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BETWEEN THE TRANSFER OF SOVEREIGNTY AND DEMOCRACY DEFICIT. EUROPEAN COUNCIL AND THE COUNCIL OF THE EUROPEAN UNION

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Between the Transfer of Sovereignty and Democracy Deficit. European Council and The Council of The European Union

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Abstract

Throughout this paper we will refer through comparation to the two European institutions: the European Council and the Council of the European Union in terms of their originality in the European Union law system. We seek to identify similarities and differences between the two institutions, which derivates from their innovative character, thus formulating a series of reflections on their role in the functioning of the European Union. We will analyze the two institutions in terms of the idea of "democracy deficit".

Keywords:

democracy deficit, The EU Council, The European Council, the European Institutions

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Introduction

Throughout the paper, we will refer by comparison, to the two European institutions: the European Council and the Council of the European Union in terms of their originality within the EU's law system. We seek to identify similarities and differences between the two institutions, which by virtue of its innovative, thus formulating a series of reflections on their role in the functioning of the European Union. We will analyze the two institutions in terms of the idea of "democratic deficit" that Jürgen Habermas (2013) accuses the European Union (Sandu, 2013). The Council of the European Union, although through its legal nature is an inter-governmental institution, it is invested with legislative function, by analogy with the Upper House (Antonescu, 2009, p. 478). The European Council itself has the character of a supra-institutional structure whose purpose is to ensure a high-level of political cooperation between Member States of the European Council (Fuerea, 2006, p. 41).

Between the transfer of sovereignty and democracy deficit

The Council of the European Union performs a legislative function, with responsibilities in the areas of:

- Adopting the European legislative framework - in cooperation with the European Parliament;
- European public policy coordination in the economic and social fields, based on the general agreement of the States' Member;
- International agreements between the EU and other countries or international organizations;
- Approval of the EU budget in cooperation with the European Parliament;
- Defining and implementing the Common Foreign and Security Policy of the EU (CFSP) based on guidelines set by the European Council;
- Orientation of cooperation between national courts and police forces in criminal matters (Barbulescu, 2001, p.132).

The European Council has powers in matters concerning the general development of the structure and prospects of the European Union (Fuerea, 2006, pp. 44-48).

Both institutions are Member States of the European Union, the composition of which is determined by national political factor, usually the national Parliament, being chosen by the citizens. This restriction of the democratic nature, the lack of choice of these institutions bring a

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number of criticisms regarding the democratic deficit. The idea of democratic deficit of the European Union refers to the ideal model of the nation state. Some authors, including Jürgen Habermas (2013) consider that the EU deviates from electoral democracy, placing states and transnational organizations, not subject to popular control, too much power.

The transfer of sovereignty between nation states and the EU has not been made between institutions with similar democratic practice, such as for example the National Parliaments to the European Parliament, but the national parliaments to a complex legal structure made up of European Parliament and the EU Council. European parliamentarism can not be understood as the classical bicameral, the European Parliament as the lower house and the EU Council as the upper house, just because of the EU Council character of being elected as a representative of national governments and not citizens. However an analog model would be the UK House of Lords, as the body weights are also a legislative body is the result of an election.

Both councils seem to contradict the principle of separation of powers, as the EU Council and the European Council have legislative and executive powers (Antonescu, 2009). This regime of "confusion of powers" is also a source of deficit of democracy, exercising power on an european level, being partially legitimized on the electoral base. Executive function is assigned through the established Treaties of the European Union by the European Commission, which is supervised by the European Parliament. EU Council and the European Council have from this point if view an original status, they being rather nationally controlled, then on an european level, and represents the interests of member states by their governments and not directly to citizens through elected deputies at the European level.

Legitimacy Councils should be reconsidered, as mentioned democratic deficit is reflected in the public control that can be exercised directly by citizens in the electoral process. Executive and legislative prerogatives of the two Councils are carried out outside the representative office as a result of the compromise made by the EU to Member States in return for the partial transfer of sovereignty. Unless, institutions representing Member States would have questioned the reality of their sovereignty in the context of common policies. Consensual nature of the decisions of Member States shall ensure that transferred sovereignty is not used against national interests.Some authors talk about a legislative and executive bicephalous, reflecting a tendency to balance the

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intergovernmental side and the supranational dimension with the democratic needs of the European construction (Antonescu, 2009).

The main difference between the two Councils lies in how they transfer the democratic deficit in the EU court's legitimate power. From this perspective, the European Council has in its composition the Heads of State and Government of the member countries, assisted by European Commission President and the Ministers of Foreign Affairs. National representativeness of the Council transfers such the legitimacy, so the fact that its members come indirectly from the results of national elections even if not European. Its function is to institutionalize political cooperation between State Members, it being political legitimized precisely through the need to support national interests. EU Council has in turn a preponderance of laws, making ministers (unelected) by direct suffrage in the member countries to meet European legislative powers.

Conclusions

In our opinion this position of the two Councils, reflects a particular character of the European construction as the superstate unit without recognized state attributions, but with powers of delegated sovereignty of the State Members.

Overcoming the classical theory of separation of powers is justified by the unique nature of EU, of non-state carrier of sovereignty.

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