

## SOME CRITICAL ASPECTS CONCERNING THE INSTITUTIONAL SYSTEM OF EUROPEAN UNION

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**Abstract:** *In this paper we want to clarify and understand the decisional process in European which is related to the determination of the identity of the Union, answering to several questions concerning the implementation of the European Union into an organization, the different relations with other organizations and with the international law. In the family of the international organizations, the European Union has its own place because it realizes an economic integration project and a political one, a supranational but refusing the traditional categories of constitution and the international law. Qualifying as an international organization sui generis, EU developed a new legal order, deciding to create a supranational organization, formed by Member States and their citizens. The integration process is a permanent challenge opened to a new and developing process for solving all the internal and external problems of the EU. The States have an international "sensitivity" when the application of EU rules exceeds their obligations laid down in the Treaties to third countries and international organizations to which they have not exempted obligations. It was argued that the concept of "demos" or acting people is intrinsically linked to that of the nation-State. The issue of democratic deficit of the European Union is bound to four basic problems: the construction as a whole and therefore of the institutional system, under the principle of conferral, the Union shall act only within the limits that Member States have been conferred in the Treaties to attain the objectives that they set, The Treaty of Lisbon reinforces the legitimacy of the operation of the Union based on free and democratic will expressed by Member States. European construction is achieved through a democratic transfer of competences of the democratic States to a Commission subject to a weak democratic control, while the European Central Bank preserves absolute dominion over its monetary policy outside democratic control. The democratic deficit of the European Union must be judged in the light of the democratic ideal, which led to an ideal-type of political regime, being found itself in constant restructuring, with respect to the evolution of socio-political realities.*

**Keywords:** *decisional process, institutional, European Union, European External Action Service*

**JEL classification:** *K3, K33*

**1. Generally Introduction.** The understanding of the decision-making process in the EU is very closely related to the determination of EU identity by answering a series of questions on enframing in an international organization, its relations with other organizations and international law. Ana M. Lickova shows that in the family of international organizations, the European Union (EU) has a special place because it

realizes a supranational, economic and political integration, but rejecting the traditional categories of constitution and international law ( Lickova, vol. 19, n.3)

EU members have invested its institutions with many internal and external powers, giving rise to complicated international situation. In the EU, its Member States are and remain sovereign entities which mean that its areas of competence were the result of a transfer of competences from the national to the supranational level. The States have an international "sensitivity" when the application of EU rules exceeds their obligations laid down in the Treaties to third countries and international organizations to which they have not exempted obligations. (Ivan, A.L., (2007)

Union's situation is closest to that of the federal states, whose constitutions reserve large areas of autonomy to the sub-federal entities whose international action can cause consequences and affect the whole federation. The absence of international legal personality exempts the sub-federal entities from direct international reactions. In contrast, international sovereignty of EU member states can then expose them to the international obligations arising from wrong acts of supranational institutions.

EU members had to deal with a number of challenges long before the appearance of European Court of Human Rights and the judicial bodies of the International Trade Organizations. In these institutions, the European states have difficulties similar to the difficulties encountered by the traditional federal governments. Governments meet the challenges coming from the international effects of the international legal capacity, where documents are missing or are paradoxically incomplete. (A.M. Lickova ,(1999)

## **2. Analysis and determination of notions.**

### **The Insufficient democratic legitimacy of the EU institutional system.**

As M.V. Antonescu noted, the originality of the EU political system makes the problem of democratic legitimacy to present different aspects independently of each dimension of the Union. On the government side, the legitimacy has in view: the representation of Member States in the EU institutions, the share of votes of each state in the decision-making process, responsibilities of the EU institutions and their relationship to each other. (M.V. Antonescu, (2006)

It may be invoked the "living report" of the European citizens with the institutions, because they need to know the functioning of institutions and participate in their lives. According to the method of initial integration, goals stated by the European Communities were of economic nature. At the same time, some issues related to the implementation of its objectives, in particular those related to the integration of markets, proved to be eminently political. For example, there is the annual agricultural price fixing or the directive on the right of establishment and recognition of diplomas. Other areas that preoccupied the governments of the Member States, rather than on their citizens, as far as affecting the essential interests of the Member States, and in particular, their budgetary balance by transferring funds from the Community and tax harmonization. In some countries, especially in England and Germany, the increased level of transfers to the Community was run by politicians. In addition to the mentioned cases, the Treaty of Maastricht has raised some concerns; particularly those who opposed to the treaty presented it in an apocalyptic picture. Politicians have presented this treaty as trying to create a Super - European State, without its institutional system to work, sometimes being successful only due to general ignorance of the population (M.V. Antonescu, 2006)

Critical issues to the Treaty of Maastricht went from an anachronistic conception of the role of the State and included a series full of contradictions. It was stressed that the areas important to exercise political power were torn out from the democratic constraints. This finding may give the impression that the removal of the political power of the State - nation was by definition an anti-democratic action, thereby prompting a fundamental antinomy between democracy and supranational power. In a similar manner, we mention that popular sovereignty was unique and indivisible, so that the National Assembly was its sole representative. This position implies in particular that the transfer of powers could not be made of a mere strengthening of the powers of the European Parliament.

It was argued that the concept of "demos" or acting people is intrinsically linked to that of the nation-State. Any idea of transnational democracy is beyond any question. Similarly, limited consent of the European peoples is evoked on the European integration process. Finally, it was argued that the democratic deficit is more important to the Community institutions, than it would be at the level of national institutions. In a paper devoted to the crisis of democracy, it is shown that although the democratic ideal is materialized in forms that express the participation of the people in power, democracy is dysfunctionally marked by the de-legitimizing authority, by the fragmentation and disintegration of social groups, the discharge of the core values of democracy: equality and individualism. (M. Crozier, 1977)

### **The Democratic deficit of the European Union.**

Lady Williams, former Minister of the Labour Party in UK defined the democratic deficit as "the distance between the transferred powers to the Community level and control mechanisms from the elected parliaments that is implemented". On the other hand, we must emphasize that "between a union of states and a union of nations, there is a gray area where decisions are likely to spiral out of control" where the confusion between the operation of powers, insufficient legitimacy of institutions, lack of transparency, insufficient democratic control and restricted impact of national parliaments are manifestations of the democratic deficit. This problem does not arise only in the European Union, it equally arises in the nation-state. (Constantin Stephanou, 1997)

The draft Constitutional Treaty had in mind an ambitious European project to propel a more clearly stated political unity, supported including by a symbolism able to express its ability to solve their own problems through a European mechanism more clearly defined, and to manifest itself as an actor with a clear and distinct voice in the international arena. The Treaty not being adopted, the Intergovernmental Conference had the task of developing what was called the reforming Treaty in the sense that it wanted to meet the expectations of the Union's peoples linked to a clearer definition of the identity of the Union, but especially to a democratization of its organization and functioning "closer to citizens", addressing their life problems. It thus seeks an answer to the question raised by the Laeken European Council in December 2001 on equipping the Union with a mechanism to make it more powerful and at the same time closer to its citizens, ie, more democratic. (Clapie, Michel, (2003)

As outlined by Professor *Liviu - Peter Zăpârțan*, the issue of democratic deficit of the European Union is bound to four basic problems.

The first relates to the construction as a whole and therefore of the institutional system, legitimacy expressed by the popular will to confer to some institutions the ability to organize and lead a community based on laws and rules that are respected. In this sense, there can be a lack of legitimacy of the European construction because it is based on Treaties that are ratified by each state according to democratic procedures.

The Treaty of Lisbon considers in this respect that, under the principle of conferral, the Union shall act only within the limits that Member States have been conferred in the Treaties to attain the objectives that they set, so that any competence not conferred upon the Union remain with the Member States. Added to this is the provision of art. 3 § 3 according to which, under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only in so far as the objectives of the proposed action can not be satisfactorily achieved by the Member States, both at central and at regional and local level, but can be better achieved due to the scale or effects of the proposed action at Union level.

The Treaty of Lisbon reinforces the legitimacy of the operation of the Union based on free and democratic will expressed by Member States because the Union institutions apply the principle of subsidiarity according to the protocol of the Treaties and national parliaments ensure the compliance with the principle of subsidiarity in accordance with the procedure laid down in the protocol.

It is believed that in this way the Union's legitimacy is judged through what is it by itself, through its identity and its unique and original way by which it was built, when states and European nations have decided on behalf of common fundamental values and aspirations of peace, security and well-being to assign part of their sovereignty attributes to build a distinct institutional system to balance the interests and wills of the Member States. It is significant in this regard, the statement at art. 8 A according to which the Union operation that is based on representative democracy, meaning that "citizens are directly represented at Union level in the European Parliament: States are represented in the European Council by the Heads of State or Government and in the Council by their governments, themselves democratically responsible either to their national Parliaments, or to their citizens. Art. 9 has changed its content in the Treaty of Lisbon stating that the Union shall have an institutional framework to promote its values, accomplishment of objectives, serving its interests and citizens of the Member States and ensure the consistency, effectiveness and continuity of its policies and actions.

The Treaty, thus, provides a legal basis for the need to have a coherent institutional framework, able to accomplish the goals for which the Union was created as her successes are proofs of that people's needs in a more efficient manner. There is a "unit tax", that is a number of benefits that accrue to people's lives that would not have been able to get in the old formats of the States. Mindful to how the Union institutions relate to their citizens, the Treaty inserts art. 16 A which states that "to promote good governance and ensure the participation of the civil society, institutions, bodies and Union bodies are working in compliance with the highest possible degree the principle of openness, the political nature of the debates in the European Parliament and in the Council ( when it deliberates and votes on a draft legislative act).

*O. Baisné* and *R. Pasquier* stated that the legitimacy of European integration strengthens as it proves its ability to meet the needs of European citizens and more, to anticipate a number of requirements it may have. It is a real change in the national

political space in which European concerns make their way of generating political behaviors, beliefs and values that re-define the political posturing. It would exist, in the interpretation of the two authors, an institutionalization of community roles and rules within each Member State, a statement of the European issues by the national political class. (O Baisné et R. Pasquier, 2007)

Some authors, including *William Outhwaite*, think that after the introduction of the European citizenship occurs a mutation in the particular civil societies that could generate future a civil European society supported by Economic and Monetary Union, by euro, by policies designed to create a freedom, security and justice space. (William Outhwaite, 2000)

A second issue raised by the discussions on the democratic deficit are connected to the representativity of the European institutions and their personnel action. In this respect, it is considered that the democratic deficit would be expressed by a combination of factors:

1. The weakness of the European Parliament (despite increasing his powers after the signing of the Maastricht Treaty). The Council is the true European legislator. In particular, the European Parliament has no control over monetary and trade policy. Elections for the European Parliament record an increasing absenteeism rate: from 37% in 1979, the absence rate reaches 50.6% in 1999 and 55.4% in 2004, hence a lack of democratic legitimacy of the European Parliament.

2. Commission President is not elected, he is appointed by the heads of states and governments under a negotiation between the leaders of the European countries. Commission accumulates functions, so it has a monopoly on initiative right, it sets the application texts of decisions taken by the Council, it performs official duties in the field of competition and it also has the power to sanction.

3. Council members have democratic legitimacy, but the Council legislates on a Commission proposal that does not have its own democratic legitimacy.

4. Decisions made by a qualified majority on trade reveal exclusively from Commission, with secret and opaque intervention of the specialist committee and the lobby – exercised by the interested stakeholders.

Organization of powers is confusing because there are three executive bodies (Competition Commission, European Council and Council of Ministers), two legislative bodies (Council of Ministers and European Parliament) and the concentration of legislative and executive with the Council.

Contrary to the principle of separation of powers inherent in any democracy, the European Union is based on the distribution among the different institutions of features that contribute to the decision making process:

- Proposal belongs to the Commission; the Parliament has only a mere advisory role;
- the Council has decision-making power;
- the Court of Justice sets legal standards;
- the Court of Auditors checks finances;
- Central Bank sets monetary policy.

European construction is achieved through a democratic transfer of competences of the democratic States to a Commission subject to a weak democratic control, while the European Central Bank preserves absolute dominion over its monetary policy outside democratic control. The absence of debate, the Commission's power supported by the Committee 133, the independent role of the Central Bank, the Commission's submission to multinational agencies, the tendency to standardize the

economy, hegemonic tendency of large countries (France, Germany, UK) with respect to the small ones, the complicated language of the Treaties "neo-colonialism" of EU with respect to the South in WTO negotiations, they all complement a picture of Europe's democratic deficit.

The reformation of European institutions is not a simple adjusting to meet enlargement as it was tried by the Treaty of Nice. The reformation of the European institutions involves a fundamental break with Europe in the Treaty of Maastricht, Amsterdam and Nice. In this regard, it may be noted that the Treaty of Lisbon doesn't introduce spectacular provisions on institutional mechanism, but a series of tendencies are noteworthy.

The concept of European democracy is enshrined in Title II which provides provisions relating to the principles of democracy on which the European construction is designed: according to art. 8 the democratic equality is enshrined stipulating that "in all its activities, the Union shall respect the principle of equality of its citizens, who benefit from equal attention from its institutions, bodies and agencies; art. 8 enshrines the idea that the functioning of the Union shall be founded on representative democracy so that every citizen has the right to participate in the democratic life of the Union, and its decisions are made as openly and closer to the citizens, while respecting the principle of subsidiarity; the dual legitimacy of Union is enshrined, by the will of states to respect the precepts of democracy, but also by the will of the people, which leads to the assertion of the need to establish cooperation between national parliaments and the European Parliament to improve the mechanism of co-decision.

The Treaty of Lisbon defines especially three levels of democratic compliance will of the people of the Union, national, states and peoples and European level will have to be based on the will of citizens.

Article 8B explicitly requires as the European institutions to maintain a constant, open and transparent dialogue with the civil society, with all the stakeholders interested in solving European problems.

Citizen initiative is stimulated by the provision of section 4 of article. 8B which states that at least one million citizens who are nationals of a significant number of Member States may invite the Commission to draw up a proposal for a legal act deemed necessary.

It should be noted that according to art. 8C, the role of national parliament's increases in the construction of the Union, in its good operation, throughout the European public life, working together, ensures the principle of subsidiarity, assessing the European policies.

All these together includes the "democratic deficit" of the EU operation because it induces the "constitutionalization" of the ultra-liberal economic model, recorded mainly in the 332 articles of the third part of TEC (comprising a total of 448 items) ignoring other possible scenarios of the European construction.

**3. In conclusion:** The Community political system tends to come closer to the American or Swiss model, rather than the German model. These three systems coincide with the Community system in relation to the issue of central bank independence. In the latter case, the absence of a central government and parliamentary control allow the ECB to act only after their own logic imposed by the treaties, without knowing a counter - power. Even the implementation of a European government responsible in front of the European Parliament and of the European Council eventually, it would be on the transformation way of the current Union into a

federal entity, an inevitable stage as long as they would realize that the democratic deficit stems from the absence of such institutions.

The democratic deficit of the European Union must be judged in the light of the democratic ideal, which led to an ideal-type of political regime (in the Weberian sense of the term), being found itself in constant restructuring, with respect to the evolution of socio-political realities. A proof of this is the fact that altogether with the strengthening of the unity of the European peoples appeared new requirements of organization and management at the institutional level, to which the sequence of treaties tried to answer them. The Treaty of Lisbon is subscribed to this philosophy that will represent the basis of a future reforming treaty when the degree of European integration will increase.

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