



## ARTICLES

### RE-CONCEPTUALIZING AUTHORITY AND LEGITIMACY IN THE EU

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# ELECTORAL ACCOUNTABILITY IN THE EUROPEAN UNION: AN ANALYSIS OF THE EUROPEAN PARLIAMENT ELECTIONS WITH RESPECT TO THE EU'S POLITICAL DEFICIT

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ABSTRACT: This *Article* discusses the usefulness of the concept of accountability, and of *electoral* accountability more precisely, for the analysis of the European Union (EU). Starting from the idea that the EU does not suffer so much from a democratic deficit but rather from a *political* one, it argues that much more attention should be given to the concrete mechanisms through which EU decision-makers are held accountable. Among the latter, elections to the European Parliament (EP) are of special interest as they provide – at least in theory – the most direct channel for institutional accountability as well as the necessary incentives for political actors to act responsively. However, the declining turnout in European elections and the lack of knowledge of the EU on the part of voters reveal flaws in accountability at the EU level. The latter are attributed to the internal working of the EP and to certain features of the electoral system for the election of its members.

KEYWORDS: accountability – democratic deficit – European elections – European Parliament – legitimacy – transparency.

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## I. INTRODUCTION

The rejection of the European Constitutional Treaty by the French and Dutch voters in 2005, the outcome of the referendum in the United Kingdom on EU membership in 2016 and, more generally, the growing success of anti-EU parties are the most visible signs of a rampant legitimacy crisis of the EU. Beyond specific temporary circumstances that have aggravated citizens' distrust such as the economic crisis of 2007,<sup>1</sup> the EU indeed faces existential questions regarding its very *raison d'être* as well as its aims and functioning, with the threat of European disintegration looming on the horizon.<sup>2</sup> Against this backdrop, the objective of this *Article* is to explore the reasons why the direct election of the European Parliament (EP) and the continued expansion of its powers did not provide sufficient answers to the so-called "democratic deficit" of the EU. With the concept of accountability at the centre of this analysis, I argue that elections are not solely a mechanism through which citizens express policy preferences but also a means for them to hold governments accountable. However, the mechanisms of electoral accountability at the European level face major institutional and political obstacles that are responsible for the continued legitimacy crisis of the EU. The 2019 EP elections provide the empirical material on which my argument is built.

The rest of the *Article* is organised as follows. In the next section, I argue that the EU suffers more from a political deficit than from a genuinely democratic one. Then, I propose to put the concept of electoral accountability at the heart of the analysis of the democratic functioning of the EU. The following section explores the institutional and political features that limit the efficiency of electoral accountability mechanisms as a legitimizing tool. In closing, I discuss the results and highlight their significance for the future of the EU.

## II. EUROPEAN UNION: A DEMOCRATIC OR A POLITICAL DEFICIT?

There are many indicators of the popular distrust in, and, even, of the rise of hostile feelings towards the EU. Two are more particularly critical for the long-term legitimacy of the whole project: the rise of Eurosceptic parties calling for the (partial) dismantling of the EU,<sup>3</sup> on the one hand, and the low participation in EP elections, on the other.<sup>4</sup> Regarding the latter, even though the 2019 election saw an improvement with a turnout of 50.95 per cent (compared to 42.61 per cent five years earlier), the turnout compares poorly to what is usually observed in legislative and presidential elections in Member States. This sug-

<sup>1</sup> K. ARMINGEON, B. CEKA, *The Loss of Trust in the European Union During the Great Recession since 2007: The Role of Heuristics from the National Political System*, in *European Union Politics*, 2014, p. 82 *et seq.*

<sup>2</sup> E. JONES, *Towards a Theory of Disintegration*, in *Journal of European Public Policy*, 2018, p. 440 *et seq.*

<sup>3</sup> E. HERNÁNDEZ, H. KRIESI, *Turning Your Back on the EU. The Role of Eurosceptic Parties in the 2014 European Parliament Elections*, in *Electoral Studies*, 2016, p. 515 *et seq.*

<sup>4</sup> M. FRANKLIN, S.B. HOBOLT, *European Elections and the European Voter*, in J. RICARDSON, S. MAZEY (eds), *European Union: Power and Policy-Making*, London: Routledge, 2015, p. 399 *et seq.*

gests that the EU legitimacy crisis that emerged in the early 1990s has not disappeared and that the successive treaty reforms did not produce the expected benefits.<sup>5</sup>

The theme of a “democratic deficit” emerged in the 1990s to identify the profound imbalance between the EU’s growing powers and its incomplete democratic credentials.<sup>6</sup> From the foundation of the European Coal and Steel Community (ECSC) onwards, it was argued, the transfer of competences from the national to the supranational level happened at a much faster pace than the establishment of proper democratic mechanisms. The direct election of the EP starting in 1979 was an important move to create a direct link between citizens and EU institutions, but the powers of the EP were only consultative at the time. Since then, however, they have increased steadily and, as a result, the very idea of an EU democratic deficit can be called into question.<sup>7</sup>

Indeed, the aim of the latest revisions of the Treaties was to improve the democratic credentials of the EU, as made explicit in the Laeken Declaration on the future of the European Union of 15 December 2001. Continuing a trend that was already visible in the Treaties of Amsterdam and of Nice, the Treaty of Lisbon strengthened the role of the EP in the decision-making process of the EU as well its political control of the Commission. It also expanded the influence of national parliaments that now have a greater ability to scrutinise proposed EU law. Consequently, the EU today offers multiple channels of delegation and representation that greatly improve its democratic quality, at least from a *formal* perspective.<sup>8</sup> As a polity, it has federal features that allow comparisons with other political system such as that of Canada,<sup>9</sup> and the United States.<sup>10</sup> In the case of the EU, the constitutive territorial units (the Member States) are represented in the Council, whose members are accountable to the national parliaments, and the citizens by directly elected parliamentarians (see Art. 10 of the Treaty on the European Union). Most of the democratic gaps in this system have been filled in recent years, notably thanks to the publicity of votes in the Council and the increased role of the EP in the

<sup>5</sup> R.C. EICHENBERG, R.J. DALTON, *Post-Maastricht Blues: The Transformation of Citizen Support for European Integration, 1973–2004*, in *Acta Politica*, 2007, p. 128 *et seq.*

<sup>6</sup> The term “democratic deficit” was coined much earlier, but it truly began to cause controversy and entered the mainstream of political debate during the first half of the 1990s (i.e. in the aftermath of the Treaty of Maastricht).

<sup>7</sup> A. MORAVCSIK, *In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union*, in *JCMS: Journal of Common Market Studies*, 2002, p. 603 *et seq.*

<sup>8</sup> Some policy areas remain, however, outside of the scope of this democratization by “parliamentarization”. This is most notably the case for the Economic and Monetary Union and for the Common Foreign and Security Policy.

<sup>9</sup> A. VERDUN, *The Federal Features of the EU: Lessons from Canada*, in *Politics and Governance*, 2016, p. 100 *et seq.*

<sup>10</sup> R. SCHÜTZE, *From Dual to Cooperative Federalism. The Changing Structure of European Law*, Oxford: Oxford University Press, 2009, *passim*; S. FABBRINI, *Compound democracies. Why the EU and the US Are Becoming Similar*, Oxford: Oxford University Press, 2010, *passim*.

European Commission selection process.<sup>11</sup> Some limited elements of participatory democracy have even been introduced, such as the European citizens' initiative.<sup>12</sup> Following the adoption of the Treaty of Lisbon, one can therefore argue that most of the *formal* deficit of democracy has been addressed.<sup>13</sup>

Still, there is undoubtedly room for democratic improvements in the institutions and decision-making processes of the EU.<sup>14</sup> However, the important point here is that the current democratic crisis is not only – and perhaps not principally – a matter of institutional design and cannot therefore be solved through mere institutional engineering; it also relates to the actors' subjectivity and perceptions, starting with the citizens. If legitimacy is defined as a belief – “a belief by virtue of which persons exercising authority are lent prestige” –,<sup>15</sup> then the EU clearly lacks legitimacy whatever the qualities of its institutions. As pointed out before, the improvement of EU democratic features was accompanied not by increased support but, paradoxically, by growing scepticism – if not contempt – on the part of European citizens.<sup>16</sup>

In fact, the EU may not suffer so much from a democratic deficit but from a *political* one. As others have already argued, the EU lacks “democratic arenas for contestation” and appears to be insulated from political competition.<sup>17</sup> The temptation to rely on some form of “output legitimacy”,<sup>18</sup> and to highlight the benefits of the EU is not a satisfactory solution, even though this is what many EU leaders have been proposing following the tradition of building Europe “through concrete achievements”, as famously put in the Declaration of 9 May 1950 delivered by Robert Schuman.<sup>19</sup> The first problem with substantive forms of legitimacy is that they do not provide proper mechanisms to ensure that the government serves the citizens' true preferences: “a democracy would al-

<sup>11</sup> It has been noted however that, in the aftermath of the Eurozone crisis, the technocratic elements have been strengthened at the expense of *national* representative democracy in the field of economic and fiscal governance. See I. SÁNCHEZ-CUENCA, *From a Deficit of Democracy to a Technocratic Order: The Post-crisis Debate on Europe*, in *Annual Review of Political Science*, 2017, p. 351 et seq.

<sup>12</sup> E. MONAGHAN, *Assessing Participation and Democracy in the EU: The Case of the European Citizens' Initiative*, in *Perspectives on European Politics and Society*, 2012, p. 285 et seq.

<sup>13</sup> See however S. KRÖGER, D. FRIEDRICH, *Democratic Representation in the EU: Two Kinds of Subjectivity*, in *Journal of European Public Policy*, 2013, p. 171 et seq.

<sup>14</sup> See S. BARBOU DES PLACES (ed), *Democratising the Euro Area Through a Treaty?*, in *European Papers*, 2018, Vol. 3, No 1, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 7 et seq.

<sup>15</sup> M. WEBER, *The Theory of Social and Economic Organization*, New York: Free Press, 1964, p. 382.

<sup>16</sup> This paradox was notably pointed out by O. ROZENBERG, *L'influence du Parlement européen et l'indifférence de ses électeurs: une corrélation fallacieuse?*, in *Politique européenne*, 2009, p. 7 et seq. in the case of the EP.

<sup>17</sup> A. FØLLESDAL, S. HIX, *Why There Is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, in *JCMS: Journal of Common Market Studies*, 2006, p. 533 et seq.

<sup>18</sup> F. SCHARPF, *Governing in Europe: Effective and Democratic?*, Oxford: Oxford University Press, 1999, p. 13 et seq.

<sup>19</sup> Schuman Declaration of 9 May 1950, available at [europa.eu](http://europa.eu).

most definitely produce outcomes that are different to those produced by 'enlightened' technocrats. Hence, one problem for the EU is that its policy outcomes may not be those policies that would be preferred by a political majority after a debate".<sup>20</sup> Additionally, in the absence of explicit consent given to the government, efficient policies do not guarantee political support. For example, distrust towards the EU is also deep in countries that have clearly benefited from their membership.<sup>21</sup> In fact, the EU fuels a feeling of distance, of loss of control. It needs to give its citizens an active role. This is where the concept of accountability might be useful.

### III. CONCEPTUALIZING ACCOUNTABILITY

The concept of accountability is core to any serious analysis of democracy – or, more precisely, of representative democracy. However, it only recently entered the debate on democracy in the EU and did so with a narrow approach. Let me first stress that any definition of democracy implies that the government follows the people's preferences (i.e. that it shows responsiveness) and that some form of control – or accountability – is necessary for this to happen.<sup>22</sup> In other words, modern democracies can be described and analysed as systems designed to ensure government accountability. As emphasised by Manin: "It is the rendering of accounts that has constituted from the beginning the democratic component of representation".<sup>23</sup> What exactly does this imply for the study of the EU? I will first dig into the concept of accountability itself before applying it to the specific context of the EU.

The concept of accountability has recently become very popular and has consequently been taken in all kinds of directions. It is, for instance, sometimes considered to be an equivalent of neighbouring concepts such as "responsibility", "control" or "responsiveness". Faced with the risk of "conceptual stretching",<sup>24</sup> it has been argued that it is preferable to limit the use of the term to its core definition.<sup>25</sup> The original (etymological) meaning of accountability gives a first indication: it refers to the process of being called "to account" for one's actions by some authority and this is what accountability

<sup>20</sup> A. FØLLESDAL, S. HIX, *Why There Is a Democratic Deficit*, cit., p. 545.

<sup>21</sup> That said, it is clear that the EU also suffers from the multiple crises that have hindered its ability to deliver in the past years. See D. BRAUN, M. TAUSENDPFUND, *The Impact of the Euro Crisis on Citizens' Support for the European Union*, in *Journal of European Integration*, 2014, p. 231 *et seq.*

<sup>22</sup> A. PRZEWORSKI, S. C. STOKES, B. MANIN (eds), *Democracy, Accountability, and Representation*, Cambridge, New York: Cambridge University Press, 1999, p. 4.

<sup>23</sup> B. MANIN, *The Principles of Representative Government*, Cambridge: Cambridge University Press, 1997, *passim*. The wording in French is even more telling: "C'est la reedition des comptes qui, depuis l'origine, constitue l'élément démocratique fondamental du lien représentatif". See B. MANIN, *Principes du gouvernement représentatif*, Paris: Calmann-Levy, 1996, p. 301.

<sup>24</sup> G. SARTORI, *Concept Misformation in Comparative Politics*, in *American Political Science Review*, 1970, p. 1033 *et seq.*

<sup>25</sup> R. MULGAN, *Accountability: An Ever-Expanding Concept?*, in *Public Administration*, 2000, p. 555 *et seq.*

should fundamentally be understood as. In a nutshell, in politics, accountability relates to “the requirement for representatives to answer to the represented on the disposal of their powers and duties, act upon criticisms or requirements made of them, and accept (some) responsibility for failure, incompetence, or deceit”.<sup>26</sup>

Moving one step further, Mulgan argues convincingly that accountability has three fundamental features: externality, rectification, and authority.<sup>27</sup> Briefly:

1) Accountability is external, meaning that the account is given to some other person or body outside the body or person held accountable. In democratic politics, those who govern are distinct from (and thus accountable to) the “governed” or the “represented” (be it the voters, the citizens or the people).

2) Accountability involves “a process of rectification” in that one side, the one calling for account, seeks answers and rectification whereas the other side, the one being held accountable, responds and accepts sanctions (or rewards). Accountability thus involves social interaction and exchange, which generally takes the form of elections in democracies.

3) Thirdly, accountability implies “rights of authority”, i.e. those holding to account are asserting some form of higher legitimacy over those who are accountable (including the right to demand answers and impose sanctions). In politics, this authority lies with the people, as democracy is supposedly the government of the people.

As argued before, elections are a key component of accountability in democratic systems. While democracy is supposedly the “government by the people”, the contemporary form of government is undoubtedly representative. However, elections provide a channel for people to express their preferences and, even more importantly, give consent to their government. Technically, elections not only enable voters to choose who is going to govern them. They also allow them to sanction (or reward) those who govern them as they are elected for a limited period and elections are held on a recurring basis. As put by Le Sueur: “In a democracy, the ultimate form of public accountability is through elections”.<sup>28</sup> I should also stress that elections present all the features of accountability described before i.e. externality, exchange and authority. Externality is not the most obvious since the people is supposedly the sovereign in democratic systems. However, it has long been recognised that people’s sovereignty is a legal fiction and that power is in fact vested in the hands of a limited (though not entirely closed) political elite.<sup>29</sup> The people nevertheless retain the “rights of authority”, that is they are ultimately in charge of demanding answers and sanctioning those who govern. Finally, elections are by nature an interaction process where political offer and demand meet.

<sup>26</sup> J. BRADBURY, *Accountability*, in I. MCLEAN, A. McMILLAN (eds), *The Concise Oxford Dictionary of Politics*, Oxford: Oxford University Press, 2009, [www.oxfordreference.com](http://www.oxfordreference.com).

<sup>27</sup> R. MULGAN, *Accountability*, cit., pp. 555-556.

<sup>28</sup> A. LE SUEUR, *Accountability*, in P. CANE, J. CONAGHAN (eds), *The New Oxford Companion to Law*, Oxford: Oxford University Press, 2008, p. 7.

<sup>29</sup> See R. ARON, *Démocratie et totalitarisme*, Paris: Gallimard, 2007, p. 56.

According to Mulgan whom I follow closely again here, in practice accountability has two complementary sides.<sup>30</sup> On the one hand, it is a situation in which someone is responsible for things that happen and can give a satisfactory reason for them; it is more or less synonymous with answerability, blameworthiness, liability, and the expectation of account giving. As I will argue later, the EU has mostly focused on this dimension of accountability so far. This aspect is certainly highly desirable from a normative standpoint but it remains limited as to its effects and consequences. On the other hand, accountability can be taken to mean the degree to which what precedes actually happens. It relies ultimately on a sanction/reward mechanism, as in the phrase “being held accountable”. In other words, accountability does not only depend on the agent but also on the principal’s capacity and willingness to exercise its responsibility.

The beauty of elections is – at least in theory – that they provide both the most powerful institutional mechanism for accountability and the incentives for actors to be accountable. Indeed, elections have a dual nature: prospective and retrospective.<sup>31</sup> Through them, voters choose who will govern them but they can also express a retrospective judgement on the incumbents who they may sanction or reward. The dual nature of elections – and in particular the dimension of accountability – results from their repetition. Those who govern know that they will face the popular judgement in the next election. Since they are assumed to seek reelection, they rationally anticipate the voters’ judgement and are therefore incentivized to take their preferences into consideration.<sup>32</sup> Such a mechanism of electoral accountability is also important from the voters’ perspective. People (and voters in particular) do not have fixed (or purely exogenously determined) preferences regarding policy outcomes.<sup>33</sup> They form their opinions about which policy they want through iterative and deliberative processes. These opinions are likely to change depending on the circumstances and the justifications provided by those who govern. In other words, voters’ preferences are shaped by the democratic process itself at the core of which we find accountability in the double form of reason giving by politicians and sanction/reward giving by voters. While accountability has come to be considered the hallmark of democracy, its effectiveness in the context of the EU is highly questionable.

#### IV. MECHANISMS OF ACCOUNTABILITY IN THE EU AND THE EP ELECTIONS

While EP elections allow citizens to have a direct say on EU policy choices, they do not provide very efficient means for voters to hold EU decision-makers accountable, that is to

<sup>30</sup> R. MULGAN, *Accountability*, cit., p. 570.

<sup>31</sup> A. HEALY, N. MALHOTRA, *Retrospective Voting Reconsidered*, in *Annual Review of Political Science*, 2013, p. 285 *et seq.*

<sup>32</sup> B. MANIN, *The Principles*, cit., p. 178.

<sup>33</sup> J. ELSTER, *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences*, Cambridge: Cambridge University Press, 2015, p. 165 *et seq.*

reward or sanction them for their deeds. This situation results from both the structure of EU decision-making process and the political characteristics of these elections.

#### IV.1. EU COMPLEXITIES

The situation in the EU on the subject of accountability – as well as transparency – has changed a lot since the Commission published its White Paper on European Governance nearly 20 years ago.<sup>34</sup> Regarding accountability, the European Commission stressed the need to clarify the role of each institution in order to make decisions more transparent: “roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level”.<sup>35</sup>

Various developments in the past two decades have contributed to rendering the EU more accountable, especially if when considering the first dimension of the concept (answerability, blameworthiness, liability, and the expectation of account giving) identified in the preceding section.<sup>36</sup> Not only is the decision-making process increasingly open and transparent,<sup>37</sup> but there are new enforcement mechanisms, such as the EU ombudsman and the establishment of transparency registers, that insure that this is the case.<sup>38</sup> Besides, in line with the stated aim of the White Paper on European Governance “to communicate more actively with the general public on European issues”,<sup>39</sup> the communication policy of the European Union has been rethought although its efficiency remains limited.<sup>40</sup> This is not to say that everything is perfect at the EU level, and there are some drawbacks to transparency,<sup>41</sup> but the EU is undoubtedly doing much better than most national political systems and administrations in Europe.

<sup>34</sup> Commission, European Governance - A White Paper, COM(2001) 428 final.

<sup>35</sup> *Ibidem*.

<sup>36</sup> S. PEERS, M. COSTA, *Reassessing the Accountability of European Union Decentralized Agencies: Mind the Independence Gap*, in *European Public Law*, 2016, p. 645 et seq.; E.M. BUSUIOC, *European Agencies: Law and Practices of Accountability*, Oxford: Oxford University Press, 2013, *passim*; M.A.P. BOVENS, D. CURTIN, P. T HART (eds), *The Real World of EU Accountability: What Deficit?*, Oxford: Oxford University Press, 2010, *passim*.

<sup>37</sup> J. LODGE, *Transparency and EU Governance: Balancing Openness with Security*, in *Journal of Contemporary European Studies*, 2003, p. 95 et seq.

<sup>38</sup> P. MAGNETTE, *Contrôler l'Europe: Pouvoirs et Responsabilité Dans l'Union Européenne*, Bruxelles: Editions de l'Université de Bruxelles, 2003, *passim*.

<sup>39</sup> White Paper on European Governance, p. 9.

<sup>40</sup> F. FORET, *Légitimer l'Europe: Pouvoir et Symbolique à l'ère de La Gouvernance*, Paris: Presses de Sciences Po, 2008, p. 55 et seq.

<sup>41</sup> S. NOVAK, *The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union: The Silence of Ministers*, in *JCMS: Journal of Common Market Studies*, 2013, p. 1091 et seq.



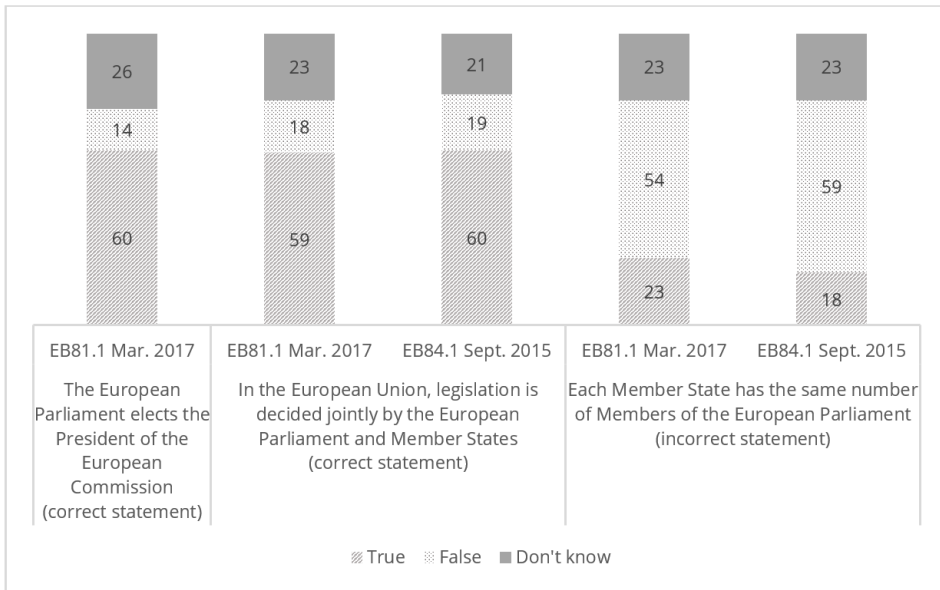


FIGURE 1. General knowledge of the European Parliament (Evolution September 2015-March 2017). Note: The wording of the question was “For each of the following statements about the EU could you please tell me whether you think it is true or false?” (Source: European Parliament Research Service, “Two years until the 2019 European elections. Special Eurobarometer of the European Parliament”, Brussels April 2017).

The problem of the EU here is not so much its lack of openness and transparency but the complexity of its decision-making process. On top of the complex triangular relationship between the Commission, the EP, and the Council of ministers, most decisions rely on a web of committees and agencies that defies the understanding of ordinary citizens. Besides, there is no real separation of powers,<sup>42</sup> as well as no clear distinction between legislative and executive acts.<sup>43</sup> In a nutshell, the multiplicity of actors and institutions involved as well as the “confusion of powers”<sup>44</sup> – vertically and horizontally – result in a dilution of responsibilities that is a major obstacle to effective accountability as it is difficult (if not impossible) for voters to know who is ultimately responsible and sanction (or reward) them. What is more, attempts to make the EU more democratic, for example by involving

<sup>42</sup> G. CONWAY, *Recovering a Separation of Powers in the European Union*, in *European Law Journal*, 2011, p. 304 et seq.

<sup>43</sup> H. HOFMANN, *Legislation, Delegation and Implementation under the Treaty of Lisbon: Typology Meets Reality*, in *European Law Journal*, 2009, p. 482 et seq.

<sup>44</sup> S. FABBRINI, *Europe's Future: Decoupling and Reforming*, Cambridge: Cambridge University Press, 2019, p. 105.

the national parliaments, may have unintended consequences and make the situation even worse. In fact, the multiple channels of representation in the EU can lead to a “democratic surplus” that is itself responsible for a democratic deficit.<sup>45</sup>

Additionally, the EU operates under a “multiple decision-making regime” that only makes things more complicated for citizens. This is true, of course, of the inter-institutional relations that follow complex and lengthy processes, but also for the functioning of the EP itself. The latter as well as the European elections deserve special attention. As shown by Figure 1, a large share of Europeans are not aware of the EP’s composition, legislative power or role in electing the President of the Commission. While accountability in the EU is a broader question, the lack of knowledge about the EP is a particular problem as it is supposed to be the only body connecting citizens directly to the supranational institutions. As argued by Paul Magnette, “la reddition des comptes reste incomplète, ou inconcevable quand elle ne peut déboucher en dernière instance sur une sanction électorale”.<sup>46</sup> Do the EP elections provide citizens with a satisfactory tool for accountability? And do voters actually use these elections to hold their representatives accountable?

#### IV.2. THE DEFICIENCIES OF ELECTORAL ACCOUNTABILITY

The empirical analysis of EP elections departs dramatically from the “ideal” of elections as an effective mechanism to sanction or reward incumbents. The standard interpretation of EP elections is that they are “second order” national contests.<sup>47</sup> This means that EP elections are more determined by domestic political cleavages than by alternatives originating in the EU. This is the case because national political systems decide most of what needs to be decided politically in the low salience context of “second-order elections” to the EP. The initial explanatory pattern is that people perceive there to be less at stake in second-order elections and therefore vote differently than in their first order counterpart. Consequently, it is possible to make several predictions about the results of such elections, in particular a lower turnout than at the national level, a decline in votes for government parties (and larger parties in general) and a higher vote share for smaller ones. With some small nuances, this second-order model remains the standard interpretation of EP elections.<sup>48</sup>

In terms of democratic accountability, the second-order nature of EP elections poses two problems. First, the weakness of popular participation indicates in itself that voters are not effectively exercising their right to hold their representatives accountable. The outcome of the election is therefore barely interpretable in terms of sanction or

<sup>45</sup> R. BELLAMY, S. KRÖGER, *Representation Deficits and Surpluses in EU Policy-Making*, in *Journal of European Integration*, 2013, p. 477 et seq.

<sup>46</sup> P. MAGNETTE, *Contrôler l'Europe*, cit., p. 159.

<sup>47</sup> K. REIF, H. SCHMITT, *Nine Second Order National Elections: A Conceptual Framework for the Analysis of European Elections Results*, in *European Journal of Political Research*, 1980, p. 3 et seq.

<sup>48</sup> L. DE SIO, M.N. FRANKLIN, L. RUSSO (eds), *The European Parliament Elections of 2019*, Rome: Luiss University Press, 2019, pp. 57-70.

reward of the incumbents; and in turn, representatives are not really incentivised to be responsive to their voters given that there are so few voters. Second, empirical evidence suggests that voters sanction first-order national incumbents, i.e. national governments. The focus on national partisan competition and national issues, which tends to result in the decline in votes for the national government, only diminishes the chances that voters would be interested in holding MEPs [è la prima volt ache viene usato l'acronimo, mettere per esteso] accountable. As a matter of fact, the analysis of EP elections seldom considers the possibility of retrospective voting. When it does, it is to assess the impact on electoral outcomes of the national economic performance not that of the EU.<sup>49</sup> This is, however, a research blind spot that needs further investigation as there is some empirical evidence suggesting that MEPs' parliamentary performance matters for their reselection and re-election chances.<sup>50</sup>

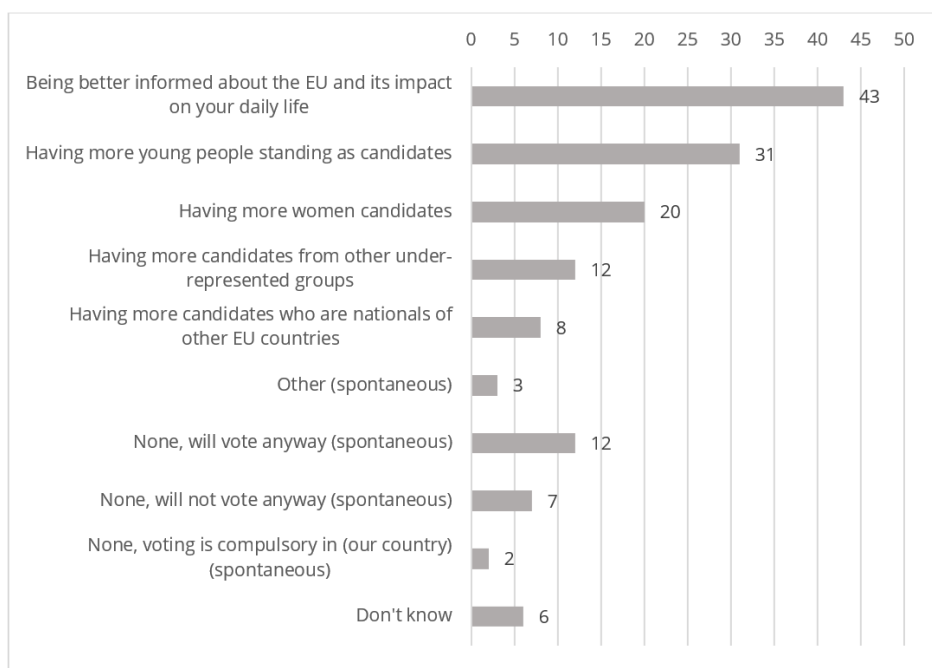


FIGURE 2. Factors of participation at the next EP elections (per cent). Note: The wording of the question was "The next European Parliament elections will be held in May 2019. Which of the following would make you more inclined to vote in these elections?" (maximum three answers) (N=27,474)

<sup>49</sup> T. KOUSSER, *Retrospective Voting and Strategic Behavior in European Parliament Elections*, in *Electoral Studies*, 2004, pp. 1 et seq.

<sup>50</sup> J. NAVARRO, *Le travail parlementaire, un investissement payant? Les Élections Comme Évaluation Rétrospective du Bilan des Députés Sortants*, in *Revue Internationale de Politique Comparée*, 2010, p. 141 et seq.

In general, however, voters have limited information about EU politics, which contributes to their low participation in EP elections. In a Eurobarometer survey conducted a few months before the 2019 election, being better informed about the EU and its impact on their daily life was the first element mentioned by respondents among the factors likely to make them more inclined to vote in the subsequent EP election.<sup>51</sup> More than four in ten respondents (43 per cent) chose this item, which was the one most mentioned in 20 countries.<sup>52</sup> In seven countries, the absolute majority of respondents said that being better informed about the EU and its impact would make them more inclined to vote in the next elections, with the highest proportions recorded in France (60 per cent), Sweden (66 per cent), and the Netherlands (67 per cent).

The lack of information – also regarding the real powers of the EP – is certainly an important explanation of the low turnout in European elections and their second-order nature. EU politics suffers from a deficit in media coverage.<sup>53</sup> Citizens are in general less informed about the process of EU policy-making, the EU political class and its actions, than they are about the same at the national level.<sup>54</sup> There are, however, other structural obstacles to a real electoral accountability in the EU that impede its full democratization.

Considering the first dimension of accountability, the EP is far from being as open and as transparent as one could expect and its system of voting (by a show of hands) prevents any possibility of monitoring MEPs' choices.<sup>55</sup> The practice of trilogues between the three main institutions means that significant parts of the EU's legislative process are conducted under a veil of secrecy.<sup>56</sup> Besides, the process of coalition formation inside the EP does not help to clarify responsibilities. While political group cohesion is relatively high, intra-party cohesion is lower than conventional wisdom would suggest when the main political groups are opposing.<sup>57</sup> The growing partisan fragmentation of the EP has made coalitions more difficult to form and more unstable, a phenomenon that is likely to be exacerbated after the 2019 election.<sup>58</sup> In other words, as

<sup>51</sup> Commission, *Special Eurobarometer 477 - Democracy and Elections*, 2008.

<sup>52</sup> They could give up to three responses.

<sup>53</sup> C.H. DE VREESE, 'Europe' in the News: A Cross-National Comparative Study of the News Coverage of Key EU Events, in *European Union Politics*, 2001, p. 283 et seq.

<sup>54</sup> N. BRACK, Y.S. RITTELMAYER, C. STANCULESCU, *L'Europe en Campagne Électorale: une Analyse Croisée des Médias Nationaux*, in *Politique européenne*, 2010, p. 173 et seq.

<sup>55</sup> P. SETTEMBRI, *Transparency and the EU Legislator: 'Let He Who Is Without Sin Cast the First Stone'*, in *JCMS: Journal of Common Market Studies*, 2005, p. 637 et seq.

<sup>56</sup> G.J. BRANDSMA, *Transparency of EU Informal Trilogues through Public Feedback in the European Parliament: Promise Unfulfilled*, in *Journal of European Public Policy*, 2019, p. 1464 et seq.

<sup>57</sup> S. BOWLER, G. McELROY, *Political Group Cohesion and 'Hurrah' Voting in the European Parliament*, in *Journal of European Public Policy*, 2015, p. 1355 et seq.

<sup>58</sup> On the political dynamic resulting from the 2019 EP elections, see E. CANNIZZARO, *The 2019 Elections and the Future Role of the European Parliament: Upsetting the Institutional Balance?*, in *European Papers*, 2019, Vol. 4, No 1, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 3 et seq.

Føllesdal and Hix have noted,<sup>59</sup> it is not so much that the EU lacks satisfying formal accountability mechanisms but that, in the absence of a clear majority-opposition divide, there is no governing party that the voters could wish to sanction or reward.

The institutional set-up of the EP elections strengthens the latter phenomenon. The lack of uniformity in the rules for these elections has often been lamented.<sup>60</sup> According to Costa, for instance, “quarante ans après [la première élection au suffrage direct], le Parlement européen souffre toujours de problèmes de représentativité démocratique en raison de la diversité des règles électorales nationales”.<sup>61</sup> The row surrounding the jailed or exiled Catalan leaders elected to the EP in June 2019 but unable to take their seat shows well the contradictions of supranational elections organised in a national setting.<sup>62</sup> However, beyond the legal intricacies and contradictions of the current situation, the biggest mismatch relates to the very principle of *European* elections being held in *national* constituencies. Such a system allows neither the individual responsibility of MEPs (with the partial exception of the few countries with preferential voting) nor that of European political groups. While voting in the EP increasingly follows partisan (i.e. transnational party groups) lines, *national* political parties select the candidates and run the electoral campaigns for the EP elections. There is therefore no clear connection – on the voters’ side – between their vote and the performance of incumbent parties in the EP. In turn, MEPs are not very much incentivised to be responsive to their voters given the small probability that the latter would sanction or reward them based on their past performance. In this respect, the creation of a Europe-wide electoral constituency that was alluded to by Ursula von der Leyen in her speech to the Parliament on 16 July 2019,<sup>63</sup> is certainly not a panacea but could nevertheless contribute to reducing the gap between the political process (of majority formation) at the EU level and the voters’ control over their representatives.

## V. CONCLUSION: FROM LEGITIMACY TO AUTHORITY

This article has argued in favour of a careful analysis of electoral accountability processes as a research strategy to better understand the nature of the EU’s political defi-

<sup>59</sup> A. FØLLESDAL, S. HIX, *Why There Is a Democratic Deficit*, cit., p. 533 et seq.

<sup>60</sup> See the European Parliament resolution of 11 November 2015 on the reform of the electoral law of the European Union.

<sup>61</sup> O. COSTA, *Histoire de la réforme électorale européenne et de l’Acte électoral de 1976. Démocratisation et légitimité politique*, Luxembourg: Office des publications de l’Union Européenne, 2016, p. 57.

<sup>62</sup> Several Catalan MEPs were not officially inducted as MEPs by the Spanish authorities as they were in exile or denied the right to leave prison to take a Constitutional oath, a prerequisite to taking up a parliamentary mandate in Spain. See B. RIOS, *EU advocate general: jailed Catalan leader has right to immunity as MEP-elect*, in *Euractiv*, 12 November 2019, [www.euractiv.com](http://www.euractiv.com).

<sup>63</sup> The issue of transnational lists also appears in Ursula von der Leyen, Mission Letter to Věra Jourová - European Commission Vice-President for Values and Transparency, [ec.europa.eu](http://ec.europa.eu), p. 4.

cit. Even though it only sketches preliminary ideas, it is already clear that the capacity of EP elections to improve the EU's accountability depends as much on institutional constraints as on the engagement of political actors. In practice, if accountability requires that those who govern are ready to face their responsibilities, it also rests on the capacity and the willingness of those who are governed, the voters or the citizens, to hold them accountable. A failure to do so entails some very negative consequences for the political system as a whole.

Indeed, since Max Weber, we know that political authority depends on some form of legitimacy. In a would-be democratic system such as the EU, electoral legitimacy is supposed to grant the government sufficient authority and capacity to act. This point was clearly perceived by political actors from all sides in the debates preceding the direct election to the EP. Both the opponents as well as the proponents of this reform recognized a direct and causal link between the legitimacy provided by the election and the power and influence of the EP. More precisely, they anticipated that such an important institutional step would strengthen the influence and autonomy of the EP. Two quotes from the discussion preceding the ratification of the 1976 Act in the French Senate illustrate this point:<sup>64</sup>

“Certes, l'Assemblée élue au suffrage universel direct ne détiendra pas plus de pouvoir que l'Assemblée actuelle. Mais de quelle autorité, de quelle influence sera-t-elle investie !”<sup>65</sup>

“Dès l'instant où l'élection des représentants des neuf pays, dont la France, au sein de l'Assemblée européenne aura lieu au suffrage universel, il va se créer une certaine dynamique [...] on nous imposera des clauses dont nous ne voulons pas, en particulier cette assemblée constituante qui serait totalement incompatible avec l'indépendance de notre pays.”<sup>66</sup>

As one can see, the common understanding when the EP direct election was first established was that the legitimacy conferred by the election would also provide the EP with an increased authority to exercise its competences (and allow it to go beyond its formal powers). If one takes the causal relationship that it is at the heart of this claim seriously, one should also ponder the extent to which the EP's ability to act effectively is diminished by the lack of awareness and enthusiasm of citizens. If electoral legitimacy can result in increased authority, then limited electoral legitimacy must logically lead to lessened authority! The lack of accountability could have another consequence. In the context of rising populism and anti-EU feelings, voters may be tempted to throw away not only the politicians but the system itself, as is often the case in newly established

<sup>64</sup> French Senate, *Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage*, 8 October 1976.

<sup>65</sup> Claude Mont (Rapporteur de la Commission des Affaires étrangères du Sénat), *Compte rendu intégral de la séance du 23 June 1977*, in *Journal officiel de la République française*, 24 June 1977, p. 1659.

<sup>66</sup> Pierre Carous, *ibidem*, p. 1670.

democracies.<sup>67</sup> In other words, the rejection of the EU, of which Brexit is only the apex, may well result from the lack (or the perception of a lack of) proper accountability mechanisms that would offer citizens alternative policy options and a capacity to change the course of the EU.

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<sup>67</sup> M.W. SVOLIK, *Learning to Love Democracy: Electoral Accountability and the Success of Democracy*, in *American Journal of Political Science*, 2013, p. 685 *et seq.*

