

National Public Administrations and the Democratic Deficit of the European Union: A Comitology Conundrum

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The European Union (EU) is a complex political system whose institutional framework encompasses representatives of European citizens, member states, »eurobureaucracy« (Commission and agencies), national parliamentarians and members of public administrations. Such a complex framework is a by-product of reforms the EU has gone through in order to include stakeholders in its decision-making process, with the goal of delivering democratically adopted rules that have legitimacy. The democratic deficit is a sign that the EU lacks full legitimacy. The paper aims to show that comitology system is a source of democratic deficit. It shows the reasons why national public administrations got involved in the decision-making process, and the role they have in overseeing the implementa-

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tion of adopted measures. The paper also gives the reasons why comitology is a threat to democratic accountability, pointing to the Council as the main source of that threat. Finally, it also suggests ways of reducing the democratic deficit by empowering the representatives of national public administrations to work transparently.

Key words: democratic deficit, comitology, European Parliament, European Commission, European Council, executive overreach, national public administrations

1. Introduction

Crisis of the European Union is linked to the very nature of that polity. It can be seen ever since European member states started to develop a supranational entity that would deal with intricacies of pooling national sovereignties and develop an »ever closer Union« (Dinan, 2006). However, the crisis peaked since world financial problems manifested endemically in peripheral member states' sovereign debt and consequently in Eurozone crisis. The European Union and its institutions now operate in an almost daily crisis-mode, trying to counteract problems occurring not only at the supranational, but also at national and even subnational levels, and trying to deal with the most sceptic environment they encountered in history. All those cumbersome problems could best be seen in May 2013 when an obscure, technical matter embedded in a more encompassing, but still quite technical, implementing act allowed for a wave of ridicules and criticisms to be sent toward the European Union in general and the European Commission in particular. The matter was banning reusable olive oil bottles, and that episode shows all the complexities of the institutional framework of the EU. It also serves as a good example of the obscure and largely incomprehensible work of comitology, which is the main culprit in the olive oil bottle saga and principal topic of this paper. It shows how an implementing act, although nominally in the hands of the European Commission is profoundly influenced not only by lobbyists and interest groups, but also by unaccountable representatives of national public administrations. Although they have a great influence in shaping a specific future EU law, this law is through media almost exclusively presented as something the European Commission wrote by itself and is forcing member states to adopt against their free will – when in reality

national executives are the most dominant actors in the political arena of the EU. This paper sees representatives of national public administrations, who work under the auspices of comitology, as one of the main, albeit sporadically mentioned, issue in the discussion of the democratic deficit of the EU. Therefore, it aims to show why comitology is a problem and how national administrations are part of that problem. It will try to offer solutions for eliminating it from the complex equation of issues that inflate the legitimacy problem of the EU. Before that, a short but comprehensive overview of scientific work on democratic deficit is required, showing among other factors, the sources of that deficit at both the national and supranational levels.

European institutional structure was formed when the domination of executive over legislative bodies in nation states was a norm, except not everybody saw the change happening and affecting the EU as well (Warleigh, 2003: 2). Legitimacy crisis is one of the manifestations of the drift from the domination of legislative institution toward domination of executive institution, and at the level of the EU, it is summed under the name of the democratic deficit. There are numerous analyses that try to show the reasons of disinterest of European citizens for the European integration process and their place in that process (mostly through direct elections for the European Parliament). That gap between the EU and its citizens is linked with several distinct problems some of which are: lack of opportunity for the EU to work more strongly in the areas citizens see as the most problematic (unemployment, environment protection, social policy, health); lack of ability of projecting positive light on European institutions when they deliver policies European citizens want and favour (mostly because citizens don't understand at which level certain policy was adopted, but also because national political elites tend to portray the successful policies as their brainchild, yet have no problem blaming Brussels for unpopular decisions); complex institutional framework of the EU that differs significantly from those citizens in nation states are accustomed to (European Governance, 2001: 7).

Alienation of citizens leads to ever rising democratic deficit critique which shows continued interest in finding solutions for current challenges at the European level, especially those issues linked to the globalizing tendencies of social, cultural and economic development. In order to understand the democratic accountability of the EU, it is opportune to analyse the problems of European integration that lead to the democratic deficit, to show the influence of executive overreach, and to point at an obscure role

of national public administrations at the European level that are part of the problem.

Primarily, it is important to show the necessity of linking the European integration process and democracy, having in mind unbreakable link between the level of democratisation of a polity and the level of rights and freedoms of its citizens. The EU, similarly to nation states, satisfies all procedural factors important for the development of democracy. It has representative institutions, and supports building institutional framework of control mechanisms (Hix, 2008: 85). The problem seems to be that procedural democracy is not enough. What is also needed is a level of substantial democracy, which focuses on the content of those factors. In short, it means that free and fair elections at supranational level mean nothing if political elites do not use them to compete on anything but strictly national questions and issues (Hix, 2008: 76). Many authors see the low turnouts in European elections as the main reason for the democratic deficit, others see it in executive overreach (on which this paper will focus in the second part), while some actually claim there is no democratic deficit at the EU level, so there is no need to spend time deliberating about it.

2. Is There a Democratic Deficit?

Let us try to answer if there actually is a democratic deficit at the European level. The question is salient because up to the Maastrich Treaty the issue of democratic character of the European integration had not been taken into account at all. Two main schools of thought researching the development of the EU – functionalism (and neofunctionalism) and intergovernmentalism – did not see importance in emerging critiques of democratic deficit. Efficacy of a political system is improved, according to functionalists, if one removes final decision-making process from the influence of everyday politics, including the electoral uncertainties (Ehin, 2008: 624). More simply, economic integration, as the main aim of European integration process, will be more successful if technocratic elites get free reigns to adopt optimal policies. If one looks at the EU as a technocratic experiment, one can see the reasons to make the role of the citizens mostly symbolic.¹

¹ Such a view is not sustainable if one wants to make anything else but a mere international organization out of EU. It is possible not to allow citizens and its representative

Intergovernmentalists, however, see the European integration as nothing more than diplomatic cooperation of sovereign states (Warleigh, 2003: 17) that does not need democratic legitimacy of its own. To them, the EU is nothing more than the most successful example of institutionalised international coordination of public policies (Moravcsik, 2006: 264). For some, the permissive consensus that existed for the most part of the institutional development of the EU was reason enough to believe public lack of interest meant at the same time their full acceptance² of the integration process, as benefits of integration were clearly visible to all (Warleigh, 2003: 18).

Problem can also be found in looking at the EU through the same glasses one uses to observe nation states, expecting that same set of process and factors to exist at the EU level and at the level of its member states. Puntscher Riekmann (2007: 122) concludes that norms and development factors that exist at the level of nation states cannot be expected to exist at the EU level as well, because those are completely different political systems. One can ask therefore, does the EU need to be democratic in the way nation states are (Ehin, 2008: 620)? We cannot expect democracy of the EU to stem solely from the democratic character of its member states; we must search for the way of building a completely autonomous level of democracy in this complex polity through its own institutions (Lukšič, Bahor, 2007: 150). If the EU is a post national and post-state polity, developed as a way of dealing with the problems of globalization (in a similar fashion as nation states were developed as a way for individuals to cope with challenges of social modernization), it could be a post-democratic entity as well. In that regard, the preconceived notions of what democracy needs to include cannot be successfully transposed from the national to supranational level. Puntscher Riekman concludes similarly, by saying that the question of democratic deficit is intertwined with the notion of diffuse democracy, i.e. the lack of new thinking patterns about building democracy in a completely new political entity that is still in its developing

bodies a say in decision affecting import quotas or percentages of arable land one needs to let rest before ploughing, but it is much harder to justify such a position when military, judicial or security cooperation questions are raised.

² Political system can enjoy two types of support. Affective support is built on ideological and cultural acceptance of a system by its citizens. Utilitarian support is built on rational feeling of costs and benefits of a system to citizens. By combining those two types of support, in which second one depends on the first one, one can analyse the readiness of citizens to accept certain political system and decisions it makes (Hix, 2008: 58).

phase, which cannot work with democratic norms of nation states but has not yet been able to fully develop its own norms.

Basic argument, which practically tries to counter the notion of presence of democratic deficit at the EU level, comes from the assumption that the Union rests on double democratic legitimacy: through elections for the European parliament it is legitimised by citizens directly, and through the work of the Council of the European Union and European Council it is legitimised by national actors of the member states (Maurer, 2003: 59). Even if there is a democratic deficit, it is greatly diminished through profound changes these institutions have undertaken by way of treaty changes: Council and the European Parliament are co-legislators, qualified majority vote is used in a growing number of policy fields, the European Parliament has a strengthened role in influencing the constitution of the Commission, etc.

All of these arguments can persuade us that the democratic deficit is not an important issue for the EU, but at the end of the day, it is still posed as a problem by many. That leaves one no choice but to analyse the multitude of factors that can help influence the deficit debate, as well as to think about solutions that could eliminate one of the most profound problems European integration has encountered. Comitology is certainly such a factor.

3. Rise of the Democratic Deficit Debate

The concept of democratic deficit was first used by a British political scientist David Marquand in the late 1970s. He linked it to the strengthening of national executives at the expense of legislatures as a result of the European integration process (Magnette, 2007: 70). There are many causes of the democratic deficit, but among the main ones is the introduction and extension of qualified majority voting in the Council of the European Union, sanctioned by the adoption of the Single European Act (although it was carried out earlier). The decision to have some issues of common interest adopted by qualified majority rather than consensus, which had hitherto been the case, could, according to Marquand, lead to a situation in which a member state must adopt a policy despite opposition from its national parliament and representatives of its government acting in the Council of the European Union. Rupture of the link between decisions of national parliaments, which indirectly transfer the

sovereign will of their citizens, and the work of supranational European institutions, enhances the problem of democratic legitimacy of European decision-making process, because it cannot be controlled by veto-wielding member states. Eliminating the link between the decision-making of representatives of executives of nation states (who decide in the Council of the EU), and the consent of national parliaments, increased the ability to criticize European decisions. This was helped by a relatively weak position of the European Parliament in the European institutional structure.

Analysing the various criticisms regarding the lack of democratic legitimacy in decision-making process at the European level, Hix (2005: 177) points out several important sources. The democratic deficit at the European level occurs due to the combination of reduced powers of national parliaments and increased role of the executive authorities, combined with the relative weakness of the European Parliament, which is not able to compensate for the lost powers of national parliaments³. All that leads to a general lack of understanding of the EU among citizens of the member states and the consequent aversion to its work, which ultimately results in decision-making at the European level that is not supported or understood by the majority of European public opinion. This concept of democratic deficit is comprehensive and takes into account many different factors that are associated to each other or have significant mutual influence. Sources of democratic deficit are multiple and different, they are linked to costs and benefits of European decision-making, technocratic acting of political actors, diminished role of citizens, lack of common goals and identity, as well as constitutional defects that are influenced by all those factors (Eriksen, Fossum, 2004: 436).

Another source of democratic deficit issue can be linked to treaty reforms which deepened and widened European integration process and transferred legislative competences from national parliaments to supranational institutions. The problem occurs when some of those competences are not transferred to the EP, as the only logical successor of national parliaments, but are instead given to the Council. With that, executive actors have been strengthened once more (Maurer, 2003: 56). This problem shows that democratic deficit is not just linked to the role of supranational bodies, but that it stems from the role national actors assume while working at the supranational level.

³ Lower result of the elections to the European Parliament also contributes to its relative weakness in fighting democratic deficit, because European elections are considered second-class elections fought over domestic rather than European issues.

3.1. Democratic Deficit and the Role of National and Supranational Institutions

Although it can be argued that democratic deficit can be linked solely to the working of the EU (Majone, 1998: 14), problems linked to it, the most important of which is the dominance of executive and administrative apparatus over representative institutions, are observable at the level of nation states as well. The democratic deficit is partly transferred from the national level of decision-making structure and is not born solely at the supranational level. The process of European integration has been used by executive and administrative actors at the national level to accumulate added competences to the detriment of national legislative bodies (Fella, 2002: 12), at the same time accusing supranational institutions of overreach in order to hide their role in diminishing the influence of representative bodies.

The problem of the democratic deficit of the European Union is strongly linked to the problem of weakening competences of national parliaments in the process of formulating, deliberating and adopting new rules and regulations. However, that weakening is not linked solely to the process of European integration, because it can be shown that the weakening of national parliaments started with domination of party elites in executive, instead of legislative bodies. In that regard, strengthening the role of national parliaments in the decision-making process of the EU is limited at best and detrimental to European integration at worst, because party majorities represented in national parliaments are much more interested in supporting their national governments led by their party leaders. The unwillingness of party members in parliaments to hold their party leaders in governments accountable shows that by strengthening the role of national parliaments at the European level one is strengthening the grip national governments have on the decision-making at that level. Another question is what stimulates members of national parliaments to act responsibly at the supranational level, when they are assessed by their electorate according to what they have done nationally (or even locally) and not by how they have contributed to common interests of a supranational entity.

The problem of democratic deficit cannot be related to national actors only, and each of the three relevant European institutions adds to it. The European Parliament's problem is a weak link between their work and citizens due to low turnout at European elections, while the role of the Commission is even more problematic because a link between its work and European citizens is practically non-existent. However, the most

problematic institution is the Council of the EU, mostly because of closed deliberations (despite its being a legislative institution), but also because of its complex framework and dependence on non-elected and non-accountable bodies such as working groups (populated with members of national public administrations) or COREPER (with its diplomatic-like procedures and secretive consensus-building).

At the very beginning, European institutional framework was not seen as a source of democratic deficit, since it was somehow logical to assume European institutions would be active in promoting and deepening of the integration process, which was a legitimate aspect of their work (Warleigh, 2003: 16). Today the assumption is completely different, as it assumes such an activism is what fuels the deficit by insisting on transferring ever more policies from the national to supranational level. Such activist stance is being slowed down and counteracted by tools like subsidiarity, proportionality, veto powers etc.

The democratic deficit debate started with a critique of increasing competences of the European Commission (and later of those of the Council mostly due to the lack of transparency) and diminishing powers of national and supranational representative bodies (Grubiša, 2007: 140). The debate continued with the issue of the lack of separation of powers; horizontally, based on the separation of different institutions, and vertically, based on the separation between subnational, national and supranational levels of governance (Warleigh, 2003: 8).

Indirectly elected Council of the EU is often considered as a sufficient factor of democratic accountability of the European decision-making process. However, the problem is that members of the Council have not been elected on the manifestos that declare what their policies will be when they work at the Council level, but how they will govern at the national level (Bogdanor, 2007: 9). Hence, the legitimacy of the Council is questionable, since the legitimacy citizens have given them through the electoral process does not span to the supranational level. Even if it does, legitimacy of the Council is still lacking, as it is a secretive body that works behind closed doors, which is the only example of a democratic legislative body that works in such a fashion (Hix, 2006a: 152). Furthermore, the Council cannot be considered a truly legislative body, as it sometimes works in executive capacity obfuscating further separation of powers at the European level (Hayes-Renshaw, Wallace, 2006).

4. Eliminating the Democratic Deficit

Although there are criticisms about the democratic nature of the EU, there are also attempts to eliminate, or at least lower, the accountability deficit of European integration. Bowman (2006), for example, shows that there are several distinct models for eliminating the democratic deficit. Sceptical model insists the problem occurs because of constant transfers of policies from national to supranational institutions. The solution is, therefore, linked with subsidiarity principle, and with returning of competences to national institutions that do not lack democratic mandate gained at elections. Revisionist model depends on historical approach of showing democracy can slowly grow in political systems that lack common *demos*, are not bound with overarching constitution and do not span finite territories (Bowman, 2006: 200). Democracy can, therefore, be built (or democratic deficit eliminated) by using old patterns in new conditions, or by building completely new modes of governing. Federalist approach to elimination of democratic deficit is based on the idea that complex environment (made complex due to globalisation) can be counteracted only by building complex polities. The most successful contemporary complex polity are federations, hence by using the federal model of institution-building citizens will be able to understand the complexity of the EU through a framework they are familiar with (separation of powers, bicameral legislatures, etc.).

Some authors (Hix, 2006b; Bartolini, 2006: 31) think that democratic deficit can be eliminated within current institutional framework, i.e. without the need for drastic changes of the nature of the EU. We only need to politicize the structure, by introducing political competition for offices. That would lead to stronger legislatures, as well as governments that are born from, and depend on, parliamentary approval and scrutiny. With that, a single sovereignty place would develop and citizens would be able to distinguish where their will resides (Gerring, Thacker, Moreno, 2009: 337).

In the end, four different approaches to reform the political system of the European Union can be distinguished: 1) return of some competences to the national decision-making institutions through enhanced observation of subsidiarity principle; 2) building of a European *demos* linked with common identity; 3) change in competences and scope of the EU; and 4) reform of the institutional framework of the EU, mostly by widening the role of representative bodies (Warleigh, 2003: 1).

This paper finds the problem of democratic deficit to be stemming from executive overreach and uses the fourth model for its elimination. The problem is found in comitology, which is used by the Council as a way of controlling the Commission, and keeping the Parliament out of development of implementing acts. Although the democratic deficit is most strongly linked with the European Parliament and its weak electoral legitimacy, it is a problem all EU institutions are part of. The Council is by all means a guilty party, if for nothing else than because of introduction of unaccountable bureaucratic elements in the decision-making process, which some authors call bureaucratic syndrome of the European decision-making (Grubiša, 2005: 62).

5. The Role of Comitology in the European Institutional Framework

The development of a new regulatory system is not linked only to adopting new rules, but also to implementing and controlling the implementation of those rules throughout a political system. It can be done through establishment of specialised independent governmental agencies or by developing technical, non-legislative acts that detail the ways of implementing the act in question, including possible derogations of certain aspects of said act. Despite the complex nature of the European Commission and its administrative bodies, it does not have the possibility of developing and controlling the implementation of EU law in member states. In order for it to be successful, Commission is helped by a vast system of committees, known in *eurojargon* as comitology⁴ (Majone, 2000: 280). Basically, comitology refers to a set of procedures through which EU member states control how the European Commission implements⁵ EU law.⁶ They exert that control via representatives of their national public administrations, who work under the guidance of national ministers. It is reasonable to

⁴ This paper will not argue why this name seems to be wrong, and will use it for simplicity reasons.

⁵ Implementing of EU laws lies squarely in the hands of member states. However, where law requires uniform conditions, the EU act confers implementing powers to the Commission, which does it with the help of different committees.

⁶ For more see www.ec.europa.eu/transparency/regcomitology/index.cfm?do=implementing.home

maintain that comitology primarily serves as a way for the Council to control the implementing work of the European Commission, although it was originally established as a forum for cooperation between national administrations of member states under the auspices of the European Commission (Bergström, 2005: 311).

The idea behind the work of comitology is present in almost all modern political systems that developed constitutional and legal rules governing the ways legislative acts should be detailed and implemented, because legislative bodies lack both the time and technical knowledge to account for all possibilities when developing a legislative act (Maxianova, Maxian Rusche, 2006: 207). Certain institutional framework similar to comitology exists in federal polities, i.e. in those political systems in which one level of governance adopts legislative acts, and another level has the obligation to implement them (Dehousse, 2003: 800). The problem with it, and that problem is more acute when comitology of the EU is observed, is that power is in the hands of the executive, i.e. power is reserved for the national and not only supranational level, but is wielded by national public administrations and ministries and not by representative bodies (either national parliaments or the European Parliament).

At the beginning, comitology was developed as a way for the Council to control the work of the European Commission in order to stop any centralization of power at the EU level (Dehousse, 2003: 809). In that way, legitimacy of an entire process should have been preserved because the final decision was still in the hands of national governments, because any disagreement between comitology and the Commission would lead to the Council deciding on the applicability of implementing rules. Nevertheless, proliferation of the system (at one point the Commission was served by over 300 different committees), secretive ways of deliberating, complexity of its structure and lack of interest by the national media and public, raised the level of critique over the lack of democratic accountability. It is therefore a prime example of institutional arrangement that enhances the problem of the democratic deficit of the EU.

How does comitology work? Being co-legislators in an ordinary legislative procedure, the Parliament and the Council lay down the rules for adoption of implementing acts in advance. If EU law stipulates the need for uniformity of implementing acts across the EU, the Commission is given the right to establish those acts, and is in that way helped by comitology (Fazekas, 2011: 58). Depending on a policy the act is regulating, the Commission is helped by one or more relevant committees. There is one

member of each member state's national public administration in these committees, specialised for a specific policy, who deliberate and then decide by qualified majority. Committees are chaired by the representative of the Commission, who has the exclusive right to propose the agenda. The Commission proposes the final implementing act and tries to incorporate the advice of the committee(s). If a committee does not give its opinion, or if it is not able to get the qualified majority, the Commission can proclaim their draft act as final. If a committee manages to reject it, the Commission can ask the Appeal Committee to review the decision, and in the end, can ask the Council to give the final saying. Again, if the Council does not act in allotted time the Commission can deem its act accepted (Regulation (EU) No 182/2011, 2011).

The Lisbon Treaty has brought certain changes to the way comitology system functions, not only in regard to its internal structure, but also in the way different EU institutions control or influence the comitology process. While before the Lisbon Treaty, the entire comitology process was in the hands of the European Commission and the Council, with Lisbon, and particularly with making the European Parliament a co-legislator, comitology practices needed to be reformed in a way that would guarantee the European Parliament a say in the matter. It was not realized in a way that would satisfy members of the European Parliament, despite new rules guaranteeing the Parliament's right to revocation and right to opposition the acts adopted under comitology procedure (Blom-Hansen, 2011: 19).

The procedural problem with adoption of implementing acts is seen right away. Despite the Parliament being a co-legislator, it does not have almost any way of influencing or controlling the details of the act, unlike the Council that has the final say if problems between the Commission and committees occur. Since it provides the Council as well as the governments of member states with a mechanism for control over the Commission, the committee system is often thought to manifest a conflict of interests (Bergström, 2005: 8). In order to remove that discrepancy, the Commission proposed and it was accepted, that the European Parliament be kept aware of every step of the comitology procedure, and to have a right to ask for an implementing act to be scrapped if members of Parliament suspect the Commission exceeded its own implementing powers. Although Article 5a of Regulation 1999/468/EC stipulates that the Commission should reject an implementing act if Parliament opposes it, in practice it can keep the act, only changing it slightly in order to make the

Parliament's opinion, and its possible recourse to the Court of Justice,⁷ void. Despite those attempts at meliorating the position of the European Parliament, and despite some authors (Héritier et al., 2013) showing the Parliament's relative success in being included in the comitology process, everyday work of different committees shows that both the European Commission and the Council can work in a way that is incompatible with democratic accountability via (national or supranational) representative bodies.

Comitology shows the dominance of the Council in the institutional framework of the EU, which makes the European Parliament wary of it as just another way of diminishing the role of representative bodies at the national and supranational levels. Main criticism of the EP is that the Council could change the nature of legislative act through implementing acts upon which the Parliament has almost no control (Neuhold, 2008) or that control is symbolic and constrained with insurmountable obstacles (Regulation, 2011).

The European Commission is also critical towards the comitology system, mostly because it rightly sees the vast system of committees as an obstacle to full implementing powers it should have as an executive body. In order to simplify the institutional framework of the EU, the Commission has kept advising on reforms that would lead to strict separation of responsibilities of different European institutions. The Council and the Parliament should stick to legislating new acts and setting new legislative frameworks, while the European Commission should have the sole right of developing secondary acts (including implementing acts). If such a separation of competences was strictly observed, there would be no need for different administrative committees, and the comitology system could be abolished (European Governance, 2001: 31). Such a reform would not only simplify the separation of powers, both horizontally and vertically, but would also remove one aspect of executive overreach and help diminish the democratic deficit at the European level.

Defenders of the comitology system say that including representatives of public administrations is not done in order to control the implementing process and keep the Commission in check, but is meant to establish the fora for deliberating, advising and cooperation between experts at the

⁷ For a detailed account of the European Parliament clash with the European Commission in regard to exceeding of implementing powers, see Maxianova, Maxian Rusche (2006), as well as cases C-14/06 and C-295/06 European Parliament and Kingdom of Denmark vs. Commission of the European Communities.

national and supranational levels in order for optimal problem-solving to occur (Tallberg, 2006: 204). In that way, comitology is nothing more than a part of a complex supranational-national structure aimed at improving the lives of European citizens. However, the way it works, the fact that it is not accountable to a single representative body, and the way it helps accumulate ever more power in the hands of executives, shows that comitology magnifies the democratic deficit of the EU and is therefore a problem for the Union as a whole. While what defenders claim could have been the case in the early years of comitology, Bergström has shown that the situation has now evolved from cooperation to control.

6. Conclusion

The paper has indicated several problems that help raise the issue of democratic accountability of the EU. One of the problems is the overemphasized role national executives have in the decision-making process of the EU, which is even more augmented if one takes into account the role of national public administrations. Representatives of national public administrations are not elected by citizens, they are not accountable to a single elected representative body, and their work behind closed doors does not help to suppress the view of the EU as a Byzantine structure that almost no citizen can easily navigate through (which the reusable olive oil bottle fiasco has clearly shown). Lack of legitimacy of a part of the European decision-making structure, be it only the part concerned with adopting implementing acts, enhances the suboptimal democracy of the entire Union. That lack of legitimacy stems not only from overcomplicated decision-making procedures, which do not allow citizens to understand the process under which they are governed, but is also connected to severing the links between citizens as originators of sovereign will and final rules under which they lead their lives.

Council of the EU with its ambivalent legislative-executive duality, European Council with its micromanagement of policies it was never meant to deal with, and comitology with its unaccountable way of defining what a legislative act actually means, show the unstoppable wave of executive overreach spreading from the national to supranational level of governance. As Weiler (1998: 54) has noted, the problem of unaccountability is a present threat in modern democracies and is mostly visible in rubber-stamping legislatures, and in faceless bureaucracies that have the

right of both formulating legislative proposals and once national parliaments accept them, implementing adopted laws through non-legislative acts. Having that in mind, comitology was probably unavoidable at the level of the European Union, but relative independence of the European Parliament is a *differentia specifica* that can preserve the supranational level of governance from a complete executive overreach that has already claimed victims at the national level, within member states.

Although the Commission has its own interests in mind when fighting against proliferation of committees and their ever-greater influence, the European Parliament, as well as national representative bodies, can find an ally in that institution, having in mind that the Parliament and the Commission share a natural link of trying to preserve and strengthen the European integration. As can be seen from the example of reusable olive oil bottles mentioned at the beginning of this article, views of the Council of the European Union towards supranational integration are ambivalent at times, and are mostly guided by desire to enhance the influence of governments. The media frenzy surrounding the Directive on olive oil bottles, and subsequent retreat by the European Commission, under the partial influence of some governments that were uninterested in the question while it was going through comitology process (mainly the government of the United Kingdom), shows the extent of autonomous influence the comitology process exerts. This example, as many others would show as well, points at lack of interest, understanding and transparency the comitology process gets, and shows the precarious role representatives of national administrations, who are under direct influence of their respective governments, have with regard to democratic accountability of the European decision-making process.

While national public administrations can, and sometimes do, help in pushing the European integration process further, there is always fear that their link to executive bodies (and in the end to chiefs of government through ministries and other executive organs), as well as the lack of accountability to weak national parliaments (and isolated European Parliament) could bring even more power to executives. That would be detrimental not only to the position of representative bodies in the institutional framework of the EU, but also to the link between the EU and its citizens. Without that link, the EU cannot build its democratic legitimacy and will not be able to perform as a complete polity in a rapidly changing world.

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NATIONAL PUBLIC ADMINISTRATIONS AND
THE DEMOCRATIC DEFICIT OF THE EUROPEAN UNION:
A COMITOLOGY CONUNDRUM

Summary

European Union is a complex political system whose institutional framework encompasses representatives of European citizens and member states, »eurobureaucracy« through the European Commission and different agencies, national parliamentarians, as well as members of national public administrations. Such a complex institutional arrangement is a by-product of constant reforms the European Union has gone through in order to include as many stakeholders as possible in its decision-making process, with the ultimate goal of delivering democratically adopted rules that have legitimacy in the eyes of its citizens. The democratic deficit of the European Union, however, is a sign that the European Union lacks full legitimacy of European citizens. The aim of the paper is to show that obscurity of certain parts of the decision-making process, the so-called comitology system, is a source of the democratic deficit. It shows the reasons why national public administrations have got involved in the decision-making process of the European Union, and the role they have in drafting legal acts and implementing measures, as well as in overseeing the proper implementation of adopted measures in member states. The paper also shows the reasons why comitology, as it now stands, is a threat to democratic accountability of the European Union, pointing to the working practices of the Council as the main source of that threat. Finally, it tries to suggest ways of reducing the democratic deficit of the European Union, not by excluding national public administrations but by empowering their representatives to work transparently.

Key words: democratic deficit, comitology, European Parliament, European Commission, European Council, executive overreach, national public administrations

JAVNE UPRAVE DRŽAVA ČLANICA
I DEMOKRATSKI DEFICIT EU:
PROBLEMI S KOMITOLOGIJOM

Sažetak

Europska unija je složen politički sustav čiji institucionalni okvir obuhvaća predstavnike građana Unije i država članica, »eurobirokraciju« putem Europske komisije i raznih agencija, članove nacionalnih parlamenata, kao i službenike javnih uprava država članica. Ovako složeno institucionalno uređenje nusprodukt je stalnih reformi koje Unija provodi kako bi u proces odlučivanja uključila što veći broj dionika, s ciljem da se propisi donose na demokratski način i imaju legitimitet u očima njezinih građana. Demokratski deficit EU znak je da joj nedostaje puni legitimitet koji joj bi trebali dati vlastiti građani. Analizira se netransparentnost pojedinih dijelova procesa odlučivanja, tzv. sustava komitologije, koja je jedan od uzroka demokratskog deficita. Pokazuje se zašto su se javne uprave država članica umiješale u proces odlučivanja na razini EU te uloga koju one imaju pri izradi nacrtu propisa i primjeni donesenih mjera, kao i pri nadzoru ispravnog provođenja usvojenih propisa u državama članicama. Objašnjava se razloge radi kojih je komitologija, u svojem današnjem obliku, prijetnja demokratskoj odgovornosti Unije, pokazujući da je trenutni način rada Europskog vijeća glavni izvor te prijetnje. Navode se mogući načini smanjivanja demokratskog deficita, ne tako da se javne uprave država članica EU isključe iz odlučivanja, već tako da se njihovim predstavnicima omogući transparentan rad.

Ključne riječi: demokratski deficit, komitologija, Europski parlament, Europska komisija, Europsko vijeće, supremacija izvršne vlasti, javne uprave država članica