

European Union's Democratic deficit and post-Lisbon Treaty citizenship

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Abstract: *The Treaty of Lisbon (2009) has made numerous changes and new developments in the European Union's mechanisms. If some of them refer to its institutions, others are related to the international legitimacy of the European Union, so that it has acquired its legal personality. Another aspect refers to the possibility of leaving the states in the Union, which had not been foreseen so far, with only the entry procedure being regulated, offering by this possibility a truly democratic character that the Union needed.*

Key words: Lisbon Treaty, democratic deficit, European Union citizenship, initiative

New perspectives of the Treaty of Lisbon

ONE OF THE MOST IMPORTANT ASPECTS of the Treaty of Lisbon is that it confers legal personality on the European Union. Article 15 of the [Treaty of the European Union](#) (TEU) set up the office of President of the European Council. Article 18 TEU has resized the Foreign Policy and Common Security. The simplification of the decision-making process is another regulation that is part of the innovative features of the Treaty of Lisbon. The Treaty also clarifies the competencies of the European Union (Articles 4 and 5 of the TEU and Articles 3 to 6 of the TFEU**) as exclusive, shared and supportive, but also the statehood of states (Article 222 TFEU). Another regulation of the Treaty of Lisbon establishes, through Article 6 TEU, the jurisprudence of the Charter of Fundamental Rights of the European Union, but also the relationship it has in adopting the provisions of the

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** TFEU = Treaty of the Functioning of the European Union.

European Convention on Human Rights. The Neighbourhood Policy falls within the European Union's obligations, but Member States keep the right to decide (Article 8 of the TEU). The disappearance of the pillar structure of the European Union determines the Communitarisation of police and judicial cooperation.

The following provisions relate to combating the democratic deficit in the European Union and provide for the necessary measures to eliminate criticism of the transparent representativeness of citizens in the framework of the Union mechanism: Article 14 of the TEU provides the European Parliament with increased powers in the legislative, budgetary and international. Article 12 TEU envisages an increase in the role of the National Parliaments, on which we shall summarize the fact that they enjoy the possibility of close cooperation with the European Parliament and with other national parliaments of the Member States. In terms of attributions, they are obviously more numerous, because national parliaments can work directly with the European institutions, not just through the executive, verify compliance with the principle of subsidiarity in the drafting of normative acts, have direct implications in the revision of the treaties. It is envisaged that according to Article 49 TEU, national parliaments should be notified by States wishing to join the European Union.

The right of Member States to withdraw from the European Union as set out in Article 50 TEU expressly provides that Member States may decide to withdraw from the European Union in accordance with their own constitutional rules and after notification to the European Council. Withdrawal is formally achieved through a negotiated and concluded agreement between the requesting Member State and the European Union. Decisions in the Council shall be taken by a qualified majority after obtaining the consent of the European Parliament. The Treaties cease to apply to the State concerned from the date of entry into force of the withdrawal agreement or, in the absence of such an agreement, two years after such notification unless the European Council, in agreement with the Member State concerned, unanimously decides to break this deadline. Even after the withdrawal, the Treaty provides the State with the opportunity to return to the Union by submitting the application and following the specific procedures required (under Article 49 of the TEU).

The Citizens' Initiative is another novelty under the Treaty of Lisbon, which regulates the possibility for one million European citizens from different countries to propose a problem to be debated or adopted in the European Union's decision-making mechanisms. It also envisages the possibility for States or the Commission to submit to the Council proposals to amend certain provisions of the Treaties adopted. As a result, the Council, through its President, paved the way for an Intergovernmental Conference (IGC), in which,

with the unanimity of the States and the national parliaments, the treaty could be amended before its entry into force.

Increased power for local actors

The Constitutional Treaty provided explicit reference to regional and local levels, introducing a series of safeguard measures aimed at guaranteeing regional competences and even constitutionalizing their participation in the decision-making process. All these provisions also appear in the Treaty of Lisbon, without any change, being in fact a recognition and explanation of the multi-level political system of the European Union and its federal character, the power being shared between different decision-making and managerial levels (Luzarraga, Llorente 2011: 110).

The Treaty explicitly recognizes - for the first time - the principle of local and regional autonomy within the EU Member States. It also gives greater importance to the local and regional level in checking of the principle of subsidiarity. The Treaty guarantees that the process of drafting new EU legislation begins with a detailed analysis of the local and regional impact of all proposals. The Treaty also gives the Committee of the Regions several prerogatives to track the legislative draft at all stages of the legislative process. The Treaty provides the European body with several legal and policy instruments. Authorities at all levels across Europe will have to collaborate much more than they have done so far. The Committee of the Regions anticipates these new challenges and is ready to contribute to the increased capacity of local and regional authorities (CoR). The stage where the actors have performed is completely changed since the political and economic decisions were further fragmented.

The Treaty of Lisbon changed the relationship between the Committee of the Regions and the other EU institutions. The Committee gained a stronger presence at all levels of the EU decision-making process - in the preparation, modification and monitoring of legislation affecting local and regional authorities. It ensures a greater contribution by the authorities closest to citizens to EU policies at all levels and encourages greater involvement of the general public in the process of European integration. All three institutions adopting EU legislation - the European Parliament, the Commission and the Council – should consult the CoR when drafting legislation in any area that could have a regional impact. The Committee's opinions cover several policy areas, including energy and climate change. Services of general interest,

namely social services, public services and infrastructures, as well as their importance to local and regional authorities, are covered by a protocol annexed to the Treaty. In addition, the Committee now has legal instruments to protect its right to be consulted at the European Court of Justice. Thus, they can protect their prerogatives if they feel that they are not respected by the other EU institutions and can attack EU legislation that does not respect the principle of subsidiarity by violating local and regional competences (CoR).

As elected representatives of European citizens, both Members of the European Parliament and the Committee of the Regions enhance the democratic legitimacy of the European Union. The Treaty of Lisbon established a closer and clearer relationship between the two institutions. This should allow for greater public relations with the European Union and greater confidence in its democratic nature. The most important change to the Treaty is that Parliament - in addition to the Commission and the Council - has an obligation to consult the Committee on the proposals in all policy areas where the Commission and the Council should have done so far. Having the opportunity to review its opinions as a result of changes made by the EU institutions, the Committee is able to follow political debates in Parliament, to advise rapporteurs and to react promptly to political developments. Through this process, the relationship between the Committee and Parliament will become more concrete and more political in character. Under the new "early warning" procedure, the European Parliament can block legislative proposals by a simple majority vote if most national parliaments raise objections to subsidiarity. In situations where the Committee shares the concerns of national parliaments, it will ensure that the European Parliament follows suit. The Council has a similar prerogative to reject proposals. Relations between the Member States and the Union can be found in the first articles of the TEU, which also clarify the mutual obligations of cooperation, loyalty and solidarity. In addition, at the level of the general principle, the political limits of the Union's action vis-à-vis the Member States are identical, which is the guarantee of the Constitution of the Union of some of the essential components of the states, regions and local entities, them (CoR)

Article 1 (TEU) states that: "This Treaty marks a new stage in the process of creating an ever-closer union among the peoples of Europe, in which decisions are taken with full respect of the principle of transparency and as close as possible to citizens ". The illusory character of this Community consecration is based in practice on the major democratic deficit in the European Union, the distance between the Union institutions and the European citizen, the administrative bureaucracy brought to the highest level, the Community corruption accused of national corruption, especially in Central

European states and Eastern countries that joined the European Union in 2004 and 2007 ([Marin 2009: 9](#)).

Fighting the democratic deficit

For the European citizens, it must be made clear that the Treaty of Lisbon increasingly transferred great powers from the citizen to bureaucracy, transforming the European Union from an association of states and democratic governments, with common values and goals, into a federation led by a bureaucratic and foreign values with the majority of the member states. The tools of transformation are the same in all local communities and in the Member States: ignorance and temporary indifference of the public, cooperation of political elites, especially in elections, the cultivation of myths, such as "Europeanism" and "European culture" ([Marin 2009: 10](#)).

With the new Treaty, we noticed the reconsideration of the role of citizens in the European Union. Thus, on the one hand, they are considered to be subjects of law in the face of the European public power, and on the other hand they are political actors, legitimising the public power at European level, which in turn is exercised in their name and with their participation. The Title II of the Treaty, entitled "Provisions on democratic principles", consists of four articles: the first three include the principles of democratic equality, representative democracy and participatory democracy ([Luzarraga, Llorente 2011: 113](#)). One of the fundamental objectives of this Title was to bring the European Union closer to its citizens, explaining and clarifying the European political model. This article had a twofold purpose: to expose and explain the bases and rules of play specific to the European political system and, on the other hand, to introduce provisions on its democratic functioning by linking citizens' participation in the democratic life of the European Union ([Luzarraga, Llorente 2011: 114](#)).

Part of the specialized literature on governance is dedicated to proposals to increase democratic accountability and the EU's governance capacity. In the literature, three distinct directions of reform can be identified: constitutionality, parliamentary activity and deliberation. The first concerns the growth of overall rules and procedural controls that would ensure minimum levels of transparency and public participation in the development of EU policies. Parliamentary involvement would entail increasing EP legislative and budgetary powers, strengthening parliamentary groups, subordinating the Commission ([Wallace et al. 2015: 32-33](#)). A deliberative

democracy would be the solution by involving citizens and their representatives through a joint deliberation.

The main question related to this type of democracy is that democracy must be as representative as possible. This means that the positions expressed by the representatives in Parliament should be as close as possible to the preferences of the electoral body. From this perspective, it is possible to solve how elected representatives cannot deviate or deviate as little as possible from the preferences of the electoral body. From the perspective of citizen-delegated democracy, parties and their formation are two suspicious things. Parties are seen as a conspiratorial way of producing a distance between voters and their representatives (Hix 2010, 74-76).

The European Parliament is the only European institution elected by direct vote. The Treaty of Lisbon provides a legal basis for the need to have a coherent institutional framework capable of achieving the objectives for which the Union was created, through the transfer of powers of the democratic states (Timofte 2010: 85-91).

Citizens' involvement in decision-making

The *Citizens Initiative* (Article 11 (4) TEU) introduced by the Treaty of Lisbon, allows one million citizens, nationals of a significant number of Member States, to directly request the European Commission to submit an initiative of interest for them in a field of competence of the Union. For the first time in the history of the European Union, the citizens of the Member States benefit from the direct right of Community legislative initiative similar to the national constitutional systems at the request of a number of citizens, the European Commission initiates a legislative project. Thus, this initiative is the first formal manifestation of citizens' right to take part in the EU decision-making process, emphasizing the democratic legitimacy of the EU. The conditions and procedures for exercising citizens' initiative lay down in a regulation adopted by the European Parliament and the Council based on a proposal from the European Commission.

It is for the first time that citizens can participate actively in the exercise of the sovereign authority of the European Union, being directly involved in the European legislative process, which transforms European citizenship into an effective exercise of the resulting rights. The legislative initiative has a symbolic value. It proves the existence of a European people representing

more than the sum of the national citizens, the chairman of the Committee on Constitutional Affairs said. The proposal sets out how many signatures to be collected for each country and suggests that the Commission analyse, after collecting 300 000 signatures from three Member States, whether the initiative can be considered. It sets a one-year deadline for collecting signatures and gives the Commission four months to examine the initiative and how to proceed with it. With the aim of bringing citizens closer to the European Union's decision-making process, the Treaty of Lisbon strengthens the role of the social partners by recognizing the Tripartite Social Summit - social partners (private employers, small businesses, public employers, etc.). The Treaty recognizes the importance of dialogue between citizens, civil society structures and the institutions of the European Union, the first two mentioned structures now being able to take part in European decisions (Pop 2010: 90-91).

Kristine Kruma (2014) has noticed that although there were changes caused by the Lisbon Treaty provisions on citizenship have not changed. In essence, what is observed is the replacement of the formula "citizenship is complementary" with a new formulation "is additional to the national citizenship." Beyond the debate on the economic and social substance of citizenship, its political valency can be recognized in the individual's relationship with the EU institutions. This relationship is no longer one brokered by the Member State to which it belongs citizen but became a direct one. The first step was through direct suffrage for the European Parliament, and then by the right to petition the EU institutions (Kruma 2014).

The role of citizens increases with the Treaty of Lisbon, and they can be directly involved in the formation of regulations, on a joint proposal by several citizens, members of the European Union. They are given the right to petition, having the opportunity to raise debated and regulated issues at Union level (Jiglău 2010: 80-82).

Article 24 (TFEU) is the legal basis on which the framework for guaranteeing and enforcing the right of citizens' initiative, petitioning and writing to the EU institutions is being built. This article is supported by the provisions of Articles 11 (TEU), 227 (TEU), 228 (TEU), 13 (TEU), and 55 (TEU). The petition may be individual or collective and may take the form of a request, a complaint, a complaint concerning the application of Community law or an appeal to Parliament to take a position on a particular matter. Petitions may be sent by post or by filling in a form on Parliament's website in any of the official languages of the EU. Within Parliament, there is a petitions committee which, as a first step, examines the admissibility of petitions. However, requests for information and general comments on EU policies are not

considered as petitions. Petitions seeking the revocation of a court judgment in a Member State are also inadmissible, and problems relating to bad administration in EU institutions or bodies must be addressed to the European Ombudsman. If the petition is considered to be admissible, the Petitions Committee may ask the European Commission for documents or information. The petition may be referred to other committees of the European Parliament for information or for them to take appropriate action. In some exceptional cases, the Committee on Petitions may submit an EP report to be submitted to plenary approval or make an on-the-spot finding (Bărbulescu 2009: 167).

This novelty of increasing the influence of civil society, through the initiative of a million citizens coming from several Member States, is a freshness, and actively involves citizens with legislative proposals, and is also an interesting mechanism of direct democracy, whose procedure was to be further developed by the institutions by drafting a regulation (Luzarraga, Llorente: 2011: 116). It has also strengthened the collective identity of the citizens of the European Union by making a firm commitment to strengthening the power of community, alongside the efforts of the European institutions. Knowledge of the rights that the European Union citizen attributes to them must be supplemented by their use as instruments of civic contestation, active participation in political institutions, voting, associative life. A citizen of the future must be able to involve in engagement and integration to actively participate in the consolidation of all European projects. By the Treaty of Lisbon, by establishing the citizens' initiative and other innovations, European citizens cease to be a mere depositary of rights, but become a form of association and communication between citizens of the Member States who decide to use rights as influential instruments with a view to achieving a joint project (Pop 2010: 92-93).

Final remarks

As a result of the Lisbon Treaty, the role of the citizens of the European Union has felt a better, exploited one that is giving the European Union a transparent decision-making process. This decision on the citizen's proximity to the European Union institutions and its regulation in the Treaty of Lisbon, as well as a new principle of the European Union, also had the effect of referendums rejecting the Constitutional Treaty. It drew attention to the low confidence that European citizens have in the EU institutions. It needed a transparent, and

serious involvement of the EU decision-making mechanisms to gain its respect and legitimacy.

After almost a decade since the Lisbon Treaty came into force, the European Union citizenship is a clearer reality conceived by the citizens of the Member States. The debate on the democratic deficit has left more land to analyse the efficiency of the citizenship. In this regard, the European Commission's Eurobarometers have measured every year the citizens' perception about the European Union, and the main question whereby this is checked is: "You feel you are a citizen of the EU? (QD2.1)", but also a package of questions measuring their perception about "the most positive results of the European Union". The first two most positive results are: (a) the free movement of people, goods and services within the EU and peace among the Member States of the EU (European Commission 2018).

I state that the major difficulty in assuming completely this citizenship by the national citizens of the 28 Member States resides in the misunderstanding of this new status. I would emphasise here what Patricia Mindus stressed recently (2017): European citizenship differs from the traditional meaning as it is not a nationality, nor a dual citizenship found in federal systems. Keeping the framework of an international organisation, the European Union has a legislation that differs from the international law "in allowing direct individual access to the justice system". In addition, all the provisions concerning the EU citizenship are based on a common principle: freedom from discrimination on grounds of nationality. (Mindus 2017).

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