

# DEMOCRATIC LEGITIMACY OF THE EUROPEAN UNION AND THE (EQUAL) REPRESENTATION OF THE INTERESTS OF MEMBER STATES: EUROPEAN DEMOCRACY IN LIGHT OF THE EQUALITY AMONG MEMBER STATES

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## ABSTRACT

*The history of European construction dates back more than seven decades and has undergone major changes throughout this period in terms of its geographic extent, depth, institutional framework, and setting of this cooperation. However, the nature, shape, and objective of this construction are still the subject of active discussion and debate. An important part of this discussion has been the question of 'democracy' and 'democratic legitimacy' since the establishment of this cooperation after the Second World War. Democracy is not only a fundamental value of the Member States and the requirement of adherence according to the Copenhagen criteria but also an expectation towards the European Union. The notion of 'democratic deficit' has long been introduced to characterise the shortcomings of the democratic legitimacy of European institutions. However, the approach of creating European democracy and a European public or political space and the role of Member States or national political institutions in this process have been among the key questions of the 'Conference on the Future of Europe'. Therefore, this paper aims to explore institutional reform at the European Union level or a better use of national institutional potentials that would help create a democratic legitimacy for the European decision-making process. The paper explores whether the various methods of increasing democratic legitimacy affect the equality of the Member States and how these two principles can be reconciled.*

## KEYWORDS

democratic deficit  
European Parliament  
democratic legitimacy  
national parliaments  
equality of Member States

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## 1. Introduction

The nature and ultimate objective or mission of the institutionalised European cooperation have been subject to constant public, legal, and academic debates since its beginning. Is it an association of States, is it a union of citizens, or is it perhaps a union of different peoples? Is it a cooperation that creates a supranational entity or is it rather a cooperation among equals? Is it perhaps an institutionalised platform that more influential Member States can use to remain on the world stage? The questions of European democracy and democratic legitimacy as well as the related question of equality or equal representation among the Member States will depend on the responses to these questions. These debates have not only been present in the past but also define the ongoing discussions on the future of European construction. In addition, the question of democracy and the search for democratic legitimacy has run through the entire history of European integration.<sup>3</sup>

Since the launch of the idea of uniting the coal and steel production in France and Germany under one supranational organisation, the ‘High Authority’ in the Spring of 1950, the question of democratic – parliamentary regimes or representative democracy – oversight has continuously existed and posed an institutional and academic dilemma. While the Paris Treaty of 1952 establishing the European Coal and Steel Community (ECSC) set out a strong supranational structure with democratic oversight by national parliamentary systems, the Rome Treaty of 1957 envisioned the evolution of a future European democratic institution and Europe-wide election.<sup>4</sup> In addition, the Member States continuously reinforced in the Founding Treaties that democratic legitimacy is their (legal) expectation vis-à-vis the European institutions and their governance structure.<sup>5</sup> This set the stage for the evolution of and debates around the institutional framework of European democracy.

On the other hand, European construction was established by countries that all had democratic parliamentary systems. It was a fundamental and underlying feature of European cooperation, which later became an essential feature of European identity.<sup>6</sup> Participatory democracy has also been a major distinction from that in countries that

3 | See, for example, Bertonecchini and Chopin, 2010, pp. 66–79.

4 | The shape and purpose of the democratic control of the competence of the supranational institutions was a subject of intense debate between European countries during the treaty negotiations. See Middelaar, 2009.

5 | According to Article 2 of the Treaty on European Union: ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. In addition, ‘Article 2 TEU is not a mere statement of policy guidelines or intentions, but contains values which, as has been set out in paragraph 145 above, are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles’. (See Judgement of 16 February 2022 in Case No. C-157/21, *Poland v Parliament and Council*, ECLI:EU:C:2022:98, paragraph 264).

6 | The Declaration on European identity adopted at the Copenhagen European Summit of 14 and 15 December 1973 stated:

‘Sharing as they do the same attitudes to life, based on a determination to build a society which measures up to the needs of the individual, they are determined to defend the principles of representative democracy, of the rule of law, of social justice – which is the ultimate goal of economic progress – and of respect for human rights.’

were occupied and remained Eastward of the Iron Curtain. After the fall of the Berlin Wall, democracy has become a formal and basic condition for those countries that wish to join European integration according to the Copenhagen accession criteria adopted in 1993.<sup>7</sup> In other words, the democratic functioning of EU Member States has become a trademark of European cooperation that distinguishes it from other regions and countries of the World.

When Alexis de Tocqueville made his journey to the New World in 1831, he wanted to explore the institutional and societal conditions that established the circumstances for democracy as well as for democratic rule overseas and wrote his powerful book: *De la démocratie en Amérique*,<sup>8</sup> which later became notable both in America and in the old continent.<sup>9</sup> In light of the historical evolution – both the successes and failures – and the recent institutional, economic, and other challenges of European construction, the role and function of European democracy in the institutional setting of European cooperation along with the viable ways of its reinforcement are worth examining. The dilemma is particularly timely since the Maastricht Treaty of 1993 and the subsequent revisions have envisioned cooperations in the fields of internal and external security (second and third pillars of the cooperation) that are different in many respects from the original areas of market and economic integration. Furthermore, the first pillar that is the original market integration has begun to include more political elements. Whereas market integration requires the Member States to adopt a more passive and rule-abiding approach, political integration requires more active participation and decision or rulemaking from the members.<sup>9</sup> This shift and difference have a crucial impact on how European democracy; the democratic legitimacy, democratic oversight, and conflict-resolution function of democratic debates and deliberations are conceived or approached.<sup>10</sup> It also has an impact on the interests of the Member States and the principle of their equality.<sup>11</sup>

Against this background, this paper first provides an overview of the role, historical evolution, and dilemma of democracy and democratic legitimacy of European construction (II). Mainly due to the ongoing crisis period, the question of democracy has been the focal point of reform proposals. This paper discusses these reform proposals in light of the interests and equality of the Member States (III). The paper concludes by highlighting the potential avenues of reinforcing the democratic legitimacy of European construction (IV.).

7 | European Commission, 2024. Also see Judgement of 10 December 2018 in Case No. C-621/18, *Wightman and Others*, ECLI:EU:C:2018:999, paragraphs 62 and 63.

8 | Tocqueville, 2007.

9 | The technocratic market integration is also characterised as ‘policies without politics.’ See, Schmidt, 2006, p. 317.

10 | One of the key questions throughout the development of European integration has been the formation of an institutional avenue and structure that is both receptive to a ‘European public opinion’ or ‘public opinions across Europe’ and capable of channelling or embodying their sentiments and views in the European governance structure. Since the current structure seems to be weak or rather incapable of fulfilling this function, it would be essential to create a new institutional setting. See, for example, de la Baume, 2015.

11 | The equality of the Member States is a principle enshrined in Article 4 paragraph 2 of the Treaty on European Union.

## 2. The historical evolution of the role of democracy in European construction

As mentioned above, the question of democratic oversight was already present in the negotiations leading to the establishment of the ECSC in 1950. The six founding Member States agreed to provide the arrangement of their national parliaments with oversight functions in response to the establishment of a strong supranational institution that is the 'High Authority' with autonomous competences.<sup>12</sup> The model institution was the recently established Council of Europe and its 'Consultative Assembly'.<sup>13</sup> Accordingly, the Paris Treaty establishing the ECSC envisioned an 'Assembly' – *l'Assemblée* – that consisted of 78 representatives of the Member States' national parliaments in proportion to the number of their population.<sup>14</sup> Under the institutional structure of the ECSC, the national parliaments were entrusted to fulfil a rather strong democratic control over the operation of the supranational 'High Authority'.<sup>15</sup> In this model, democratic control was established by the agreement and exercised through the democratic institutions of the Member States, and therefore, the interests of the Member States were also represented. As the subsequent events that led to the next phases of European cooperation showed, the model of 'mining cooperation' was successful, and the Assembly turned out to be an efficient partner of the 'High Authority' in solidifying the first steps of European integration. However, the scope of this cooperation only concerned a quite narrow and specific area relating to rather technical questions that fall outside of most public and political debates, even though this cooperation also had a '*finalité politique*.' Therefore, the ECSC was not able to engage the popular sentiment or create a public space for debates, conflicts, and conflict resolution.

Five years later, based on these experiences, the Rome Treaty established a common 'Assembly' for the European Communities.<sup>16</sup> The delegations of national parliaments con-

12 | It was the German Federal Republic who favoured and supported the introduction of the democratic control of the national parliaments over the High Authority. See, for example, Middelaar, 2009.

13 | Articles 22–35 of the Treaty on the Council of Europe established the Consultative Assembly in 1949 [Online]. Available at: <https://rm.coe.int/1680935bd0> (Accessed: 31 July 2024). In 1994, the Committee of Ministers decided to use the 'Parliamentary Assembly' denomination instead of the 'Consultative Assembly.' In addition, the idea of a 'European Assembly' was proposed during the Hague Congress in May 1948. See Historical events in the European integration process – The Hague [Online]. Available at: <https://www.cvce.eu/recherche/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/5c35593d-484a-4f53-b0bd-a6605110c3b3> (Accessed: 31 July 2024).

14 | Articles 20–25 of the ECSC Treaty [Online]. Available at: <https://eur-lex.europa.eu/legal-content/HU/ALL/?uri=CELEX:11951K/TXT> (Accessed: 30 December 2023).

15 | Article 23 of the ECSC Treaty.

16 | The separate Assembly of the ECSC ceased its operation in 1958 and a common Assembly was established for the ESCS, the European Economic Community, and for the European Atomic Energy Community. See, for example: The European Parliament: Historical background [Online]. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf) (Accessed: 15 August 2024).

tinued to provide democratic oversight, and their numbers were increased.<sup>17</sup> However, the scope of action and the competence of the new ‘Assembly’ were more limited compared to the ‘Assembly’ of the ESCS. Accordingly, the ‘Assembly’ assumed an advisory role and their opinions had no binding effects on the Council of Ministers.<sup>18</sup> At the same time, the Rome Treaty created an expectation to prepare the design of a European election with direct universal suffrage.<sup>19</sup> This provision set the stage for the evolution of European democracy and the democratic institution in the coming decades.

In the meantime, the ‘Assembly’ leaned on its future role as the representative of the peoples of the Member States<sup>20</sup> and later – in its hope – the representant of a European electoral community. Therefore, even though the actual competences were quite narrow, the ‘Assembly’ was envisioned to become a significant player in the future of European integration. In this spirit, the focus and emphasis of the subsequent developments of European democracy was placed on the supranational (treaty-based) institution, whereas the role of the national parliaments – along with the interests of the peoples of the Member States – has gradually become secondary. This development has weakened the relationship and interaction between public discourse and opinion formation and political action.

The process began with a semantic and thus rather symbolic debate on the denomination of the ‘Assembly.’ Even though the Member States gave the name ‘Assembly’ in the treaty text, the ‘Assembly’ itself adopted a ‘Rules of Procedure’ to declare itself a ‘Parliament’ in March 1958. Its primary motivation and objective were to show its desire to represent the European (sovereign) people on the one hand and to become a legislative forum on the other. Many of the Member States refused to accept the ‘semantic coup’ of the ‘Assembly’ for nearly two decades as they had a different vision regarding the nature of European construction and what democratic legitimacy means in this cooperation.<sup>21</sup> Only the Single European Act of 1986 adopted and incorporated the term ‘European Parliament’ in the text of the treaty.<sup>22</sup>

However, the development was not only semantic as the competences and scope of action of the European Parliament were the subject of further and continuous debates. David Ian Marquand introduced the notion of ‘democratic deficit’ in the academic and political discourse in the 1970s, referring – in a misleading way – to the operation of European construction and its institutions and to the shortcomings of the operation of

17 | Article 138 paragraph 2 of the Treaty of Rome [Online]. Available at: <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:11957E/TXT> (Accessed: 10 January 2024).

18 | However, it is also true that the gradual formation of the common and then internal market rather required the technocratic mindset and approach of the European Commission (the previous ‘High Authority’).

19 | See, Article 138 of the Treaty of Rome, ‘L’Assemblée élaborera des projets en vue de permettre l’élection au suffrage universel direct selon une procédure uniforme dans tous les États membres’.

20 | According to Article 137 of the Rome Treaty: L’Assemblée, composée de représentants des peuples des États réunie dans la Communauté, exerce les pouvoirs de délibération et de contrôle qui lui sont attribués par le présent Traité.

21 | Among others, Charles de Gaulle and Margaret Thatcher rejected this idea.

22 | See the preamble of The Single European Act [Online]. Available at: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/single-european-act> (Accessed: 30 December 2023).

the European Parliament.<sup>23</sup> From then on, it has been used to underpin the justification for the reinforcement and expansion of the competences of the European Parliament vis-à-vis the Council as the co-legislator. Accordingly, the competence of the European Parliament has been gradually increased for the past half century at each treaty revision.

The development has been coupled with – as the Rome Treaty set out in Article 138 – the establishment of the direct election of the representatives of the European Parliament since 1979. It has created not only a further reference point of direct legitimacy and thus a continuous increase of the competence of the European Parliament but also a shift away from the potential role of the national parliaments or other democratic institutions in the democratic functioning of European cooperation. Consequently, a supranational structure has the dominant view and narrative to reinforce European democracy, the democratic basis of the European institution and of the creation of a European public space. This way of thinking also meant a shift away from the Member States (and their political institutions) and, thus, reduced the expression or pursuit of their interests. As highlighted later in this paper, the direction of this development will eventually aim to create its own basis of democracy without the Member States or their democratic institutions. At the same time – as a comprise for the direct election of members of the European Parliament – the institutionalisation of the European summits within the framework of the European Council in 1974 provided an avenue for the Member States to participate and a common platform for strategic governance of European cooperation.<sup>24</sup> It has become increasingly important as shown in the historical turning points and events since the 1990s.

The fall of the Berlin Wall along with the adoption of the Maastricht Treaty of 1993 opened a new dimension for a European democratic discourse as the prospect of European autonomy and political cooperation appeared on the horizon. The Member States created political layers of their institutionalised cooperation including questions of external and internal security. They were no longer passive subjects of economic and market regulations but began to play an increasingly active role in the formation of autonomous European policy areas. They also introduced the concept of European citizenship. This was a watershed moment in the history of European integration and the supranational way of thinking wished to exploit it. Accordingly, the introduction of the co-decision procedure elevated the European Parliament to its long-desired role of co-legislator. The subsequent treaty revisions gradually expanded the legislative areas in which the co-decision competence applies, continuously strengthening the position of the European Parliament.<sup>25</sup> Furthermore, in 2003, on the 40<sup>th</sup> anniversary of the Elysée Treaty, a Franco-German compromise provided the European Parliament with the competence to elect – based on the proposal of the European Council – the President of the European Commission in exchange for the establishment and institutionalisation of the position of the president of the European Council.

23 | Marquand, 1979.

24 | See The European Council [Online]. Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/23/the-european-council> (Accessed: 11 August 2024).

25 | The Treaty of Amsterdam in 1997 and the Treaty of Nice in 2001 See The European Parliament: Historical background [Online]. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_1.3.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.1.pdf) (Accessed: 31 December 2023).

What started in Maastricht in terms of the establishment of the institutional settings of a political integration was supposed to end with the adoption of the Constitutional Treaty by the Convention on the Future of the European Union a decade later.<sup>26</sup> The Constitutional Treaty would have shifted the democratic legitimacy of European construction from the (peoples of) Member States to the European citizens. However, two referenda – organised in France and in the Netherlands – rejected the draft Constitutional Treaty. The introduction of the concept of European citizenship could not restore or create the interaction or links between public opinion and political action. The Member States, equally holding the constituting power of European construction, halted this type of democratisation process by which they would be ultimately forced into the passenger seat of European construction. Consequently, the Member States remained the ‘master of the Treaties,’ and European construction continued to be based upon an interstate treaty structure. Furthermore, one of the most important and relevant lessons of the Convention is that the constituting power of European construction continued to belong to the Member States, who retained their equal (sovereign) rights to renew, reform, or modify the Founding Treaties. In other words, the Member States need to reach unanimity to be able to modify or renew the Founding Treaty, which reflects the principle of equality as the constituting power of European construction. Consequently, European democracy and the democratic legitimacy of European institutions have been created and are a function of the underlying Treaty structure. As the Founding Treaties require, only democratic political communities can participate in European construction.

### **3. The current institutional setting and reform proposals in light of the equality and equal representation of the interests of the Member States**

As a consequence of the failure of the Constitutional Treaty, the current institutional structure is provided by the Lisbon Treaty of 2007, which terminated the differences between the institutional structure of economic (European Community) and political (European Union) integration. However, one of the important and relevant innovations of the Lisbon Treaty concerned the European Parliament. It provides that the European Parliament represents the citizens at the Union level.<sup>27</sup> This was a major shift from the earlier treaty provisions that stipulated the objective of the European Parliament as ‘the peoples of the States brought together in the Community’,<sup>28</sup> which, according to the origi-

26 | The Convention on the Future of the European Union by the Laeken Declaration of the European Convention in 2001. The purpose of the Convention was to draft a Constitutional Treaty for European integration.

27 | Article 10 of the Treaty on European Union: ‘1. The functioning of the Union shall be founded on representative democracy. 2. Citizens are directly represented at Union level in the European Parliament’.

28 | Article 189 of the Maastricht Treaty (Nice consolidated version): ‘The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the powers conferred upon it by this Treaty’.

nal thoughts, 'shall consist of representatives of the peoples of the States'.<sup>29</sup> This shift had a symbolic force as it continued to influence the perception of the European Parliament as the future representative of a transnational European democracy. As discussed below, it has viewed itself not as the representative of the national political communities or peoples but as the representative of the citizens that form a single political body. Accordingly, the European Parliament has used the treaty base to strengthen its position vis-à-vis the Member States for the last decade. It tries to achieve what the European Convent and the Constitutional Treaty failed to realize, namely, to become the (sole) constitutive power of European democratic legitimacy without the Member States or their peoples.

The Lisbon Treaty also empowered the national parliaments along with the role of the national political communities to check the principle of subsidiarity and proportionality and encouraged interparliamentary cooperation. Furthermore, as detailed in the conclusion of this paper, the national political communities continue to have multiple roles that define the nature and future of European construction also respecting the principle of equality and equal representation of Member States.

The self-perception of the European Parliament has been illustrated by its aspiration to solidify its position and expand its competence vis-à-vis the Council and the Member States for the past decade. During the 2019–24 term, the European Parliament considered and prepared numerous proposals that serve this purpose. The report on the stocktaking of the European elections of 2019 already emphasised the importance of the introduction of the 'lead candidate system' (*Spitzenkandidaten*)<sup>30</sup> as well as the 'transnational list' as the hallway of a so-called European political and public space.<sup>31</sup> Under this report, the national political communities would no longer play a role in the European Parliamentary election while the Council – the institution representing the Member States – would undergo a gradual transformation and become a second legislative chamber of the Union.<sup>32</sup> Subsequently, the European Parliament adopted a separate report about the election of its members by direct universal suffrage.<sup>33</sup> The document aimed to introduce a Union-wide constituency from which Members are elected on the basis of 'transnational lists'.<sup>34</sup> It was coupled with a resolution on the right of the initiative of the European Parliament, which has been its longstanding demand to be granted the competence to a general direct right

29 | Article 137 of the Rome Treaty: 'The Assembly [European Parliament], which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty'.

30 | See, Navracscs, 2020.

31 | See, paragraphs W) and AD) and paragraphs 14–15 and 20 of the European Parliament resolution on stocktaking of European elections.

32 | See, paragraphs U) and 21 of the European Parliament resolution on stocktaking of European elections.

33 | Motion for a European Parliament legislative resolution on the reform of the electoral law of the European Union (2020/2220(INL)) [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/A-9-2022-0083\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2022-0083_EN.html) (Accessed: 10 July 2024). It was followed by the 2015 electoral law reforms proposal [Online]. Available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_IDA\(2015\)558775](https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2015)558775) (Accessed 10 July 2024).

34 | See, especially, paragraph 19 of the Motion for a European Parliament legislative resolution on the reform of the electoral law of the European Union (2020/2220(INL)).



of legislative initiative. acquire competence to a general direct right of legislative initiative.<sup>35</sup> The European Parliament also reinforces and reflects its desire to position itself as the representative of a European demos without the 'constraints' of national political communities.<sup>36</sup> Finally, the European Parliament also debated a resolution on the statute and funding of European political parties and European political foundations.<sup>37</sup> The proposed resolution strengthened the transnational dimension of the European political parties to support the establishment of a single European public space.

Besides the proposals of the European Parliament, the Conference on the Future of Europe held between 2020 and 2022 also put forward similar conclusions.<sup>38</sup> The introduction of a union-wide – transnational – electoral list, the leading candidate system, and the legislative initiative have been recurrent themes.<sup>39</sup> Based on these proposals, the Conference also suggests the restructuring of the European institutions to reflect the functions of a sovereign federal state.<sup>40</sup> The overall objectives of these proposals too are to create an autonomous European public space and strengthen its legitimacy via a transnational institutional arrangement without relying on the Member States. To this end, the recommendations include re-opening the discussion about a constitution<sup>41</sup> and re-launching the European Convention.<sup>42</sup>

The common focus and goals of these aspirations reflect the self-perception of a European Parliament that will enhance democratic legitimacy by reducing the attachment to the institutions of the Member States. The idea of creating a transnational political space does not correspond to the principle of equality of the Member States, nor does it respect their sovereignty.

Nevertheless, the Lisbon Treaty – reflecting the consensus of the Member States – as well as the nature and regulation of the parliamentary election, does not reflect the self-perception and ambitions of the European Parliament. The elections take place within national frameworks and their stakes mostly concern or relate to national political communities. Consequently, the European electorate is divided along the lines of national

35 | European Parliament resolution of 9 June 2022 on Parliament's right of initiative [Online]. Available at: [https://oeil.secure.europarl.europa.eu/oeil/de/procedure-file?reference=2020/2132\(INI\)](https://oeil.secure.europarl.europa.eu/oeil/de/procedure-file?reference=2020/2132(INI)) (Accessed: 10 January 2024). European Parliament resolution of 9 June 2022 on Parliament's right of initiative (2020/2132(INI)) [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0242\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0242_EN.html) (Accessed: 10 January 2024).

36 | The document compares the desired competences of the European Parliament to the legislative bodies of the Member States.

37 | Draft European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (recast) (COM(2021)0734 – C9-0432/2021 – 2021/0375(COD)) [Online]. Available at: [https://www.europarl.europa.eu/doceo/document/A-9-2022-0223\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2022-0223_EN.html) (Accessed: 10 January 2024).

38 | The Conference on the Future of Europe was a joint initiative by the European Parliament, the Council of the EU and the European Commission, launched on 10 March 2021 [Online]. Available at: <https://www.consilium.europa.eu/en/policies/conference-on-the-future-of-europe/> (Accessed 15 January 2024).

39 | See Proposal No. 39 of the Report on the Final Outcome of the Conference on the Future of Europe, p. 81.

40 | Ibid, p. 83.

41 | Ibid, p. 83.

42 | Ibid, p. 84.

political systems; thus, the Member States continue to function as a filter in European Parliamentary elections. Instead of a transnational characteristic, the European political space consists of a multitude of – competing and complementing – national political spaces and debates. It is also reflected in the fact that the agenda is largely set by the national political communities and the Members of the European Parliament's attachment to national delegations are defining their viewpoints and positions.

Furthermore, the principle of degressive proportionality as a fundamental election rule of the European Parliament has been adopted that allows the less populous Member States to be overrepresented while the more populous Member States agree to be under-represented.<sup>43</sup> The rationale behind this regulation as well as its underlying objective is to reduce the differences among the Member States and therefore help realise a more equal representation of the national political communities at the European level. From the perspective of the Member States, the European Parliament rather represents – within the constraints of the competence set by the Treaties – the European aspects of national political communities. This vision is in contrast to the actual self-perception of the European Parliament.

#### **4. Conclusion: Reinforcing democratic legitimacy in light of the principle of equality of the Member States**

The self-perception of the European Parliament has been oriented towards weakening the division between national political communities across European integration. However, by doing so, the European Parliament itself has become one-sided as it fails to take into account the major fault lines and differences in European construction. Therefore, it has failed to put the existing debates, different viewpoints, tensions, and conflicts on a democratic stage. These differences originate in the different historical paths of the national political communities, which have been and still are an integral part of the European identity; and this variety serves as a source of inspiration and innovation in the old continent. Instead of offering a forum that considers different viewpoints or debating or resolving these conflicts, the European Parliament has drifted towards a supranational idea that is interested in weakening the role of national political communities in European cooperation. However, since the fault lines and differences among national political communities have remained an integral part of European construction and political debates, the European Parliament is weakening both democratic legitimacy and the space for European democratic debates as well as the equality and equal representation of the Member States. As a result, even though their competences have been steadily increasing for the past three decades, the European Parliament has been struggling to discuss relevant questions or to attract the opinions of the peoples. Therefore,

43 | See The European Parliament: organisation and operation [Online]. Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/20/the-european-parliament-organisation-and-operation#:~:text=The%20concept%20of%20degressive%20proportionality%20means%20that%20although,the%20number%20of%20seats%20relative%20to%20its%20population.> (Accessed: 10 July 2024).

the European Parliament also distorts the public discourse in Europe but, nevertheless, continues to propose an institutional framework, including particularly the right to a general legislative initiative, which largely differs from the institutional balance that the Member States agreed on or what the Founding Treaties reflect.

To reinforce the basis of democratic legitimacy in European construction, a national political system for the Member States and their institutions should be considered by establishing avenues for their active participation. These institutions can channel and present the multitude of national political spaces and debates towards European construction. However, their involvement should also be aligned with the ‘principle of equality’ of the Member States. In this sense, this principle is not contrary to the evolution of European democracy since it is conceived as a construction of national democratic systems and political communities. In other words, the national political discourses, along with the traditions, histories, and legal and constitutional cultures, are all essential components of an evolving European democracy.

The national democratic forums – national assemblies and parliaments – have been provided with two essential avenues into the decision-making process of European cooperation. However, interstate institutions, the Special Council of the Ministers of the Paris Treaty composed of national ministers, became the blueprint of the Council of the European Union. Members of democratically elected governments have assumed a legislative role since the beginning. Furthermore, the institutionalisation of European summits within the framework of the European Council in 1974<sup>44</sup> not only provides a common forum for the strategic governance of European construction but also serves as an essential bridge between the peoples of the Member States and the European institutions, thus continuously infusing democratic legitimacy. Democratic legitimacy lies in the democratic responsibility and accountability of government officials as well as the heads of states or governments to their national parliaments and peoples.<sup>45</sup> This parliamentary oversight is an essential guarantee of the separation of the constitutional functions between the executive and legislative powers, which also include – albeit to a different extent – the national democratic oversight of the government’s participation in European construction. The extent of this oversight function currently depends on the concrete constitutional structure and tradition. However, by increasing the influence of national democratic institutions, the operation of both Councils will enjoy greater democratic legitimacy and at the same time also express the equal representation of the Member States. It is by no coincidence that the meetings of the European Council are the most mediatised events of the European decision-making process and political life since they attract the attention of national democratic communities. They can speak on behalf of and also to the peoples of Europe. Yet, even though the European Council has the responsibility and competence to discuss and adopt the strategic direction of the European Union, it does not have a solidified place in its institutional arrangement. It is

44 | See The European Council [Online]. Available at: <https://www.europarl.europa.eu/factsheets/en/sheet/23/the-european-council> (Accessed: 10 July 2024).

45 | See Treaty of Lisbon (2007/C 306/01) Article 8 A paragraph 2 ‘Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens’.

not part of the legislative process, and its conclusions cannot be judicially enforced. It has a leadership role without the necessary institutional establishment.

A related question is the voting scheme of the European Council and the Council of Ministers. Each Member State is represented, which indicates their equality in terms of representation; however, the voting scheme might differ. The Founding Treaties introduce three different schemes: unanimity, qualified majority, and simple majority. The requirement of unanimity ultimately safeguards the principle of sovereign equality of the Member States. However, the decision-making of the European Council has been characterised by a strong tendency of consensus, even though the given question is to be decided by a simple majority.<sup>46</sup> This tendency shows respect for the equality of Member States and ultimately the will of the national democratic community as the authors of these decisions. The qualified majority introduced by the Lisbon Treaty requires the favourable vote of 55% of the Member States that encompass at least 65% of the population of the European Union. The rationale behind the adoption of the qualified majority vote has been to better serve the purpose of democracy and democratic considerations by introducing or adding the notion of 'citizens' into the inter-state decision-making process. Even though this type of voting aims to satisfy the principle of democracy between states and citizens, it might also lead to a conflict. By referring to a single European political community (European demos), it provides greater weight to certain states, thus weakening the principle of equality and equal representation between the Member States and the inter-state characteristic of the decisions of the European Council. However, if the decisions are to be adopted by national political communities, the qualified majority voting scheme cannot provide equal rights to them.

The second avenue for the participation of national political forums is a more direct, albeit still limited, role in the European decision-making process. Under this scenario, national parliaments would serve as a counterbalance of supranational aspirations such as the European Parliament and the Commission. The first such role of the national parliaments after the introduction of universal suffrage in 1976 was to establish the Conference of Parliamentary Committees for European Union Affairs (COSAC) at the time of the fall of the Berlin Wall in 1989. However, this attempt turned out to be rather powerless as the institutionalisation of the role of national parliaments has faced strong opposition from supranational institutions such as the European Parliament and the European Commission. Consequently, the mainstream institutional reform aspirations have not included this perspective in the possible reform options of European construction.

The Lisbon Treaty also introduced a limited role of national parliaments.<sup>47</sup> The early warning system (EWS) or yellow card procedure has included national parliaments in the European legislative process by providing them with the right to indicate whether a legislative proposal would fall under national competence and exceed the competence of the European Union. One third of the national parliaments gained the right to initiate such a 'subsidiary control' over the European 'draft legislative acts.' However, the reasoned opinions of national parliaments remain non-binding as the European Commission is

46 | The search for consensus has its historical roots in the Luxembourg compromise of 1966. See, for example, Middelaar, 2009, pp. 99–138.

47 | See, Protocol (No 2) to the Treaty on European Union on the application of the principles of subsidiarity and proportionality.

only required to review the draft legislation.<sup>48</sup> Partly for this reason, the EWS has been criticised for the ‘lack of teeth’ or its inefficiency in safeguarding the principle of subsidiarity<sup>49</sup> and for failing to reinforce democratic legitimacy.<sup>50</sup> While the EWS would have given national parliaments a counterweight role, a recent initiative formulated at the 2013 COSAC meeting in Dublin would envision a more proactive role by providing them with the indirect right to initiate legislative acts within the existing treaty framework and within the parameters of the current political dialogue.<sup>51</sup> This initiative aims to reinforce the connection between the EU and the peoples of the Member States by further involving the national political systems and institutions in European construction.<sup>52</sup> Furthermore, national parliaments are able to provide a framework to maintain permanent relations and interactions between national public discourses and political actions. Therefore, the right of initiative of national parliaments is also aligned with the principle of the equality of the Member States which might also contribute to making the national political systems rival in the eyes of the European Parliament.<sup>53</sup>

The question of ways to reinforce the democratic legitimacy of European construction has been present since the beginning; however, it has become one of the central questions since the fall of the Berlin Wall. Creating a cooperation that is increasingly political requires the ability to democratically discuss the differences and conflicts, and forging a common position that can ultimately lead to autonomous – European action requires the involvement of the national political spaces and discourses. Their equality expresses and also guarantees the protection of national identities. There are vital links that tie together sovereignty, equality, democratic rule, and identity because sovereignty provides the framework for democratic rule and for democratic discourse to unfold. European democracy is therefore a democracy of national democracies that provide equal representation of the interests of the Member States. The increased participation of the national political institutions offers a way to reinforce the democratic discourse of European construction by also taking into account the principle of equality and equal representation of the interests of the Member States.

48 | In the case of the ‘orange card’ procedure, the reasoned opinions of the national parliaments represent at least a simple majority of all the votes allocated to them, the European Commission must review the proposal and decide whether to maintain it. See Protocol (No 2) to the Treaty on European Union on the application of the principles of subsidiarity and proportionality.

49 | See Controlling Subsidiarity in Today’s EU: the Role of the European Parliament and the National Parliaments (Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE 732.058 – April 2022) [Online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/732058/IPOL\\_STU\(2022\)732058\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/732058/IPOL_STU(2022)732058_EN.pdf) (Accessed: 20 January 2024).

50 | Boronska-Hryniewiecka, 2017, p. 248.

51 | ‘(...) national parliaments should be more effectively involved in the legislative process of the EU not just as the guardians of the subsidiary principle but also as active contributors of that process.’ Contribution of the XLIX COSAC Dublin, 23–25 June 2013.

52 | Boronska-Hryniewiecka, 2017, pp. 254–257.

53 | The European Parliament rejects or at least is deeply suspicious about the institutionalisation of the national parliaments. See, for example, Boronska-Hryniewiecka, 2017, pp. 259–260.

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