

DEMOCRACY AND HUMAN RIGHTS

# ENHANCING THE EU'S DEMOCRATIC LEGITIMACY

Short and Long-Term Avenues to Reinforce Parliamentary and Participative Democracy at the EU Level

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Efficient policy outcomes are a necessary, but not a sufficient source of legitimacy for the EU in 2020. Given its power and the distributional effects of its policies, the EU needs stronger democratic mechanisms to turn citizens' input into policies.



Among the institutional reform approaches to increase the democratic legitimacy of the EU, the most promising avenue is a combination of European parliamentary and participative democracy.



This study analyses reform needs and presents short and long-term recommendations to make EU elections more meaningful, civil society involvement more bottom-up and economic policy more accountable.



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## 1

# INTRODUCTION

Following the European Parliament elections in May 2019, citizens' satisfaction with democracy at the level of the European Union (EU) has reached its highest level in 15 years (Standard Eurobarometer 2019: 143). 55 percent of respondents were satisfied with the way how »democracy in the EU works«. It is also the first time since the beginning of Eurobarometer surveys that an absolute majority of respondents (56 percent) state that their voice counts in the EU (Standard Eurobarometer 2019: 148). On the other hand, even now more than one third of EU citizens (36 percent) is not satisfied with EU democracy (Standard Eurobarometer 2019: 143), and the percentage of those who state that their voices do not count in the EU is even higher (39 percent) (Standard Eurobarometer 2019: 148). Both figures reflect unacceptable levels of discontent. Rather than resting on the laurels of recent improvements, the EU therefore needs to undertake further efforts in strengthening its democratic legitimacy.

A closer look at the roots of these developments reveals that the EU, driven by internal and external crises, underwent profound changes during the last decades. New competences and responsibilities mean that output legitimacy based on effective governance (Scharpf 1999) is no longer a sufficient basis for democratic EU policy (Majone 2014). Due to the end of the permissive consensus (Hooghe/Marks 2009; Zürn 2019) and increasing politicisation of EU policies (Kriesi/Grande 2016; Hutter/Kriesi 2019), citizens demand more government by the people and direct influence on EU decisions than ever before. **The EU therefore needs a stronger basis of democratic input legitimacy** (Scharpf 2005) as well as higher decision-making standards in terms of throughput legitimacy (Schmidt 2013).

At the same time, there is a long-term historic trend towards strengthening input legitimacy at the EU level, which also continued during the last decade. The European Parliament was one of the winners of the Treaty of Lisbon and gained more influence than ever before in some policy areas, such as international treaties (Müller Gómez/Reiners 2019). The decade-long decline of turnout in European Parliament elections was curbed in 2014 (Kaeding/Switek 2015), and the trend changed in some countries in 2019 (Kaeding/Müller/Schmälter 2020). The lead candidates (*Spitzenkandidaten*) procedure, which succeeded in 2014 (Christiansen 2015), but failed in 2019 (Heidbreder/Schade 2020; Müller Gómez/

Thieme 2020), opened the chance to make European Parliament elections and party competition more attractive. At the same time, due to the reform of participative democracy under the European Commission's »Better Regulation Agenda« (European Commission 2019a), the EU takes the first place in the 2018 OECD ranking for stakeholder engagement (OECD 2018).

However, **this democratic development of the EU during the last years did not keep up with the increased needs.** The strengthened role of the European Council (Wessels 2016) resulted in increasingly intergovernmental decision-making in some policy areas, side-lining the European Parliament as the only directly elected EU institution (Müller Gómez/Reiners 2019). Reforms in the European Economic and Monetary Union (EMU), in some cases adopted outside EU primary law, turned the EU into an overly complex structure, decreasing the transparency of EU decision-making. Developments in other policy areas – such as climate change, migration, or health policy – give also reason to expect that the need for more fundamental reforms providing the EU with a stable democratic legitimacy will only increase over the coming years.

After the 2017 White Paper (European Commission 2017c) missed the chance to address institutional reform challenges (Müller 2017a), **the Conference on the Future of Europe is a second opportunity to enhance European democracy** (Plotka 2020a). In order to enable decision-makers at the EU and national levels to seize this opportunity, this research paper **provides an in-depth analysis of the EU's current democratic deficit.** In line with the basic assumption that further democratisation of the EU does not require a radically new institutional setup, but should continue well-established reform paths, it **rejects reform approaches calling for a presidential democracy, a »demiocracy«, or differentiated integration to safeguard national democracy.** Instead, the paper explores ways to reinforce the democratic legitimacy of the EU by **strengthening both its parliamentary and its participatory dimension.**

Matching the satisfaction with EU-level democracy with socio-demographic data reveals that wealthier citizens and citizens with a higher education are more likely to be satisfied with European democracy than those struggling to pay their

bills or those having concluded their education in earlier ages (Standard Eurobarometer 2019: 146). Analysing the turnout of European Parliament elections reveals similar patterns of socio-demographic distortion. Haußner and Kaeding show that turnout for the European Parliament elections in 2019 was higher in wealthier neighbourhoods than in quarters with higher unemployment rates (Haußner/Kaeding 2020). This suggests that participation in European Parliament elections is linked to satisfaction with EU-level democracy – but also that for a significant part of the population it is not sufficiently evident why they should turn out for the election at all.

Accordingly, this study puts a strong emphasis on **making European Parliament elections more meaningful in order to enhance EU-level democracy** (see also Müller 2020a). As the central legitimating instrument, European Parliament elections should be the opportunity for all EU citizens to take part in collective self-government at the European level in a plain and easy way. It is therefore necessary that the elections offer clear alternatives and have a relevant impact on the policy agenda in a way that is easy to understand even for those who are not closely following EU politics.

Comparing satisfaction with EU-level democracy to citizens' evaluation of national level democracy also reveals that dissatisfaction is not specifically directed at the EU. On EU-wide average, 59 percent of respondents are satisfied with national level democracy, while 39 percent are not. High levels of dissatisfaction seem to reflect a general discontent with democracy. Hobolt also found a »positive relationship between regime support at the two levels of government« (Hobolt 2012: 101). Mounk argues that »citizens are falling out of love with democracy« (Mounk 2018: 105). To win back citizens for democracy in general, it is not sufficient to just transform the EU political system into a fully-fledged parliamentary democracy. The EU also has to retain its position as a democratic innovator (OECD 2018: 48ff.).

In this context, instruments of participative democracy offer an important additional channel for politically active citizens to insert their demands into the decision-making process. As some citizens demand new ways of political engagement to bridge the perceived gap between citizens and politicians, **the EU has to make civil society involvement more bottom-up** (Plottka 2020b). At the same time, by holding EU decision-makers accountable and forcing them to be more responsive, participative instruments also help to make electoral alternatives more visible. Thus, we consider parliamentary and participative democracy as complementary rather than opposed approaches to reinforce input and throughput legitimacy.

Finally, the data on satisfaction with EU-level democracy reveal another priority for enhancing the democratic legitimacy of the EU. During the last decade, the most significant increase in satisfaction with democracy in the EU can be observed within the Euro area (Standard Eurobarometer 2019: 148). This is not due to reforms of democratic governance in the Euro area, but rather a reversion to the mean after the

sharp increase in discontent with European democracy during the crises in the Euro area. As crisis management activities lost their salience, public attention – most notably in the least affected countries – turned to other policy areas. However, Greece remains the only country in the EU where a clear majority (60 percent) is dissatisfied with European democracy, while just 36 percent are satisfied. Among the six EU28 countries below the EU-wide average of content with European democracy, a total of three (Greece, Italy, and Spain) were severely affected by the crises in the Euro area (Standard Eurobarometer 2019: 144).<sup>1</sup> These findings underline the clear effects of Euro area governance on citizens' evaluation of European democracy. Therefore, it is necessary to **make European economic policy more accountable** (Plottka 2020c).

Reinforcing democracy at the EU level is both a sprint and a marathon. On the one hand, crisis phenomena like the rise of populist parties, the Brexit referendum or the increasing challenges to the primacy of EU law underline the urgency of improving input legitimacy of the EU. On the other hand, converting the EU into a full parliamentary democracy not only requires power shifts for which many national governments are not yet ready, but also certain societal conditions, like a European public sphere, that need time to emerge. While past experiences justify the expectation that there is a mutually reinforcing dynamic between institutional democratisation and the emergence of a transnational public debate (Risse 2014a, 2014b; Kratochvil/Sychra 2019; Kriesi 2020; Müller 2020b), it is difficult to fast-track this process. The enhancement of European democracy can only be achieved in a step-by-step approach. Therefore, **this study dovetails both short and long-term perspectives**.

Chapter II provides an analysis of the current democratic deficit of the European Union. It argues (1) why a focus on output legitimacy alone is insufficient, (2) why the notion of a »substantial democratic deficit« of the EU because of the supposed lack of societal prerequisites is unwarranted and (3) why certain institutionalist approaches, namely European presidentialism, demoi-cracy and differentiated integration, are disregarded in this research paper. Chapter III then analyses the reform needs regarding European Parliament elections and the position of the European Parliament in the political system of the EU, as well as the functioning of participative democracy in the EU. A special focus is placed on the EMU as the policy area that underwent the most profound changes since the Lisbon Treaty entered into force in 2009.

To cover these reform needs, the following three chapters outline specific reform proposals for making European Parliament elections more meaningful (chapter IV), making civil society involvement more bottom-up (chapter V) and making EU economic policy more accountable (chapter VI). These

<sup>1</sup> The other three countries are France, the Czech Republic and the United Kingdom (which since has left the EU on 31 January 2020).

proposals lead from immediate steps that do not necessarily imply treaty changes to more ambitious future reforms towards a fully-fledged parliamentary and participative democracy at the European level. They concentrate on procedural reforms that could be implemented by the EU institutions.

Finally, chapter VII summarises the analysis and provides a comprehensive reform package of measures which should be directly adopted by the Conference on the Future of Europe. Annex I displays a complete overview of all recommendations and their respective time frame.

## 2

# THE DEMOCRATIC DEFICIT OF THE EUROPEAN UNION

This chapter clarifies the theoretical approach of this study on how to address the democratic deficiencies of the European Union. For this, we analyse several approaches to the legitimacy deficit.

We first argue why **output legitimacy** – i. e., the capability of the EU to effectively generate efficient policy outcomes – is a necessary, but not a sufficient legitimacy source for the EU in 2020. Most importantly, the EU has by now become too powerful and some of its policies have too strong distributional effects to be legitimised without democratic input.

In a second step, we deal with the so-called **»substantial deficit thesis«**, which argues that democracy is only possible at the national level because the European political system cannot generate certain societal prerequisites of democracy such as a transnational public sphere, a common identity and an intermediary system. First, recent research offers clear evidence that there is in fact a mutually reinforcing interaction between the democratisation of political systems and the emergence of societal conditions such as public spheres or intermediary systems. While these societal conditions cannot be established top-down, institutional reforms can contribute to strengthen them. Second, the cure proposed by proponents of the **»substantial deficit thesis«** to renationalise certain EU competences does not solve the deficiency, but rather exacerbates the problem: If nation states try to address challenges that lie beyond their sphere of influence (Zürn 1998), their legislation lacks impact.

This research paper therefore takes an **institutionalist approach to the democratic deficit** in the EU. As explained in the introduction, it focuses on strengthening both European parliamentarism and European participative democracy. These are, however, not the only reform approaches to enhance European democracy. Other proposals that have been widely discussed in recent years include **European presidentialism, European democracy and differentiated integration**. Still, we consider these competing approaches more problematic than the path of parliamentary and participative democracy. In the final part of this chapter, we will justify why they are no fix to the democratic deficiencies of the EU.

## THE ROLE OF OUTPUT LEGITIMACY

The academic debate about the democratic deficit of the EU (Plottka/Rebmann 2019) suffers from fundamental disagreement about the standards to assess the democratic quality of the EU (Majone 2002). One traditional assumption is that output legitimacy – generated by effective governance for the people contributing to everyone's welfare (Scharpf 1999, 2005) – is key to legitimise the EU. While this assumption still heavily influences policy-makers (Bratislava Declaration 2016), it is widely seen as obsolete in the academic debate. There have been two main arguments why output legitimacy should suffice to legitimise the EU, which both have lost most of their persuasiveness.

Firstly, Majone developed the argument of the **»regulatory state«**. According to this thesis, the competences of the EU are limited to policy areas which do not have redistribution effects, but allow for Pareto efficient solutions that benefit everyone (Majone 1999). As long as this is the case, there is no need for democratic decision-making. On the contrary, policy areas allowing Pareto efficient solutions should not be subject to majoritarian politics, but governed by independent institutions to ensure that optimal decisions in everyone's interest are taken. However, although EU competences in the area of social policy – the policy with strongest redistribution effects – remain limited (Hacker 2018), recent crises have disproved the idea that all EU policies are simple Pareto optimisations. For example, the crisis in the Common European Asylum System results from an unfair burden sharing and free riding of some member states. Analysing the rescue measures to fight the crises in the Euro area, Majone himself concluded that the **»democratic deficit of the EU would turn into a democratic default«** (Majone 2014: 1221). Finally, the recent recovery plan **»Next Generation EU«** to tackle the recession caused by the COVID-19 pandemic (European Commission 2020a; European Council 2020) has transnational redistribution effects not known before at the EU level.

The second argument, which has been most prominently advocated by Moravcsik, assumes that EU competences are limited to policy areas that are of little interest for EU citizens (Moravcsik 2002). If citizens do not pay attention to EU policies, there is no need to make their voices count in EU decision-making. As a consequence, a **»permissive consensus«**,

by which citizens supported European integration simply through not protesting against it (Lindberg/Scheingold 1970: 41), would suffice to legitimise the EU. However, as Lindberg and Scheingold anticipated already in 1970, the permissive consensus was going to end »if the Community were to broaden its scope or increase its institutional capacities markedly« (Lindberg/Scheingold 1970: 277) – a dynamic that has become obvious with the rising levels of Euroscepticism since the early 1990s (Hooghe/Marks 2009). By now, a whole strand of research on »politicisation« of European policy has shown that the salience of EU policy has increased, positions have become more polarised and more actors have turned towards debating EU policy (Braun/Hutter/Kerscher 2016; de Wilde/Leupold/Schmidtke 2016). The recent crises were another driver of politicisation of EU policy (Kriesi/Grande 2016).

In conclusion, research of the last decade clearly shows that output legitimacy does not suffice any more to legitimise the EU and its policies. Citizens demand a say in EU politics. However, this does not mean that output does not contribute to the legitimacy of the EU at all. Indeed, satisfaction with the policy output of the EU is currently higher than with EU-level democracy: in 2019, 68 percent of EU citizens consider EU membership of their respective country to have a net benefit, while just 25 percent think that their country does not benefit from membership (Zalc/Becuwe/Buruian 2019: 97). However, as has already been argued by Weber in his seminal analysis of different sources of legitimacy (Weber 1964 [1921/1922]: 158), legitimacy based on this kind of rational calculation is always fragile. The drop in the number of EU citizens seeing a positive net benefit of EU membership during the crises in the Euro area (2010–2013) underline that **trying to strengthen the acceptance of the EU leaning exclusively on output legitimacy would be a highly risky strategy** (Zalc/Becuwe/Buruian 2019: 97).

Finally, there are several factors that structurally limit output legitimacy in the EU.

For example, the EU currently lacks relevant competences to address the challenges of most concern to EU citizens. In 2019, citizens found »immigration« and »climate change« to be the most urgent policy issues. For both issues, however, there is an **»expectations-capabilities gap«** (Hill 1993; Börzel 2005). While many citizens demand the EU to put in place a more coherent asylum policy (which depending on their political preferences might either be a more open and humanitarian approach or a »fortress Europe«), the EU cannot deliver on either of these proposals because in fact national governments are in the driving seat. As long as there is a gap between high expectations and limited competences, a too strong focus on output bears the risk of undermining the EU's legitimacy. The same is true for the EU climate policy, where national-level implementation lacks behind progressive EU-level policy objectives, or the EU's role during the COVID-19 pandemic (Müller 2020c).

In addition, the **liberal bias of the current EU Treaties** also limits the EU's ability to generate output legitimacy. The

high degree of substantial regulatory content in EU primary law excludes certain policy options from the EU's political agenda and limits EU-level policy-makers' scope for decisions. Most importantly, EU primary law has contained a provision on the abolition of trade barriers and on competition policy since the Treaties of Rome (Scharpf 2008: 54). Based on this liberal bias of the EU Treaties, it has been easier for the Commission and the European Court of Justice to promote deregulation (Weiler 1994) than for EU legislators to adopt regulatory measures (Höpner/Schäfer 2010). The same principle applies to fiscal policy, as art. 126 of the Treaty on the Functioning of the European Union (TFEU) and the Fiscal Treaty strictly limit the member states' ability to borrow, while the EU's own fiscal capability is restricted by the unanimity requirements in the own-resources decision (art. 311 TFEU) and the decision on the Multiannual Financial Framework (art. 312 TFEU).

To close the expectations-capabilities gap and to repeal the liberal bias enshrined in EU primary law, a fundamental reform of the EU Treaties is required. **This study underlines the need for a fundamental treaty reform to address the most urgent challenges and generate output legitimacy** (Plottka 2020a). However, proposing a complete revision of the EU lies beyond its scope and therefore such proposals are excluded from the reform agenda proposed in the following chapter.

## A SUBSTANTIAL DEMOCRATIC DEFICIT?

Beyond the debate about output legitimacy, **advocates of the so-called »substantial deficit« thesis argue that the EU cannot be democratised by institutional reforms** because polities cannot generate the societal prerequisites they require to become functioning democracies. These are most notably a common demos, a common public sphere and citizens sharing common memories and experiences (Kielmansegg 1996). As a consequence, advocates of the »substantial deficit« thesis often warn against transferring competences to the European level or even call for their renationalisation – an argument that was carried to the extreme by Brexiteers in their slogan »Let's take back control« in order to preserve »a pristine and somehow mythical [national] parliamentary sovereignty« (Ringeisen-Biardeaud 2017: 10).

However, these arguments fall short for several reasons. First, the idea of a »substantial deficit« is based on an undue comparison of the EU to existing nation states. As Beck and Grande have argued, theories that were developed in the age of empires to analyse nation states do not possess universal validity (Beck/Grande 2010: 189). Accordingly, several authors have pointed out that the advocates of a »substantial deficit« set up **excessive requirements regarding the cultural homogeneity of a European demos** and have claimed a more pluralist and procedural concept of democracy (Preuß 2005; Innerarity 2014).

Secondly, the advocates of a »substantive deficit« fail to explain how the supposed prerequisites of democracy at the na-

tional level came about in the first place. Research inspired by Anderson (1983) and Hobsbawm (Hobsbawm/Ranger 1992) has clearly shown that societal conditions such as collective identities and public spheres are not primordial prerequisites of a political system, but that **political systems are indeed capable of constructing their own demoi** in a mutually reinforcing dynamic. Findings on European identities (Risse 2015), European public spheres (Risse 2014a), political parties at the European level (Liedtke 2020), social movements (della Porta 2011) and also civil society (Kohler-Koch 2010) underline that the EU is on a way of developing what Grimm and Kielmansegg declare to be missing. For example, an increasing number of EU citizens feel either »definitely« or »to some extent« that they are citizens of the EU (Standard Eurobarometer 2019: 39). They do not share a homogeneous European identity, which would be the hypothetical basis for a European people resembling national peoples, but they have a secondary European identity (Risse 2015). In a similar way, there is no homogenous public in the EU, in which all citizens share a common language. However, research has shown that cross-border public debates do take place (Conrad 2016; Knaut 2016) and European public spheres are emerging (Risse 2014a). The European intermediary system of parties, labour unions, civil society and media (Niedermayer 2005: 63) is still insufficient and needs to develop further, but it already exists (della Porta 2011; Liedtke 2020). Regarding a common memory and common experience of EU citizens, Leggewie points out that the »Holocaust« is a common reference to justify the European integration project (Leggewie/Lang 2011).

Thirdly, due to increased transnational interdependence EU member states (or nation states in general) are less and less capable of addressing fundamental political challenges on their own. In cases where challenges need to be addressed at the European or even global level, **maintaining competences at the national level will therefore not result in major democratic controllability**. Rather, in these cases the democratic quality of the political system can only increase with competence transfers to the EU – even if certain societal conditions of democracy are not yet fully developed at the supranational level.

## INSTITUTIONAL REFORMS: COMPETING APPROACHES

Based on this review of arguments regarding the co-called »substantive deficit« thesis, reforming EU-level democracy is in fact also a way to generate the societal conditions of democracy, such as public spheres and the intermediary system. For this, however, it is necessary to address the democratic deficit at the institutional level (Føllesdal/Hix 2006), by reforming primary and secondary law and by changing constitutional practices.

In order to achieve this, as has already been indicated in the Introduction, this research paper focuses on a combination of strengthening European parliamentarism by more meaningful European Parliament elections on the one hand and enhancing the procedural quality of EU decision-making in

terms of accountability, transparency, openness and inclusiveness with a special focus on European participative democracy as well as democratic governance in the Euro area on the other hand. This approach combines classical parliamentary democracy (Steffani 1983) and newer deliberative approaches (Neyer 2006).

However, there are also several other reform approaches to enhance European democracy. Among them, especially European presidentialism and »demoi-crazy«, but also differentiated integration have been widely discussed in recent years. In the remainder of this chapter, we will justify why we consider these competing approaches **less promising or even counter-productive as solutions to the democratic deficiencies of the European Union**.

## EUROPEAN PRESIDENTIALISM

A first approach, which we label as European presidentialism, is focussing on **strengthening the democratic legitimacy of the EU executive by establishing one single president**. While an early suggestion in this context was the election of the Commission President by a parliamentary assembly of national parliaments (Hix 2002), most proposals for a European presidential system envision a **direct election of an EU president** (e.g. Decker/Sonnicksen 2009, Schäuble 2012, Luc van den Brande 2017, Decker 2019a).

One of the main arguments in support of establishing a presidential system is having a clearer, more transparent structure. One president with an own source of legitimacy would replace the Commission President, the President of the European Council and the rotating Council Presidency (Hix 2002). European presidentialism would thus give an answer to Henry Kissinger's famous question who is to be called if one wants to speak to »Europe« (Halling 2003). Internally, an EU president would take over the symbolic function of representing the whole of Europe. Giving his European speeches all over the continent, French president Emmanuel Macron tried to upload the symbolic function of the French president to the European level (Thomas 2018). A president with such a symbolic function could be a strong driver of European identity. Finally, another main argument supporting a European presidential system is the assumption that transnational political parties will continue to remain weak, complicating a parliamentary democracy at the EU level. Therefore, presidentialists suggest to directly legitimise the EU executive, approximating the political system of the EU to the one of the United States.

However, it is very doubtful that these suggested benefits would indeed materialise. Considering that few of the EU member states have presidential traditions, it remains an open question how the symbolic dimension of an EU president would work out. In the fragmented and multilingual European public, **strong political parties at the EU level offer better prospects for organising transnational opinion formation than individual presidential candidates**. As single persons, they encounter more difficulties to con-

nect with European publics. Some presidentialists indeed assume that the need to present presidential candidates and support them in EU-wide campaigns for a common election would also lead to more Europeanised parties and electoral campaigns (Decker 2019b). However, it is unclear why a direct presidential election should have a fundamentally more intense effect in this regard than the parliamentary *Spitzenkandidaten* system.

The existing multiparty system in the European Union also poses **a significant challenge to the establishment of a working procedure for a direct presidential election**. It is implausible that any president would win an EU-wide majority in the first round. Therefore, Decker proposes several options for an electoral system, namely (1) a preferential voting system, (2) an electoral college and separate elections in every member state, or (3) a run-off in the European Parliament to elect the president. All of these options, however, come with significant disadvantages. A preferential voting system would complicate, rather than simplify the voting procedure, further alienating less-informed citizens from EU politics. An electoral college with proportional representation of the national contingents would only replicate the party-political composition of the European Parliament itself. On the other hand, a US-style electoral college where the national votes are assigned by a majoritarian »winner-takes-all« principle might create clearer majorities, but – as the example of the US shows – risks to increase polarisation and further drive apart EU member states. Moreover, it is unclear whether EU citizens, who are mostly used to parliamentary systems with multi-party coalition dynamics would accept an EU president voted into office only with a plurality of the popular vote. Instead of having a run-off in the European Parliament, a parliamentary system would be much simpler and more transparent.

Finally, the decisive weakness of an EU president would be the lack of institutional powers. Compared to other presidential systems, **the political system of the EU concedes only little power to the Commission President**. Unlike the US president, for example, the Commission President lacks the instrument of executive orders, as well as the executive control over military and federal police forces. The member states remain in charge of implementing EU policies in most areas. In order to achieve the intended central position of an EU president, he or she would require the agenda setting power on the EU level. Therefore, member states would have to give up the rotating Council presidency. That might be acceptable as the presidency has already lost much of its influence and prestige since the entry into force of the Lisbon Treaty. However, the heads of state or government had to also give up the agenda-setting power of the European Council. The new president would replace the current permanent President of the European Council and need to turn his role from being the »servant« of the heads of state or government to being their »master« (Wessels/Traguth 2010: 298f.).

That is very unlikely to happen, especially as long as the only source of power of the new president would be their di-

rect election. Without a majority in Parliament and possibly even without being elected by a majority of citizens, an EU president would hardly impose his or her agenda against the heads of state or government, who possess all relevant power resources. Rather, the most likely scenario would be that one or several heads of state or government become informal antagonists of the formal president, resulting in a kind of permanent co-habitation. Without a far-reaching restructuring of the political system in order to grant sweeping new powers to a new EU president, a direct presidential election would therefore not lead to increased transparency and accountability of EU policy, but risk **an even more blurred and informal power-sharing system and even bigger expectations-capabilities gaps**.

By contrast, establishing a parliamentary system, as proposed in this study, would give the President of the European Commission a power base in the European Parliament, closely linking the executive and legislative branches. In line with the traditional antagonism between supranational and intergovernmental institutions, it would not result in any new informal power centres, but rather assign new sources of power to the European Commission in order to live up to the expectations of a president.

## EUROPEAN DEMOI-CRACY

A second approach to EU democracy is the concept of a European »demoi-cracy« (Nicolaidis 2003, Müller 2010, Chevénal/Schimmelfennig 2012), defined as »a Union of peoples who govern together, but not as one« (Nicolaidis 2012: 351). This notion is based on the assumption – closely linked to the »substantive deficit thesis« – that due to the lack of a common European *demos*, democratic input legitimacy can only be created at the national level. As a consequence, demoi-cratic conceptions mostly **reject majoritarian decision-making at the supranational level and focus on transnational deliberation and cooperation**.

The specific institutional consequences of this approach often remain less clear. However, one possible institutional interpretation of demoi-cracy is **Angela Merkel's »Union method«** presented in a speech in Bruges in 2010 (Merkel 2010). In a way that clearly resonates with definitions of demoi-cracy, Merkel described that method as »coordinated action in a spirit of solidarity – each of us in the area for which we are responsible but all working towards the same goal« and stressed that in her view the alternatives were not supranational or intergovernmental methods, but to have a European position or not to have a position at all (Merkel 2010: 7). However, her references to the competence of the European Council to »lay down [...] guidelines on how the Union should develop« (Merkel 2010: 7) and to the importance of national action to implement common objectives show that **the Union method places intergovernmentalism centre stage**.

Indeed, during the decade that has followed the German Chancellor's Bruges speech, national governments gained

influence while the European Parliament was side-lined in some policy areas. The institutionalisation of the European Council and its permanent President by the Lisbon Treaty, as well as the power to define the objectives and priorities of European policy assigned to the European Council in art. 15 TEU, laid the legal basis for the formation of a new »constitutional practice« which the heads of state or government used to their advantage in the strategic pursuit of their own interests. Especially in crisis-ridden policy areas like the economic government in the Euro area or the reaction to the current COVID-19 pandemic, intensified intergovernmental cooperation has served as a substitute to giving additional rights to the supranational institutions. Other intergovernmental policy areas that have become increasingly important are the Common Foreign and Security Policy and the Common Security and Defence Policy, where member states are also willing to establish parallel structures outside the European Treaties, as the example of the »European Intervention Initiative« (E2I) demonstrates. Even in policy areas governed by the ordinary legislative procedure and qualified majority voting, intergovernmentalism has been breaking new ground. The Hungarian government's continued refusal to recognise the legality of Council Decision 2015/160153 on the resettlement of asylum seekers from Greece and Italy is evidence of this.

Representatives of the »New Intergovernmentalism« (Bickerton/Hodson/Puetter 2014) therefore see a new phase of integration which is characterised by a growing importance of policy coordination, the delegation of competences to so-called »de novo bodies« (Scipioni 2017) and deliberative, consensual decision-making, especially in the Council system. Coordination between the 27 governments is becoming increasingly important to ensure effective policy-making within this incrementally changing institutional framework.

At a superficial glance, the increasing importance of the intergovernmental method might appear to solve many of the problems of EU-level democracy. In theory, there is a clear line of legitimation and responsibility: A national demos elects the national parliament, which elects the head of government, who appoints ministers, who then decides in the Council by log-rolling with 26 other ministers. However, this notion is problematic on several accounts. First, the described line of legitimation from citizens to Council decisions is much longer than what is usual in any existing democratic system. Moreover, as **log-rolling in the Council and its preparatory bodies makes EU decision-making more opaque**, citizens often cannot hold their governments accountable for negotiations in the Council because they simply do not know what is going on. Moreover, Council negotiations facilitate a discursive framing in terms of national interests rather than (party-)political alternatives (Müller 2020b). In practice, European policy seldom plays a central role in national electoral campaigns, which further **reduces the accountability of national parliaments and national governments for European decisions**.

Finally, the attempt to increase the role of national parliaments – a strategy that was pursued especially by the Ger-

man Bundestag during the crises in the Euro area (Höing 2015) – is not an effective solution either. For one, it adds new veto players to EU decision-making, further reducing its effectiveness and exacerbating the problems of institutionalised consensualism in the EU (more on this in the next chapter). Moreover, during the crises in the Euro area it has shown to reinforce the influence gap between different national parliaments, with the **risk of leading to the development of »first« and »second class« parliaments in the EU** (Auel/Höing 2013).

Lastly, the **delegation of powers to so-called »de novo bodies« makes EU decisions fully unaccountable**, as these institutions rely fully on output legitimacy. To be fair, these bodies are no proposal of supporters of democracy. However, the delegation of competences is the practical response of governments to the increasing demand for coordination.

In sum, it is difficult to assess the effects of democracy on the democratic quality of EU governance because there are few concrete reform proposals. However, the recent development of the EU's institutional structure shows that increasing powers for national governments and parliaments not only threatens the EU's ability to generate output legitimacy, but also **reduces the transparency and democratic accountability of EU decision-making**.

## DIFFERENTIATED INTEGRATION

Since David Cameron (2013) announced his plan to hold another referendum on British EU membership, the academic debates about differentiated integration (Tekin 2019) and even disintegration (Eppler/Scheller 2013) received increasing attention. From these debates, two strands of argumentation touch upon the question of a democratic deficit of the EU. In line with the »substantial deficit thesis«, a first strand **underlines differentiation and disintegration as a means to save national sovereignty** (Lippert 2017: 102) and thus democracy. Accepting differentiated integration as a permanent reality, a second strand of the debate focuses on the **need to differentiate citizens' political participation rights in cases of differentiated integration**. Most notably, the crises in the Euro area fuelled the debate about a Euro area parliament or Euro area subcommittee in the European Parliament (Heermann/Leuffen 2020).

Already in the 1970s, Dahrendorf criticised the assumption that »the European interest [...] is either general or it does not exist« (Dahrendorf 1979: 19–20). Instead of trying to find common solutions to all questions, he advocated for a concept of »Europe à la carte, that is common policies where there are common interests without any constraint on those who cannot, at a given point of time, join them, must become the rule rather than the exception« (Dahrendorf 1979: 20–21). While some assume that such differentiation is temporary as laggards catch up later on (Kölliker 2001) and can therefore serve as an instrument to overcome reform blockades (Habermas/Gabriel/Macron 2017), other

authors see differentiation as **a tool to manage increasing heterogeneity of EU member states** and to allow national governments to be responsive to national publics (Lord 2015). If citizens have different stakes in EU-level decisions or public cultures are heterogeneous, different types of differentiated integration can result in more legitimate EU decision-making than consensual decisions between all member states would allow for (Kröger/Bellamy 2017). Empirical research has recently underlined that differentiation can help to accommodate »heterogeneous preferences in a diverse EU« (Schraff/Schimmelfennig 2020).

This approach of limiting integration to willing member states safeguards national sovereignty of the unwilling member states. Therefore, it is in line with arguments of the representatives of the »substantial deficit« thesis (Kielmasegg 1996) who assume that all policy areas that remain subject to national competence are fully legitimised. It is also in line with the rationale behind democracy (Nicolaidis 2003, Müller 2010, Chevenal/Schimmelfennig 2012) as differentiated EU-level decisions and EU reforms can be responsive to national demos with differing preferences concerning EU policy and European integration.

However, there are a number of weak spots in this approach. While a limited degree of differentiated integration might be acceptable (see the examples of Denmark, Ireland and Sweden), the case of the United Kingdom – the country that had most opt-out clauses from EU policies – should be a warning example that **differentiated integration is unlikely to placate deeply rooted democratic discontent with the EU**.

On the contrary, if »Europe à la carte« turns into »cherry picking«, it could unravel the European integration project. On the one hand, **the line of argumentation strengthens the position of Eurosceptics** (Hix 2008). On the other hand, differentiated integration can **undermine the unity of the European legal order** by threatening »the uniform application of EU law« (Adler-Nissen 2014: 27) and therefore making it more difficult for the EU to generate output legitimacy any more. Finally, it creates **a political culture that invites governments to comply only with beneficial regulations and disregard any costly obligations** by referring to their constituencies' will. The Czech, Hungarian and Polish governments' refusal to comply with the 2015 Council decision on the temporary mechanism for the relocation of applicants for international protection (Court of Justice of the European Union 2020) or the Hungarian government's referendum on the relocation scheme (Gessler 2017) are indicators of how the expectation to obtain a national opt-out can weaken the EU's capacity to act even in policy areas that in theory are fully integrated.

While these arguments against the logic of differentiated integration as a fix to the EU's democratic deficits consider the Union's view, there are also doubts whether differentiated integration is suited to preserve democracy at the national level. As we have argued above in the context of the »substantial deficit« thesis, maintaining competences at the na-

tional level allows the national democratic institutions to control the output of the legislative process, but does not give them tools to manage transnational societal independencies and therefore does not necessarily increase the democratic quality of decision-making. Accordingly, differentiated integration can only make a positive democratic contribution in policy areas **where one member state has limited interdependencies with other member states**.

Empirical research has found evidence that the degree of interdependence between member states indeed explains some of the differentiation in the EU (Schimmelfennig/Leuffen/Rittberger 2015). However, there is also some empirical evidence for the alternative post-functionalist argument (Hooghe/Marks 2009) that differentiated integration can be explained by the degree of politicisation of EU policy at the national level (Schimmelfennig/Leuffen/Rittberger 2015; Thym 2016).

If differentiation is not congruent with the degree of interdependence, the member states are democratically entrapped, as their nominal decision-making power is undermined by factual or even legal constraints. The most prominent example of this democratic entrapment is one of external differentiation, namely the Norwegian »fax democracy« (Norwegian Government 2012: 6). As a non-EU member of the common market and Schengen area, Norway is required to implement EU legislation without having any influence on the EU legislative procedure. Similarly, Shaw considers also Danish membership of the Schengen Area and the Danish opt-out from Justice and Home Affairs to have a »perverse effect« on democracy (Shaw 1998: 77).

Finally, differentiated integration also **increases the complexity of European integration**. With increasing differentiation, citizens find it harder to understand which parts of the *acquis communautaire* apply where and what rights derive from them (Walker 1998). This confusion weakens elements that should contribute to a common political identity, such as Union citizenship or the EU Charter of Fundamental Rights. Whether accommodating some Eurosceptics with differentiated integration (Schraff/Schimmelfennig 2020) will pay off increasing alienation of all citizens in the long-run remains an open question.

A special aspect of this complexity effect is the **question of internal differentiation of EU institutions**. For the inter-governmental institutions, this question is answered: Non-participating states do not vote in the Council, and for the EMU there are even separate institutions (von Ondarza 2013: 21–23). However, it remains open for the supranational institutions, especially for the European Parliament: Should MEPs from member states opting out from certain EU law or not participating in certain forms of deepened integration be allowed to vote on legislation concerning these issues?

The main critique is based on the ideal of democratic self-determination (Heermann/Leuffen 2020: 1019–1020). Only those who are subject to a certain decision should take part in the decision-making process (Eriksen/Fossum 2020: 20).

Von Ondarza (2013: 31) has shown that in some cases up to 45 percent of the Members of the European Parliament are not from member states participating in the legislation. For the European Economic and Monetary Union, Heermann and Leuffen (2020: 1018–1019) calculated that about one third of MEPs are from non-Euro area states.

However, this argument remains very formalistic. As shown before, **EU legislation in one policy area can have severe effects on non-participating member states.** This is especially the case for the Euro area. First, all member states of the EU, except Denmark, are obliged to adopt the Euro as their currency in the future. Second, the dichotomous perspective of Euro area members and non-members is a misleading simplification. In fact, European economic governance – including, among others, the Exchange Rate Mechanism II, the Euro Plus Pact, the Banking Union, and the Fiscal Treaty – forms a complex structure of differentiated integration in which the United Kingdom was the only real outsider (Tekin 2019: 3). Recent efforts to turn the governance in the Euro area into real European economic governance (Juncker/Tusk/Dijsselbloem/Draghi/Schulz 2015) will further reinforce the external economic effects of the Euro area on non-member states. Therefore, allowing MEPs from non-Euro area states to participate in Euro-related legislation helps to fix the democratic deficit of Euro area governments pre-deciding in the Euro group about decisions with effects beyond the Euro area. Any further attempts to deepen differentiation along the line of Euro area member states and non-members would risk driving the EU apart (Gnath 2017). In other policy areas, the limited number of non-participating states means that the problem is marginal anyway (von Ondarza 2013: 31). For example, in the Common Security and Defence Policy the only non-participating member state is Denmark (14 MEPs), in the Area of Freedom, Security and Justice, the only non-participating states are Denmark and Ireland (12 MEPs).

A second argument against the participation of all MEPs in votes concerning differentiated policy areas is accountability. Citizens subject to a regulation cannot hold MEPs from non-participating countries to account for their vote (Heermann/Leuffen 2020: 1020). Members of the European Parliament represent all citizens of the Union, but they are elected in just one member state. While this criticism is certainly valid, however, it is not limited to issues of differentiated integration, but applies to European Parliament elections in general. As we will show in chapter III, the lack of real transnational elections and a strong pan-European party system are an important impediment to democratic accountability at the European level. In order to solve these problems and to enable citizens to hold MEPs to account, it is necessary to advance the EU towards a transnational electoral law and to further develop parliamentary democracy at the EU level. Chapter IV of this research paper proposes a number of reforms in this regard. **Differentiating the European Parliament along national borders, however, would only worsen the problem.** Most importantly, it would mean that party-political majorities in the European Parliament could vary depending on the policy area, imped-

ing the formation of stable majorities beyond a »permanent grand coalition« (more on this below).

In sum, we conclude that **neither does differentiated integration provide a general fix to the democratic deficit of the EU nor will internal institutional differentiation increase the democratic quality of decision-making within the European Parliament.** While differentiated integration may be a practical necessity in order to allow a majority of member states to advance European integration despite the veto threats of single reluctant governments, its merits as a tool for the democratic management of heterogeneity are, at best, ambivalent.

## 3

## NEEDS TO REFORM EUROPEAN DEMOCRACY

In our review of the democratic deficit in chapter II, we have shown that strengthening output legitimacy is a necessary, but not a sufficient source for the legitimacy of the European Union. Given the redistribution effects and the public salience of today's EU policy, democratic input legitimacy at the European level is indispensable. At the same time, the »substantial deficit thesis« which claims that a supranational democracy is impossible due to the lack of essential societal prerequisites is unconvincing. Although the societal conditions needed for a democracy are not subject to direct control of constitutional legislators, there are clear indications that polities are indeed capable of generating them in a mutually reinforcing dynamic between top-down institutional reforms and bottom-up societal change. In order to induce democratic change, it is therefore a possible and necessary approach to address specific institutional deficits by reforming primary and secondary law and by changing constitutional practices.

In this context, this research paper focuses on three areas in need of institutional reform: **parliamentary and participative democracy at the European level as well as accountability of the European economic governance.** Our approach thus combines classical parliamentary democracy (Steffani 1983) and newer deliberative approaches (Neyer 2006). In the following chapter, reform needs in these three areas are analysed in more detail.

### WHY EUROPEAN PARLIAMENTARISM IS NOT COMPETITIVE ENOUGH

Compared to most other democratic political systems, the EU is characterised by an unusually high amount of institutional checks and balances, little majoritarian decision-making and a low level of competitiveness (Costa/Magnette 2003). Of course, elements of an electoral democracy have been present in the EU since the first direct European Parliament elections in 1979. Since then, subsequent treaty reforms have strengthened the role of the Parliament, supranational party organisations have evolved, and electoral campaigns have become gradually more European. It is easy to identify parallels between the EU's institutional structure – European Parliament, Council, Commission – and a federal state with a two-chamber parliamentary system. However, despite the considerable progress that has been achieved,

the European Parliament is still in a more tenuous position within the political system of the EU than national-level directly elected chambers usually are within theirs.

In the first place, despite the European Parliament's co-decision rights, the EU Council is still involved in all substantive decisions at EU level, making it more powerful than any indirectly elected second chamber at the national level. At the same time, the Council has also higher decision-making thresholds (a qualified majority or even unanimity is needed for all substantial decisions) and is generally less prone to majority voting than a usual second chamber, increasing the blocking power of small groups of member states. Originally intended to foster a culture of compromises, this strong consensual tradition not only reduces decision-making efficiency but also drastically weakens the capacity of a parliamentary majority in the European Parliament to implement its political programme. In consequence, **European elections lack a decisive impact on the European policy agenda.** Conflict lines in the decision-making process are often inter-institutional (between supranational and inter-governmental institutions) rather than between parties, incentivising the formation of broad alliances within the European Parliament. This established practice of changing majorities around a »permanent grand coalition« leads to a low level of competitiveness among the main pro-European parties within the European Parliament (Hix 2008).

A similar effect is produced by the election procedure for the members of the European Commission. As Commissioners are proposed by the national governments, **the Commission reflects the party-political composition of the Council at the time of the nomination rather than a parliamentary majority.** This ideological fragmentation institutionalises a »permanent grand coalition« also within the Commission and makes it more difficult for any major political group in the European Parliament to take on the role of an opposition. The low level of party-political competitiveness, for its part, limits the ability of citizens to exert democratic influence at the supranational level. Barring drastic vote shifts towards anti-EU parties, European Parliament elections are unlikely to significantly alter the political course of the EU (Føllesdal/Hix 2006). **This failure to produce political turning points makes the EU less responsive to citizens' demands and reduces the democratic meaningfulness of European elections.** As a con-

sequence, voters still treat European Parliament elections as »second-order« elections (Reif/Schmitt 1980; Träger/Anders 2020). Despite the uptick in 2019, participation is generally lower than at the national level; candidates and programmes are less well-known, and public debates are more heterogeneous, weakening accountability.

At the same time, in a way typical for overly consensual polities (Andeweg 2000: 533), **the absence of a loyal opposition within the system tends to create opposition against the system itself and fosters Euroscepticism.** As mentioned before, EU policy has an increasingly redistributive impact and therefore becomes inherently more contested. In this context, the low level of competitiveness between pro-European parties and the lack of meaningful elections remove an outlet for political dissatisfaction. This strengthens populist anti-EU parties, who can claim to be the only opposition to the political course of the EU (Müller 2014). Rather than pacifying conflicts over EU policy, the institutionalised consensualism thus transforms them into a conflict over European integration as such.

A key approach to solve this problem is to **facilitate democratic alternation in the form of a parliamentarisation of the European Commission** and a clear contrast between a stable majority and a loyal opposition within the European Parliament. Breaking up the »permanent grand coalition« and allowing one of the major pro-European parties to take an opposition role will make European politics more adversarial and increase the impact of the elections. At the same time, the existence of a loyal opposition will increase the Commission's political accountability and allow dissatisfied voters to vote against current EU policy without turning towards parties that reject the EU polity.

As an additional problem, transnational opinion formation usually still takes place downstream of aggregation processes at the national level. This is most acute in the context of the political parties at the European level, the so-called Europarties. Being part of the intermediary system, they should be a key transmission belt between the European citizenry and the political institutions of the EU. Moreover, as representatives of transnational social cleavages, they are best-suited to organise transnational opinion formation processes and give public debates a transnational framing. Still, **Europarties often lack a clear political profile and are internally divided along national lines.** This, however, is also due to institutional causes. Most importantly, as candidate selection processes for EU positions are still dominated by national parties, there are clear structural incentives for EU politicians to follow the line of their national party rather than engage directly with a transnational public. To overcome this situation, it is necessary to strengthen the role of Europarties in both European Parliament elections and the selection of the European Commission.

At the same time, even where they exist, transnational party positions often suffer from insufficient visibility in the public sphere. While the European Parliament itself is a very transparent institution, **the EU decision-making process as a**

**whole lacks clarity and legibility.** This is due to both its high complexity and the still very opaque opinion-formation procedures inside the Council and the informal trilogue, where essential standards of throughput legitimacy, notably accountability and transparency, are violated. As a consequence, the level of public knowledge about the different actors in EU politics, their positions, and their contribution to EU decision-making, is generally low. Measures are needed to increase the transparency and traceability of EU decision-making in order to make transnational electoral alternatives more visible and ensure accountability at the European level.

Finally, from a legal point of view, the **lack of formal electoral equality is a crucial obstacle to strengthening the European Parliament.** While the European Parliament elections fulfil most formal criteria of a democratic election, they suffer from a lack of transnational equality. In order to ensure a relevant representation even of the smallest states, national seat contingents in the European Parliament follow the principle of »degressive proportionality«: a more populated member state elects more Members of the European Parliament than a less populated one, but less MEPs per inhabitant. A vote cast in a more populated state is therefore less likely to influence the composition of the European Parliament.

This lack of equal representation not only exposes the European Parliament to public criticism, but has also become a major legal obstacle to a further parliamentarisation at the European level. According to the German Federal Constitutional Court's Lisbon Judgment of 2009, the fact that in »a narrow decision among opposing political groupings« a majority in the European Parliament does not necessarily represent a majority of EU citizens bars Germany from agreeing to a treaty reform that would enable the formation of a parliamentary government in the EU (Federal Constitutional Court 2009: para. 281). Therefore, a mechanism to guarantee direct proportionality among political groups (if not among member states) is needed in order to allow further progress towards parliamentary democracy at the EU level.

In order to solve these shortcomings of EU-level parliamentarism, it is thus necessary to increase accountability and competitiveness among political parties by making European Parliament elections more consequential and by increasing the scope of majoritarian decision-making in the EU – in a word: by **further approaching the EU to the model of a full parliamentary democracy with a bicameral system.** The bicameral system allows for consulting also the member states' point of view, which in most policy areas bear the responsibility of implementing European legislation. However, the role of the second chamber – the Council – may not be so dominant as to impede a meaningful electoral process.

## WHY PARTICIPATORY DEMOCRACY IN THE EU SHOULD BE STRENGTHENED

Participatory democracy is a response to citizens' demands for new ways of direct political participation. **To some ex-**

**tend it helps to win back citizens for political participation** (Kießling 2001: 30f.), who had already turned away from democracy, and, thus, increases the inclusiveness and openness of European politics (Plottka 2012). In view of the declining membership of parties and other political organisations, the still weak intermediary system at the EU level and declining voter turnout (Schäfer 2009; Kaeding/Haußner 2020), **participatory democracy empowers civil society organisations (CSOs) to function as intermediary organisations** (Kohler-Koch 2012). This way, policy-makers obtain information from interest groups about the distribution of political preferences in their respective constituency (Beyers 2004). As long as there is no fully functioning party system at the EU level (Liedtke 2020) and party competition remains limited, participatory democracy is a complementary fix to representative democracy at the EU level.

**Participatory democracy also strengthens the accountability of EU politics by forcing policy-makers to justify their decisions** vis-à-vis CSOs and citizens. Due to the polarisation of European policy on the national level (Hutter/Kriesi 2019) it is of increasing importance to justify EU policies. Otherwise citizens will be further alienated from consensual policy debates in EU institutions (Plottka 2016). **This way, participative democracy also contributes to the emergence of European publics** (Conrad 2016; Knaut 2016). Other authors find that interest groups and civil society actors even **improve the quality of deliberative processes by providing expertise to EU decision-making processes** (Joerges/Neyer 1997; Göler 2006; Joerges/Neyer 2014).

**The formalization of consultation procedures makes the previously unregulated relationships between decision-makers and interest groups more transparent.** Most notably, Codes of conduct and the EU transparency register make participatory democracy transparent (Greenwood 2017: 55–66).

Arguments in support of participative democracy are offset by a number of objections: Empirical studies show that few citizens alienated from party politics engage in participative democracy. Analysing the socio-demographic structure of active citizens, participatory democracy turns out to be even more exclusive than European Parliament elections (cf. Schäfer 2009: 33ff.; Merkel 2011). An increasingly professionalised EU-level civil society (Saurugger 2012) also suffers from a gap between representatives in Brussels and membership at the local level. Varying with the policy fields, there are deficits in the aggregation of civil society interests comparable to those within Europarties (Kröger 2018).

By strengthening the executive, in particular the European Commission, participative democracy affects the institutional balance in the political system of the EU (Bunea/Thomson 2015). Furthermore, there are traditional arguments against direct democracy. These include the fear that direct democracy offers an opportunity structure for populists (Heuss 2009 (1948): 63). As the examples of referendums in the Netherlands (van der Brug/van der Meer/van der Pas 2018)

and Hungary (Gessler 2017) show, this is of special importance to Eurosceptics trying to initiate referenda about EU policies (Schünemann/Petri 2017). Closely related is the assumption that citizens are insufficiently informed about issues at stake and therefore vote on their current government instead. Analyses of the referendum debates in France and the Netherlands on the Treaty Establishing a Constitution for Europe show such voting patterns (Maurer et al. 2007). Therefore, European referendums can be used as a strategy to permanently block the European integration process (Schünemann 2017).

Considering this assessment of risks and opportunities of participatory democracy, **we propose a gradual development of participative democracy to complement European representative democracy.** A major constitutional leap towards the creation of a »third pillar« of the EU's democratic legitimation would increase the probability that new instruments are misused. By contrast, a careful expansion will allow for learning processes among citizens and decision-makers confining the potential risks.

To further develop EU-level participative democracy, the following deficiencies need to be addressed.

**The EU instruments of participative democracy suffer from insufficient participation by stakeholders and citizens.** One third of all EU citizens had not heard about the European Citizens' Initiative in 2016 (Gerstenmeyer/Klein/Plottka/Tittel 2018: 88). A lack of communication efforts is an issue, as the European Court of Auditors found a correlation between the number of communication channels used to advertise a consultation and the number of submitted answers (European Court of Auditors 2019: 26f.).

In terms of functional representation, research findings concerning the diversity of actors taking part in consultations are ambivalent: For example, Bunea (2017: 65) observes an increasing variety of actors. On the contrary, Garben (2018: 234) emphasises the continued prevalence of the usual suspects. He and other authors find differing degrees of bias towards business interests. High-level Commission meetings with representatives of interest groups reveal a similar pattern: Diversity is increasing, while corporate interests continue to prevail as interlocutors (Kergueno 2020). **Balancing the bias towards business interests remains a major challenge, although it is partially eased if consultations address highly salient issues** (Røed/Wøien Hansen 2018). In these cases, participation is more diverse than in consultations on technical issues (Beyers/Arras 2019).

In terms of territorial representation, EU-level participative democracy faces a double challenge: First, Dür and Mateo (2012) point out that resources are a key determinant of whether member state-level actors have access to the EU level. Second, there is an uneven distribution of participants in consultations by member states. Measured by the number of answers per 100,000 citizens, the German-speaking countries participate most (European Court of Auditors 2019: 28). In some member states, civil society also remains

weaker than in others (Pleines 2011) or it is challenged by authoritarian tendencies (Najmowicz 2019). Ensuring equal participation from all member states is an increasingly relevant challenge.

As research on intentions to use the ECI shows, citizens participation is also biased. Kandyla and Gherghina (2018) conclude that the ECI is more appealing to »politically sophisticated [citizens,] who feel able to navigate the complexity of EU politics.« As intentions to use the ECI are as biased socially as participation in European elections (Kaeding/Haußner 2020), **participative democracy cannot be considered a way to fix low turnout in elections** (Merkel 2011). However, it meets the new participatory demands made by a number of citizens. To further increase the inclusiveness of EU decision-making, finding a better social balance of participating citizens is the key challenge. Views of citizens who do not vote in elections and who are underrepresented in civil society also need to be heard in participative democracy.

**In a polity with 24 official languages, the lack of language proficiency in English remains an important hurdle preventing political participation.** The translation of consultation documents into all official languages is only required for priorities of the Commission work program. For other consultations, translation into the working languages is deemed sufficient (European Commission 2017a: 68). In 2018, just 70 percent of all public consultations were translated into all the official languages (European Commission 2019a: 3). Furthermore, until the end of 2019, the European Commission was not obliged to translate registered ECIs into all the official languages (art. 4 (4) of Regulation (EU) 2019/788).

Another hurdle discouraging participation is the confusing variety of participation instruments throughout the policy cycle. In the first phase, stakeholders can provide feedback to a »Roadmap« or »Inception Impact Assessment«. In the second phase, the Commission conducts public online consultations for evaluations, fitness checks, green papers, initiatives with impact assessments and optionally for Commission communications. For other legislative proposals, stakeholders also get the opportunity to give their feedback (European Commission 2017b: 437–449). In the third phase, there are consultations on drafts of delegated acts and implementing acts. In the fourth phase, citizens have the opportunity to give recommendations on the website »Lighten the load«, to make EU law more effective and efficient (European Commission 2017a: 71–72). Further Commission instruments include citizens' dialogues, comitology committees, and expert groups.

Furthermore, there are the ECI, the right of petition to the European Parliament or the right to complain to the European Ombudsman. **Even for experts, it is difficult to understand how some of these instruments differ and where to engage.** If several consultation instruments are used for one initiative, there are unnecessary duplications (Godwin/Akse/Lenoir 2017: 26). Therefore, the instruments need to be clearly differentiated (Renda 2015) and specifi-

cally addressed to target groups, either citizens or interest groups, and organised civil society.

Binderkrantz, Blom-Hansen and Senninger (2020: 15) show that open consultations »are associated with the involvement of a broader range of interests than other consultation formats, e.g. stakeholder conferences«. Furthermore, Quittkat (2011: 670) finds that consultation turnout depends on the design of the questionnaire. Closed questions increase participation, while open questions alienate citizens. Others criticise the fact that closed questions only allow for expressing opinions and not for providing evidence (Godwin/Akse/Lenoir 2017: 27). Therefore, **it is necessary to clearly define the objectives and the target groups of individual consultations, and to design the questionnaires accordingly. Improving the methodology is also necessary for consultation meetings, which leave considerable room for better moderation.** However, Alemanno (2018: 2) underlines the fact that none of the instruments are suitable for public mass participation.

Concerning accessibility, at least for all the Commission's consultation instruments, which are open to the public, the website »Have your say« provides a single access point with limited information and links to websites, where ongoing consultations and other feedback mechanisms are listed. However, **a user-friendly one-stop resource providing an overview of all instruments of participative democracy, clarifying the target groups, and explaining the instruments is lacking** (European Court of Auditors 2019: 24).

The recent reform of the ECI regulation has facilitated the ECI procedure considerably (Plottka 2019). The procedure remains, however, burdensome, while the legal effects of successful initiatives are limited. The ECI has not yet become a tool for citizens but requires support from organised civil society. Further reform is needed, either towards facilitating requirements or towards automatic legal consequences, which justify high thresholds, or towards lowering the requirements.

Despite the ECI, the right to petition, the right to address the Ombudsman, and the website »Lighten the load«, **all the instruments applied by the Commission follow a top-down approach, where citizens can only respond to the Commission's questions.** While organising an ECI requires too many resources, the »Lighten the load« website is clearly framed as a tool to fight assumed »overregulation«. In just a few of its more than 1,500 citizens' dialogues (European Commission 2019b), the Juncker Commission experimented with new methods that allow citizens to set the agenda for the dialogues on their own. Thus, there is no straightforward instrument regularly allowing citizens to propose new ideas for EU policy.

Depending on whether the European Parliament will be assigned the right of initiative in the future, the right to petition could be developed into such an agenda-setting instrument. Currently, citizens' interest in petitions to the Europe-

an Parliament is limited, while web portals to organise informal e-petitions, such as change.org, openPetition or Avaaz, as well as e-petitions to governments and parliaments in some countries (Le Blanc 2020) attract considerable interest. Since 2014, the European Parliament has also run a web portal for the online submission of petitions. Its introduction resulted in a sharp drop of 50 percent in the number of petitions to the Parliament in its 9<sup>th</sup> tenure (Heezen/Marzocchi 2019). Against this backdrop, the Petition Committee's statement that there is a »need to continue the technical development of the portal« (European Parliament 2019a) must be considered a massive understatement.

**In addition to lacking the opportunity to set the agenda, consultation procedures are criticised for being suggestive.** Especially by designing questionnaires with closed questions, the Commission can »preclude certain outcomes« (Dawson 2016: 1220), without offering the opportunity to present evidence on the issue. Participants can only express their opinion (Godwin/Akse/Lenoir 2017: 27). Therefore, the Commission has to make explicit which consultations are aimed at gathering expert knowledge and which seek to get an overview of preferences among stakeholders. A more balanced participation is necessary for both. However, unequal participation can make information on preference distribution completely useless. The design of consultations has to be adapted accordingly.

Public consultations are followed by an evaluation of the results, published in synopsis reports. They are rather descriptive, outline the consultation strategy, characterise the participants, and summarise their input (European Commission 2017b: 433–436). The better regulation guidelines do not provide any guidance on methodology for the evaluation (Chase/Schlosser 2015: 3). In practice, the Commission often uses statistical analysis but does not make it transparent (European Court of Auditors 2019: 43). The presentation of statistics is highly problematic as participants are not representative (European Court of Auditors 2019: 39). **Improving the methodology of questionnaires will allow for a better analysis of the answers.** For consultations seeking expert knowledge this is a suitable approach. However, for consultations seeking information about preference distribution, the results will not be usable as long as participation is biased and not representative.

Having evaluated the results, participants expect feedback from decision-makers about their input. **Being responsive to citizens' input remains the most problematic aspect of EU-level participative democracy.** Hardly any of the synopsis reports are translated into languages other than English (European Court of Auditors 2019: 41f.), which prevents contributors from reading them. If consultations result in a legislative proposal, an explanatory memorandum has to link consultation inputs to the draft legislation and justify the fact that certain contributions are discarded (European Commission 2017b: 433–436). The Commission shows a similar pattern in dealing with the ECI. The European Court of Justice had to denounce Commission decisions to not register an ECI, because it failed to give reasons for its

decision (Plottka 2017: 191). In addition to publishing the explanatory memorandum, »better regulation« does not foresee any communication activities. Thus, it is clear why participants »feel that the Commission lacks accountability« (European Court of Auditors 2019: 46). On the one hand citizens should be able to expect decision-makers to explain why they are not considering specific proposals and inputs. On the other hand, they miss an opportunity to show that they are responsive. The time lag between citizens' input and EU-level decisions is problematic. The ECI is the most noteworthy example, as the collection of signatures and the Commission initiative sometimes occur years apart. Therefore, citizens need an opportunity to easily track the follow-up to their input and EU level decision-makers have to engage in debating their input with citizens.

With the exception of single case studies, no general enquiry is possible that assesses to what degree participative democracy shapes EU legislation. What remains clear is that **all instruments of participative democracy lack direct consequences.** Even successful ECIs, which have to comply with the standards of direct democratic decision-making, are only guaranteed a dialogue with the European Parliament and Commission. Thus, the 2011 judgement of Kohler-Koch and Quittkat (2011), that there is no »participative democracy« but rather »participative governance« is still valid. As the organisers of ECIs have proven themselves to be reasonable, albeit sometimes controversial, further developing the ECI could be a first step towards real »participative democracy«.

Further developing the ECI would **allow the EU to maintain its role as a democratic innovator.** Despite having developed the previously described consultation regime and established the first transnational »Volksrecht« in history (Kaufmann 2011: 201), EU-level transparency regulations are exemplary and more progressive than in most member states (Katzemich/Lange/Bank 2019: 21). However, the transparency register is currently limited to the Commission and the European Parliament. Inter-institutional negotiations on an obligatory transparency register have already restarted following the appointment of the new lead negotiators of the European Parliament for the new legislature. Two major reform needs have to be addressed in these negotiations: First, while Council participation in the transparency register is a step forward in limiting the coverage to general secretariat staff (Council of the European Union 2017), the reform is falling short of what is necessary. The staff responsible for negotiations in preparatory bodies, most notably COREPER, will not be covered. Second, the recent reform of the European Parliament's rules of procedure has paved the way to a compromise in making the register mandatory for MEPs (European Parliament 2019b).

In order to turn EU-level participative governance into EU-level participative democracy, it is necessary to address the previously mentioned reform needs. The aim of these reforms is not paving the way for direct democracy in the EU. Instead, **European participative democracy complements representative democracy** by making policy-mak-

ers more accountable and increasing the transparency of the decision-making processes. As participative democracy also increases the openness and inclusiveness of the EU political system, it contributes to strengthening the intermediary system in the EU and to winning back some citizens to democracy, who are alienated from party politics.

## WHY EUROPEAN ECONOMIC GOVERNANCE NEEDS TO BE MORE ACCOUNTABLE

The review of citizens' reform demands has shown that the crises in the Euro area had a strong effect on citizens' perception of European democracy. While their assessment of EU democracy improved in most Euro area countries since the end of the crises, it is still significantly worse in the countries that were most deeply affected by the crises. Therefore, enhancing the democratic legitimacy of European economic governance is the third urgent issue to be addressed.

### **European economic governance is one of the policy areas which cannot exclusively rely on output legitimacy as it suffers from an expectation-capability gap.**

Monetary policy is fully supranational and the EU has a strong oversight mechanism over national fiscal policy. However, the EU lacks instruments for an effective economic policy, as its budget is far too small, and most competences remain with the member states. The Euro area lacks a homogeneous economic development as cohesion policy failed to provide cohesion (Sapir 2005). Being no optimal currency area (Mundell 1961) and undergoing different business cycles in each member state, the interaction of a variety of diverging national macroeconomic policies with a single European monetary policy – fittingly dubbed »one size fits none« by The Economist (2009) –, is limiting the EU's ability to provide output legitimacy in all its member states. Therefore, there is an increasing need for input legitimacy to European economic governance. (As mentioned in the beginning of this chapter, giving recommendations to address the institutional deficits impeding a better substantial output falls outside the scope of this study.)

In order to generate input legitimacy, the political system has to transform citizens' demands into policies (Scharpf 1999: 16). Research findings on politicisation of European economic governance during the crises, however, disagree on whether polarisation takes place across national borders (Statham/Trenz 2012; Risse 2014) or between countries (Leupold 2016). This is crucial for determining how to organise input legitimacy: by intergovernmental or supranational politics?

In European economic governance, the increasing demand for input legitimacy is mainly addressed by putting national governments centre stage. Considering research that finds political contestation between rather than within national publics, this has some justification. However, it results in the deadlock of debates, as the conflict over a fiscal union versus stability union shows (Hacker/Koch 2016) and reduces

the EU's ability to act. Moreover, it increases the role of power politics at the expense of deliberation, whilst driving Euroscepticism. The role of the German government has been widely criticised for being too influential during the crises in the Euro area (Sternberg/Gartzou-Katsouyanni/Nicolaïdis 2018) and similar patterns could be observed throughout the recent COVID-19 pandemic (Ladurner/Reuscher/Thumann 2020). **The intergovernmental logic of the governance in the Euro area amplifies the polarisation between EU member states.**

Contestation that cuts across national borders, on the other hand, is not represented within the intergovernmental governance of the Euro area. During the crises in the Euro area, the European Council and the newly created Euro summit were dominant actors further consolidating the European Council's role as an EU institution formally established under the Lisbon Treaty (Müller Gómez/Wessels/Wolters 2019: 69). Bickerton et al. (2014) even consider that the reforms undertaken during the crises in the Euro area are evidence for a »new intergovernmentalism«. While partly relying on the EU budget as an instrument to address the current economic crisis (European Commission 2020a), the European Parliament's powers in the European Semester are restricted to giving its opinion on the employment guidelines. It took the Six- and Two-Pack reform packages as an opportunity to formalise the economic dialogue, obtaining the right to invite the Commission, the presidents of the Council of the EU, the European Council, and the Eurogroup as well as member state representatives for an exchange to its »Economic and Monetary Affairs Committee« (Chang/Hodson 2019: 351–353). **These competences of the European Parliament to discuss, but not decide are far too limited to represent transnational citizens' demands or to play a mediating role between polarised positions of member states.**

It is thus necessary to rebalance the role of supranational and intergovernmental institutions in European economic governance. **The increasing need for input legitimacy cannot be limited to the involvement of national governments, but rather requires also involving the European Parliament.** The degree to which the European Parliament's powers should be extended might be subject to further debate. However, the current practice of leaving it almost completely outside the governance structure creates a democratic deficit that needs to be addressed. Furthermore, the European Parliament's potential for deliberative politics that can contribute to finding compromises between member state positions has to be exploited.

### **In addition to these concerns about the input side to the EU political systems, there are also doubts regarding the EU's ability to react to citizens' demands due to a lack of instruments for macroeconomic governance.**

Initial responses to the crises in the Euro area were uncoordinated member state activities (Dullien/Schwarzer 2011: 93). The EU budget is far too small to be used for an effective response. As a result of the lack of appropriate EU level instruments, member states had to negotiate about the establish-

ment of instruments before they could be used for crisis response. In the threefold crises in the Euro area, this was a slippery slope of ever greater packages developed in incremental negotiation processes, which did not reflect a learning curve. The implications could be anticipated at the beginning of the crisis in 2009. However, it was also clear that due to the intergovernmental logic of decision-making, national governments would not dare to take the necessary measures, as they »felt« the »constraining dissensus« (Hooghe/Marks 2009).

In 2020, the crisis affects more member states and the looming recession is expected to be larger. In terms of economic governance, the EU member states react quicker and seem to agree on more substantial measures at once. However, it is unclear whether these are lessons learned from inadequate responses during the crises in the Euro area or if circumstances are just better by chance (German interest in economic recovery). There is no guarantee that the EU's response to the next economic crisis will be as swift as its current reaction. Therefore, **adequate EU level instruments for macroeconomic policy are required on a permanent basis.** The need to negotiate about new instruments for every recession instead of simply triggering existing ones opens an expectation capability gap, where citizens consider the EU as being unable to react to their demands. The high degree of substantial regulatory content in EU primary law and related treaties, most notable the Fiscal Treaty is another caveat concerning the EU's ability to generate input legitimacy.

**Giving the European Parliament decisive power is necessary to represent transnational citizens' demands and to mediate intergovernmental conflicts, thus making economic governments more effective.**

The report »Towards a Genuine Economic and Monetary Union« (van Rompuy 2012: 16) stated: »One of the guiding principles is that democratic control and accountability should occur at the level at which the decisions are taken.« This objective has not been reached since 2012. **Accountability in European economic governance is blurred.** In the European Semester, national governments in the European Council and the Council of the EU are responsible for discussing and providing the policy orientation of economic policy and adopting the country specific recommendations at the European level. At the member state level, they are free to implement them or not. Intertwining the role of the supervisor and the supervised clearly blurs responsibilities and makes it difficult for citizens to hold their government accountable in national elections. The other central institution in the European Semester is the Commission, which should be controlled by the European Parliament. In European economic governance, however, the European Parliament's competences are limited to macroeconomic dialogues, discussing employment guidelines, participating in the interparliamentary conference foreseen in the Fiscal Treaty, reporting obligations of the President of the Euro Summit and the planned reporting obligations of the Commission under the new »Recovery and Resilience Facility«.

**In order to strengthen the democratic legitimacy of European economic governance, it is necessary to establish a system of checks and balances and to separate more clearly EU-level and member-state-level activities.**

**European economic governance has also considerable deficiencies concerning transparency.** Although it is mentioned in the EU Treaties, the Euro group convenes as an informal body (Protocol No. 14 annexed to the EU Treaties), making it even less transparent than the Council itself (Wiesner 2017: 54). The Euro Summit is not even a formal institution of the European Union (art. 12 Fiscal Treaty). Furthermore, the ESM Treaty and the Fiscal Treaty are international treaties outside the EU primary law. The institutions they create are non-majoritarian expert institutions (Wiesner 2017: 54), which lack public and parliamentary control – an approach that has been called »Ad-hoc-Technokratisierung« by Enderlein (2013). The European Semester is designed as a technocratic procedure as well, effectively lacking public control. The economic dialogue in the Economic and Monetary Affairs Committee of the European Parliament is not sufficient to make the European Semester transparent.

Schmidt's criteria of inclusiveness and openness refer to the access of organised civil society and individual citizens to decision-makers. **Although the Commission, which is the prime addressee for organised civil society at the European level, is central to European economic governance, participative democracy is mainly restricted to legislative procedures.** The intergovernmental institutions – also central to European economic governance – refuse to participate in participative democracy. Thus, it scores on these criteria even lower than on accountability and transparency.

Giving the European Parliament decisive powers in European economic governance is key to making decisions in EU economic policy more accountable and directly contributes to making European elections more meaningful. On the other hand, separating competences and responsibilities between the European and national level is crucial for making European economic governance more transparent. Otherwise, policy alternatives remain unclear. As few areas within this policy field are governed by the ordinary legislative procedure, turning the European political system in a bicameral system hardly touches upon the existing structure of European economic governance. Rather, European economic policy is mainly governed by the open method of coordination and enhanced policy coordination, which empowers the executive on the expense of parliaments (Rasmussen 2018: 345). Therefore, a special reform approach is needed to address this policy area.

## 4

## MAKE EUROPEAN PARLIAMENT ELECTIONS MORE MEANINGFUL

In order to make European elections more meaningful and address the previously discussed reform needs, a broad range of measures is necessary. A reform of the European electoral system ensures transnational electoral equality and strengthens the role of European political parties. The parliamentarisation of the Commission, while also strengthening the Europarties, is key to facilitating democratic alternation. Finally, a reform of the legislative procedure can prevent blockages by minorities of member states and make European decision-making more transparent. In the following section, specific reform proposals in these three areas will be outlined.

### REFORMING THE EUROPEAN ELECTORAL SYSTEM

The electoral system of the EU is still nationally fragmented. While the Direct Elections Act only provides for some general requirements such as the need for a proportional system, most specific regulations – including rules regarding voting age, preparation of candidate lists, campaigning, and the precise voting day – are left to the member states. In the long term, the **creation of a uniform electoral procedure** will strengthen the perception of EP elections as a coherent European voting act and make transnational campaigning easier. As such a step is explicitly foreseen in art. 223 TFEU, it would only require a reform of the Direct Elections Act.

Even without full harmonisation, however, it is possible to **further synchronise national voting procedures**. The Hübner/Leinen report adopted by the EP in 2015 proposed a number of steps in this regard. These include a common deadline for the establishment of national electoral lists, a common closing time for polling stations in all member states, a harmonised minimum voting age, and an enhanced visibility of Europarties by placing their names on the ballot papers (European Parliament 2015; see also Nogaj/Poptcheva 2015). Unfortunately, the Council did not follow through on these proposals. The as of yet unratified electoral reform adopted in 2018 only brought minimal progress, focusing mostly on a minimum national threshold and on measures to avoid double voting (Council of the European Union 2018). Still, the Hübner/Leinen proposals remain the plausible next steps for electoral reform.

A further measure to strengthen Europarties is the **introduction of a transnational electoral threshold**. This could be arranged by an electoral system in which only parties who receive 3 percent of the EU-wide vote are eligible for seats in the EP, but national parties belonging to the same Europarty are counted as one (Decker 2015). Such a reform would strongly incentivise national parties to become a member of a Europarty before the EP elections instead of only joining an EP group afterwards, rendering the European party system more transparent and increasing national parties' political dependence on and structural loyalty to their Europarties. At the same time, it would keep out small parties without European partners in a more efficient way than national thresholds do, thus facilitating majority-building in the EP beyond the grand coalition.

The electoral reform that offers most leverage to strengthen Europarties is the **introduction of transnational (EU-wide) lists** (Verger 2018). While there are different options for their implementation, each version of transnational lists gives Europarties a role in the selection of EP candidate and thus creates structural loyalty on the part of the candidates towards them. At the same time, EU-wide lists give public visibility to Europarties on the ballot paper and, as a consequence, in the electoral campaigns.

Finally, EU-wide lists can also be used to create **a mechanism for proportional compensation among political groups in the EP**, while maintaining degressive proportionality for national seat contingents. To achieve this, transnational seats would be allocated in such a way that the overall seat share of each political group – including seats won via national lists – corresponds to the share of votes that the group has received on the European level. (A similar system of proportional compensation exists in Austria for national parliamentary elections.) Maintaining degressive proportionality for national seat contingents while introducing proportional compensation among political groups will make it possible to satisfy both the concerns of small countries and the conditions set out by the German Constitutional Court's Lisbon Judgment.

For a quick introduction of transnational lists, they should initially comprise the 46 seats left vacant by the withdrawal of the United Kingdom from the EU. However, based on past electoral results, this number would only allow for a partial proportional compensation (Müller 2017b). In the medium

term, therefore, **the number of transnational seats should be increased to about 1/6 of the EP (125 seats)**. For this, national seat contingents will have to be reduced. This could be done either in a uniform way, by maintaining the current level of degressivity. In this case, a treaty change is necessary, as it implies lowering the smallest national contingents from six to five seats. As an alternative, the reduction could also be realised by maintaining the minimum contingent of six seats. This would increase the degressivity of national seat contingents at the expense of the bigger member states, but avoid the need for a treaty reform. A reform of the Direct Elections Act would still be necessary.

## PARLIAMENTARISING THE EUROPEAN COMMISSION

Creating a strong link between the parliamentary majority in the EP and the European Commission is essential to establishing democratic alternation. However, the current impact of EP elections on the composition of the Commission is low. The EP has a right to elect the Commission President, but can only vote on the proposal of the European Council. And while the European Council must »[take] into account« the result of the elections in this proposal (art. 17 (7) TEU), there is no consensus over the exact meaning of this obligation.

The introduction of lead candidates (*Spitzenkandidaten*) in 2014 was intended to operationalise the link between EP elections and the Commission Presidency and to increase the visibility of Europarties during the electoral campaign. However, their potential to foster a transnational public sphere has not yet fully materialised. A short-term measure to give them more public presence is a reform of the nominating procedure (Wolfs/Put/Van Hecke 2020): **Europarties should nominate their lead candidates earlier and with a more inclusive procedure**. The decision about this lies with each Europarty.

In 2019, the lead candidates procedure was unsuccessful because the EP groups failed to form a majority backing any of the lead candidates and the European Council insisted on its proposal prerogative. As the nomination of the Commission President always depends on parliamentary majorities, which can only be determined after the election, there should not be any formal obligation to elect a lead candidate as Commission President. Still, even when there is no parliamentary majority for any lead candidate, EP groups must remain the driving forces in the selection of the Commission President without being strong-armed by the European Council. Therefore, **the timeline following an EP election should be adjusted to give EP groups sufficient time to agree on a Commission President**.

In the medium term, the primacy of the EP in the selection procedure should be made explicit. For this, the art. 17 (7) TEU should be amended in such way that if the person proposed by the European Council is not elected by an EP majority, **EP groups are enabled to propose their own candidates**.

Regarding the College of Commissioners as a whole, the connection between the parliamentary majority and the Commission is even weaker. The EP has the right to a vote of consent on the College, which it has repeatedly used as leverage to veto specific candidates. However, it has little to no influence over the selection of candidates, who are proposed by national governments. As a consequence, the Commission represents the variegated party-political composition of the Council rather than the EP majority, further institutionalising the »permanent grand coalition«. Moreover, the fact that Commissioners depend on a proposal by their national government creates a structural dependence that counteracts the idea that they should only serve the common European interest.

A first step to solve this situation is the **reduction of the number of Commissioners**, overcoming the principle that each member state proposes one Commissioner. This reform would render the Commission more efficient and underline that Commissioners do not represent their home countries, but the EU as a whole. The reduction of the number of Commissioners is already provided for in art. 17 (5) TEU, but has been suspended by a European Council Decision (European Council 2013), which should be repealed.

In the medium term, the appointment of Commissioners should be reformed by a requirement that **national governments select the Commissioner candidates from among the Members of the European Parliament**. This will increase the visibility and name recognition of the Commissioners, who will already have been publicly present as candidates in the electoral campaigns, and strengthen the link between EP elections and the appointment of the Commission. This reform will require a treaty change and an adjustment of incompatibility rules that currently prevent MEPs from being Commissioners.

In the long term, the system by which national governments propose Commissioners should be eliminated altogether and **Commissioners should be appointed by the Commission President alone**. (Abolishing the »one Commissioner by member state« rule would not be strictly necessary for this reform but would make it easier to implement.) As the Commission President will be responsible to the EP, this reform will in fact significantly increase the role of political groups in the selection of the Commissioners and incentivise the formation of stable majorities in the EP, creating a clear distinction between majority parties that are represented in the Commission and opposition parties that are not. This will induce a more competitive and confrontational political culture and foster democratic alternation, making EP elections significantly more meaningful and ultimately strengthening the democratic legitimacy of the Commission itself as a supranational political body. This reform will require a treaty change.

The election procedure only ensures that the Commission has the confidence of the EP at the beginning of the electoral term. Once it has taken office, the Commission can only be voted out by a vote of no-confidence, which in its current

form (art. 234 TFEU) requires a two thirds majority in the EP. This high threshold weakens parliamentary control and disincentivises the formation of stable majorities in the EP. **Therefore, the quorum for a vote of no-confidence should be lowered to an absolute majority of MEPs**, the same that is needed to vote the Commission in. This will lead to closer cooperation between the Commission and the majority parties in the EP.

Moreover, the current no-confidence procedure is »destructive« in the sense that it forces the Commission to resign, but does not replace it with a new one. Instead, it triggers a regular nomination procedure according to art. 17 (7) TEU, in which the European Council (and not the EP) has the right of nomination. This separation of the right to vote out the old Commission from the right to nominate a new one is prone to creating political instability and should therefore be replaced by a **constructive no-confidence vote**. In this model, a motion of no-confidence against the sitting Commission must always be accompanied by the nomination of a new Commission President. The EP itself would thus nominate and elect the new Commission President at the same time as the old one is voted out. This reform will require a treaty change.

Still, linking the Commission closely to the parliamentary majority brings a risk of blockage if no parliamentary majority can be formed. In order to overcome such situations, the full parliamentarisation of the Commission should be accompanied by a **right of self-dissolution for the EP by a two thirds majority**. This will require a treaty change.

## REFORMING THE LEGISLATIVE PROCEDURE

Making EP elections more meaningful requires the elected parliamentary majority to decisively influence EU policy. Currently, the ordinary legislative procedure (OLP, art. 294 TFEU) establishes the EP as a co-legislating body on an almost equal footing with the Council. However, its position in the legislative procedure is still weak compared to most other directly elected chambers in national parliamentary systems. In order to increase the impact of EP elections, the legislative procedure must allow the parliamentary majority to implement its own policy preferences more effectively. At the same time, the procedure must become more transparent to make political alternatives visible to the public.

As a short-term measure, the EP should receive a **right of legislative initiative** (Maurer/Wolf 2020). Currently, the monopoly of initiative lies with the Commission, and art. 225 TFEU only allows the EP to »request« that the Commission submit proposals. Although Commission President von der Leyen (2019) has committed to honour all such requests, there is no formal obligation for the Commission to do so. A right of legislative initiative – be it through an interinstitutional agreement or, more robustly, through a treaty change – will give the parliamentary majority an agenda-setting power and allow them to publicly show their positions. It also has an important symbolical value, as it is highly unusual

for any democratic parliament not to have a right of initiative. Still, as a stand-alone measure its impact on actual policy will remain limited because the Council could still block any legislative initiative of the EP. Moreover, given the comparatively weak personal and financial resources of the EP, its initiatives would probably be limited to a number of high-profile symbolic issues. In the long run, the EP's right of legislative initiative will lose practical importance with a progressing parliamentarisation of the Commission itself.

Another reform to be addressed in the short term is to **increase the transparency of informal trilogues**. As the current OLP requires an agreement between the EP and Council, informal trilogues have been developed as a means of speeding up interinstitutional negotiations parallel or previous to the formal legislative procedure. Today, the vast majority of legal acts are agreed in this way and then rubber-stamped in the first formal OLP reading (Kluger Dionigi/Kloop 2017). However, informal trilogues lack basic transparency, which makes EU decision-making hard to understand for the general public and obscures political accountability. As a first step, the proposals recommended by the European Ombudsman in 2016 should be implemented in an interinstitutional agreement between the EP, Commission and Council. These proposals include the publication of trilogue meeting dates, summary agendas, the positions of the three institutions, the names of the involved decision-makers, and a list of the documents tabled during trilogue negotiations (European Ombudsman 2016).

In the long run, **informal trilogues should be abolished completely or reduced to very exceptional matters**, allowing the formal legislative procedure to regularly take its course. While no formal legal change is necessary in order to stop using informal trilogues, this reform requires further changes to the formal legislative procedure in order to maintain law-making efficiency and avoid the risk of legislative blockages.

One of these risks is that art. 294 (4) TFEU currently does not include any time limit, permitting the Council to delay legal acts indefinitely. Therefore, it is necessary to introduce a **time-limiting provision for the Council's first reading**. If after the EP's first reading the Council does not take a decision within a certain time frame (e. g. six months), the legal act should enter into force in the version of the EP's first-reading position. The introduction of a clear time frame would render the ordinary legislative procedure more efficient and reduce the need for informal trilogues. Moreover, this provision would mirror the corresponding time limit for the EP's second reading in art. 294 (7) (a) TFEU and thus eliminate an asymmetry to the detriment of the EP. This reform requires treaty change.

Another obstacle to a swift legislative procedure is the increased quorum in the EP's second reading. While the EP usually decides by a majority of votes cast, art. 294 (7) (c) TFEU requires an absolute majority of all MEPs to amend the Council's first-reading position. This creates a problematic incentive for the EP to avoid the second reading entirely and

use the informal trilogue instead. Moreover, given that not all MEPs are usually present in plenary votes, the absolute majority quorum reinforces the need for large cross-party alliances like the »permanent grand coalition« and hampers democratic alternation. Therefore, **the quorum for the EP's second reading should be lowered to a majority of votes cast**. This reform requires treaty change.

On the side of the Council, decisions within the OLP currently require a qualified majority vote (QMV) of 55 percent of the member states representing 65 percent of the population. This high threshold renders decision-making less efficient and gives disproportionate power to blocking minorities in the Council. Moreover, it reinforces the »permanent grand coalition« and impedes a stronger party-political polarisation of EU decision-making, as all three major Europarties (EPP, PES, ALDE) participate in enough national governments to form a blocking minority if the Council votes along party-political lines. To overcome these problems, **the QMV quorum should be lowered to a »double absolute majority«** of 50 percent of member states representing 50 percent of population. This reform requires treaty change.

The risk of a blockage in or by the Council is even greater in policy areas in which a special legislative procedure requires unanimity instead of a qualified majority vote. National veto rights give disproportionate influence to single member states, diminishing the meaningfulness of EP elections. It is therefore not only in the interest of decision-making efficiency, but also of supranational democracy to **replace unanimity procedures with the ordinary legislative procedure**. In the short term, this effort should focus on specific policy areas, especially tax and social policy. For this, the passerelle clause in art. 48 (7) TEU could be used, which requires unanimity by the European Council, but not formal treaty reform.

In the long term, transforming the EU into a full parliamentary democracy requires even more ambitious steps. On the one hand, **all unanimity procedures should be replaced with majority voting in both the Council and the Parliament**. Notably, this should also include all budgetary matters, such as the own-decisions procedure (art. 311 TFEU) and the multiannual financial framework (art. 312 TFEU). For decisions with constitutional relevance (e.g. treaty reform, enlargement) unanimity in the Council might be replaced with an increased qualified majority quorum, such as 75 percent of the states and population. It must be noted, however, that a complete abolition of national veto rights would not only require treaty reform, but would also have major legal repercussions at the national constitutional level.

On the other hand, even with all these reforms, the Council would still have a co-decision right in all legislative procedures, which is highly unusual for a second legislative chamber and unparalleled for one that is not directly elected. To transform the EU into a full parliamentary democracy, this situation should be solved by introducing a **new legislative procedure in which the EP receives explicit priority**

**over the Council**. Under this procedure, which would be applied to the most integrated policy fields, the Council would only have a suspensive veto over the EP's first-reading position and could be overruled by a majority of members of the EP.

In sum, in order to strengthen parliamentary democracy at the EU level and make EP elections more meaningful, it is necessary to increase the scope of majoritarian decision-making in the European political system and enable the parliamentary majority to implement its policy preferences more effectively. While some of these reforms could be addressed through changes in secondary law or interinstitutional agreements, the more effective ones require treaty reform. In several cases, a step-by-step approach is necessary in order to create the preconditions for more ambitious reforms. The Conference on the Future of Europe should provide a fresh impetus to implement urgent short-term measures, but also to initiate the debate about a full parliamentary democracy at the European level in the long term.

## 5

## MAKE CIVIL SOCIETY INVOLVEMENT MORE BOTTOM-UP

EU-level participative democracy has the potential to enhance the EU's input legitimacy, to force EU decision-makers to better justify their decisions, and to develop European public spheres in times of increasing politicisation. To make use of this potential, the previously discussed reform needs have to be addressed within the framework of five reform approaches. First, EU-level participative democracy has to become more inclusive to win back citizens with changing participatory demands to EU politics and improve its potential to generate input legitimacy. Second, participative governance has to overcome its top-down approach by giving citizens an agenda-setting power. Third, reforms of participative instruments need to make EU institutions more responsive to citizens' input. They either have to justify why they discard the input or better show when they are responsive to citizens', stakeholders', and civil society's demands. Fourth, the EU has to become more transparent by putting all actors in the ordinary legislative procedure on a level playing field. The Council should not be allowed to shy away anymore. Fifth, the upcoming Conference on the Future of Europe is the best opportunity to test innovative instruments of participation. Therefore, it should be used to learn how citizens and organised civil society can participate in reforming the EU Treaties.

### MAKE EU DEMOCRACY INCLUSIVE

Instruments of EU-level participative democracy do not follow clear objectives, do not clearly define their target groups, and partially overlap. In sum, the consultation regime is barely understandable for non-experts. To solve the issue, **two transparent sets of consultation instruments should be developed**, one set addressing citizens and one set addressing stakeholders and organised civil society. Each instrument within the two sets should be given a self-descriptive name, making clear what its objective and its target group are. Clear names and distinguished sets facilitate the decision of citizens and experts about which instrument they choose to participate with, and makes it easier to better disseminate information about opportunities for EU-level participation. To make consultation instruments more transparent, the Commission has to revise its better regulation guidelines.

If instruments have a clear objective (either gathering opinions or collecting evidence based on expert knowledge), Commission staff are enabled to **better design targeted**

**questionnaires** and improve the moderation of consultation meetings. Using improved methodology will most likely result in more beneficial outcomes and reduce frustration on the participants' side. Experts are offered the opportunity to bring in their expertise on issues referenced by the Commission as well as to mention additional issues that are not yet addressed. Questionnaires for citizens can be designed in such a way that they do not require previous knowledge. Simple questionnaires increase participation rates significantly. Improving the methodology of questionnaires and meetings requires in-house capacity building for Commission staff and, especially for the moderation of meetings, outsourcing the task to independent experts.

A **relaunched website »Have your say+«** should provide access to ECIs, e-petitions, the Ombudsman, all online consultations, feedback mechanisms, and other consultation instruments of the Commission, such as »Lighten the load« and citizens' dialogues, as well as the transparency register. The website translated into all 24 official languages should contain simple explanations of each instrument, allowing citizens, stakeholders, and civil society activists to choose the appropriate instrument for their purpose. A helpdesk should be available for questions. The website should contain a search engine and alert mechanism allowing citizens to search for ongoing ECIs, petitions, consultations, and inquiries of the Ombudsman as well as results and reports from previous activities. As a single access point the website reduces the efforts required to find ongoing activities, facilitates participation by better explaining what needs to be done, and decreases the administrative burden on the institutions, as a clear overview of all ongoing activities minimises the duplication of initiatives. Establishing such a platform would require the inter-institutional agreement of the Commission, Parliament, Council and Ombudsman as well as sufficient funding from the annual EU budget to set up and run the website and helpdesk.

### GIVE CITIZENS AGENDA-SETTING POWER

The thresholds for successful ECIs are high, while the direct effects are limited. To improve citizens' agenda-setting power, **the requirements and effects of an ECI should be better balanced**. Following the example of government and parliament petitions in the United Kingdom (Panagiot-

opoulos/Elliman 2012), the EU institutions' responses should be scaled according to the number of collected statements of support. If organisers collect 10,000 signatures from at least three member states,<sup>2</sup> they receive a written response from the Commission. If they collect 100,000 signatures from at least seven member states,<sup>3</sup> they are invited by the Commission to discuss their proposal, and at least one committee in the Parliament and the Council deliberate on the ECI. Finally, if an ECI is successful in collecting 1 million signatures from at least seven member states, it has a direct effect. In cases where the organisers have attached a draft legislative proposal to their ECI, the legislative procedure starts automatically. Where there is no attachment, the Commission is obliged to draft a proposal in consultation with the organisers. The reformed ECI procedure gives citizens a more powerful agenda-setting instrument and forces EU institutions to become more responsive to citizens' inputs. For establishing the 10,000 and 100,000 signature threshold, the ECI Regulation needs to be reformed in the ordinary legislative procedure, while establishing direct effect requires a revision of art. 11 (4) Treaty on European Union (TEU).

In addition to giving citizens agenda-setting power with regard to the Commission's right of initiative, citizens also need an instrument to address the European Council, considering its task is to set the general political directions and agree on the EU's priorities. Therefore, **a citizens' consultation process should precede the adoption of the European Council's strategic agenda.** For the consultation process, some of the Commission's citizens' dialogues should be turned into deliberative bodies, as already tried on some occasions. In decentralised deliberative mini publics, groups of randomly selected citizens from across Europe debate on the future priorities of the EU and the course to take. The results are documented in a report and complemented by a Eurobarometer survey on the priorities and directions of EU policy based on the outcome of the citizens' dialogues. In an annex to the strategic agenda, the European Council should be obliged to discuss which consultation results it has considered and to justify why it discarded others. The new consultation process gives citizens an agenda-setting power outside the ordinary legislative procedure and puts an end to the European Council's shying away from participative democracy. This reform requires the willingness of the European Council and support from the Commission. Resources for citizens' dialogues and Eurobarometer surveys exist, the only task is to use them in a more targeted manner.

## MAKE EU INSTITUTIONS MORE RESPONSIVE

It is necessary to **make consultation processes and their follow-up more transparent.** So far, only summary reports of consultations are published as staff working docu-

ments, which accompany Commission proposals. Every initiative for which one or more consultation activities are conducted as well as ECIs and petitions should be assigned a unique procedural file number, which allows citizens to track the initiative.<sup>4</sup> Like the digital object identifier (DOI), it should be possible to also use the file number as an internet link. For each procedural file a unique micro page on the relaunched »Have your say+« website is created. It documents every initiative, including all the related documents, events, and follow-ups. The procedural files on the website »EUR-Lex« provide a best practice example of how to archive and visualise legislative procedures. The unique procedural file number makes EU-level consultations more transparent and improves the way EU citizens, stakeholders, and organised civil society are informed about EU institutions' responses to their inputs. The proposal only requires limited additional resources to adapt the system for legislative procedural files to consultation procedures and a revision of the related provisions in the better regulation guidelines.

## MAKE EU LEGISLATION MORE TRANSPARENT

It has been shown before that the Commission's transparency regulations are quite advanced and the European Parliament has taken steps to also make the transparency register mandatory (European Parliament 2019b). The willingness of the Council to join the transparency register remains limited. Its mandate for the ongoing inter-institutional negotiations foresees that only staff of the general secretariat shall become subject to the provisions, while member state negotiators will be excluded from the regulations (Council of the European Union 2017). Being the still more powerful EU-level legislative body, this exception for negotiators is unacceptable. Therefore, **all national representatives and staff participating in the Council, COREPER, or any meeting of its preparatory bodies have to be subject to EU-level transparency regulations.** While the transparency register itself is based on an institutional agreement, making member state staff subject to the regulations would require a treaty change.

As member states will most likely reject the idea of participating in the EU transparency register for formal reasons, the EU institutions, a group of member states with transparency regulations in force, and others willing to join could set up an **integrated multilevel transparency register** that also covers member state representatives and staff, based on national legislation. An integrated transparency register would become a role model and increase political pressure on other member states to join. The proposal would require a revision of the institutional agreement on the transparency register and the revision or adoption of national legislation.

<sup>2</sup> National quorums should be 1 percent of the quorums for successful ECIs.

<sup>3</sup> National quorums should be 10 percent of the quorums for successful ECIs.

<sup>4</sup> We would like to thank Pauline Fröhlich for suggesting this recommendation.

## ALLOW CITIZENS' AND CIVIL SOCIETY'S PARTICIPATION IN TREATY REFORMS

Considering the success of the Convention on the Future of Europe, which was complemented by a civil society forum, **representatives of organised civil society and citizens should become members of the convention** foreseen in the ordinary revision procedure for treaties (art. 48 (2–5) TEU). They should be selected from a civil society forum and a citizens' dialogue accompanying the convention. The recommendation requires a revision of art. 48 TEU.

The upcoming Conference on the Future of Europe should be used to test the new ordinary revision procedure proposed under recommendation No. 9. The Conference on the Future of Europe should be complemented by a civil society forum and a citizens' dialogue. Delegates from both bodies should become members of the conference. The proposal requires consent by the Commission, European Parliament, and Council in an inter-institutional agreement.

## 6

## MAKE EU ECONOMIC POLICY MORE ACCOUNTABLE

In chapter III, we have shown that reforming European economic governance is a key aspect in order to reinforce the democratic legitimacy of the EU. The number of deficiencies outlined before can be summarised in three reform approaches that need to be addressed:

- better clarify responsibilities for European economic governance;
- make European economic governance more transparent;
- eliminate overly complex institutional structures.

The best way to achieve these goals is to give the European Parliament and, through European elections, the citizens of the EU more influence on European economic policy.

In the short term, **every European Commission should adopt a five-year economic and social strategy**. In the past, the European Council adopted the long-term economic strategy of the EU (European Commission 2010), which influences the European Semester even beyond its lifetime (Hacker 2018). This limits the ability of the Commission to set its own priorities. Instead, every incoming Commission should lay out its priorities in an economic and social strategy, in addition to its political guidelines. The strategy should set the tone for the Commission's role within the European Semester, enable the European Parliament to hold the Commission accountable throughout its five-year tenure, and give voters more influence on European economic governance. Combining an economic with a social strategy would also help to rebalance the current bias towards restrictive fiscal policy in the European Semester. As the example of the »Green New Deal« of the current Commission shows, the proposal requires only willingness on the part of the Commission to adopt the strategy and stick to the defined priorities in European economic governance. A separate strategic document adopted by each Commission in addition to the political guidelines would give it more visibility.

Also in the short term, **the European Parliament should debate the separate steps of the European Semester more intensively in the plenary**. The debate about the Commission's Annual Growth Survey, the draft Euro area recommendations, and the employment guidelines in the plenary were a step forward. The adoption of own-initiative reports gives the debate more visibility and increases the

transparency of the European Semester. Therefore, the European Parliament should also debate the draft country-specific recommendations in plenary and adopt another own-initiative report on the European Semester. It would be an instrument to hold the Commission accountable for its economic policy against the backdrop of its social and economic strategy. It would also give an impulse to the debate in the Council, the adoption of the policy orientation by the European Council as well as the adoption of the country-specific recommendations. As the European Parliament has the right to adopt own-initiative reports, the proposal requires only the willingness of the European Parliament.

In a mid-term perspective, **the policy orientation for the European Semester should be adopted by the European Parliament**. Complementing the Council deliberations on the policy orientation for the European Semester with an own-initiative report of the European Parliament increases transparency, but does not clarify accountability. The member state governments would still define the guidelines against which they are judged. In order to separate the supervising body from the supervised, it is necessary to exclude the Council from the European Semester. The non-functioning excessive deficit procedure has made the problem of fusing both roles obvious. Clear separation would ensure that accountability »occur[s] at the level at which the decisions are taken« (van Rompuy 2012: 16). Citizens can hold the European Parliament accountable for EU-level decisions and national governments in national elections for member state-level decisions. As an interim measure, both the Council and the European Parliament could adopt the policy orientation under the ordinary legislative procedure. To implement this recommendation, secondary law needs to be reformed.

Also in the short to mid term, **national parliaments should be implied in the European Semester**. The national reform programmes, which outline the objectives, priorities, and concrete plans on how a member state government intends to reach the EU-level policy objectives, should be adopted by national parliaments. The debate on the national reform programmes would increase transparency and give member state citizens the opportunity to hold their governments accountable for proper implementation. This adds another level of critical assessment of the implementation of economic policy. National governments would need to bet-

ter justify their national reform programmes. In cases where they achieved considerable progress in the previous years, this would also be an opportunity to present themselves as successful. To implement the recommendation, secondary law needs to be reformed.

As an additional measure to parliamentarise economic governance, **the country-specific recommendations within the European Semester should be adopted by the European Parliament.** In order to further clarify the responsibilities for EU-level policy recommendations and member state-level policy implementation, the Council system should be excluded from supervising national policies, as discussed before. The deficiencies of the excessive deficit procedure prove that self-control by governments in the Council does not work. Therefore, country-specific recommendations within the European Semester should be proposed by the Commission and adopted by the European Parliament. The supranational institutions are politically responsible for the recommendations and can be held accountable for them in European elections. The national governments and parliaments are responsible for implementing recommendations and can be held accountable in national elections. The new procedure improves the critical assessment of national policies and simplifies the procedure considerably. To implement the recommendation, secondary law needs to be reformed.

Moreover, **the intergovernmental structures outside the EU primary law and in parallel to EU institutions should be abolished.** As shown above, the responses to the crises in the euro area resulted in intergovernmental structures outside the EU Treaties. The duplication of structures unnecessarily complicates the institutional setup of the EU. To make European economic governance more transparent and less complex, it is necessary to integrate all instruments into the EU Treaties, as foreseen for the Fiscal Treaty in art. 16 and proposed by the »Five Presidents Reports« (Juncker et al. 2015: 18). This recommendation requires treaty change.

In a similar way, also **the Eurogroup and the Euro Summit should be abolished.** Both institutions are unnecessary informal duplications of EU-level institutions, the Euro Summit does not even have a basis in the EU Treaties. After Brexit, Denmark is the only member state that is not obliged to introduce the euro as its currency and even Denmark takes part in the European Exchange Rate Mechanism II. Therefore, all member states are potentially affected by future decisions in the euro area; and formal decisions are taken in the ECOFIN Council, anyway. Therefore, integrating the Eurogroup and the Euro Summit into the Council and the European Council would simplify the institutional structure of the EMU considerably and increase transparency. This recommendation requires a reform of the European Treaties and the Fiscal Treaty.

Some of the recommended reform options merely require the willingness of the EU institutions, while a few require either the reform of secondary or primary law. The negotia-

tions on the EU's economic response to the pandemic, Germany's Chancellor Angela Merkel's recent comment on the possibility of treaty reforms as a long-term response to the current crisis (Gutschker 2020) and the Conference on the Future of Europe open a window of opportunity to address these challenges in the coming years.

## 7

## CONCLUSIONS: TEN RECOMMENDATIONS TO MAKE THE EU MORE DEMOCRATIC IN THE SHORT TERM

Following the missed opportunity to reform the EU after the Brexit referendum, **the planned Conference on the Future of Europe opens a new window of opportunity to address the most urgent reform needs, including the enhancement of the democratic legitimacy of the EU.**

During the last decade, one main argument put forward against the idea of a treaty revision has been that it would open Pandora's box in a time when Eurosceptic parties enjoyed a relatively strong position in the wake of the crises in the Euro area. Therefore, critics of a treaty revision recommended to wait until the economic situation would improve and citizens would vote Eurosceptic parties out. This argument, however, does not resonate any more. On the one hand, waiting for time to pass by has not proved to be a successful strategy: Eurosceptic parties are by now in government in several member states and no substantive decline of their vote share is foreseeable in the short term. On the other hand, the 15-year peak of citizen's satisfaction with EU-level democracy reached in 2019 (Standard Eurobarometer 2019: 143) is solid ground to address the necessary reforms now. It is unlikely that further inaction will put the EU in any better position for this.

As almost two in five European citizens still believe that their voices do not count in the EU (Standard Eurobarometer 2019: 148), strengthening the democratic legitimacy has to be among the top reform priorities of the EU. Strengthening output legitimacy is necessary, but not sufficient to address the concerns of these citizens. As this research paper has argued, the EU competences are by now too comprehensive and its policies have too many distributional effects to be dealt with an exclusive focus on output legitimacy. **The EU therefore needs a stronger basis of democratic input legitimacy as well as higher decision-making standards in terms of throughput legitimacy.** At the same time, we have shown that the notion that EU-level democracy is bound to fail due to the lack of societal prerequisites is unconvincing. On the contrary, there is evidence that thanks to a mutually reinforcing interaction political systems are indeed capable of constructing their own demos even at the supranational level. Therefore, this research paper supports the view that **institutional reforms are capable of enhancing EU-level democracy by strengthening both its parliamentary and its participatory dimension.**

In the first place, the paper analysed ways of **making European Parliament elections more meaningful** in order to allow all EU citizens an easy way to choose between clear alternatives and have an impact on the EU policy agenda. To also address the demands of those EU citizens who express clear discontent with representative democracy in general, the research paper also explored ways of **making civil society involvement more bottom-up**, complementing representative democracy with new avenues of political participation. Survey data show that the crises in the Euro area and the crisis management have been a major source of citizens' discontent with European democracy in recent years. Therefore, the research paper also explored ways of making **European economic policy more accountable.**

Other approaches to institutional reforms were disregarded in this paper: A European President would not possess sufficient power sources to live up to the expectation generated by a direct election. The positive effects of **Euro presidentialism** can also be realised by turning the European Commission into a real government in an EU-level parliamentary democracy, without establishing a political system that would be new to most EU citizens. Discussing the institutional implications of the idea of **demiocracy** is difficult as few concrete reforms have been proposed. Among those proposals that resonate best with democratic arguments is Angela Merkel's »Union method« of strengthening intergovernmentalism. However, too much intergovernmentalism is rather the root cause of the democratic deficit than a fix to it. Finally, the research paper also rejected proposals for differentiated integration as a means to enhance the democratic quality of the EU. Instead, **differentiated integration** makes EU-level decision more complex and obstructs the emergence of a common political identity, while also tending to democratically entrap non-participating member states at the national level.

Concerning **EU-level parliamentarism**, the research paper outlined several significant deficiencies. Compared to most other democratic systems, the EU is characterised by an unusually high degree of inter-institutional entanglement and the lack of a real parliamentary opposition. Rather than pacifying political conflicts, this strong consensualism weakens accountability, makes EP elections less meaningful, and ultimately emboldens populist anti-EU parties. To reinforce European parliamentary democracy, several

kinds of reform are necessary. At a formal level, it is necessary to tackle the lack of electoral equality. Regarding procedural legitimacy, transnational opinion formation must be strengthened and the transparency and legibility of EU decision making must be increased. Finally, European elections must become more consequential by facilitating democratic alternation between a stable governing majority and a loyal opposition and by widening the scope of majoritarian decision-making.

With regard to **participative democracy**, citizens' participation rights on the EU level are quite advanced, especially compared to most member states. However, participative governance has not turned into real participative democracy, yet. Its outreach to some groups of citizens and on the national level is still too limited. To increase the outreach and involve more citizens and national-level civil society organisations, technical obstacles in the consultation procedures must be lowered with regard to increasing participation. As its instruments are mainly top-down and they lack direct effects, citizens must be given a true agenda-setting power and EU institutions need to become more responsive to citizens' input. Member state governments in the Council system refuse to participate in any of the instruments. Most notable, the complete Council has to participate in the EU transparency register.

**European economic governance** lacks sufficient competence to generate output legitimacy. As these reform proposals are outside the scope of this research paper, the analysis focused on analysing the overly complex decision-making structure of European economic policy, which is insufficiently accountable, transparent, inclusive and open. Therefore, it is necessary to better clarify responsibilities for European economic governance between EU-level and national-level actors, to give citizens more insight into decision-making procedures by involving parliaments, and to simplify the institutional structures inside and outside the EU.

**To address these deficiencies, the following reform proposals should be adopted in the short-term perspective:**

1. The European electoral system should be reformed by the introduction of **EU-wide transnational lists**, used for proportional compensation between political groups, and by the introduction of a **transnational electoral threshold**.
2. The **number of Commissioners should be reduced** in order to underline the principle that Commissioners are not representatives of their country, but of the EU as a whole.
3. The European Parliament should have a **right of legislative initiative**.
4. Unanimity procedures should be replaced by the **ordinary legislative procedure** in as many policy areas as possible.
5. Two different sets of **better designed consultation instruments** should directly target either citizens or civil society organisations.
6. All instruments of participative democracy should be accessible through a **relaunched »Have your say+« website**, and **unique procedural file numbers** should allow citizens to track every initiative from the consultation throughout the whole legislative process.
7. An **integrated system of national transparency registers** should cover all negotiators in the Council system.
8. To give citizens more influence on EU economic policy, every incoming Commission should adopt an **economic strategy** for its term.
9. Based on the new Commission strategy, the European Parliament should adopt the **policy orientation for the European Semester** every year.
10. To make the European Semester more transparent, national parliaments should **adopt the national reform programmes**, while the European Parliament should **adopt the country-specific recommendations**.

The best opportunity for adopting these short-term measures is the Conference on the Future of Europe, which should itself become a prime example for the participation of citizens and civil society organisations in EU decision-making.

## OVERVIEW

The following table gives an overview of all policy proposals presented in this research paper.

	<b>Short-term (no treaty change necessary)</b>	<b>Medium-term (requires treaty change)</b>	<b>Long-term (implies fundamental changes in functioning of the EU)</b>
<b>Reforming electoral law</b>	<ul style="list-style-type: none"> <li>– Synchronize national voting procedures</li> <li>– Create transnational (EU-wide) lists, used for proportional compensation</li> <li>– Create a pan-European threshold</li> </ul>	<ul style="list-style-type: none"> <li>– Widen number of transnational seats to allow for full proportional compensation</li> </ul>	<ul style="list-style-type: none"> <li>– Create a uniform European electoral system</li> </ul>
<b>Parliamentarising the European Commission</b>	<ul style="list-style-type: none"> <li>– Nominate lead candidates earlier</li> <li>– Give more time to EP groups to agree on a Commission President</li> <li>– Reduce number of Commissioners</li> </ul>	<ul style="list-style-type: none"> <li>– Give EP groups the right to nominate Commission President</li> <li>– Select the Commissioner candidates from among the Members of the European Parliament</li> <li>– Lower quorum of no-confidence vote to absolute majority</li> <li>– Make no-confidence vote constructive</li> </ul>	<ul style="list-style-type: none"> <li>– Let Commission President alone appoint Commissioners</li> <li>– Give the EP the right of self-dissolution</li> </ul>
<b>Reforming the legislative procedure</b>	<ul style="list-style-type: none"> <li>– Give the EP a right of legislative initiative</li> <li>– Increase transparency of the informal trilogues</li> <li>– Replace unanimity procedures by OLP</li> </ul>	<ul style="list-style-type: none"> <li>– Introduce a time limit for the Council’s first reading in OLP</li> <li>– Lower quorum for the EP’s second reading in OLP to majority of votes cast</li> <li>– Lower QMV quora to double absolute majority</li> </ul>	<ul style="list-style-type: none"> <li>– Abolish informal trilogues</li> <li>– Replace all unanimity procedures with (qualified) majority votes</li> <li>– Give the EP the right to overrule the Council</li> </ul>
<b>Reforming EMU</b>	<ul style="list-style-type: none"> <li>– Have the Commission adopt a five year economic and social strategy</li> <li>– Have the EP adopt an own-initiative report on the European Semester</li> <li>– Imply national parliaments in the adoption of national reform programmes</li> <li>– Give the EP the right to adopt the policy orientation for the European Semester</li> <li>– Give the EP the right to adopt country-specific recommendations</li> </ul>	<ul style="list-style-type: none"> <li>– Abolish intergovernmental structures outside the EU primary law and in parallel to EU institutions</li> <li>– Abolish Euro group and Euro summit</li> </ul>	
<b>Making participative democracy more inclusive</b>	<ul style="list-style-type: none"> <li>– Develop two transparent sets of consultation instruments (for citizens and stakeholders) with self-descriptive names</li> <li>– Better design targeted questionnaires and improve the moderation of consultation meetings</li> <li>– Create a single online access point to all participative instruments</li> </ul>		

<b>Giving the Citizens Agenda-Setting Power</b>	<ul style="list-style-type: none"> <li>– Better balance requirements and effects of an ECI</li> <li>– Introduce a citizens' consultation process preceding the adoption of the European Council's strategic agenda</li> </ul>	<ul style="list-style-type: none"> <li>– Give the ECI a direct effect</li> </ul>
<b>Making EU institutions more responsive and transparent</b>	<ul style="list-style-type: none"> <li>– Introduce a unique procedural file number for initiatives</li> <li>– Set up an integrated multi-level transparency register based on national legislation</li> </ul>	<ul style="list-style-type: none"> <li>– Include representatives of organised civil society and citizens as members of the convent foreseen in the ordinary treaty revision procedure</li> <li>– Subject all national representatives and staff participating in the Council, COREPER and preparatory bodies to EU-level transparency regulations</li> </ul>

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# ENHANCING THE DEMOCRATIC LEGITIMACY OF THE EU

## Short and Long-Term Avenues to Reinforce Parliamentary and Participative Democracy at the EU Level



Efficient policy outcomes are a necessary, but not a sufficient legitimacy source for the EU in 2020. The EU has by now become too powerful and its policies have too many distributional effects. Therefore, the EU needs stronger democratic mechanisms to turn citizens' input into policies and make EU institutions more responsive to citizens' demands. At the same time, fears that the lack of a European demos makes an EU democracy impossible are unwarranted. Institutional reforms themselves can contribute to creating the necessary societal conditions for supranational democracy.



Among the institutional reform approaches to increase the democratic legitimacy of the EU, the most promising avenue is a combination of European parliamentary and participative democracy. Other proposals, such as European presidentialism, democracy, or differentiated integration, are more problematic and might even be counter-productive as a solution to the democratic deficiencies of the EU.



This study analyses reform needs and presents short and long-term reform proposals to enhance democratic legitimacy at the EU level. It outlines specific recommendations for making European elections more meaningful and civil society involvement more bottom-up. Additionally, a special focus is placed on economic governance of the monetary union as a policy area that has particularly strong effects on citizens' evaluation of European democracy.

Further information on the topic can be found here:

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