

In view of the limits on the powers of the European Parliament, it is often argued that there is a ‘democratic deficit’ in the EU. On the basis of your current knowledge, do you agree, and how can the deficit be removed?
(Max 2000 words)

One of the main values of the European Union has always been a ‘respect for democracy’, and the significance of democracy within the Union order is emphasised by Article I-2 and Title VI of the Constitution, ‘The democratic Life of the Union’. The obligation on institutions is stated to be to involve citizens by ‘appropriate means’ for the functioning of the Union.

The European Parliament is said to be one of those main institutions of the European Community, which is empowered to undertake legislative roles. In the past it was not a democratic body, and consisted of representatives of Member States who were required to be members of a national parliament. Having recognised the need for a ‘democratic’ institution in the Treaty of the European Union, it was possible to strengthen its powers and thus its role over time. This is what happened and is happening with regard to the European Parliament. Thus, from 1979, democracy increased with the introduction of direct elections since members are responsible to their electorate (though it should be noted that recent elections have revealed a low voter turnout, casting doubts on Parliament’s claims to democratic legitimacy). Parliament today has played an increasingly important role in the legislative process and has been given the final say in certain aspects of the budget. On the other hand, there still exists a lack of democratic legitimacy in the EC decision-making process (hence a ‘democratic deficit’). This means in its simplest terms, that there’s not enough connection between individuals of the State(s), for example, and the Community/European Union (the EU) in matters of law making.

This debate typically critiques the democracy of Community law-making in three ways – (I) quality of representative democracy (the extent to which Community law-making undermines parliamentary democracy at a national and regional level), (II) quality of participatory democracy, and finally (III) quality of deliberative democracy (public debate between citizens that surrounds and informs law making process). Both sides of the argument are discussed below.

The relative importance of Parliament’s role varies according to the nature of legislation, and whether it’s made according to the consultation, co-operation or co-decision procedure. The consultation procedure is where Council consults Parliament before adopting an act. There is no binding effect on the Council, nor does the Council have to give reasons for Parliament’s opinion’s disregard. Until the Single European Act was introduced, this was the usual form of legislative process. Today it is only used in certain policy areas such as agriculture.

The co-operation procedure gave parliament an opportunity to propose amendments to the draft legislation given by the Council, but the Council still had the final say and could overrule Parliament if they acted unanimously with the Commission. Hence this resulted in limited powers for Parliament, since even if Parliament proposed amendments they could be rejected. On the other hand, it could be said that this procedure resulted in changes in the way the institutions

operated, causing greater 'dialogue', as it were, between Parliament and the Commission/Council. Post-Treaty of Amsterdam (TOA), this procedure has virtually disappeared, and is limited to aspects of the monetary policy. It was thereafter that the Co-decision procedure was introduced (Article 251 of TEU, amended by TOA), which is probably one of the biggest reforms in democratic power for Parliament. It has been witnessed to increase the bargaining power of Parliament since now it has two opportunities to view the draft legislation proposals. Both the Council and Parliament must approve of the proposals as well as the text from the Conciliation Committee (a committee which meet to reach compromises between the institutions' conflicting viewpoints, consisting of equal members/representatives from Council and Parliament), in order for it to be adopted. With this procedure, Parliament now also has the power to veto a piece of legislation. If the institutions fail to reach an agreement via the Committee, the proposed legislation will fall through. It must be stated that proceedings of the Conciliation Committee are however not open to the public, leading to several questions of how transparent and democratic this process really is. The SEA also introduced the Assent procedure, excessively reinforcing the basic message of the co-decision procedure. Here, measures to be adopted by assent are only enforced if Parliament gives its consent. This procedure again gives Parliament considerable power but is used only in limited circumstances e.g. external relations. The disadvantage obviously of this is that Parliament's only available option is either to entirely block or agree the proposal. There is neither compromise, nor a mechanism by which Council and Parliament might resolve their differences.

In giving Parliament more power, the procedure above is nonetheless deemed to improve democratic credentials of the Community. By the TOA and Nice limiting further the Council's power through increasing the areas covered by co-decision, this procedure can be said to improve the democratic legitimacy of the Community (though problems have been noted regarding the operation of the Conciliation Committee). Critics have argued that the process post-TEU has become too complex and long-winded, and should only be applied within specific policy areas. This has been evidently ignored, and so should the Constitution come into place, the Co-decision procedure will be renamed the 'ordinary legislative process'. The Constitution would bring a further shift in the areas in which co-decision is to be used.

Despite the increase in areas in which co-decision is used already, Parliament still has limitations imposed on it in terms of the roles it plays in certain areas, such as agriculture and the JHA and CFSP pillars, which wouldn't change under the new Constitution. Parliament also has weaknesses in the methods it fulfils its responsibilities, for example, under Article 192 it may request policy initiatives but does not have a right of policy initiative.

Nevertheless, Parliament has a supervisory role. It can exercise direct political control over the Commission. One of the Commission's tasks is that it must publish a general report that is discussed in an open session in Parliament, increasing democratic accountability. Parliament also has power to dismiss the Commission through the passing of a vote of censure – this is to be carried by a two-thirds majority vote, representing members of parliament. It must also be consulted on the nomination of the President and the appointment of

Commissioners and the Commission as a whole has to be approved by Parliament. The Council too is subject to extensive supervision. Under the TEU, Parliament had been given power to investigate maladministration issues in the implementation of community law. An Ombudsman has been appointed to enquire into such complaints in the activities of EC institutions or bodies. Therefore it must be said that this and the co-decision procedure both have improved and strengthened Parliament's position in the decision-making process by increasing the control of Parliament over the Commission.

Parliament also promotes human rights. It has to be mentioned that it was Parliament, which persuaded other institutions to recognise the significance of human rights and the ECHR (European Convention of Human Rights).

Arguments against the fact that the European Parliament should not be solely held responsible for the 'democratic deficit' lead us to examine the other constitutions. There is certainly a lack of democratic accountability of the Commission and Council. To begin with, the Commission is not elected at all. The Commissioners are politically appointed by Member States. However, with the changes made to increase Parliament's control over the appointment process, this problem is diminishing, though control is still over individuals and not over the Council as a body (as members of Council of Ministers are members of national parliaments and have not been elected for the purpose of serving as a member of the Council of Ministers). Therefore, the quality of democratic control rests with national parliaments, causing a variation of standards throughout the EU. National parliaments become involved in legislation processes too late to have any impact on outcomes, and as we have seen the level of control varies between Member States' national parliaments. With the introduction of the Constitution however, national parliaments would have the possibility of having a role in the legislative process (if co-decision were used). This is because the Constitution visualises a greater role for the involvement of national parliaments prior to the enactment of European legislation, thus ultimately increasing democracy within the Union.

One other concern is the use of non-elected bodies in the decision-making process, constituting to the 'democratic deficit' ideal. Examples of these are COREPER and ECOSOC. They tend to structure debates in Council, and potentially can discourage debate on certain issues. These were, before the TEU, stronger historically than Parliament in the decision-making process. The ECJ has no jurisdiction to review COREPER's acts, and its jurisdiction is limited in relation to the new free movement of persons provision, subject to an exception in the interests of 'national security'.

Furthermore, due to the complexity of the legislative process, decision-making is not transparent and hence less democratic. As a result of this, it's difficult for individuals to become involved in the process and hold decision-makers accountable – this as we can see contradicts the Union's 'mission statement' and value, as it were.

A representative democracy depends on the presence of its 'people' to represent. Without the sense of any uniformity, i.e. 'Us' according to Scharf, there is no reason for losers of any vote to accept the view of the majority. Within the EU, this is important because most citizens currently do not see themselves as part of

a 'European people', but as nationals of their own Member States. A deliberative democracy is one which enables strangers to come together to decide matters of common interest as free and equals. Individuals accept legal restrictions in democracies because they have had the opportunity to participate in the debate that led to the adoption of the law, rather than negotiate. In the EU, conditions for this type of democracy are not present. Eriksen has argued however that there are elements of deliberative democracy in some areas, with the problem being not the absence of debate, but of its 'fragmented nature' e.g. there are new European audio-visual spaces such as newspapers, Internet, television, etc, which prove that a general public in Europe isn't totally absent.

In addition to this, improvements could be made in the way documents are drafted and made available, so as to increase simplicity in terms of language, for example. A Code of Conduct (1993) has been published regarding public access to Council and Commission documents. Now, the Council has to consider whether it's appropriate or not to refuse access, conversely changing the attitude of ministers towards the release of non-controversial/non-sensitive information. This Code's use is emphasised in the case *Carvel v Council* (Council held to be in breach of the Code as it did not take into account all of the claims of the applicant into account and automatically refused to reveal minutes on the basis that all minutes are confidential).

The Council has also recently agreed that all outcomes of votes on legislative acts should be made public, that debates on issues of public importance be broadcasted and finally access to minutes of meetings facilitated.

Significant progress can be said to have been made in increasing transparency and hence towards removing the 'democratic deficit'. The virtual removal of the co-operation procedure and streamlining of the co-decision procedure makes the legislative process simpler, and consequently more transparent, also increasing Parliament's power and democratic sustainability. A declaration in the TOA states that institutions ought to improve the drafting of Community legislation in order to result in plainer language. Clarifying and codifying Community legislation will improve legislation. Article 255 EC says, 'any citizen, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents'. It is hoped that this should increase the accountability of ministers in the Council to their national parliaments, as individuals will be able to identify how the individual representatives of the Member States voted.

Should the Constitution come into place, transparency will be emphasised as part of its title on democracy. Institutions will be under an obligation to 'conduct their work as openly as possible'. Article I-50(2) (Treaty establishing a Constitution for Europe – not enacted yet) specifies that the European Parliament should meet in public, as should the Council when voting/considering on a draft legislative act.

Over the years, the role of European Parliament has tremendously increased, arguably enlarging the Community's democratic credentials. Thus it is evidently clear that limits on the powers of European Parliament have significantly decreased, constituting progress towards removing the 'democratic deficit'. Although there are still problems with efficiency (time-consuming need

to reach unanimity in decision-making, qualified majority voting being extended to new policy areas by ToA/Nice, more languages to deal with, complexity of processes, etc), democratic accountability and transparency of procedures, these can be said to derive not from problems to do with the European Parliament but rather from the other institutions and the limitations imposed upon them. A move towards the Constitution would, as we have seen, attempt to ameliorate the majority of problems faced in terms of democracy, though to what extent is unknown, mainly due to the fact that the Community/Union legal order has changed and continues to change over time.

(2,226 words)