



Beyond the EU's democratic deficit: From union of states to European democracy

European View
2022, Vol. 21 (2) 178–185
© The Author(s) 2022
DOI: 10.1177/17816858221128708
journals.sagepub.com/home/euv



Jaap Hoeksma

Abstract

The democratisation of the EU is a historic achievement, which poses great challenges. This article argues that the EU has overcome its democratic deficit and that the nature of the Union has been defined in unambiguous terms. It will be demonstrated that the 2007 Lisbon Treaty defines the EU as a democratic union of democratic states. Moreover, the European Court of Justice has elaborated this concept in its jurisprudence with sound legal reasoning. The implication of this analysis for political theorists and constitutional lawyers is that the EU has outgrown its democratic deficit. Taking this approach enables politicians to refute the claim that the EU is not a real democracy and to present it as a union of states and citizens which works as a European democracy. The immediate challenges for the Union are to improve its democracies and to defend them against both erosion from within and foreign aggression.

Keywords

EU, Democracy, Political theory, Constitutional law, Global governance, Citizenship education

Introduction

Ever since its foundation in 1992 the EU has been criticised for its democratic deficit (Malinov 2021). Scholars even argued that the EU itself did not meet its own accession criteria. Three treaties and 30 years later, the EU has overcome its contentious deficit by evolving into a European democracy of states and citizens. The present article aims to show how and through which stages the EU has developed from a union of democratic states to the first-ever transnational democracy in human history (European Committee of the Regions 2022). While the EU can be described from the citizens' point of view as a democratic union of democratic states, it can also be identified in terms of the UN system of global governance as a democratic international organisation.

Corresponding author:

J. Hoeksma, Euroknow, Hoofdweg 39 B, NL 1058 AW Amsterdam, Netherlands.
Email: Euroknow@gmail.com

The current state of affairs

The EU is a new kind of international organisation with an equally innovative model of governance. The hallmark of the EU is that it applies the constitutional principles of democracy and the rule of law to an international organisation. As a result of this unprecedented experiment, the EU has emerged as a new subject of international law.

This observation paves the way for the EU to be appreciated as the most fundamental innovation in the fields of public law and global governance since the early modern era. Although the emerging polity was portrayed at the time of its foundation by its main promoter Jacques Delors as an ‘Unidentified Political Object’ (Delors 1985), the EU can now be defined as a union of states and citizens which works as a European democracy. Seventy years after its foundation the European polity has ceased to be the ‘inextricable conundrum’ which politicians and academics regarded as impossible to solve (Burgess 2006).

As the EU has been defined, it has also become possible for it to develop its own distinct political philosophy. The theory of democratic integration replaces the Westphalian paradigm of the state with the civic perspective of human rights and democracy in the study of the EU, and offers a theory capable of explaining the functioning of the EU as a European democracy (Hoeksma 2018). The practical advantage of this new theory is that it reveals the emergence of a European model of transnational governance that deviates from the traditional Westphalian system of international relations. As the case law of the European Court of Justice (CJEU) demonstrates, the ramifications of this development are far-reaching (CJEU 2022). The Court underlines that, in their dealings within the framework of the EU, states can no longer invoke the ‘sacrosanct’ Westphalian principle of non-interference in the internal affairs of a sovereign state. By acceding to the EU, they volunteered to comply with the common standards on which the Union is founded, and they cannot unilaterally free themselves from these obligations after accession. While member states are entitled to withdraw from the Union in line with Article 50 of the Treaty on European Union and to resume full ‘Westphalian’ sovereignty, they are bound by their treaty obligations while their membership of the Union continues.

This new theoretical perspective on the EU sheds fresh light on the role and functioning of the EU on the global stage. The Union can be identified in terms of the UN system of global governance as a ‘democratic international organisation’.

The most important outcome of this new theory for citizens is that it demonstrates how the EU has overcome its democratic deficit (Majone 1998). From their point of view, the EU has found its constitutional destination by establishing itself as a democratic union of democratic states. As the first example of a new kind of global organisation, which by its very nature can be neither mature nor full-grown, the present challenges for the EU are to improve its fragile transnational democracy and to defend it against both erosion from within and aggression from abroad.

The long and winding road to dual democracy

Paradoxically, the EU is also the most underrated political achievement in recent history. Academic scholars from various disciplines tend to stress the democratic backsliding of the past decade (Wind 2020), while advocates of a federal Europe continue to stress that the EU can only be a 'real' democracy if the Union has been turned into a sovereign state (Verhofstadt 2006). Moreover, the German Constitutional Court maintains the view that the concept of democracy also requires a 'demos' (Buitenweg 2016). The most regrettable consequence of these disparate tendencies is that the EU is still in doubt about its identity. The EU presents itself in its printed and digital publications as an 'economic and political union of states', while it aspires to be a transnational democracy (European Union Publications Office 2021). This conceptual impasse should not be prolonged. While the recently concluded Conference on the Future of Europe symbolises that citizens are an indispensable element of the EU, the Russian invasion of Ukraine highlights in the most dramatic way that the EU should be able to defend itself, its values and its constitutional achievements as the first transnational democracy in political history against traditional and digital forms of foreign aggression. The time is long overdue for the EU to overcome its identity crisis and to face its internal and global responsibilities.

For a proper understanding of the nature of the EU in its present form, the following stages in the process of the democratisation of the Union should be distinguished.

1. Driven by the determination to create an ever-closer union among the peoples of Europe, the founding fathers of the EU broke the cycle of warfare on the old continent. The aim of the 1951 European Coal and Steel Community was, in the words of Robert Schuman, 'to make war not only theoretically unthinkable but also materially impossible' (Timmermans 2008, 1–8). The conceptual innovation required to achieve this goal consisted of the pooling of sovereignty. The participating states sacrificed the principle of absolute sovereignty for the guarantee of peace.
2. The practice of the shared exercise of sovereignty proved to be so successful that the six founding states of the present EU decided to broaden their cooperation to the entire economy. The European Economic Community and Euratom, both founded by virtue of the 1957 Treaty of Rome, merged with the European Coal and Steel Community in 1965. As a result, the executive institutions of the three separate communities were unified. The CJEU established in 1963 that the transfer of sovereignty to the European Economic Community had led to the emergence of an 'autonomous legal order' (CJEU 1963). The Court also clarified that the law of the Communities has direct effect and, in case of conflict, takes precedence over national regulations (CJEU 1964).
3. It was envisaged that the internal market, which the member states intended to create to boost their economies, would result in a gradual transition from unanimous decision-making to a practice of deciding by majority voting. However, French President de Gaulle insisted on the preservation of the right of veto and blocked his country's participation in the Communities until further notice. His

'policy of the empty chair' created the first existential crisis of the emerging polity and was only solved through the ingenious 1966 Luxembourg compromise (Segers, 2013, 159).

4. Despite this temporary setback, the emerging common market proved to be so attractive that new member states asked for accession. After the first enlargement in 1973 the Communities described themselves in the Declaration on European Identity as 'a union of democratic states' (*Bulletin of the European Communities* 1973).
5. As it was unfeasible for a union of democratic states to be governed in an authoritarian, let alone dictatorial, way, the members of the Communities instantly aspired to gain democratic legitimacy of their own too. The parliamentary assembly was transformed into a directly elected parliament. The first direct elections to the European Parliament (EP) were held in 1979 with a voter turnout of over 60% (CVCE 2016).
6. As the turnout for the second direct EP elections witnessed a serious decrease in voter participation, the European Council tasked the Adonnino Committee with presenting suggestions to bridge the gap between the citizens and their Communities. The Committee's proposals included the introduction of the EU flag and the foundation of the Erasmus exchange programme.
7. Although a severe economic recession in the 1980s caused a feeling of 'Eurosclerosis' in the member states, the Communities welcomed three new countries from Southern Europe after they had shaken off the yoke of Fascism. The increase in the number of participants and the determination to complete the internal market prompted the Communities to introduce qualified majority voting through the Single European Act of 1987 (Weiler 1991).
8. The fall of the Berlin Wall in 1989 and the implosion of the Soviet-dominated Warsaw Pact preceded but did not prevent the foundation of the EU through the 1992 Treaty of Maastricht. Instead, the regions which had previously formed the German Democratic Republic became an integral part of the EU. The principal aim of the Maastricht Treaty was to complete the internal market. Both the introduction of EU citizenship and the creation of the single currency were regarded as the crown jewels of the internal market.
9. As the EU is open to all democratic European states, a considerable number of countries signalled their intention to accede to the Union after the collapse of Communism. In reaction, the 1993 Copenhagen Summit clarified the criteria for EU accession for new member states (*Bulletin of the European Communities* 1993). These criteria emphasised the need to respect the values of the EU, notably democracy and the rule of law. The 1997 Treaty of Amsterdam included the values of the EU in the treaties and paved the way for the transformation of the EU into a dual democracy.

10. The construction of a democracy at the level of the Union received decisive impetus from the proclamation of the Charter of Fundamental Rights of the EU at the Summit of Nice in 2000. Eight years after the introduction of EU citizenship, the new status still remained an empty vessel (Jessurun d'Oliveira 1995): the citizens of the Union did not enjoy more rights than those already attributed to them by virtue of the fundamental freedoms of the internal market. The Charter brought about a fundamental change and granted the new citizens full political, economic, social and legal status. It was, in effect, a Magna Carta for the citizens and enabled them to confidently declare *Civis Europaeus sum* (Lenaerts 2012).
11. Although the rejection in 2005 of the Constitution for Europe by the electorates of two founding member states was widely regarded as a serious setback, the ensuing impasse was quickly overcome through the Treaty of Lisbon in 2007. The unique and unprecedented hallmark of the Lisbon Treaty is that it defines the EU as a democracy without turning the Union into a state. Thanks to the Lisbon Treaty citizens can perceive the EU as a union of democratic states which also constitutes a democracy of its own. In short, the Lisbon Treaty constructs the EU as 'a democratic union of democratic states' (Hoeksma 2021, 5–7).
12. The consequences of the Lisbon Treaty proved to be far greater than politicians had foreseen. Before the entry into force of the new treaty on 1 December 2009, the ECJ had already established that the new status was to be regarded as the fundamental status of the nationals of the member states (ECJ 2001). In consequence, the ECJ abolished the requirement for EU citizens to cross a border in order to 'activate' their rights as citizens of the Union (ECJ 2011). It ruled in subsequent verdicts that EU citizens could also invoke their rights against the authorities of their own country, even if they had been sentenced to imprisonment for breaches of national laws (ECJ 2015). In the high-profile case of a jailed politician, who had been elected in 2019 as a Member of the European Parliament, the ECJ finally established that the EU has an autonomous democracy (ECJ 2019). By delivering its verdict in unequivocal terms, the Court confirmed the academic finding that the EU is constructed as a democratic union of democratic states. Acting within the limits of its competences, the EU must meet similar requirements regarding democracy and the rule of law as it demands its member states to respect.

The implication of this development for the position of the EU in the field of foreign affairs is that the Union has been granted the status of 'enhanced observer' with the UN. In terms of the UN system of global governance, the EU qualifies as the first-ever democratic international organisation. In consequence, the EU is the only international organisation to have been invited by US President Biden to participate in the 2021–22 Summit for Democracy. Thus, the identification of the EU as a democratic union of democratic states from the internal perspective of the citizens and as a democratic international organisation from the global viewpoint of the UN are two sides of the same coin.

Conclusion

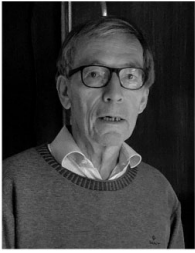
Although the evolution of the European polity has often resembled the procession of Echternach, in which participants take two steps back after having taken three steps forward, the recent involvement of citizens in the process may serve to demonstrate that real progress has been made. While in 1984, after the fall in turnout for the EP elections, the European Council decided to convene a commission of wise elders with a view to bridging the gap with the citizens (of the member states of the Communities), in 2019 the EP, the Council and the Commission invited EU citizens themselves to participate in and convey their views through the Conference on the Future of Europe. The Conference developed a multilingual digital platform for the dissemination of ideas at the transnational level, organised European and national citizens' panels, and resulted in 49 concrete proposals on a variety of subjects, including European democracy. Although it is uncertain whether the recommendations of this 'unprecedented experiment in transnational deliberative democracy' (EU 2022, 5) will bear fruit during the present legislature, the three initiating EU institutions may regard the very existence and proceedings of the Conference as clear confirmation of the encouraging conclusion that the alleged democratic deficit of the EU has been overcome.

The European institutions owe it to the citizens to use the final years of the present electoral period to address the internal wavering about the identity of the Union. The discord within the European Council on the subject was revealed and accentuated by the outgoing German Chancellor Angela Pribyl when, in a press conference after her last meeting, she publicly posed the question, 'What are we? An association of states or an ever-closer union?' (Pribyl 2021). For its part, the EP should cease promoting the outdated view that European democracy can only thrive if the EU becomes a federal state. It must come to terms with—and indeed take pride in—the idea that the EU has developed an entirely new model of transnational democracy, geared to the needs of a continent with a rich history and impressive cultural diversity. In fact, the EP should present itself as the champion of the European model of democracy. While the Commission should receive credit for prioritising the democratisation of the EU during the last two terms, it has to practise what it preaches, notably with respect to the values of the Union and citizenship education. Given its contended nature, the EU should not take European democracy for granted. *A fortiori*, the EU cannot pretend to be a democracy if and for as long as it presents itself as a union of states.

References

- Buitenweg, K. A. (2016). *The parliamentary quest for representative autonomy*. The Hague: Eleven International Publishing.
- Burgess, M. (2006). *Comparative federalism, theory and practice*. London: Taylor & Francis.
- CJEU. (1963). Case C-1963 26/62. *Van Gend en Loos v Dutch Revenue Authority*. [5 February]. ECLI:EU:C:1963:1.
- CJEU. (1964). Case C-1964 6-64. *Costa v E.N.E.L.* [15 July]. ECLI:EU:C:1964:66.
- CJEU. (2001). Case C-184/99. *Grzelczyk v Centre publique d'aide sociale d'Ottignies-Louvain-la-Neuve*. [20 September]. ECLI:EU:C:2001:45.

- Conference on the Future of Europe. (2022). *Report on the final outcome*. Luxembourg. <https://futureu.europa.eu/pages/reporting>. Accessed 16 May 2022.
- CVCE. (2016). Rates of participation in European elections (1979–2014). www.cvce.eu/content/publication/1999/7/9/7dc3cc1c-13f3-43a6-865f-8f17cf307ef7/publishable_en.pdf. Accessed 23 May 2022.
- Delors, J. (1985). Speech made at the first IGC, Luxembourg, 9 September 1985. In European Communities, *Bulletin of the European Communities, No. 9 (November)*, 7. <https://aei.pitt.edu/65674/>. Accessed 28 April 2022
- ECJ. (2011). Case C-34/09. *Ruiz Zambrano v ONEm*. [8 March]. ECLI:EU:C:2011:124.
- ECJ. (2015). Case C-650/13. *Delvigny v Commune de Lesparre Médoc*. [6 October]. ECLI:EU:C:2015:648.
- ECJ. (2019). Case C-502/19. *Junqueras Vies v Tribunal Supremo*. [19 December]. ECLI:EU:C:2019:1115.
- ECJ. (2022). Cases C 715/17. *Commission v Poland and Hungary*. [16 February]. ECLI:EU:C:2022:98 and ECLI:EU:C:2022:97.
- European Committee of the Regions. (2022). *Report of the high level group on European democracy*. Brussels, 31 January. <https://cor.europa.eu/en/news/Pages/Report-of-the-High-Level-Group-on-European-Democracy.aspx>. Accessed 10 March 2022.
- European Communities. (1973). *Bulletin of the European Communities*, 12. <https://aei.pitt.edu/57092/>. Accessed 9 May 2022
- European Communities. (1993). *Bulletin of the European Communities*, 12(6). <https://aei.pitt.edu/65710/>. Accessed 9 May 2022.
- European Union Publications Office. (2021). *The European Union: What it is and what it does*. <https://op.europa.eu/webpub/com/eu-what-it-is/en>. Accessed 16 May 2022.
- Hoeksma, J. (2018). *The theory of democratic integration*. Oisterwijk: Wolf Legal Publishers.
- Hoeksma, J. (2021). *The European Union: A democratic union of democratic states*. Oisterwijk: Wolf Legal Publishers.
- Jessurun d'Oliveira, H. U. (1995). Union citizenship: Pie in the sky? In A. Rosas & E. Antola, *A citizens' Europe: In search of a new order* (p. 126). London: Thousand Oaks.
- Lenaerts, K. (2012). 'Civis Europaeus Sum': From the cross-border link to the status of citizen of the Union. *Online Journal on Free Movement of Workers Within the European Union*, No. 3, 6–18.
- Majone, G. (1995). Europe's democratic deficit: The question of standards. *European Law Journal*, 4(1), 5–28.
- Malinov, S. (2021). The democratic deficit of the EU: Breaking the spell of a false analogy. *European View*, 20(2), 226–33. <https://www.martenscentre.eu/wp-content/uploads/2021/10/Autumn-2021-European-View.pdf>. Accessed 27 April 2022.
- Pribyl, K. (2021). Title. *Augsburger Allgemeine*, 21 October.
- Segers, M. (2013). *Reis naar het continent*. Amsterdam: Uitgeverij Bert Bakker.
- Timmermans, C. W. A. (2008). Genesis and development of the European Communities. In P. J. G. Kapteyn & P. VerLoren van Themaat, *The law of the European Union and the European Communities* (pp. 1–51). Alphen aan den Rijn: Kluwer Law International.
- Verhofstadt, G. (2006). *The United States of Europe*. London: The Federal Trust.
- Weiler, J. H. H. (1991). The transformation of Europe. *The Yale Law Journal*, 100(8), 2403–83. <https://www.jstor.org/stable/796898>. Accessed 5 May 2022.
- Wind, M. (2020). *The tribalization of Europe*. London: Polity Press.

Author biography

Jaap Hoeksma studied law at the Free University of Amsterdam with a focus on political theory. He worked with the UN High Commissioner for Refugees (1976–90) and founded his company Euroknow in 1992. He is the creator of the boardgame Eurocracy and author of *A Polity Called EU* (2011), *European Democracy* (2019) and *The European Union: A Democratic Union of Democratic States* (2021). His new book: *The Democratization of the European Union* is due to appear early 2023.