THE ONGOING DEBATE ABOUT THE EUROPEAN UNION'S DEMOCRATIC DEFICIT

Cemil KAYA*

ÖZET

Avrupa Birliği hiç şüphesiz dünyada önemli bir aktör konumundadır. Almış olduğu kararlar, doğrudan doğruya Avrupa Birliği vatandaşlarının günlük yaşamlarını büyük ölçüde etkilemektedir. Bu nedenle demokratik meşruiyet konusu, hem Avrupa Birliğinin, vatandaşları tarafından algılanma tarzını etkilemesi hem de genişleme süreci öncesi özel dikkat gerektirmesi açısından önem arzetmektedir. Bu anlayış ışığında çalışmanın amacı, kurumsal bakış açısı doğrultusunda mevcut haliyle Avrupa Birliği içinde ne kadar demokratik boşluk olduğunu ortaya koymaktır. Konunun çok geniş bir boyutunun bulunması nedeniyle makale, kurumsal oluşum ve karar alma süreci bağlamında Avrupa Parlamentosu, Avrupa Komisyonu ve Bakanlar Konseyine odaklanacaktır.

ANAHTAR KELİMELER

Avrupa Birliği, Meşruiyet, Demokratik Boşluk, Democratic Meşruiyet

ABSTRACT

The European Union (EU) is a substantial player on the world scene. Its decisions affect profoundly the daily life of the Union citizens directly. Therefore, democratic legitimacy is of fundamental importance since it is not only the one which affects the way in which the Union is perceived by its citizens, but also the one which requires crucial attention for the success of the enlargement process. In the light of this understanding, the aim of this article is to deduce to what extend a democratic deficit exists within the EU in terms of the institutional perspective. Indeed, this is a broad issue and, as such, will focus primarily on the European Parliament (EP), European Commission (EC) and the Council of Ministers in terms of institutional design and the decision-making process.

KEYWORDS

European Union, Legitimacy, Democratic Deficit, Democratic Legitimacy

* Associated Professor Doctor. Selcuk University Law Faculty

I. Introduction

The EU has a substantial role not only in Europe but also on the rest of the world scene. Its rules and regulations directly affect the everyday life of its citizens in fields as different as health, environment and social protection. Thus citizens are supposed to have a view on how decisions are made. In addition, the EU is far from merely an economic organisation and is increasingly establishing itself as a political entity, which clearly claims to be part of a democracy family[1]. Participations of citizens in decisions affecting their lives are a quite obvious feature of a good working democracy[2]. The EU's democratic features are, therefore, important. In fact democracy is one of the principles upon which the EU is founded. It is also important to the citizens that it gives a sense of emotional security and provides stability to the citizens[3]. As democratic legitimacy is a prerequisite of a truly functioning democracy it is important to establish just how democratic the institutions and decision-making instruments of the EU actually are[4].

Democratic legitimacy in the EU's decision-making process has long been a subject of debate. Such debate typically critiques the EU's decision making process in several different ways[5]. The debate has been enhanced particularly by the growing scholarly literature and also because of its high profile amongst politicians. Academics tend to analyse democratic legitimacy in the EU according to their own analytical and normative perspectives[6]. A significant part of academic literature focuses on the EU's "democratic deficit" which was developed by Joseph Weiler[7]. On the other hand, numerous academics claim that the extent of the deficit is exaggerated and that the

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[1] **Liberatore**, Angela, Governance and Democracy: Reflections on the European Debate. In Munshi, Surendra & Abraham, Biju Paul (Eds.), Good Governance, Democratic Societies and Globalisation, Sage Publications, London 2004, p. 76.

[2] **Liberatore**, p. 77.

[3] **Mather**, Janet, Legitimating the European Union, Palgrave Macmillan, Hampshire 2006, p. 1.

[4] **Davidson**, Caroline J, How Democratic is the European Union? An Analysis of the Democratic-Deficit within the European Union and the Proposed Reforms. Unpublished Dissertation Thesis, University of Portsmouth, Portsmouth, 2003, p. 1.

[5] **Adrienne**, Héritier, Elements of Democratic Legitimation in Europe: An Alternative Perspective, Journal of European Public Policy, Vol. 6, No. 2, 1999, p. 269.

[6] See **Majone**, Giandomenico, Europe's 'Democratic Deficit': The Question of Standards, European Law Journal, Vol. 4, No. 1, March 1998, pp. 6-7.

[7] **Craig**, Paul, The Nature of the Community: Intergration, Democracy, and Legitimacy. In Craig, Paul & de Búrca, Gráinne, The Evolution of EU Law, Oxford University Press, Oxford 1999, p. 23.

EU is actually a legitimate, representative and democratic organisation[8]. So one point that should be borne in mind is that democratic legitimacy in the EU's decision making process is complex and under debate. Democratic deficit has been defined in a number of ways. Lord, defined the democratic deficit by referring to a number of features: "the unelected character of the European Commission, the alleged weakness of the European Parliament, the withdrawal of powers from national parliaments, lack of a European political identity or 'demos', low voter participation in European elections, the absence of strong democratic intermediaries such as political parties, the remoteness and obscurity of the Union's decision making procedures, and much else besides…"[9]. Actually there are two approaches explaining democratic deficit. The first is a socio-psychological perspective and the second is an institutional perspective[10]. The former is concerned with questions of European identity and demos formation, the latter focuses attention on power sharing, which supports either giving the EP or national parliaments a greater role in the EU decision making process[11]. This article deals with democratic deficit in the light of the institutional perspective. It will focus primarily on the EC, Council of Ministers and the EP in terms of institutional design and the decision making process. The article will argue that a fairly severe democratic deficit exists in the EU's decision-making process. For this purpose first, the EP second, the Council of Minister's and third the EC's role in the decision-making process will be analyzed respectively.

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[8] For instance Zweifel claims that "While there is much room for improvement, the EU does not suffer from a democratic deficit greater than that of the world's most liberal democracies". **Zweifel**, Thomas D, … Who is without sin cast the first stone: the EU's democratic deficit in comparision, Journal of European Public Policy, Vol. 9, No. 5, 2002, p. 812. And at much the same time Crombez feels that "… the basic structure and the specific composition of the EU institutions are not inherently less democratic than the US political institutions, with the exception of the Commission, the monopoly proposer of legislation". **Crombez**, Christophe, The Democratic Deficit in the European Union: Much Ado about Nothing?, European Union Politics, Vol. 4, No. 1, 2003, p. 114.

[9] **Lord**, Christopher, Democracy in the European Union, Sheffield Academic Press, Sheffield 1998, p. 11.

[10] **Chryssochoou**, Dimitris N, Democracy and the European Polity. In Cini, Michelle (Ed.), European Union Politics, 2nd ed., Oxford University Press, Oxford 2007, p. 360.

[11] **Chryssochoou**, p. 360.

II. The Dimension of the European Parliament

The democratic legitimacy question remains primarily focused on the EP. The main reason for that is that the transfer of legislative powers from the member states to the EU, has resulted in a loss of law making powers for national parliaments, but this has not been matched by an equivalent degree of democratic accountability and legislative input on the part of the EP[12]. The EP is the only directly elected and multinational parliament in the world, as well as the only directly elected institution in the EU. It is normal that in democracy legislative power must be in the hands of elected bodies and must include greater participation by all segments of community. But in the EU practice, the EP has only a minor role in the legislative process. The formal powers of the EP, as the only directly democratically legitimized European decision- making body, are limited when compared to its member state counterparts[13]. Furthermore, although the EP's powers have been extended by Treaty reforms, it remains a restricted institution in the legislative procedure compared to the EC, which has the sole right to initiate legislation and the Council of Ministers, which continues to enjoy primacy in the Community legislative process. Briefly "the EP does not have full legislative powers. Unlike national parliaments, it does not have the final say over what is and what is not to become law. On the other hand, it does not have the capacity to exercise a fully 'positive' legislative role by initiating, developing and passing into law its own proposals"[14]. Nevertheless, successive reforms have been introduced since the mid-1980s to fill the democratic deficit in the EU. These reforms have dramatically increased the powers of the EP. For instance, The Single European Act created two new procedures – the cooperation procedure and the assent procedure – and the Maastricht Treaty introduced a further one – the co-decision procedure, which was revised and made effective by the Amsterdam Treaty (Article 251). The co-decision gives the same weight to the EP and the Council of the European Union on a wide range of areas (for example, consumer protection, culture, education, employment, health, the environment, the internal market, the right of establishment etc.). The emergence of the co-decision procedure has had the effect of improving the institutional position of the EP at the expense of the EC[15].

[12] **Chryssochoou**, p. 361.

[13] **Nugent**, Neill, The Government and Politics of the European Union, 6th ed., Palgrave Macmillan, Hampshire 2006, p. 240; **Adrienne**, p. 269.

[14] **Nugent**, p. 247.

[15] **Peterson**, John, The College of Commissioners. In Peterson, John & Shackleton, Michael

More generally, as Stacey points out that the EP has "gained a greater ability not only to hold the Commission more accountable, but also to get the Commission to do things it would not otherwise do"[16]. According to Nugent, democratic deficit concerns were the cause of creation of the co-decision procedure in the Maastricht Treaty[17]. "While the cooperation procedure had certainly increased the EP's influence, it still did not have the power of veto under the procedure if the Council was resolved to press ahead with a legislative proposal. The co-decision procedure gave the EP this power of veto"[18]. However, it applies to thirty two articles, and agriculture, fisheries, taxation, trade policies, competition and Economic and Monetary Union issues are except in this procedure[19]. Craig & de Búrca argue that if the Constitutional Treaty had been ratified, this procedure would have been re-named the ordinary legislative procedure and the number of areas subject to the procedure would have doubled[20].

III. The Dimension of the European Commission

The democratic deficit debates, also focus on the role of the EC within the legislative process. The EC is centrally involved in the EU decision making at all levels. The EC, the guardian of the Treaties and the Community's executive arm, works in close collaboration with Parliament. It is the initiator of EU policies and, formally has the sole right to propose EU legislation. In this sense it has the function of a government. At present all the legislative procedures commence with a proposal from the EC and basically there are three main forms, the co-decision procedure, consultation procedure and assent procedure. Whether they are separately examined it is easily observed that in the EU's decision making process the EC plays a dominant role by comparison with the EP. It can be said that the EC is at the heart of the EU decision making system[21], as only the EC has the right of initiative or has responsibility for drawing

(Eds.), The Institutions of the European Union, 2nd ed., Oxford University Press, Oxford 2006, p. 97; **Shackleton**, Michael, The European Parliament. In Peterson, John & Shackleton, Michael (Eds.), The Institutions of the European Union, 2nd ed., Oxford University Press, Oxford 2006, p. 117.

[16] As cited in **Peterson**, p. 97.

[17] **Nugent**, p. 408.

[18] **Nugent**, p. 408.

[19] **Craig**, Paul & **de Búrca**, Gráinne, EU Law Text, Cases, and Materials, 4th ed., Oxford University Press, Oxford 2008, p. 113; **Shackleton**, 2006, p. 109; **Nugent**, p. 408.

[20] **Craig & de Búrca**, p. 113.

[21] **Nugent**, p. 149.

up proposals for new European laws. The problem in terms of democratic legitimacy is that the EC is not elected at all. The Commissioners are political appointments and often portrayed as an uncountable technocracy. According to Treaty Establishing the European Community (TEC), Commissioners are not national representatives. Rather, they should "in the general interest of the Community, be completely independent in the performance of their duties". They should "neither seek nor take instructions from any government or from any other body" (Article 213 TEC). In other words, as members of the EC, they are required to act in the general interest of the EU, not in that of their countries of origin. The EC is appointed for a five-year term by the Council acting by qualified majority in agreement with the Member States. It is subject to a vote of appointment by the EP. Although, the President of the EC and the other Commissioners are subject to a vote of approval by the EP, in reality all but the President are national nominees. All commissioners ultimately owe their appointment to the exercise of national discretion. At the first stage of the appointment procedure the Member States draw up a nominee list it would therefore be quite unrealistic to expect from Commissioners, suddenly to detach themselves from previous loyalties[22]. It might be expected, therefore, that since Commissioners, at the first stage, owe their appointment and re-appointment to the national governments, this factor may influence the exercise of their powers[23].

Once more the EC is the focus of so much lobbying by interest groups, independent experts, national administrations and quasi non-governmental organisations[24]. There are a large number of interest groups in the EU, -no exact numbers exist but all estimates indicate that lobbying has exploded since 1987[25]- and of course the phenomenon of EU lobbying is not at all new[26]. But the first target for lobbying is generally the EC rather than other EU institutions[27]. Furthermore, interest groups have become increasingly institutionalized within

[22] **Nugent**, p. 155.

[23] **Berry**, Elspeth & **Hargreaves**, Sylvia, European Union Law, 2nd ed., Oxford University Press, Oxford 2007, p. 22.

[24] **Mazey**, Sonia & **Richardson**, Jeremy, Interest Groups and the Brussels Bureaucracy. In Hayward, Jack & Menon, Anand (Eds.). Governing Europe, Oxford University Press, Oxford 2003, p. 210; **Shaw**, Jo, Law of the European Union. 3rd ed., Palgrave, New York 2000, p. 119.

[25] **Andersen**, Svein S. & **Eliassen**, Kjell A, Informal Process: Lobbying, Actor Strategies, Coalitions and Dependencies. In Andersen, Svein S. & A. Eliassen, Kjell (Eds.), Making Policy in Europe, Sage Publications, London 2001, pp. 47-48.

[26] **Mazey & Richardson**, p. 210; **Andersen & Eliassen**, p. 44.

[27] **Mather**, p. 97.

the EC across all policy sectors and legislative process[28]. For strengthening its democratic nature, the EC usually contacts interest groups affected before it adopts its proposal. In terms of the EU decision making process, effective, well-organised and well-resourced lobbying may be functionally beneficial so long as its objectives do not deviate too far from those cherished by the EU, or from those of the member states' governments[29]. In practice, a variety of interest groups have a critical influence on decision making as a result of the specific information and expertise with which they provide the EC at an early stage of the decision making process. Therefore in practice the EC is of course never entirely separated from national or sectoral pressures and lobbyists who are acting exclusively to realise their clients' interests[30].

Critics of the EU's institutional arrangement on democratic deficit often emphasize the bureaucratic and technocratic character of the EC. Within this context a new term "technocratic legitimacy" was developed by Beetam and Lord[31]. In this respect, "the Commissioners are sometimes called modern 'Platonic guardians', which is, of course, an unsatisfactory justification of their powers"[32]. The role of the Commissioner is closely bound up with that of his cabinet or personal team of advisers, who assist the Commissioner in his or her wide-ranging duties. They are meant to act as a bridge between the commissioner and the services. The cabinets are composed of national experts, or civil servants representing national interests and they are central to the policy-making and political process of the Community[33]. However, in practise, cabinets are often accused of acting as agents of their member states as much or more than of the EC as an institution. This system of expert committees has been described as one of the most opaque areas of community decision-making[34]. In addition delegation of power to technocrats may exclude more regular channels in the decision-making process, such as the EP and even the Council of Ministers[35]. In other words comitology is governed

[28] **Mazey & Richardson**, p. 210.

[29] **Mather**, p. 98.

[30] **Mazey & Richardson**, p. 220; **Shaw**, p. 116.

[31] **Beetham**, David & **Lord**, Christopher, Legitimacy and the European Union, Longman, London 1998, p. 19.

[32] **Horeth**, Marcus, No way out for the beast? The unsolved legitimacy problem of European governance, Journal of European Public Policy, Vol. 6, No. 2, 1999, p. 254.

[33] **Nugent**, p. 158.

[34] **Liberatore**, p. 80.

[35] **Craig & de Búrca**, p. 134.

exclusively by officials and they predominate also in the primary law making processes. So Comitology plays an important role in by-passing of the normal democratic process and it is a real problem for the Community[36].

IV. The Dimension of the Council of Ministers

Finally, as is well known, legislative power rests primarily with the Council of Ministers and only secondarily with the EP. Although the EC and the EP also have such power they are not comparable to those of the Council of Ministers[37]. In more precise terms, it shares legislative competence with the EC, since the latter initiates all legislation. The fact that the legislative process in the EU is dominated by the executive is nothing unusual and is indeed a characteristic of almost all parliamentary systems of government. Davidson asserts that the EP's power as a legislator remains subsidiary to the Council of Ministers, "as the EP may not secure legislation against the wishes of this institution"[38]. The problem of democratic legitimacy for the Council of Ministers is related to its formation. It consists of representatives of the Member States at ministerial level. Whereas the members of the EP are directly elected, the members of the Council of Ministers take their seats as national ministers. Moreover, while the EC can be voted out of office by the EP, the Council of Ministers has a permanent term[39]. Also these representatives tend not to have been elected for the purpose of serving as a member of the Council of Ministers. Therefore it reflects the interest of national governments[40]. In other words, the Council of Ministers is the place where national interests are expressed, defended, and combined by ministerial representatives of all the member states[41]. The members of the Council of Ministers are not politically accountable to any EU institution for their acts[42]. The representatives of member states in the Council of Ministers are responsible to their national parliaments and indirectly to the national electorates. Any control is therefore indirect and only over the individual members rather than the Council of

[36] **Craig**, p. 24; **Craig & de Búrca**, p. 135; **Shackleton**, p. 118.

[37] **Nugent**, p. 192.

[38] **Davidson**, p. 22.

[39] **Hayes-Renshaw**, Fiona, The Council of Ministers. In Peterson, John & Shackleton, Michael (Eds.), The Institutions of the European Union, 2nd ed., Oxford University Press, Oxford 2006, p. 77.

[40] **Justice**, The Democratic Deficit. Democratic Accountability and the European Union, Human Rights and the 1996-97 Intergovernmental Conference, Russel Press, London 1996, p. 7.

[41] **Hayes-Renshaw**, p. 60.

[42] **Shaw**, p. 127.

Ministers as a body. For example, the French people will only have control over the French minister but not the Belgian minister. Ministers can avoid taking responsibility for a decision by passing it on to ministers of the other Member States[43]. Once more unlike the EC, the Council of Ministers does not have a fixed membership. So national interests are represented more strongly because of the formation of the Council of Ministers. In this connection its individual members meet rarely and develop little Community solidarity[44].

The other problem in terms of democratic legitimacy is the Council of Minister's work is prepared by a structure of some 250 working parties and committees comprising delegates from the Member States. They resolve technical issues and forward the dossier to the Permanent Representatives Committee (Coreper), (Article 207 of the Treaty establishing the European Community) made up of the Member States' ambassadors to the EU, which ensures consistency in the work and resolves technical-political questions before submitting the dossier to the Council of Ministers. The main task of every working group is to reduce as much as possible the number of issues to be discussed at Coreper and ministerial level[45]. Coreper as a *de facto* decision maker works in a secretive and opaque manner. Their decisions are merely accepted without discussion at Council level before being submitted to the EPt[46]. Therefore, this kind of legislation is not subject to systematic scrutiny by either the EP or by national parliaments[47]. The "national ministers, diplomatic representatives and administrative officials from the Member States"[48], who are brought together in the Council of Ministers, are held directly accountable and answerable to their respective national parliaments and are, thus, "indirectly accountable to voters, the link is too tenuous and the mode of interaction too diplomatic or technocratic to satisfy many observers"[49].

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[43] **Steiner**, Jo & **Woods**, Lorna & **Twigg-Flesner**, Christian Texbook on EC Law, 8th ed., Oxford University Press, Oxford 2003, p. 58.

[44] **Berry & Hargreaves**, p. 24.

[45] **Hayes-Renshaw**, p. 67.

[46] **Hayes-Renshaw**, p. 67.

[47] **Justice**, p. 8.

[48] **Moravcsik**, Andrew, In Defence of the 'Democratic Deficit': Reassesessing Legitimacy in the European Union, Journal of Common Market Studies, Vol. 40, No. 4, 2002, p. 605.

[49] **Moravcsik**, p. 605.

V. Conclusion

In conclusion, it can be said that the EU, in its current state, displays a fairly severe democratic deficit with regard to the EC and Council of Ministers in the decision-making procedure. The major problem, primarily, is unbalanced separation of powers. Although the powers of the EP have gradually been increased as regards its participation in the legislative process, its role still, to some extent, remains of lesser importance than that of the EC and the Council of Ministers. As previously mentioned the EC is a non-elected body but it plays a vital role in the EU's decision-making process. The Council of Ministers basically acts as an arena for national interest representation. The EC and the Council of Ministers are unaccountable to European citizens. A further concern is the use of non-elected bodies in the decision-making process. The most important example is Coreper, which plays an important role in the decision-making process. Similarly, the decision-making process is dominated by bureaucrats and comitology continues to give rise to similar concerns. Furthermore, interest groups generally exercise a considerable influence on both the content of proposals and the outcome of the decision making process.

For the EP the key academic debates have been concerned with the extent of its power and influence in the legislative process. Therefore, enhancement of the legislative powers of the EP may be one solution to reduce the democratic deficit. Also the EP's direct representative capacity, will continue to play an important role to reduce the democratic deficit. In addition, Mather's assessment on a directly elected EC in the EU is worth quoting extensively. He assumes: "A directly elected Commission, or at least a directly elected Commission president, empowered to act on behalf of the EU, scrutinised by the EP, would make liberal representative democracy a reality within the EU. It is possible, although less likely, that a directly elected Council President, under the direct scrutiny of the EP, would serve the same kind of purpose. Or again, perhaps the EP could itself appoint either a Commission or a Council President, or perhaps such a person could emerge from the electoral process, like the UK prime minister – this at least would enable a second-hand form of liberal democracy"[50]. Finally, it could be said that democratic deficit debate will remain on the agenda of the EU, because as Lord indicated in his book, the story of the blind men and the elephant is applicable to the so-called democratic deficit in the EU[51].

[50] **Mather**, p. 174.

[51] **Lord**, p. 11.

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