Integration process in the European Communities and the European Union exemplifies the constant search for a compromise among various concepts represented by member states and scholars. The European Union in the 21st century is featured by two main trends. The first is enlargement incorporating the countries of East-Central Europe, the second is impossibility to carry out reforms rooted in deepening of cooperation of member states. The Treaty establishing a Constitution for Europe, a new general international agreement replacing majority of earlier primary law acts, might have been a symbol of reformatory concepts. However, it has not entered into force, as a result of objection of French and Dutch citizens expressed in the referendum in 2005. The second reformatory attempt is the Treaty of Lisbon.

This paper constitutes a contribution to discussion on main reforms introduced by the new treaty. The argument is based on three main theses. Firstly, the Treaty of Lisbon does not change a hybrid character of the European Union. Secondly, intergovernmental practices will still dominate in the EU system. Thirdly, democratic deficit as a feature of the system will not be significantly reduced. Main part of analysis is prefaced by general characterisation of the EU governance system.

The most important problem connected with the European Union relates to a regular identification of this specific integration structure. The key-issue is its internal decision-making process that creates a very complicated system of governance. A critical assessment of this phenomenon is connected with two questions: the first is evaluation of that system from a perspective of the role of member states (integration approach), the second is characterisation from a perspective of democracy (democratic approach). The term governance can be defined in many ways: as activity of formal governmental structures, as multiple mechanisms of so-

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cialisation and social control, as a “good rule” or as ruling by networks\(^2\). In this paper a system theory approach is used, equalling the governance to decision-making.

The system of decision-making in the European Union can be perceived with respect to two main features: primary role of member states and the democratic deficit. The first feature is strictly connected with the very reason of European integration after the Second World War. This reason is the convergence of interests of states that creates the tendency of ever closer cooperation and defines stages of integration. The economic interest seems to be the most important one is in this context while current situations in internal policies of states influence solutions chosen. Evolutionary integration process leading to a political union as well as an active role of international secretariats and Community/Union courts should be perceived as fulfilment of decisions made earlier by member states. The conditions of international cooperation, its institutionalisation and rules result from a relative bargaining power of states’ governments that do not give up the sovereignty but rather delegate its elements to the higher level in order to improve the efficiency of their actions. The delegation of monitoring and exercising of international agreements to international secretariats and courts is aimed at controlling of implementation of these agreements by other states. A primary role in the process of deepening and widening of integration is played by governments of the most important states and their cabinet members. Community/Union institutions and their officials are second-order participants of the game\(^3\).

This state-centric approach means in no way the total acceptance of the realist theory of international relations in context of European integration. The liberal intergovernmentalism (A. Moravcsik) seems to be a better way of explanation of contemporary situation in the EU. This way of thinking is rooted in a liberal paradigm of international relations that incorporates internal connections between the state and the individual (or the society). State’s behaviour in international politics is a direct result of interactions with “internal and transnational social context”. Ideas, interests and social institutions affect state’s actions by shaping its preferences and main social objectives, which in turn creates the basis for strategic calculations of governments\(^4\). The main thesis of liberal intergovernmentalism is perception of integration as an outcome of international bargaining where the main actors are governments that have ac-

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cess to information and ideas. These governments initiate, mediate and mobilize negotiations that are naturally effective and deprived of big transactional costs.

This explanation is based on three elements:

1) issue-specific interdependence clarifying national preferences;
2) bargaining process rooted in asymmetric interdependence;
3) institutional choice depending on the need of credible commitment.

The governments want to negotiate agreements that in the most effective way accomplish national preferences in a given area. This process is an outcome of pressures of internal “constituents” that react on impulses of international politics. National preferences should not be instable and appear only during negotiations (garbage can concept) or be rooted in ideological and geopolitical interests. They should rather reflect issue-specific patterns of substantive interdependence, i.e. depend on the very problem actually negotiated. There are four empirical proofs of employment of this method. First, the governments present different (not ideological) positions in different substantial areas. These positions refer to benefits expected from policy coordination compared with unilateral policy. Second, negotiators tend strictly to obey instructions they have received from the governments as a result of perception of interests. Third, the positions of member states are relatively stable. Possible flexibility is connected with the shape of the final package, positions of the most important states as well as internal (domestic) debate. Fourth, modifications appear if some structural changes in internal policy are foreseen.

Another basic point of European integration is a relative bargaining power of member states. The most important in this context is a trade interest: integration is an outcome of rational choices made by national leaders on the basis of economic factors. Interests of the biggest companies, macroeconomic preferences of governmental coalitions and impact of world market play a huge role. In process of the building of a new regime the asymmetry of national economies must therefore be taken into account.

Decisive role of national interests can be noticed also in shaping the institutional structure of the EU. In every phase of decision-making (initiative, mediation, mobilisation) independ-

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7 Ibidem, pp. 61-62.
ent institutions play rather minor role: their competences result from the will of member states that delegate powers to the Community/Union level only if they are not able to control observance of international obligations themselves. Member states tend to delegate powers also in other situations: when future decisions are not sure, when benefits from implementation of agreements by other partners are high and when the costs of delegation are acceptable. Institutional solutions create a kind of a hybrid system\(^{11}\). The source of the power of European law is after all the ratification of treaties connected with parliamentary assenting act. The European Union is becoming then the \textit{association} of states\(^{12}\).

The second feature of the system of governance in the EU, the democratic deficit, is an extremely discussed matter. A common definition of the democratic deficit in the EU refers to a limited influence of the addressees of decisions taken by EU governing bodies on the contents of those decisions. The reason for a deficit is a transfer of decision-making centre from state to the Community/Union level without creating a supplementary mechanism that could offer the citizens possibility of participation and control of EU institutions. The convergence of the EU and the state systems does not remove the deficit. Moreover, the democratic deficit is a two-level phenomenon. It appears at the level of the Community/Union and at the level of member states: in this sense there is \textit{a double democratic deficit} in the EU\(^{13}\).

The first level of the democratic deficit is characterised by two further elements: institutional deficit and participation deficit. Institutional deficit is an outcome of division of powers among EU institutions that prefers organs appointed without direct influence of citizens (Council, Commission). Participation deficit reflects lack of active participation of population which results from the size of the system (27 states with ca. 500 million citizens) reducing the possibility of real political discourse. The democratic deficit at the second level is caused by a transfer of many functions of the state to the Community/Union. Member states are no longer allowed to regulate some areas which leaves those areas uncontrolled and undermines the very quality of democracy\(^{14}\).

The most important reasons for democratic deficit are globalization and intensification of transborder interactions (external reason) as well as a specific for the EU dynamics of those

\(^{11}\) A. Moravcsik, K. Nicolaidis, \textit{op. cit.}, pp. 69-73, 76-77.


phenomena (internal reason)\textsuperscript{15}. The expression of the democratic deficit can be found in two dimensions: political participation of adult citizens and the level of freedom of participation in competitive decision-making process. There are six practical arguments for the existence of the democratic deficit in the EU:

1) indirect political accountability of the Commission (a main administrative institution);
2) a weak political role of the European Parliament (the only institution with direct political background resulting from elections);
3) a lack of lively and Europeanised system of intermediary institutions (European political parties, associations and media);
4) a strict division of initiative and legislation resulting in institutional (instead of political) tensions;
5) a character of integration process (negative integration prevails positive integration);
6) a lack of European demos and a rudimentary level of European society\textsuperscript{16}.

However, there are also arguments that negate the thesis of the democratic deficit in the EU. The size of the system, its institutional structure, multinationalism, lack of common history, culture, discourse and symbolism cannot be the very reason for lack of democracy. On the contrary: interinstitutional balance, indirect democratic control and a growing role of the European Parliament make European politics clean, transparent, efficient and functional for the needs of the citizen. The EU system should be confronted with real political systems and not with utopian idealistic visions\textsuperscript{17}.

A. Moravcsik presents arguments against the existence of the democratic deficit in the EU. A starting point is perception of the EU as not a superstate but rather as a loose confederation. Cooperation of member states refers first of all to some elements of economic sphere and aims at regulatory activities. A decentralised implementation of Community/Union policies takes place at member state level. Decision-making procedures in the EU require a qualified majority or even unanimity: thus is the EU not a parliamentary but a division-of-power system. Pluralistic features of the EU make it a diffuse governance system. Four strict arguments are used to reject the deficit thesis. First, the EU system has a double democratic legitimacy and is accountable to citizens directly by elections to the European Parliament and indirectly by elected national officials. The latter channel is much more important because of

\textsuperscript{16} M. G. Schmidt, Demokratietheorien, Opladen 2000, pp. 430-435.
greater identification and loyalty of citizens towards their own states as well as because of high professional level of bureaucrats. The Community/Union institutions work in situation of informative pluralism which helps them to optimize a final decision. Second, the EU system is based on technocracy and collects high scores in terms of substantive democratic legitimacy. Third, a direct participation of population in EU decision-making process is not high but still not lower than in member states. Moreover, a higher level of participation could be dysfunctional: social popularity of independent decision-makers is often bigger than popularity of political organs, the EU is specialized in matters that do not need wide social participation, social debates on EU problems must be decentralised and reflect a need for satisfaction of many social groups (in other case there is a threat of disintegration). Fourth, the EU governance system is aimed at finding the balance between liberal economic model and model of social protection. The opposition to liberal reforms at the EU level can be limited by decentralised approach to the construction of social protection systems in member states.18

The very existence of the European Union can be perceived as democratic added value. A bigger territorial scope results in appearance of great number of new ideas and interests which limits possibility of disregarding of interests of minority groups. Interests that cannot be effectively articulated at state level find new channels at the EU level.19

The most important questions concerning EU governance are then connected with its democratic character. First, if the European Union is not a state, why should it be democratic? Second, if the European Union represents a new “state-like” type of international organisation, what kind of democracy should it follow?

The European Union is not a state but a sui generis political and legal structure. Some elements of state are surely absent in the EU system: possibility of general management of political process, own army or monopoly of using force.20 There are two limitations of democracy in EU structure: the size and diversity of the system as well as its unfinished nature. The first results in variety of solutions proposed and the second impedes the identification of the citizen with the Community/Union as a system in statu nascendi.21 Democracy is not the only way of legitimisation: the others are for instance sovereignty or expansion of definition.

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18 Ibidem, pp. 606-619.
20 M. G. Schmidt, op. cit., pp. 430.
of state in order to incorporate the notion of welfare. There is also possibility to diversify sources of legitimacy in different areas of the Union’s activity.  

The EU system is determined not only by its own structure but also by perceptions of legitimate organisational rules. Constitutional logic of the EU can be perceived not only as logic of political community based on democratic assent of citizens but also as logic of international enterprise or supranational technocracy. Legitimacy depends then respectively on quality of member states’ governments or efficiency of the system.

The system of governance in the European Union reflects current state of integration process in Europe. A sovereign nation-state is still the most important participant of this process while the Community/Union continues to be a tool of achieving individual goals of every state. The role of the citizen is a second-order issue. This way formal structure and informal behaviour create a non-typical hybrid system. The European Union is a quasi-polity, nascent polity, emergent polity or would-be polity. The following part of the paper consists of comparative analysis of the Nice system and the Lisbon system with respect to sui generis character of the European Union in terms of integration and democratic perspective.

Hybridity of the EU system can be characterised by seven elements:

1) the legal construction perceived as the “third” system;
2) legal nature of decisions;
3) decision-making procedures;
4) institutional system;
5) the powers of the Community/Union;
6) the competences of supranational bodies;
7) the possibility of “self-conferral”.

The first element, the perception of the Nice EU as the “third” legal system, has its roots in the lack of treaty provisions dealing with the very nature of European construction. The basis of the specific character of the legal system can be found in Art. 10 TEC:

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty”. Yet the closer definition of the system must have been reached by the European Court of Justice (ECJ) in its famous judgements, with Costa case on the top\textsuperscript{27}. To put it briefly, it stems from the ECJ case law that Community law is a specific legal order independent from both international and national laws. What is more, national provisions cannot be applied unless they correspond with Community provisions (primacy principle).

There is no reform of this system in the Treaty of Lisbon. The provisions on the character of the legal system and primacy are still not to be found in the primary law. The only new factor is Declaration No. 17 concerning this issue: “The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law”. In the same declaration the opinion of the Council Legal Service is recalled: “It results from the case law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (…) there was no mention of primacy in the treaty. \textbf{It is still the case today}. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case law of the Court of Justice”. The result of the treaty changes is maintenance of the \textit{status quo}.

The hybridity of the second element, legal nature of decisions, is emphasised by the mixture of binding and non-binding acts. In general, the law adopted in the first EU pillar has a form of legally binding acts defined in Art. 249 TEC (regulations, directives, decisions). Recommendations and opinions are also legal acts, though they have no binding force. On the other hand, instruments of the second pillar (Common Foreign and Security Policy) should be characterised as “soft law”. Principles, general guidelines, common strategies, joint actions, common positions (Art. 13-15 TEU) and – with some limitations – international agreements (Art. 24 TEU) cannot be perceived as legal and legally binding acts. Also the instruments of the third pillar (Police and Judicial Cooperation in Criminal Matters): common positions, framework decisions and decisions are not created as legal acts. The only exception are conventions (Art. 34 TEU) that should be perceived as international law.

The system of the sources of EU law proposed in the Treaty of Lisbon is an outcome of deeper reforms. First of all, the division in three sub-systems (corresponding to three pillars) is abolished. Instead, common categories of acts that stem from the Nice first pillar system are created: regulations, directives, decisions (with binding force), recommendations and opinions (with no binding force)\textsuperscript{28}. A new element is a further classification of acts: legislative, delegated and implementing acts are strictly defined. On the other hand, in the field of Common Foreign and Security Policy – which loses the doctrinal name of the second pillar – the only act to be used is a decision. The most important feature of CFSP decision is its non-legislative character\textsuperscript{29}. Surely such a decision is also not a delegated or an implementing act. This could mean that a specific type of EU instrument is introduced that in fact does not differ from its counterparts in the Nice system.

The third element, decision-making procedures, is based on cooperation of intergovernmental and supranational institutions. The most important point is the balance between those two types of bodies. In the first pillar decisions are made by the European Parliament and the Council, the Council or – in case of powers conferred on it – the Commission. The most frequent voting method in the Council (still a key-institution) is based on a qualified majority rule (Art. 205 TEC). On the contrary, in the second and the third pillars the system is founded on a general unanimity principle (Art. 23, 34 TEU) where the role of the European Parliament and the Commission is very limited.

The Treaty of Lisbon does change the situation to a great extent. A new “ordinary legislative procedure” that corresponds to the Nice co-decision is established. The role of the European Parliament and the Commission is strengthened. The qualified majority voting system in the Council is reformed in order to find an agreement quicker and easier\textsuperscript{30}, but there is one exception: Common Foreign and Security Policy. In this sphere the general principle of unanimity is upheld\textsuperscript{31}. Thus the contradiction majority vs. unanimity will still exist.

The fourth element, institutional system, reflects the relative powers of member states. The composition of main institutions and bodies is based on the rule of the presence of each member state. Formal and real roles of states depend first of all on their population and bargaining power but still every state is “in” and can directly influence the final package. The

\textsuperscript{28} Cf. Art. 249-249d (288-292) TFEU (in brackets numbers of articles according to the new numbering introduced by the Treaty of Lisbon).
\textsuperscript{29} Cf. Art. 11, 12, 15b (24, 25, 31) TEU.
\textsuperscript{30} Cf. Art. 9c (16) TEU, Art. 205 (238) TFEU. There is also a new method of cancelling of decision-making, called “enhanced Ioannina compromise”.
\textsuperscript{31} Cf. Art. 11 (24) TEU.
only exception from that rule is the Commission after 2009 with less members than a total number of member states.

The principle “each member state is represented in each institution” is not disturbed in the Treaty of Lisbon, with the same exception concerning the Commission. What is important, the reform of the Commission is postponed till 2014 when the number of Commission members should correspond to two thirds of member states.

The fifth element, the division of powers between the European Union and member states, is based on some principles. The most important set of rules in this context can be found in Art. 5 and in Art. 10 TEC where principles of limited conferral, subsidiarity, proportionality and loyalty are established. The most important feature of the Nice system is the lack of strict definition of powers conferred on the EU. In the second and the third pillars the situation is also unclear\(^{32}\).

The Treaty of Lisbon is a great step towards clarification of division of powers. In Art. 3a (4) and in Art. 3b (5) TEU the four main principles are upheld. Declaration No. 18 in relation to the delimitation of competences and Declaration No. 24 concerning the legal personality of the European Union are added to underline the role of member states in the definition of conferral of powers. The Protocol on the application of the principles of subsidiarity and proportionality emphasises the role of member states’ internal bodies, first of all national parliaments, in EU decision-making process.

The most important reform is inclusion of a new title concerning categories and areas of Union competence\(^{33}\). A very strict classification of exclusive and shared competence is made in Art. 2b (3) and Art. 2c (4) TFEU. Exclusive competence of the Union relates to the following areas: customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine biological resources under the common fisheries policy; common commercial policy. It is added that “the Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope”. To shared competence belong the following fields: internal market; social policy (for the aspects defined in the treaty); economic, social and territorial cohesion; agriculture and fisheries (excluding the conservation of marine biological resources); environment; consumer protection; transport;

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\(^{32}\) Cf. Art. 11, 29 TEU.

\(^{33}\) Part I, Title I TFEU.
trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health matters (for the aspects defined in the treaty). What is more, “in the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs. (...) In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs”. As far as shared competence is concerned, the treaty consists only of principal areas. Apart from them, the Union shall share competence with the member states where the treaties confer on it a competence which does not relate to the areas with exclusive competence and to areas where the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the member states. The latter includes: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation. The Protocol on the exercise of shared competence is added to clarify that “when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area”.

The competence in the area of Common Foreign and Security Policy is defined in Art. 11 (24) TEU. The competence in this realm covers all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence. The implementation of CFSP shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the treaties for the exercise of the Union competences defined elsewhere. Similarly, the implementation of the policies listed elsewhere shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the treaties for the exercise of CFSP.

The sixth element, the competences of supranational bodies, is a decisive factor of decision-making system. In the Nice EU the powers of supranational political institutions, the European Parliament and the Commission, are particularly limited and controlled by intergovernmental bodies with a supreme position of the Council and the European Council. The

34 Cf. Art. 2e (6) TFEU. The Union shall also have some limited competences in the area of economic, employment and social policies of member states, cf. Art. 2a (2) and Art. 2d (5) TFEU.

35 Cf. Art. 25b (40) TEU.
only supranational organ of the second pillar, the High Representative for CFSP, is not equipped with real influence.

Institutional provisions of the Treaty of Lisbon create a very interesting part of reforms. The European Parliament is given new competences resulting from enlargement of co-decision procedure ("ordinary legislative procedure"). The Commission is also included in many new decision-making areas. The most important changes relate, however, to intergovernmental institutions that are featured with supranational elements: the European Council with the President, the Council with the High Representative of the Union for Foreign Affairs and Security Policy. The President of the European Council shall: chair it and drive forward its work; ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council; endeavour to facilitate cohesion and consensus within the European Council; present a report to the European Parliament after each of the meetings of the European Council. Moreover, at his level and in that capacity, the President shall ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy. On the other hand, the High Representative of the Union for Foreign Affairs and Security Policy shall: conduct the Union's common foreign and security policy; contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council - the same shall apply to the common security and defence policy; preside over the Foreign Affairs Council; be one of the Vice-Presidents of the Commission; ensure the consistency of the Union's external action; be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. Those unclear powers of the new bodies are reason for many disputes. Their real role will depend on many factors: positions of members states, political will and personalities. Before their start it is not possible to evaluate them in context of strengthening of supranational features of the EU system. It is also difficult to judge the growing role of national parliaments in decision-making process, particularly new obligations in areas of information and interparliamentary cooperation.

The seventh element, the possibility of conferral of powers on itself, is connected with autonomy or independence of EU institutions. The Nice system is very conservative in this

36 Cf. Art. 9b (15) TEU.
37 Cf. Art. 9c (18) TEU.
sphere. There are two ways of “self-conferral”. The first relates to Art. 308 TEC: “If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures”. The second way relates to the activities of the European Court of Justice and its case law that in many cases in fact creates new rules and principles.

The Treaty of Lisbon consists of some changes in context of the first way. Provisions of Art. 308 (352) TFEU make self-conferral much more difficult: “If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. (…) Using the procedure for monitoring the subsidiarity principle (…) the Commission shall draw national Parliaments' attention to proposals based on this Article. (…) Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation. (…) This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy (…)”. These provisions are supplemented by two declarations. According to the Declaration No. 41 on Article 308 of the Treaty on the Functioning of the European Union the reference to objectives of the Union does not refer exclusively to promoting peace, EU values and the well-being of EU people with respect to external action. In this connection it is recalled that legislative acts may not be adopted in the CFSP area. In the Declaration No. 42 on Article 308 of the Treaty on the Functioning of the European Union it is underlined that, in accordance with the settled case law of the Court of Justice, Art. 308 TFEU, “being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, this Article cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose”.
The next problem to be discussed are references of the Treaty of Lisbon to the democratic deficit. First of all, a new title (“Provisions on Democratic Principles”) is added to the Treaty on European Union. According to Art. 8 (9) TEU “in all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies”. The most important provisions can be found in Art. 8a (10) TEU: “The functioning of the Union shall be founded on representative democracy. (...) 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. (...) 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. (...) Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union”.

Institutional aspects are described in Art. 8b (11) TEU: “The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. (...) The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. (...) The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent. (...) 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 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 a citizens' initiative shall be determined in accordance with provisions adopted by the European Parliament and the Council, “including the minimum number of member states from which such citizens must come”.

The role of national parliaments in strengthening EU’s democracy is underlined in Art. 8c (12) TEU: “National Parliaments contribute actively to the good functioning of the Union: through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union; by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of

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39 Title II TEU.
40 Cf. Art. 21 (24) TFEU.
subsidiarity and proportionality; by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area (…); by taking part in the revision procedures of the Treaties (…); by being notified of applications for accession to the Union (…); by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union”.

All the reforms presented above give rise to the conclusion that the European Union after the Treaty of Lisbon is still a hybrid legal and political system with two main features: domination of member states and the democratic deficit. Strong intergovernmental elements of the Lisbon EU system can be found in eight phenomena. First, the primacy of EU law is still rooted only in case law of the European Court of Justice which makes the dispute between European and national constitutional courts up-to-date. Second, decisions made in the area of Common Foreign and Security Policy have non-legislative nature. The discussion on the character and obligations for member states arising from that policy is therefore not finished. Third, the unanimity is still the main principle in decision-making in the CFSP area. The role of the new High Representative is in this case probably strongly diminished. Fourth, there are still many blocking tools in the qualified majority voting in the Council. Some new methods are appearing, with “enhanced” Ioannina on the top. This makes the whole process more intransparent and strengthens the most powerful states. Fifth, every member state is still represented in every main institution. The only exception is the Commission after 2014 but member states, formally the European Council, are allowed to decide otherwise and maintain the current system. Sixth, the principles of conferral and the presumption of member states’ competence are strengthened while there is still no clear definition of shared competences. The tensions between the EU and national levels are expected. Seventh, self-conferral is more difficult than in the Nice system. The consent of the European Parliament is needed and special exceptions for Common Foreign and Security Policy are predicted. Eighth, the President of the European Council has only symbolic powers. The clarification of accountability and identification issues is still the task for the years to come.

The problem of the democratic deficit is not solved, either. Five phenomena reflect that question. First, the only directly elected institution is the European Parliament with no direct impact on EU policy. The other institutions need not have a stable support in parliamentary organ. Second, the European Parliament is still a “co-legislative” body. Its role is strengthened by enlargement of co-decision sphere but the institution is not comparable with national parliaments. Third, the Commission is still appointed mainly by member states. The results of
elections to the European Parliament must be taken into account with this respect but it is hardly imaginable to perceive the European Parliament as first player in that game. Fourth, intermediary institutions are still lacking. There is an institutional stimulus to create European political parties but there is no interest of population to participate in this process. Fifth, inter-institutional divisions are still more important than political divisions. The struggle between the European Parliament and the rest of institutions tends to be a constant element of decision-making process\textsuperscript{41}.

From a legal perspective the Treaty of Lisbon is a treaty amending and supplementing former international agreements constituting the Communities and the Union. Such a formula is aimed at simplifying the acceptance of the document by member states with parts of population strongly opposed to deepening of integration. The contents of the new treaty are to a great extent identical with the Treaty establishing a Constitution for Europe, which may explain troubles concerning ratification process in some member states. The Treaty of Lisbon is after all the agreement relating to almost every sphere of activity of the European Union. In fact the construction of the European Union and its foundations are not reformed in a revolutionary way. This is only a short step towards identification of the \textit{finalité politique}.

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\textsuperscript{41} Cf. M. G. Schmidt, \textit{op. cit.}, pp. 430-435.