

Are the european
union's decision
making processes
democratic?



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Q: 1 ' The EU's institutions and law-making processes can be considered sufficiently democratic given the range of interests to be taken into account within the unique legal order of the Union.' Critically discuss.

The European Union is an economic and political union that comprises of 28 member states. It is *sui generis* in nature and must find a balance between supranationalism and intergovernmentalism. This was shown in the case of *Van Gend en Loos*. [1] Azman describes the Union as a " powerful economic and political union" with a " mighty voice in foreign policy" and a " democracy defender". [2] Democracy plays an important role within the European Union as it is one of the fundamental principles, alongside human rights, equality and the rule of law, to name a few. [3] The concept of democracy refers to the involvement of the citizens in political decision-making. This means the member states and the citizens of the EU have the right to exercise their rights to vote. Under this principle of democracy, all citizens within the EU are to be treated fairly by the EU institutions, have the right to partake in the decision making process and receive information on the activities of the Union. In other words, the Union should have an element of transparency and openness towards its citizens.

The European Union practices representative democracy. This means that citizens are directly represented by the European Parliament within the Union and Member States are represented by their Heads of States or Government in the European Council and in the Council of Ministers (the

Council) by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens. This is laid out in Article 10 of the Treaty of the European Union. The European Union claims to be democratic in numerous ways, however, the extent of their democracy and whether or not they practice it is questionable. This essay is going to discuss the transparency element of the European Union, the democracy of the individual institutions and accountability in both these areas.

Transparency

Transparency is an important element of democracy. It is where the executives and the European Parliament, who are involved in the decision making processes, are subject to the requirement of openness or public access. An example of this is the requirement that the European Commission must publish a general report on the activities of the Union for discussion by the European Parliament.[4]This encourages citizen participation and holds the executives to account of their actions in the legislative process.[5]One way in which transparency, and subsequently democracy, is undermined is through trilogues. Trilogues are an informal tripartite meeting where the representatives of the European Parliament, the Council and the European Commission take part in. The aim of this is to reach a prompt agreement on a set of amendments acceptable to the European Parliament and the Council, which must then be approved by these institutions in accordance with their internal procedures. Trilogues contain information concerning the positions of the institutions on ongoing co-decision procedures. They are an integral part of decision making as they are used in 70%-80% of legislative procedures.[6]This is a problem as these exchanges are usually taken place

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in private, and the public have no access to these documents. This seems to undermine the transparency element of the union, which is an integral element, and naturally, this questions the democratic legitimacy of the Union. Furthermore, due to these exchanges being private, the ministers involved will not be held to account for their actions as the ministers involved will remain private.

In the Follesdal and Hix article, Majone seems to suggest that the European Union is not transparent enough. He states that “ the EU needs more transparent decision-making”.^[7]On the other hand, academics, such as Andrew Moravcsik, believe that the European Union is “ more transparent than most domestic systems of government.”

The Institutions of the European Union

European integration meant an increase in executive power and a decrease in a national parliamentary control. The design of the European Union means that policy-making at EU level is dominated by the executives, that is the national ministers in the council, and government appointees in the Commission.^[8]

The institutions of the European Union are expressed in Article 13(1) of the Treaty of the European Union. It states that the Union’s institutions include the European Parliament, the European Council, the Council of Ministers (the Council), the European Commission (the Commission), the Court of Justice of the European Union, the European Central Bank and the Court of Auditors.^[9]Amongst these institutions, some are supranational, some are

intergovernmental, some have real decision making powers and some fall into all three of these categories.

The European Parliament is the most democratic institution of the European Union as it is directly elected. As stated in the treaty, is composed of representatives of the Union's citizens and should be digressively proportional with a minimum of 6 members per member state and a maximum of 96 members.[10] These representatives are called Members of the European Parliament (MEP). They are elected by direct universal suffrage and sit a term of 5 years.[11] It exercises legislative functions alongside the Council, but it has no power of legislative initiative. On the face of it, the European Parliament seems like a democratic institution that is democratically elected by its citizens. However, voter turnouts for the EU elections have seen a decline since 1979, where 61.99% of EU citizens participated. In contrast, only 42.61% of citizens chose to exercise their rights to vote in the 2014 elections.[12] This constitutes an inaccurate representation of citizens in the European Parliament as over half of the EU population (roughly 500 million) are not being represented and their voices not heard. However, it could be argued that it is no fault of the Union whether or not a citizen chooses to exercise their right to vote. On the other hand, the citizens might find it difficult to choose to exercise their right to vote if they are not being kept in the loop or are ill-informed. One factor that would promote informed voter participation is the availability of unbiased and accurate information that considers issues from a supranational perspective, and one could argue that it is the responsibility of the European Parliament itself to ensure that this information is delivered at a state level.

There is a lack of Pan-European media giving accurate or pro EU information and news. Any media attention directed at the Union is likely to be inaccurate or supportive towards national governments. Some citizens are not aware they have a right to vote in EU elections, and those who may be aware might not understand how they go about voting in these elections. In addition to this, those that do choose to exercise their rights to vote tend to vote with the consideration of their own national state in mind rather than with a supranational attitude because of biased information given to them by their own state media. This may lead to them voting for a political party that may be doing well at national state level, but not at EU level. This could be due to the lack of media attention and information provided around this issue. In comparison, unlike Union elections, national elections are covered by the media and campaigned heavily. Citizens of the state are kept well informed and are aware of who their ministers are.

Successive reforms of the EU treaties have increased the powers of the European Parliament. However, it can still be said that the European Parliament is still weak in comparison with the governments in the Council, even though it has equal legislative power with the council.

The Council of Ministers is an institution made up of a representative, at ministerial level, from each member state^[13]. This institution seems democratic as most national governments are elected by their citizens directly or indirectly, such as elections in the United Kingdom, and these ministers represent their citizens in the European Union. It exercises, jointly with the European Parliament, legislative functions.^[14] Being a democratic institution, it would be appropriate that a democratically elected institution <https://assignbuster.com/are-the-european-unions-decision-making-processes-democratic/>

has powers to carry out legislative functions. However, they have no powers to initiate legislation. This is explicitly up to the Commission to do so. The Council, and the European Parliament for that matter, may propose legislation to the Commission, but the Commission are not obliged to put forward the proposal, however, they must explain their reasons for the rejection.[15] This procedure, again questions the democratic legitimacy of the Union. Surely a democratic body should have the ultimate monopoly to initiate legislation.

Furthermore, the Council are subject to judicial review.[16] Many argue that this seems to undermine democracy since judges are appointed not elected. So why then, are ministers, elected by the citizens, being subjected to a body that is completely unelected? According to an article by the European Constitutional Law Review,[17]

The European Commission consists of one national from each member state, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents, as expressed in the Treaty.[18] The members of the Commission are chosen on the grounds of their general competence and European Commitment from persons whose independence is beyond doubt.[19] It is an unelected body with an explicit monopoly for initiating legislation in most policy areas. [20] The European Union claim to be democratic, yet their legislations are being initiated by an entirely unelected body, who are also not accountable for their actions. The Commission is responsible to the European Parliament.

The Citizens' Initiative is a procedure whereby no less than one million citizens from a significant number of member states may invite the European Commission to submit a legislative proposal.[21] This seems to be an appropriately democratic procedure as it is allowing the voices of the citizens within the Union, to be heard. However, the Commission is not obliged to initiate the proposed legislation. This strips away the democratic legitimacy, once again, and in a way, stripping away the voices of the citizens.

There seems to be too much 'behind the scenes power'. The Commission can initiate EU legislation and shape what it looks like. They are also able to divide the Union's work programmes and have the power to withdraw and amend legislative proposals, yet it is, again, entirely unelected. This questions the principle of democracy within the EU.

The European Council, as expressed in the treaty, consists of Heads of States or Government of the member states, together with its president and the president of the Commission.[22] The European Council is a strategic body that provides the EU with general political directions and priorities and acts as a collective presidency.[23] It is also able to provide an impetus to guide legislative policy, however, it does not exercise legislative functions.[24] It seems to be an indirectly democratic body since it comprises of elected heads of states from national governments. The European Council does exert considerable political influence on the European Union. This can be seen during the special meeting in April 2005 to discuss the refugee crisis. Despite the European Council having no legislative powers, they do have certain formal decision making powers. It is able to instigate treaty reform via the Ordinary revision procedure or Simplified revision procedure. It also has the <https://assignbuster.com/are-the-european-unions-decision-making-processes-democratic/>

power to alter the procedure for adopting legislation in certain instances via the Passerelle Clauses.[25]This means it can change voting procedures in the Council from unanimity to majority voting. The European Council, itself, must vote by unanimity and obtain the consent of the European Parliament. National. This seems to be a democratically legitimate process, since the procedure involves an indirectly democratic body and the consent of the most democratic body in the Union.

Accountability

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[1]Case 26/62 *Van Gen den Loos* EU: C: 1963: 1

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[5]Deirdre Curtin and Päivi Leino, ‘ In Search of Transparency for EU Law-Making: Trilogues on the Cusp of Dawn’, *Common Market Law Review* 54: 1673-1712, (2017).

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[7]Andreas Follesdal and Simon Hix, ‘ Why there is a Democracy Deficit in the EU: A Response to Majone and Moravcsik’ (2006) 44(3) *Journal of Common Market Studies* 553.

[8]Andreas Follesdal and Simon Hix, ‘ Why there is a Democracy Deficit in the EU: A Response to Majone and Moravcsik’ (2006) 44(3) *Journal of Common Market Studies* 553.

[9]Treaty of the European Union, Article 13(1).

[10]Treaty of the European Union, Article 14(2).

[11]Treaty of the European Union, Article 14(3).

[12]European Parliament / Results of the 2014 European elections accessed 2 January 2019

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[13]Treaty of the European Union 16(2)

[14]Treaty of the European Union 16(1)

[15]Treaty on the Functioning of the European Union, Articles 225 and 241

[16]Treaty on the Functioning of the European Union, Articles 263 and 256

[17]“ Talking about European Democracy” (2017) 13 European Constitutional Law Review 207

[18]Treaty of the European Union, Article 17(4)

[19]Treaty of the European Union, Article 17(3)

[20]Treaty of the European Union, Article 17(2)

[21]Treaty of the European Union, Article 11(4)

[22]Article 15(2) TEU

[23]Treaty of the European Union, Article 15(1).

[24]Ibid.

[25]Treaty of the European Union, Article 48(2).