From the (difficult) rappresentation to the (difficult) participation: 
the desirable strengthening of democracy in the EU

I.

The European institutions are frequently accused of lack of democracy, as they are unrepresentative of the European citizens; situation which is often summarized by the phrase „democratic deficit” of the European Union.

The Treaty of Lisbon should be a step forward towards strengthening the democracy of the European Union, but, beyond texts and good wishes, do the innovations set forth by the reviewed Treaties really innovate the EU legal system? Do they concretely solve the democratic deficit? do they really increase for EU citizens the opportunities of sharing and participating in taking political decisions within the European competence? Are the European people sovereign?

It is clear that here, as far as I modestly know, it is not possible to provide (nor perhaps assume) responses, however, the intention is to highlight some „clues” on the path which, following the Treaty of Lisbon, the European institutions have taken to bring the „peoples of Europe” together.

Path to follow even more carefully at this particular historical moment in which the global crisis, not only economical, is putting a strain on the same estate of the European legal system. Nowadays, granting more democracy in taking decisions at the European level, would ensure greater legitimacy,
and, therefore, more political influence, to the European institutions\(^3\). However, in this preamble, it is not possible to ignore, beyond the institutions introduced to strengthen democracy in the European Union, the practice of taking significant political choices for the „European community” by agreements between individual Members which effectively „bypass” the institutions of the EU. In fact, there are frequent summits (e.g. think about the recent summits between France and Germany) that seem, in some cases, have replaced the intergovernmental decision-making procedures. In this study, while analyzing the texts of treaties, it is not possible to ignore the scenery in which the EU rules operate: on the one hand Member States being in a crisis of sovereignty, many of whose choices are directed by markets and instructions received by institutions (without direct democratic legitimacy) such as the European Central Bank; on the other, however, too many times, at the same time, the EU institutions are deprived of their authority due to choices made by agreements of individual Member States\(^4\).

Being the above description an uneasy context, that it wouldn’t be honest to ignore, I now turn to analyse the state of democracy in the European institutions as provided for in the Treaties, as well as what kind of progress from the past has been made by the Treaty of Lisbon. Hoping that the strengthening of the democracy will lead to equal legitimacy able to resist to some grandstanding of individual Member States.

II.

Before reviewing the institutions introduced by the Treaties to create or strengthen the democracy in the European Union, it is perhaps useful to clarify the terms, tracing the major classical democratic models, perhaps known by everyone, but that in this study allow to clarify the different ways of achieving a democratic „system”, not only by the representation.

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\(^3\) In this sense, for instance, on 29 September 2011 after the Bundestag vote, which approved the reform of the European fund „save states”, German Economy Minister Wolfgang Schaeuble said „Europe has come out stronger from every crisis so far. It will happen this time too, although someone doubt about it. Europe is our future. «In the future, he added, would be very important to think on a president directly elected by EU citizens.»”

As known, the term democracy (from the Greek δέμος people and κράτος power) means “government by the people.” However, democracy is not frozen and can not be implemented just in one way: there are many ways and models that legal system have historically adopted, all characterized by the common goal of providing the people the power (more or less direct) of exercise its sovereignty.

The classical distinction between models of democracy is between direct democracy and representative democracy. That is on one hand, the oldest democracy (the Agora’s on, which nowadays strongly characterizes systems such as the Helvetic Confederation), in which people exercise their sovereignty directly. Citizens are not just voters who delegate their political representatives, but they also hold (more or less directly) the legislative power, being able to propose and vote directly ordinary and constitutional laws through legal institutions of popular consultation.

Echoing the thoughts of one of the leading theorists of the direct democracy, Jean-Jacques Rousseau, there is democracy (direct) when the “people are gathered together” and “in person” take political decisions, limiting the intervention of intermediaries (executive), that Rousseau called “people’s commissars.” In this conception, the representative democracy seemed to grind with direct democracy, as it would have altered the popular will that no intermediary can synthesize.

However, representative democracy is nowadays the most common model in Western legal systems. People exercise their sovereignty by electing representatives, who summarize the will of the governed ones. Laws are not directly voted by the people but by the legislative assembly in which the representatives sit. Of course in practice and in the various systems in history, representative democracies have taken different organizations: democracies, parliamentarians, presidential, semi presidential, etc.

As often happens talking about models, even considering the democratic ones, they are never “pure”, “crystallized”, as their definitions would require. It is thus clear that in all the legal complex systems, there are correctional institutes or that change the the theoretical model somehow. For instance, legal systems based on direct democracy always provide for a representative

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5 N. Bobbio, *Democrazia*, in *Enciclopedia Einaudi*, vol. IV, *ad vocem*.
component as well (also the model of Rousseau foresaw the „People’s Com-
missars”, or more recently, the abovementioned Helvetian system, where the
various referendums, proactive or oppositional, always operate in a legal sys-
tem with elected assemblies, representing different levels of territorial gov-
ernment). Therefore, also Constitutions which provide for representative
assemblies of the sovereign people (as for most of the European systems), al-
most always, require institutions of direct democracy, such as referendums.

Within the classical distinction, it is then possible to find another mod-
el, or perhaps, better, a sub-model commonly referred to as „participatory
democracy”\(^8\). The participatory democracy involves all the activities per-
formed by citizens, as individuals or as representatives of social groups, in
order to influence the management of public authorities, without, however,
that they result directly in legal acts that conclude a proceedings\(^9\); expression
of will, therefore, that do not necessarily produce decisive effects on the de-
cisions taken by the relevant institution, but that, however, have a role, above
all, politically considerable in directing the acts’ formation process of the
public authorities\(^10\). Proposals or opinions by which the authorities are in-
duced to consider, in order to take their decisions, a broader range of infor-
mation and ideas. Considerable influence as it is expressed by the holders of
sovereignty: the people. A dialogue between rulers and ruled, where, after
the exercise of the right to vote, voters return to exercise their sovereignty to-
wards the rulers, by indicating policy options to be taken, by participating in
the drawing up of the political act.

A modern case of implementation of the participatory democracy model
is notoriously identified in the „Participatory or participated Budget” which
is a kind of direct citizens’ participation to their town or community’s life:
the most famous recent experience of participatory budgeting is the city of
Porto Alegre (Brazil) – with more than one million inhabitants – which be-

\(^8\) As M. Luciani, *Democrazia rappresentativa e democrazia partecipativa*, in *La sovranità

\(^9\) A. Pizzorusso, *Democrazia partecipativa e attività parlamentare*, in *Parlamento istitu-
zioni democrazia*, Milano 1980, p. 133; and A. Valastro, *Partecipazione, politiche pubbliche,
diritti*, [in:] A. Valastro (a cura di), *Le regole della democrazia partecipativa. Itinerari per la
costruzione di un metodo di governo*, Napoli 2010, p. 17 ss.

astrid-online.it, (10.05.2012).
gan in 1989. The aim was to allow citizens to participate actively in the development and elaboration of town policy.

Participation is achieved firstly on a territorial basis: the town is divided into districts, and through public meetings citizens of each district declare their needs and priorities in the different areas of the public policy. The city council attends all meetings through a representative, in order to provide technical, legal, financial information with the intent to promote feasible proposals. At the end, each territorial or thematic group presents its priorities to the Planning Office, who prepare a draft budget, which shall take into account the priorities suggested by regional or thematic groups. The budget is finally approved by the City Council.

Most likely, participatory democracy do not have its own autonomy, as citizens are involved in various stages of the act processing, but in the end it is (almost) always a representative body which takes the final decision contained in the document.

Also for such reasons, participatory democracy should not be confused either with direct democracy, as people only participate and direct the institutions, but do not directly decide, in place of them.

Being these the classical models of democracy of modern constitutionalism – to simplify, I will not explore more specifically all theoretical variations that have occurred over time, often altering and making much more complex the system – now, it is possible to analyse the „democratic” institutions that the Community Treaties, yesterday, and the Treaty of Lisbon, today, introduced and developed in order to promote the connection between rulers and ruled, within one of the abovementioned schemes which, although different, are always democratic instruments: to the government of the people, in fact.

III.

Starting from the origins of EU legal system, in the founding Treaties, the accepted model, albeit very simple, was the representative one. Although,


12 M. Luciani, Democrazia rappresentativa e democrazia partecipativa, p. 186.
perhaps, it was already possible to argue that – with the Treaties of Rome in 1957 – the European Communities were equipped with a democratic organization (based on decisions made by governments democratically elected). The democratic legitimacy has been, in fact, created after the decision of 20 September 1976 in which the European Council established in Brussels, to make the European Parliament eligible by direct universal suffrage. After the entry into force of such decision on 1 July 1978, as known, the first elections were celebrated in June 1979. However, this representation could not influence the decisions of the Community policies, due to the limited role of Parliament.

A more concrete democratic legitimacy and an increased contact between peoples and European institutions, as known, were reached after the Maastricht Treaty, which established the European Community in 1992 (afterwards amended on this point by the Amsterdam Treaty of 1997). First element, although formal, of such approach – although just symbolic – has been the establishment of European citizenship, beyond the skills and content, which was an historical step in the recognition of the individuals within the Treaties, and their role and rights of representation and democratic participation\textsuperscript{13}. Rights exercisable directly against the Community institutions or within the Member States. Rights expression of democratic classical models, especially the representative and participatory ones.

The active and passive electoral capacity of the European Parliament are surely included in the representative model.

The right to petition the European Parliament and the right to appeal to the Ombudsman belong instead to the participatory model. In this sense, in fact, the petitions or complaints to the Ombudsman, although they do not allow a real citizen participation in the process of formation of an act or a decision of the European institutions, still they represented a first line with the EU institutions, allowing to activate the policy or action of the institutions on instances coming „from below“.

With the same logic are likely to be read other provisions introduced by Maastricht, which, although not fully corresponding with the peculiar institutions of the abovementioned democratic models, describe a kind of ap-

proach between institutions and citizens, encouraging the participation of the individual to the EU activities. For example, the right to address to the bodies in one of the official languages of the Union, which have promoted the possibility of European citizens to „dialogue” with EU bodies and understand their activities; or, furthermore, the right to access to records or documents, which made more transparent the EU activity and allowed greater information opportunities for citizens.

However, although there were institutions fostering the participatory democracy, the predominant democratic model in the Maastricht Treaty is the representative one, fundamentally based on the active and passive electorate for European citizens to the European Parliament. Starting from this remark, probably, arose the major criticisms regarding the EU democratic deficit, especially considering that the representation is linked to a body which has no significant decision-making functions in the definition of the EU policies. It is clear, in fact, that beyond the right to elect their representatives, in practice, there is the problem of the influence of political power that representatives are able to exercise in such a complex legal system, as the EU one. The representative democracy model would, in fact, that the elected representatives have actual decision-making power, in lieu of the sovereign represented.

IV.

The abovementioned critical, as known, was one of the premises to the Treaty of Rome which intended to create a Constitution for Europe. One of the main objectives of said Treaty was precisely to find a remedy to the aforementioned deficiencies, but, of course, by granting more power to the European institutions would have caused, accordingly, a wider transfer of sovereignty from the Member States\(^\text{14}\).

In the Lisbon Treaty the UE framework is very similar to the one set forth by the foresaken Constitutional Treaty, though without all the „federalist” symbols from which the latter was characterized. Perhaps, it is possible to say that the substance of the Constitutional Treaty did not changed, but it did so its shape.

\(^{14}\) As G. Guarino, op.cit., p. 53.
With specific reference to the democracy strengthening, the Treaty of Rome aimed at strengthening the role of national parliaments in the European architecture, and continuing to improve and guarantee the democratic legitimacy and transparency of the Union and its institutions, to bring them closer to the citizens of Member States. However, some institutions, and, in general, the framework of the Rome Treaty of 2004 have been confirmed by the Treaty of Lisbon. Despite having set aside the idea of having a Constitution, the existing Treaty has kept hoping to bring Member States’ citizens closer to the EU, and to strengthen their participation and representation.

Nowadays, the first two paragraphs of Article 10 of the EU Treaty specifically say: „1. The functioning of the Union shall be founded on representative democracy. 2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens”.

Therefore the representative democratic model of the EU (definitely related to the art. 20 TFEU on voting rights), has been applied, specifically, by strengthening the role of EU citizens’ representative body: the legislative power is now exercised by the Parliament „together with the Council,” according to the normal procedure, so that in most cases, they are on an equal footing.

Therefore, after Lisbon, the role of the popular representation body has been strengthened, and, accordingly, the EU democracy as well.

The democratic model of representation seems to have been strengthened by another provision of the aforementioned Article 10 of the EU Treaty, which in its last paragraph, provides that: „4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union”.

Thus, an express acknowledgment of the role of parties, which the classical doctrine of constitutional law consider as the primary instrument for processing the popular will15. The acknowledgment of such social formations’ role in building up a European political awareness, as well as spokesman for the will of citizens, seem to make a significant contribution in or-

der to strengthen the democratic institutions. Subject to, of course, the test in practice. That is, if really parties will better develop and maintain the functions granted them in the Treaty and impose themselves as interpreters of the popular will, on a large and complex level as the European one.

It is undeniable, however, that, following the Treaty of Lisbon, the EU democratic strengthening is getting developed through the confirmation and the introduction of institutions implementing the participatory democratic model16.

The abovementioned art. 10, in fact, providing for the EU representative democratic grounding, in paragraph 3, specifies that: „Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”. 

Said provision is connected to and develops many of the statements contained in the preamble and is also implemented in some institutions provided for in the TFEU.

In addition, special attention should be given to art. 11 of the EU Treaty, which (on paragraph 1) asks the European institutions to give „citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”.

The same Article (on paragraph 2) expressly grants a significant role to „representative associations and civil society”, which shall constantly speak with the institutions, by keeping „a transparent and regular dialogue „.

Moreover, compared to the abovementioned traditional participatory institutions (such as the petition or appeal to the Ombudsman), the Treaty of Lisbon introduces the institute actually most participatory in the „history” of European law (among other things already set forth in the „constitutional” Treaty in 2004, on art. I-47.4), i.e. the legislative initiative proposed by the EU citizens17. Art. 11, paragraph 4 of the EU Treaty (and Article 24 of TFEU) provides for such institution as follows:

„4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate

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proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.”

The aforementioned Article 24 basically refers, in turn, said proposal to a regulation adopted by the European Parliament and the Council in accordance with the ordinary legislative procedure. This regulation (No 211/2011) was published last 11 March 2011 in the Official Journal of the European Union, and will enter into force one year after enactment, that is 1 April 2012.

However, before moving quickly to analyze the regulation, said provision, by itself, has a primary meaning in order to evaluate a possible consolidation of democracy in the EU according to the analysed models.

Actually, such provision has to be considered as a significant „step forward” toward the democratic strengthening: it is an institution that allows citizens to participate in one of the most important functions of the EU, i.e. the legislative function. Even more important, as it refers to the initiative stage. Therefore, it allows European citizens to stimulate the European action in areas which peoples of Europe feel highly important.

Of course, the European institutions, and in particular the Commission, are not obliged (the EU Treaty states „to invite the Commission”) to submit a proposal. However, the political importance of a one million European citizens subscription belonging to different Member States seems more than a suggestion, being hard the Commission to ignore it. In fact probably the regulatory framework in which art. 11 paragraph 4 fits, could lead to suppose a real obligation to follow the initiative. Of course, practice is to be verified. The regulation governing the (more or less simple) procedure to submit the initiative will certainly have a considerable influence on the success of this institution and then on the EU democratic strengthening.

Currently, Regulation No 211 of 2011 (waiting for its complete implementation in 6 months) seems to have gone to the right direction. Without being too specific on the relevant discipline, roughly, the regulation governing the so called „European Citizens’ Initiative” (ECI) provides that the request, as mentioned, shall be submitted by at least one million EU citizens, belonging to at least one third of the Member States. Furthermore, the regulation provides (in one of its Annexes) a minimum number of signatures required for
each state, calculated in proportion to the number of deputies to the European Parliament of that country (eg. For Italy are 54,000; for Poland 37,500). The initiative must be submitted by a committee composed of at least 7 people from 7 different Member States.

One of the most important innovation is how to collect signatures. In fact, in addition to the collection by paper, for the first time, signatures will be collected via Internet. Promoters will record the proposal on-line, after that the Commission will have 3 months to rule on the admissibility of the recorded initiative. From that moment, promoters will have a period of 12 months to collect the required subscriptions.

Using Internet to strengthen democracy (especially the participatory one) of the EU and, more generally, of any Member State, is obviously an issue that would require an independent report (the so-called e-democracy). However, talking about participatory democracy, is clear as in order to facilitate the exchange of information and the manifestation of the people will through the network will certainly help implementing the institutions such as the popular initiative, and seems to be a significant tip and an important opportunity for the future.¹⁸

V.

The analysis of the institutions that allowed even a „modest” democracy within the EU institutions in origin, and those subsequently adopted by the most recent treaties – as compared with the classical democratic models of modern constitutionalism – seem to describe a development, which is based both in the past and nowadays, on the representative model, but which, especially more recently, seems to focus on increasing the participation model, which, as mentioned, has the advantage (if it will be really implemented in practice) to allow voters, the people, to express their political will, not only when voting, but also during the stages of formation of the political will: for instance, while making a EU regulation.

There are many skeptics who argue for a difficult implementation of participatory democracy, especially at European level, as for the extension and the difficulty to communicate and interact between the various peoples of

¹⁸ A. Valastro, Le regole della democrazia partecipativa, p. 48.
Europe. In *Democracy and Its Critics*, Robert Dahl\(^{19}\), observes that participatory democracy was possible in ancient times due to certain conditions, including limited sovereignty to a single city, whose population was low and rarely exceeded one hundred thousand inhabitants.

Perhaps, nowadays the difficulties that participatory democracy meets (as well as the representative democracy) could be overcome in the future by strengthening internet: a real new habitat, where the discussion and participation strengthen the democracy, also the representative one of those who are represented but still continue to exercise – even after the election of their representatives – their own sovereignty.

Having said that, however, beyond the provision of any technical and legal instrument, the objections which have been made in the introduction still remain. Namely, regardless of the innovations set forth by the Treaties, there is still the concrete demand to fill the meaning of the European democratic model (present and future), respecting the role and functions of the institutions, especially the European Parliament which is the headquarters of the popular representation.

Once again the commitment of all parties involved will be needed. First of all Member States, that is their will to cede part of their political sovereignty, at least as much as their economic sovereignty which has already been handed over.

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**Streszczenie**

*Od (trudnego) przedstawicielstwa do (trudnej) partycypacji: pożądane wzmocnienie demokracji w Unii Europejskiej*

Artykuł opisuje instytucje wprowadzone uprzednio przez traktaty ustanawiające Wspólnotę Europejską, a obecnie przez Traktat Lizboński, w celu wzmocnienia demokracji w ramach instytucji europejskich, promujące związek między rządzącymi a rządzonymi.

Opracowanie prowadzi do konkluzji, zgodnie z którą – w obecnym kontekście – wzmocnienie demokracji w Unii Europejskiej wydaje się pomijać wprowadzenie instytucji, które nie tylko promują demokrację przedstawicielską, lecz jednocześnie pozwalają na uczestnictwo obywateli w podejmowaniu decyzji po-

litycznych, wdrażając model demokracji partycypacyjnej. W tym sensie, pozytywnym przykładem jest wprowadzenie przez Traktat Lizboński inicjatywy ustawodawczej obywateli Unii Europejskiej. Właściwie, takie postanowienie powinno być uznane jako istotny „krok naprzód” w kierunku wzmocnienia demokracji. Jest to bowiem instytucja, która pozwala obywatełom na uczestnictwo w jednej z najważniejszych funkcji UE, tj. funkcji legislacyjnej, a na dodatek odnosi się do etapu zgłaszania projektów aktów ustawodawczych. Dlatego też, pozwala ona obywatełom UE na pobudzanie działań UE w obszarach, które uzna-ją oni za szczególnie istotne.