

# Euroscepticism and Trustbuilding

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## 1. Introduction

For decades Euroscepticism has played the role of an “ugly duckling” in the mainstream narrative of European integration, an obstacle to be conquered on the rightful path towards a united Europe. For decades legitimate representatives of their countries – Charles de Gaulle or Margaret Thatcher – have been portrayed as enemies of integration whose political tombstones pave the way of progress like milestones while integration marched onwards carried by its heroes such as Jacques Delors or Helmut Kohl praised today as political visionaries. After the creation of the European Union (EU) by the Treaty of Maastricht in the early 1990s, Euroscepticism retreated from mainstream to the fringes of European political debate. However, in the wake of the Eurozone crisis and in context of the present migration crisis, the “duckling” has grown and it’s rearing its ugly head, with Eurosceptics emerging all over Europe. The results include rising populism, strong polarization of opinions, and declining trust in the European Union.

This opinion paper’s aim is not so ambitious as to map all the sceptics in EU member states across the continent since other scholars have already done a good job mapping them (see for example Szczerbiak – Taggart 2008; Grabow – Florian 2013; de Wilde – Michailidou – Trenz 2013). Nevertheless, this paper aims first, to diagnose the phenomenon by identifying three different types of Euroscepticism according to their relationship to the Europe Union as a polity, and their engagement with European politics and policies, and secondly to suggest four types of treatment to help rebuild trust in EU policies, politics and the European Union as a polity.

After an initial assessment of the ideal democratic situation, we discuss present trends in European integration and their perceptions by the public, since public opinions and perceptions are the roots from which Euroscepticism grows. In the third section, we present three different types of Eurosceptic thought with examples, while the fourth section suggests a range of remedies to cure the lack of public trust in EU, and at the same time strengthen democratic political processes at the European level.

## 2. The long life of Euroscepticism: *From Maastricht to the Constitutional Treaty to the Fiscal Compact*

The notion that the European Union (EU) suffers from some sort of legitimacy crisis has been an integral part of the European public and political debate ever since the establishment of the EU via the Maastricht Treaty. The initial rejection of the Maastricht Treaty by popular referendum in Denmark shattered the belief in the so-called “permissive consensus,” which allowed the EC/EU to build up new

competences and expand its territory without fear of public backlash. At the same time, the famous Maastricht verdict of the German Constitutional Court (German Constitutional Court 1994) had an additional chilling effect on the efforts to build a pan-European democracy. According to the ruling of the court, the successful establishment of a functioning pan-European democracy is conditional upon the emergence of a pan-European, “organic” and homogenous demos. Unlike this democratic ideal, the present-day EU is, in its evolution, marooned somewhere half-way between “just” an international organization and a “full-fledged” federal union with a European people.

Danish referendum on the Maastricht Treaty demonstrated that the stakes are high, as the EU’s democratic deficit can lead to increased use of national referenda, threatening key legislative initiatives and treaty changes. At the same time, the *Karlsruhe* verdict arbitrarily set the standards for a pan-European democracy too high when it envisioned a European demos with “Volk-like” qualities (a sense of social cohesion, shared destiny and collective self-identity and loyalty). This definition of “demos”, which has been accepted by the European political class, is taken directly from traditional German political philosophy, whose definition of polity is “based on the tired old ideas of an ethno-culturally homogeneous Volk and the unholy Trinity of Volk-Staat-Staatsangehöriger as the exclusive basis for democratic authority and legitimate rule-making” (Weiler 1995: 223).

Since Denmark set a precedent with its popular rejection of the Maastricht Treaty, the European Union has been haunted by the prospect of another negative national referendum effectively vetoing future treaty revisions. Consequently, Ireland became the “usual suspect”, with its constitutional provision requiring a referendum whenever an international treaty requires changes to the 1937 Irish Constitution. In 2001 the Irish electorate initially rejected the ratification of the Treaty of Nice, only to endorse the treaty in a second referendum a year later.

While the Danish and Irish negative referenda could have been dismissed as voices from the periphery, the rejection of the Treaty Establishing a Constitution for Europe by the electorates in France and the Netherlands – two founding members of the EC/EU – drove the message home that all is not so well with the present state of the Union. The Constitutional Treaty was the product of the European Convention, which was inspired by the Philadelphia Convention, and the treaty was renowned for its federalist ambitions. The negative outcome of the referenda in France and the Netherlands represented a fatal blow to all those who hoped to “cure” the democratic deficit of the EU with a federal structure and, by extension, a

pan-European democracy. In the wake of this disappointment, the European Union entered a so-called “period of reflection” in which the states took it back upon themselves to steer the integration process, as the proverbial “masters of the treaties”.

The “post-constitutional” period is thus characterized by a shift towards intergovernmentalism with an emphasis on nation states as the prime actors of integration as well as the main sources of democratic legitimacy for the EU itself. Member states took the reins of the integration process once again and sat together around a negotiating table in the usual *intergovernmental conference* format to hammer out the successor to the Constitutional treaty – the Lisbon Treaty. The new treaty toned down the federal/constitutional rhetoric. Also, the European Council was established as a formal institution of the EU, endowed with the task of defining the EU’s overall political direction and priorities. Furthermore, some of the remaining federalist innovations in the Lisbon Treaty – such as the reduction of the size of the European Commission – were scrapped after Ireland rejected the new treaty in a referendum in June 2008. Thus the “intergovernmental spirit” of equal representation of member states in the Commission was preserved. Nevertheless, despite the general swing towards an intergovernmental model of integration, the Lisbon Treaty has maintained the drive towards deeper integration with new policy areas being transferred from the national to the European level of governance.

The series of failed and repeated referenda on the European Union’s primary has law left a bitter aftertaste in the form of declining popular participation in European Parliament elections and brought a gust of wind into the Eurosceptics’ sails. Little did we know in 2009 that the European Union was to enter the turbulent waters of economic and migration crises. The Eurozone crisis prompted further integration along intergovernmental lines. The two key intergovernmental treaties<sup>01</sup> addressing the crisis have been concluded outside of the framework of the EU primary law. The biggest nation states played crucial role in “rescuing” the failing states, defending the euro and suppressing the Eurozone crisis, as the many sleepless nights of national leaders at the European summits testify. But this formal separation of the rescue mechanisms from the EU may not be evident, as somewhat confusingly for the public, the European Commission has been assigned the role of a monitor and enforcer of the agreed rules as part of the Troika.<sup>02</sup>

The post-constitutional EU has been built on the shared assumption that the intergovernmental model is the best way to preserve and enhance the democratic legitimacy of the EU

while allowing pragmatic deepening of the EU where needed. According to the proponents of the intergovernmental model, the democratic legitimacy of the European Union is ensured primarily through the participation of the democratically accountable national governments or even national parliaments in the EU decision-making process. Supranational institutions such as the European Parliament and more importantly the European Commission have only limited democratic legitimacy because there is no “homogeneous and loyal” European demos (see the German Constitutional Court “no demos” argument mentioned above).

However, even the decisive shift from the federalist ideals of a pan-European democracy towards a more pragmatic intergovernmental approach did not help the EU to shore up its legitimacy and deal with the democratic deficit. The European Union continues to struggle with dwindling popular trust in its institutions. According to the latest Eurobarometer polls, trust in the European Union is in a long-term decline. Before the economic and financial crisis (2004-2009), trust in the EU oscillated between 44% and 50% with a one-time peak in 2007 when the overall trust in the EU reached 57%. At the peak of the crisis in 2011-2013, however, trust in the EU dropped to 31-33%. Despite a positive swing in late 2014, in recent months, the trust dropped back down to 32% (Eurobarometer 2015), presumably in connection with the migration crisis.

The popular image of the European Union follows a similar trend. The economic and financial crisis badly damaged the EU’s reputation, which had in fact been in a slow decline even before the crisis hit European shores. At the moment, only 37% of Europeans view the EU in a positive light and 23% in a negative light, while at the height of the economic crisis, the share of those with positive perceptions matched the share of Europeans with negative perceptions of the EU.

What is worrisome though, is not just the overall trend, but the *country disparities* in perceptions of the EU. It is not uncommon that citizens of neighbouring countries express widely divergent opinions and perceptions of the EU. For example, while 55% of Poles see the EU in a positive light, only 27% of Czechs share this assessment. There is also a wide gap between the Eurosceptical UK (where only 30% of the people see the EU positively) and Ireland, whose electorate is very pro-European with 54% of the citizens assessing the EU positively (Eurobarometer 2015). In the end, we are dealing not with one debate on European politics, but with 28+ national debates/interpretations of European politics. It is not so surprising, then, that there are such great differences in opinions on and perceptions of the European Union even among close neighbours in the same region.

<sup>01</sup> The Treaty Establishing the European Stability Mechanism, better known as the bail-out fund, and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, better known as the Fiscal Compact.

<sup>02</sup> The Troika includes: the European Commission, the European Central Bank and the International Monetary Fund.

While the opinion polls provide an interesting insight into Eurosceptic mood of the public and its evolution over time, they do not provide the full picture. The polling questions like “Do you trust the EU?” and “What kind of image does the EU conjure up for you?” do not allow us to differentiate between different types of public opposition to the EU. Do people reject the very idea of institutionalized European integration, or are they simply dissatisfied with harmful or unpopular EU policies (such as austerity measures)? Do Europeans trust the so called “European leaders”? And how popular really are those European political parties which brag about their “direct mandate” for their “*Spitzenkandidaten*”?

Opinion polls about “trust in the EU” and “trust in the EU institutions” are ubiquitous thanks to Eurobarometer and other agencies. But unfortunately, polls about the European public’s (dis)trust in EU leaders (such as Jean-Claude Juncker, Donald Tusk, Martin Schultz, but also national leaders such as Angela Merkel or François Hollande responsible for EU policies) and European political parties are virtually non-existent, making it almost impossible to measure the scope of different types of Euroscepticism.

### 3. Typology of Euroscepticisms

Euroscepticism is a fuzzy and politically sensitive concept. It is used both as a concept in scholarly discourse and as a political label in political practice, often loaded with negative connotations. While some political parties and movements carry the Eurosceptic label with pride, others reject it as inaccurate and harmful.

As an academic concept, it is often used as a catch-all term for various types and degrees of opposition to the European integration, European Union institutions and EU policies. Most scholars working in the field are aware that the concept of Euroscepticism (as it is being used in the political discourse) is too all-encompassing and needs further refinement. The existing literature usually differentiates between soft and hard Euroscepticism (Szczerbiak – Taggart 2008). Alternatively, one can distinguish between those Eurosceptics who oppose the current EU and those who reject the very idea of European integration and cooperation (Kopecký – Mudde 2002). This paper takes a different approach. We differentiate between three types of Euroscepticism, based on the classic distinction between its relationship to the EU as a polity, EU politics and EU policies.

#### 3.1. *Opposition to the EU as a polity (anti-systemic Euroscepticism)*

Those who oppose the European Union *polity* – anti-systemic Eurosceptics – attack the very institutional foundation and the basic characteristics of the EU political system. The criticism arrives from different sources.

The strongest form of anti-systemic Euroscepticism criticizes the very existence of the EU, which is being portrayed as a “superstate-in-the-making”, along with its institutions, because they are seen as a threat to national sovereignty and national democratic institutions. In recent years this type of Euroscepticism has gotten only stronger. While in the past decades, “intergovernmental Europe” served as a rallying point for many Eurosceptics critical of “federalizing tendencies” within the EU (from Charles de Gaulle to Margaret Thatcher), contemporary anti-systemic Eurosceptics often call for an outright exit from the EU (or at least from the Eurozone) and the dissolution of the EU as such. For many decades, British conservatives played the role of a standard-bearer for the Eurosceptic cause, fighting for an intergovernmental Europe against the threat of political integration (federalism). Today, intergovernmentalism finds little or no appeal among the “new” anti-systemic Eurosceptics, the prime examples being the United Kingdom Independence Party – UKIP, the Front National in France, the Freedom Party of Austria and the Party of Free Citizens in the Czech Republic, who advocate a more radical institutional shake-up of the EU, their country’s exit from the EU or its abolishment as the most extreme option.

Anti-systemic Euroscepticism is usually associated with an exit from or abolishment of the EU itself for the sake of rescuing the endangered sovereignty of nation states. However, the contemporary EU polity and its institutional structure could also be criticized from the opposite side of the political spectrum: the EU could be criticized for betraying federal ideas and for actually being *the* obstacle on the path towards a truly pan-European democracy. The recourse to naked power politics during the Greek bail-out crises, when the creditor countries led by Germany used their economic weight to push Greece to the very brink of an exit from the Eurozone and then forced it to accept sweeping austerity measures, represents the ugly face of the current intergovernmental trend in European integration.

Finally, anti-systemic Euroscepticism does not always have to come from the fringes of national politics. In fact, several anti-systemic Eurosceptics have been an integral part of an EU country’s domestic political elite – for example, the hard-line Eurosceptics among the British Tories or the former Czech president Václav Klaus. Neither does anti-systemic Euroscepticism automatically translate into policy-oriented Euroscepticism. Some neoliberal anti-systemic Eurosceptics appreciate the achievements of the European integration in the field of internal market (free movement of goods, services, capital and labour), yet they dismiss the political and institutional structure of the EU as unnecessary, believing in rational and largely voluntary economic cooperation among sovereign states, which is exactly the kind of integration Margaret Thatcher and her “disciples” had in mind.

### 3.2. *Opposition to the EU politics (anti-establishment Euroscepticism)*

The second type of Euroscepticism takes aim at the *politics* of the European Union and the European political class as a whole. While the anti-systemic Euroscepticism often remains abstract in its defence of vague concepts like “national sovereignty” against a long-term threat of a “federal superstate”, anti-establishment or “populist” Euroscepticism criticizes everyday practices of European politics, and its attacks are much more personalized. According to the anti-establishment Eurosceptics, the European Union is run by self-serving political elites (politicians, diplomats and bureaucrats) detached from the lives of ordinary citizens. The everyday European political process is, according to them, non-transparent and rigged with strong influence of business lobbies. On the one hand, behind-the-scenes deals are integral tools of international diplomacy and decision-making in the intergovernmental EU bodies is still informally based on this centuries old European diplomatic practice. On the other hand, this behind-the-scenes diplomatic wrangling – such as the selection process for top EU jobs – with the related aura of secrecy and lack of transparency turns out to be a burden if we expect EU legitimacy to be based on public support and accountability.

While anti-systemic Euroscepticism clearly differentiates between national political institutions (eulogized as the embodiments of democracy and legitimacy) and EU institutions (which are seen as illegitimate by definition), anti-establishment Euroscepticism rides the wave of the popular discontent with politics in general, be it national or European. What’s more, the elites of other member states are not spared either and anti-establishment Eurosceptics easily turn their anger against their own national governments and political institutions. Despite all the treaty changes in the past three decades (including the Treaty of Lisbon), the EU sticks to the intergovernmental model of integration at its core, particularly in times of crisis. But the intergovernmental cooperation requires the national governments to make compromises through the decision-making process, which makes them vulnerable to being accused of “collaboration” with the despised “European political class”.

Once the anti-establishment Eurosceptical parties and movements take hold of power in national governments (think of, for example, Syriza in Greece or Law and Justice in Poland), they face a profound dilemma. They can either take on the role that other national governments play: represent the country in the intergovernmental institutions, make concessions and compromise themselves – which is oftentimes difficult, since they have attacked their potential partners in negotiation before – or continue their anti-establishment opposition, find

themselves ostracized in the intergovernmental club and get on a slippery slope towards anti-systemic Euroscepticism, eventually embracing “exit” sentiments. The intergovernmental system of the EU leaves very little room for populist “anti-establishment opposition” (as well as for legitimate “policy-oriented opposition” see below) because it requires consensus to function.

### 3.3. *Opposition to the EU policies (policy-oriented Euroscepticism)*

The third type of Euroscepticism arises from the opposition to specific EU *policies*. We call it policy-oriented Euroscepticism. The Eurozone financial, debt and economic crisis and the measures employed by the EU to tackle the crisis (the Fiscal Compact, the Six-Pack and the Two-Pack) sparked a huge rise in this kind of Euroscepticism, even in countries with generally pro-European electorates (e.g. Spain, Italy). Policy-oriented Euroscepticism copies the political cleavages well known from domestic political systems: growth vs. austerity, liberalization vs. protectionism, etc. While anti-systemic Euroscepticism is driven by abstract considerations about sovereignty, and anti-establishment Euroscepticism is focused on the political class and its detachment from ordinary people, policy-oriented Euroscepticism is driven by policy considerations or ideology. Even though policy-oriented Euroscepticism manifests itself through opposition to specific issues and policy proposals (such as the planned TTIP), it is usually rooted in broader political and ideological considerations.

Gone are the times of permissive consensus of the 1980s and early 1990s, when EU policies were perceived as non-political technical (bureaucratic) measures, attracting relatively little attention from the general public. Thanks to the Eurozone crisis, the EU’s economic policy has been hotly debated from the top political level to the media to the levels of the general public. In addition to the economic and monetary union, even the seemingly non-controversial economic integration (the so-called negative integration characterized by the removal of barriers within the single market) turned out to be a political issue. The first indication of the popular opposition against the seemingly technical and apolitical “economic integration” was the French rejection of the Constitutional Treaty, which was partly driven by policy-oriented Euroscepticism – namely the opposition to the liberalization of services within the single market. Then public opposition to the previously non-controversial negative integration resurfaced in the least likely of places – in the United Kingdom, where much of the Brexit sentiment is driven by the popular opposition to the free movement of labour.

Policy-oriented opposition to the EU’s policies could originate from different sides of the political spectrum. In connection with the Eurozone crisis, the EU’s economic policy has been

frequently criticized from the left for its lack of a political mandate and its excessive stress on austerity. However, it is not uncommon to hear right-wing neoliberal Eurosceptics criticizing the EU for its “socialist”, business-unfriendly policies either.

Additionally, some of the supposedly shared European values are becoming subjects of political contestation within Europe. For example, the meaning of solidarity has been challenged during both the financial and economic crisis and the migration crisis. The migration crisis itself severely shattered the notion of the EU being a normative power and a beacon of solidarity, humanity and progress. To some extent, the migration crisis highlighted the cleavage between socially conservative forces, which associate the European identity with an exclusive Christian identity (an idea that was most explicitly expressed by Orbán in Politico.eu 2015), and the socially liberal political forces, which associate Europe with universal human rights and solidarity.

## 4. Recommendations

### 4.1. *Rebuilding trust in EU policies: Euroscepticism as a legitimate alternative*

Despite the cited prominence of EU-critical politicians among the elite of several EU member states (notably Britain, Poland and Czechia), Euroscepticism is still all too often scoffed at by the political and media mainstream. In part, this is because any policy-oriented criticism of EU policies and its current political establishment is perceived as an attack on the legitimacy of the EU itself; in part, it is because of the common intertwining of Euroscepticism with nationalism, xenophobia or all sorts of populism, as witnessed in parties like UKIP, the Front National or the AfD (in the liberal viewpoint). We argue, however, that the policy-oriented and anti-establishment Euroscepticism should be treated as a legitimate part of the political scene rather than a threat to the EU itself and its legitimacy, as pluralism and political competition are the definition of democracy.

Therefore, political parties and individual politicians who are currently in charge of the EU should recognize Euroscepticism as a legitimate opposition in the European public debate instead of building “firewalls” around Eurosceptic parties and politicians. Opposition to EU policies and the current EU establishment should be taken seriously and cautiously confronted with counter-arguments, regardless of where it comes from. True, it is difficult to wage a debate with those who exploit popular fears and emotions, often with little regard for facts. However, to borrow from the philosopher and first president of Czechoslovakia Thomas Masaryk, democracy is discussion. However unpleasant it may be, pro-European, liberal and democratic forces should confront their opponents

and win the battle of arguments in a democratic debate in which everyone can trust that they will be welcome.

Xenophobic or racist opinions that clearly violate Europe’s institutional orders should not be allowed to be voiced, but legitimate questions of what “Europe” do we want, or, indeed, even whether we want Europe at all should be acknowledged as part of the political debate. Avoiding these issues because we see them as supposedly resolved once and for all only plays into the hands of the Eurosceptics, who can exploit the growing divide between the elites and the citizens.

The EU constitutional order (primary law) should remain politically neutral – besides the reference to core European values. Also, there is a reason for the European executive (the European Commission and the European Central Bank) to remain politically neutral in its regulatory tasks (such as implementing the EU competition policy or banking supervision). On the other side, political leaders of EU institutions (including “national” leaders who share the responsibility for EU policies) must stop pretending to be politically neutral, assume political responsibility for EU policies and try to defend them in the face of public opposition.

It is up to the ruling elites of the EU (in the European Parliament and the Council of the EU) to defend their policies. If they are not able to defend the sometimes mistaken or unpopular policies and lose the trust of Europeans, there must be a democratic mechanism to replace one set of governors (EU politicians) with another and change the EU policy.

### 4.2. *Rebuilding trust in EU politics: Crafting multiple pro-European narratives*

While inviting the Eurosceptics to an open debate could help reinvigorate the European democracy, alone it does not suffice. Equal and inclusive treatment may deprive the policy-oriented Euroscepticism of its protest and anti-system potential and “soften” its anti-establishment varieties. However, in order to counter it and regain trust in the European project, political and civil society leaders must craft persuasive pro-European arguments of their own.

The authors of the “Save our Europe!” appeal, which was published on this year’s Europe Day, recall Václav Havel’s words: “If we cannot dream of a better Europe, we will never construct a better Europe” (Cazenave et al. 2016). It is now upon the political leaders to follow this invitation. Instead of paying lip service to “Brussels”, centre-left and centre-right leaders should assume their responsibility as an integral part of the EU – after all, national leaders are the supreme decision-makers in the Council – and promote long-term positive visions of European integration.

It is important to highlight that there should be a multiplicity

of narratives available. After all, politics always reflects and resolves the *conflicts* that exist in the given society (Mouffe 2000). Currently, the story about Europe is one of a lowest common denominator between the different political families that are part of the “Brussels consensus.” It is little surprise that such a minimalist vision, which in many countries entails little apart from European funds and perhaps borderless travel, does not attract identification and support. Instead, more democracy should entail also more disagreement, which would use the recent proliferation of crises as an opportunity for bold visions rather than for technocratic management.

A truly democratic European public sphere would benefit from an increased competition of conservative, socialist, liberal, and green, but also Eurosceptic ideas of what Europe is and ought to be. The increased political competition over the meaning of Europe would arguably attract more attention and, ultimately, more trust in the European polity, since it bears the potential of demonstrating that every European citizen has got something at stake here and that European problems are not decided about behind closed doors.

The point is not to construct a new “EUtopia”, but rather to rethink Europe as a pluralist space of democratic competition and political dialogue to which everyone is invited. Trust in European democracy is thus built through long-term engagement in these pluralist deliberations, which are flexible enough to accommodate conflicting visions of Europe.

It is not marketing, but rather political vision that is in short supply. Therefore, the pro-European voice has to be carried by parties, media and, crucially, civil society. It is only through such a truly democratic and inclusive approach that the most disturbing type of Euroscepticism – the anti-establishment opposition to European *politics* per se – can be deprived of its key argument, namely that Eurosceptic politicians in this stream are fundamentally different from the other politicians, who are all just the same.

#### 4.3. Rebuilding trust in the EU polity: More room for opposition in the Council

The political clash over EU policies, ideology or even principles is not too different from a political clash within a domestic political arena. However, the debate over EU policies takes place in a very different institutional (and constitutional) context. In domestic political systems, there is a clear distinction between the polity and the government. The legitimacy of the polity (such as the Czech Republic) does not, at least in the short and medium term, depend on the legitimacy of the government (the government of the Czech Republic).

How is it possible? In a democratic political system, policy-oriented opposition and even anti-establishment opposition are being channelled into a clash of alternative political

programs. Therefore, policy-oriented opposition and even an anti-establishment opposition do not threaten the legitimacy of the polity (the political system). It is the national government and the political establishment which are to blame for the effects of mistaken or unpopular policies, but not the polity (the Czech Republic).

The legitimacy of the political system (polity) is not threatened as long as the system provides space for a legitimate policy-oriented and even an anti-establishment opposition. The opposition not only enjoys the “right to be heard” (freedom of speech), but also the “right to be in opposition” and the “right to fight for the executive power”. Opposition parties are part of the *polity* (political system), yet they do not share the political responsibility for the government’s *policies*. Therefore, people dissatisfied with the government’s policies and the political establishment can find a vehicle for their dissatisfaction (opposition parties and politicians) without threatening the polity itself.

What about the European Union? The most serious deficiency of the current EU political system is the inability to insulate the legitimacy of the polity (an institutional order) “from the effects of mistaken or unpopular policies by removing particular political leaderships” (Beetham – Lord 1998: 74). The European Union does inevitably produce wrong or unpopular policies. However, the EU’s political system lacks a vehicle to represent the popular discontent with EU policies (political opposition) and a competitive democratic mechanism allowing for the change of EU policies and political leadership. In these circumstances, the crisis of legitimacy of the “EU government” inevitably translates itself into the legitimacy crisis of the EU itself. Thus, policy-oriented Euroscepticism transforms into an anti-systemic Euroscepticism. We can identify two problems limiting the space for a legitimate policy-oriented opposition (Euroscepticism): the culture of consensual decision-making and the absence of European political parties.

Consensual decision-making still prevails both in the Council of the EU (not to speak about the European Council) and in the European Parliament. The Council sessions are notoriously consensual with voting being the exception that proves the rule rather than a standard decision-making mechanism<sup>03</sup> (Smeets 2015). What is more, this consensual tradition is so engrained that when voting eventually does take place, even in an issue area deemed supranational, policy implementation can wither and countries can try to attack the vote with a legal charge (the most recent example being the September 2015 vote on refugee redistribution, which Slovakia and Hungary plan to attack before the European Court of Justice; it is not yet known on what charges they plan to attack it).

While diplomats defend consensual decision-making as a tool for building trust among nation-states, we argue

<sup>03</sup> This is rather ironic considering how much time the member states have spent negotiating the complicated qualified majority voting mechanism under the Nice Treaty and how much they bickered over the reformed one in the current Lisbon Treaty.

that consensual decision-making is in fact detrimental for the long-term legitimacy of the decision-making process because it leaves no room for opposition. To put it simply, within a consensual decision-making system, there is no way for a member state to absolve itself of the responsibility for a particular EU policy.

On the other hand, qualified majority voting (QMV) provides an opportunity for a member state to publicly oppose a particular policy and absolve itself from a political responsibility for the policy considered wrong. QMV provides an opportunity for a Eurosceptic government to demonstrate its legitimate policy-oriented Euroscepticism, without threatening the integrity of the polity and the unity of its legal order and without resorting to a more dangerous anti-establishment Euroscepticism or anti-systemic Euroscepticism. By dangerous anti-systemic opposition we understand (threats of) permanent opt-outs (which erode the integrity of the polity and its legal order) or exits from the European Union.

Thus, in order to create room for a legitimate policy-oriented opposition in the Council, the EU should relax its obsession with consensual decision-making and embrace QMV as a safety valve. On the other side, Eurosceptic governments should not perceive QMV (the risk of being outvoted) as an inherent threat to their sovereignty, but as an opportunity to publicly vent their political opposition, a shelter for their alternative policy views and a way to dodge the pressure towards consensus.

#### *4.4. Rebuilding trust in the EU polity: Allow European political parties to compete in EP elections*

While providing more room for political opposition within the Council through QMV is desirable in the medium term, too much political tension between member states over EU policies could be detrimental and lead towards a fragmentation of the polity (opt-outs, differentiated integration and exits). A country's repeated (or permanent) experience of being outvoted in the Council would inevitably breed anti-systemic Euroscepticism and calls for an exit from the EU. In the long run, nation states (national governments) are not the best vehicles for public discontent with EU policies and its political establishment. So what are the alternatives?

Despite the general decline of mass political parties, national political parties remain a key vehicle for channelling popular discontent with existing policies and the existing political class into a competition of political ideologies and political programs and a clash of politicians. But when it comes to influencing EU policies, national political parties are no longer perceived as effective vehicles for change in EU policies for several reasons. First, national political parties tend to focus on national rather than European policy issues, with the possible exception of

times of a severe EU-wide crisis (such as the economic or the migration crisis). Second, even if they do focus on EU policy issues, their political power ends at national borders. By definition, national political parties are confined within national borders, and even well-established national political parties from large member states (for example, the British Conservatives) struggle to make an impact on the EU-level decision-making process, not to speak about fringe parties like the Greek Syriza. What about the national political parties and the European Parliament? The falling voter turnout in European elections, where people choose national parties to represent them in the European Parliament, could be interpreted as an indicator of a decreasing trust of people in the ability of national political parties to serve as an effective channel for the popular opposition towards EU policies. In fact, some national political parties focus their EP election campaigns solely on national policy issues and do not even pretend to be able to shape EU policies.

We argue that the natural vehicles for the public discontent with EU policies (policy-oriented Euroscepticism) and even with the EU political class (anti-establishment Euroscepticism) should be European political parties. The EU institutional system must allow European political parties to represent alternative visions of EU policies and compete for executive power. Unfortunately, the current system of European political parties and European parliament elections is dysfunctional and non-transparent and is itself a part of the problem of the legitimacy crisis of the EU rather than a solution to it.

With much fanfare, European political parties announced their "*Spitzenkandidaten*" for the post of the President of the Commission ahead of the 2014 EP elections. However, European political parties themselves do not compete in the EP elections – in fact they are legally prohibited from competing in European Parliament elections (only national political parties are allowed to field candidates). How much democratic legitimacy does the "winning candidate" carry when the European party which nominated him was not on the ballot for the EP elections and thus received zero votes from European citizens? The democratic legitimacy of the so-called "European parties" and their "*Spitzenkandidaten*" is indirect at best as long as they do not compete in the EP elections.

At the same time it is difficult for European political parties to serve as vehicles for public discontent with EU policies when new entrants and grass-root European political parties and movements face serious hurdles when entering the system. There is no single "European passport" which would allow them to stand in EP elections across the whole Union. European political parties are not allowed to field candidates in the European Parliament elections, and they are forced to register 28 national political parties (or find allies among existing national political parties) if they want to field



candidates across the whole EU.

## 5. Conclusion

The picture we paint in this paper is not a rosy one, it is one of the European Union in trouble: the so-called permissive consensus has long run out, at the same time the EU elites as well as EU member states in intergovernmental formats continue to make decisions that affect lives of its citizens, without a clear possibility for the people to affect these decisions. The intergovernmental drift of the past decade did not change much in this respect, as even non-EU agreements between states (for example country bail-outs) continue to raise concern. In other words: the more bold and efficient decisions are needed, the more the EU seems to lose public trust and its democratic credit.

European decision-making through *consensus without competition* worked while decisions were made on “technicalities” of product standards, however making decisions on matters of fiscal austerity or public security no longer falls into this category and provokes public as well as political backlash. The Eurosceptics can be roughly divided into three categories: policy-oriented Eurosceptics, who do not undermine the European political order as such, but who, just like domestic opposition, disagree with policies that come out of the executive kitchen – these sceptics typically oppose the fiscal austerity or the TTIP. Second group of sceptics can be labelled as anti-establishment Euroscepticism, as it contests mainstream politics – including European politics – head on, its attacks are more personal but also more fleeting, because once these forces get into the mainstream themselves, they often change rhetoric. The last type of scepticism – anti-systemic Euroscepticism – despite being the most notorious one is also the most abstract, rallying around phrases such as “national sovereignty” and “federalist superstate” advocating radical solutions of state exit from the EU or dismantling the European project as a whole.

Growing in numbers, Eurosceptic currents can't be ignored much longer. If the European Union wants to survive, regain trust of its citizens and improve its fading democratic credentials, we reckon the time to act is now and we offer several remedies. In general, they revolve around more competition as a *sine qua non* of democratic political order. First of all, opposition to EU policies should be invited to defend their ideas for the sake of better argument within a neutrally defined “constitutional” framework. Concrete policies should be connected to concrete parties/politicians who, if removed from power, do not bring the whole political order down with them. Secondly, Europe needs to become more political, more open to multiple narratives and their carriers, as it's the job of politics to resolve conflict among people. Put differently, consensual lowest common denominator decision-making

practice belongs to all and nobody in particular, it is not vision, it's plan B. Third, suggestion is directly connected to the previous two: allow real competition in the Council and European Parliament elections with the winners bearing responsibility for acting out their visions, as well as for failure to do so, without endangering the political order itself (no more “blame it on Brussels”). Also, we're not the first to suggest making more use of the qualified majority voting mechanism in the Council. Competition in one decision-making chamber would not make sense without direct competition in the other – in the European Parliament. We suggest direct electoral competition among European parties for executive power as it would both provide an array of visions as well as a mechanism how to exchange “incompetent government” without bringing down the whole polity.

We are of course aware that such solutions are easier said than done, however, imagining the alternative of a slowly disintegrating union is far worse than institutionalizing more plurality, competition and political responsibility in the EU political order – values we all subscribe to.

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