

Research Project
“European Studies for Democratic Citizenship”

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**DECISION-MAKING PROCEDURES OF THE
EUROPEAN INSTITUTIONS AND DEMOCRATIC
LEGITIMACY**
*HOW CAN DEMOCRATIC CITIZENSHIP BE EXERCISED ON
THE TRANSNATIONAL LEVEL?**

Report prepared for the Council of Europe

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Bibliography: Selected works on the question of European citizenship

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* The paper refers to the European Union. Unless stated otherwise, all references to European treaties and to the numbering of articles relate to the consolidated version of the treaties as amended by the Treaty of Amsterdam.

(I) The Concept of Citizenship in the European "Constitutional" System

In the history of political systems, democratic citizenship has been expressed and developed mainly on the level of the nation-state and its regional and local subdivisions. A paradigm for citizenship on the transnational level has not yet evolved. The concept of "cosmopolitan" citizenship is still a vague philosophical vision.¹ The application of citizenship on the level of a transnational entity (or intergovernmental organization) such as the European Union constitutes a new conceptual phase of the interpretation of basic notions of political theory. Joseph Weiler rightly emphasizes the challenge that this enlargement of the realm of application of the concept of citizenship constitutes to European legal and political thinking: "The traditional, classical vocabulary of citizenship is the vocabulary of the State, the Nation and Peoplehood. It is hard to think of the term unconnected to those concepts."² In transcending the boundaries of the state (and of state-centered constitutional law), the establishment of European citizenship undoubtedly constitutes a "conceptual revolution"³ in terms of contemporary theory of constitutional law and of the understanding of civil and political rights in Europe.

On the basis of the notion of the citizen as the source of sovereignty and legitimacy of any political entity (generally defined as the state), a variety of procedures have been designed to meet the requirements of democracy. Forms of representation through parliament and direct-democratic procedures such as the *referendum* are the basic organizational tools by which the citizen participates in public life on the level of the

¹ See David Held, *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*. Cambridge, Oxford: Polity Press, 1995.

² "Introduction: European Citizenship – Identity and Differentity," in: Massimo La Torre (ed.), *European Citizenship. An Institutional Challenge*. The Hague, London, Boston: Kluwer Law International, 1998, p. 1.

³ Paul Maignette and Mario Telò in: Paul Maignette (ed.), *De l'étranger au citoyen. Construire la citoyenneté européenne*. Paris, Brussels: De Boeck Université, 1997, p. 12.

nation-state. Since the French Revolution, the dichotomy of direct and representative democracy has been constitutive for the European discourse on the ideal political system. On the basis of this European experience, one might formulate as a general maxim of democratic citizenship: “*As much direct participation as possible, as much representation as necessary.*”⁴

In the reality of European politics however – and this also refers to the level of the nation-state – we witness the predominance of the representative model of decision-making which often *excludes* the direct participation of the citizen in public affairs. Irrespective of this fact of realpolitik, the genuine paradigm of democracy is that of direct or participatory democracy to which all other forms of exercising the political will are related insofar as they aspire to a form of “democratic legitimacy.”⁵

So far, democratic legitimacy has been the property of the nation-state. Because of the traditional connection of the concepts of “citizenship” and “state,” citizenship on the transnational European level implies that the “constitutional” structure of the European Union is interpreted in the sense of a state-like entity in a federalist context.⁶ All complaints about a so-called lack of democracy in the European Union implicitly construe a state-like character of this transnational entity.

While the Council of Europe comprises the political entities (states) of the whole of Europe and, thereby, represents the very European identity

⁴ See Werner Maihofer, “Abschließende Äußerungen der Herausgeber,” in: Ernst Benda, Werner Maihofer, Hans-Jochen Vogel (eds.), *Handbuch des Verfassungsrechts der Bundesrepublik Deutschland*. Berlin: de Gruyter, 1983, p. 1411. (Trans. by the author.)

⁵ On the basic notion of democracy and the dichotomy of direct and representative forms of decision-making see the analysis by the author: “Democracy and Human Rights: Do Human Rights Concur with Particular Democratic Systems?,” in: Hans Köchler, *Democracy and the International Rule of Law. Propositions for an Alternative World Order. Selected Papers Published on the Occasion of the Fiftieth Anniversary of the United Nations*. Vienna, New York: Springer, 1995, pp. 1-17.

in the sense of Europe's social and cultural traditions, the European Union claims to be more than an intergovernmental structure with the aim of preserving the common heritage of human rights and democratic freedom. While the Council of Europe is truly representative of Europe as a geographical and cultural-historical unit, it does not aspire to form a transnational entity with decision-making powers transgressing national boundaries. In its intergovernmental structure it can better be compared to the United Nations Organization. It aims to define common legal and constitutional standards for a democratic polity in Europe, and it involves non-governmental organizations, citizens' movements and social forces on a broad basis. In this sense, it is an organization more oriented towards the vision of a "Europe of the peoples" but it does not constitute a realm of transnational politics and of supranational sovereignty in Europe.

This area of political and economic decision-making is left to the European Union which, however, is not representative of Europe as a whole. The European Union is still an exclusive entity which represents the political will of a minority of European nations but which nevertheless understands itself as the nucleus of a pan-European political reality. It is of special interest to the political thinker to analyze this new system of inter-state relations in Europe in regard to its compatibility with the basic requirements of democratic citizenship.

While an elaborate set of rules and procedures regulates the participation of the citizen in each European state (though mainly on the level of representation), the possibilities of participation in the decision-making process on the transnational European level are still very limited. In the framework of the European Union, only *indirect* participation of the

⁶ See Joseph Weiler, "European Citizenship – Identity and Differentity," loc. cit., pp. 1-24.

citizen seems to be possible in the present statutory framework. Apart from the fact that instruments of direct democracy, such as the *referendum*, do not exist in the procedural regulations of the European Union, the representative structures of decision-making are developed only in rudimentary form. Undoubtedly, the complex, multi-layer structure of the European Union "precludes the simple, mono-directional hierarchical flow of political authority" from the people to the government via elected representatives, which is the basic paradigm of Western parliamentary democracy.⁷ In comparison to national parliaments, the role of the European Parliament as a representative body is limited, to a large extent, to deliberative and consultative functions and, in specially described areas, to a kind of veto right vis-à-vis the power of the Council. The role of legislator, on the European level, is in reality played by the Council of the European Union, i.e. by the representatives of the executive branch of the member states.

In this constitutional system, where the national executive authorities collectively play the role of European legislator, the European Commission serves as the *de facto* executive authority upon which the Council has conferred "powers for the implementation of the rules which the Council lays down." (Art. 202 of the Treaty of Rome in the numbering of the Treaty of Amsterdam) Ironically, it is the functionaries of this executive branch who are entitled to the privileges traditionally connected with the exercise of the free mandate in parliament. In a certain sense, the role of the members of the European Commission is defined according to the principle of the "free mandate": "The members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties. In the performance of these duties, they

⁷ Nick Bernard, "Citizenship in a Polycentric Polity," in: Stratos V. Konstadinidis, *A People's Europe. Tuning a concept into content.* (EC/International Law Forum III) Aldershot, Brookfield (USA), Singapore, Sydney:

shall neither seek nor take instructions from any government or from any other body.” (Art. 213, Par. 2 of the Treaty of Rome) Being granted the privileges of the legislative branch together with the power of the executive branch, the European Commission plays a unique role outside a traditional democratic context. As argued by critics of the erosion of democracy on the European level, “[e]xpert sovereignty tends to prevail over popular sovereignty or parliamentary sovereignty.”⁸ The Commission's statutory commitment to the “common good,” the *volonté générale* “European style,” not only immunizes the Commission members against eventual pressures from the part of governments but shields them from any decisive influence from the part of the “official” legislative branch, the European Parliament (to say nothing of the citizens of Europe). Taking into consideration the all-encompassing powers of the Council according to Art. 202 of the Treaty of Rome which it exercises “to ensure that the objectives set out in this Treaty are attained,” one may fairly maintain that a division of powers, so essential not only for the rule of law but for a genuine democratic system, is nearly non-existent in the framework of the European treaties. It is no wonder that there exists widespread popular discontent with a “technocratic” model of European integration that is mainly shaped by the member states' executive branch on the basis of the initiatives of the European Commission.

In marked contrast to the general authority enjoyed by the Council and, in connection with it, by the Commission, the European Parliament is merely allowed to “exercise the powers conferred upon it” by the Treaty of Rome (Art. 189). As stipulated in Art. 192, those powers mainly relate to “giving its assent or delivering advisory opinions” and to the procedures

Ashgate/Dartmouth, 1999, p. 6.

⁸ Svein S. Andersen and Tom R. Burns, “The European Union and the Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance,” in: Svein S. Andersen, Kjell A. Eliassen, *The European Union: How Democratic Is It?* London, Thousand Oaks, New Delhi: SAGE Publications, 1996, p. 227.

laid down in Articles 251 and 252 of the Treaty of Rome. These two articles contain the only provisions for a role of the European Parliament as representative of the European *sovereign* (the citizens) albeit in the form of a *negative* power to veto an act of the Council based on a proposal of the Commission. Undoubtedly, some traces of a division of powers can be identified in these complex rules of Art. 251 and 252 which, however, only regulate the adoption of acts by the *Council* and only in matters where the articles are explicitly mentioned in the Treaty. The role of legislator is reserved to the Council; the Parliament is only allowed to play the role of giving its assent.

This is not a real division of powers (the Parliament has no power of its own anyway!), but rather it is a *pragmatic* system of checks and balances between the Council, the Commission and the Parliament for the adoption of acts specifically designed in the Treaty of Rome. The “negative” (reactive) power of the European Parliament (amounting to a kind of veto right in matters specifically mentioned in the Treaty) is a far cry from the requirements of democratic citizenship on the European level. The institution of an *Ombudsman* appointed by the European Parliament (Art. 195 of the Treaty of Rome as inserted by Art. G [41] of the Treaty on European Union) and the right of the citizens to address a petition to the European Parliament (Art. 194) do nothing to change the balance in favor of genuine citizens’ rights. The only competence of the *Ombudsman*, according to the provisions of the Treaty, is to submit reports on citizens’ complaints to the concerned authorities and to the European Parliament.

(II) The Treaty on European Union and its Implications for Democratic Citizenship

In regard to democratic citizenship, the “Treaty on European Union” as originally established by the Treaty of Maastricht and amended by the Treaty of Amsterdam, creates high expectations that cannot be met by the realities of the provisions of the amended versions of the *Treaties establishing the European Communities*.⁹ Those expectations have been fed by declarations of European leaders preceding the Treaty of Maastricht. In a joint letter, dated 6 December 1990, to the then Italian presidency of the EC, President François Mitterrand and Chancellor Helmut Kohl had called for enhancing the powers of the European Parliament and for the creation of a common European citizenship.¹⁰ The Treaty on European Union (Treaty of Maastricht) in Art. 1 (numbering of the Treaty of Amsterdam) obliges the contracting parties to make decisions “as closely as possible to the citizen.” It furthermore commits the Union (in Art. 2) “to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union.” This is in conformity with the original Art. 8 of the Treaty of Rome (Art. 17 in the version of the Treaty of Amsterdam) which states that “[e]very person holding the nationality of a Member State shall be a citizen of the Union.”¹¹ In addition to the formulations of the Treaty of Rome, the Treaty of Amsterdam, in its Art. 17 (1), states that “[c]itizenship of the Union shall complement and not replace national citizenship.” This new

⁹ For a detailed description and analysis of the history and interpretations of the Maastricht Treaty see Michael J. Baun, *An Imperfect Union. The Maastricht Treaty and the New Politics of European Integration*. Boulder/Co., Oxford: Westview Press, 1996.

¹⁰ See the full text of the letter in: Finn Laursen and Sophie Vanhoonacker (eds.), *The Intergovernmental Conference on Political Union: Institutional Reforms, New Policies, and International Identity of the European Community*. Dordrecht: Martinus Nijhoff, 1992, pp. 313f.

¹¹ On the concept of European citizenship in the legal, political and social framework of the European Union see esp. Massimo La Torre (ed.), *European Citizenship. An Institutional Challenge*. The Hague, London, Boston: Kluwer Law International, 1998; Siofra O’Leary, *The Evolving Concept of Community Citizenship. From the Free Movement of Persons to Union Citizenship*. The Hague, London, Boston: Kluwer Law International, 1996;

formulation, though improving the definition of citizenship, still does not clearly "disassociate" Union citizenship from member state nationality.¹² It falls far short of the expectations originally put into the Intergovernmental Conference in 1996. The Treaty of Amsterdam further commits the member states (in Art. 2) "to maintain and develop the Union as an area of freedom, security and justice." Notwithstanding the lack of a clear commitment to a kind of supranational European citizenship *sui generis*, these formulations, taken at face value, stipulate the establishment of transnational democracy on the European level.

Furthermore, as provided for in Art. 5 (new numbering) of the Treaty of Rome and in Art. 2 of the Treaty on European Union (in the version of the Treaty of Amsterdam), the principle of *subsidiarity* is one of the guiding rules for the achievement of the objectives of the European Union. This makes it necessary for the Union to act "only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States." (Art. 5 of the Treaty of Rome) If meticulously followed, this would guarantee that the citizens more actively participate in decisions on the national, regional and local level where their interests are directly affected.

In the present political reality, the rights granted through European citizenship are very limited, and the space for democratic action is unavoidably restricted because of the rudimentary form of the transnational European concept of citizenship. The basic characteristics of citizenship, even in the era of the Treaty of Amsterdam, are still confined to the level of national decision-making procedures. Citizenship on the European level includes the right to elect the members of the European

Paul Magonette (ed.), *De l'étranger au citoyen. Construire la citoyenneté européenne*. Paris, Brussels: De Boeck Université, 1997.

Parliament and the right to be elected to the Parliament (within the area of one's own nation-state or, with certain reservations, in the member state in which the European citizen resides even if he is not a national of that state) and the right to participate in the municipal elections in the member state in which the European citizen resides even if he is not a national of that state (Art. 19 of the Treaty of Rome), the right to address a petition to the European Parliament, and the right to appeal to the European Ombudsman (an office attached to the European Parliament) (Art. 21). Thus, European citizenship grants the citizen the basic democratic rights on the *local* and *national* but not on the *European* level. As stated by Siofra O'Leary in a comprehensive analysis of the evolving concept of EU citizenship, the civil and political rights vaguely introduced by the concept of European citizenship "do not necessarily reduce the Community's democratic deficit or improve citizen participation in decision-making."¹³

On the transnational level, European citizens, in spite of the "regional" flexibility provided for in Art. 19 of the Treaty of Rome in regard to the exercise of their rights, are still more or less "departmentalized" along national lines while the powerful economic lobbies and other interest groups have already organized themselves on the transnational level. Citizens' democracy is replaced by a "*de facto* democracy of organized interests, lobbies and representatives of organizations."¹⁴ In contrast to Art. 191 of the Treaty of Rome (which emphasizes the importance of political parties at the European level and states that such parties contribute "to expressing the political will of the citizens of the Union"), there exist no such parties yet on a pan-European level; there is no *effective* representation of citizens' interests on the European level. Whatever representation of citizens' interests exists, it is

¹² Siofra O'Leary, op. cit., p. 309.

¹³ Op. cit., p. 309.

mediatized through the national political structures of the member states. The members of the European Parliament themselves have to define their loyalties vis-à-vis political parties in their respective nation-state. The departmentalized, segmented representation of citizens in the European Parliament (on the basis of the nation–state that is still the fundamental political reality within the framework of the European treaties) is itself very weak in comparison to parliamentary representation on the national level of the member states. Real democracy in the sense of citizens' involvement in public affairs requires a kind of *public space* which, at present, only exists on the level of the nation-states whose national identities the Treaty on European Union explicitly pledges to respect (Art. 6, Par. 3).

For those who believe in the predominance of the nation-state in regard to the exercise of political rights, there obviously exists no "democratic deficit" in the European Union. On the basis of such a philosophy, President François Mitterrand declared in November 1990 that no lack of democratic legitimacy existed in the EC since "true democracy" was represented by the role of independent democratic states in the Council of the European Union. In apparent contrast to the contents of his letter mentioned above, he placed the main emphasis on the traditional role of the nation-state as a sovereign entity, clearly distancing himself from a federalist vision of Europe in which alone the concept of European citizenship could develop its full meaning.¹⁵ Quite understandably, those theorists who define the legal nature of the European Union on the exclusive sovereignty of the nation-state members do not see any problem of legitimization. They speak of a "double democratic legitimization" in regard to the European Parliament and the Council of the European

¹⁴ Svein S. Andersen and Tom R. Burns, *op. cit.*, p. 229.

¹⁵ See *Economist*, November 3, 1990, p. 56.

Union.¹⁶ For those however, who, in their evaluation of the European Union, go beyond the framework of the nation-state, the lack of democratic legitimacy of the EU consists (a) in the limited accountability of its decision-making institutions to democratically elected representatives, and (b) in the lack of transparency of the decision-making procedures in general.

As we can see from the rules defining the competence of the Council and the Commission in the Treaty of Rome, the role of European “sovereign” is generally played by the Council with the Commission as plenipotentiary (but definitely not by the citizens of the Union themselves). The Commission plays the key role with the nearly exclusive right to initiate legislation.¹⁷ This creates a kind of *bureaucratic space* of pan-European action much to the detriment of European democracy. The nation-states remain the sovereign actors in the European Union. This is also true in regard to the role of the European Council (as distinct from the Council of the European Union) established by the Treaty on European Union. The European Council, consisting of the Heads of State and Government of the Member States and the President of the European Commission, “shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.” (Art. 4 in the numbering of the Treaty of Amsterdam) The European Parliament is entitled to receive a report after each of the European Council’s meetings as well as a “yearly written report.” The Parliament has no special competence in the general framework of the Treaty on European Union (original Treaty of Maastricht).

¹⁶ Winfried Kluth, *Die demokratische Legitimation der Europäischen Union. Eine Analyse der These vom Demokratiedefizit der Europäischen Union aus gemeineuropäischer Verfassungsperspektive*. Berlin: Duncker & Humblot, 1995, p. 114.

¹⁷ See Svein S. Andersen and Tom R. Burns, op. cit., p. 231.

Instead of an elaborate division of powers (the characteristic of the rule of law) there only exists an informal system of checks and balances in which the citizens of Europe are not directly involved. Through the European Council (in the general framework of the European Union) and through the Council of the European Union (the "Council" in the framework of the Treaties establishing the European Communities), it is the executive branches of the nation-states that constitute the source of power and legal order in the Union. The Council acts as the *de jure* and *de facto* legislature; the Parliament is a legislative body only by name.

The identity of legislative and executive powers as incorporated by the Council resembles the lack of a real division of powers in another intergovernmental entity: the United Nations Organization, where the Security Council absorbs not only legislative and executive but also judicial powers on the global level.¹⁸ The predicament of the European Union consists precisely in its basic structure of being a supra-national entity in the form of the European Communities (or an intergovernmental agreement in the form of the Treaty on European Union) where the executive branches of the signatory powers exercise the basic influence and where the Commission (as the executive branch) enjoys a kind of legal and political immunity (similar to the "free mandate" of national legislatures) which places it apart from the concerns of citizens, whether on the national or pan-European level.

The "democratic deficit" of the European Union exists precisely in this "growing gap between the power and authority of the EC institutions, as more and more aspects of national sovereignty are transferred to the European level, and the ability of the citizens of European countries to

¹⁸ See Hans Köchler, "Democracy and the New World Order," in: *Democracy and the International Rule of Law*, pp. 37-59.

exercise supervision and control over Community decisionmaking through their elected representatives, whether national parliaments or the [European Parliament]."¹⁹

Because of the European Union's multi-layer structure and combination of supra-national and intergovernmental elements in decision-making, the citizens' will is much more *mediated* on the European than on the national level of each member state. This is one of the basic reasons for the lack of democratic legitimacy and credibility of European institutions. Although the European Union addresses this basic problem of the weakness of its own representative structures, among others, in the "Protocol on the Role of National Parliaments in the European Union" (annexed to the Treaty on European Union) and encourages, according to the Protocol, "greater involvement of national parliaments in the activities of the European Union," the measures proposed are more of cosmetic than of substantive procedural nature. They mainly relate to a better flow of information with regard to making available all "Commission consultation documents" to the parliaments of member states and to forwarding "Commission proposals for legislature as defined by the Council" to the governments of member states that in turn make them available to the national parliaments "as appropriate." Even where the flow of information on proposals for European legislature is concerned, the executive branches of member states are given priority, as it is left to them to share the information with their own legislature.

It is often argued that the national parliaments are among the losers of the European integration process and that "deparliamentarization" is

¹⁹ Michael J. Baun, *An Imperfect Union. The Maastricht Treaty and the New Politics of European Integration*. Boulder/Co., Oxford: Westview Press, 1996, p. 86.

characteristic of this very process.²⁰ Those concerned about the lack of democratic legitimacy in the framework of the European Union call for an "awakening" of national parliaments with regard to the decision-making on the European level.²¹ In an analysis on the impact of European Union membership on the political structure in the new member state Austria, it is argued that Union membership has only strengthened the national executive branch and bureaucracy at the expense of the Austrian parliament.²² It is stated that, in the first three years of Austria's membership, not even in one single case (related to decisions on Austria's EU affairs) did the initiative come from the Austrian parliament.²³ National legislatures, it is argued, are not in a position to match – or counterbalance – the overwhelming power and influence of the European institutions or even to control effectively the European policies of their respective governments.

(III) The Requirements of Democratization on the European Level

Summing up the political and constitutional realities, one can say that the member states of the European Union, by the provisions of the Treaty of Amsterdam (as amending the Treaty of Maastricht and the Treaties establishing the European Communities) have created high expectations of *democratic European citizenship* which they cannot fulfill in the present constitutional framework either of the European Communities as supranational organizations or of the European Union as

²⁰ Wolfgang Wessels and Dietrich Rometsch, "Conclusion: European Union and national institutions," in: Wolfgang Wessels and Dietrich Rometsch (eds.), *The European Union and Member States. Towards Institutional Fusion?* Manchester, New York: Manchester University Press, 1996, p. 362.

²¹ Op. cit., p. 336.

²² Gerda Falkner and Wolfgang C. Müller (eds.), *Österreich im europäischen Mehrebenensystem. Konsequenzen der EU-Mitgliedschaft für Politiknetzwerke und Entscheidungsprozesse.* (Schriftenreihe des Zentrums für Angewandte Politikforschung, vol. 17.) Vienna: Signum Verlag, 1998, p. 231. See also the article by Wolfgang Böhm, "Bringt die EU das Ende des Parlamentarismus?" in: *Die Presse*, 25 August 1998, p. 6.

²³ Op. cit., p. 232.

an intergovernmental agreement. The European Union is politically “underdeveloped.” It lacks the necessary political infrastructure that could serve as a kind of “transmission belt” from the popular to the political level.²⁴ The European Union’s – and in particular the European Communities’ – procedures of decision-making lag behind commonly established democratic standards although they are far more advanced than the standards of the United Nations Organization. In the present constitutional framework, the European Parliament cannot act as representative of the sovereign (i.e. the community of the citizens of Europe); its rights are basically negative (namely to declare its assent to legislative acts of the Council or to initiatives of the Commission in a strictly regulated and limited framework). The Parliament cannot take initiatives of its own, but instead acts more as a kind of public conscience or *ombudsman* of the peoples of the member states.

The frequent criticism about a "democratic deficit" of the European Union mainly relates to this lack of authority of the Parliament. As aptly stated by Michael J. Baun in his comprehensive analysis of European integration, the European Parliament "cannot initiate legislation and has generally served as a consultative body to the Commission and Council of Ministers."²⁵ As explained above, it has only limited powers to delay or amend legislation. It is in this context that experts have characterized the European Union as an instance of "post-parliamentary governance where transnational lobbies and interest groups are gradually replacing the traditional parliamentary fields of competence."²⁶

²⁴ Cf. the analysis by Beate Kohler-Koch, “Organized interests in the EC and the European Parliament.” *European Integration online Papers* (EioP), vol. 1 (1997), n. 9 at <http://eiop.or.at/eiop/texte/1997-009a.htm>.

²⁵ Op. cit., 86.

²⁶ See Svein S. Andersen and Tom R. Burns, "The European Union and the Erosion of Parliamentary Democracy: A Study of Post-parliamentary Governance," loc. cit.

In view of recent developments it is argued, however, that the European Parliament has *de facto* strengthened its position as a result of the confrontation over a possible vote of no-confidence against the European Commission (with the political consequence of the collective resignation of the Commission).²⁷ The Parliament's right to discharge the entire Commission with regard to budgetary matters, as guaranteed in the Treaty of Amsterdam,²⁸ is seen as a special improvement of the position of the Parliament in the power balance of the European Union.

It is often stated that the process of European integration has been characterized by a "double shift of power," i.e. by a shift of the formal and actual decision-making authority away from the nation-state (a) to local and decentralized bodies, and (b) to the transnational body of the European Union. A substantial loss of political means of control and regulation at the national level is regrettably acknowledged. Indeed, in many cases, European Union membership has required member states to give up some of their basic democratic procedures and competencies. In contradiction to the principle of subsidiarity, matters hitherto dealt with on the national level (including local and regional matters within the territory of a member state) have had to be transferred to the European Union level, which has resulted in the undermining of democratic structures of the member states. Some commentators even speak of a "loss of democratic accountability"²⁹ and bluntly state that "the EU is not a political system in which rulers are held accountable for their policies and actions."³⁰

²⁷ See the comment "Die gute Krise" in: *Der Spiegel*, n. 3/1999, pp. 22-25.

²⁸ "The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget." (Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Art. 4, Par. 10: modified version of Art. 180b [1] of the Treaty establishing the European Atomic Energy Community.)

²⁹ Michael J. Baun, *op. cit.*, p. 86.

³⁰ Svein S. Andersen and Tom R. Burns, *op. cit.*, p. 227.

To put it even more clearly: the Swiss system of direct democracy, one of the basic achievements of democracy in Europe, to a large extent would not be compatible with the provisions of the European treaties. The respective competencies dealt with through the instrument of *referendum* would have to be transferred to the supranational level where representative mechanisms prevail and collective European decision-making is the responsibility of the Council representing the governments of the member states.

The Union claims to be committed to the protection of the basic democratic rights through the establishment of a citizenship of the Union (Art. 2 of the Treaty on European Union). In order to make democratic citizenship on the European level a reality, the European Union, with its various supranational organizations, has to be *democratized* on the basis of strengthening participatory rights (whether direct or indirect) of the citizens. Only such measures will ensure the legitimacy and acceptance of the EU by the citizens of Europe. As Michael J. Baun, in his analysis of the Maastricht Treaty, stated, "it is doubtful that European citizens will assent to the transfer of key elements of national sovereignty and substantial decisionmaking authority to EU institutions without the accompanying extension of mechanisms for democratic accountability and control."³¹

Democratization on the level of the European Union must include:

- A further strengthening of the role and competencies of the European Parliament in the system of checks and balances described above. Instead of defining its role as a merely *reactive*

³¹ Op. cit., p. 147.

body, the member states should give it the competencies and controlling powers of a real legislature.

- The strengthening of the Parliament should include a new framework for elections to the European Parliament on a pan-European, not a nation-state basis. This would imply the reconstitution of political parties as competitors at the supranational European level.
- The principle of subsidiarity, solemnly confirmed by the Treaty on European Union, should be taken seriously and implemented at all levels and in all fields of decision-making.
- This measure should be accompanied by the gradual building of a “pan-European public space” consisting of political organizations, citizens’ movements etc. with a universal European outlook (to complement the political articulation of the citizens’ will on the level of the nation-states). The Council of Europe, through its traditional pan-European outlook and mission, may play a special role in this regard.
- The *right of information*, an individual and collective right of the citizens of the Union vis-à-vis the Council and the Commission, should be strengthened and constitutionally guaranteed. Democratic participation is meaningless without unhindered access to the relevant facts.
- For decisions on basic constitutional matters of the European Union (to be properly defined in an amendment to the Treaty on European Union) the instrument of *European referendum* should be established. In the age of computer technology that has brought about an “information revolution” there should be no insurmountable obstacles to such an undertaking. Only such a basic reform will advance the concept of democratic citizenship

in the direction of establishing a direct political link between the Union and its citizens.³²

Such measures of reform, as vaguely defined as they may be at the present stage, may provide the basis for democratic citizenship at the European level – in conformity with the declaration of the Treaty on European Union (Art. 6, Par. 1): “*The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law ...*” The European Union has to be developed towards an open and democratic community which is based on *co-operation* among sovereign member states on an equal basis and on the *participation* of the citizens, the holders of the sovereignty of the member states, both in the national and transnational context. Only this will help to strengthen the hitherto “fragile legitimacy”³³ of a supranational organization that ultimately aspires to build a federal system of Europe in which the citizens enjoy their basic rights beyond the confines of the European nation-state.

³² See Siofra O’Leary, op. cit., p. 309.

³³ Richard Kuper, “The many democratic deficits of the European Union,” in: Albert Weale and Michael Nentwich (eds.), *Political Theory and the European Union*, p. 145.

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