

# CAN THE EU BE A DEMOCRACY IF ITS MEMBER STATES ARE NOT?

JAAP HOEKSM  
EUROKNOW

TEPSA COMMENTARY  
02/2024



TEPSA

trans-  
european  
policy  
studies  
association



Co-funded by  
the European Union

## Introduction

The recent jurisprudence of the European Court of Justice (ECJ) concerning the identity of the European Union (EU) warrants the reopening of the stalled debate about 'the nature of the beast'. This comment posits that the EU has evolved to a democratic union of democratic states that can be described in terms of global governance as a democratic international organisation. In view of democratic backsliding, however, the following question must be addressed: can the EU be regarded as a democracy if (one or more of) its Member States are not?

## Opposing views

Seen in this perspective, the upcoming elections for the European Parliament in June will be decisive for the question as to what we are. Hungarian Prime Minister Viktor Orbán and sympathising parties in other Member States propagate the view that sovereign states cannot be forced to accept decisions from a higher authority. Just like the United Nations Security Council does not have the power to prescribe to its Member States how to act, the European Council cannot impose its will on the Member States of the Union. Each country retains the right to veto, and Brussels is not allowed to meddle in the internal affairs of its sovereign Member States.

Contrary to the sovereignists, the democrats argue that the EU is an organisation of democratic states, which also functions as a democracy of its own. They submit that, when two or more democratic states agree to share the exercise of sovereignty in ever wider fields with the view of attaining common goals, their organisation should respect similar demands of the rule of law and democracy as its Member States. They underline that the values of the EU are enshrined in Article 2 of the Treaty on

European Union (TEU) and that the EU is entitled if not obliged to defend and protect these values on behalf of its citizens.

## Pooling sovereignty

This conflict illustrates the evolution which the European polity has been undergoing since the foundation of the first Community in 1952. The present EU still contains a number of characteristics stemming from its original construction as an association of states. While the aim of the European Coal and Steel Community (ECSC) to prevent the renewed outbreak of war between the contracting parties may not have been unique, its method certainly was. The ECSC was the first association of states which applied the practice of pooling sovereignty. The participating states had learned the hard way that absolute sovereignty leads to absolute destruction and agreed to make the renewed outbreak of war between them practically impossible by transferring sovereignty over the raw materials for warfare to a higher authority.

## The democratisation of Europe

Seven decades onward, the higher authority has evolved to the present EU, comprising 27 Member States and around 450 million citizens. In the course of these 70 years, the EU has not been turned into a new federal state but has intensified and elaborated its dual entity approach. Learning by doing, the Member States realised that sharing the exercise of sovereignty is only feasible between democratic states. Countries like Greece, Portugal and Spain could only join the then-Communities after having transformed themselves from autocracies into constitutional democracies.

In its Conditionality Verdicts of 16 February, the ECJ summarised the evolution of the EU in a most enlightening manner. It observed that the Member States had first agreed on their common values and had subsequently applied these values to their organisation. In this way, they succeeded in overcoming the democratic deficit that characterised the early Communities. While the Member States of the European Communities described themselves in 1973 as a "Union of democratic States", it took the polity almost half a century to become a democracy of its own too. Thanks to the jurisprudence of the ECJ, it has become clear that the EU must respect similar standards of democracy and the rule of law as it requires the Member States to meet. In consequence, the EU may now be described in clear and transparent terms as a democratic Union of democratic States.

## Democratic backsliding

History has its twists and turns. The wave of democratic backsliding which recently swept over the world has also hit Europe. As a result, the United Kingdom elected to resume national sovereignty by leaving the EU in accordance with the new procedure of Article 50 TEU. Fearing the economic and financial consequences of such a move, other Member States decided to revert the EU to a traditional association of states without democratic aspirations. During the court proceedings concerning the conditionality verdicts, Hungary and Poland claimed that the rule of law competences, attributed to the European Commission in the Recovery and Resilience Facility, amounted to unwarranted interference in the internal affairs of sovereign states. In fact, they claimed to right to interpret European law in their own national manner and to develop their own version of 'illiberal democracy'.

## Defending the values of the Union

As the standards which the regressing Member States favour tend to fall short of those of the Lisbon Treaty and the EU, the notorious democratic deficit seems to be shifting from the Union to (a number of) Member States. This development raises the new question as to whether the EU can be regarded as a democracy if its Member States are not. In answering this question, it should be taken into account that Article 9 TEU instructs the Union to observe the principle of equality of its citizens. Within the EU polity, nationals of Member State A must be treated in the same way as those of Member State B. The values of the Union apply to all citizens and institutions of governance within the area of freedom, security and justice in an equal manner. Upholding the rule of law is a responsibility of both the national institutions of the Member States and of the communautarian institutions of the Union.

The present debate about the upcoming Hungarian Presidency of the Council of the EU demonstrates the intricacies of the challenge. While the European Parliament may rightfully regard itself as the voice of the citizens and as the champion of their right to equal treatment, it has no formal role in the procedure of Article 236 TFEU concerning the establishment of the list of Council configurations. As a result of the historical origins of the EU as an association of states, the responsibility in this area rests entirely with the European Council and the Council of the European Union. The decisive difference between the Communities of the past and the present Union is that the representatives of the Member States in these institutions are obliged to uphold the values of the Union too! As the Special European Council concerning the aid package for Ukraine held on 1 February 2024 demonstrated, dissenting Member States are no longer entitled to use their right of veto at will.

In conclusion, it may be suggested that the battle for the soul of Europe is far from over. Seen in this light, the European Parliament should do "whatever it takes" to prevent the democratic EU polity from regressing to an ordinary association of states!

All the opinions expressed in this publication are the sole view of the author, and do not represent the position of the Trans European Policy Studies Association (TEPSA) or of its Members.

Editing and formatting: Allegra Wirmer and Irene Rusconi (TEPSA).

---

*Jaap Hoeksma is Director of Euroknow. He is the creator of the board game Eurocracy and the author of several books on European democracy, notably *The Democratisation of the European Union*, *Eleven* and *The Hague 2023*.*

