

How to Increase Legitimacy in the European Union? The Concept of Multi-level Governance Legitimacy

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Karen De Jonghe is a PhD-student at the Faculty of Political and Social Sciences of the University of Antwerp. She previously worked for the Belgian Ministry of Foreign Affairs and is now employed at the European Commission. She can be contacted at de_jonghe_karen@hotmail.com or karen.de-jonghe@cec.eu.int.

Dr. **Peter Bursens** is assistant professor at the Faculty of Political and Social Sciences of the University of Antwerp, where he teaches European Integration and Foreign Policy Analysis. His research interests include the implementation of European policies, the concept of Europeanisation, EU and globalisation, multilevel environmental governance and legitimacy in the EU. He can be contacted at peter.bursens@ua.ac.be.

1. Introduction: the EU and Multi-Level Legitimacy

Today the European Union (EU) is confronted with two major challenges: *firstly*, the EU has to reform itself radically to ensure that an enlarged Union of 25 Member States will still be able to function efficiently and, *secondly*, the EU should become much more legitimate. This ongoing search for more legitimacy in the EU is the subject of this paper.

The paper represents the conceptual output of a wider research project on legitimacy in the EU¹. The basic research questions of this project are the following: “*what does legitimacy mean within an EU-context and how can it be increased?*” To answer these questions the project consists of five stages. *Firstly*, we want to join the debate on *whether the EU really suffers from a legitimacy problem* through the presentation of legitimacy indicators and the current debate on institutional reform. *Secondly*, before tackling the legitimacy problem on the European level, the project develops a *concept of legitimacy in political systems in general*. *Thirdly*, we will apply *our legitimacy concept to the EU as a multi-level governance system*. In this part we will elaborate on different features of such a multi-level governance legitimacy. *Fourthly*, these features of legitimacy will ultimately be the starting point to suggest theoretical strategies to enhance the legitimacy of the EU as a multi-level governance system. *Finally*, we intend to compare the theoretical solutions with political reality and feasibility by confronting our theoretical findings with every day practitioners of European politics.

This paper is confined to the second and third question, i.e. to the conceptualisation of legitimacy in general and within a multi-level governance system in particular. As such it will set out the framework for the further development of legitimacy enhancing strategies in the EU. We will therefore touch only briefly upon the operationalisation of the legitimacy-enhancing instruments and remain totally silent with respect to the political debate.

We start, however, with briefly illustrating our position that the EU indeed suffers from a legitimacy problem and that both academics and practitioners should explore a wide range of remedies to do something about it. Without claiming that statistics can give ultimate proof of the EU's legitimacy problem, we do share the opinion of many that data from public opinion surveys, voter turn-out, treaty ratifications and street protest can be used as indicators of a lack of social legitimacy in the EU.

First of all, consecutive Eurobarometer polls show that European citizens have got a rather low degree of trust in the European institutions. Eurobarometer 58, for instance reveals that only the European Parliament (59%), the European Court of Justice

¹ The broader project is sponsored by a grant from the Research Council of the University of Antwerp (BOF) and runs from 2002 until 2005.

(54%) and the European Commission (53%) are trusted by a majority of the European population. All other institutions drop well below 50% (Commission, 2002: 11). Even taking into account that the 'no opinion' category is often larger than the 'no trust' category, these figures rather strikingly point into the direction of a lack of legitimacy of EU institutions vis-à-vis EU citizens.

Secondly, Balme and Chabanet (2002: 6) have recently shown that since 1979 voter turn-out for European elections has been consistently much lower than turn-out for national elections. In addition, the European turn-out is decreasing faster than the average national turn-out. During the last elections for the European Parliament, hardly half of those who were allowed to vote eventually also showed up. These figures clearly reveal that the European Parliament is not considered as an institution worth of voting for. To the extent that this attitude stems from the perception that the European Parliament is not capable to deliver interesting or useful policy output, low voter turn-out figures can be used as an indicator for the lack of legitimacy.

Thirdly, the ratification problems with respect to the Treaty of Maastricht in Denmark (1992) and with respect to the Treaty of Nice in Ireland (2001) can be seen as indicators for the discontent of citizens with the state of legitimacy in the European Union. *"It had become apparent that there were widespread public misgivings about the nature of the Union and an unwillingness to entrust the continued governance of Europe to the elites by whom it had hitherto been dominated"* (Arnull 2002: 7).

Fourthly, *"People have become less willing to accept passively government by unaccountable elites. Public institutions and those who hold public office have become subject to an increasing level of critical scrutiny (Arnull, 2002: 7)"*. This can be illustrated by the rising amount of protests. Balme and Chabanet, for instance, demonstrate that the proportion of protests generated by European decisions is rapidly increasing: from 5% in 1992 towards 10% at the end of the nineties (Balme and Chabanet, 2002: 2). Protest actions, such as those during the gatherings of the European Council, clearly show that some are even willing to be actively engaged in demonstrations that explicitly target the EU's lack of legitimacy.

Besides having problems with its social legitimacy, the EU also struggles with institutional or formal legitimacy, that stems from the perceived insufficient legislative powers of the European Parliament, inadequate accountability of the European Commission and lack of transparency of the Council of Ministers. This aspect of legitimacy is not purely academic either: it has become one of the core issues of institutional reform. The European Council of Nice issued a 'Declaration on the Future of the European Union', recognising the need *"to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States"* (Council, 2000). One year later, the Belgian Presidency succeeded in having the 'Laeken Declaration' approved at the European Council of Laeken (2001). This declaration explicitly mentions that future institutional reform should deliver more 'democracy, transparency and

efficiency' in the EU (Council, 2001)'. The Laeken European Council also gave birth to the Convention on the Future of the European Union, meant to prepare the 2003/2004 Intergovernmental Conference (IGC). Following the 'Laeken Declaration', the Convention also considers democracy, transparency and efficiency among the most important points on its agenda. In July 2003, the European Convention presented its final report, taking the shape of a draft constitutional treaty and offering old and new strategies to enhance the legitimacy of the European integration project (Convention, 2003).

Parallel to these broader discussions on the future legitimate functioning of the EU, some European institutions also started internal reforms. During the European Council of Barcelona (2002) the Solana report was discussed, containing proposals to improve the functioning of the (European) Council (Solana, 2002). Following up on the Solana proposals, the Heads of State and Government took the first measures to improve the internal functioning of the European Council during their meeting in Sevilla (2002) (Presidency of the European Union, 2002). The internal reform of the European Commission, on the other hand, was launched in March 1999, after the discharge of the Commission Santer. In 2001, the European Commission issued its '*White Paper on European Governance*', mentioning seven principles that form the basis for its internal reform towards 'good governance': transparency, participation, legitimacy, efficiency, coherence, subsidiarity and proportionality (Commission, 2001). This short overview of the current debate on institutional reform clearly shows that, unlike in the past, negotiations not only deal with efficiency-enhancing plans, but also with legitimacy-increasing strategies.

In short, the presented overview demonstrated that many indicators point to - at least a perceived - lack of legitimacy in the EU. In addition, these introductory remarks have shown that the concept of legitimacy suffers from conceptual confusion. It has therefore become clear that, before making any suggestion to enhance the EU's legitimacy, we need to sort out the conceptualisation issue and answer the question 'What does legitimacy really mean in an EU context?' In paragraph 2, we therefore firstly deal with legitimacy in political systems at large. Only in paragraph 3, we will look at legitimacy in the EU, conceptualised as a multi-level governance political system.

2. The concept of legitimacy

What does the concept of legitimacy of a political system mean? What are the criteria that allow us to measure the extent to which a political system is legitimate? Are there different dimensions of legitimacy that can be distinguished in a political system? Which model of legitimacy fits which political system? And how can all these elements be incorporated in an integrated view on legitimacy? These questions will be tackled in the following paragraphs.

2.1 *The legitimacy concept*

What does the concept of legitimacy of a political system mean? Scientific enquiry into the nature of legitimacy is one of the oldest tasks of both normative and empirically oriented political science. Traditionally, **political philosophers** reflected on the conditions under which domination over others could be called legitimate. In this tradition the qualification ‘legitimate’ can be granted to structures of governance that have been established in accordance to certain rules and principles (Steffek, 2000: 5-6). These rules and principles are the criteria to which a political system must comply to be considered ‘legitimate’. Political philosophers (Rousseau, 1963; Horton, 1992) have long been searching for criteria to which a political system needs to comply in order to create an obligation for those submitted to that political authority, to obey. These criteria that have to be met by a political system in order to be perceived by the citizens as ‘right’ and which give them the feeling of ‘duty’ of obedience will be discussed in paragraph 2.2.

With the rise of **empirical social science** in the early 20th century a remarkable turn occurred in the thinking about legitimacy. Max Weber detached legitimacy from its philosophical background and conceptualised it as an empirical social fact: legitimacy became conceptualised as the phenomenon that people are willing to accept authority on normative grounds, no matter on which specific beliefs this acceptance is grounded. Legitimacy in Weber’s sense is the phenomenon that a social order enjoys “the prestige of being considered binding” (Steffek, 2000). Max Weber also asserted that authority became rationally legitimised in the 20th century. Under the conditions of enlightened modernity, legitimacy of authority usually emerges through a process of rational argumentation. Prescriptions that are viewed as legitimate, successfully link shared basic norms and ideas to practical rules. Political scientists of today still define legitimacy as the compliance of a political system with the traditional values to which it refers and that guarantees - using the definition of Max Weber - the adherence of the majority of the citizens by their passive tolerance or their active support.

2.2 *Criteria, dimensions and models of legitimacy*

As has been mentioned before, we need to establish a clear conceptualisation of the complex notion of legitimacy. In order to do so, we analytically distinguish between criteria, dimensions and models of legitimacy. The *criteria* refer to the conditions that a political system has to meet if it wants to be considered as a legitimate system. *Dimensions* refer to the idea that legitimacy has got hard institutional and soft cultural features. Finally, *models* refer to type of political system and to the style of governance. This paragraph describes these analytical categories, broadly inspired by the work of Beetham and Lord, while paragraph 2.3 will integrate them in one coherent whole, as such adding an integrative dimension to the Beetham and Lord classification.

With respect to the *criteria* we agree with Beetham and Lord (1998b: 3-7) who write that “*the starting point for any analysis of legitimacy... has to be an acknowledgment of its complexity, and of the full range of factors – rules, normative beliefs, actions and procedures – that contribute to making political authority rightful* (1998b: 5). Following these three elements, the degree of legitimacy of a political system can be ‘measured’ in relation to the degree a political system meets three criteria. These criteria are, firstly, that “*the political authority has to be acquired and exercised according to **established rules (legality)***”; secondly, that “*the rules are justifiable according to **socially accepted beliefs** about what is the rightful source of authority, and the proper ends and standards of government (**normative justifiability**)*”; and thirdly, that the positions of authority have to be confirmed by an explicit approval and confirmation of its subordinates and recognised by other legitimate authorities (**legitimation**). “*The first of these levels is that of rules; the second that of justifications grounded in beliefs; the third that of acts of consent of recognition*”(1998b: 4).

1. *Legality*: authority is acquired and exercised according to established rules
2. *Normative justifiability*: justifications grounded in beliefs about:
 - (a) the rightful source of political authority
 - (b) the proper ends and standards of government
3. *Legitimation*: acts of consent of recognition

Figure 1: three criteria of legitimacy

Next to the three criteria, we make a distinction between three *dimensions* of legitimacy. First of all, it is important to see that the legitimacy deficit comprises more than just the often quoted institutional democratic deficit (Abromeit, 1998; Lord, 1998; Weale and Nentwich, 1998; Kohler-Koch, 1999; Banchoff, 1999b). The legitimacy literature reveals that legitimacy has, besides structural institutional aspects, also cultural aspects, or to be more concrete, that besides democracy also the identification of the citizens with the political system is a necessary component of a legitimate political system. **Democracy** refers to structural aspects such as the representation of the population and the separation of powers; **identification** points to the popular acceptance of the project of the political authority that governs (the recognition by the people of the exertion of power) and to issues such as identity and citizenship.

This division between democracy and identification is widespread and is similar to the distinction Arnall makes between social and formal legitimacy. With **formal legitimacy**, he refers to “*the extent to which all the applicable legal requirements were satisfied when the entity in question was set up*” (cf. legislation) (Arnall, 2002:

3). With *social legitimacy*, he points to “the extent to which the allocation and exercise of authority within it commands *general acceptance*” (Arnall, 2002: 4).

Next to identification and democracy, Beetham and Lord add a third dimension: *performance*, defined as the relation of the political system to the ends or purposes it should serve and the effectiveness of its decision-making procedures. Again, similar to this dimension of performance, other authors, such as Scharpf use the concept of *output legitimacy* as opposed to *input legitimacy*. In this respect, input legitimacy or government by the people refers to a chain of accountability linking those governing to those governed; output legitimacy or government for the people, refers to the fact that the democratic process is an empty ritual without delivery (Scharpf, 2001; Arnall, 2002: 5; Menon and Weatherill, 2003: 115).

The three dimensions of Beetham and Lord (democracy, identification and performance) seem to represent all other dimensions that can be encountered in the literature. By using the concepts of Beetham and Lord, we pay tribute to their logical threefold division. The first main dimension is *democracy* and equals the concepts of institutional and formal legitimacy. We will use the concept of democracy from here on. The second dimension is *identification* and equals the concept of social legitimacy. Below we will use the concept of identification. The third dimension is *performance* and equals the concept of output- legitimacy. We will use the concept of performance in our analysis.

1. *democracy*: institutional or formal legitimacy
2. *identification* of the citizens with the European governance or social legitimacy
3. *performance* or output legitimacy

Figure 2: three dimensions of legitimacy

Finally, Beetham and Lord distinguish between three *models* of legitimacy. Firstly, the legitimacy model of the nation state, defined as *direct legitimacy* and based upon the liberal democratic conception of a nation state with two typical foundations: the recognition of the people as the source of political authority and the protection of rights in a large sense, as aim of the government. The second is the legitimacy model of an international organisation, defined as *indirect legitimacy*. Typical to the legitimacy of international institutions is that they refer more to individual states than to individual citizens. The legitimacy of international institutions emanates from the principle that the authority (of the international organisation) is legitimised when this is acknowledged and confirmed by other legitimate authorities (member states). Below, these two models will be discussed more in detail in relation to the EU as a multi-level political system.

Besides the direct and indirect model of legitimacy, Beetham and Lord define the model of *technocratic legitimacy*, with two typical features. Firstly, there is a focus on governmental performance. Secondly, the technocratic legitimacy assumes that public good is better realised by professionals that can not be subjected to shortcomings and disturbances of democratic and especially electoral politics. The source of justification of the authority lays in the special knowledge and expertise that officials have and that can be validated by a broader legitimacy of technological, professional and scientific knowledge within modern society (Beetham and Lord, 1998b)².

1. *direct* legitimacy of a nation state (through individual citizens)
2. *indirect* legitimacy of an international organisation (through member states)
3. *technocratic* legitimacy (through experts)

Figure 3: three models of legitimacy

Admittedly, this distinction between these three models of legitimacy is rather controversial. The first two models of legitimacy (direct and indirect legitimacy) are related to different kinds of political systems (respectively to a nation state and to an international organisation). The third model, however, is not related to one political system in particular, but rather to a specific style of governance. We will take this important consideration with us, when we analyse the legitimacy of the political system of the EU.

2.3 Integration of criteria, dimensions and models: towards a three-dimensional conceptualisation.

Figure 4 integrates the conceptual categories from the previous paragraph. The integration reflects the complexity of the legitimacy concept, both in terms of analysis and in terms of political consequences. Indeed, because of this complexity, not only the academic analysis, but also the legitimacy enhancing strategies should be complex. The presented three-dimensional conceptualisation, however, will prove to be a useful tool to make the necessary analysis and to act accordingly. What exactly

² This model is rather paternalistic, because it insinuates that only few have access to a limited form of knowledge and know what is good for society, while the majority of the population does not have access. But, as Beetham puts it, technocracy does not make an independent alternative to a democratic legitimacy, “*on which it remains parasitic, and to which it is therefore vulnerable once serious demands for popular authorisation and accountability are raised*”... “*Technocratic forms of rule suffer from the characteristic delusion that the decision-makers ‘know best’, that their decision are merely technical or instrumental, and that they can be assumed to be benevolent agents of the public good*” (Beetham and Lord, 1998b: 22).

does this scheme learn us? First of all, it draws attention to the fact that legitimacy has got a different nature depending on the political system: nation states differ in many aspects from international organisations and therefore need to correspond to different kinds of legitimacy. The same goes for technocratic systems (which can be both national and international). Secondly, in both kinds of political systems (national and international), legitimacy is characterised by structural (democracy) and cultural (identification) aspects. Since the systems are so different, also the dimensions are different. This means, for instance, that the analysis of the degree of democracy within a nation state is different from the one in an international organisation. Therefore, also strategies to increase the democratic character of international organisations must be different from those in nation states. Thirdly, to establish the ultimate degree of legitimacy of the, let's say, identification dimension of a nation state, we need to explore the criteria of normative justifiability and legitimation (the criterion of legality no really being an issue with respect to the dimension of identification). In addition, attempts to enhance the legitimacy of that particular identification dimension of a nation state also require strategies in terms of all three criteria.

models of legitimacy →	direct	indirect	technocratic
dimensions of legitimacy ↓			
democracy	legality normative justifiability legitimation	legality normative justifiability legitimation	legality normative justifiability legitimation
identification	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation
performance	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation

Figure 4: a three-dimensional conceptualisation of legitimacy through the integration of criteria, dimensions and models

It should be stressed again that in our view the direct and indirect models of legitimacy are linked to political systems (nation state or international organisation), in contrast with the technocratic legitimacy model, which is not linked to a particular political system but rather to a particular style of governance. This is important for the conceptualisation, because the political systems and the styles of governance can be mixed: a political system can have the model of indirect legitimacy (international organisation), and at the same time use the model of technocratic legitimacy with

regard to the style of governance. This distinction will become important when we will be applying this model to the political system of the EU.

In the next part of this paper we will apply this integrated concept of legitimacy to the European Union. Following our scheme, we therefore need to know first which model of legitimacy (direct or indirect?) is applicable to the political system under scrutiny and to analyse and which style of governance it uses (is it a technocratic model of legitimacy?). That is why, in the next paragraph, we will first give an analytic description of the political system of the EU, in order to decide upon the model of legitimacy that will be needed to analyse the degree of legitimacy within the system.

3. Legitimacy in the EU as a multi-level governance system

In this paragraph, we will firstly analyse the political system of the EU, by comparing it with the political systems of nation states and international organisations. Secondly, we will confront our conceptualisation of the political system of the EU with the different models of legitimacy: the direct legitimacy of nation states and the indirect legitimacy international organisations. In other words, in this paragraph, we will search for an operational definition of the concept of legitimacy, using the complex conceptualisation of legitimacy and taking into account the equally complex conceptualisation of the EU as a multi-level governance system.

3.1 The EU as a multi-level governance system

In our view, the EU should be conceptualised as a multi-level governance system. From this perspective the EU is composed of European, national, regional and local levels of governance. This means that the EU is not just a level that exists above the member states, but that it should be considered as an overall multi-level political system with a specific kind of governance on each of the constituent levels (Marks, 1996; Bernard, 2002). Nick Bernard (Bernard, 2002) describes this idea rather well: *“The EU could be described as a system of multi-level government. By multi-level government, I refer ...to a system of organisation of public power divided in two (or more) layers of government, where each layer retains autonomous decision-making power vis-à-vis the other(s)”*. To analyse the political system of the EU in more detail, it is useful to make the distinction between the multi-level character and the governance features.

The ***multi-level dimension*** can be found in the different institutions that take part in the European decision making. The EU is first of all composed of *a European level* with both an intergovernmental approach (e.g. the Council of Ministers and the European Council) and a supranational approach (e.g. the European Commission, the

European Parliament and the Court of Justice). *The national level* of the EU is represented in the member states (the national governments as well as the national parliaments). The *regional and local levels* of the EU are represented by regions (e.g. Belgian Regions or German Länder) and local authorities (cities and municipalities). This multi-level approach is also a very dynamic feature since decision-making procedures continuously jump from one level to another and sometimes even run on different levels at the same time (e.g. the co-decision procedure). It should be clear by now that this multi-level character of the EU calls for a multi-level legitimacy approach as well. Indeed, from the multi-level governance perspective, the EU is neither a pure international organisation nor a traditional nation state, but something in between.

The governance dimension of the EU as a multi-level governance system points to a specific way of governing within the overall European political system. European governance, i.e. European decision-making encompassing all levels, is characterised by some very particular governance features. First of all it takes place in networks rather than in hierarchical relationships. This network approach, secondly, causes a blurring of the distinction between public actors (official governmental institutions) and private actors (individuals, interest groups). This interest representation is characterised by a large diversity of strategies and styles. In addition, actors take part in the decision making, not necessarily because they are formally entitled to do so, but often because they can contribute to the solution of certain policy issues (problem solving capacity). Fourthly, the way of governing differs from one policy domain to another. The main policy fields (regulating policy, redistributing policy, civil liberties and security, foreign and defence policy and the EMU) each have different decision making procedures. Furthermore, the main policy output regards regulating policy sectors, not (re)distributing resources. Finally, besides traditional binding legislation, also alternative policy instruments are used: soft law, bench-marking, best practices, open method of coordination, ... Parallel with the multi-level element, these specific governance features of the EU need to be addressed with legitimacy strategies that take into account these governance particularities.

In short, both the multi-level and governance features of the EU should be taken into account, when analysing the legitimacy of the European system. Indeed, also Quermonne rightly mentions (2001: 18) that the features of democracy of a member state cannot be projected on the European Union without caution: *‘S’agissant de l’Union européenne, la donnée est spécifique. Aussi la transposition sans précaution des critères de la démocratie valables pour les Etats a parfois conduit à commettre des erreurs d’appréciation ou, à propos du déficit démocratique, à produire des exagérations. Dès l’origine, cette singularité appelait en effet d’autres critères, pas forcément illégitimes, en vue des objectifs poursuivis de l’entrepris’.*

3.2 Legitimacy in the EU as a multi-level governance system: multi-level governance legitimacy

Having defined the EU as a multi-level governance system, we now need to combine our legitimacy concept with the described particularities of this European political system. Starting from the multi-level features, we will firstly apply the direct and indirect legitimacy features to the EU.

The EU as an international organisation? The EU's indirect legitimacy

This section applies the three criteria (legality, legitimation and normative justifiability) to the EU, considering it as an international organisation. In this model of **indirect legitimacy**, legitimacy of the EU arises especially from the member states, and more precisely from their mutual negotiations and ratifications of the treaties and their permanent participation in the decision making procedures (*legitimation*). The Intergovernmental institutions of the EU, such as the European Council and the Council of Ministers, are the emanation of this indirect legitimacy: being composed of delegates that are legitimate representatives of their nation states, these bodies legitimise the decisions that are jointly taken. Secondly, the institutions and procedures of the EU correspond with the judicial systems of the member states (*legality*). Finally, we have to look at the performance indicators (or output legitimacy of the EU). Because member states are not any longer capable to guarantee the welfare of their citizens on their own, they try to transfer competencies to the European level. This indirect character, however, makes the degree of *normative justice* in this indirect model rather weak. The justifications rarely go further than a small elite group. “*It is not the direct cooperation of ordinary citizens that is required to maintain the authority of the UN, of GATT, of NATO, etc. but that of the member states and their officials and it is for the behaviour of these alone, therefore, that considerations of legitimacy are important*” (Beetham and Lord, 1998b: 11). From this, we can conclude that the EU, from the perspective of its international or intergovernmental nature, should be considered to be able to deliver legitimacy in terms of legitimation and legality, but that it will have trouble to live up to the normative justifiability criterion.

The EU as a nation state? The EU's direct legitimacy

However, as we have sketched out before, the EU is substantively more than an classical international organisation. Above all, the EU has got direct impact on the (European) citizens of all member states. It wants its citizens to accept the European laws as directly legally binding. This nation state characteristic of the EU explains why it is insufficient to say that the enforcement of European rules lays solely with

the national governments and that the authority of the member states is in itself sufficient to guarantee the obedience of the citizens to the EU. European citizens are expected to recognize the EU directly as a rightful source of authority. The EU, in other words, must become also able to live up in a direct way to the criterion of *normative justifiability*. An additional element that supports this view, is that besides intergovernmental institutions (the European Council and the Council of Ministers), the EU is also composed of supranational institutions (the European Commission the European Parliament and the European Court of Justice) which are expected to represent the general European concern. We could finally add that the EU also has a direct impact on the political legitimacy of the member states themselves: the legitimacy of the EU and those of the member states can be seen as two communicating barrels: "(...) *the legitimacy of political authority in the European political space is an interactive or 'two-level process' between the EU and its member states, which cannot be analysed at one level alone*" (Beetham and Lord, 1998b: 16). Of course, also within the direct perspective the *legality* and *legitimation* criteria remain important. However, it is mainly from a normative justifiability point of view, that the EU also needs to have **direct legitimacy** (although this does not imply that the model of national legitimacy can be applied without changes to the European Union) (Banchoff, 1999a). In a multi-level political system, direct and indirect legitimacy must go together.

In short, the conceptualisation of the EU from a multi-level governance approach (Marks, 1996), means that it is a political system that is multi-layered and that is characterised by more or less unique governance features. Both multi-layeredness (including European, national and regional levels) and the style of governance (including elements such as horizontal networks, strong involvement of private actors and the use of alternative policy instruments) have a major influence on the analysis of the legitimacy problem of the EU. It forces to rethink old recipes (Held, 1995). Strategies to reduce the gap must be compatible with the multi-level character of the integration process.

The EU as a multi-level governance system: towards multi-level governance legitimacy

The previous paragraphs have thus shown the need for **double legitimacy** (Held, 1995; Schmitter, 2001) or 'dual legitimation' (Dashwood, 2002: 37). The EU can be legitimised, through its partly international organisation character, with respect to legality and legitimation. Especially the normative justifiability, however, needs to be approached from the nation state characteristics. What the EU needs, in other words, is a **multi-level legitimacy**. This conclusion brings us again rather close to the work of Beetham and Lord. "*The indirect conception of legitimacy, based on the model of international institutions, which derives from legality at the one hand and recognition by other legitimate authorities on the other, is insufficient on its own to provide*

legitimacy for the institutions and decisional authority of the EU. At the same time a purely technocratic model of direct legitimacy is inadequate to the political character of its decision making. Only the direct form of legitimacy which is based upon the liberal democratic legitimacy of normative validity and legitimation will be able to ensure citizen support and loyalty to its authority. These are the criteria of effective performance in respect of agreed ends, democratic authorisation, accountability and representation, and agreement on the identity and boundaries of the political community, respectively”(Beetham and Lord, 1998b: 22).

Let us develop this argument further by re-introducing the **distinction between the multi-level and governance** features of the EU. From this point of view, legitimacy-enhancing strategies should be focused on the multi-level and governance aspects respectively. The combination of these multi-level and governance aspects of the EU with our Beetham-based models of legitimacy (direct, indirect and technocratic) brings us to a double conclusion. Firstly, the direct and indirect legitimacy models, which have already been attributed to particular political systems, can now be linked to the multi-level aspect of the EU. This link again shows very clear that the EU, by virtue of its multi-level character needs a double route to legitimacy. Secondly, the technocratic model of legitimacy, which has not been attributed to a particular political system, can now be linked to the governance aspect of the EU. With respect to the latter, however, we have to be careful. While it is certainly true that the EU-governance system has in many ways technocratic features (expertise based interest intermediation, the comitology system, technical negotiations within Council working parties...), it is much more than technocracy alone. What exactly it is, has already been partly described above as the EU governance system: a rather unique style composed of a mixture of features.

Figure 5 integrates the different aspects of legitimacy with the approach of the EU as a multi-level governance system. The next stage is to incorporate the dimensions and criteria in this multi-level governance legitimacy framework.

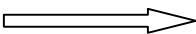


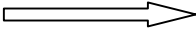
the EU as a multi-level governance system 	the multi-level aspect 	the governance aspect 
legitimacy models for the EU 	direct and indirect legitimacy or double legitimacy	technocratic legitimacy?

Figure 5: multi-level governance legitimacy in the EU

To what extent can we use the three dimensions of legitimacy (performance, democracy and identification) that we identified above to analyse the EU? Concerning the **performance** (or output legitimacy) dimension, several authors argued in the past that performance (as the relation to the ends or purposes the system

should serve and the effectiveness of its decision-making procedures) is indeed a useful analytical tool. Scharpf, for instance, stated convincingly that the distinction between input and output legitimacy remains crucial when analysing the legitimacy problems in the EU: *'(...) the Union needs to do more to involve the public in articulating its underlying values and formulating its substantive policies. But enhancing what is sometimes called the Union's 'input-legitimacy' in this way must not be allowed to jeopardise the output-legitimacy, which is the capacity to achieve its objectives. The balance can be a difficult one to strike (Arnold, 2002: 4-5)'*. Also Menon and Weatherill pointed out that *'input legitimacy must be seen as one important element in assessing the legitimacy in the EU, but it should be assessed in combination with an unavoidable appreciation of the virtues of output legitimacy. It is in the very nature of the Union that it invites such nuanced examination. And it is therefore quite proper to identify a road to legitimacy paved by the ability of the Union to deliver responses to problems that would be insoluble or even simply less effectively solved by individual states (Menon and Weatherill, 2003: 115)'*. Finally, also Lord mentioned the need to make the EU legitimate on both the input and output sides of governance (Lord and Magette, 2001: 6).

In addition, Lord and Beetham, among others, argued that that besides performance also democracy (authorisation, democratic accountability, democratic representation) and identity are relevant categories to study the EU's legitimacy. With respect to the EU, just as with respect to other political systems, the study of institutional aspects must be complemented with cultural aspects. Or formulated differently, besides the democracy deficit also the problematic identification with the European political system must be analysed. In the European context **democracy** refers to institutional aspects such as the representation of the European populations and citizens and the separation of powers among the European institutions. **Identification** points to the popular acceptance of the integration project and to issues such as a European identity, European citizenship and the European 'demos'. Also Jens Steffek mentions this dimension of identification: *'Supranational bodies like the EU try to create such feelings of belonging by invoking a common European culture and European values (2000: 28)'*³.

Finally, we need to re-introduce the established criteria for legitimacy in the EU multi-level governance framework. This means that legality, normative justifiability and legitimation should be analysed for each dimension and for both multi-level and governance aspects. Again, it should be stressed that, not only on a theoretical level but also with respect to the application to the EU, not all criteria are equally relevant. Especially the legality criterion is much more interesting for the democracy

³ In our analysis, we will use the concepts of performance, democracy and identification. At the same time, however, also the other concepts that have been mentioned before, can be applied to the EU. The dimensions of formal and social legitimacy, for instance are applicable. Arnold for instance stipulates that *it is almost universally recognised that formal legitimacy, while essential, is not sufficient. A healthy Union also requires social legitimacy if the fruits of its decision-making processes are to enjoy broad societal acceptance (2002: 4)'*.

dimension than for the other two dimensions. Figure 6 gives an overview of the overall conceptual framework.

the EU as a multi-level governance system →	legitimacy of the multi-level aspects	legitimacy of the governance aspects
dimensions of legitimacy ↓		
democracy	legality normative justifiability legitimation	legality normative justifiability legitimation
identification	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation
performance	(legality) normative justifiability legitimation	(legality) normative justifiability legitimation

Figure 6: multi-level governance legitimacy, including dimensions and criteria

The main message of this framework is that both legitimacy and the EU are complex phenomena. From this follows that, in order to increase the legitimacy of the EU, complex and multiple roads should be explored: legitimacy needs to be increased on each authority level of the EU (European, national, sub-national and local). It should equally be enhanced while taking into account the specific governance mode of the EU, which can be different for each level; furthermore EU-legitimacy is linked to democracy, identification and performance dimensions, which play at the different levels and with respect to a diverse set of governance features. Finally, while developing legitimacy-increasing strategies, the three criteria should always be present and applied to all dimensions, levels and governance features.

4. The operationalisation of multi-level governance legitimacy

Some authors have already proposed strategies to boost legitimacy in the EU, based on different aspects of legitimacy or based on particular characteristics of European institutions. Arnall and Wincott, for instance, discuss in detail instruments that influence legitimacy, such as transparency, simplification of the treaties, decentralisation, new governance modes and so on. These instruments differ according to the institutions and decision making systems they are intended for (Arnall, 2002). In this paragraph, we will engage in a similar exercise through an analysis of how the theoretical framework of multi-level governance legitimacy can work in practice. The main aim of this paragraph is to formulate concrete strategies to increase the European legitimacy. Figure 8 reproduces the framework of previous figures, now introducing, within six clusters, a series of strategies or instruments. The

presented overview is by no means meant to be exhaustive. It just wants to indicate in concrete terms, that the search for legitimacy in the EU must take into account the whole range of models, dimensions and criteria. The suggested instruments merely serve as examples.

the EU as a multi-level governance system →	legitimacy of the multi-level aspects	legitimacy of the governance aspects
dimensions of legitimacy ↓		
democracy	1. <ul style="list-style-type: none"> parliamentary control Commission as an emanation of parliamentary majority direct democracy treaty negotiations (convention method) ... 	2. <ul style="list-style-type: none"> technocratic degree of decisions control on comitology participation of private actors alternative policy instruments ...
identification	3. <ul style="list-style-type: none"> internalisation of multiple identities acceptance of multiple authority levels European citizenship European demos ... 	4. <ul style="list-style-type: none"> acceptance of the technocratic government confidence in other than political actors: media controle The incorporation of private actors in the decision making ...
performance	5. <ul style="list-style-type: none"> deliverance of multi-level instruments (levels, length, ...) ... 	6. <ul style="list-style-type: none"> deliverance of alternative instruments (actors involved, compliance, ...) ...

Figure 8: multi-level governance legitimacy in practice

Let us discuss briefly some of these instruments.

The reduction of the democratic deficit within a multi-level system (1) calls for an institutional analysis of the European political system. After that, legitimacy enhancing instruments can focus on legal and hard institutional aspects such as:

- parliamentary control: in a federal way, bicameral, quid will be the function of the Council of Ministers and the Committee of the Regions, European elections with European candidates, control through national parliaments, ...? (cf. Smith, 1996; Benz, 2001)
- the democratic basis of the European Commission: the emanation of a parliamentary majority, an elected president, quid will be the function of the Council, ...?)
- is direct democracy possible: direct election of the Commission president, European referenda, ...?
- How to organise future Treaty revisions: through the convention method, establishment of a European constitution, ...? (cf. Börzel and Risse, 2002).

Democratisation of the governance aspects of the European political system (2) puts more emphasis on institutional issues such as the technocratic character of decisions, control of the comitology system, and informal networks (Neuhold, 2001), the involvement of private actors in the policy making process, the regulatory character of European policies (Majone, 1999) and the use of alternative policy instruments in stead of legislation (open co-ordination, soft law, co-regulation, self-regulation, bench marking, best practices, ...).

To suggest solutions for the acceptance of *the multi-layerdness (3)* calls for the use of other questions and models. In this respect, issues will be treated such as the internalisation of multiple identities (local, regional, national, European) (Carey, 2001), the acceptance of the simultaneous authority of several governance levels, the issue of European citizenship and the core question of the existence of a European demos (Chryssochoou, 1998). These questions don't need an institutional but a cultural analysis and will therefore need inspiration from the constructivist school. It must be added that these cultural elements will be less malleable than the institutional elements, which must be taken into account in the analysis.

Identification with the governance features (4) brings the analysis to the acceptance of technocratic governance and the acceptance of stakeholders participating in the policy making process. It also refers to the trust in other than purely political actors (Jorgensen, 1997) and basically deals with the question whether it is acceptable that legitimacy also stems from control by the press and the incorporation of private actors. In other words, can checks and balances come from political institutions alone or can they also emanate from other actors? These strategies will have to be based on public opinion surveys and other data sets.

Finally, increased performance of the EU multi-level governance system raises questions about the deliverance possibilities of governance instruments that are necessarily complex. How can policies be effective when they are elaborated through decision-making mechanisms that cross up to four governance levels and that can take several years? How will policies be complied with when non-binding instruments are used? How can output legitimacy be increased by the involvement of a wide range of actors?

The integration of the six clusters will enable to formulate combined strategies, using at the same time institutional reform, a boost in performance and cultural socialisation processes.

5. Concluding remarks:

This paper fits into a broader research on legitimacy in the EU. The main objective is to formulate new avenues to help reducing the legitimacy problem. In order to

achieve this goal, the research is composed of five underlying questions. Is the EU really confronted with a legitimacy problem? What does legitimacy mean in political systems in general? What is the meaning of legitimacy in the EU? How can we proceed to suggest reforms towards more legitimacy in the EU? How feasible are these suggestions from a practical point of view? The second, third and, to a lesser extent, fourth question were the focus of this paper. Firstly, from the literature, we established general criteria, dimensions and models of democracy. Secondly, we defined the European Union as a multi-level governance political system. Thirdly, combining both theoretical exercises, we developed the model of multi-level governance legitimacy. Finally, we introduced some concrete strategies that, from our theoretical point of view, should be followed in order to reform the EU towards a more legitimate political system. Future research will now have to make these strategies more concrete, integrate them into a ‘master’ strategy and search for political feasibility.

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Anne BERGMANS

Hans BEYERS, secretaris

Stijn BOVY

Kristof GEERAERTS

Dave SINARDET

Jeff VAN OUYTSEL

Redactieadres:

PSW-PAPERS

Universiteitsplein 1

B-2610 Antwerpen (Wilrijk)

Fax: + 32 3 820 28 82

E-mail: pswpaper@uia.ac.be

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