

# ALTERNATIVES

Turkish Journal Of International Relations

Volume 8

Number 4

Winter 2009

## Democracy in the European Union and the Treaty of Lisbon

Nevra Esentürk\*

### *Abstract*

Democracy, one of the basic values of Western politics, has undergone a comprehensive development process still in progress during the course of European integration. Although at the initial phase of the integration, even no hint of democracy was on the fore, it has become one of the most discussed subjects in the Union. With the recent development of the Lisbon Treaty, the question of democratic legitimacy, transparency and efficiency of the EU was put at the center. Thus, it has been given much more attention and its credentials have been improved day by day in the EU. However, democracy, which is a very comprehensive subject incorporating several issues related to the EU, such as the principles of the EU, the institutional structure, legislative procedures, fundamental rights and the principles of subsidiarity and proportionality, despite all this improvement trend in force, is still not sufficient. In this context, in which there still exists "democratic deficit" in the EU, after a brief historical background of the issue, the Lisbon Treaty is analyzed in terms of the novelties, advances it brought to democracy in the EU basically in two parts, namely the democratic principles, and the institutional and functional aspects of European democracy in this study. In the light of this analysis, it is aimed to figure out the advantages and limits of the improvement trend in European democracy, which would open the way for further developments in this issue.

*Key words:* democracy in the EU, democratic deficit, the Lisbon Treaty

### **Introduction**

Democracy, one of the basic values of Western politics, has undergone a comprehensive development process still in progress during the course of European integration. European integration, which started from the point of the European Coal and Steel Community (ECSC), emerged as a club of six member states with a primary focus on economic integration at the

beginning, when even no hint of democracy was on the fore, and reached the point of the recent development of the Lisbon Treaty in which the question of democratic legitimacy, transparency and efficiency of the EU was put at the center after the refusal of the Draft Treaty Establishing a Constitution for Europe by the two founding member states of the European Union (EU), France and the Netherlands.

The Lisbon Treaty, which has had the basic aim to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action<sup>1</sup>, was signed by the EU member states on 13 December 2007, and entered into force in 1 December 2009, amending the *Treaty on European Union*<sup>2</sup> and the *Treaty establishing the European Community*.<sup>3</sup> In this process the TEC was renamed to *Treaty on the Functioning of the European Union* (TFEU). After seven years of reform discussions, several intergovernmental conferences and the refusal of the *Draft Treaty Establishing a Constitution for Europe*<sup>4</sup> by the two member states, the Lisbon Treaty was framed with specific focus on the democratic accountability, institutional functioning and decision-making mechanisms of the EU.

In that regard, during the European integration process, through the developments of enlarging and deepening of European integration, democracy has become one of the most discussed subjects in the Union. Thus, it has been given much more attention and its credentials have been improved day by day in the EU. Then, the Union, which was labeled as a top-down initiative, very further from its citizens, has enforced a tendency towards making the citizens closer to the Union on a step-by-step basis. This trend has continued and reached the climax with the recent Lisbon Treaty.

However, democracy, which is a very comprehensive subject incorporating several issues related to the EU, such as the principles of the EU, the institutional structure, legislative procedures, fundamental rights and the principles of subsidiarity and proportionality, despite all this improvement trend in force, is still not sufficient as in the domestic states. In this context, in which there still exists 'democratic deficit' in the EU, in order to comprehend the issue thoroughly, after a brief historical background of the issue, the Lisbon Treaty is analyzed in terms of the novelties, advances it brought to democracy and democratic life of the Union basically in two parts, namely the democratic principles and the institutional and functional aspects of European democracy in this study. In the light of this analysis, it is aimed to figure out the advantages and limits of the improvement trend in European democracy, which would open the way for further developments in this issue.

## Historical Background

Democracy, one of the current key themes in the contemporary discourse about European integration, has undergone a vast process of development until it has reached today. In order to comment on the current situation of European democracy, it is wise to analyze the historical background of democracy in the EU briefly.

In the European Economic Community (EEC), taking the economic integration as the focal point, democracy was not on the agenda until the end of 1960s. The first sign of the importance of humans in the Community was revealed in 1969 with the speech of Chancellor Willy Brant of Germany in which he called for a Europe with a "human face".<sup>5</sup> Following this speech, Vedel Report on the powers of the European Parliament (EP) was prepared which argued for a reinforcement of the democratic element of the Community.<sup>6</sup> Towards the end of 1970s, in 1977 the term "democratic deficit" was first spelt out, which was related to the inability of the EU to act in the face of a common need by European citizens for European action.<sup>7</sup>

The first major initiation for democracy of the EC took place with the direct elections to the EP, since the Parliament became the only Community institution that was composed of members representing the citizens. After this big leap, two successive developments in 1984, namely the EP's Draft Treaty on European Union and the establishment of Ionanno Committee by the European Council, triggered a "top-down" concern with political dimension of integration, which opened the way for further developments concerning democracy in the Community.<sup>8</sup> The Single European Act (SEA), signed in 1986, introduced the Qualified Majority Voting (QMV) in the Council of Ministers, and it changed the picture one step further on the way towards increasing the democratic credentials of the Community.<sup>9</sup>

The "democracy deficit" came to the fore with the 1992 Maastricht Treaty, when a majority of the Danish electorate objected to the ratification of the Treaty.<sup>10</sup> With this development, for the first time, the citizens increased their voice and demonstrated that they had to be taken into account in the constitutional design of the Union. Thus, as a response to this event, politicians throughout the member states emphasized the need to make Europe more transparent, accountable and relevant to the peoples of Europe.<sup>11</sup> This development drew the attention of all EU institutions which pronounced that there was an increasing need to democratize the Union. Moreover, the principle of subsidiarity was enshrined in the Treaty and with the establishment of the Committee of Regions, mobilization of actors was provided for direct representation of European regions and subnational entities in the European arena.<sup>12</sup>

The Intergovernmental Conference (IGC) on Treaty Reform that took place in 1996, incorporated new provisions to make the Union more transparent and closer to its citizens in order to overcome their alienation from the Union.<sup>13</sup> In that respect, Article 255<sup>14</sup> of the Amsterdam Treaty allows any citizen of the Union to access to documents subject to certain limits. Moreover, a provision for an Ombudsman was also made to create an institution that citizens could refer to and to strengthen the mechanisms for accountability in the system. The Dublin Draft Treaty, prepared in the same year, was opened with the ringing statement of "Europe belongs to its citizens" and emphasized that there was a great need of institutional changes for more efficient, effective decision-making and direct mechanisms of legitimization in the EU.<sup>15</sup>

The 1997 Treaty of Amsterdam institutionalized the concept of "democracy" via including the founding values of the EU system in the Treaty. In Article 6<sup>16</sup> of Treaty, democracy was stated as one of the founding values of the EU, which is common to the Member States. In order to meet the requirements of this founding principle, a protocol on the role of national parliaments was prepared for enhancing the role of national parliaments in the EU system and the Conference of European Affairs Committees (COSAC) was established which provided an important transnational link for national parliamentarians, and an area of deliberation on national dimension of integration for domestic European committees.<sup>17</sup>

Upon the analysis of the historical background of democracy in the EU, the democratic deficit of the EU can be summarized in four aspects: The constitutional architecture of the EU, which has evolved from a series of Treaties agreed by the Member States and constitutionalised by the European Court of Justice (ECJ), points out a system lacking constitutional clarity, since the consent of citizens at national level has not been taken at national level.<sup>18</sup> In the institutional design of the EU, which is based on a set of common institutions at EU level, the decisions evolve from intense bargaining within and across the policy-making institutions, operating within a delicate institutional balance.<sup>19</sup> In this institutional design, there is no doubt that Europe's citizens have difficulty in identifying "who governs" in the Union and cannot exercise their own prerogative to dismiss them at elections.

As a result, people started to question the legitimacy of each EU institution. Firstly, the European Commission, a technocratic body at the heart of the institutional system, exercises policy initiation and law-making power with no direct democratic mandate.<sup>20</sup> The Council of Ministers, the main law-making body, lacks accountability as a collective entity, which could only be exercised through national parliaments. Although the use of QMV in the

Council of Ministers has been increased to compensate for this deficit, the secrecy of the Council during the decision-making process caused question marks in citizens' minds. The EP, which has been directly elected since 1979, has used its democratic credentials to press for more power in the system. However, the EP even has suffered from a number of problems, notably high levels of absenteeism and low turnout in EP elections, which have served to undermine its assertion of legitimacy.<sup>21</sup>

The process of EU institutional system is based on a complex set of governing institutions, numerous decision rules and underdeveloped constitutional framework. Thus, governance in the EU is relatively opaque and inaccessible which increases the problems of accountability. In order to lessen this complexity and blurriness, the Union has fostered an intensification of institutional linkages between Brussels and the Member States in a form of *engrenage* that has brought more and more national actors into the Brussels arena.<sup>22</sup> Then, at the core of the process, there placed the growth of committees and working groups that are attached to the Commission services and in the Council of Ministers. By this way, the Commission has enhanced its weak bureaucratic resources by co-opting national officials into a rapidly growing world of comitology committees.

With regard to public opinion, democracy in the EU is deficient due to the fact that although individual Europeans are subject to European law and have gained rights under the new legal order, they used to be more actively engaged in the system as customers or workers than as citizens. Moreover, EU institutions suffered from a distinct remoteness from Europe's peoples, which was most dramatically demonstrated with the Danish objection to the ratification of the Maastricht Treaty, mentioned above.

In this part of the study covering the historical background of democracy in the EU in terms of its chronological development and aspects of its democratic deficit, it is found out that although democracy in the EU has undergone considerable progress, this does not prevent the existence of 'democratic deficit' in the EU, stemming from structural features of the decision making system, top-down institutional structure, complex procedural mechanisms, barriers to participation in the system discussed above.

On the road towards the preparation of the Draft Constitutional Treaty, the issue of democracy was put at the center both in the Laeken Declaration guiding the European Convention in search of increasing the democratic legitimacy and transparency of the institutions and in the outcomes of the Convention, revealed in the Constitution's preface that the Convention draws up proposals about the issue of bringing citizens closer to the European design and European institutions, and about the 'measures to increase democracy,

transparency and efficiency of the EU through developing the contribution of national parliaments to the legitimacy of the European design, through simplifying the decision-making processes, and by making the functioning of the European institutions more transparent and comprehensible.<sup>23</sup>

In that regard, the Constitutional Treaty brought considerable novelties in terms of the introduction of a new Title VI 'Democratic Life of the Union', which was not elaborated by a working group but incorporated in the body text of the Constitution, rather than as a protocol or annex to it. Once this novel Title VI is considered, it is found out that the Title, which was originated from the work of a mangle of Working Groups (WGs) such as the WG of *Simplification, Subsidiarity and the Protocol on National Parliaments*, can be analyzed through focusing on the democratic principles it envisages and examining the changes it brought to the functional and institutional aspects of European democracy.

Nonetheless, the Constitutional Treaty, which was prepared with the aim to bring EU citizens closer to the functioning of the EU and inform the public more about the EU policies, ended with failure with the refusal of the Netherlands and France in the referenda during the ratification process of the Treaty. In that respect, considering the European integration process, 2005 has been memorized as the year in which referenda held in the Netherlands and France rejected the Constitutional Treaty. While the majority of the member states already had ratified the Constitutional Treaty, due to the requirement of unanimity to amend the Treaties of the EU, it became clear that it could not enter into force. Upon the political crisis that this development caused, the process of the ratification of the proposed Constitutional Treaty ended politically for one year. It was clear that the member states needed to have broad debate for the Constitutional Treaty.

Considering that there is a gap between the action Europe takes and the public's perception of Europe's role, the Commission picked up a momentum in creating a new citizens' agenda to regain the confidence of the public and to deliver solutions to the issues raised by citizens. In that regard, the Commission initiated the 'period reflection' with the Communication on *Plan D and the Period of Reflection*. This document envisages a policy driven agenda addressing the expectations of EU citizens and reinvigorating their support for the European project to solve the institutional problems of the EU.<sup>24</sup> This agenda, which was rooted in the established priorities of prosperity, solidarity, and security, and drive for growth and jobs, can be considered as the launch pad of democratic reform process in the EU. With this document, it was aimed to provide a renewed commitment to Europe and to strengthen

public confidence in Europe. That is the way to create the conditions to deliver an institutional settlement and to create the necessary conditions for future institutional settlement.

The new impetus for the European integration was given during the German Presidency in 2007 when the period of reflection was declared over. By adopting the *Berlin Declaration*<sup>25</sup>, the member states displayed their intention to further the European integration process. In that regard, this declaration outlined the intention of all member states to agree on a new treaty. In line with this, a new timeline for the new Treaty was set and that it was decided that it would be an amending treaty. With the entry into force of the Treaty of Lisbon in December 2009, the following part of the study discusses the Treaty of Lisbon regarding democracy in the EU.

### **Democratic Principles and Provisions**

The Title VI of the Constitutional Treaty mentioned above, was amended as Title II "Provisions on Democratic Principles" covering Article 8. The Article incorporates three principles of democratic governance in Europe, that is, democratic equality, representative democracy and participatory democracy. They are discussed in this part of the study.

Taking into account Article 8<sup>26</sup> of the Treaty of Lisbon, the equality of citizens before all Union institutions is pointed out regarding the institutional design of the Union. Thus, this Article also reflects the individualistic concept of democracy with the emphasis only on "equality of citizens" and leaves out the idea of equality of states.<sup>27</sup>

With regard to Article 8 A of the Treaty of Lisbon, envisaging the principle of representative democracy, the complementation and modification of the mechanisms of representative democracy via elements of direct democracy are put forward. In that regard, this principle is laid down as the basis of the working of the Union under Article 8 A (1).<sup>28</sup> Article 8 A (2)<sup>29</sup> brings member states to the scene and reflects the common idea of dual legitimacy of the Union based on the citizens and the states. The following paragraph of the Article, 8 A (3)<sup>30</sup>, reflects the importance of citizens' participation to the democratic life of the Union by means of taking up open and close decisions to the citizens. In the last paragraph of the Article, 8 A (4)<sup>31</sup>, the importance of political parties at European level is put forward to express the political will of the EU citizens in an organized way.

The third democratic principle of the Treaty of Lisbon, participatory democracy, is stated under Article 8 B, with the purpose of providing a framework and content for the dialogue which is largely already in place between the institutions and civil society.<sup>32</sup> In that regard, the following paragraphs of the Article set the ground for the effective operation of

this dialogue. Thus, Article 8 B (1) reflects the ideal of deliberative democracy, which attributes much weight to the process of public deliberation as a crucial factor of democracy<sup>33</sup>. The second<sup>34</sup> and third<sup>35</sup> paragraphs of Article 8 B focus on the requirements of open, transparent and regular dialogue with representative associations, with a specific focus on the Commission in the latter paragraph. Then, there comes the most significant novelty of Title II, that is the "citizens' initiative", which is stated in the fourth and last paragraph of Article 8 B, Article 8 B (4)<sup>36</sup>. With this initiative, the strictly representative character of European democracy is modestly softened and the symbol of a real bottom-up democracy is put forward.<sup>37</sup> By this way, the importance of the will of citizens before the hardcore European bureaucracy comes to the fore again and citizens are given the opportunity to find out about and take part in the political process of the EU. The Treaty also recognizes the importance of consultation and dialogue with associations, civil society, workers and employers, churches and other non-denominational organizations.

In addition to the new democratic principles discussed above, Title II of the Treaty reproduces provisions found in the existing treaties, for instance, in transparency of the proceedings of Union Institutions (Article 8 B (2)). The transparency of the proceedings of Union institutions, which exists limitedly and under certain limited conditions since Article 255 of the Amsterdam Treaty which gives citizens a right of access to the EP, Council and Commission documents, is extended in the Treaty of Lisbon under the Article 8 B (2)<sup>38</sup> highlighting the principle for the functioning of democracy for the sake of openness of the work of all Union institutions with specified means, certain time framework and rules, the details of which is going to be discussed in the following part of the study.

### **Institutional and Functional Aspects of Democracy in the EU**

Depending on the issues raised in the Laeken Declaration about how the democratic legitimacy and transparency of the present institutions could be increased for the European Parliament, the Council and the Commission, and the role of national parliaments be enhanced, the democratic credentials of these EU institutions, specified in the Treaty of Lisbon, are analyzed and the issue of transparency and publicity is discussed within the framework of institutional and functional aspects of democracy in the EU.

Regarding the institutional structure of the EU, under Title III "Provisions on the Institutions", the institutional framework of the Union was set to ensure the consistency, effectiveness, and continuity of its principles and actions. Without changing the main institutional set up of the EU, the Treaty introduces a number of new elements to make these



bodies more effective, consistent and transparent, all in the cause of better serving the peoples of Europe. In that regard, according to Article 9, the institutional framework of the Union has been set with seven EU institutions, the European Parliament (EP), European Council, Council of the European Union, European Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors. Among these institutions, the European Parliament, Council of the European Union, European Commission are essential to discuss with regard to democracy in the EU. In addition, national parliaments, although are not part of the EU's official institutional set up, is vital to deal with in this study, as they play a vital role in the operation of the EU. The Treaty of Lisbon gives the national parliaments greater scope to participate alongside the European institutions in the work of the Union.

*The European Parliament* (EP), as the main channel of democracy within the institutional structure of the EU, has been centered on the debate about democratizing the Union's decision-making process through the discussion of the powers of the EP. Thus, as it was armed with enhanced democratic credentials following the first direct elections in 1979, the EP has persistently demanded more power and in that respect, has become the greatest winner of the Treaty of Lisbon.<sup>39</sup>

With regard to the composition of the EP, the Parliament is lacking a uniform electoral procedure, which distorts the representativeness of the EP.<sup>40</sup> According to the Article 9 A (3)<sup>41</sup> of the Treaty, "direct universal suffrage" is put forth, in which the EP is elected in "free and secret ballot" incorporating two classic principles of democratic elections but missing "equal ballot". The Treaty also limits the number of members of European Parliament (MEPs) to 750 under Article 9 A (2)<sup>42</sup> on the basis of "degressively proportional representation of European citizens. Moreover, once the definition of the EP is taken into account, the new provision of the Treaty differs from the current provision in that the new provision focuses on "citizens" as the relevant starting-point of democracy, not on "peoples". Thus, the basic individualistic concept of democracy, mentioned within the concept of new democratic principles, comes to the fore again in the institutional structure of the EU.

In pursuant of the rather modest changes in the creation of the EP, functions of the EP are clearly identified for the first time in the Constitution under Article 9 A (1). They can be summarized as legislation (jointly with the Council of Ministers), budgetary functions (the dual budgetary authority of the EP and the Council, political control, and consultation.<sup>43</sup>

The legislative powers of the EP have been strengthened steadily especially, with the introduction of co-decision procedure<sup>44</sup>, which puts the Parliament in a position of an actual co-legislator alongside the Council. The Treaty of Lisbon does not change this procedure, but

simplifies it and emphasizes the EP's role as a genuine co-legislator on an equal footing with the Council, stated under Article 48.<sup>45</sup> With the introduction of 'ordinary legislative procedure' under this Article, the co-decision procedure has truly become the general rule for the adaptation of legislative acts through extending the domain of the procedure from 37 to 80 subject matters. However, although the scope of co-decision procedure is extended to important subject matters, including the liberalization of services, intellectual property, common agricultural policy, asylum and immigration, the EP's influence on European legislation is still not satisfactory, since the Parliament is not the sole or principal legislator, but shares legislative power with the Council.

The political control of the Parliament, not extending to the Commission and the Council, which are the executive powers of the EU, is underdeveloped compared to the parallel functions of domestic parliaments. In that respect, the EP is granted to approve the nomination of the President of the European Commission and the nominated Commission as a body under the Article 214 EC.<sup>46</sup> Although the Treaty of Lisbon does not completely change this procedure, it replaces the government of the member states by 'the European Council' and adds the provision for a second round that in case of the candidate's not receiving the required majority support, the European Council shall within one month propose a new candidate to the EP, following the same procedure.<sup>47</sup>

*The Council of the European Union* is the most powerful institution and the primary lawmaker<sup>48</sup> of the EU. In that respect, it is wise to analyze this institution of the EU regarding the democratic legitimacy of the EU and the reforms brought by the Treaty of Lisbon within this context.

On analyzing the composition of the Council of the Union, the Council members, as the members of national governments, enjoy some degree of democratic legitimacy via national elections. However, lacking an electoral connection between all Council members and all European citizens, Council decision-making appears to suffer from two major democratic deficiencies, which are the unanimity voting and extreme distortion of citizens' representation, running counter to the principle of 'one man-one vote'.

Taking into account the decision-making procedure in the Council, unanimity as the normal mode of decision-making, especially in important issues, does not fit with democracy, which is normally associated with majority voting. In that respect, the current dominance of consensual decision-making in the Union is often considered as undemocratic and as a manifestation of the intergovernmental character of the Union, as 'diplomacy' in contrast to 'democracy'.

On this ground, the Treaty brings forward some reforms to enhance the democratic legitimacy of the Council of the Union. In that respect, Article 9 C (3) makes qualified majority voting the decision-making rule, as mentioned above.<sup>49</sup> The scope of QMV has been extended from about 35 to about 70 policy areas and most importantly, issues from the former third pillar, such as judicial cooperation in criminal matters, police cooperation etc. have been removed from the unanimity zone. However, the Common Foreign and Security (CFSP) sector, the harmonization of indirect taxes, and some types of international agreements remains within the framework of QMV. Once the extension of majority voting in the Council of the Union is evaluated, it is seen that although it still leaves out certain politically sensitive issues, it is an improvement for the democratic legitimacy of the Union.

The second part of the Treaty reform appears in the replacement of the current weighting of votes by the requirement of a double majority. Double majority is simple and comprehensible for the public and reflects the fact that the Council is currently both the federal organ in the EU, representing the Member States and besides the EP - an important representative of the citizens. This reform is done under the Article 9 C (2) and (4).<sup>50</sup> Then, there is no doubt that the reduction of "one state-one vote" and the introduction of the double majority instead can be regarded as an important step towards a fair representation of citizens, who are the basic unit of any democratic regime.

*The Commission*, as an independent body composed of bureaucrats, has a crucial role in the institutional structure of the EU as the sole initiator of the decision-making process.<sup>51</sup> However, concerning the democratic legitimacy, it is problematic in that it is deficient in terms of the transparency in its decision-making.

The "comitology" procedure in the law-making procedures of the Commission are not well-known in terms of democratic legitimacy, as these procedures are problematic from a democratic point of view in terms of the inconsistency of the choice of the type of committee, which is hardly predictable for the influenced citizens. Moreover, in this procedure, the EP is not actively involved and barely informed about the committee proceedings.<sup>52</sup>

On analyzing the provisions in the Treaty of Lisbon, it is found out that it creates a new category of legislation, that is, delegated regulation<sup>53</sup>. Through this innovative element, although the comitology procedures are not substituted, a different framework for them is offered, which may in the long run have an effect in its details. Thus, it is seen that although an innovative provision is created in the Treaty, the problem of lack of transparency and lobbying in comitology proceedings have not and could not be solved by the Treaty of Lisbon.

Within the framework of the debate about democracy in the EU, national parliaments play a central role in that the work of national parliaments in relation to the Union constitutes one element of democratic legitimacy of European governance. In that respect, during the IGCs of the Treaty of Lisbon, it was raised that the national parliaments be better informed and more involved to enhance the democratic legitimacy of the Union. On this ground, considering the importance of a closer watch over the national parliaments over the European policies of their governments and to and monitoring of the principle of *subsidiarity*<sup>54</sup>, the Treaty frames the involvement of the national parliaments into the decision-making of the EU under Article 8 C in accordance with *the Protocol on the Role of the National Parliaments in the European Union*.

In that respect, the Treaty gives greater scope to participate alongside European institutions in the work of the Union. Article 8 C clearly sets out the rights and duties of the national parliaments within the EU. The Article briefly deals with the right to information, the way they monitor subsidiarity, mechanisms for evaluating policy in the field of freedom, security and justice, procedures for reforming the treaties and take part in inter-parliamentary cooperation between national parliaments and with the EP.<sup>55</sup> Then, the Commission is obliged to forward directly to national parliaments all consultative texts or legislative proposals as well as the annual legislative and strategy programmes to make them be able to monitor the principle of subsidiarity through an early warning mechanism.<sup>56</sup> Thus, in this Article, the greatest novelty lies in new power to enforce subsidiarity. Any national parliament may flag a proposal for EU action which it believes does not respect to this principle.

In this context, depending on the fact that national parliaments contribute to the good functioning of the Union, these new provisions regarding informing the national parliaments about the functioning of the EU institutions are provided in accordance with the above mentioned Protocol. In that regard, the informal way of informing the national parliaments by the Commission in the Nice Treaty has been formally outlined in the Treaty of Lisbon. The way of providing information for national parliaments takes place in a process starting with the Commission directly forwarding its consultation documents as well as annual legislative programme and any other instrument of legislative planning or policy to national parliaments.<sup>57</sup> Moreover, *draft legislative acts*<sup>58</sup> are forwarded to national parliaments as to the EP and to the Council.<sup>59</sup> By keeping the national parliaments more closely informed about the legislative functioning of the EU and bringing them closer to the decision-making procedures of the EU through this process, the aim is to increase the control over the application of the principles of subsidiarity and proportionality. In this context, every draft

legislative act requires a detailed opinion from the national parliaments that would make it possible to evaluate its compliance with the subsidiarity and proportionality principles. This reasoned statement for the justification of the draft legislative act contains some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by member states, including, where necessary, the regional legislation.<sup>60</sup> With this early warning system, any national parliament will have eight weeks to argue the case if it feels a proposal is not appropriate for EU action.<sup>61</sup> If enough national parliaments object, the proposal can be amended or withdrawn. Thus, this early warning system gives national parliaments an important role in ensuring that the EU does not overstep its authority by involving itself in matters that can best be dealt with at national, regional or local level.

On the whole, taking into account the new powers given in the Treaty of Lisbon for national parliaments, it is seen that the legitimacy potential of the national parliaments with regard to European democracy has been increased. Nevertheless, they are not sufficient in that national parliaments' direct involvement faces inherent limitations arising from the inevitable complexity of the legislative process. All in all, it is concluded that whatever advance is provided, national parliaments can at most function as European co-legislators and co-supervisors in only a quite limited way.

### **Transparency and Publicity**

In addition to the importance of the institutional aspects of democracy in the EU for democratic legitimacy and governance, transparency and publicity, indispensable conditions for a functioning democracy, is essential to be discussed to have an overall interpretation of the issue in question.

In the EU, which started as a top-down initiative, mentioned above, it was only with the Maastricht Treaty that the issue of 'openness' in decision-making came to the fore under Article 1.<sup>62</sup> However, although this advance took place at a later stage of the European integration process, lack of transparency and publicity remains as one of the main shortcomings of the European system of government.<sup>63</sup> In that respect, lack of transparency and publicity obstructs citizens' giving an informed consent to government action and discussing or criticizing it in a well-founded manner. Thus, this results in their not intervening promptly in the political process, which in short hinders democratic control and oversight and opens the channels of lobbying by well-organized pressure groups to the detriment of diffuse interests.<sup>64</sup>

The issue of transparency can be analyzed in various aspects. First of all, there is a lack of transparency arising from complexity of European laws. Secondly, the question of individual access to European documents comes to the fore, which finds its answer under Article 42 of *the Charter of Fundamental Rights*, recognizing the right of access to documents as a fundamental right.<sup>65</sup>

The other part of the dual indispensability of functioning democratic process, publicity is essential for the general *active* duty to legislate in public and to publish legislative materials. However, the Union is very underdeveloped in this issue as well. The publicity of law making has been introduced recently, basically in 2002. The hardcore bureaucratic institutional structure of the EU arising from the secrecy of the Council meetings, non-public comitology procedures of the Commission, partly deliberation of the EP in public, impedes such publicity. Although some initiatives were taken in the European Council of Seville of June 2002 for an *open Council* policy in accordance with opening the co-decision procedure to the public, deficiencies remain intact in the Union.

On this ground, regarding the increase of transparency and openness as the crucial issue in the IGCs for the Treaty of Lisbon in accordance with the problem of European democracy, the Treaty of Lisbon puts forward considerable provisions. The indispensability of transparency and democracy reveals itself in the new Title II *Provisions on Democratic Principles*, some paragraphs of which refers to *transparency* and *openness*. The first initiation taken by the Maastricht Treaty mentioned above is enhanced with the clear spelling out of the concept of *openness* under Article 8 A (3). Secondly, the *transparency* regarding the proceedings of EU institutions is stated in Article 8 B (2) and (3).

Considering the provisions of the Treaty of Lisbon, then, the issue can be dealt with in three parts. The first part of the European transparency problem arises from the general complexity of European law, which can only be solved through the simplification of the Union's instruments and procedures. Regarding simplification as the main means of achieving *openness*, the Treaty of Lisbon initiates to simplify the Union acts. In that regard, the number of instruments for legal acts are decreased from 16 to 5 types, the cooperation procedure, which still exists in four cases in the area of the Economic and Monetary Union, is abolished and a hierarchy of legislation is established to relieve the laws from technical details, which currently present a barrier to public understanding.<sup>66</sup>

The second part of transparency concerns with citizens in terms of individual access to documents, which is incorporated in the Charter of Fundamental Rights<sup>67</sup>, and citizens' political rights. Under these new clauses, the current right of access is not extended but it was

guaranteed at European level. The most important and third aspect of transparency is public legislation, regarding the democratic governance. The EU, which has a very underdeveloped institutional structure concerning public law making, as discussed above, has only recently put emphasis on this issue, especially in the sphere of the arguably most powerful co-legislator, the Council.<sup>68</sup> The guarantee of public law making is constitutionalized by the Treaty of Lisbon, and extended to all types of legislation in all decision-making institutions of the EU.

On the whole, this improvement made in the Treaty of Lisbon constitutes a considerable step towards more transparency and openness in the EU. Most importantly, the attempts initiated for the overall transparency in the work of the Council is vital to allow citizens' direct oversight and to facilitate and improve the active involvement of national parliaments in the EU.

## **Conclusion**

After having analyzed democracy in the EU starting from how the democratic life of the Union was evolved in the historical background and what novel principles and institutional and functional aspects have been brought by the Treaty of Lisbon, it is concluded that democracy not originated from the Founding Treaties of the Union, despite considerable progress during the course of the European integration process, is still deficient in the EU and as Burca argues there is still a general consensus about the existence of 'democratic deficit' in the EU.<sup>69</sup>

In that respect, the basic institutional structure of the EU characterizes the continuing 'democratic deficit'. The brief analysis of the institutional and functional aspects European democracy, made in this study, reveals the fact that the creation, structure and procedures of the governing institutions in Europe are not as democratic as the domestic systems of government in the member states. In this context, there appears a three-fold democratic problem in Europe, covering the functions of law-making, controlling government and constitution making.

Regarding these three functional deficiencies of democracy in the EU within the framework of the institutional structure of the Union, the function of law-making is distorted though the partial involvement of the Parliament to the legislative process at the European level and national parliaments' loss of law-making powers. Secondly, the parliamentary function of controlling government is alleviated, as the members of the Council are not controlled by national parliaments. The EU democracy is also deficient concerning the higher-

law level of European constitution making, in the process of amending and transforming the European treaties themselves.

Stemming from this three-fold democratic problem, the Treaty of Lisbon has brought forth novel provisions. In the first place, the Treaty of Lisbon has strengthened the role of the EP as a co-legislator through extension of the coverage of co-decision procedure discussed above and the national parliaments are more involved in the decision-making process. Secondly, the lack of the Council's control by the national governments due to secret deliberation and voting in this institution, is partly removed by the Treaty of Lisbon and the vacuum of the control of European government is filled with the European citizens' initiative, which is an important development in line with Preface of the Treaty, stating to make the Union closer to its citizens.

On the ground of deficiencies and the provisions of the Treaty of Lisbon, it is concluded that the existing functional deficiencies are considerably reduced by the Treaty of Lisbon, especially the twin exercises of law making and the control of government are substantially improved and the issue of transparency is guaranteed at the European level. Unfortunately, these improvements do not eliminate the 'deficit' in European democracy thoroughly. In that sense, the Treaty of Lisbon can be regarded as an important but deficient step on the road towards making the EU more democratic, accountable, transparent and open, not as an end but as a means towards reaching the end point of functioning democracy in the EU.

## NOTES

---

\* PhD, Specialist in European Union, [nesenturk@yahoo.com](mailto:nesenturk@yahoo.com).

<sup>1</sup> See the *Preamble* of OJ C 306, Vol. 50, 17.12.2007, <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>, (retrieved on June 20, 2009, from World Wide Web: URL)

<sup>2</sup> TEU, Maastricht Treaty; 1992

<sup>3</sup> TEC, Rome Treaty; 1957

<sup>4</sup> Throughout the study, *the Draft Treaty Establishing a Constitution for Europe* is referred as 'the Draft Constitutional Treaty'.

<sup>5</sup> Laffen, B. (1999), 'Democracy and the European Union', in Cram, L., Dinan, D. and Nugent, N. (eds.), *Developments in the European Union*, London: Macmillan Press Ltd., p. 333.

<sup>6</sup> *Ibid*, p. 334.

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*.



---

<sup>9</sup> Laming, D. (2004), "The Democratic Credentials of the New European Union: Does the Constitution increase the EU's Democratic Legitimacy?", *Union of European Federalists*, <http://www.federalunion.org.uk/acrobatfiles/040909democraticcredentials.PDF> (retrieved: December 10, 2004, from World Wide Web: URL)

<sup>10</sup> Ibid, p.335.

<sup>11</sup> Ibid.

<sup>12</sup> Baun, M. J. (1996), *An Imperfect Union: The Maastricht Treaty and the New Politics of European Integration*, United States: Westview Press, p. 93.

<sup>13</sup> Laffen, B. (1999), "Democracy and the European Union", in Cram, L., Dinan, D. and Nugent, N. (eds.), *Developments in the European Union*, London: Macmillan Press Ltd., p. 335.

<sup>14</sup> See OJ C 340, 10.11.1997, <http://europa.eu.int/eur-lex/en/treaties/dat/amsterdam.html>, (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>15</sup> Laffen, B. (1999), "Democracy and the European Union", in Cram, L., Dinan, D. and Nugent, N. (eds.), *Developments in the European Union*, London: Macmillan Press Ltd., p. 335.

<sup>16</sup> See OJ C 340, 10.11.1997, <http://europa.eu.int/eur-lex/en/treaties/dat/amsterdam.html>, (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>17</sup> Ibid.

<sup>18</sup> Laffen, B. (1999), "Democracy and the European Union", in Cram, L., Dinan, D. and Nugent, N. (eds.), *Developments in the European Union*, London: Macmillan Press Ltd., p. 335.

<sup>19</sup> Ibid, p. 336.

<sup>20</sup> Warleigh, A. (2003), *Democracy in the European Union*, London: SAGE Publications.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> See the Preface of OJ C 310(47), 16.11.2004, p.1.

<sup>24</sup> See COM 2006, 212, 10.05.2006.

<sup>25</sup> The *Berlin Declaration* (officially the Declaration on the occasion of the 50<sup>th</sup> anniversary of the signature of the Treaty of Rome) is a non-binding EU text that was signed on 25 March 2007 in Berlin, celebrating the fiftieth anniversary of the signing of the Treaty of Rome which founded the European Economic Community.

<sup>26</sup> "In all activities, the Union shall observe the principle of the equality of citizens, who shall receive equal attention from its institutions, bodies, offices and agencies." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>27</sup> Peters, A. (2004), "European Democracy After the 2003 Convention", *Common Market Law Review*, 41, p.44.

<sup>28</sup> "The functioning of the Union shall be founded on representative democracy." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>29</sup> "Citizens are directly represented at Union level in the European Parliament. 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." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>30</sup> "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken up as openly and as closely as possible to the citizens." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>31</sup> "Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union." (See OJ C 306, Vol. 50, 17 December 2007)

---

<sup>32</sup> See Article 8 B (1), "The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union actions." (OJ C 306, Vol. 50, 17 December 2007)

<sup>33</sup> Peters, A. (2004), "European Democracy After the 2003 Convention", *Common Market Law Review*, 41, p.44.

<sup>34</sup> "The Union institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>35</sup> "The Commission shall carry out broad consultation with parties concerned in order to ensure that the Union's actions are coherent and transparent." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>36</sup> "No less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties." (See OJ C 306, Vol. 50, 17 December 2007)

<sup>37</sup> Peters, A. (2004), "European Democracy After the 2003 Convention", *Common Market Law Review*, 41, p.45.

<sup>38</sup> See OJ C 306, Vol. 50, 17 December 2007.

<sup>39</sup> Peters, A. (2004), "European Democracy After the 2003 Convention", *Common Market Law Review*, 41, p.45.

<sup>40</sup> See Article 190 EC in OJ C 191, 29.07.1992, [http://europa.eu.int/eur-lex/en/treaties/dat/EU\\_treaty.html](http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html), (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>41</sup> See OJ C 306, Vol. 50, 17 December 2007.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> The co-decision procedure was introduced by the Maastricht Treaty under Article 251 EC.

<sup>45</sup> See OJ C 306, Vol. 50, 17 December 2007.

<sup>46</sup> See OJ C 191, 29.07.1992, [http://europa.eu.int/eur-lex/en/treaties/dat/EU\\_treaty.html](http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html), (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>47</sup> See Article 9 D (7) in OJ C 306, Vol. 50, 17 December 2007.

<sup>48</sup> The Council of the European Union shares its lawmaking power with the EP within the framework of *co-decision procedure*.

<sup>49</sup> See OJ C 306, Vol. 50, 17 December 2007.

<sup>50</sup> "As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union." (OJ C 306, Vol. 50, 17 December 2007)

<sup>51</sup> See Article 9 D in OJ C 306, Vol. 50, 17 December 2007.

<sup>52</sup> Peters, A. (2004), "European Democracy After the 2003 Convention", *Common Market Law Review*, 41, p.58.

<sup>53</sup> See Article 35 in OJ C 306, Vol. 50, 17 December 2007.

<sup>54</sup> *Subsidiarity* means that the EU, except in the areas where it has exclusive powers, acts only where action will be more effective at EU-level than at national level.

<sup>55</sup> See OJ C 306, Vol. 50, 17 December 2007.

<sup>56</sup> Ibid.

<sup>57</sup> See Article 1 of the *Protocol on the Role of the National Parliaments in the European Union* in OJ C 306, Vol. 50, 17 December 2007.

---

<sup>58</sup> *Draft legislative acts* mean proposals from the Commission, initiatives from a group of member states, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

<sup>59</sup> See Article 2 of *the Protocol on the Role of the National Parliaments in the European Union* in OJ C 306, Vol. 50, 17 December 2007.

<sup>60</sup> See Article 5 of *the Protocol on the Role of the National Parliaments in the European Union* in OJ C 306, Vol. 50, 17 December 2007.

<sup>61</sup> See Article 6 of *the Protocol on the Role of the National Parliaments in the European Union* in OJ C 306, Vol. 50, 17 December 2007.

<sup>62</sup> See OJ C 191, 29.07.1992, [http://europa.eu.int/eur-lex/en/treaties/dat/EU\\_treaty.html](http://europa.eu.int/eur-lex/en/treaties/dat/EU_treaty.html), (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>63</sup> Peters, A. (2004), *European Democracy After the 2003 Convention*, *Common Market Law Review*, 41, p.63.

<sup>64</sup> Ibid.

<sup>65</sup> See OJ C 364/01, 18.12.2000, [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf), (retrieved on May 4, 2007, from World Wide Web: URL).

<sup>66</sup> See Article 48 of OJ C 306, Vol. 50, 17 December 2007.

<sup>67</sup> The Treaty of Lisbon guarantees the freedoms and principles set out in the Charter of Fundamental Rights and gives its provisions a binding legal force.

<sup>68</sup> Peters, A. (2004), *European Democracy After the 2003 Convention*, *Common Market Law Review*, 41, p.66.

<sup>69</sup> Burca, D. (2004), *Democracy and the EU*, Desmond Greaves Summer School, <http://www.feasta.org/documents/democracy/deburca.htm>, (retrieved on December 6, 2004, from World Wide Web: URL).