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Representation in Demoicracies. What Input from Belgian Federalism for the Conference on the Future of Europe?

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Abstract

The Conference on the Future of Europe aims at revising the democratic institutions of the EU. This contribution assesses representation in the EU through the lens of demoicracy, focusing on how the demos and the demoi are represented and how this interacts with the executive-legislative balance and party politics. As the Belgian polity is a living case for the EU but often as flawed as the latter when it comes to democratic standards of representation, we examine whether and how reform proposals for the Belgian polity can inspire the Conference on the Future of Europe. We demonstrate that the direction demoicracies should head for when strengthening democratic representation includes a balanced representation of the demos and demoi via a bicameral system, a polity-wide constituency to represent the demos, involvement of the legislatives of the constituent units at the encompassing level, and a specific role for polity-wide parties.

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1 The Conference on the Future of Europe and Democratic Representation[2]

The European Union (EU) is work in progress. Every treaty reform of the past decennia has altered the multilevel architecture of the European polity. Institutional reforms brought changes in the allocation of competences and the decision-making mechanisms, affecting the power balance between the constituent units of the EU (the member states) and the encompassing European level. Ever since the negotiations that resulted in the Maastricht Treaty, the search for a more effective functioning of the EU has been accompanied by the quest for a more democratic functioning, too. The latest chapter in this story is the Conference on the Future of Europe. The European Commission, the European Parliament as well as the member states have called to once again address the quality of European democratic governance while discussing the future challenges of the EU.[3]

Indeed, the territorial organization of the EU in multiple levels affects the quality of its democratic functioning. In more general terms, responsiveness ('the adequate translation of citizens' preferences into public policies') may be hindered as cognitive capabilities prevent voters from making a clear distinction between government levels.[4] In addition, it is argued that too few Europeans see themselves as having multiple identities to fully express their democratic rights in the EU multilevel polity.[5] While the effects of the multilevel environment on responsiveness have not yet been tested systematically[6], it is safe to put that, even when these cognitive and affective requirements would be met, second order effects may still affect the very substance of representation in the EU.

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[2] We would like to thank Dirk Jörke and Jared Sonnicksen for their valuable comments on preliminary drafts and support developing this contribution.

[3] See the Joint Declaration on the Conference on the Future of Europe, available at https://futureu.europa.eu.

[4] T. Däubler, J. Müller and C. Stecker, 'Assessing Democratic Representation in Multi-level Democracies', (2018) 3 *West European Politics* 41, 542.

[5] A. Hurrelmann, 'Demoi-cratic citizenship in Europe: an impossible ideal?', (2015) 1 *Journal of European Public Policy* 22.

[6] S. Leon, 'Muddling up Political Systems? When Regionalization Blurs Democracy: Decentralization and Attribution of Responsibility', (2018) 3 *Journal of Common Market Studies* 56.

This contribution starts from the observation that whether a citizen is cognitively or affectively able to make the distinction between government levels, is actually not relevant when knowledge and identification cannot be fully exploited due to the way representation is organized. Indeed, a voter who intends to reward or sanction (a member of) the executive for the policies delivered will only be able to do so if that executive actor or party happens to run for office in his or her constituency. In other words, the nature of representation and of representative institutions such as the electoral rules and the party system affect the quality of democracy of the EU as a multilevel polity, even for well-informed voters who identify with multiple levels. At least two features can impede such multilevel democratic representation.[7] Firstly, dominance of executive over legislative actors puts constraints on the representative character of democratic government within and across government levels. Secondly, dominance of the multiple constituting demoi, or statespeople, over the encompassing demos, or people, complicates the democratic character of the highest level of government, and of the intergovernmental relations between the government levels.[8] In addition, both types of dominance are closely linked to the functioning of the party system in multilevel political systems.

This contribution focuses on one dimension of the EU's multilevel polity in the Conference on the Future of Europe's discussion on revising its democratic institutions. It analyses how the people and the statespeople are represented in the democratic set-up of the EU and how this interacts with the executive-legislative balance and party politics. We do so from the perspective of three analytical frameworks: intergovernmentalism, federalism and

[7] P. Meier and P. Bursens, 'Belgium: the Democratic State of the Federation', in A. Benz and J. Sonnicksen (eds), *Federalism and Democracy* (University of Toronto Press, 2020), 180-196.

[8] In federations we tend to distinguish between the demos or the people of the federation, and demoi or the statespeople of the different constituent units. Translating this vocabulary to the EU implies speaking of the European demos or people and of the member states' demoi or statespeople. While it is not fully correct to translate these terms one on one, it allows for clarity throughout the manuscript. This point will be further developed in sections 4 and 5.

demoicracy. We then evaluate representation in the EU from a demoicratic viewpoint and assess whether and how representation as organized in the Belgian polity can offer inspiration for EU reform. We argue that both the EU and Belgium are comparable political systems that can be analysed through the lens of demoicracy, especially with respect to flaws in their representative democratic institutions.[9] More particularly, we examine how current Belgian federalism and (the shortcomings in) its (proposed) reforms can inform the discussion in the Conference on the Future of Europe regarding democratic representation.

To this end, we first discuss representation in the EU from the three analytical frameworks and motivate our choice to focus on the demoicratic perspective. We then look for input from the Belgian system and more in particular its reform attempts in the quest for a more optimal organization of democratic representation in the EU. We argue that our focus on the failed Belgian attempts to remedy the flaws of its representative system contains valuable insights when redesigning the EU's democratic institutions.

2 Democratic representation in the EU

Representation is a cornerstone of democratic systems as it involves the mechanism through which government can show itself responsive to citizens' preferences. In modern democracies citizens do not participate in governing their society themselves but leave the act of governing to their representatives. Democratic representation is based on equal voting rights of those who should be represented. In any political system the principle of representation raises discussions about the nature of equality of those represented. This is even more so in multilevel political systems, whether they take the form of a state or stretch out beyond the state, such as the EU. While it is clear that in both instances of multilevel polities, individual citizens as well as the constituent units (sub-states or states respectively) should be represented, additional questions

[9] *Ibid.*

pop up.[10] Should representation of constituent units be weighted and if so, how should the relative weights be determined? Should the governments or the statespeople of constituent units embody the representation? What electoral rules should apply for the direct representation of individual citizens? What should be the power balance between the individual citizen and collective representation? Each multilevel system has organized the required double representation by means of two bodies, one representing the citizens of the polity (the people), the other representing the constituent units of the polity (the statespeople). The modalities of the electoral systems and the balance between the two chambers are different for each system.

When it comes to the EU, it rests upon a basic treaty signed and ratified by sovereign states (either through a referendum or by parliamentary approval). Hence, the member states, as constituent units of the EU, should be represented in the EU decision-making architecture. At the same time the EU grants the citizens of the member states European citizenship on top of their national citizenship. In the wording of the Treaty on the European Union, citizens of the member states should be 'directly represented at Union level in the European Parliament' (EP).[11] Moreover, EU citizens have the right to 'participate in the democratic life of the Union'.[12] Hence, individual citizens of EU member states are supposed to be also directly represented at the European level. This indirect and direct representation is institutionalized in the European Council and Council of the EU, and the EP respectively.

While not explicitly called that way, the representation in the EU comes down to a bicameral system based on an individual and a collective channel of representation. This seems to satisfy the requirement to have representation of both individual citizens and constituent units. But the devil is in the detail. Who are the representatives, who exactly do they represent,

[10] J. Lacey, op.cit.; A. Scherz, 'Representation in multilateral democracy: How to represent individuals in the EU while guaranteeing the mutual recognition of peoples', (2017) 6 *European Law Journal* 23.
[11] TEU eg Article 10 TEU
[12] *Ibid*.

how are they elected, what is the relation between the two chambers, i.e. between the individual citizens and constituent units….?

European citizens are represented in the EP by directly voting for the Members of the EP (MEPs). However, instead of one electoral college, MEPs are elected in as many constituencies as there are member states. The treaty allocates each member state a proportional number of MEPs without reflecting the real proportion of inhabitants in each member state. Moreover, each member state organizes EP elections according to its own procedures as EU rules only impose some minimal requirements such as a form of proportional representation. Hence, the voting system (open lists, closed lists), the number of electoral districts, whether or not compulsory voting applies, thresholds to receive seats, and the method to calculate the number of seats differ per member state.[13] Also, European level party structures are weak, as national parties decide on candidates, electoral lists and electoral platforms. However, once elected, MEPs sit within political groups, which are based on (varying degrees of) ideological affiliation and which show high (but again varying) degrees of internal coherence. In short, while their MEPs enjoy equal voting rights, EU citizens are represented in the EP in substantively different ways depending on their national citizenship, which affects the nature of equality of representation. In addition, it is widely accepted that EP elections are still second order – although some authors argue that the second order character has decreased over the years as the EP gained more say in EU legislation and EU matters became more salient to the general public.[14]

The member states – as constituent units of the EU – are represented in the European Council, the Council of the EU, as well as diplomatic and administrative bodies composed of national representatives. Member states are very different in terms of size, population and

[13] A. Ripoll Servent, *The European Parliament* (Macmillan, 2018).
[14] R. Corbett, 'European Elections are Second-Order Elections: Is Received Wisdom Changing?', (2014) 6 *Journal of Common Market Studies* 52.

economic strength. Nevertheless, they often enjoy equal power in the EU as the European Council operates in consensus and the Council needs to approve decisions with unanimity in a substantial set of policy areas. However, member states have unequal power whenever the Council decides by majority, which is since the Lisbon Treaty the standard procedure in almost all areas the EU has the power to legislate. The most frequently used procedure is a super majority, known as qualified majority voting (QMV). It balances out large and small member states by granting the former a higher voting weight and the latter the requirement that a minimal number of member states must approve a decision. In all (European) Council bodies, the member states are represented by national executives, be it by ministers, diplomats or administrators. In each member state, parliaments have the right to control the executives' EU policies. However, their scrutiny tools and practices differ substantially (ranging from providing a binding negotiation mandate to ex-post briefing by negotiators).[15]

3 Representation in the EU from an Intergovernmental versus Federal Perspective

How to make sense of the EU's multilevel representation? In this and the following section we discuss three analytical frameworks to capture representation in the EU: intergovernmentalism, federalism, and demoicracy.[16] As a start, does an intergovernmental perspective help to understand the current representation mechanisms? Surely, intergovernmentalists are right when pointing out that the EU was created by sovereign states to provide common solutions that benefit all participating states[17]. However, throughout the consecutive treaty changes, the

[15] K. Auel, O. Rozenberg and A. Tacea, 'Fighting Back? And, If So, How? Measuring Parliamentary Strength and Activity in EU Affairs', in C. Hefftler, C. Neuhold, O. Rozenberg and J. Smith (eds), *The Palgrave Handbook of National Parliaments in the EU* (Palgrave Macmillan, 2015), 60-93; T. Winzen, 'National Parliamentary Control of European Union Affairs: A Cross-national and Longitudinal Comparison', (2012) 3 *West European Politics*, 35.

[16] Intergovernmentalism and federalism are not used as integration theories, as the aim of our contribution is not to explain the degree of EU integration. We use both as analytical frameworks to assess the democratic functioning of the EU, addressing the question: if we regard the EU as an intergovernmental c.q. federal polity, what does that entail for democratic representation? We add the third framework of demoicracy as it was specifically developed to evaluate the democratic nature of multilevel polities.

[17] S. Hoffmann, 'Obstinate or Obsolete?', (1966) 3 *Daedalus* 95.

EU has moved beyond a limited set of policy domains and its decisions now entail winners and losers, economic and value redistribution at the individual and aggregate level, and compulsory compliance of common legislation backed by a supreme court. As the EU is about more than regulation that produces pareto-optimal policies, Majone's argument that majoritarian institutions at the EU level are not necessary and even counter-productive no longer holds.[18] It is correct that sovereign states unanimously decide which domains they want to govern jointly and that democratic policymaking within member states shapes national bargaining positions and therefor also the collectively governed policies.[19] This is especially the case in the consensus-driven European Council and with respect to those policy areas in which the Council acts as sole decision-maker and decides with unanimity (such as large chunks of foreign policy). However, there is more going on in the EU than a mere two-level game.[20] The Council co-adopts (with the EP) common legislation (mostly but not exclusively in regulatory policy domains) by majority, making the governments of the member states no longer fully accountable to their respective constituencies. Some policy areas are inherently redistributive, and most others go much further than just making optimal regulations. EU directives and regulations also directly affect citizens or other actors within the member states instead of just targeting the member states. Looking through the lens of intergovernmentalism, enhancing democratic quality can only come down to reversing the course of integration: renationalizing distributive policy domains, reinstalling unanimous decision-making between member states' governments in all EU bodies and policy domains, and all this while assuming that all member states live up to democratic standards.

However, looking at the current set-up of the EU, it is no longer enough that only member states function as fully developed democracies. The EU has evolved beyond a pure

[18] G. Majone, 'The Regulatory State and its Legitimacy Problems', (1999) 1 *West European Politics* 22.
[19] A. Moravcsik, *The Choice for Europe* (Cornell University Press, 1998).
[20] R. Putnam, 'Diplomacy and Domestic Politics. The Logic of Two-Level Games', (1988) 3 *International Organization* 42.

intergovernmental political system. But did it end up at the other end of the continuum? Is the EU a federal system with representation organized via a fully-fledged bicameralism that makes all EU level decisions accountable to both citizens and member states? The EU has come a long way but is not (yet) a federation. As a start, the EP has hardly any power or even no power at all in a substantial set of policy areas that the Treaty has attributed to the EU level. Only one of the representative bodies – the Council – decides in matters as external security policy. In most areas in which the EU is endowed with legislative powers, the EP and the Council are co-legislators. However, the right to initiate legislation lies quasi exclusively with the European Commission. Moreover, the latter as the primary executive body does not rest upon a stable majority in one or both representative chambers, and it is not directly accountable to the citizens.

One could nevertheless imagine federal mechanisms to enhance democratic representation in the current EU decision-making architecture.[21] One option is to organize politicization at the European level via EU-wide elections for the EP from which a majority emerges that supports the policy choices of the EU executive. Another way is to design EU-wide elections to directly elect the presidents of the executives.[22] Such reforms would alter the relation between the representation of European citizens and the constituent units. However, this either assumes that a European demos latently exists and can be activated or that such a demos can develop through electoral engineering. At this point we agree with those who argue that – at least for the moment – the EU lacks a well-developed encompassing demos which casts doubt on the applicability of the federal framework when aiming for improvement of democratic representation in the EU.[23]

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[21] A. Føllesdal and S. Hix, 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', (2006) 3 *Journal of Common Market Studies* 44.
[22] J. Sonnicksen, 'Democratising the separation of powers in EU government: The case for presidentialism', (2017) 6 *European Law Journal* 23.
[23] J. H. Weiler, 'In the face of crisis: Input legitimacy, output legitimacy and the political messianism of European integration', (2012) 7 *Journal of European integration* 34.

In short, if one considers the EU as an intergovernmental or a federal polity, strategies to enhance democratic representation boil down to reforming the EU into either a classic international organization or a full-fledged federal state. We argue that the current EU is unlikely to disintegrate or integrate any time soon to fully match any of these two polity models. Therefore, we propose to use a third framework that allows for more adequate engineering of democratic representation as it departs from the ideal types of intergovernmentalism and federalism.

4 Representation in the EU from a Demoicratic Perspective

Reforms from an intergovernmental or federal perspective fall short as such strategies would presuppose the EU to either return on its steps of integration or to make a leap forward, neither of which are politically feasible now. Hence, we look for a way to upgrade representation from a third analytical framework which starts from the current level of integration and the existing relations between the institutions. We do not engage with the discussion whether such a third way is a model in itself or inevitably has to come down to a bleak version of either intergovernmentalism or federalism.[24] We look for a more optimal way of representation, given the current state of integration. Logically, such an alternative lies somewhere in between intergovernmentalism and federalism as the EU is more than an international organization but less than a state. The core task of a third way is to find a vertical balance between the representation of the citizens and the constituent units while also respecting the horizontal balance between the multiple constituent units.[25] The most common perspective used for this alternative is demoicracy or multilateral democracy. It has been applied to the EU in different

[24] M. Ronzoni, 'The European Union as a demoicracy: Really a third way?', (2017) 2 *European Journal of Political Theory* 16.
[25] J. Lacey, op.cit.; A. Scherz, op.cit.

ways by a range of authors.[26] In this contribution we follow those who consider demoicracy as a 'political arrangement of jointly exercised political authority. Its proper domain is a polity of democratic states with hierarchical, majoritarian features of policy-making, especially in value-laden redistributive and coercive policy areas, but without a unified political community (demos)'.[27] In other words, demoicracy takes the core intergovernmental position of separate political communities of states as building blocks of the polity but combines this with the federal feature of a common level that exercises joint competences which are often subject to majoritarian decision-making. In its vertical dimension, demoicracy is therefor based on the equality and interaction of citizens' and statespeoples' representatives in the making of common policies. Horizontally, it seeks to balance equal transnational rights of citizens with national policy-making autonomy. Demoicracy stands for the 'government of the peoples', i.e. 'for the idea that separate statespeoples can freely affirm common political institutions, and found and exercise political authority together in an institutional arrangement'.[28]

Crucial for demoicracy, the constituent units are statespeople or demoi, and not states. This makes it distinctive from the state-centred focus of both intergovernmentalism and federalism which consider the multiple states or an encompassing EU state respectively as the main building blocks of the polity. Moreover, the demoicracy perspective shares with the intergovernmentalist perspective that the EU does not have a cohesive demos itself but disagrees with intergovernmentalists that this makes democratic government impossible at the level of the EU polity, provided that the institutional design of representation guarantees a

[26] R. Bellamy, 'An ever closer union among the peoples of Europe: Republican intergovernmentalism and demoicratic representation within the EU', (2013) 5 *Journal of European Integration* 35; J. Bohman, *Democracy Across Borders. From Dêmos to Dêmoi* (MITPress, 2007); F. Cheneval, *The government of the peoples: On the idea and principles of multilateral democracy* (Springer, 2011); F. Cheneval and F. Schimmelfennig, 'The Case for Demoicracy in the European Union', (2013) 2 *Journal of Common Market Studies* 52; F. Cheneval, S. Lavenex and F. Schimmelfennig, 'Demoi-cracy in the European Union: Principles, Institutions, Policies', (2015) 1 *Journal of European Public Policy* 22; K. Nicolaidis, 'European Demoicracy and its Crisis', (2013) 2 *Journal of Common Market Studies* 51.

[27] F. Cheneval, S. Lavenex and F. Schimmelfennig, op.cit., 353.

[28] F. Cheneval, S. Lavenex and F. Schimmelfennig, op.cit., 353.

vertical and horizontal balance, as expected by the federal approach.[29] According to adherents of demoicracy, both demos and demoi should be granted effective channels of representation for the EU to be regarded as a representative democratic system. The concept of demoicracy is close to compound democracy, or dual compound democracy, referring to the different modes of decision-making in the EU.[30]

5 The flawed representation of the EU demoicracy

If a demos is defined as 'a political community that shares a purpose, and possesses the institutional infrastructure of self-government', then the EU demos should be regarded as rather weak.[31] Survey results show that citizens in the EU identify themselves only rarely with the European level polity. Only 15% identifies exclusively / primarily with the EU level. Moreover, the EU does not have an integrated public sphere nor a well-developed transnational mass media or party system. Some basic principles of the demoicratic perspective are therefore helpful to comprehend representation in the EU.[32] These principles deal with striking a balance between the rights of individuals and the rights of demoi. Demoi should be free to join and leave the encompassing polity, should be able to veto new treaties that establish common rules, and should be democracies themselves; there should be no discrimination of demoi and demos; the laws of the union should have primacy over the laws of the constituent units and a supreme court should have jurisdiction over all dimensions of the polity that have been attributed to the polity via the treaty. Discussing the EU from the related perspective of a federation of states, others add that member states, while remaining sovereign, have installed the EU as a legal order in itself, for instance by granting the EU the right to act in the international legal order.[33] In

[29] A. Hurrelmann, op.cit.
[30] S. Fabbrini, op.cit. (2010). S. Fabbrini, *Which European Union?* (Cambridge University Press, 2015); J. Lacey, op.cit.
[31] F. Cheneval and F. Schimmelfennig, op.cit., 337.
[32] F. Cheneval and F. Schimmelfennig, op.cit.
[33] S. Rummens and S. Sottiaux, op.cit.

terms of internal decision-making these authors define the EU as a hybrid system with both unanimity and majority voting procedures. The latter is especially relevant for representation: demoicracy presupposes a common level where attributed joint competences are subject to majoritarian decision-making. This implies a bicameral system through which both demoi and demos are represented at the upper level and in which both enjoy an equal position when it comes to law-making by the upper level.

However, while EU laws are indeed adopted in co-decision by the EP and the Council of the EU, i.e. by assemblies that represent the demos and the demoi respectively, some peculiarities must be pointed out. The national character of EP elections, such as the absence of an EU-wide electoral constituency and the dominant position of national political parties nuance the direct representation of the European demos. EU elections are de facto national elections, disputed by national parties to elect national members of the EP. This reasoning was also followed by the German Constitutional Court when judging the EU to have a democratic deficit as the EP does not represent the EU citizens 'in unity and without differentiation' and therefor does not guarantee political equality among all its citizens.[34] True, most national parties belong to an EU-level party group, but most of these are rather loose federations which play only a minor role in the EP elections. As a result, there is no EU-wide choice over policy alternatives nor an EU-wide contest for executive leadership. The European Commission as the executive (or mandated executive by the Council) does not have to be supported by a stable majority in the EP, nor is the European Commission or its president directly elected by an EU-wide electorate. The 'Spitzenkandidaten' process introduced in 2014 and modified in 2019 does not help much as long as the Commission president and the other members are appointed by the members of the European Council, who can ultimately choose to ignore the results of the EP elections and pressure MEPs to follow their preference.

[34] S. Rummens and S. Sottiaux, op.cit.

Moreover, while the EU has a bicameral system that reflects the representation of both demos and demoi, the executive actors dominate the legislative actors as the Council, although acting as legislator, is composed of representatives of member state governments, i.e. of the states and not so much of the statespeople or the demoi. In addition, national parliaments' control of their executives' positions in the Council is often lacking, resulting in a dominance of national executives over national level legislatives.

In short, when evaluating representation from a demoicracy perspective, the current EU design is clearly flawed. Despite the vast number and nature of its competences, the EU still rests substantially upon the aggregated will of the constituting units through non-majoritarian decision-making in the (European) Council and, more importantly, the absence of a European electoral constituency, aggravated by the second order character of EP elections and the limited European saliency of national elections. In the next two sections, we take stock of representation in the Belgian multilevel system to see how the Belgian system relates to these options and how it may inspire EU reform discussions.

6 The similarly flawed representation of the Belgian demoicracy

6.1 The comparability of the EU and Belgium

To be able to draw inspiration for EU democratic institutions from Belgium, we argue that both political systems are cases of a broader category of multilevel political systems. Multiple authors have argued that the EU and (quasi) federal states are sufficiently alike to allow for fruitful comparisons. This is obvious for EU-scholars who look at the EU through the lenses of comparative politics.[35] But even an international relations perspective allows a comparison

[35] S. Hix, 'The EU as a Polity', in K. Jørgensen, M. Pollack and B. Rosamunde (eds), *The Sage Handbook of European Union Politics* (Sage, 2006), 141-158; L. Hooghe and G. Marks, *Multilevel Governance and European Integration* (Rowman and Littlefield, 2001); L. Hooghe and G. Marks, 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus', (2009) 1 *British Journal of Political Science* 39; K. Nicolaidis and R. Howse, *The Federal Vision* (Oxford University Press, 2001); S. Fabbrini, *Federalism and*

based on the argument that the EU can be defined as a highly institutionalised and hierarchical type of international organization.[36] Also federalism scholars have put forward arguments that underline the comparability between federal states and the EU.[37] In addition, several authors have defined both the EU and Belgium as quasi federal, or at least enumerated similarities, such as the multinational and consociational nature and the absence of polity-wide parties.[38] More specifically, and despite variation in size and the number of constituent units, previous empirical comparisons between Belgium and the EU have dealt with language and redistribution, consociationalism and political parties, decision-making procedures, politicization and language and representation.[39]

Of course, the EU and Belgium are subject to different dynamics. The EU is a clear case of a centripetal evolution. The process of increasing integration has long been an almost exclusively elite-driven process, preventing EU institutions and policies to become politicised. More recently, however, contestation by segments of the electorate has triggered the politicisation of EU policies and institutions.[40] In this respect, it is argued that in the EU the political order itself is now being contested by a growing part of the public and political parties: 'People question what kind of community they want to live in, and accountability processes

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Democracy in the European Union and the United States (Routledge, 2005); S. Fabbrini, *Compound Democracies. Why the European Union and the United States are becoming Similar* (Oxford University Press, 2010).

[36] H. Farrell and A. Newman, 'The New Interdependence Approach: Theoretical Development and Empirical Demonstration', (2016) 5 *Review of International Political Economy* 23.

[37] M. Burgess and A. Gagnon, *Federal Democracies* (Routledge, 2010); F. Cheneval and M. Ferrín (eds), *Citizenship in Segmented Societies. Lessons for the EU* (Edward Elgar, 2018); S.B. Wolinetz, 'Comparing the Incomparable: treating the EU in Comparative Context', in F. Laursen (ed), *The EU and Federalism: Polities and Policies Compared* (Ashgate, 2011), 27-40.

[38] V. Bogdanor, 'Forms of Autonomy and the Protection of Minorities', (1997) 2 *Daedalus* 126; W. Swenden, 'What–if anything–can the European Union learn from Belgian federalism and vice versa?', (2005) 2 *Regional and Federal Studies* 15.

[39] J. Lacey, *Centripetal Democracy. Democratic Legitimacy and Political Identity in Belgium, Switzerland and the European Union* (Oxford University Press, 2017); S. Rummens and S. Sottiaux, 'Democratic Legitimacy in the Bund or Federation of States: the Cases of Belgium and the EU', (2014) 4 *European Law Journal* 20; D. Sinardet and P. Bursens, 'Democratic legitimacy in multilevel political systems: The role of politicization at the polity-wide level in the EU and Belgium', (2014) 3 *Acta Politica* 49; W. Swenden, op.cit.; P. Van Parijs, 'Must Europeans be Belgian? On Democratic Citizenship in Multilingual Polities', in C. McKinnen and C.I. Hampsher-Monk (eds), *The Demands of Citizenship* (Continuum, 2000), 235-253.

[40] K. McNamara, 'Authority Under Construction: The European Union in Comparative Political Perspective', (2018) 7 *Journal of Common Market Studies* 56.

become part of contestations over the proper role of institutions and actors.'[41] The question then becomes whether the institutional design of the EU polity is sufficiently mature and equipped to allow for mechanisms through which both policies and polity can be genuinely politicised without the system itself risking to collapse.[42] Belgium, on the contrary, can be characterised by a centrifugal dynamic that has transformed the country from a unitary to a federal state trough six consecutive state reforms. Unlike in the EU, the territorial reform process has taken place in a very politicised way, certainly at the level of political parties and, partly because of this, also at the level of the electorate.[43] Both polities have been stable for a decade as the latest territorial reforms stem from 2009 (EU) and 2011 (Belgium). At the same time, both systems are flexible as they can adapt to blockages and requests. Indeed, more recently calls for new steps of constitutional reform have popped up, culminating respectively in the Conference on the Future of Europe and in proposals for constitutional reform during the burdensome formation of a federal Belgian government in the wake of the 2019 elections.

Each in their own way, European and Belgian reforms have been subject to path dependent pressures. Regarding the EU, the consecutive Treaty reforms can be defined as system maintenance, meaning that the options for democratic reforms in the EU were limited to those that fit the centripetal integration logic.[44] At the same time, institutional reform by majority voting is not accepted by the constituent member states, often citing the EU's lack of a collective identity and public sphere. Therefore, the Treaty prescribes the tough requirement of unanimity to change the institutional architecture, making outcome highly incremental. Consecutive treaty changes often started out with great ambition but gave birth to modest

[41] J. Olsen, 'Democratic accountability and the changing European political order', (2018) 1 *European Law Journal* 24.
[42] S. Bartolini, *Restructuring Europe: Centre Formation, System Building, and Political Structuring between the Nation State and the European Union* (Oxford, 2005).
[43] K. Deschouwer, *The Politics of Belgium. Governing a Divided Society* (Palgrave, 2012); M. Reuchamps, D. Sinardet, J. Dodeigne and D. Caluwaerts, 'Reforming Belgium's Federalism: Comparing the Views of MPs and Voters', (2017) 3 *Government and Opposition* 52.
[44] M. Bevir and R. Phillips, 'EU Democracy and the Treaty of Lisbon', (2017) 5 *Comparative European Politics* 15.

outcome only, especially regarding the reform of its democratic institutions[45]. Similarly, in Belgium revisions have been limited to what fits the centrifugal logic. Reforms focused on the strengthening of the constituent units, reflected only limited attention for the representation of the encompassing demos, and reinforced executive dominance in intergovernmental relations. Unlike the EU, however, constitutional reform must only be supported by a majority (albeit a special double majority – implying an overall two-third majority plus a simple majority in each language group). This requirement makes Belgium an exception to the rule that majority voting in constitutional matters is only plausible in case of a well-developed collective identity.

In short, while the direction has been opposite, both the EU and Belgium seem to have ended up in a similar spot: somewhere halfway between centralization and decentralization, caught in path dependency and producing unfinished and therefor suboptimal democratic institutions. We now turn to the flaws of the Belgian polity before analysing what EU reforms, to be discussed in the Conference on the Future of Europe, can learn from the Belgian reform attempts.

6.2 Belgian demoicracy: demoi dominate demos, executives dominate legislatives

While articles 1 and 33 of the Belgian constitution define Belgium as a federation, the institutional and political reality point to demoicracy features, especially when focusing on the dimension of representation. Similar to the EU, the identification with the encompassing demos is quite low: 31% of the Flemish population identifies exclusively or primarily with the Belgian level, while 48 % of the French-speaking population does so.[46] In addition, Belgian state-wide

[45] The main example being the very limited democratic reforms in the Lisbon Treaty, despite the very clear diagnosis of democratic flaws in the Laeken Declaration, the radical proposals that emanated from the Convention on the Future of Europe and the ambitious reform in the Constitutional Treaty, for instance with respect to the election and powers of the European Parliament.

[46] K. Deschouwer, L. De Winter, J. Dodeigne, M. Reuchamps and D. Sinardet, 'Measuring Sub-national Identities in Surveys. Some Lessons from Belgium', paper presented at 'The State of the Federation, Liège, 18 December 2015.

mass media and public sphere are almost completely absent, political parties are organized at the regional level and almost all of them set up separate groups in the federal parliament. As a result, Belgium de facto hosts two (actually three, taking the German-speaking parties in the German community into account) separate party systems in one single state.[47] Other features of Belgian federalism such as cooperation agreements between the constituent units, linguistic parity in the federal government, special majority rules in the federal parliament and state reform negotiations dominated by non-state wide parties also match with the features of demoicracy.[48]

At the same time, the competences of the Belgian federal level are still quite substantive, especially in the area of taxation, social security and law and order policies. This presupposes that the will of the Belgian population is recognized at the federal level via a federal chamber representing the demos, complemented by another chamber whose members represent the constituent units. However, in terms of law-making powers and representation of the two chambers, the conclusion must be that Belgium has no such bicameral system. Firstly, only the House of Representatives (*Kamer/Chambre)* has law-making competences. The Belgian Senate (*Senaat/Senat)* has hardly any role in law-making of any kind, which means that the demoicracy criterion of parity between the demoi and demos is absent in Belgian parliamentary representation. Secondly, as only the directly elected members of the House enjoy law-making powers, this means, at first sight, that the representation of the encompassing Belgian demos dominates the representation of the demoi at the federal level. However, House members are elected via provincial constituencies. And more importantly, except for the constituency of Brussels Capital, in these constituencies Flemish political parties only compete in the five Flemish provincial constituencies and French-speaking parties only in the five French-speaking

[47] K. Deschouwer, J.-B. Pilet and E. van Haute, 'Party families in a split party system', in K. Deschouwer (ed), *Mind the Gap: Political Participation and Representation in Belgium* (Rowman & Littlefield, 2015), 92-111; D. Sinardet and P. Bursens, op.cit.
[48] S. Rummens and S. Sottiaux, op.cit.

provincial constituencies. Moreover, members of the House must identify with either the Dutch or the French language group. Hence, the House is more a representation of demoi (or language communities in the Belgian case) than of the demos. One could then argue that the demoi are represented twice at the upper level as the Senate is composed of members of the parliaments of the constituent units and hence an assembly where the demoi are even more clearly and formally represented.[49] Adding up, demoi dominate the representation at the federal level. In addition, this domination is not expressed through the executives (or parliaments, for that matter) of the constituent units as these are excluded from federal law-making. The most important link between the levels of government is an informal one: the (leadership of the) political parties of the parliamentary majorities at the constituent unit level. This extreme pivotal position of political parties in Belgium has led to its qualification of a particracy, generally considered as detrimental for the quality of democratic representation.[50]

Furthermore, the horizontal dimension of demoicracy calls for equal rights of the citizens of all demoi. In practice, this comes down to avoiding negative consequences of decisions taken by one constituent unit for one or several other constituent units. Such avoiding of negative externalities is hindered in Belgium precisely because executive nor legislative actors have incentives to care about such spill-over effects. The parties these actors belong to only need to get their candidates elected by one language group. Once elected, legislators and ministers cannot be held accountable by the other language group for the negative externalities that result from decisions they take within the regional constituency in which they have been elected. The quasi absence of state-wide political parties and of a state-wide electoral constituency is the crucial feature here. This is obvious in the case that one regional government takes a decision that is considered harmful by another regional government. However, it is also

[49] R. Dandoy, J. Dodeigne, M. Reuchamps and A. Vandeleene, 'The new Belgian Senate. A (dis)continued evolution of federalism in Belgium?', (2015) 3 *Representation* 51.
[50] J.-B. Pilet and P. Meier, 'Ze halen hun slag wel thuis. Over particratie en het aanpassingsvermogen van Belgische partijen', (2018) 4 *Res Publica* 60.

relevant in case of vertical negative externalities. For example, a federal minister who belongs to a French-speaking party does not have to fear electoral backlash for a decision that may harm the Flemish government, as the former stands for election in another constituency, and vice versa.

In short, while Belgium is *de iure* a federation, when it comes to representation it has *de facto* many features of a demoicracy. Most of these point to a dominant position of the demoi over the demos, and more in particular of the executives and the political parties of the demoi, which negatively affects the quality of representation.

7 Inspiration from Belgian reform proposals for representation

What inspiration, then, can the Belgian system offer to address the shortcomings of representation in the EU? The demoicracy framework points to three ways to enhance democratic representation in the EU: a bicameral system in which the directly elected second chamber represents EU-citizens via elections in an EU-wide electoral constituency, more powerful parliamentary actors as expression of the demos and the demoi, and the development of EU-wide political parties.[51] In the previous section we demonstrated that these areas are equally problematic in the Belgian case. Actually, during its history, Belgium has first evolved into a (consociational) parliamentary democracy and later into a federal system.[52] While the federalisation was not designed to ameliorate the existing democratic nature[53], the Belgian case

[51] See also D. Djaïz, *Slow Démocratie. Comment maîtriser la mondialisation et reprendre notre destin en main* (Allary, 2019); T. Piketty and A. Vaucher, *Manifesto for the Democratization of Europe* (https://www.socialeurope.eu/manifesto-for-the-democratization-of-europe, 2018).

[52] A. Lijphart, *Democracy in Plural Societies: A Comparative Exploration* (Yale University Press, 1977); A. Lijphart, *Patterns of Democracy: Government Forms & Performance in Thirty-six Countries* (Yale University Press, 2012); K. Deschouwer, op.cit., 2012.

[53] K. Deschouwer, 'And the peace goes on? Consociational democracy and Belgian politics in the twenty-first century', (2006) 5 *West European Politics* 29; K. Deschouwer, op.cit., 2012; P. De Grauwe and P. Van Parijs (eds), *Electoral Engineering for a Stalled Federation. A country-wide electoral district for Belgium's federal Parliament* (www.rethinkingbelgium.eu/rebel-initiative-files/ebooks/ebook-4/Re-Bel-e-book-4.pdf, 2009); P. De Grauwe and P. Van Parijs (eds), *The Malaise of Electoral Democracy and What to Do About It* (www.rethinkingbelgium.eu/rebel-initiative-files/ebooks/ebook-14/Re-Bel-e-book-14.pdf, 2014); E. van Haute and K. Deschouwer, 'Federal reform and the quality of representation in Belgium', (2018) 3 *West European Politics* 41.

may nonetheless suggest avenues for enhancing democracy in the EU, including wit regards to. the dimension of representation.

7.1 Strengthening bicameralism and the creation of a polity-wide constituency

The Belgian bicameralism and electoral system have been diagnosed as flawed in several ways. Firstly, as the federal Senate has been stripped from most of its powers, some suggest having it completely abolished, others having it restored in its previous more powerful position[54]. As this chamber is the ultimate locus to involve the demoi at the federal level, proposals to strengthen rather than weaken the Senate vis-à-vis the first chamber seem appropriate. The formal EU equivalent of the Senate is the Council which is already on par with the EP when it comes to legislative acts. There is nothing to learn here. However, from a demoicracy perspective, the Council should be rather composed by legislative actors instead of executive actors, i.e. replacing member states' executives by member states' legislatives, or, even more drastically, adding a third chamber, next to the Council and the EP. While such reforms would increase the involvement of the demoi, neither seem feasible options in the short run as this would require an unanimously backed treaty reform. In addition, having three chambers would make the electoral system overly complex and thus rather decrease than increase democratic representation.

Secondly, regarding the EP, the demoicracy perspective points to a flawed representation of the demos due to separate national constituencies. To overcome a similar problem, Belgian academics and politicians have developed a plan to create a state-wide electoral constituency for the House of Representatives. It would serve to elect part of the MPs of this chamber, next to other MPs being elected in smaller constituencies. This would enhance

[54] P. Popelier, 'Het kaduke masker van de Senaat: tussen deelstaatfederalisme en multinationaal confederalisme', in J. Velaers, J. Vanpraet, Y. Peeters and W. Vandenbruaene (eds), *De Zesde Staatshervorming. Instellingen, bevoegdheden en middelen* (Intersentia, 2014), 53-90.

the legitimacy of the House and its accountability towards the entire demos as it would allow the demos to select some MPs from the entire federation and not only from parties serving the own demoi.[55] This proposal can further inspire similar ideas that have already been dispersed at the European level, and have even been suggested in reports by the EP itself.[56] Clearly, such a reform presupposes more cohesive EU-level party federations as we discuss below in this section. In addition, such an EU-wide electoral base would also justify enhanced powers for the EP, for instance the right to initiate legislation. Strengthening the EP would also contribute to a more equal relation between the legislative and the executive, to which we now turn.

7.2 Rebalancing the executive – legislative relation

Legislatives can be strengthened vis-à-vis executives in several respects. One way to improve representation from a demoicracy perspective is increased involvement of constituent unit parliaments in the positions that constituent unit executives take in issues that belong to the competences of the upper level. In the EU this means national parliamentary scrutiny of member states' EU policies, whereby national parliaments, as an expression of the demoi, become more active in steering and controlling national governments' positions. Here, the EU cannot look at the current Belgian set-up as the dual nature of the Belgian polity excludes regional governments from participating in federal decision-making. Reform proposals for the Belgian polity would only make sense if Belgium would turn into a cooperative model. If anything, the Belgian case shows the detrimental side of a dual nature. However, as the EU resembles a cooperative model, demoicracy indeed invites national parliaments to scrutinize their executives' performance at the European level.

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[55] Paviagroep, *Een federale kieskring voor de Kamer van Volksvertegenwoordigers* (www.paviagroup.be/proposal.html#voorstel, 2007).

[56] D. Hübner and J. Leinen, *The Reform of the Electoral Law of the European Union European. Added Value Assessment accompanying the legislative own-initiative Report* (www.europarl.europa.eu/RegData/etudes/IDAN/2015/558775/EPRS_IDA(2015)558775_EN.pdf, 2015).

With respect to the position of national parliaments as multi-arena players in the EU, several additional changes can be envisaged such as increasing their involvement in the Political Dialogue and the Early Warning System, the introduction of green and red card options on top of the yellow card regarding legislative initiatives[57], and increased involvement in the development of soft law such as in the framework of the European Semester.[58] Additionally, national parliaments could also become involved in Treaty changes alongside or instead of the current dominant position of member states' governments in these matters (see conclusion).

Strengthening the position of legislative actors vis-à-vis executive actors can also be done by increasing interparliamentary cooperation. Such cooperation can be both horizontal (among assemblies of constituent units) and vertical (between assemblies of the upper and the lower levels). Again, the dual nature of the Belgian system is not inviting for interparliamentary cooperation and has therefor little inspiration to offer, except to show which way not to take. However, within the EU there is room for optimizing the existing modest forms of interparliamentary cooperation. From a demoicracy perspective horizontal tools such as COSAC and vertical tools such as Interparliamentary Committee Meetings are avenues that deserve upgrades.[59]

7.3 Polity-wide political parties

[57] The Political Dialogue refers to a set of formal and informal contacts between national parliaments and the European Parliament. The Early Warning System refers to the subsidiarity control on EU legislative proposals by national (and regional) parliaments, whereby these assemblies can issue so-called yellow or orange cards forcing the European Commission to review and justify a specific proposal. A green card would come down to an explicit confirmation of the Commission's right to initiate a proposal under subsidiarity rules, while a red card would give a sub-set of national parliaments the power to block a legislative proposal to be taken into consideration, again on subsidiarity grounds.

[58] K. Auel and C. Neuhold, 'Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty', (2017) 10 *Journal of European Public Policy* 24; K. Gattermann and C. Hefftler, 'Beyond Institutional Capacity: Political Motivation and Parliamentary Behaviour in the Early Warning System', (2015) 2 *West European Politics* 38.

[59] D. Fromage, 'Increasing Inter-Parliamentary Cooperation in the European Union: Current Trends and Challenges', (2016) 4 *European Public Law* 22.

A major feature of the current Belgian system is the dominance of regionally organized political parties: these conclude and guard the government agreements at all levels, control voting behaviour in all the parliaments and appoint candidates for elections in all parliamentary assemblies. All this happens in the quasi absence of state-wide parties and elections, against a background of almost completely absent state-wide mass media and public sphere. This separation makes the highly autonomous constituent units, nor the federal level concerned about the externalities of their decisions or policies. In addition, intergovernmental relations occur almost exclusively between executives, with regionally organised political parties as the only connection between the levels of government. Moreover, besides the judicial treatment of conflicts of competences, the political treatment of conflicts of interest is dealt with by intergovernmental mechanisms that are – again – dominated by regional political parties. Voters can choose for rival policies and policymakers at the federal level, but not for all the parties or candidates who may end up in parliament or government. In addition, voters cannot kick out the candidates they have not been able to vote for, although all members of the federal government can take decisions that affect them.

The party system of the EU is quite similar as the political parties of the constituent units are more powerful actors than their EU level equivalents. Also in the EU, representation of the encompassing demos via parties is very weak, although one could argue that the EU is more integrated than Belgium because of the existence of EU-wide party federations and, even more so, quite coherent political groups in the EP.[60] In the Belgian system, such party federations and joint parliamentary groups only exist for the radical left PVDA/PTB and the two Green parties respectively.

The demoicracy perspective would suggest a return to polity-wide political parties in Belgium. As the centrifugal dynamics make this an unlikely evolution, other less radical steps

[60] G. McElroy, and K. Benoit, 'Party Groups and Policy Positions in the European Parliament', (2007) 1 *Party Politics* 13.

are propagated such as housing party headquarters from the same ideological family in a shared building so as to foster contact on a daily basis, frequent consultation, substantial collaboration, and integrated electoral platforms between ideologically affiliated parties from both language communities. In addition, parties can participate in elections in more than one constituency or can put candidates on lists of parties that stand in the other constituency. The latter is already the rule rather than the exception for the Flemish parties in local elections in Brussels. Finally, the creation of parliamentary political groups composed of parties that were elected in different constituencies can foster cooperation among parties in the legislative. Such practices can be found in the Belgian polity and can serve as ways forward at the EU level as well. Indeed, some of these have already been implemented at the European level. Examples include nationals from one EU member state participating in EP elections in another member state, strongly integrated electoral programs (such as the 2019 Green platform and the French Renaissance list which included an Italian candidate) and even emerging European parties (such as Volt Europa). Such initiatives can enhance the attention for the EP and by doing so decrease the second order nature of EP elections.

Finally, in Belgium the party headquarters coordinate between government levels. This takes place outside the parliamentary arena which adds to the flawed accountability. In the EU such coordination is controlled by the governments of the member states, formally inside the (European) Council and informally outside the Council (through bilateral and multilateral talks). From a demoicracy perspective, both are problematic as not the demoi but executive actors of the member states take centre stage, especially when national parliaments do not adequately control them. Democratic representation in the EU would profit from an enhanced role for parties as expression of the demoi as this would politicize EU matters. However, this would preferably not take place in party headquarters or Council contexts but in the

parliamentary arena as this would then simultaneously strengthen the position of the legislatives vis-à-vis the executives.

8 Conclusion

Both the EU and Belgium are multilevel polities that struggle to organize adequate democratic representation of their lower and upper levels. The optimization of democratic representation is one of the objectives of the Conference on the Future of Europe. That is why we probed the possibility of Belgian inspiration in the European deliberations. We argued that despite the many differences, both can to a large extent be considered as demoicracies, which means that they would benefit from similar reform options to enhance their democratic nature.

The demoicracy model implies an equal representation of the (Belgian and European) demos and the (Belgian and European) demoi via a bicameral system. Both the demos and the demoi should be equally involved in majoritarian decision-making to adopt polity-wide legislation. To live up to the demoicratic standards, the EU requires substantial changes in its bicameral and electoral system, the relation between legislatives and executives, and the role of political parties therein. A look at the Belgian case made clear that the Belgian polity is often as flawed as the EU polity when it comes to demoicratic standards of representation. We identified an overrepresentation of the demoi, and legislatives dominated by executives, both aggravated by the pivotal position of political parties at the level of the constituent units. As these are the areas in which the EU should made progress, not so much the current organization of representation but rather the reforms suggested in the Belgian context may bring inspiration. In short, the look at the Belgian case confirmed the direction of change that demoicracies should head when strengthening democratic representation: ensuring equal representation of demos and demoi via a bicameral system, a polity-wide constituency to represent the demos, involvement of the legislatives, primarily those of the constituent units as expression of the

demoi and a role for polity-wide political parties embedded in the national and European parliamentary assemblies.

These are the specific dimensions that the demoicracy lens would suggest to the participants in the Conference on the Future of Europe. The Joint Declaration alludes to some of the elements we discussed. For one, it explicitly mentions that citizens are expected to fully participate in the discussions, hereby explicitly inviting the European demos, to the extent it exists, to become involved and hence not just leaving the future of the EU in the hands of the member states who represent the demoi within the EU. It leaves us with the question of who should sit around the table of the Conference? Intergovernmentalists would argue that this should be the privilege of the governments of the sovereign member states, while federalists would plead for representatives of the European level institutions on top of national governments. Those who think from a demoicracy perspective would put national parliaments (as representatives of the demoi) and members of the EP (representing the European demos) at the helm of the deliberations. The Joint Declaration refers multiple times to the equal role of the Commission, the EP and the Council in the Conference, and also invites national parliaments to provide input, again hinting at a joint participation of the demoi (via the Council and national parliaments) and the demos (via the EP). While it is hard to predict whether such a demoicratic membership of the Conference increases the likelihood of demoicratic solutions to the present flawed democratic representation of the EU, one has at least to conclude that both demos and demoi, as well as executives and legislatives are invited to discuss a new institutional architecture for the EU.