Danuta Kabat, Zbigniew Rudnicki

THE QUESTION OF LEGITIMACY IN THE ENLARGED EUROPEAN UNION

Introduction

Among numerous problems concerning the European integration, the issue of legitimacy belongs to the ones, not often raised. Firstly, the question of legitimacy is perceived as a narrow, theoretical issue, which does not directly correspond with the most recent, urgent problems, the European Union is facing. The second reason for a sceptical treatment of this question is an opinion - widely disseminated among academics - that this problem can be solved along with the progress of the European integration.

Legitimacy becomes a salient problem in the context of the European Union's Eastern enlargement, since the enlargement will mark a turning point for the question of legitimacy. Along with difficulties, the enlargement process will bring with; the legitimacy issue will gain a greater weight. On the one hand, impossibility to fulfil accession requirements, on the other, lack of possibilities to absorb negative effects of such a development, will cause the situation of an accusation of European policy for domestic economic disturbances, followed by the questioning of legitimacy of the European Union.

Problems arising against the difficulties in adaptation in both new and old member states to conditions of a new, enlarged Union can lead to the questioning of the Union's legitimate basis. European integration is graduating from the stage dominated by economy and passing onto the stage of political, social or even cultural entity and enlargement to the East will in all probability delay this process. However, on the new stage of integration problem of legitimacy becomes more salient, in particular when it comes to the decision on the final shape of the European polity.
The question of legitimacy is present in discussions on the European integration since 1950s - the establishment of the first supranational organisation the European Coal and Steel Community. However, it became a real problem in the second half of 1980s and at the beginning of 1990s. Since then, the academic literature often refers to the democratic deficit and the legitimacy crises of the European governance. Such a development is directly linked, on the one hand, to the shift of real powers from the national to the European decision-making centre, on the other, to the increase in the membership of the European Communities.

The legitimacy issue is also closely associated with the so-called governance turn in the European studies, which became en vogue in the 1990s. In comparison to classical theories on European integration such as: intergovernmentalism or neo-functionalism, which try to embrace the integration process from the perspective of international relations, the governance concept applies instruments stemming from political science, i.e. comparative political analysis. Therefore, we are giving the answer not to the question - why the European integration? - but studying the European Union in its own rights.

In the course of the integration process structures were established and equipped in own institutions and competencies. Consequently, the law is passed, which is supreme to the law of the member states and is binding directly both member states and citizens. Therefore, a question arises concerning the legitimacy

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1 On 1 November 1993 the Maastricht Treaty, establishing the European Union entered into force. The European Union, a political structure was established; a political framework under which fall the existing Communities, i.e. European Community, European Coal and Steel Community (the Treaty expiring on 23 July 2002) and European Atomic Energy Community.
4 "...the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subject of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which becomes part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community. Case 26/62 Van Gend & Loos v. Nederlandse Administratie der Belastingen [1963] ECR 1.
of the European governance a question typical to the national context.\footnote{This issue is well presented by Marcus Höreth who states: Da sich somit durch den europäischen Integrationsprozeß eine überstaatliche Handlungsebene herausgebildet hat, die zur Setzung kollektiv verbindlicher Entscheidungen befugt ist, stellen sich insgesamt ähnliche Fragen nach seiner Legitimation wie für den politischen Prozeß im staatlichen Bereich Marcus Höreth, Die Europäische Union im Legitimationstrilemma. Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Nomos Verlagsgesellschaft, Baden-Baden, 1999, p.16.}

**The need to legitimise the European polity**

In the course of the integration process, European Communities changed to such an extent that they hardly resemble a traditional international organisation. Therefore, one is looking for appropriate definitions what the European construction is. The most known are: less than a federation and more than a regime,\footnote{William Wallace, Less than a Federation, More than a Regime: the Community as a Political System, H. Wallace, W. Wallace, C. Webb, eds., Policy-Making in the European Community, John Wiley and Sons, Chichester 1983.} multi-level polity,\footnote{Gary Marks "Structural Policy and Multilevel Governance in the European Community", Alan Cafruny, Glenda Rosenthal, eds., The States of the European Community II: The Maastricht Debates and Beyond, Lynne Rienner, Boulder 1993.} functional association of states,\footnote{The term was invented by Hans-Peter Ipsen - the European Community as a "funktionaler Zweckverband". Hans-Peter Ipsen, Europäisches Gemeinschaftsrecht, Tübingen 1972, p.196.} political system,\footnote{L.N.Lindberg, S.A.Scheingold, Europe's Would be Polity: Patterns of Change in the European Community, Prentice Hall, Englewood Cliffs, NY, 1970; See also: Simon Hix, The political system of the European Union, Macmillan Press, London 1999.} governance without government.\footnote{James N. Rosenau, Ernst-Otto Czempiel, eds., Governance without Government: Order and Change in World Politics, Cambridge University Press, Cambridge 1992.} The European structure started to be seen as governance, where next to regulatory powers, redistributive policies are made\footnote{A very well known example is the Community Agriculture Policy.} and binding decisions taken.\footnote{The European Union represents a new, heterogeneous centre of governance where directly binding legislation for Europe's citizens is made, often on the basis of qualified majority voting across a broad range of issues. The emergence of this new centre has not replaced the nation states with a nascent superstate: on the contrary internationalised governance (the term used by B. Laffan in: B.Laffan, “The European Union: A Distinctive Model of Internationalisation”, Journal of European Public Policy, Vol.4, No.2, 1998, p.235-254) is established and produced in the complex web, which links European, national and subnational institutions. See Lykke Friis, Anna Murphy, 'And Never the Twain Shall Meet?' The EU's Quest for Legitimacy and Enlargement, DUPI Working Paper No. 1999/8.\footnote{Economic regulations adopted at the European level are measures, which belong to the positive integration. Much of that type of regulation enhances efficiency of the system and thus can be seen as contributing to market- building. Positive integration also incorporates market-correcting policies. An example of market-correcting positive integration at the European level is social regulation. Thus, positive integration refers to measures that in the national context refer to a welfare state very broadly defined. See Alberta M. Sbragia, "Building Markets and Comparative Regionalism: Governance Beyond the Nation-State", Markus Jachtenfuchs, Michele Knodt (Hrsg.), Regieren in internationalen} As long as the European Communities dealt with negative integration,\footnote{The term in invented by Hans-Peter Ipsen - the European Community as a funktionaler Zweckverband.} the need for
legitimate governance was not so urgent. Quite different situation emerges, while dealing with the positive integration, i.e. market-building measures, which require the legitimate basis, either through direct participation of European citizens in the decision-making process, efficiency and effectiveness of the system or the existence of common identities - we-feeling.\textsuperscript{14}

The European Union in the 1990s can be seen as a contested open-ended polity. It regulates almost as many policy issues as nation-states and has been accepted by politicians, interest groups and many parts of the public as an appropriate framework for policy-making.\textsuperscript{15} This over-expending agenda of integration has also led to public scepticism towards the European Union project, making the legitimacy crises and democratic deficit codewords in the literature and practice on European integration. At exactly this time of contestation, the European Union has launched two major integration projects: the common currency and enlargement to the East - both of which have major implications for the emerging European polity.\textsuperscript{16}

The acknowledgement that the European Union is a polity in its own rights has a major implication for how scholars view legitimacy. Unlike intergovernmentalists who look upon the European Union as a state-based intergovernmental bargaining forum where decisions are legitimised by the very participation of democratically elected governments,\textsuperscript{17} the polity-scholars pledge the need for legitimacy beyond the state.\textsuperscript{18}

\textsuperscript{14} Since the European construction is multi dimensional, we are looking for different concepts of legitimacy that could make legitimate basis for the European construction. The concepts of legitimacy often used in the European context are: democratic (participatory) - input, output and social legitimacy.

\textsuperscript{15} Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ ... op.cit.

\textsuperscript{16} Ibidem.


\textsuperscript{18} This dichotomy is presented by Helen Wallace who states: If the EU is defined essentially as a policy-generating process only, than the issue of how to maintain legitimacy, could be argued to rest with the participating member governments ... but if the EC is defined as a partial polity, i.e. as an entity that has developed into a form of direct governance in its own right, the questions of what political identity, loyalty and affiliation to the EC level of governance become crucial. Helen Wallace, Deepening and Widening: Problems of Legitimacy for the EC, S.Garcia, ed., European Identity and the Search for Legitimacy, Pinter, London 1993, p.100-101.
Legitimacy concept for the European governance

The essential question is what kind of legitimacy for the European Union. The problem, which arises here, is that the legitimacy concept is closely linked to the historical development of the nation state and the European Union is anything but a state.

The traditional theoretical approaches to the European integration such as: intergovernmentalism and supranationalism take the model of the nation state as their analytical point of departure, arguing that a strong shared sense of history and culture are necessary requirements for European Union’s legitimacy. For intergovernmentalists, the model of shared identification is embedded in a member state, as a representative of popular sovereignty, for federalists, shared identification refers to a common European identity in the context of an emerging super-state.\textsuperscript{19}

Therefore, one is forced to look for alternative theoretical approaches. At this point helpful seems to be the new theoretical school, which conceptualises the European Union as a multi-dimensional governance system or a contested polity.\textsuperscript{20} Under governance school, which looks upon the European Union as neither an intergovernmental organisation nor a super-state in the making, the state centric trap is avoided and door is opened to different concepts of legitimacy. The governance perspective points to a nesting of compatible regional, national and supranational identities as a viable basis for a stable and legitimate polity.\textsuperscript{21} In this multi-dimensional structure, several sources of legitimacy can be adopted on which the European Union can be based.

Different kinds of legitimacy of the European governance

Looking for ways to legitimise any political process, irrespective of the level of political performance - be it local, national, transnational or international - we base our analysis on the famous Abraham Lincoln’s saying that democracy is government

\textsuperscript{19} Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ .... op. cit.
\textsuperscript{20} The term contested polity refers not only to political contestation at the European level, but also to the contested structure of the European Union as a whole. European elites as well as publics share no uniform sense of what the European Union should be and where it is headed. Its competencies and institutional make-up have been - and will likely remain - the object of political conflict.Thomas Banchoff, Mitchell P. Smith, eds., Legitimacy and the European Union. The contested polity, Routledge, London and New York 1999, p.2.
\textsuperscript{21} Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ .... op. cit.
by the people, for the people and of the people.

Government by the people - input legitimacy - implies that the legitimacy of the political system depends on the citizens' participation in the democratic decision making process. A political system can achieve input legitimacy if the citizens possess political equality and effectively participate in and control the political decisions. Accordingly, the democratic order at the European level ought to maximise equal, direct and effective individual influence on European policy-making and government accountability. Such a perspective implies for the European governance the strengthening of powers of the European Parliament and elements of direct democracy.

Input legitimacy comprises these elements, which base the legitimacy of a democratic system on the political process. Dahl lists four criteria, which must be fulfilled: effective participation of the citizens, voting equality at the decisive stage, an enlightened understanding of the matters to be decided upon and citizens control of the agenda.

The principle of input legitimacy claims that a democratic system of rule achieves its legitimacy by the way decisions are made and not by the results, these decisions produce. It is assumed that only government by the people will ensure government for the people. The theory of input legitimacy is based on individualism; i.e. equal autonomy and rights as well as equal and effective participation of individual citizens as the ultimate reference for the legitimacy of a political order. The supreme authority must be allocated to the level at which the citizens political equality, participation in and control of political decisions is most effectively ensured.

Government for the people - output legitimacy - claims that a political system obtains legitimacy by effectively and efficiently realising the citizens' goals and solving their problems. According to this theory, the democratic order at the

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22 Marcus Höreth speaks about the participative input Marcus Höreth, Die Legitimationstrillemma ... op.cit, p.82.
23 Frank Schimmelfennig, Legitimate Rule in the European Union, Centre for German and European Studies, University of California at Berkeley, August 1996.
25 Frank Schimmelfennig, Legitimate Rule in the European Union ... op. cit.
26 Die Legitimität eines jeden politischen Systems hängt von der Fähigkeit ab, effiziente und effektive Problemlösungen zu produzieren, die den Bedürfnissen, Wünschen und Zielen der Regieren
European level ought to maximise effectiveness and efficiency of policy-making. This implies an important role for functional organisations and majoritarian decision-making. Competencies should be allocated to the level, which is most capable of achieving a given goal and to solve a given problem.\(^{27}\)

In the output dimension - government for the people - collectively binding decisions should be effective in dealing with these problems that the members of the constituency cannot solve either individually or through market interactions or even voluntary co-operation. Compliance is justified because governing decisions are in the common interest.\(^{28}\)

Output legitimacy is the core of technocratic or more generally utilitarian theories of legitimate rule. How the democratic process is organised is secondary to what it achieves for citizens. A system of rule derives its legitimacy from its capacity and it is democratic insofar as the output is in the interest of the citizens. According to the principle of output legitimacy, the political system at the European level should be ordered with a view to maximising system capacity. Competencies should be allocated to the level of policy-making, which is most effectively and efficiently able to achieve the citizens' goals and to solve their problems. Legitimate European rule requires that the European system capacity is higher than the capacity of the individual states.\(^{29}\)

Government of the people - social legitimacy - states that the legitimacy of a political order depends on the degree of social homogeneity, the strength of civil society institutions and the existence of a collective identity among citizens.\(^{30}\) Thus, policy-making at the European level ought to protect the communities, which fulfil the conditions of social legitimacy as subjects of democracy and which must retain a maximum political autonomy. In the European Union context, this theory requires

\(^{27}\) Frank Schimmelfennig, Legitimate Rule in the European Union ... op. cit.
\(^{28}\) F. Scharpf, Interdependence and Democratic Legitimation, unveröffentlichtes Manuskript MPI für Gesellschaftsforschung, Köln 1998, p.3 after: Marcus Höreth, Die Legitimationstrillema, .... op. cit., p.85.
\(^{29}\) Frank Schimmelfennig, Legitimate Rule in the European Union ... op. cit.
\(^{30}\) ... das legitime Regieren jenseits der Staatlichkeit vom Vorliegen bestimmter struktureller und sozi-kultureller Voraussetzungen abhängig ist. Die Legitimität eines jeden politischen Systems - insbesondere des einer majoritären Demokratie - hängt vom Grad der sozi-kulturellen und strukturellen Integration des zugrundeliegenden Gemeinwesens ab. Marcus Höreth, Die Legitimationstrillema ... op. cit., p.89.
consensual interstate decision-making and the protection of national autonomy by an exclusive and minimal allocation of competencies to the Union.\textsuperscript{31}

Social legitimacy encompasses these elements, which consider the legitimacy of different forms of democratic rule to be dependent in one way or another on the social context in which a political system operates. Important social characteristics in this regard are the degree of social homogeneity, the collective identity of the individuals and the strength of civil society.\textsuperscript{32}

Social legitimacy gives the community priority to an individual. Social groups and the society have no subject status of their own. They are the associations and aggregators of autonomous individuals and they are legitimate insofar as they mirror the interests of the individuals they are composed of. Democracy here is government of the people. From the principle of social legitimacy, follows that the political order at the European level should protect the communities in the way of a consensual decision making. At the same time, these collectivities ought to retain a maximum of political autonomy.\textsuperscript{33}

The above picture of different ways of analysing the issue of the legitimate European governance is very often applied in the academic literature. However, in the literature one can encounter other qualifications of the concept of legitimacy, such as: foundational, political, utilitarian and mythical legitimacy\textsuperscript{34} or looking at the legitimacy issue from different perspective we can speak about: legitimacy through recognition and legitimacy through representation.\textsuperscript{35} Generally speaking any political

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\item \textsuperscript{31} Frank Schimmelfennig, Legitimate Rule in the European Union ... op. cit.
\item \textsuperscript{32} Ibidem.
\item \textsuperscript{33} Ibidem.
\item \textsuperscript{34} Foundational legitimacy refers to the rule of law, ethnos and demos doctrine. The rule of law doctrine refers to the fact that a governance system can obtain legitimacy by being subject to democratic rules and judicial control. The existence of demos, refers to the sense of collective identity and belonging, we-feeling, which legitimises a governance system. Usually this identification or sense of community is linked to ethnic affiliation, e.g. the nation state and equips a governance system with a strong foundational myth. Utilitarian legitimacy can be obtained by promise of material (economic) benefits and their actual deliverance. Political (democratic) legitimacy is grounded in consensus about the institutions and structures of a governance system e.g. in specific forms of participation. In the case of the European Union this involves the representation and participation of both states and peoples in the European Union governance. Mythical legitimacy refers to the fact that a governance system can appeal to and construct a community vision as a means of legitimisation. This vision can refer to future, which the collectivity shares or to a past, which distinguishes the community from the others. Ideas about a common destiny can also provide an important element of legitimacy. See Lykke Friis, Anna Murphy, "And Never the Twain Shall Meet?" ... op. cit.
\item \textsuperscript{35} While speaking about legitimacy through recognition we can make further differentiation into recognition through legal validity - a fundamental requirement of any legitimate political system,
system, which exercises direct power over citizens must have a democratic basis, i.e. the consent of the governed, stemming either from democratic representation in decision-making bodies, public goods it provides for the citizens or common identity, i.e. feeling of belonging to a given community.

**Sources of legitimacy for the European Union's politics**

The European Union is governing; therefore, it needs direct democratic legitimate basis at the European level. The Union can claim such legitimate basis through the European Parliament, the only directly elected institution and therefore publicly accountable.  

Although the European Parliament does not play the role, typical to the one, played by a representative institution in the national context, nevertheless, it gives a legitimate basis for the European policy making. Since this basis is not sufficient, we are looking for other basis to legitimise the European governance.

Government for the people claims the legitimate basis from the efficient and effective political problem solving - the technocratic-utilitarian justification of the European governance. The European Union can claim the utilitarian underpinning as far as it serves the peace and welfare in Europe. So long as the European Union fulfils the duties, e.g. it is an efficient problem solving entity, it can be seen as justified from the output perspective.

The democratic and formal legitimacy of the European Union is still based indirectly on the member states, which have signed the Treaties and than ratified in member states parliaments according to national constitutional requirements. In

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36 The turning point for the European Parliament was the year 1979, when for the first time deputies to the Parliament were elected in Europe-wide direct elections. See Akt zur Einführung allgemeiner unmittelbarer Wahlen der Abgeordneten der Versammlung (ABL 1976 L 278/1).

37 Speaking about the input legitimacy, we are dealing with the kind of legitimacy, known in the national context as democratic legitimacy. Since the Union is not a state, but a multi-dimensional and multi-level polity, therefore we are looking for other sources of legitimacy for the European
contrast to the European level, at the national level there are socio-cultural conditions for democracy - the government of the people. Thus, the European governance must refer to the member states as a legitimate base, to structures and processes of national democracy, on which social legitimacy of the European governance depends.  

From economic to political entity - different legitimacy needs: a short look back

European Coal and Steel Community and than European Economic Community and European Atomic Energy Community were predominantly of an economic character. In these Communities, the role of the supranational institutions was limited and the member states could control the integration process. Moreover the aims of the Communities were economic, in the words of Stanley Hoffmann belonged to so-called low politics. Such a situation was acknowledged in the mid 1960s under the so-called Luxembourg compromise. Therefore, so long as the European Community was seen as an economic entity, it legitimised itself by its economic aims.

The situation changed in the 1980s with the signing of the Single European Act, which introduced the new co-operation procedure under which the decisions could be taken on the basis of qualified majority voting as well as new policies such as: research and development, environmental and social policy. The European governance.

38 Marcus Höreth, Die Legitimationstrillema, ... op.cit., p.93-94.
39 The European Commission can be seen as an exception. For the European Coal and Steel Community the Commission, a supranational institution, was the decision making body.
40 In the literature we encounter the differentiation between low politics, relating to economic issues and high politics touching upon political ones. Because the economic issues does not touch upon the state sovereignty to such an extent as political ones, therefore it is easier for sovereign states to agree on economic integration, even though common decisions are taken on the basis of qualified majority voting. In such a situation, the economic performance, efficiency and effectiveness of the system make legitimate basis for the integration process.
41 The Luxembourg compromise was concluded between (at that time) six member states of the European Economic Community in January 1966. It allowed for decisions to be taken in the Council of Ministers by unanimity in case vital national interests were at stake.
42 The cooperation procedure allowed for decisions to be taken by the Council of Ministers on the basis of qualified majority voting. In comparison to the consultation procedure, which was introduced in the 1950s and which foresaw the consultation of the European Parliament by the Council (mandatory or facultative consultation), under the new procedure with the introduction of the second reading in the European Parliament, the role of the Parliament was strengthened, however at the end of the day, it was still the Council which took the decision.
Economic Community in the way of spill-over process\textsuperscript{43} evolved into a quasi-political entity, because the economic problems generate political implications and the solution can only be political. What is equally important, the Single European Act dealt for the first time with high politics, namely: European Monetary Union and European Political Cooperation.\textsuperscript{44}

The political character of the European structures was stressed at the beginning of 1990s with the entering into force of the Treaty on the European Union. This Treaty, commonly known as the Maastricht Treaty reinforced the political character of the European Community and established the Union, a political structure, based on intergovernmental co-operation. Other important developments were: introduction of the new co-decision procedure, new policies and the timetable for the establishment of the European Monetary Union along with the convergence criteria as well as two intergovernmental pillars dealing with Common Foreign and Security Policy and Justice and Home Affairs.

The two subsequent Treaties on the European Union\textsuperscript{45} further reinforced the political character of the Union, having introduced among other things the flexibility and closer co-operation clause as well as made reforms of the European Union’s institutional structure.

The development of the Communities in the 1990s caused further transfer of competencies from the national to the European level. This transfer followed not only in the economic but as well in the political sphere. Moreover, with the widening of the use of qualified majority voting, the member states started loosing control over the integration process to the supranational institutions. The lost of member states competencies was not compensated by an adequate enhancement of powers of directly elected institution - the European Parliament - thus strengthening the democratic deficit.\textsuperscript{46}


\textsuperscript{44} Provisions concerning the European Monetary Union and European Political Cooperation find themselves in the Preamble to the SEA and in the Title III of SEA, which are outside the scope of the three Communities and therefore have an intergovernmental character.

\textsuperscript{45} At this point I am referring to the Treaties establishing the European Union, which entered into force on 1 May 1999 Treaty of Amsterdam and on 1 March 2003 Treaty of Nice.

\textsuperscript{46} While speaking about the democratic deficit, we should make a differentiation between the democratic deficit relating to the lost of control competencies by the member states, not
How then European politics can be legitimised? In the early decades of the European integration, the legitimisation of the system was indirect, through governments, acting in the name of their peoples. Moreover, economic integration provided utilitarian benefits for states and societies. What is equally important, at that time Europeans made an effort to create a community vision, realised in the concept of the Citizens Europe, cultural policy and the establishment of common European symbols such as: flag anthem, driving licence and passport.

The aim of developing a strong Community was affected by enlargement in two ways. On the one hand enlargement increased the internal heterogeneity within the Union, on the other, contributed positively to community building, through the establishment of the principles of solidarity and cohesion between the regions, states and peoples. These principles became corestones of integration for poorer member states and are thus central to their perception of legitimacy in the Union. Moreover, enlargement confirmed the European Union's foundational myth as a club, opened to all European democracies that want to join.47

Until the second half of 1980s the issue of legitimate rule in the European Community context was not so salient, since the integration was limited to a few policy sectors and decision-making was based on the consensus of the member states. The indirect legitimacy embedded in the member states together with the Community economic aims was sufficient to legitimise the integration process. Under Single European Act and than Treaty on the European Union new policy sectors have been europeanised. The European Community was not only about the internal market, but it was equipped in the redistributive powers. Political regulation of many policy areas escapes the control of member states and is subject to policy making in sectoral multi-level networks composed of specialised national and European interest groups and bureaucracies. Moreover, areas like foreign policy, border controls and currency, which belonged to the core of state sovereignty, were shifted to the European agenda. Additionally, the decision making on the basis of majority voting was expended. The more power over core issue of state sovereignty and

compensated by the strengthening of competencies of the European Parliament, and the one relating to the national context, i.e. the national parliaments being unable to control their representatives in case decisions are taken on the basis of qualified majority voting in the Council of Ministers.

47 Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ ... op. cit.
Redistribution policies were transferred to the European level, the more the Community was in need of its own sources of popular support.\textsuperscript{48}

As mentioned above, subsequent enlargements and expansion of the Community agenda caused the legitimacy crises, expressed by the Danish no to the Treaty on the European Union. The Maastricht Treaty contained provisions relating to Common Foreign and Security Policy, Economic and Monetary Union and European citizenship - the development, which strengthened state-like character of the Union. The legitimacy crisis was also linked to the fact that national governments and their citizens could not accept the fact that the political boundaries of their governance system were no longer national but European. Moreover, the legitimacy crises reflected the difficulty of creating a sense of community. Last but not least the crises was connected to the dilution of the European Union's foundational myth, i.e. decades after the II world war and the end of the Cold War made that the reconciliation was not longer such a salient issue and the threat of communist Europe was gone.\textsuperscript{49}

**Enlargement and legitimacy**

Forms and structures of governance are not an end in themselves. They have to be designed or adopted to meet the challenges, which the respective polity has to face as effectively as possible - legitimacy being one of them.\textsuperscript{50}

The 1990s saw the major erosion of the post-war permissive consensus on European integration among European citizens. There was frustration about the lack of transparency and democratic control in the European Union policy-making and implementation process. The increasing complexity and diversity within the Union system - with each new member state, the policy process becomes less transparent to citizens - is likely even worsen the situation.

These developments were seen as a sign of a fundamental crisis of legitimacy. The pressure on European governance structures to acquire legitimate basis is likely

\textsuperscript{48} Frank Schimmelfennig, Legitimate Rule in the European Union ... op. cit.
\textsuperscript{49} Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ ... op. cit.
\textsuperscript{50} Other challenges are: the challenge of increasing global exposure, the challenge of economic and social cohesion, the challenge of increasing diversity, the challenge of growing complexity, the challenge of widening political agenda. See Jörg Monar, The future of European Governance ... op. cit., p.23-29.
to increase during the next years. One of the reasons is the widening political agenda, which is likely to lead to more European legislation. Another reason is that only a solid legitimate basis can protect the European construction against a further erosion of public support, which might result from the system’s increasing complexity and diversity in combination with national governments blaming European institutions for failing to respond effectively to certain problems, which have been moved upwards from the national to the European level.\textsuperscript{51} The increased heterogeneity resulting from the next enlargements will further complicate the situation by reducing the prospects for a European collective identity and Europe-wide political discourses, which could legitimise European Union’s decisions on politically sensitive issues.\textsuperscript{52}

The subsequent rounds of enlargement both strengthened and weakened the possibilities of enhancing legitimacy of the European structure. What then about the enlargement to the CEECs? Enlargement to the emerging Eastern democracies can reinforce the European Union’s foundational myth of shared past, common destiny and community of values. Enlargement can also strengthen the utilitarian basis of the European Union legitimacy. It will provide a framework for the adjustment of states to changes and new security challenges as well as a mechanism for new regional division of labour in Europe and create opportunities for trade and promotion of economic welfare. However, many questions arise such as: whether the present members of the European Union will be willing to share economic costs with newcomers. Another aspect relates to the solidarity principle, an important legitimising factor for the so-called cohesion states, which in an enlarged Community will graduate out of this status and become net contributors to the European Union budget. For these states, which have stressed solidarity and access to founding as a cornerstone of membership in the European Union, this could impinge on continued public support for the Union and enlargement. Finally, enlargement can affect efficiency of the Union, an important dimension of utilitarian legitimacy. An enlarged Union will need to deepen its structures i.e. to move to qualified majority voting in

\textsuperscript{51} Ibidem. p.28-29.
the Council and reduce its numbers of Commissioners in order to retain efficiency.\textsuperscript{53}

**Necessary changes to the present governance structure**

Reform proposals aiming at strengthening the input legitimacy are based on the assumption that the European Union political system will gain legitimacy from the citizens, effectively participating in the political decisions and control the European governance. Therefore, there should be an increase in the powers of the European Parliament and a two-chamber system established, representing the European people and the member states. The more the European Parliament gains control over decision-making, the greater will be the citizens' participation. The strengthening of the European Parliament's powers will bring a systemic change, i.e. creation the federal-democratic model. However, as the main barer of legitimacy in the Union, the Parliament's increase in legislative and control competencies will be the most appropriate instrument for ensuring the legitimacy of the European governance.\textsuperscript{54}

On the other hand, measures to close the democracy gap at the European level may impair the Union's efficiency and capacity for action. Thus, there is trade-off between efficiency and effectiveness requirements on the one hand and democratic participation and control on the other. The more the Community gains in democratic quality, the more it will loose in decision-making efficiency. Moreover, it is questionable whether the European Union is capable of being a democracy in case of the lack of structural preconditions on which democratic governance depends. In the absence of European media, European political parties and genuinely European process of public opinion formation, constitutional reforms could not by themselves overcome the present democratic deficit at the European level.\textsuperscript{55} Democracy cannot be installed by a constitutional act but it must be linked to particular social preconditions, which are only partially existent in the European Union.\textsuperscript{56} However, an increase in the European Parliament's competencies will weaken the Council, the

\textsuperscript{53} Lykke Friis, Anna Murphy, ‘And Never the Twain Shall Meet?’ ... op. cit.
\textsuperscript{54} Marcus Höreth, Die Legitimationstrillema ... op. cit., p.248-253.
\textsuperscript{56} We can speak about a community of memory, communication and experience in which the collective identity generates, stabilises and is transferred. For the time being, the Western Europe is neither communication nor memory community and only to a limited extent the experience community. See Peter Graf Kielmasegg, "Integration und Demokratie", Marcus Jachtenfuchs, Beate
voice of the member states, thus, decreasing the indirect democratic legitimisation of European governance through the member states and their parliaments. It will also mean a decrease in output legitimacy.

Speaking about the output-legitimacy is about strengthening the supranational elements of the European governance. This can be done through the strengthening of the role of the European Commission by direct elections of the president, widening the scope of decisions-making on the basis of qualified majority voting, effective implementation of the European law, thus increasing role for the European Commission as policy-entrepreneur. Another strategy aims at decisions to be taken by experts and independent institutions to which regulatory powers were delegated and who should act in the public interest.  

Legitimacy of a political system depends on the degree on social homogeneity and the existence of collective identity among citizens. Since the only communities, which fulfil these conditions, are the member states, therefore they should play the most important role in the multi-level game of European policy-making. Thus, the Union requires consensual interstate decision-making and greater role for national parliaments in controlling European policy process, making the national parliaments the primary source of legitimacy. However, such a development will lead to the decrease in the technocratic-utilitarian legitimacy. Moreover, strengthening the Member State's role in the European policy process means stepping back to the unanimous decisions in the Council, i.e. an intergovernmental co-operation - a step back about the present stage of integration. Another way of achieving social legitimacy is through the regionalisation of the decision-making processes. In institutional-political terms, it means an increase in the competencies of the Regional Committee, de facto the establishment of an additional parliamentary chamber. 

What are other ways to legitimise European governance as a sui generis political structure? The European Union seen as a contested, evolving, multi-level

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polity rules out established patterns of democratic representation through a fixed set of central institutions. At the same time, however, its structure allows for new forms of representation at the intersection of European and national institutions. Parties and interest groups - traditional democratic links between society and the state - are forging new patterns of representation at the European level. More informal, fluid forms of representation do not meet the standards of popular sovereignty set by traditional democratic theory. Nevertheless, they reflect the reality of the European Union as a polity composed of multiple identities embedded at multiple levels of governance.

**Concluding remarks**

What legitimate basis has the European governance, what was done and what is still to be done? As to legitimacy requirements, we have to be careful not to simply apply traditional models of nation-state legitimacy to the European Union system. Because of the multi-national basis and multi-level governance structure, the European Union system cannot provide the same sort of recognition through the belief in legitimacy, based on a common identity. Neither has the Union so far been able to develop a satisfactory form of legitimacy through political representation.

Although enlargement can strengthen legitimacy, there is a risk that it will exacerbate the European Union’s problem of developing closer bonds between the member states and their citizens. Enlargement requires the European Union to improve the efficiency of its institutions - an improvement, which could be seen as undermining the representation of the member states and citizens in the European Union. Enlargement can undermine the utilitarian legitimacy by introducing costly competition in labour markets or re-directing economic aid from the present member states to the newcomers in the East and by adding complexity if not hampering the efficiency in decision-making. It also adds to existing tensions between representation and democracy.

Legitimacy is not a static term, but a concept, which changes over time and in

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59 Marcus Höreth, Die Legitimationstrilemma ... op. cit., p.305-307.
60 Thomas Banchoff, Mitchell P.Smith, eds., Legitimacy and the European Union ... op. cit., p.2.
respect to polity-formations. In the European context, the aim should be not to maximise one legitimacy element at the cost of another one, but to optimise all of them.

The values of democratic governance, effective integration and national autonomy need to be balanced in order to maintain legitimacy. Each has an independent normative value and the pursuit of one at the expenses of another will damage rather than raise the legitimacy. Such a triangular conception of the European Union legitimacy places the main institutions: the Council of Ministers as the guardian of national autonomy, the European Parliament as the guardian of democratic governance and the Commission together with the European Court of Justice as the guardian of effective integration.62

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