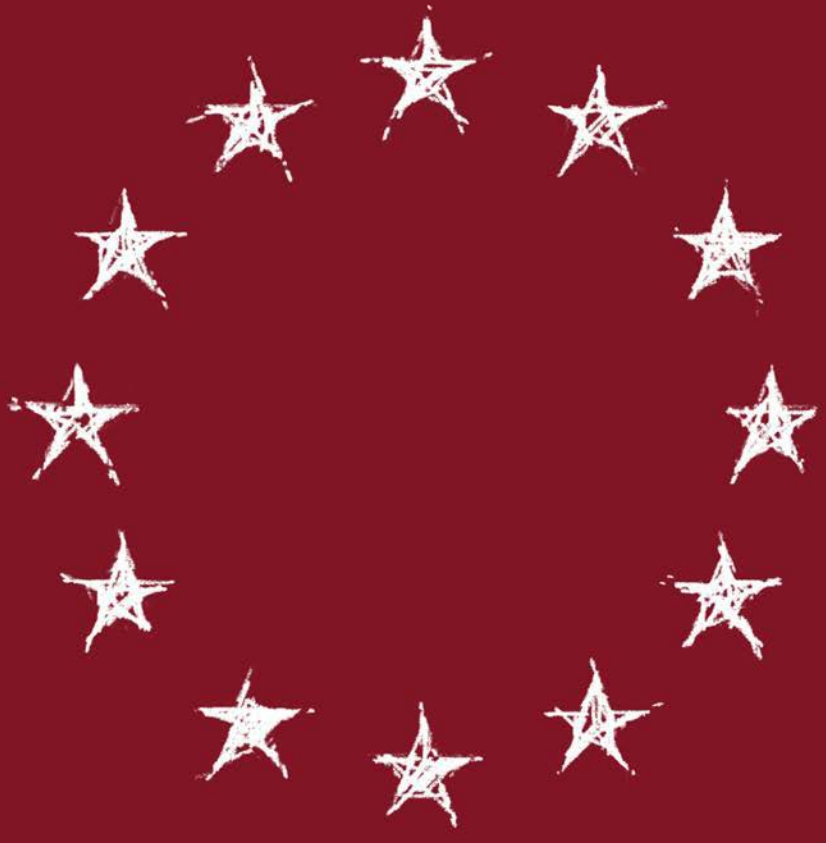
Virginia Vecchiato

EU Regulations as a Hybrid Genre

A Linguistic View of the European Democratic Deficit



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Introduction

This research project begins with some reflections on a socio-political phenomenon known as the 'democratic deficit', which has long affected the institutions of the European Union (EU).

The growing perception of a democratic deficit and the declining popularity of the EU institutions have generally been attributed to 'the inability of the institutions to communicate their goals to people in different member states' (Koskinen 2008: 81), even though the 'participatory turn' has attempted to connect Europe with its citizens (White Paper on European Governance 2001: 3). Since the encounters between the EU elite and its various constituencies are typically text-mediated rather than personal, it makes sense to look for the reasons for the perceived democratic deficit, which according to Wilson (2000) is also a 'cultural deficit', in the discursive practices found in European written legal documents and in particular in EU regulations.

The focus of the study is not on the political and purely legal consequences of the actual or alleged 'democratic deficit', but on the textual, cognitive and rhetorical manifestations of the phenomenon in EU regulations, as the main contention is that there is a relationship between the way EU regulations are written and the socio-political context from which they emerge. The basic methodological approach of this study comes from linguistics, drawing on concepts from EU law, as the European procedure for adopting new laws stipulates that each act must follow a canon and precise steps involving various actors (drafters, editors, legal revisers, specialist lawyers, in-house translators, lawyer-linguists, citizens and economic operators, and the Directorate-General for Translation) in order to improve the quality of EU multilingual lawmaking (Strandvik 2016) and thus facilitate readability and translatability. As research, it is exploratory, i. e. it aims to describe issues and contexts and to get to know the object of research (EU regulations) better, with particular attention to the way they are drafted and the reasons that justify such a law-making process. In order to carry out this type of research, after considering the hybrid legal system of the EU, which is neither civil law, nor common law, nor international law, but a new

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legal framework, EU legal texts – in particular secondary legislation (regulations) – were considered and their generic integrity was examined in order to understand whether they are hybrid or not. The analysis only partially covered issues related to the multilingual nature of EU law and other translation-oriented considerations, focusing mainly on monolingual texts written in English. The analysis focused on linguistic aspects such as genre, text types, register and rhetoric, which are elements that precede translation and on which it usually depends (Trosborg 1997). In the light of such an analysis, it might be plausible to approach the translation of EU regulations from a new functional perspective and beyond the synoptic approach.

The term 'democratic deficit' is generally attributed to David Marquand (1979) – who stressed the lack of accountability of the European institutions towards the European public, whose will is not reflected in sometimes unpopular policies (Mèny 2003: 8). The European democratic deficit can be interpreted in two ways: it can be the result of 'too little democracy' or it can refer to a kind of 'overshadowed democracy' (Azman 2011: 244). The origin of this phenomenon is often political, i. e. the lack of confidence in the European institutions; but this study aims to prove that the founding fathers of the European Union were well aware of this possible consequence – although they never officially stated it – and that, despite the well-known economic and political arguments in favour of the so-called 'Monnet method of functional and political spillovers', another strategy adopted to promote European integration was textual and discursive. In fact, this alternative strategy had to do with the way EU secondary legislation was written and, in other words, with soft power, i. e. the EU's commitment to certain normative principles such as democracy and human rights (Nielsen 2013). In Nye's (2004) words, soft power as a concept applied to the American context – which is also valid for the European scenario – is

> (…) the ability to get what you want through attraction rather than coercion or payments. When you can get others to want what you want, you do not have to spend as much on sticks and carrots to move them in your direction. Hard power, the ability to coerce, grows out of a country's military and economic might. Soft power arises from the attractiveness of a country's culture, political ideals and policies. When our policies are seen as legitimate in the eyes of others, our soft power is enhanced (Nye 2004: 256).

Drafting EU law is 'writing for translation [… since] no single EU text stands alone' (Robertson 2010b: 159), and it is in this legal scenario that European multilingualism finds its most complete and concrete manifestation. However, from a legal perspective, the supranational European legal system is based on primary legislation – namely the international treaties – and secondary legislation – namely the regulations, directives and decisions that implement the founding principles and constitute the 'operative provisions', the statutory di-

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mension of EU law. In other words, in the EU, secondary legislation refers to legal acts, and the principles underpinning them are expressed in international treaties.

From this perspective, EU law derives from – but is not – international law and interferes with the national law of the Member States, over which it takes precedence (judgment of the Court of Justice of 5 February 1963, Van Gend & Loos). In terms of the legislative process, the European Parliament (the only institutional body directly elected by EU citizens) and the Council of the European Union adopt new legislation after the European Commission has prepared a legislative proposal on its own initiative. It is the Commission's extraordinary functions that underpin the debate on Europe's democratic deficit, democratic legitimacy and accountability. From a linguistic point of view, when a new legal document is adopted in the legislative process, it temporarily becomes the source text for the other versions of the document, which has to be drafted in 24 official languages. When all the versions of the document are ready, the source text loses its status and becomes one of the 24 equally valid versions of the document. In addition, when a new concept needs to be expressed, a neologism or a new term is created or borrowed from other legal or non-legal contexts and used in such a way as to avoid any confusion between EU terms and concepts and pre-existing civil law or common law terms and concepts (Šarčević 2013). In proposing legislation and implementing policies, the Commission has created many policy networks, ranging from technical expert committees to administrative and diplomatic networks, NGOs and socio-economic interest groups. This is a strategy that allows the Commission (and the Council) to 'convince the outside world of the strength of the normative foundations of European foreign policy [through] strategies of cognitive persuasion reminiscent of concepts and methods used in public diplomacy' (Michalski 2005: 126). The aim is to convince internal and external audiences of European ideas and perceptions of the world order. The normative component is important in legitimising the EU's soft power, as both normative power and soft power consider 'the impact of norms and values [in] an attempt at identity construction with both a descriptive and prescriptive element' (Nye 2011 in Nielsen 2013).

Based on these assumptions, this study aims to explore the specificities of EU regulations as a genre. To this end, and in an attempt to answer the questions of how EU regulations are drafted and 'why' they are drafted as they are, chapters 1 and 2 present the legal and linguistic scenario that has led to the legal and linguistic hybridity and complexity of EU regulations. Chapter 3 presents the theoretical framework for this study, and Chapter 4 provides information on the methodological approach, the research questions, and the data and corpus design. Chapter 5 examines the textual, cognitive and generic dimensions of ninety EU regulations – mainly selected from areas of exclusive European

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competence, namely competition, monetary policy, customs union, trade and marine flora and fauna – and the linguistic devices involved in the phenomenon of 'textual legitimacy', with the ultimate aim of demonstrating that EU regulations, emerging from a hybrid legal and linguistic context, are a hybrid genre. By 'textual legitimacy' we mean here all the textual strategies adopted to draft the texts of regulations in order to present them as valid, legal and, in other words, legitimate. Each section – with the exception of the annexes – of the ninety EU regulations is analysed, paying particular attention to recitals, definitions and enacting terms. It was found that EU regulations are persuasive texts which, according to Tiersma's (1999) taxonomy, combine aspects typical of operative legal documents containing legal performatives (enacting terms) and aspects typical of expository and persuasive documents (recitals). A parallel was drawn between the cognitive structure of EU regulations and other written legal texts, such as judgments and treaties, reinforcing the assumption that EU regulations are a hybrid genre.

The regulative and facilitative function of law (Danet 1980) defines and enables relationships, and to do this it is necessary to establish a relationship between language and social order that allows the legal to be equated with the social. In the EU, this socio-political aspect has always been open to criticism because of its peculiar multilingualism and multiculturalism combined with a variety of different national legal frameworks. Nevertheless, the contractual nature of international and supranational rule-making (Robertson 2016) and soft law (or the 'contractualisation of relations' as Tulmets (2007) calls it) could – from a textual point of view – limit the negative effects of undemocratic and illegitimate spillovers. Indeed, their ultimate goal is to find a balanced compromise that takes into account a variety of international, national and regional interests.

In light of the above, this study provides an in-depth analysis of EU regulations from a syntactic, rhetorical and pragmatic perspective to show how textual legitimacy and soft power are rhetorically and textually expressed in a corpus of ninety European regulations, which represent the expression of EU internal policies from which EU foreign policy and diplomacy emerge: Since EU foreign policy is derived from EU internal policies (Michalski 2005; Tulmets 2007; Nielsen 2013), a backward procedure was followed, and some features of the former were sought (and found) in the latter. In particular, since the appeal to soft power represents a specific approach developed by the EU to 'co-opt rather than coerce' (Tulmets 2007: 216) its interlocutors and to 'achieve coherence between policy areas and geographical regions by mainstreaming contractual relations and strategic communication and in dialogue with third countries, NGOs, EU member states and international organisations' (Michalski 2005: 134), this study demonstrated the importance – not only from a linguistic perspective – of re-

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citals, which constitute the introductory part of every EU regulation and represent an area of study that has been neglected in legal and academic research (Klimas and Vaiciukaite 2008; Fontaine and De Ly 2010). Although recitals use non-mandatory language (EU 2015) and are not allowed to contain operative provisions, they fulfil a pragmatic role that is coherent and consistent with the proactive integration policies pursued by the EU.

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1. The concept of 'democratic deficit' and its socio-linguistic spillovers

1.1 Premise

This research project aims to show that the phenomenon commonly known as the 'democratic deficit', which has long affected the institutions of the European Union (EU), is not an unpredictable side-effect caused by purely political factors (namely by tracing it back to oppositional visions of the relationship between the individual and the community), but an inevitable socio-political consequence of the incomplete European integration, which began as an economic manifestation and should have led to complete socio-political harmonisation.

The origin of this phenomenon, called the 'democratic deficit', is political, since the lack of trust in the European institutions is often linked to the feeling that they are distant – not only physically – from EU citizens (Majone 2005; Hix 2008). Nevertheless, this study aims to demonstrate two crucial aspects: on the one hand, the founding fathers of the European Union were aware of this possible consequence – although they did not officially state so; on the other hand, despite the well-known economic and political arguments in favour of the so-called 'Monnet method of functional and political spillovers' – of which more later – another strategy was adopted to promote European integration. This alternative approach to the problem was neither economic nor political, but textual and discursive, having to do with the way in which EU secondary legislation was written. The European Community, now the European Union, was inspired by the American federal model. It is no coincidence that Gian Domenico Majone (2005), in his comparison between the United States of America and the United States of Europe (as Winston Churchill referred to the EU in some public speeches in the years immediately after the Second World War), identifies as the main reason for the failure of the European federal project the absence of four fundamental elements – which he finds instead in the American scenario: 1) a common language; 2) a homogeneous system at the national level; 3) the common law system; 4) a common enemy.

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In addition, it is a significant feature of EU law to coordinate methods of economic production and trade rather than to regulate civil society: EU law does not fit into civil and common law concepts because it starts from completely different positions, namely the functioning of markets, competition and international relations (Robertson 2016: 36–37), and – in its primary legislation – originates from international law. The growing perception of a democratic deficit and the declining popularity of the EU institutions have generally been attributed to 'the inability of the institutions to communicate their goals to people in different member states' (Koskinen 2008: 81), even though the 'participatory turn', i. e. the increased use of participatory language in policy documents (Abels 2002, Bora and Hausendorf 2006 in Koskinen 2008), has attempted to connect Europe with its citizens (White Paper on European Governance 2001: 3). Since, as Koskinen (2008) argues, the encounters between the EU elite and its various constituencies are typically text-mediated rather than personal, it makes sense to look for the reasons for the perceived democratic deficit, which according to Wilson (2000) is also a 'cultural deficit', in the discursive practices found in European written legal documents and, in particular, in EU regulations.

1.2 Democracy in between: culturalist and non-culturalist models of democracy

If we wanted to simplify the discourse on the democratic deficit in international organisations, we could start with Robert Dahl's seminal work on international organisations that cannot be democratic (Dahl 1999).

The American scholar's approach to democracy starts from a basic assumption: it is difficult to define what democracy is. Other things being equal, the term 'democracy' is usually applied to a form of government and is understood as a system of popular control and fundamental rights. Nevertheless, it is difficult to locate the threshold between democracy and non-democracy because it is 'not like the freezing point of water' (Dahl 1999: 21). For this reason, every democratic system allows for the delegation of power and authority, and so-called representative democracies are nothing more than polyarchies. In addition, Dahl sensibly notes that the smaller the democratic unit, the greater the opportunity for its citizens to be represented. But it is not just a question of size, because the other side of the coin is that small units of citizens cannot deal with problems of universal scope, which is why international organisations are created. Ordinary citizens do not have the opportunity to participate in the decisions of a world government to which they delegate their authority. Thus, if on the one hand international organisations are necessary to deal with issues that cannot be dealt

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with by a single national government, on the other hand it is reasonable to conclude that 'international decision-making is not democratic' (Dahl 1999: 23).This political approach does not exclude a number of socio-cultural considerations, since as a democratic unit expands to include new territory and people, the 'demos' is likely to become more heterogeneous; diversity tends to increase the number of possible political interests and cleavages based on difference' (Dahl 1999: 26). Dahl concludes that the governments of international organisations are not democracies but 'bureaucratic bargaining systems', citing the case of the European Union (EU) and its democratic deficit 'as a likely cost of all international organisations' (Dahl 1999: 34). Given that the EU is an international organisation (Robertson 2010a) or an international community (Caliendo et al. 2005), it consists of several transnational institutions: the Commission – which has bureaucratic and administrative functions; the European Council – which is composed of the heads of government of each member state, decides by qualified majority and has a mainly representative function; and the European Parliament – which is the only directly elected body, but which is 'central to a model of political representation that has failed to establish effective links between the people and the Union' (Scully, Hix and Farrell 2012). Nevertheless, some scholars argue that it is not correct to define the EU as an international organisation, since it is a supranational body and its democracy is therefore different from any other democracy (Azman 2011: 244).

Although the lexicographical definitions of 'democracy' are

> 'A system of government by the whole population or all eligible members of a state, usually through elected representatives. […] A state governed by a system of democracy. [Control of an organisation or group by the majority of its members. […] The practice or principles of social equality' (online OED Lexico)

and focuses on political and organisational aspects, 'democracy' is a value (Sen 1999) and it is possible to see its strong relationship with culture. Nevertheless, democracy is not a universal value but an adaptable one, and the following paragraphs aim to demonstrate this assumption.

Assuming that it is possible to link philosophical principles or moral values to a particular historical framework, in the case of democracy it is inevitable to go back to its philosophical and historical cornerstones, namely classical Greece. As is well known, male citizens selected at random were part of assemblies that voted and governed by majority without electing representatives (our current members of parliament). This early form of direct democracy proved so suitable and reliable that it was developed and implemented in the Roman Republic, taking particular care to ensure that almost all social classes were represented, from the plebeian tribunes to the senators. From these early manifestations of democracy, modern principles evolved, leading to the modern era, to absolute monarchy and

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the tripartite system, to the Age of Enlightenment and later to the liberal thought that would properly define parliamentary regimes. Meanwhile, the great empires did not address the problem of exporting their form of government and establishing general principles in their colonies (a tendency well expressed by the Latin motto *civis romanus sum*).

Conversely, the French revolutionaries and Napoleon Bonaparte were the first to address the problem, which was resolved (successfully or unsuccessfully, depending on one's interpretation of the historical event) in Victorian Britain. The Geographical Society of London was founded in 1830 in order to combine general principles with the characteristics of foreign peoples and distant places: it was able to collect and analyse data in order to promote the development of geographical sciences[1], namely geosciences and socio-anthropological sciences. However, such a project implied the acceptance of something that today may sound unrelated to current relativism, namely the concepts of civilisation and assimilation of conquered territories. The approach of the British colonisers, which led to the study of geography, customs and traditions as an integrative act, was 'more conducive to democracy than that of other colonisers' (Lipset and Lakin 2004: 178), since they – more than any other colonial power – promoted forms of self-government in their colonies: however it happens, democracy could be established for many reasons, such as conquest, imposition, endogenous compromise (Lipset and Lakin 2004: 179), but it is quite controversial whether or not it can survive and succeed in the long term under certain cultural patterns. In addition, other 'critical factors affecting the future consolidation and expansion of democracy will be economic development and political leadership. Economic development makes democracy possible; political leadership makes it real' (Huntington 2003: 98). Going back to fifth-century Athens, the democratic republic and the political project conceived by Pericles allowed the city-states to first triumph over Persian absolutism on the coasts of Anatolia before surrendering to Alexander. The relationship between democracy, absolutism, science, technology and economic development is complex. Athenian democracy encouraged the arts and technology and prevailed over the Persians, but there was also significant scientific development under Alexander the Great. A few centuries later, in the eighteenth century, in France and Europe, enlightened despotism would be fertile ground for French revolutionary seeds. Thus, according to history, scientific and cultural development can be fostered by both democratic and non-democratic forms of government, or, as Giovanni Sartori argues, 'growth came with technological progress, and […] technology is a by-product not of democracy but of the kind of logic and rationality forged by the ancient

1 From the History of the Society, available at https://www.rgs.org/about/the-society/history-and-future/ [accessed 22 February 2024].

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Greeks that eventually gave rise to the 'scientific spirit' (1995:106).If 'the historical antecedents [of democracy] are two: […] secularisation and […] the 'taming' of politics' (Sartori 1995: 104), 'culture cannot be a permanent obstacle to democracy' (Lipset and Lakin 2004: 197), since many important democratic principles lie within culture, which is by no means immutable. Because culture is not a fixed concept (Mill in Lipset and Lakin 2004: 197), and because the dominant beliefs and attitudes in a society are dynamic and not stagnant (Huntington 2003: 96), anyone can become democratic (Lipset and Lakin 2004: 197).What determines attitudes towards democracy is 'context, country and historical experience […] more than ideology or demographic characteristics in the abstract' (Lagos 2008: 117).Democracy is a demanding system (Sen 1999: 10), a Western invention whose 'desirability, universality and exportability […] as a constitutional form […] rests on the rule of harm avoidance' (Sartori 1995: 101). The different paradigms of democracy derive from the different nature of the relationship between democracy and culture, although it is not easy to define the causal chains between democratic culture and democratic institutions and to say which comes first. It is on this basis that the confrontation between culturalist and non-culturalist approaches takes place. As far as the former is concerned, we can endorse a premise of Montesquieu's: 'Democracy is an irrational human motive force […] which reflects religions, customs and manners' (Montesquieu in Przeworsky et al. 1993: 54), rooted in 'secularism, tolerance, liberal individualism, [and] respect for and obedience to the rule of law' (Lipset and Lakin 2004: 197) and the pursuit of freedom. With regard to the latter, it takes per capita income, growth rate, and turnover of heads of government as critical factors, since cultural values would not be conducive to the organic development of democracy, but would at least support it, once imported from outside and afterwards. The touchstone of culturalist theory is the 'postulate of oriented action: actors do not respond directly to situations, but to them through mediating 'orientations'. Orientations to action are general dispositions of actors to act in a certain way in sets of situations' (Eckstein 1988: 790). General dispositions come from traditions, customs, religion and culture.

General dispositions are derived from traditions, customs, religion and culture, which would generate democracy, which in turn would generate growth or economic development (Inglehart and Welzel 2007). Recasting a theory of modernisation as a 'syndrome of social changes associated with industrialisation' (Inglehart and Welzel 2009: 33), it is possible to describe modernisation as a process consisting of two distinct stages: the first, an industrial phase, is characterised by a hierarchical and regimented way of life; the second, a post-industrial phase, is characterised by an increase in human autonomy as well as existential security. In registering a shift from materialist to post-materialist values, the second phase of modernisation has also influenced the function of

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religion, which no longer provides absolute rules of behaviour but a sense of the meaning of life. In this shift from survival to self-expression values, people begin a process of emancipation from authority. In the post-industrial phase, 'people become more materially secure, intellectually autonomous, and socially independent' (Inglehart and Welzel 2007: 24), and new forms of spirituality and non-material concerns result in traditional churches losing members and spiritual concerns not losing ground. The central insight of modernisation theory is that socio-economic development brings about systematic changes in political, social and cultural life and that 'cultural change is a major factor in the emergence and survival of democracy' (Inglehart and Welzel 2007: 47).According to this approach, democracy requires not only a democratic culture, but also citizens' awareness of 'what constitutes illegitimate state action' (Weingast 1997 in Przeworsky et al. 2003: 182).Although Weingast does not provide a causal explanation, that is, he does not identify which values make democracy more stable than others, he points out that democratic stability and culture are different aspects of situations in which societies try to solve their coordination dilemma. For its critics, this seems to be a weakness of culturalist theory, since it would not provide an explanation of 'what and how culture matters' (Przeworsky et al. 2003:1 82). In fact, aspects of culture that would influence democratic stability are: a) unconditionality, i. e. the fact that people value democracy per se, regardless of the outcomes it produces; b) participation, i. e. people see democracy as an obligation to follow outcomes resulting from rules they have agreed to; c) democratic personality that people may have; d) consensus, i. e. 'if people do not share basic characteristics such as language, religion or ethnicity, they do not have enough in common to sustain democracy' (Przeworsky et al. 2003:183).These four factors are complemented by self-expression values (Inglehart and Welzel 2007), which would provide the link to democratisation, as they come to define effective democracy as a kind of mathematical product of formal democracy through the integrity of public officials, whose scores are provided by the World Bank Institute's governance indices. This is in stark contrast to those who see democracy as 'a shorthand – and a misleading one at that – for an entity composed of two distinct elements:1) the liberation of the people (liberalism) and 2) the empowerment of the people (democracy) […]; it is growth that entails democracy, not democracy that generates growth' (Sartori 1995: 107).

The culturalist view sees the process of human development as consisting of three components: socio-economic modernisation, a cultural shift from traditional (survival) values to secular-rational (self-expression) values, and democratisation. In other words, the relationship between democracy and culture would reflect the fact that 'economic development brings about socio-political change only insofar as it changes people's behaviour [and that] economic de-

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velopment is conducive to democracy insofar as it creates a large and educated middle class and […] changes people's values and motivations' (Inglehart and Welzel 2009: 39).Even if a minimalist empirical definition of democracy could provide 'a limited number of characteristics [to] allow, at an empirical level, […] the establishment of a threshold below which a regime cannot be considered democratic' (Morlino 2011: 31), it is not clear how the above four points – unconditionality, participation, democratic participation and consensus – of a minimalist definition of democracy could be empirically assessed. For example, can we speak of 'democracy in the European Union' or should we speak of 'democracy with European connotations'? This is the basis for the concept of 'adaptable democracy': without reaching extreme and paradoxical positions, it is reasonable to think that one democracy does not fit all.

Moreover, there is no single concept of democracy, but rather a wide range of definitions, which may suggest the use of the adjective 'adaptable' – rather than 'universal' – since there are no two democracies that are perfectly equivalent. Thus, the precursor of democracy is the concept of the state, which, according to enlightened principles, consists of three elements: a territory, a people and an authority, and which, according to Philpott (2001), is the manifestation of 'supreme authority within a territory'. Given these definitions of the state and democracy, this 'authority' must represent the people and be elected by a majority of the people. When the concept of national power (nationalism) or the desire to subjugate others takes precedence over respect for freedom of expression, the concept of democracy is ignored. This may not be the case in Europe, although something seems to be going wrong in the post-Westphalian order: in the past, military competition with foreign nations and, nowadays, economic competition fought over conference tables (Timmerman 2017 in Mody 2020: 18) may lead to the neglect of civil rights.

1.3 Democratic deficit in Europe: causes and consequences

The term 'democratic deficit' is generally attributed to David Marquand (1979) – who emphasised the lack of accountability of European institutions to the European public, whose will is not reflected in sometimes unpopular policies (Mèny 2003: 8) – and it is one of the relatively few 'truly innovative EC/EU concepts' (Schübel-Pfister 2004: 116 in Šarčević 2016). The European democratic deficit can be interpreted in two ways (Jolly 2003 in Azman 2011): it can be the result of 'too little democracy' or it can refer to 'overshadowed democracy'. One solution 'to the lack of accountability is to promote greater access to information – that is, greater transparency' (Nye et al. in Grigorescu 2013), although it is difficult to define what accountability is.

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According to Schedler et al. (1999: 14), accountability is a two-dimensional concept that 'carries two basic connotations: answerability, the obligation of public officials to inform and explain what they are doing; and enforcement, the ability of accountability agencies to impose sanctions on those in power who have violated their public duties'. In his account of what he calls the informative and argumentative dimensions of accountability, Schedler emphasises the relational nature of accountability, which necessarily involves accountable and accounting parties and excludes any kind of monologic power. The 'etymological ambivalence' (Schedler et al. 1999: 15) of the term accountability stems from the double connotation of the word 'account', which essentially refers to two semantic fields: that of bookkeeping and that of storytelling. However, political accountability is not only a matter of discursive activity, i. e. answerability, but it also implies the idea that the accounting party can 'eventually punish' improper behaviour and that the accountable counterpart not only tells what it has done and why, but also bears the consequences for it; in other words, it is a matter of enforcement. Moreover, since non-national institutions – such as the EU – have 'made use of a wide range of accountability mechanisms that were introduced and tested only relatively within the national context' (Cassese 2012: 61), it should be advisable to abandon the 'domestic analogy': 'the global legal order has created unique accountability mechanisms based mainly on information' (Cassese 2012: 172).

Many arguments about the 'democratic deficit' in the European Union have to do with the nature, function and objectives of the Union itself, which, as a global institution, is a standard-setting and standard-setting body (Majone 2008). However, these standards have proved inadequate because the EU's two-fold democratic deficit stems from the fact that the executive, namely the Council and the Commission – representing the political and bureaucratic branches respectively – is responsible for legislation, but the latter is usually stronger than the former. Moreover, the EU has 'no legislature, but a legislative process in which different political institutions play different roles' (Majone 1998: 8).This democratic deficit is a manifestation of several symptoms – technocratic decision-making, lack of transparency, insufficient public participation, excessive use of administrative discretion, inadequate mechanisms of control and accountability (Majone 1998: 14) – which can be successfully treated by re-setting the procedural and substantive standards of legitimacy. Although some scholars take an optimistic approach to the problem of legitimacy in the EU, emphasising the potential of the 'regulatory state' (Majone 2002, Moravcsik 2008), the Commission's monopoly on legislative initiative (Majone 2002, 1998) is challenged by others (Dahl 1999; Norris 2003; Hix and Follesdal 2006, Hix 2008, Azman 2011, Scully et al.2012, Crombez and Hix 2015; Fukuyama 2018) as one of many claims of the standard version of the democratic deficit. Hix and Follesdal (2006) identify five main claims:

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1. EU integration is a process of increasing executive power but decreasing national parliamentary control;
2. the weakness of the EU Parliament, as member states still set the agenda in appointing the Commission;
3. EU elections are mid-term national elections, a 'second-order national contest' (Reif and Schmitt 1980 in Hix and Follesdal 2006);
4. institutionally and psychologically, the EU is simply too distant from the electorate – the Commission is neither a government nor a bureaucracy and is appointed through an opaque procedure; the Council is part legislature, part executive, and takes most decisions in secret, as if it were an intergovernmental organisation like the United Nations, UNESCO or NATO (Norris 2003); the EU Parliament cannot be a properly deliberative assembly because of the multilingual nature of committee and plenary debates without a common political background;
5. the policies adopted by the EU are not supported by a majority of citizens.

Moreover, if one agrees with the 'theory of democracy', according to which '[democracy] would emphasise difference rather than identity [and would be judged] not by its outcomes but by its procedural elements' (Augsberg 2010: 378), the EU's democratic deficit appears to be inherently real.

Another central aspect that serves as a precondition for talking about European governance and its legitimacy (which comes only through the directly elected Parliament) is the existence (or absence) of a developing political culture, which would perhaps take many generations to occur (Dahl 1999: 29).

Governance has two purposes: to achieve collective benefits by coordinating human activity and to express a community (Hooghe and Marks 2008: 2), but the EU is neither a market, nor an international organisation, nor a nation-state (Azman 2011).

There is still no 'demos' or 'people' in the EU (Jolly 2005), so there can be no real democracy. Indeed, the founding fathers of the EU were well aware of this fact, since:

> [d]emocracy was not recognised as an issue at the beginning of European integration. It was believed that the positive results of integration in economic, political and social life would ensure the participation and support of the peoples for integration. In addition, it was widely accepted that the aggregation of democratic member states would have automatically democratised the European Communities and the institutions [which] had for many years relied on the process of indirect legitimation. (Yalçin 2014: 23–24)

Since 1957, namely the Treaty of Rome – when only six countries had joined the European 'Community' – the decision-making process has been subject to

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revision: the most recent change is the 2009 Treaty on the Functioning of the European Union (TFEU) – where the term 'Community' is replaced with the term 'Union' and for the first time it is clarified what the powers of the newly-renamed Union are after the negative outcome of two referenda on the Constitutional Treaty held in 2005 – and a couple of resolutions (European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty and European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union) which aimed at increasing Parliament's legislative power and establishing three fundamental democratic principles (art. 10 of the TFEU): the Union is founded on representative democracy, citizens are directly represented in the European Parliament and have the right to participate directly in the democratic life of the Union.

These normative adjustments were necessary because the thirty-year genesis of the single currency failed not only to become a 'regulatory extension of Europe's expanding common market' (Mody 2020: 22) and thus a monetary union, but also because it failed to trigger the 'falling forward phenomenon' that should have led to political union in Europe. As reported in the so-called Werner Report, 'the incompleteness of monetary union was actually a virtue: it would be the 'leaven', the yeast, that would cause Europe to ferment and transform itself into a 'political union'' (Werner 1970 in Mody 2020: 63): The process that had led to the adoption of the Treaty establishing a Constitution for Europe (2002) had been democratic, transparent and participatory, but the Treaty of Lisbon or the Treaty on European Union (TEU) was the result of diplomatic negotiations that almost completely excluded public opinion (Piris 2010). The 'falling forward theory', also known as the 'Monnet method – or permissive consensus – of functional and political spillovers' (Majone 2005: 43), did not produce the desired results and European integration gradually became more difficult to achieve:

> […] if the legitimacy of the basic political system remains in question, if European leaders are largely invisible to the public, and if there is little 'glue' provided by a sense of European identity to hold disparate countries together, then it becomes more difficult to resolve substantive policy conflicts. (Norris 2003: 512)

Among those who attempted to warn European elites of the predictable political failure of the European integration project, Nicholas Kaldor, who foresaw the divisive potential of the single currency in 1971, and Robert Marjolin, who made a telling critique of the unwillingness of European leaders to surrender their sovereignty to supranational European institutions, and who rejected the 'falling forward' thesis and 'the idea that monetary union would force agreement to political union' (Mody 2020: 56) deserve special mention.

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The process of European integration is still ongoing: on the one hand, it has produced some tangible results in the economic field, such as the single market and the single currency; on the other hand, it has not produced the desired results in the political field. Politics in this context means all activities related to the legitimacy, accountability and sense of identity of EU citizens. It would not be correct to say that social and cultural issues have been less important, but it seems that their resolution has been seen as an incidental by-product of economic and monetary integration.

If, on the one hand, European countries (and their leaders) were unwilling to surrender part of their sovereignty to the EU, and if economic integration did not help much in this process, on the other hand, the democratic (whatever that means) regime in Europe was framed in a unique supranational legal system that was neither federal nor international.

The coexistence within European borders of different national legal systems and – at present – twenty-four official languages gives rise to what is almost unanimously recognised as 'multilingual law', which is a tool for promoting European integration at the institutional level. Although the term 'multilingual law' is generally accepted by the majority of linguists and political scientists, the adjectives 'multilingual' and 'multicultural' are not so often used institutionally, since European social and linguistic policies are oriented towards plurilingualism and pluriculturalism. Multilingual is not synonymous with plurilingual, and multiculturalism is not synonymous with plurilingualism. Pluri-sms (pluriculturalism and plurilingualism) is one of the main objectives of education in the EU (Piccardo, North and Goodier 2019) and the Common European Framework of Reference for Languages (2020: 30) 'distinguishes between multilingualism (the coexistence of different languages at a social or individual level) and plurilingualism (the dynamic and developing linguistic repertoire of an individual user/learner)'.If, from an educational point of view, multiculturalism is an ethno-social phenomenon, pluriculturalism is a political and cultural choice; multicultural societies seek economic enrichment; pluricultural societies seek philosophical enrichment, since it is possible to discover other perspectives, other ways of conceptualising reality, other ways of living (Balboni 2015: 231).In plural or intercultural societies, there is no distinction between host and hosted groups, and everyone is open to contamination. This is what should happen to people in the EU, but it is what happens to legal texts in the EU:EU legal languages are not the same as the official national languages that ordinary citizens speak in their everyday lives, they are 'sublanguages' (Charrow, Crandall et al. 1982; Trosborg 1995b; Kittredge & Lehrberger 1982 in Kurzon 1997; Tiersma 2006) and their style is characterised by 'hybridity', being 'at once familiar and alien […] and culturally new' (Robertson 2010b: 157). Given that EU legislative drafting is 'writing for translation […] and no single EU text stands alone' (Robertson

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2010b: 159), the term 'plurilingual law' may be more appropriate to describe the EU scenario, even though all the reference literature for this research uses the term 'multilingual law'. There are three main reasons that may support the newly proposed term: 1. The so-called 'co-drafting process' – of which more later – in which 'all language versions are deliberately 'fused' into a single multi-stranded message' (Robertson 2010a: 150); 2. The procedure that judges of the European Court of Justice may follow before delivering their judgment: they may refer to different language versions of the same legal document if a term is unclear or ambiguous; 3) the so-called absolute equivalence between equally authentic documents within the EU, which cannot be achieved in practice, although it is stated in the Treaties, and is a 'legal fiction' (Wagner 2001: 67), an illogical but functional strategy to maintain linguistic equality. Case 100/84, Commission v. United Kingdom of Great Britain and Northern Ireland, cited in Engberg (2004), illustrates the mechanisms behind the Court's reasoning:

> Secondly, it should be noted that the phrase 'extraits de la mer' or its equivalent is employed in the Greek, French, Italian and Dutch versions of regulation no 802/68 and is capable of meaning both 'taken out of the sea' and 'separated from the sea.' Even allowing that the English version, which uses the phrase 'taken from the sea,' has the significance attributed to it by the United Kingdom ('complete removal from the water'), the German version of the regulation employs the term 'gefangen,' meaning 'caught,' as the United Kingdom itself acknowledges, claiming that 'it seems … to be an inappropriate term to use.'

Another telling example is Case 282/81, *CILFIT and Lanificio di Gavardo v. Ministry of Health*, in which the Court's judgment perfectly recalls the principle of the equal authenticity of the official languages of all the Member States:

> To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States. Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.

Moreover, 'Article 41 of the Rules of Procedure sanctions using a single text when interpreting CJEU case law [and there are] examples of national courts falling back on the *de facto* original of CJEU judgments, letting the French version guide the interpretation' (Derlén 2016: 60). Integral multilingualism (Seracini 2020) is not always applied in all circumstances by the EU institutions, as also stated in

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Art. 6 of Regulation 1/58 '[t]he institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases'. These linguistic and interpretive dynamics behind EU legal documents and the jurisprudence of the EU Court of Justice seem to evoke neither textualism (or strong language theory) – which relies on plain meaning and, as a consequence of the application of a literal rule, considers the text of a statute as freestanding (Solan 1993; Tiersma 1999; Engberg 2004; Harris and Hutton 2007), nor strict constructionism (Harris and Hutton 2007) – which reinforces a contextual position and takes into account the legislative history of the statute in question – although a purposive approach is usually favoured by the ECJ when statutes are ambiguous and need to be applied to particular cases (Humphrey et al. 2015: 42). The European situation presents a curious paradox: on the one hand, any version of a law drafted in one of the official languages recognised by EU Regulation 1/58 is equally valid and authentic; on the other, the synoptic approach (Robertson 2016) – also known as the 'sentence rule', which stipulates that 'all language versions should have the same 'sentence boundaries'' (EC DGT 2015: 6) – adopted to draft each version of the document evokes the process of literal translation: '[w]hen published, the texts in all language versions of the Official Journal are synoptic, meaning that the same text can be found on the same page of the same OJ in all official languages' (EU 2011: 45). In so doing, 'the emphasis on word-for-word translation distorts the sense and the syntax of the original' (Bassnet 2002: 87) but provides a solution: 'the role of translator is to produce matching signs, but not necessarily to indicate what they mean' (Robertson 2016: 159).

Nonetheless, it is difficult to see how the European Court of Justice can benefit from comparing different versions of the same document which satisfy an unnatural but functional constraint (synoptic correspondence) at the expense of naturalness and, ultimately, meaning. However, the approach adopted by the European Court of Justice is neither literal nor constructionist, since it is impossible for the Court to take into account the history of each version and the extra-linguistic factors that may have influenced the drafting of the document.

In order to move beyond the textualism/constructionism dichotomy, Engberg (2004: 1153) suggests a third way, which he calls 'connectionism', which 'may actually play the part of bridging the gap between the subjectivity of the process of understanding and the objectivity needed of legal interpretation processes in a modern society'. The connectionist approach suggests that texts may be described fully along four dimensions (formal and grammatical, thematic, situational, and functional) and that 'understanding' is 'creating a meaningful combination of connections' (Engberg 2004: 1145), thus 'constructing meaning'. In other words, the process of integration and harmonisation within the EU takes place at different levels and under as many different procedures. The textual harmonisation – which is pursued not only, but especially through translation

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