

Brunkhorst | Gaitanides | Grözinger [eds.]

# Europe at a Crossroad

From Currency Union to Political and  
Economic Governance?



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Volume 1

Hauke Brunkhorst | Charlotte Gaitanides  
Gerd Grözinger [eds.]

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## Preface

*Gerd Grözinger*

At first sight, a situation which is described as *Europe at a Crossroad* does not seem to be new. In fact, it is a standard feature of the European political processes. In retrospect, the EU went from crisis to crisis. And finally, so the story usually goes, it always overcame these challenges and the integration process intensified.<sup>1</sup> But this time it may be different. The elections of the European Parliament in May 2014 showed not only the usual weak participation, notwithstanding ongoing internal economic turbulences and heated political uproar at its borders, but also a surprisingly strong performance of nationalist parties, pointing to a more pronounced disenchantment of the voters in many nations. In a not so distant future we will also see in the UK the referendum about a formal exit from the EU. And, presumably much earlier, most experts expect a second haircut of the Greek public debt, combined with some real losses for taxpayers in other countries.

The by far deeper crisis this time has a lot to do with the Eurozone problems but it is not restricted to this set of Member States. The Kantian questions ‘What can I know? What ought I to do? What may I hope?’ transform here into the big political challenge: ‘Is the EU appropriately organized, how can it be reformed now and where should it end?’. These questions touch dimensions where many human sciences have something to contribute: in particular legal studies, philosophy, sociology, and economics. Those disciplines are represented in this volume.

The European University, Flensburg as a border town institution has a deep interest in all questions concerning the European Union.<sup>2</sup> In cooperation with the neighbouring University of Southern Denmark it organizes, amongst other programmes, the ‘European Studies’ masters programme. In this context two DAAD guest professorships were thankfully received, and in addition, a conference with the support of the DAAD was organ-

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1 See e.g. the final quote of Jean Monnet in the contribution of Charlotte Gaitanides.

2 In 2014 it even changed its name into *Europa-Universität*.

ized to discuss the ongoing crisis symptoms with an additional focus on alternatives. The conference with the title ‘Europe at a Crossroad: From Currency Union to Political and Economic Governance?’ took place in October 2012, the revised statements are collected in this volume. We are very grateful to the DAAD for the financial contribution!

*Axel Mueller* poses a more general question beyond the current crisis, concerning the often supposed democratic deficit of the EU. The existing governance system is best described as ‘federal executivism’ with a rather weak chain of legitimation from the people. Concisely discussing three prominent authors - Grimm, Offe, Streeck - with their critique that Europe has ‘no demos’ and instead pursues a dangerous path of market liberalization, Alex Mueller distinguishes between institutional democratic deficits and structural legitimacy deficits, the latter concerning the more general problem of multi-level governments’ legitimacy, especially in very diverse settings. Using positions by Möllers, Habermas and Dewey the author rejects the ‘no demos’ argument for methodological reasons. The ultimate conclusion is that the EU already has a supranational public.

For *Hauke Brunkhorst* the EU encompasses an eternal struggle between a ‘Kantian Mindset’ and a ‘Managerial’ one.<sup>3</sup> The union is seen as a succession of stages with different foci. Integration started with an economic constitution, moved then to a juridical one, followed by a political constitutionalization. And although the managerial mindset seemed clearly to prevail, during this course the Kantian counterpart was only repressed, never fully eliminated, and resurfaced periodically. After the ‘original sin’, basing European integration on the ideas of German ordoliberalism, the ECJ and EP party succeeded in pushing back the basically undemocratic elites’ position of only free-markets and nothing else. Today, when national policies are no longer affordable to combat a severe economic crisis, the next integration stage requires very practical steps like controlling the decisions of the executives (Council, Troika etc.) by the EP and giving them the right of initiative.

*Michelle Everson* deals with the provocative and self-critical question ‘what is the part of law in the current economic crisis?’ She delineates a process where legal thinking and economic theory became increasingly intertwined, with the danger of a ‘legal theory without law’. The author here

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3 Recently this opposition is compared to Dr. Jekyll and Mr. Hyde: Brunkhorst, Hauke (2014): *Das doppelte Gesicht Europas*, Berlin.

discusses both the US tradition of law and economics and the legal representation of the German ordoliberalism. Although positively referring, at least partly, to the same source of thinking as Hauke Brunkhorst - Koskenniemi -, Michelle Everson ends with a far more sceptical tone: the 'shocking conditions of legal corruption' should not lead to more Europe but to a more modest aim of relying even more on the still functioning national democracies.

Another legal, political and philosophical aspect interests *Charlotte Gaitanides* in her paper. Are the new rescue mechanisms EFSM, EFSF, ESM understandable as 'acts of solidarity'? A discussion of security systems based on solidarity concludes that certain criteria have to be fulfilled, for example, the establishment in advance or contribution according to the economic potential. Whereas the first, rather ad-hoc built institutions do not fully satisfy these criteria the author argues that the ESM, mimicking the IMF-structure, does, thereby showing a 'learning curve' of the EU. - In a comment on this paper *Jan Hauke Plaßmann* asks if solidarity is really the best category to discuss the underlying rationale of the Eurozone rescue mechanisms, since there are other possible explanations. Another critique concerns the IMF, where formal solidarity and material injustice may go hand in hand.

With the last two contributions the Eurozone, as the centre of the recent crisis, is focussed upon. *Arne Heise* discusses the missing European economic governance. From the Great Depression relevant lessons could be learnt, like: 'avoiding a financial meltdown' or 'avoiding deflation'. However, the European Stability and Growth Pact weakened the growth potential long before and therefore made it difficult to react swiftly and strongly to the financial crisis. The existing economic governance is based too much on mistrust, this dwarfs the role of the useful automatic stabilizers and leaves not enough space for a useful Keynesian stimulus policy.

*Kurt Hübner* also deals with the governance of the Eurozone. Germany is now the key actor and pursues a policy which can be named after a famous novel, as a '*Leopard*' approach. The author looks back into the history of a monetary union and shows that even the predecessor, the European Monetary System, was already working according to German preferences where price stability triumphed over the employment dimension. Now, in accordance with new procedures, e.g. the 'Six Pack', Germany seems to be everywhere. Intergovernmentalism is strengthened and the creditors are more favoured than the debtors. Should the ECB as a final



remaining actor, be legally bonded, even if a falling apart of the Eurozone is still possible?

*Gerd Grözinger* proposes substantial reforms to keep the Eurozone going. Given the multi-dimensionality of the crisis, the task is manifold. In the future, the financial sector must get rid of speculative assets, bank lending must be controlled to serve the real sector better, unit labour costs must converge with the help of a national based tax-subsidy-system and struggling member countries have to increase their revenues before getting assistance by the ESM. The implied strengthening of the ECB leads to the final question, if such an even more powerful institution than today's could forever be shielded from the people's will or, if not, should a specially elected chamber govern the central bank of a monetary union?

Given that austerity policies have a long history so has the political and intellectual resistance against them. *Kolja Möller* starts his analysis of the social dimension of the European project with the 'Ventotene Manifesto', an early document dated 1941. At the formal beginning, however, the EU did choose another way, that of technocratic integration. Social rights played only a minor role, or even worse, got captured and thereby reversed by competition and deregulation policies. To counter this move the author discusses two ways: the European Social Charter and a treaties reform. The US experience shows that such ways are possible if a window of opportunity opens.

Social security is highly relevant but not the only value dimension of significance. *Mikael Rask Madsen* discusses the interplay of human rights and European integration. The founding of the European Court of Human Rights, based on the similarly named Convention in the 1950s started a process of 'legal diplomacy' where the ECHR did step-by-step increase its position and acceptance among the national, legal and political systems of the subscriber states. In addition, other institutions, most notably the ECJ, later joined this path, starting a process which culminated in the EU Charter of Fundamental Rights. However, as the author concludes, the EU has only 28 member states and covers 500 million people. The ECHR reaches some 800 million people in 47 members, including nations like Russia and Turkey.

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## List of Abbreviations

ALARP	As low as is reasonably possible
a.M.	am Mainz
b.	billion
BCE	Before the Common / Current / Christian Era
BEPG	Broad Economic Policy Guidelines
BRIC	Brazil, Russia, India and China
BSE	Bovine Spongiform Encephalopathy
BVerfG	Bundesverfassungsgericht
BvR	Bundesverfassungsrichter
CDU	Christian Democratic Union of Germany
Cf.	Confer
Ch.	Chapter
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CP	Cardiff Process
CSU	Christian Social Union
DAAD	German Academic Exchange Service
DFG	Deutsche Forschungsgemeinschaft
EAP	Economic Adjustment Program
EC	European Communities
ECB	European Central Bank
ECFR	European Charter of Fundamental Rights
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECom	European Commission
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
Ed(s).	Editor(s)
EDP	Excessive Deficit Procedure
EEC	European Economic Community
EERP	European Economic Recovery Plan
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilization Mechanism
e.g.	for example
EMD	European Macroeconomic Dialogue
EMS	European Monetary System



*List of Abbreviations*

EMU	Economic and Monetary Union
EP	European Parliament
EPS	Employment Policy Strategy
ESC	European Social Charter
ESD	European Social Dialogue
ESFS	European System for Financial Supervision
ESGP	European Stability and Growth Pact
ESM	European Stability Mechanism
ESRB	European Systemic Risk Board
EU	European Union
FDP	Free Democratic Party
ff.	and the following
GDP	Gross Domestic Product
GMO	Genetically Modified Organism
i.e.	that is
ILO	International Labour Organization
IMF	International Monetary Fund
IMK	Institut für Makroökonomie und Konjunkturforschung
IPE	International Political Economy
IR	International Relations
IRA	Irish Republican Army
MEP	Member of the European Parliament
MOC	Méthode Ouverte de Coordination
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OJ	Official Journal of the European Union
OMC	Open Method of Coordination
OMT	Outright Monetary Transactions
Para.	Paragraph
PEW	Pew Research Center
PIIGS	Portugal, Ireland, Italy, Greece and Spain
SGP	Stability and Growth Pact
SPD	Social Democratic Party
TCE	Treaty Establishing a Constitution for Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance
UK	United Kingdom
UN	United Nations
US	United States
USA	United States of America
USD	United States Dollar

*List of Abbreviations*

VaR	Value at Risk
viz.	namely
Vol.	Volume
WTO	World Trade Organization
WWII	Second World War



## The European Public(s) and its Problems. On alleged lacking foundations of democratic legitimation in the EU and its legal system(s)

*Axel Mueller*

In the context of the current crisis, the fact that EU policies to save the financial integrity of the Euro have had deep-reaching consequences in the social fabric and policies of some member states towards their populations while not in others has put, as Habermas says, the question anew on the agenda of the relationship of democracy and economy in the EU.<sup>1</sup> That the measures had a motivation as reactions on the pressures of the global financial markets is as little in doubt as that the speed and energy with which the effects of the financial crisis could transform a debt crisis into a sovereign debt crisis has everything to do with the efficient neoliberal streamlining of Europe into a single market that is free from political interference into or against the socially insensitive demands of global capital. There is little doubt among social scientists that the process of EU - integration over the past 30 or so years was significantly framed by the globalized attempt - or “frivolous experiment”<sup>2</sup> - of transforming the former state embedded market economies into market-embedded states.<sup>3</sup> The

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- 1 Habermas, Jürgen (2012): Die Krise der Europäischen Union im Lichte einer Konstitutionalisierung des Völkerrechts, in: Jürgen Habermas, *Zur Verfassung Europas. Ein Essay*, Frankfurt, 42.
  - 2 Streeck, Wolfgang (2009): *Re-Forming Capitalism*, Oxford, 270, with reference to the idea of a “market-society” discussed in Polanyi, Karl (1977): *The Great Transformation: The Political and Economic Origins of our Time* (orig. 1944), Boston.
  - 3 Cf. references to this transformation in discussing differences between Ordo-liberalism and neoliberalism Crouch, Colin (2011): *The Strange Non-Death of Neo-Liberalism*, Cambridge, 165; Streeck (2009); and Brunkhorst, Hauke (2012c): *Europe at a Crossroad: Between the Kantian mindset of democratic capitalism and the managerial mindset of capitalist democracy*, Ms. of a presentation at the eponymous workshop at University of Flensburg, 22. An earlier reference tracing back this technical term’s use to Polanyi is Offe, Claus (2003): The European Model of ‘Social’ Capitalism: Can It Survive European Integration?, in: *Journal of Political Philosophy* 11(4) /2003, 437-469, 443-447.

prime example for this is the introduction of the market-accelerating common currency EURO without simultaneously embedding it in a EUROzone-wide network of coordinated EUROzone-wide social, fiscal and economic policies with guarantees of sharing, or at least controlling the social risks of this homogenization of the market justly among equal member states and among all EU-citizens.<sup>4</sup> If creating a single free market and dismantling the political constraints with which players in the economic arena had to calculate earlier<sup>5</sup> was the purpose of the elaboration of the EU by the member countries, they have done good work. But they uncoupled market-integration from political integration in the relevant areas and thus fostered the political divisions within the Eurozone and between the Eurozone and the remaining EU-member states to a degree that threatens to jettison the previous advances in the political integration of the EU as a supranational organization. One reason for this was, for sure, that the unwillingness to develop a proposal for a EU-wide social, fiscal and economic policy that would be handled by the EU and intervene in the national parliamentary competences would have required (and still does) presenting the proposal to the entirety of the national citizenries with the purpose of adapting their corresponding constitutions accordingly. Premising the success of economic unification on the uncertain outcomes of protracted discussions of principles among the extremely complex variety of stakeholders with often dilemmatic directions of pull in their interests in an extremely heterogeneous collection of national economies and social systems arguably would have doomed the very idea to failure. That the very idea was good was beyond doubt as long as it didn't show its costs. Now it does, and the extreme strain of the social systems in the loser countries brought home the heterogeneity of economic capacity and interests among those forcibly treated homogeneously by the guardians of the global currency- credit- and exchange markets and the guardians of Euro-stability. Once again, now under the pressure of social movements respond-

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4 An excellent analysis of the details of the consequences of this uncoupling of currency and social and fiscal policy is offered in Offe (2003) *before* constitution- and credit-crisis, and still more poignantly with the facts in by Streeck, Wolfgang (2013): *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*, Frankfurt.

5 About the challenge stemming from the connection of market-liberalisation, European economic integration and the dismantling of prevalent European social models, cf. Offe (2003), sec. IV-VI.

ing to the unjust distribution of risks between social groups and groups of nations, the wisdom and legitimacy of imposing constraints stemming from a decision made at the supranational level on national governments who normatively are in charge of protecting their populations from degradation and undue inequality of opportunities with other member-states returned to the agenda with a vengeance.

In the relevant field, social scientists and economists had long been averting to the facts of heterogeneity and complexity in the ways in which social, fiscal and economic systems were linked in the various member states to ensure a functioning distribution of wealth and welfare among the citizenry. Not putting the requisite political part of the Eurofication on the agenda on the part of the EU-decision makers was in this sense an adequate expression of a consciousness of the non-existence of a single European social space. However, what is not put up for public debate in the first place and yet decided<sup>6</sup> clearly has dubitable standing as to whether it meets the standards of *democratic* decision-making and thus, whether it can count as legitimate according to the standards expected from each of the member states by EU-law itself.<sup>7</sup>

But, as I said, the extent of the current crisis has forced to the fore even more profound questions, since intelligent inquiry into the structures responsible for the rampaging loss of social safety cannot exclude at the outset that the causes lie deeper. Are there any *general* lessons from the *particular current* crisis to be learnt about the relationship of democratic legitimacy and supranational institutions? The complaint seems to be that the introduction of the Euro and the imposition of political constraints on national parliaments by the EU-institutions in charge of steering the Euro should have been given a chance for the democratic review that the objective matters at hand - viz., that the introduction of a currency inevitably affects social, economic and fiscal aspects of sovereign government activity - would have required. But doesn't that complaint respond to circum-

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6 Because aggregatively speaking, there is of course always a EU-wide social space, but not a coordinated one, hence none that would allow concerted political action - and in this sense, the mothers and fathers of the Euro did decide to exclude coordinate influence of politics on the market-imperatives governing the Euro in the global financial markets.

7 A well-known joke among EU-law specialists with reference to open issues in the democratic credentials of EU-decision procedures has it that the EU wouldn't be allowed to join the EU if it applied as a state.

stances that are merely a symptom for a more principled unresolved issue? After all, the complaint presupposes that it *could have been* democratically justified to decide an arrangement of supranational institutions and regulations that bind the democratically justified national governments and parliaments. But the real problem is perhaps that there are reasons why supranational organizations *in general* must not legitimately interfere with democratically legitimized national governments and legal orders, or at least reasons *when* such interference isn't legitimate, such that evaluated in light of these reasons, the EU meets one of such legitimacy-disabling conditions. This type of question will be the topic of my discussion.

I will present three versions - Grimm, Offe and Streeck - of a general argument that is often used to establish that the EU-institutions meets such a legitimacy-disabling condition, the so called 'no demos' argument (II). Before doing this, it will be necessary for an adequate appreciation of its pull to mention some of its reasonable motivations by embedding it in the context of the notorious "democratic deficit" suspicions against the legal system and practice of the EU (I). After quickly examining the logical structure behind the 'no demos' intuition considered as an argument (III), I will then present principled reasons by Möllers and Habermas that show why the 'no demos' argument fails to have bite in discussions of the legitimacy and status of the supranational level in the multi-level EU-architecture, complemented by another principled reasons arising from John Dewey's conception of the "public" as a clearer alternative for the "popular" requirement of democratic legitimation (IV). I will conclude that all three conceptions together suggest that the hunt after pre-politically existing peoples as foundations of democratic legitimacy expresses, in spite of the theoretically elaborate apparatuses utilized to pump the 'no demos' intuition, no more than methodological nationalism without any footing in the material requirements of democratic legitimation. Given the absence of a principled problem with the legitimacy of the priority and interference of supranational EU-law in the national legal and political orders, there are also no principled reasons to abandon or discredit the European project in the absence of a European nation or society.

### 1. "Democratic deficit" in the legal system and practice of the EU

To begin with, the agreements and treaties forming the EU in the process of European integration over the past 60 years have been decided by

democratically elected officials of the member states in unanimous concert authorized to take such decisions. After the landmark decisions of the Court of the European Union in the early 1960s *Van Gend* and *Costa*, it is established legal opinion that the treaties expressed the will of the associated states to treat all of their subjects uniformly, and in this sense, to acknowledge EU regulations as a voluntarily accepted constraint on national jurisdiction and legislation, and since the fusion of TEU, TFEU and the Charter of Fundamental Rights of the EU into the Lisbon Treaty, the legal form of the EU can arguably be considered to be that of a *de facto* constitutionalized supranational institution. Given that the Lisbon Treaty contains the requirement that the EU accede as a subject to international law to the European Convention on Human Rights, guarantees all the liberal-democratic subjective and civil rights to all EU-citizens and prescribes liberal democracy under the rule of law as the only legitimate form of government, the process of constitutionalization of the EU can be seen as largely accomplished, and as having created a regional regime of democratic guarantees in the territory comprised by the territories of its member states.<sup>8</sup> As with growing integration, more and more functions and policies of the democratically legitimized legal orders of the national states that EU-citizens belong to come under the influence of decisions made at the level of the EU-institutions, suspicions of “democratic deficits” of the EU have not become less but rather more pronounced downstream. Talk of “Eurocrats”, “Monster Brussels”<sup>9</sup> and no-comment quotations of the applicability of the regulations regarding teleferics to Holland<sup>10</sup> are expressive of these reluctancies.

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8 For a detailed discussion on the constitution-analogue status of the corresponding documents, cf. Brunkhorst, Hauke (2012b): *Demokratie ohne Staat*, in: Hauke Brunkhorst, *Legitimationskrisen. Verfassungsprobleme der Weltgesellschaft*, Baden-Baden, 307-21. The standard opinion in European legal science is that the EU possesses, with the treaties and protocols as well as its institutions, the formal equipment of a constitutional democracy (with minor flaws); cf. Chalmers, Damian / Davies, Gareth / Monti, Giorgio (eds.) (2010): *European Union Law: Cases and Materials*, Cambridge, ch. 1, 5, 6.

9 Enzensberger, Hans Magnus von (2011): *Sanftes Monster Brüssel oder Die Entmündigung Europas*, Frankfurt.

10 The discussion about the threat of sanctions for non-compliance with the “transposition into national law” of the EU-cablecar-directive (Directive 2000/9/EC) on the part of the commission, issued as ultimatum in 2010 to the Netherlands, Finland,



Although there are manifold reasons for this diagnostic, the fact that the EU forms a multi-level system of governance with very complicated and partly flawed flows of accountability between its outputs and civic input seems to play a large role in most of them. No less complicated and often diffuse are the flows of civic participation in decision making processes. Weightier than concerns about complexity and the corresponding decrease in transparency vis-à-vis the citizen are concerns about certain routine ways of decision making at the EU-level in which access of civic control to the process seems to be positively blocked out. The main focus of attention in this regard is on the prevalence of intergovernmental decision-making by way of closed-door negotiations by the Council of Europe, i.e. the periodic summits of the leaders of the executives of the member states, in many fields of policy making that affect large parts of the population which, unsurprisingly, demand more influence either directly or indirectly via the national parliaments on the outcomes of these negotiations. The decisions made at the summits in intergovernmental agreements between national executives become, at the level of the EU, directives to be implemented by the respective national legal systems. Given the pressures connected with non-compliance with EU-directives that are exercised on the national legislatives, the latter in most cases deliberate with a foregone conclusion, and not open-endedly. The best term for this intergovernmental form of governance would be federal executivism, since it virtually marginalizes parliamentary control and thus, mediately, control by the representatives of the people. That this intergovernmental mode of decision-making causes legitimacy deficits becomes clear in those fields where the Lisbon Treaty does not require a further check on the decisions made in the Council of Europe by the European parliament, for example fiscal, social and economic policy. In these fields, a national executive who feels that the national legislative would not accept a legislative initiative and then gets the universal approval by her colleagues in the Council of Euro-

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and mountainless German Länder like Mecklenburg-Vorpommern or Berlin, based on the regulations for the harmonization of a single economic space are regularly used as a paradigm for federalist or outright anti-EU critics of alleged senseless centralist “regulative fanaticism”. Cf. Läsker, Kristina (2010): Berge, Bahnen und Giganten, in: *Süddeutsche Zeitung*, 11.05.2010. Exemplary for the anti-EU sentiments, cf. IHK München und Oberbayern (2011): Bulletin “Kuriositäten aus Europa”, in: *Eco-Post* 2 /2011, DIHK [Online] Available at: <http://www.muenchen.ihk.de/de/international/Export/EU-Geschaefte/Kuriositaeten-aus-Europa> [Accessed 1 June 2013].

pe thereby acquires a binding EU-regulation that the national parliament has to adopt on pain of EU-sanctions. If we distinguish between representative, accountability and participatory demands on democratic legitimacy, the only demand met by those decisions is that an elected official representing her national population was involved in making the decision, but - given that the risky proposal was not discussed in the national parliament - neither participatory deliberative nor - given that the directive from Brussels has to be implemented on pain of sanctions by the EU against the dissenting nation - accountability for the acceptance of the decision by the national executive is safeguarded. For all intents and purposes, the control of executive activity by the people or their representatives is reduced to an unnoticeable minimum. To make matters worse, in those fields where each member of the elected national governments used to have a functional veto power in the European council (of ministers), now majority decisions have an extended use, so that it becomes possible to bind even dissenting nations to the decisions that pass both legislative branches, and via the so-called "Passarelle" mechanism, the council can itself decide to declare a subject that was deemed to require unanimous decisions subject to majority-decision, thereby obviating the resistance of national parliaments that wouldn't allow their governments to go along. This entails the danger of a cold transfer of competences of control from national parliaments to the intergovernmental decision-making at the EU-level in the council of ministers, i.e. members of the national executives that eliminate parliamentary control. At the conclusion of both processes, the EU-rule is to be implemented at all national levels irrespective of further deliberations in their parliaments. Consequently, many warnings emerged in the discussions about the Lisbon Treaty that Brussels was "seizing powers from us,"<sup>11</sup> and that the rationale of intergovernmental decision making clearly is not legitimacy but expediency.

This diagnostic of an institutionally unresolved democratic deficit is surely partly correct, and it is also true that the thus intergovernmentally acquired decisions suffer from a legitimation-deficit because the chain of legitimation from the people through their representatives to the decision

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11 Scholz, Rupert (2008): Demokratiedefizit in der EU?, in: Clemens Fuest / Martin Nettesheim / Rupert Scholz (eds.) *Lissabon-Vertrag: Sind die Weichen richtig gestellt? Recht und Politik der Europäischen Union als Voraussetzung für wirtschaftliche Dynamik*, Köln, 197-206. More polemic is Herzog, Roman / Gerken, Lüder (2007): Europa entmachtet uns und unsere Vertreter, in: *DIE WELT* 17.02.2007.

as much as any public discussion and deliberative elements in the procedure have been sacrificed in favor of intergovernmental negotiations. Moreover, it is also true that the fields still placed by the Lisbon Treaty under this type of governance at the EU-level are crucial for the political, social and economic well-being of the populations. But one also has to underscore that in a growing number of fields, the Lisbon Treaty requires what is known as the “ordinary legislative procedure” in which proposals by the Commission, i.e. the EU-executive authorized by the EU parliament, or by the Council of Europe through the European council, have to pass parliamentary review and approval by the European Council (i.e. the part of the legislative representing the national interests through the competent ministers). That is, although there are serious institutional democratic deficits to be removed, the development of political integration of the EU appears to point in many fields towards an increasing democratization of governance also at the level of EU decision making itself. In those fields where this is the case it would also appear that EU-regulations disclose to themselves their own source of democratic legitimation flowing from the totality of EU citizens represented as members of the totality of all national member states represented in the EU-parliament, and represented as members of their respective nations by the democratically authorized members of the executives EU-nations in the European Council.<sup>12</sup> Given that the treaties’ allocation of competences assigns most fields except for the decisive ones of social, economic and fiscal as well as exterior policy, already now to the possible purview of ordinary legislative procedure, a densification of democratization seems to be a concern for the EU on its own. On the other hand, if, as the case may be, there are principled problems with purely intergovernmental decision-making at the supranational level, then the presence of pockets of purely intergovernmental and intransparent decision-making might even serve as a good indicator of

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12 Unsurprisingly, the EU-parliament itself denies the existence of democracy deficits in a publication on itself and points to the unwillingness of the national executives to use the ordinary legislative process open to them in most questions by tartly remarking that this behavioral pattern of national leaders who profess their engagement in reducing supposed “democracy deficits” much rather looks like an “honesty deficit”. Cf. the article distributed by the European parliament as an adequate self-description: Bergmann, Jan (2012): Demokratiedefizit, in: Jan Bergmann (ed.), *Handlexikon der Europäischen Union*, Baden-Baden.