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# The Different Angles of the European Democracy

## Chances and Challenges of Achieving Democratic Legitimacy in Europe

*The history of the institutionalised cooperation in Europe now looks back to more than seven decades. What differentiates this cooperation from other international organisations is the common heritage and destiny the European countries share and the community they have found in a high level of integration. However, since the very beginning of this cooperation, there have been debates about the best method and way to express common European positions. Part of this debate is the question of the democratic legitimacy of the Union institutions. As it is set out in Article 2 of the Treaty of the European Union, democracy is not only a fundamental value of the Member States, but also an expectation towards the European Union. Even though the institutional setting of the European democracy has gone a long way in the past seven decades, the question of democratic legitimacy is still being one of the key subjects and future challenges within the framework of the currently ongoing discussions on the future of Europe. There is no shortage of reform proposals, nevertheless, the main debate has been rather one-sided as it envisions only one avenue to decrease the so-called “democratic deficit” and strengthen the European policy space. What is the function of democracy in the context of the European integration and how can it represent a European position or serve as a check over the Union institutions? What institutions could be able to create a bridge between the peoples of the Member States and the European institutions? This paper seeks to outline the different responses to these questions. To this end, it outlines the theoretical background and institutional evolution of democratic legitimacy in the European integration while seeks to evaluate the current proposals and envision the alternative ones.*

**Keywords:** democratic legitimacy, subsidiarity, national institutions in the European cooperation, democratic deficit, European Council, parliamentary scrutiny, yellow card procedure, green card procedure

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## Introduction

Alexis de Tocqueville made his journey to the New World in 1831. Based on what he saw and experienced in the early decades of the United States that gained its independence not long before, he wrote his notable and influential book, *De la démocratie en Amérique* that later became popular both in America and in the old continent.<sup>2</sup> One of the main themes the book aimed to explore was the institutional and societal conditions that created the circumstances for democracy and democratic rule in America. In light of the more than seven decades long history and recent difficulties of the institutionalised European cooperation, one might rightly pose the question about the state of the democracy in Europe: its major differences from the American experience and the specific challenges to reinforce the democratic legitimacy of the European cooperation. This paper aims to offer a brief outline of the historical evolution and current dilemmas of democracy in Europe, and explore the competing alternatives of strengthening the democratic legitimacy of the institutionalised European cooperation.

Since the conception of the idea of uniting the coal and steel productions of France and Germany under one supranational organisation, the High Authority in the Spring of 1950, the question of democratic – parliamentary – overview or control has been continuously present in the debates about the institutional setting and decision-making process of the growing European cooperation. This is a cooperation that exclusively consists of parliamentary democracies: a fundamental requirement for the adhesion, and also a trademark of the cooperation. Furthermore, as the Member States agreed upon in the Founding Treaties, democratic legitimacy is a (legal) expectation towards the European institutions and their governance structure.<sup>3</sup> It is also a fundamental condition for those countries who wish to join the European integration according to the Copenhagen accession criteria that were adopted in 1993.<sup>4</sup>

Yet, one of the key questions throughout the development of the European integration has been the formation of an institutional avenue that is both receptive to a “European public opinion” and also capable of channelling or embodying their sentiments and views in the European governance structure. In other words, there has been numerous efforts – both successes and failures – for the past seventy years to form an institutional framework that gravitates “common European causes” and also willing to embrace and express them in European politics. Among the ultimate motivations (and justifications) of these efforts are that people across the integration can regard Europe as their own cause.

<sup>2</sup> TOCQUEVILLE 2007.

<sup>3</sup> According to Article 2 of the Treaty of the European Union: The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. In addition, “Article 2 TEU is not a mere statement of policy guidelines or intentions, but contains values which, as has been set out in paragraph 145 above, are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles” (see Judgement of 16 February 2022 in case C-157/21, *Poland v Parliament and Council*, ECLI:EU:C:2022:98, paragraph 264).

<sup>4</sup> See: [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/accession-criteria\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/accession-criteria_en) Also see Judgement of 10 December 2018 in case C-621/18, *Wightman and Others*, ECLI:EU:C:2018:999, paragraphs 62 and 63.



For multiple reasons, one of the most decisive turning points in the historical evolution of the European integration was the era of the Maastricht Treaty in the early 1990s. The period that led up to this era was centred around market integration and characterised by an economic focus and a strong emphasis on creating an effective internal market. However, at the same time, it was an era under the shadows of the Cold War: the artificial division of Europe and the military occupation in its Eastern part. The success of the market integration and the prosperity it brought served as a model, as well as a source of aspiration for those that remained east to the Iron Curtain. With the fall of the Iron Curtain and the inclusion of fields of political cooperation by the adoption of the Maastricht Treaty,<sup>5</sup> the European cooperation commenced navigating more autonomously. Its democratic legitimacy was gradually put to the test. Have the Union institutions been able to embody the public sentiment of the peoples in Europe? How responsive have they been? Can the European Parliament or other institutions of the European cooperation serve as a wide and fast avenue that is able to channel public – or citizen – opinions to the machinery of the Union institutions? Can such institutions truly reflect the voice of the Europeans as a whole? In light of the past one and a half decade, the response to these questions has been far from being positive. Since the Great Recession of 2008,<sup>6</sup> the European Union went through a series of external period of crises,<sup>7</sup> and was unable to give effective responses and, for the first time in its history, lost one of its strategically important Member States by the beginning of 2020.<sup>8</sup> Not only the appeal of the European integration has shrunk over the past three decades, but its institutions and especially the European Parliament remained ineffective and did not live up to the expectations of becoming a public debate forum for European cases that concern the question and challenges ahead of the integration, and thus effectively enhancing public acceptance and democratic legitimacy of the governance structure of the European integration.<sup>9</sup>

Against this background, the present paper will first provide a historical overview of the role and dilemma of democracy and democratic legitimacy of the European integration (II). As a result of both the long period of crisis and for the ongoing discussion on the expansion of the European integration, the question of democracy is in the focal point of the reform proposals around the European Union. Therefore, the paper will explore and evaluate these proposals that mainly concern the election and competence

<sup>5</sup> The Maastricht Treaty, signed in 1992 and entered into force in 1993, introduced the internal and external security questions (common foreign and security policy and the cooperation in justice and home affairs) under the institutional framework of the European integration and created the European Union. See the second part of this paper.

<sup>6</sup> The Great Recession of 2008 was the most severe economic downturn and financial meltdown since the Great Depression.

<sup>7</sup> The Great Recession was followed by the ongoing migration crisis since 2015, the coronavirus pandemic in 2020 and the outbreak and prolongation of the Russo–Ukraine war since 2022. Economic difficulties, competitiveness, energy scarcity, national and geopolitical security are now all on the table, and pose a grave challenge for the future success of the European cooperation.

<sup>8</sup> The United Kingdom is the second largest economy in Europe and strategically important in terms of its military and intelligence. See Statista 2024.

<sup>9</sup> The electoral turnouts have been generally low and – except for the 2014 European Parliamentary election – they show a decreasing tendency. See: <https://www.europarl.europa.eu/election-results-2019/en/turnout/>



of the European Parliament (III). Then, in a somewhat wider context, it will outline some alternative ways, especially the role of national parliaments to enhance democratic legitimacy of the institutional setting of the European cooperation (IV). The paper will end with a concluding section with a view to the future challenges (V).

The European integration arrived at a historical crossroad: in the face of a long external crisis period, it is struggling internally to offer effective responses, while its last major success was the eastward expansion more than fifteen years ago. One of the central questions of the way forward is how to strengthen the confidence of the European people in the effective role of the European institutions which raises the question of democratic legitimacy. This paper aims to contribute and enrich the ongoing scientific and political discussions about the approach of how to strengthen democracy in Europe.<sup>10</sup>

## The historical overview of the role and dilemma of democracy in the European cooperation

The democratic considerations were already present in the negotiations leading to the establishment of the European Coal and Steel Community (hereinafter: ECSC) in 1950. With forming the ECSC, the six founding Member States agreed to provide the arrangement of their national parliaments with oversight functions.<sup>11</sup> The “Consultative Assembly” of the Council of Europe that had been set up not long before served as a model for ECSC structure.<sup>12</sup> Accordingly, the Paris Treaty establishing the ECSC envisioned an “Assembly” – l’Assemblée – that consisted of 78 representatives of the Member States’ national parliaments,<sup>13</sup> and was given a relatively strong democratic control function including, for example, the right to refuse the annual reports of the High Authority.<sup>14</sup> This democratic legitimacy was constituted by the agreement of the Member States, and was embodied by their democratic bodies. While the Assembly turned out to be an efficient partner of the High Authority in solidifying the first steps of the European integration, its voice was rather hollow among the peoples, and thus unable to make it as a popular common cause.<sup>15</sup>

<sup>10</sup> For example, BAUME 2015 or WEILER et al. 1995: 4–39.

<sup>11</sup> It was the German Federal Republic who favoured and supported the introduction of democratic control of the national parliaments over the High Authority. See, for example, MIDDELAAR 2014.

<sup>12</sup> Articles 22–35 of the Treaty on the Council of Europe established the Consultative Assembly in 1949; see: <https://rm.coe.int/1680935bd0>. In 1994, the Committee of Ministers decided to use the “Parliamentary Assembly” denomination instead of the “Consultative Assembly”. Also, the idea of a “European Assembly” was proposed during the Hague Congress in May, 1948; see: <https://www.cvce.eu/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/5c35593d-484a-4f53-b0bd-a6605110c3b3>

<sup>13</sup> Articles 20–25 of the ECSC Treaty, see: <https://eur-lex.europa.eu/eli/treaty/ceca/sign>

<sup>14</sup> Article 23 of the ECSC Treaty.

<sup>15</sup> However, this was also due to the rather technical questions – relating to the production and pricing of coal and steel – it focused on.



Based on these early experiences, the Rome Treaty of 1957 also established a common “Assembly” for the European Communities.<sup>16</sup> The number of representatives was increased, and they were continued to be delegated by the national parliaments of the Member States.<sup>17</sup> While the competences of the newly formed Assembly were reduced compared to the Assembly of the ECSC, it was nevertheless entrusted with an important objective: to prepare the design of a European election with direct universal suffrage.<sup>18</sup> As a result of its decrease of competences, the centre of the decision-making power in the institutional cooperation lied with the Council of Ministers. It also served as an important avenue that includes the national political systems into the European affairs. The corresponding powers of the European Commission and the Assembly were diminished. Nonetheless, while the technocratic mindset and approach of the Commission was essentially important in the gradual formation of the internal market (and removing the barriers), the Assembly initially assumed an advisory role, and their opinions had no binding effects on the Council. Even though the actual competences were quite modest, the Assembly was envisioned to become a significant player in the future of the European integration: the Assembly is the representative of the peoples of the States<sup>19</sup> and, based on the creation of the European election, might later represent a single European electoral community.

The subsequent phase of the development was centred around a symbolic debate about how to call or designate the Assembly. With the adoption of its own “Rules of Procedure”, the Assembly began to declare itself a “Parliament” in March 1958, to show its aspiration to vindicate its role as the representative of the “European people(s)” as well as its legislative function. Both France led by President Charles de Gaulle and the United Kingdom led by Prime Minister Margaret Thatcher refused to give their approvals to this change and continued to call it “Assembly”. In their views, there has been no European sovereign people which a single parliament could embody. Against this backdrop, the Member States only agreed and thus authorised the usage of the name “European Parliament” in 1986, with the adoption of the Single European Act.<sup>20</sup> At the same time, the concept “democratic deficit” was also introduced into the European public discourse.<sup>21</sup> From that time on, it has been used to justify the reinforcement of the European Parliament and the expansion of its competences to reach an allegedly ideal “equilibrium” position vis-à-vis the European Commission and the Council. This

<sup>16</sup> The separate Assembly of the ECSC ceased its operation in 1958, and a common Assembly was established for the ESCS as well as for the European Economic Community and for the European Atomic Energy Community; available, for example: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf)

<sup>17</sup> Article 138 paragraph 2 of the Treaty of Rome, see: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:11957E/TXT>

<sup>18</sup> See Article 138 of the Treaty of Rome, “*L’Assemblée élaborera des projets en vue de permettre l’élection au suffrage universel direct selon une procédure uniforme dans tous les États membres.*”

<sup>19</sup> According to Article 137 of the Rome Treaty: *L’Assemblée, composée de représentante des peuples des États réunie dans la Communauté, exerce les pouvoirs de délibération et de contrôle qui lui sont attribuée par le présent Traité.*

<sup>20</sup> See the preamble of the document, The Single European Act is available: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/single-european-act> (accessed 30 December 2023).

<sup>21</sup> The concept was first used by David Ian Marquand in his book: *Parliament for Europe* in 1979.



aspiration was also facilitated by the introduction of the direct election of the representatives of the European Parliament from 1979.<sup>22</sup> That provided a basis of reference to stronger legitimacy for the European Parliament.<sup>23</sup> These developments set the stage for a period in which the European Parliament has demanded an increasingly significant role in the European governmental arrangement and legislative process that began its robust expansions beyond the market dimensions.

The events of world history also stepped in and opened new prospects in the horizon of the European cooperation. The geopolitical shift of great magnitude – including the collapse of the Soviet Union and a rival economic system, as well as the fall of the Iron Curtain and the possibility to reunite Europe – during 1989 and 1990 gave rise to rethinking and re-establishing the framework of the European cooperation. In a certain sense, the stake of these shifts was whether Europe could be able to stand on its own feet as an economic union and a political cooperation.<sup>24</sup> Germany was reunified, and as a result of an agreement between President François Mitterrand and Chancellor Helmut Kohl, the introduction of a common European currency and monetary policy became an objective.<sup>25</sup> But a perspective of a monetary union was still far from creating a framework for the political solidification of Europe. In these historical circumstances, Jacques Delors, then President of the European Commission envisioned a “*quantum leap*” and the need to transform the Commission into an executive that would be responsible to the democratic institutions of a future European federation.<sup>26</sup> Even though his proposal was considered detached from reality and from the aspirations of the Member States, this represented a watershed moment of history, and it was the Maastricht Treaty signed in 1992, which institutionalised this historical turning point.

With the adoption of the Maastricht Treaty, the Member States envisioned a European Union that rested on three different pillars – i.e. three different governance arrangements. Consequently, the institutional setting of the European Community did not apply to the areas of cooperation in foreign policy and matters of justice. The introduction of the co-decision procedure elevated the European Parliament to its long-desired role of co-legislator. The subsequent treaty revisions gradually expanded the legislative areas in which the co-decision competence applies, continuously strengthening the position of the European Parliament.<sup>27</sup> Yet, the continuous increase of its competence was not able to solidify the democratic legitimacy or acceptance of the whole European construction. The electoral participation, which was not only generally low, but also continuously decreased until 2019 and the European Parliament, was unable to

<sup>22</sup> It was a result of a compromise based on the demand of President Valéry Giscard D’Estaing: in exchange of introducing the direct election of Members of the European Parliament, the operation of the European Council was formalised.

<sup>23</sup> See BEESLEY 1963.

<sup>24</sup> It also marked the achievement of one of the underlying objectives – and the “*finalité politique*” – of the European integration, namely protecting the European countries’ cultural community against the spread of the hostile ideology of Soviet communism.

<sup>25</sup> See SAROTTE 2010.

<sup>26</sup> DELORS 1992: 335.

<sup>27</sup> The Treaty of Amsterdam in 1997 and the Treaty of Nice in 2001: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf)



become a true debate forum of the decisive questions that concern Europe.<sup>28</sup> It therefore continued to struggle to convey the will of the peoples of Europe.

As an attempt to use the mandate from the voters and sought to enhance the democratic characteristic of the integration, the European Parliament has tried to “politicise” the – otherwise technocratic – European Commission. In 2003 – on the 40<sup>th</sup> anniversary of the Elysée Treaty<sup>29</sup> – a Franco–German compromise offered a key opportunity for this. In exchange of establishing and institutionalising the position of president of the European Council, the European Parliament gained the competence to elect – based on the proposal of the European Council – the President of the European Commission.<sup>30</sup> Even though the European Parliament began to use its power, it did not lead to the reinforcement of the democratic legitimacy or the acceptance of the European construction. Nevertheless, this consideration set the stage for the further reform proposals outlined in the subsequent part of the paper.

In the meantime, what started in Maastricht in terms of the solidification of a political integration was supposed to end with the adoption of the Constitutional Treaty by the Convention on the Future of the European Union a little bit more than a decade later.<sup>31</sup> It was the ultimate test of widening the legitimate foundations of the European integration beyond the Member States and include the European citizens. Besides the Member States, the European citizens would have become the constituting power of the European Union. However, two referenda – organised in France and in The Netherlands – declined to accept the proposed new construction. The Constitutional Treaty failed and the process of Maastricht was not fulfilled: its constituting democratic foundations were refused. In a sense, the Member States continued to remain the master of the Treaties, and thus they continue to constitute the basis of democratic legitimacy of the European integration and their institutionalised cooperation also remained the political basis of the Union.

The current institutional structure is provided by the Lisbon Treaty signed in 2007, that, by amending the existing treaty structure, was designed to fill the necessary gaps the failed Constitutional Treaty had not been able to do. It terminated the pillar structure and thus the differences between the European Community and the European Union, and as a result, the process by which the European integration had become a political body ended. Even though the institutional settings remained the same from a democratic perspective, one of the noteworthy novelties of the Lisbon Treaty<sup>32</sup>

<sup>28</sup> The participation rate was 45.47% in 2004, 42.97% in 2009 and 42.61% in 2014; see: <https://www.europarl.europa.eu/election-results-2019/en/turnout/>

<sup>29</sup> The text of the Treaty is available: <https://www.fransamaltongvongeusau.com/documents/dl2/h6/2.6.3.pdf>

<sup>30</sup> This competence was institutionalised by the Lisbon Treaty reflected in Article 17 of the Treaty on the European Union.

<sup>31</sup> The Convention on the Future of the European Union by the Laeken Declaration of the European Convention in 2001. The purpose of the Convention was to draft a Constitutional Treaty for the European convention.

<sup>32</sup> Also, the Lisbon Treaty further increased the competence of the European Parliament by extending the codecision procedure. See: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf) Nevertheless, Article 10 of the Treaty on the European Union (introduced by the Lisbon Treaty) is considered more significant from the point of view of democratic foundations.



was that it declared – for the first time – that the European Parliament represents the citizens – instead of *the peoples of the States brought together in the Community*<sup>33</sup> – at the Union level.<sup>34</sup> This change has symbolic force in the eyes of the European Parliament. In the following decade, it used this mandate – as the next section of the paper will show in detail – to strengthen its position vis-à-vis the Member States. It tries to achieve what the European Convent and Constitutional Treaty failed to do so: to constitute European democratic legitimacy. In the meantime, however, the past experiences show that it continues to struggle to become a meaningful debate forum of European questions, thematise the European public discourse and gravitate the attention of the peoples across the continent.<sup>35</sup> Instead, most media and public attention rather focuses on the agenda and questions discussed during the negotiations of the European Council.

In parallel, the Lisbon Treaty also empowered the national parliaments to control over the principle of subsidiarity and encouraged interparliamentary cooperation. This is coupled with the introduction of the European Citizen Initiative. These point to alternative ways of strengthening democratic legitimacy in the European cooperation, which will be highlighted in section IV.

## The recent proposals to enhance democracy in the European Union

One of the last significant accomplishments in the history of the European integration was its eastward expansion in the 2000s that fulfilled the long-standing promise and objective of the change of regimes in the early 1990s.<sup>36</sup> It was also one of the opportunities for a reunited Europe to attain more autonomy or “strategic autonomy” as it has aimed to commence and solidify the political basis of the institutionalised European cooperation. However, the last long decade presented an unprecedented series of crises and many external challenges to the European cooperation. In the face of – and also by using – these challenges, the European Parliament – and in some cases along with other European institutions – has aspired to formulate various proposals in an attempt to establish its own legitimacy – by envisioning the notion of the “European people” – from top to bottom, as well as to enhance its own position in the institutional setting of the European integration and vis-à-vis the Member States.

<sup>33</sup> Article 189 of the Maastricht Treaty (Nice consolidated version): “The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty.”

<sup>34</sup> Article 10 of the Treaty on the European Union: “1. The functioning of the Union shall be founded on representative democracy. 2. Citizens are directly represented at Union level in the European Parliament.”

<sup>35</sup> See, for example, BOROŃSKA-HRYNIEWIECKA 2017: 248.

<sup>36</sup> The German Chancellor, Helmut Kohl pointed out in 1989 that the unification of Germany and the unification of Europe are the two sides of the same coin, see for example: <https://www.robert-schuman.eu/en/european-issues/0582-europe-as-a-power-european-sovereignty-strategic-autonomy-a-debate-that-is-moving-towards-an>





During the 2019–2024 term, the European Parliament has discussed and prepared numerous documents and initiatives that aim not only to solidify but also to expand its competences and scope of actions along with the possible establishment of its institutional legitimacy. In its report on the stocktaking of the European elections, the European Parliament already emphasised its determination to reform the democratic process and institutional arrangement of the European Union.<sup>37</sup> The proposed changes to the European electoral system have included the introduction of the “lead candidate system” (“*Spitzenkandidaten*”)<sup>38</sup> as well as the “transnational list” as the hallway of a so-called European political space.<sup>39</sup> A related institutional question and proposal of the European Parliament is the shift in the role of the European Commission that continues to assume a more political character and responsibility towards the Parliament, while the Council undergoes a gradual transformation and becomes a second legislative chamber of the Union.<sup>40</sup> These initial considerations were further detailed in subsequent parliamentary documents. Accordingly, a separate report has been adopted about the election of the members of the European Parliament by direct universal suffrage.<sup>41</sup> The motion aimed to introduce a Union-wide constituency from which members are elected on the basis of transnational lists.<sup>42</sup> The European Parliament also adopted a resolution on its right of initiative.<sup>43</sup> The resolution reflects the longstanding demand of the majority of the European Parliament to acquire the competence to a general direct right of legislative initiative which would reflect – in their views – the nature of the institution. Interestingly, one of the main starting points of the resolution is the comparison of the constitutional traditions and systems of the Member States with the position of the European Parliament.<sup>44</sup> However, setting the Member States’ governmental arrangements as an explicit objective to where the European Parliament shall aspire and position itself accordingly is somewhat misconstrued or misleading, since neither the Founding Treaties nor their interpretations by constitutional courts envision such an objective.<sup>45</sup> Even though the resolution refers to it,<sup>46</sup> it fails to elaborate on or show the reasons why the direct right of initiative in itself enhance the democratic legitimacy of the European

<sup>37</sup> European Parliament 2020b.

<sup>38</sup> See NAVRACSICS 2020: 7–28.

<sup>39</sup> See paragraphs W) and AD) as well as paragraphs 14–15 and 20 of the European Parliament resolution on stocktaking of European elections.

<sup>40</sup> See paragraphs U) and 21 of the European Parliament resolution on stocktaking of European elections.

<sup>41</sup> European Parliament 2020c. It was followed by the 2015 electoral law reforms proposal: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_IDA\(2015\)558775](https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2015)558775)

<sup>42</sup> See especially European Parliament 2020c, paragraph 19.

<sup>43</sup> European Parliament 2022a.

<sup>44</sup> See paragraph B) and points 1 and 3 of the explanatory statement of the resolution on the Parliament’s right of initiative.

<sup>45</sup> For example, in this decision on the Lisbon Treaty, the German Constitutional Court emphasised that peoples of the Member States retain the “democratic self-determination of a constitutional State” and therefore the European Parliament does not represent European people [Bundesverfassungsgericht – BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1 – 421)]. Likewise, the Hungarian Constitutional Court also stressed that the Lisbon Treaty had not established a “superstate” and the national parliaments – based on restrictive and constitutional principles – actively control the common exercises of the competences of the European Union [Constitutional Court Decision no. 143/2010 (14.VII.)].

<sup>46</sup> See paragraphs 24–26 of the resolution on the Parliament’s right of initiative.



Parliament. Rather than exploring the question of the democratic debates of common European interests, the resolution focuses on a narrow question, namely the potential disciplinary role in rule of law and democracy debates on Member States and national governments as point of justification to introduce the general right of initiative.<sup>47</sup> The European Parliament also debated a resolution on the statute and funding of European political parties and European political foundations.<sup>48</sup> The proposed resolution strengthened the transnational dimension of the European political parties by the establishment of European authority or other requirements that support these objectives.

Beyond the recommendations and efforts of the European Parliament, the Conference on the Future of Europe that was organised between 2020 and 2022 also put forward similar conclusions.<sup>49</sup> The proposals that were adopted all point to the direction of an explicit “federalisation”,<sup>50</sup> even though some of the recommendations mention the involvement of national political institution into the European politics.<sup>51</sup> The introduction of an EU wide – transnational – electoral list, the leading candidate system and the legislative initiative have been recurrent themes.<sup>52</sup> It also suggests the restructuring of the European institutions in a way to reflect the functions of a sovereign state.<sup>53</sup> The overall objectives of these recommendations are to create an autonomous European public space, strengthen its legitimacy and makes it more independent from the Member States by relying directly on the citizens. To this end, the recommendations include the re-opening of a discussion about a constitution<sup>54</sup> and re-launching the European Convention.<sup>55</sup>

Last but not least, the Franco–German Working Group on EU Institutional Reform (hereinafter: Franco–German Reform Paper) published in September 2023 contains a separate section on the European-level democracy, as it considers as one of the parts of the “heart of the debate” about the future of Europe.<sup>56</sup> The starting point of the Franco–German Reform Paper is that a continued “parliamentarisation” is needed as the “European elections remain largely focused on national issues with low visibility” since the “European (transnational) dimension of the European parliamentary election” is feeble.<sup>57</sup> However, instead of insisting on the proposition of the lead-candidate system, the Franco–German Reform Paper suggests an interinstitutional negotiation and agreement in regard to the election of the President of the Commission.<sup>58</sup> It admits that the instruments of participatory democracy – such as the European Citizen’s Initiative,

<sup>47</sup> See paragraph 5 of the resolution on the Parliament’s right of initiative.

<sup>48</sup> European Parliament 2022b.

<sup>49</sup> The Conference on the Future of Europe was a joint initiative by the European Parliament, the Council of the EU and the European Commission, launched on 10 March 2021. See: <https://www.consilium.europa.eu/en/policies/conference-on-the-future-of-europe/>

<sup>50</sup> Conference on the Future of Europe 2022: 79–84.

<sup>51</sup> Conference on the Future of Europe 2022: 84.

<sup>52</sup> See Conference on the Future of Europe 2022: 81, proposal no. 39.

<sup>53</sup> Conference on the Future of Europe 2022: 83.

<sup>54</sup> Conference on the Future of Europe 2022: 83.

<sup>55</sup> Conference on the Future of Europe 2022: 84.

<sup>56</sup> Franco–German Working Group on EU Institutional Reform 2023.

<sup>57</sup> Franco–German Working Group on EU Institutional Reform 2023: 26.

<sup>58</sup> Franco–German Working Group on EU Institutional Reform 2023: 27–28.



the petitions of the EP etc. – are underutilised and proposes their reinforcement also in areas that are traditionally belong to the domains of the Member States such as treaty reform or enlargement.<sup>59</sup> However, considering the politically controversial nature of the transnational list, the Franco–German Reform Paper rejects the idea for the time being.<sup>60</sup>

The common focus and directions of these reform aspirations to enhance democratic legitimacy is to increase the legitimacy of the inner or supranational institutions – especially the European Parliament and the European Commission – of the European Union by reducing their attachments to the institutional cooperation of the Member States and by strengthening the reliance on a transnational – or a Pan-European – political space and a hypothetical citizenry that are separate from the Member States' arrangements. Consequently, to a greater or lesser extent, they all propose in some forms the continuation of the failed Constitutional Convention of the early 2000s. Their main logic is that if the institutional setting is created from above, then the inner legitimacy will follow suit sooner or later. However, these proposed directions have difficulties to justify the link between the inability of the European Parliament to embrace questions of European interests, or becoming the main forum of debates on European questions and the lack of its transnational democratic legitimacy. Nor are they able to well justify that through a transnational political space, the European Parliament will be able to attract the attention of the peoples of Europe. Furthermore, these theoretical proposals also take it for granted that a single and Pan-European public space can emerge from Europe. In fact, despite all the efforts, the historical experience shows otherwise: since the beginning, the European public space has been built on the multitude of national political space and debates. The continuous increase of the competences of the European Parliament does not necessarily follow democratic legitimacy and voters' attention.

## **Alternative way(s) to increase democratic legitimacy: establishing the democracy of democracies**

One of the essential characteristics of the European cooperation is that its Member States are all constitutional democracies. This is also a basic condition of the adhesion to the European cooperation according to the Copenhagen Criteria.<sup>61</sup> As a result, it is a cooperation of existing and functional national democracies that form and operate according to their own national public debates and public spaces. Furthermore, these national political systems have been integral parts of the institutionalised European cooperation, and have shaped its political directions.

These national democratic forums have found – and been provided – ways into the institutionalised European constructions and decision-making process since their early foundations. The Special Council of the Ministers was composed of national ministers,

<sup>59</sup> Franco–German Working Group on EU Institutional Reform 2023: 28.

<sup>60</sup> Franco–German Working Group on EU Institutional Reform 2023: 26.

<sup>61</sup> See part I.



which became the predecessor of the Council of the European Union. The members of the democratically elected governments assumed legislative role since the early beginnings. The institutionalisation of the European summits within the framework of the European Council in 1974<sup>62</sup> not only provides a common platform for strategic governance of the European integration, but also serves as an important – and at the same time visible – bridge connecting the peoples of the Member States and the European institutions, and thus continuously infusing democratic legitimacy. In those circumstances, the democratic legitimacy lies in the democratic responsibility and accountability of the heads of states or governments to their national parliaments and peoples.<sup>63</sup> The parliamentary scrutiny is a fundamental guarantee of the separation of the constitutional functions between the executive and legislative powers that also include – albeit to a different extent – the scrutiny of the government participation in the institutional European cooperation. The extent of this scrutiny depends on the concrete constitutional setting and parliamentary tradition of the Member States. The Danish parliament, the Folketing for example has broad mandate to shape or determine the position of the Danish government in questions of European cooperation.<sup>64</sup> Therefore, in general terms, by increasing the scope and actual power of the parliamentary control and the oversight over the adoption of the government position, the governmental participation in the European decision-making will enjoy larger democratic legitimacy. This is all the more important since a fundamental constitutional requirement is that binding legal regulations or acts – including the European regulation – must be originated from the ultimate source of public authority that is popular sovereignty.

The engagement and oversight functions of the national parliaments are quite significant in terms of the characteristics of the European Council. It is the institutional forum that is in the position to decide the common political directions and development of the European cooperation. Furthermore, the regular summits of the heads of states and governments offer the attractions of the European politics that can gravitate the most media and popular attention. Among the few things that most people across the European countries are interested in, regarding European politics, are the debates lasting into late night, bargaining and hard compromises of the European Council meetings.<sup>65</sup> The European Council therefore gives significant actions by providing a forum to discuss the common questions and raise the interests of the peoples in European politics.

The second avenue for the national political systems to participate in the European politics is the more direct forms of participations of domestic parliaments in which they would represent a counterweight to the interests of the supranational institutions, such as the European Parliament or the Commission. Instead of providing democratic legitimation of the governmental cooperation, in this scenario the national parliaments would serve as a check on the supranational aspirations and might embody a “second chamber” of the European Parliament. Since 1989, the Conference of Parliamentary Committees

<sup>62</sup> See: <https://www.europarl.europa.eu/factsheets/en/sheet/23/the-european-council>

<sup>63</sup> See Treaty of Lisbon (2007/C 306/01) Article 8 A, paragraph 2: “Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.”

<sup>64</sup> See Article 19 paragraph 3 of the Danish constitution.

<sup>65</sup> See KALAS 2022: 53–69.



for European Union Affairs (COSAC) provided a consultative forum for members of the relevant committees of the national and European Parliaments. In addition to this, the Conference of the National Parliaments of the European Communities composed of the members of the national and European Parliaments, however, despite of an ambitious launch in the aftermath of the fall of the Berlin Wall, only held one meeting in November 1990. The difficulty of institutionalising this role of the national parliaments mainly lies in the opposition of the supranational institutions such as the European Parliament and the European Commission. As it was shown in the previous section, in the view of the European Parliament the citizens are represented by them while the Council should gradually evolve into a second chamber. However, their opposition has not taken into account that the European Parliament is yet unable – or at least has serious difficulties – to represent the interests or aspirations of the peoples of the Member States.

Certain roles of the national parliaments would have been introduced in the failed Constitutional Treaty and was introduced in the Lisbon Treaty.<sup>66</sup> The early warning system (hereinafter: EWS) or yellow card procedure have included the national parliaments in the European legislative process by providing them with the right to indicate whether a legislative proposal would fall under national competence and exceed the competence of the European Union. In this way, the national parliaments gained a right of subsidiarity control: the European Commission is required to send the “draft legislative acts” to the national parliaments who have eight weeks to formulate their opinions. If one third of the national parliaments state an objection, then the European Commission is required to review the draft legislation, however, the reasoned opinions of the national parliaments remain non-binding.<sup>67</sup> The EWS failed to live up to the original expectations: it has only been activated three times, and in none of these three occasions did the yellow card prompted the European Commission to withdraw its proposal based on subsidiarity control.<sup>68</sup> The EWS has been criticised for its weaknesses, including the short scrutiny period and the insufficient Commission feedback on parliamentary reasoned opinions.<sup>69</sup>

While the EWS put the national parliaments in a counterweight role, a fairly new initiative by some of the national parliaments called “green card” procedure could provide a more proactive role by granting them the indirect right to initiate legislative acts. The introduction of the green card procedure was first formulated in the 2013 COSAC meeting in Dublin.<sup>70</sup> Based on a green card initiative, the national parliaments can invite the European Commission to develop legislative initiatives and therefore are provided a greater influence on shaping the development of EU policies. As an indirect legislative mechanism, it can be dispatched within the infrastructure of the existing

<sup>66</sup> See Protocol (No 2) to the Treaty on the European Union on the application of the principles of subsidiarity and proportionality.

<sup>67</sup> In the case of the “orange card” procedure, the reasoned opinions of the national parliaments represent at least a simple majority of all the votes allocated to them, the European Commission must review the proposal and decide whether to maintain. See Protocol (No 2) to the Treaty on the European Union on the application of the principles of subsidiarity and proportionality.

<sup>68</sup> See European Parliament 2022a.

<sup>69</sup> BOROŃSKA-HRYNIEWIECKA 2017: 248.

<sup>70</sup> „[...] national parliaments should be more effectively involved in the legislative process of the EU not just as the guardians of the subsidiary principle but also as active contributors of that process.” Contribution of the XLIX COSAC Dublin, 23–25 June 2013.



political dialogue without Treaty modification. Even though the smooth application of the green card procedure might require the modification of some of the EU and national constitutional provisions,<sup>71</sup> it can reinforce the connection between the EU and the peoples of the Member States by further involving the national political systems into the European cooperation. These institutional involvements therefore might also contribute to strengthening the democratic legitimacy of the European integration by offering the construction of procedural and institutional frameworks that can effectively reach out to the peoples of the Member States, and channel their viewpoints into the European decision-making and policy space. This, of course, stems from the recognition that the European Parliament has been struggling to embody the voices or channel the interests and aspirations of these peoples, nor has it been seen as their “own parliament”. Also, from the experience that the concept of the “European citizen” does not coincide with the peoples of Member States. But this made the national political systems rival in the eyes of the European Parliament as this development might be seen as positioning one parliamentary system against the other.<sup>72</sup>

The involvement of national political systems – both the parliamentary scrutiny of the European Council and the legislative or supervision role of national parliaments – endeavour to remedy the lack of democratic control and legitimacy, as well as establish political leadership in a European cooperation whose scope has expanded beyond the economic and market integration. However, it is pursuing a different approach. Instead of reinforcing the competences of the supranational European Parliament, it complements it by relying and building on the existing and functional national democratic institutions: it endeavours to create a “democracy of national democracies” and reveals that democratic legitimacy of the European cooperation has various angles.

## Conclusions

The question of democratic legitimacy has been increasingly present throughout the entire historical development of the European integration. On the one hand, members of the European cooperation are exclusively functional constitutional democracies, and it is considered as a basic requirement for accession. On the other hand, the notions of “democratic accountability” and “democratic deficit” aim to create the control of the supranational institutions of the European cooperation. The institutionalisation of the European Council and the introduction of the direct election of the Members of the European Parliament were both designed to shed better “democratic light” on the operations of the integration and make it more visible among the peoples and citizens of Europe. The watershed moment came with the fall of the Berlin Wall and of the Iron Curtain. The cooperation exceeded the framework of market integration and laid down the founding pillars of the political cooperation in the Maastricht Treaty. The Maastricht process would have fulfilled by the Constitutional Treaty that was designed to place the

<sup>71</sup> BOROŃSKA-HRYNIEWIECKA 2017: 254–257.

<sup>72</sup> The European Parliament rejects or at least is deeply suspicious about the institutionalisation of the national parliaments. See, for example, BOROŃSKA-HRYNIEWIECKA 2017: 259–260.



legitimacy of the European construction also on the European citizens. This process, however, was rejected.

At the same time, while the competences of the European Parliament has been continuously expanded in every treaty revision and it continues to be a central aspiration of the European Parliament since then, it remained largely unable – or at least has serious difficulties – to create the basis of democratic legitimacy of the European integration and become a central forum of questions of European interests. It is therefore questionable whether the current efforts and reform proposals of the European Parliament as well as of the supranational institutions can further enhance the democratic legitimacy of the EU only by themselves. Experiences show that the European public space is built on the existing national public spaces and democracies. Consequently, the involvement of national democratic and political systems including the national parliamentary control of the Council and of the European Council as well as the national parliamentary participation in the European decision-making process seem essential in enhancing democratic accountability. That can also complement the longstanding efforts of the supranational institutions to stand on stronger foundations. Strengthening the involvement of these systems and forums thus aim to give rise to the formation of a democracy of nations, while can also help the EU reinforce its own legitimacy vis-à-vis the citizens and peoples of Europe.

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