracy. This concerned the question of the 'constituent power' necessary to create and revise the constitutional rules of the EU. Democracy is not only about participation in European

governance, but also raises questions about the initial design of the institutional framework. Before the CT, the constitutional rules of the European polity had always been drafted behind the closed doors of diplomatic meetings at **intergovernmental conferences** (IGCs), leading to treaty reform. The European Convention charged with drafting the CT aimed at a more open and participatory debate on the constitutional design of the EU by also involving European and national parliamentarians, by using online consultations, and by hosting broader debating events. However, the French and Dutch 'no' votes in referendums on the proposed CT in 2005, which led to the demise of the CT, illustrate the difficulties involved in building the EU's legitimacy on the basis of a constitutional document.

Although not as innovative in democratic terms as the CT, the Lisbon Treaty subsequently provides some new ideas on EU democracy and legitimacy. First, and for the first time, the Treaty includes an explicit title, 'Provisions on democratic principles'. In it, Article 10 clearly states that the Union 'shall be founded on representative democracy', indicating the representative role of the EP, stating that the Council and the **European Council** are accountable to the national parliaments, and mentioning the role of political parties. By contrast, Article 11 stresses elements that can be described as 'participatory democracy' (although the concept is not explicitly used)—namely, the importance of dialogue with citizens and civil society organizations (CSOs).

Second, the Treaty introduces the 'Citizens' Initiative' as a new democratic instrument and form of direct participatory democracy (Article 11(4) TEU). This allows European citizens to gather a million signatures to ask the Commission to draft a proposal for a legal act on an issue on which they consider European action is required (as long as it falls within the competences of the EU). In order to launch a citizens' initiative, citizens must form a 'citizens' committee' composed of at least seven EU citizens being resident in at least seven different member states. The citizens' committee must register its initiative before starting to collect statements of support from citizens. Once the registration is confirmed and checked on whether it falls within EU competence, organizers have one year in which to collect signatures. The Citizens' Initiative may stir up the European debate, and make the EU both more visible and bottom-up. However, it also entails risks if EU action does not live up to the expectations of those taking the initiative (see Box 9.4).

BOX 9.4 THE EUROPEAN CITIZENS' INITIATIVE IN PRACTICE

Launched on 1 April 2012, the first years of practice of the Citizens' Initiative show the limitations of this new democratic instrument. In 2017 the European Commission assessed the practice to date and introduced a proposal to the European Parliament and Council for revision. The Commission noted that the citizens' initiative had created limited debate and impact. Only four initiatives had reached the stage where the Commission provided an answer, and none had led to the adoption of a legal act. Most initiatives failed to reach the number of signatures required to be submitted to the Commission, or were simply withdrawn by those launching the initiative. More problematic is the fact that 30% of Citizens' Initiatives were refused by the Commission on the grounds that the topic was beyond its competence, sometimes on the basis of a very restrictive interpretation. This created a lot of frustration among citizens who expected the Citizens' Initiative to provide them with a tool to set the EU's political agenda in a bottom-up way. A striking example of this was the Commission's refusal of a Citizens' Initiative asking the EU to withdraw from negotiating the Transatlantic Trade and Investment Partnership (TTIP) with the USA. The TTIP was highly controversial, with the EU being accused of negotiating secretly an agreement that only favoured business interests and undermined social and environmental standards (see Chapter 17).

Even in the case of the four Citizens' Initiatives for which all requirements were fulfilled and enough signatures were gathered, the Commission, which is not obliged to propose a new legal act, answered that the existing EU's legislative framework was sufficient. In one case the Commission argued that no new action was needed, and it promised in two other cases that only soft law measures and a new consultation would suffice, rather than legislative action. Only in the initiative concerning the pesticide glyphosate did the Commission propose that it would take some legislative action. However, it declined taking up the initiative's key demand, namely banning glyphosate, and instead limited itself to developing new rules on transparency and quality of evidence studies used in EU regulation.

There is clearly a wide gap between the initial expectations created by the introduction of the Citizens' Initiative, which was perceived as an opportunity for citizens to set the policy and legislative agenda of the EU, and the way this operates in practice. As a result, after the initial enthusiasm, the number of initiatives has gone down each year. In 2016 procedural requirements for introducing an initiative were simplified. It remains to be seen whether such further simplification will really make a substantial difference. The limits in legal competence of the EU will always frustrate many of those signing an initiative. Most importantly, practice so far shows that the European Commission is reluctant to revise the existing legal framework developed by EU Council and European Parliament; or to put it differently, to allow that participatory democracy trumps representative democracy.

Third, the Lisbon Treaty has strengthened the principle of subsidiarity by giving national parliaments a way of controlling whether new proposals made by the Commission respect this principle. The new procedure allows control *ex ante*, before a decision is taken, which is more efficient than *ex post* control by the Court of Justice on whether a decision already taken respects subsidiarity. This is because the Court is reluctant to contradict a value judgement made by the European institutions. However, the success of this new procedure depends on whether national parliaments manage to collaborate within the short time span in which the procedure allows them to act. Since its creation, national parliaments only managed to trigger the subsidiarity control mechanism three times. In none of these cases did the Commission subsequently agree that subsidiarity had not been respected. In one of them it withdrew its proposal as the reasoned opinion by the national parliaments had made it clear that there was insufficient political support for the measure.

Finally, the Lisbon Treaty has further strengthened the role of the EP by turning the co-decision procedure into the ordinary legislative procedure and by giving the EP a controlling role over the adoption of a new type of delegated acts. The Lisbon Treaty also contributes to further parliamentarization of EU decision-making by strengthening the links between EP elections and the Commission's composition: Article 17(7) TEU now requires the European Council to take into account the outcome of the EP elections before nominating a candidate for Commission President. Thus the political groups in the EP each presented a candidate for Commission President (or '*spitzen-kandidat*') during the campaign prior to the 2014 EP elections, arguing that the European Council should appoint the candidate of the party acquiring most votes in the election. The European Council did indeed appoint Claude Juncker, who was the candidate of the party that came out first in the elections, namely the EPP (see Chapter 12). However, the European Council did so with much reluctance, with several member states arguing that it remained the prerogative of the European Council to nominate somebody else if they deemed that a better solution. Moreover, the EP's initiative remained modest in terms of politicizing the European Union and offering European citizens a clear choice between different politically orientated Commissions with clear and well-debated political programmes. Candidates were presented late, national debates on the role and impact of the different candidates remained limited. Moreover, while the role of the Commission President in selecting Commissioners has increased, it is still dependent on proposals made by the member states (and thus on the political majorities present at national level at the time of appointment). This limits the potential of any candidate proposed by a political party in the EP to promise a clear electoral programme.

KEY POINTS

- The debate on the Constitutional Treaty raised the question of who holds the constituent power to design the constitutional rules of the European Union.

- The Constitutional Treaty failed to create a broad participatory debate on the constitutional setting of the Union.

- The Lisbon Treaty has, for the first time, explicitly defined the democratic principles of the EU.

- The Lisbon Treaty strengthens both the representative and participatory dimensions of democracy in the EU.

Crises, populism, and EU legitimacy

Over the last decade, Europe has faced major challenges, in particular the economic crisis, the migration crisis, and a security crisis due to increasing terrorist threats. All these are not as such 'EU problems', but they have amplified in an unprecedented fashion the main features of the EU's democratic deficit. First, as the EU's legitimacy is strongly based on 'output', not being able to deliver effective policy solutions to the crises above has put into question the legitimacy of the polity as a whole. Although the origins of the economic crisis do not lie in the European integration process, but in the lending and speculative practices of the banking sector and the lack of regulation of global financial transactions, it illustrated in a dramatic way the shortcomings of **economic and monetary union (EMU)** (see Chapter 23). EU institutions were not fit for purpose and policy reaction was delayed and patchy (see Chapter 26). Similarly, the migration and security crises introduced new external challenges to the EU, for which its institutional framework was ill-prepared and rather opened up the opportunity to question one of the main achievements of European integration, namely the border-free **Schengen area** (see Chapter 22).

Second, from the EU's perspective, coordinated action to address the crises require 'more' rather than 'less Europe'. However, further transfer of **sovereignty** from the member states to the EU exacerbates the European democratic deficit unless this is accompanied by sufficient democratic accountability of the EU's new policy-making powers. To date, this has not been the case. The EU's new **fiscal policy** governance is most troublesome in this regard, as it limits member states' sovereignty to decide on their own budget without compensating with democratic input and control at the EU level. Although national parliaments retain their formal role in adopting the national budget, the budgetary margins and policy options set out in the budget are increasingly drafted at the European level, with the Commission in the lead, no intervention of the EP, and with the EU Council acting only as a potential (intergovernmental) blocking authority.

Third, while the EU's new economic governance can be criticized for its excessively technocratic nature, the key challenge posed by the economic, migration, and security crises lies not in *what the EU has done*, but *what it has failed to do*. It is in the failure of appropriate action that one finds the defining features of the EU's democratic deficit, namely the lack of a European demos and the deficient nature of the European public sphere. The adoption of a common European response has proved difficult as solidarity among European countries cannot be taken for granted, and political decision-makers tend to communicate with their own national electorate and media in terms of defending their national interest while blaming the other (see Chapter 15). Thus, efficient reaction to the economic crisis was undermined by lack of solidarity between 'credit' and 'defaulting' EU countries; while the EU's attempt to share some of the burden of immigration among all EU countries met with very hostile resistance in several countries, particularly in Central and Eastern Europe (see also Chapter 8).

Finally, the crises and EU's failed response have created a fertile ground for the emergence of populist movements and political parties. Some of the EU's policy choices have likely contributed to such an emergence. The EU's answer to the economic crisis was based on austerity policies, which, in the eurozone countries with the worst sovereign debts, has been received as a diktat imposed by the European Union. This has led to an increase in support for radical political movements, on both the extreme right and extreme left of the political spectrum. Moreover, this has gone hand in hand with an increase in **Euroscepticism**, as illustrated by the surge in support for anti-EU political parties during the EP elections of 2014 and subsequently in many national elections from the Visigrad countries to Greece, Spain, Italy, France, and Austria; while the **Brexit** referendum was won on a Eurosceptic populist ticket (see Chapter 27). The causes of such general emergence of populism are broader than the EU, as exemplified by very similar developments in the USA with the election of Donald Trump. Yet, the EU is a particularly attractive target for such populist discourse; by depicting the EU as 'foreign' and an elitist 'creation of the establishment'

populists aim to obtain the popular vote presenting themselves as the representatives of the homogenous single will of the people.

KEY POINTS

- The European Union's output legitimacy has been called into question as a consequence of the shortcomings of EMU and by its difficulties in addressing the immigration and security challenges.

- The solutions to the economic crisis amplified the EU's democratic deficit because they involved a transfer of sovereignty from the member states to the EU with little democratic accountability; and the absence of a role for the European Parliament or national parliaments.

- The crises, including Brexit, illustrate the absence of a European demos and the deficient nature of the European public sphere.

- Populism is on the rise in Europe. The EU is an easy target for populist discourse and politicians who want to retreat within national borders and look for an external scapegoat.

Conclusion

As the European Union became involved in a broader range of policy areas, its legitimacy could no longer be taken for granted. Policy outputs were no longer deemed an adequate way of improving the EU's legitimacy. However, organizing democratic participation and accountability in a supranational polity is challenging, owing to the EU's distance from European citizens and the Union's complexity. The institutional set-up of the EU provides for some of the most important elements needed to guarantee democracy— namely, that the EU is based on a division of powers guaranteed through respect for the rule of law. In a democracy, decision-making cannot be in the hands of a single authority, but has to be shared by several bodies in a system of **checks and balances**. Although the EU does not have a strict **separation of powers** across its legislative, executive, and judicial powers, it is based on a system of 'institutional balance' in which the Commission represents the Community interests, the Council, the member state interest, and the European Parliament, the European citizens' (Lenaerts and Verhoeven, 2002).

Respect for this institutional balance is guaranteed by the Court of Justice, so that none of the EU institutions can act beyond the powers that they have been given by the treaties. Within this institutional set-up, the body most directly representing Europe's citizens, the European Parliament, has gradually been given more powers. The EU has also tried to strengthen its democratic credentials by providing other checks and balances, for example, through the principle of subsidiarity, and by ensuring transparency and by institutionalizing consultation and participation. These initiatives all have their shortcomings.

Yet the main challenge for EU democracy remains the difficulty of linking European decision-making to a broad public debate across the member states, because national politicians and media either ignore European issues or address them from a particular national angle, while turnout in EP elections is in decline (see Chapter 15). Some therefore argue that the EU can never be democratic and that decision-making should remain national. However, such argumentation often builds on inaccurate assumptions. First, comparing the EU to

an idealized idea of democracy at the national level is misinformed, since many of the difficulties of democracy in the EU are not unique to the European level, but are equally present at the national level.

Second, the fact that decision-making does not take place at the European level does not imply that it will 'return' to the national level. In today's **globalized** world, many issues, such as environmental protection or the regulation of new technologies, require decision-making beyond national borders, while the working of the global market has undermined the capacity of national governments to act on their own. From that perspective, the alternative to European decision-making does not look particularly more democratic, because decisions may simply be taken in less

democratic settings such as the **World Trade Organization (WTO)**, or by big corporations acting on the global market. Brexit is a good case in point. Sold by its promoters as a way 'to take back control', the exit from the EU will require the UK to adopt many EU rules (while no longer having a say) in order to have access to the Single Market, or it will have to accommodate the demands of other countries in trade negotiations in order to compensate for the lost trade with the EU; and respond to the deregulatory requests of foreign investors to compensate for the loss of its privileged competitive position within the Single Market. In a globalized world, the EU might be a 'democracy without a demos', but the national alternative looks increasingly like a *demos* without '*kratos*' (power).

? QUESTIONS

1. Why was the democratic nature of the EEC not an issue of concern at its creation?

2. Why does the European Union suffer from a democratic deficit despite the gradual increase in the powers of the European Parliament?

3. Are national parliaments the source of legitimacy for the EU?

4. How did the governance debate change the EU's understanding of democracy and legitimacy?

5. What are the core features of 'participatory democracy' in the EU?

6. Has the Lisbon Treaty strengthened democracy in the EU?

7. Why do the economic, migration, and security crises constitute a challenge to the legitimacy of the EU?

8. Would decision-making be more democratic if it took place at the national or international, rather than the European, level?

≋ GUIDE TO FURTHER READING

Harlow, C. (2002) *Accountability in the European Union* (Oxford: Oxford University Press) Based on an analysis of the differing understandings of the concept of accountability in the member states, this book studies the mechanisms through which the EU attempts to hold policy-makers to account.

Kohler-Koch, B. and Rittberger, B. (eds) (2007) *Debating the Democratic Legitimacy of the European Union* (Lanham, MD: Rowman & Littlefield) This edited book discusses the role of parliamentary representation, the public sphere, participation, and deliberation in the EU.

Kröger, S. and Friedrich, D. (eds) (2012) *The Challenge of Democratic Representation in the European Union* (Basingstoke: Palgrave Macmillan) This book provides an analysis of the concept of democratic representation and its different meanings in the context of the EU.

Piattoni, S. (ed.) (2015) *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis* (Oxford: Oxford University Press) Taking into account the consequences of the economic crisis, this book studies both the democratic principles and the institutional architectures to reflect on democracy in the EU.

Smismans, S. (ed.) (2006) *Civil Society and Legitimate European Governance* (Cheltenham: Edward Elgar) This study provides both theoretical analysis and empirical assessment of the role of civil society and interest groups in European governance, addressing the potential and challenges in relation to the legitimacy of European decision-making.

WEBLINKS

http://ec.europa.eu/citizens-initiative/public/welcome   The home page of the European Citizen's Initiative.

http://ec.europa.eu/transparency/civil_society   The European Commission explains its relations with civil society organizations.

http://www.europarl.europa.eu/committees/en/afco/home.html;jsessionid=A4FFA5E52B0EEBFEA1D2AFA73CB 99B40.node2   The website of the Constitutional Affairs Committee in the European Parliament (AFCO) who is regularly involved in debating the state of democracy in the EU.

http://europeangovernanceandpolitics.eui.eu   The European Governance and Politics Programme at the European University in Florence produces a permanent and periodic assessment of democratic practices within the EU.

http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers   The Arena working papers series publishes current research on democracy and the democratization of the political order in Europe.

PART 3
Institutions and Actors