

The Treaty of Lisbon and the gender-blind responses to the EU crises: impact on the quality of European democracy

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Abstract. This article analyses the state of democracy in the European Union (EU) using gender lens on the Treaty of Lisbon and three of the main European crises in the first decade since its entry into force (2009-2019): the economic crisis (2008-2014); Brexit (2017-2020) and the democratic decline and triggering of Article 7 TEU against Poland and Hungary (2017 and 2018 respectively). By drawing on feminist democracy theory, it shows the interdependent connections of democracy and gender equality in the analysed European crises. It examines the two dimensions of the double democratic deficit through gender lens –the underrepresentation of women and gender sensitivity– in the adoption and provisions of the Treaty of Lisbon and European decision-making and responses to the crises. It argues that the gender-blind European responses to the crises of the first decade of the Treaty of Lisbon have contributed –among other factors– to the deterioration of the EU’s democratic structures and procedures, and have also, in turn, contributed to restraining progress on gender equality and exacerbating gender inequality across different member states. Given Ursula Von der Leyen’s declared plans for a “new push for European democracy”, and the new EU crisis emerged by the Covid-19 virus pandemic, the article points to some key gender aspects that might be worth considering for the future of the European democratic project.

Keywords: Gender; European Union; European democracy; Treaty of Lisbon; EU crisis; gender-blind; democratic deficit; women; gender mainstreaming

[en] El Tratado de Lisboa y las respuestas a las crisis de la UE ciegas al género: impacto sobre la calidad de la democracia europea

Resumen. Este artículo analiza el estado de la democracia en la Unión Europea (UE) aplicando el enfoque de género sobre el Tratado de Lisboa y tres de las principales crisis europeas en la primera década desde su entrada en vigor (2009-2019): la crisis económica (2008-2014); Brexit (2017-2020) y el declive democrático y activación del artículo 7 del TUE contra Polonia y Hungría (2017 y 2018, respectivamente). Basándose en teoría de la democracia feminista, muestra las conexiones de interdependencia de la democracia y la igualdad de género en las crisis europeas analizadas. Examina las dos dimensiones del doble déficit democrático con perspectiva de género –la infrarrepresentación de las mujeres y la sensibilidad de género– en la adopción y disposiciones del Tratado de Lisboa y la toma de decisiones y respuestas europeas a las crisis. Este artículo sostiene que las respuestas europeas a las crisis de la primera década del Tratado de Lisboa carecen de perspectiva de género y que ello ha contribuido, entre otros factores, al deterioro de las estructuras y procedimientos democráticos de la UE y, a su vez, también ha contribuido a frenar el progreso en igualdad de género y exacerbar la desigualdad de género en diferentes estados miembros. Dados los planes de Ursula Von der Leyen para un “nuevo impulso a la democracia europea”, y la nueva crisis por la pandemia del virus Covid-19, el artículo señala algunos aspectos de género claves que deberían considerarse para el futuro del proyecto democrático europeo.

Palabras clave: Género; Unión Europea; democracia europea; Tratado de Lisboa; crisis de la UE; perspectiva de género; déficit democrático; mujer; transversalización de género

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1. Introduction

Ten years have passed since the Treaty of Lisbon, the current legal basis of the European Union (EU), entered into force (2009–2019). The Treaty constituted a step forward in the democratization process of the EU's governing and decision-making system, mainly through strengthening the power of the European Parliament, among other changes. It also emphasised the EU's commitment towards gender equality by including the principles of non-discrimination and equality as core values of the EU, the mandate to promote equality between women and men, and gender mainstreaming in European policies. However, since the entry into force of the Treaty, several crises have impacted and jeopardised –to different degrees–, the democratic structures, processes and outcomes of the EU. Gender scholars have shown how democratisation and de-democratisation processes are gendered (Young, 2000; Walby, 2015; Alonso and Lombardo, 2018; Verloo, 2018; Krizsán and Rooggeband, 2019).

This article examines the state of European democracy through gender lens, by analysing the Treaty of Lisbon and the main crises that the EU has faced since its entry into force. It builds upon feminist knowledge on democracy and gender and draws on key literature about the gendered democratic consequences of the main European crises to inform about the current state of democracy in the EU. It asks the following questions: To what extent women participated in the adoption of the Treaty of Lisbon and posterior decision-making in the main European crises during the first decade of the Treaty of Lisbon?; To what extent has gender been considered in the Treaty of Lisbon and EU policies and responses to the crises during the first decade of the Treaty of Lisbon? and last but not least; How does analysing the first decade of the Treaty of Lisbon from gender lens inform the current state of democracy in the EU?

To answer these questions, this article is divided into three parts. The first part refers to the analytical framework and methods and explores the meaning of examining European democracy through gender lens. The second part examines the adoption and provisions of the Treaty of Lisbon from a gender perspective. First, looking at the participation of women in the adoption of the Treaty and second, analysing the Treaty's provisions with regards to the changes in the democratic structures and processes, and gender equality. The third part provides a political reading of the first ten years of the Treaty of Lisbon, by analysing some of the main crises – the economic crisis (2008-2014), Brexit (2017-2020) and triggering of Article 7 of the Treaty on the EU (TEU) against Poland and Hungary (2017, 2018)– faced by the EU through gender lens. First, it looks at the participation of women in European decision-making in those crises. Second, it examines whether, or to what extent, gender was considered and effectively mainstreamed in the EU's responses to those crises. Through the article, references to the links on democracy and gender equality are done. The article also looks at women's diversity and the inclusion of intersectionality in the Treaty of Lisbon and EU responses to the multiple crisis. Finally, the conclusions provide some reflections on how the examination of the first decade of the Treaty of Lisbon from gender lens is key to understand the current state of democracy in the EU. Given Ursula Von der Leyen's declared plans for a "new push for European democracy", and the new EU crisis emerged by the Covid-19 virus pandemic, the article points to some gender aspects that might be worth considering for the prospects of the European democratic project.

2. European democracy through gender lens

Gender and feminist scholars have contributed to democracy theories by addressing different dimensions of democracy that have often been overlooked before. While mainstream democracy theories have largely focused on procedural aspects of democracy, notably on participation and elections; feminist knowledge has emphasized on notions of deep democracy and the practice and outcomes of democratic rules (Verloo, 2017; Walby, 2015; Alonso and Lombardo, 2018). In fact, in "classical" democracy theories it is generally understood that the minimum conditions for democratic systems are to present at least free, fair, competitive, and periodical elections; multi-party competition and political pluralism; universal female and male suffrage; freedom of expression, and different sources of information (Morlino, 2009).

But the inclusion of gender balance and the substantive outcomes of social justice has been a cornerstone in the majority of the feminist studies on democracy.

Different authors have contributed to understanding democracy in diverse ways. For example, Morlino (2009) argues that quality democracy involves not only procedural, but also responsiveness and substantive dimensions; for Galligan (2015) a gender democracy includes the recognition and inclusion of women and the accountability of the state concerning gender equality commitments; for Walby (2015) the depth of democracy includes procedures to secure the representation of women and minorities, and the governance of major public services through democratic accountability which assures that profits are not for private owners but citizens.

This article relies on two principal ideas of the field of gender and democracy. The first idea refers to the understanding of democracy considering gender equality as a requirement of a democratic system, and the second idea to the interdependent connections of democracy and gender equality.

The first idea relates to the arguments put forward by Vogel-Polsky and Rubio-Marin, that is that the realisation of equality between women and men needs to be understood as a structural prerequisite of a democracy (Vogel-Polsky, 1998, and Rubio-Marin, 2012). This means that democracy is to be read together with gender equality and that a high-quality democratic system acknowledges the equal value of women and men, their equal dignity and their obligation to share rights and responsibilities, free from prejudices and gender stereotyping (Irigoién, 2018: 3). The core lies on posing the question of equality between men and women as a political precondition falling under the founding principles of the political regime, just like the principles of universal suffrage or the division of powers (Irigoién, 2018: 35; Gubin, 2007: 123). Considering women in all their diversity is also necessary in this regard, given that different groups of women have different experiences which must be accounted for (Irigoién, 2018: 6).

The connection between democracy and gender equality is the second idea underpinning this article. The interdependency of democracy and gender equality has been unveiled by multiple feminist and gender authors (Alonso and Lombardo, 2018; Verloo 2017, 2018). According to Alonso and Lombardo, “democracy is an ally of the feminist project and a necessary condition for its success” (2018: 78). Verloo (2018a: 47) acknowledges that progress towards gender equality outside democracy is possible –albeit mostly very partial– but claims that progress (on gender equality) is strongly connected to the quality of democracy. The assumption is that “the more democracy, the more chances for gender equality; the more gender equality there is, the more chances for democracy” (Bellamy et al, 2018: 79). A democratic system allows more freedom to civil society and this increases the influence of women’s organisations, which, in turn, feminist movements’ challenges to power gendered relations, domination, and exclusion dynamics, contribute to democratizing the political space (Alonso and Lombardo, 2018: 79). This article’s analysis shows the interwoven dynamics of gender and democracy through the text. It has systematised some of the prominent literature on gender, European democracy and the crises since the entry into force of the Treaty of Lisbon (Abels and Mushaben, 2012; Verloo, 2018a; Kantola and Lombardo, 2017; Guerrina and Masselot, 2018; Krizsán and Roggeband, 2019).

In particular, the article builds on Abels and Mushaben’s (2012) understanding of the double democratic deficit of the EU and the meaning of analysing the EU through gender lens to guide its methodology. The quote below explains it neatly: “viewing the EU through a gender lens exposes its double democratic deficit –one involving women’s underrepresentation across EU institutions and decision-making bodies, the other reflecting the lack of gender sensitivity in EU policy-making” (Abels and Mushaben, 2012: 14). Thus, this article analyses the first decade of the Treaty of Lisbon first, asking about the descriptive representation of women and second, asking about substantive representation, meaning the integration of the gender dimension in EU’s decision-making and policy responses to the main crises during the first decade of the Treaty.

Finally, this article considers intersectionality too. Experts tend to agree on the need for an intersectional approach to tackle inequalities more effectively (Van der Vleuten, 2019: 54; Alonso and Arnaut, 2017). Some scholars have pointed at the links and potential benefits of integrating an intersectional approach into a democratic governing system, particularly for advancing toward a more participatory democracy and achieving better policies (Hill Collins, 2017; Alonso and Arnaut, 2017; Martínez-Palacios, 2017; Severs et al., 2017; La Barbera, 2017; Squires, 2010). Although the attention to intersectionality in EU policymaking seems to have increased in the last years, a recent research showed that intersectional thinking was rare in EU documents, poorly articulated, and failing to present transformative solutions that challenge existing privileges (Lombardo and Rolandsen-Agustín, 2012)².

² The links between democracy and intersectionality are further analysed in the Special Issue “Justicia social, interseccionalidad y profundización democrática” published in *Investigaciones Feministas* 8(1) 2017. The different contributions by Eline Severs, Karen Celis and Silvia Erzeel; Jone Martínez-Palacios; María Caterina La Barbera; and Alba Alonso Alvarez and Catarina Arnaut are of particular interest on this regard.

3. The adoption and provisions of the Treaty of Lisbon from a gender perspective

3.1. Adoption of the Treaty of Lisbon

The adoption of the Treaty of Lisbon has its origins on the previously unratified Constitution of the EU. However, although the Treaty of Lisbon is not a constitutional treaty, it preserves most of the substantial achievements contained in the proposal for a Constitution of the EU (EU Parliament Fact Sheets, 2020).

Although for the development of the EU Constitution the European Commission promised to accord women 40% of the committee and expert-group seats, in the end, the composition of the European Convention in charge of drafting the document of the Constitution was overwhelmingly male³ (Mushaben and Abels, 2012: 233). This means that women did not participate on an equal foot to men in the making of the EU Constitution, an issue which was passed over to the Treaty of Lisbon and which poses one of the first democratic concerns. The lack of women in the EU Constitution drafting and the adoption of the Treaty of Lisbon results in a failed descriptive representation of women from the very origins of the Treaty. This happened although the principles of equality between women and men and gender mainstreaming were already part of the European *gender acquis* –i.e. the pre-existing body of rules and policies that must be followed by all EU member states (Locher, 2012: 63). In fact, the negotiations for the adoption of the Treaty of Lisbon were marked by a hierarchy of positions with fewer women at the top (Kantola, 2012: 215). Data seems to be scarce on the issue of diversity among those “few women at the top”. Yet, looking at the little representation of people of diverse ethnic origin –as well as with disabilities or different age– in EU institutions and decision-making (Chander, 2019), we can expect little diversity among these few women too.

Moreover, the examination of how the Treaty was adopted reveals wider democratic concerns in terms of participation, consultation and openness in the EU; mainly because the demands of civil society organisations, which focused much more on the “social Europe” and included concerns on the issue of equality between women and men, were side-lined in the negotiations and the Treaty –leading to the prioritization of neoliberal and market-oriented positions (Kantola, 2010: 2015; Lombardo, 2007: 164).

3.2. Provisions of the Treaty of Lisbon

3.2.1. Enhancing democratic structures and processes

There is extensive literature on the democratic innovations that the Treaty of Lisbon introduced, including other contributions in this special issue. Thus, this part will only focus on the most important democratic changes for gender equality.

The Treaty made clear that democracy is one of the EU values and enhanced democratic structures and procedures mainly by increasing the power of the European Parliament. Other innovations were the cooperation with national parliaments and citizen’s initiative, among others. The Parliament has been a key actor fostering gender equality, as it has channelled many gender equality demands. Through expanding the co-decision procedure –which requires that the Parliament and the Council jointly adopt legislation at the European level (Article 294 TFUE)–, the Parliament has been able to influence on many policies affecting gender including the measures concerning trafficking in women and children (Locher, 2012: 68), and improved the prospects for activities promoting gender justice (Van der Vleuten, 2012: 52). The Parliament has also used its powers to ensure and increase funding for programmes involving diversity and gender equality, among others (Van der Vleuten, 2012: 49). Since the first elections to the European Parliament, the percentage of women parliamentarians has steadily increased. The greater position of the Parliament after the Treaty of Lisbon has therefore provided more space and power for women too.

Also, the Treaty of Lisbon provided the Parliament with budgetary authority over the entire EU budget in an equal foot to the Council (Article 314 TFEU). Having certain power over the budget is not trivial as it has proven a useful tool to push for action on gender equality within the EU institutions and beyond (Irigoien, 2019). As an example, the control exercised by the European Parliament’s Budgetary Control Committee through the *Discharge procedure*⁴ of the European Economic and Social Committee (EESC) was key to trigger action to tackle harassment and call the attention on broader gender equality issues in the EESC. The Budgetary Control Committee asked questions on how the EESC was dealing with harassment⁵, which pressured the EESC to adopt a renewed Code of Conduct⁶.

³ According to Mushaben and Abels (2015: 233), the Constitutional Convention was chaired by a president and 2 vice-presidents, all men; women accounted for only 18 of 105 delegates in 2003, including only 3 (of 15) heads of states government; and only 3 of 30 parliamentarians. They comprised 31 per cent (5 of 16) of the MEP convention delegates but only 16 per cent (2 of 12) of the Presidium members.

⁴ The “discharge procedure” refers to the final approval of the budget implementation for a specific year (European Commission, EU Budget, 2020).

⁵ The harassment cases had become public and were covered by the media.

⁶ See the interviews made to EESC representatives and staff for the research “On the road to gender equality: gender balance in the European Economic and Social Committee” (Irigoien, 2019).

However, there have been varied feminist analyses on this regard. While the majority value the strengthening of the Parliament's position, they differ on the degree of optimism about its ability to foster gender equality legislation, considering that the Council –which has shown the biggest resistance to adopting measures that would promote gender equality–, is still privileged in the current EU's governing system (Toemmel, 2009: 10). In fact, decision-making procedures “still require the European Parliament to act strategically and forge alliances with the Commission and pioneer states in the Council in order to see its amendments adopted” (Van der Vleuten, 2012: 50). In this sense, even if the improvements of the Treaty of Lisbon to the democratic structures of the EU have been relevant, the EU's democratic framework has still weaknesses that often hamper progressive action on gender equality.

3.2.2. Provisions related to gender equality

The Treaty of Lisbon emphasised the commitment on gender equality incorporated in the Treaty of Amsterdam (1999) by including the principles of non-discrimination and equality as core values of the EU (Article 2 TEU), the mandate to promote equality between women and men (Article 3 TEU) and gender mainstreaming in European policies (Article 8 TFEU). It also made explicit references to the trafficking of women (article 79 TFEU) and the sexual exploitation of women (article 83 TFEU). Article 10 TFEU establishes that the EU should combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In addition, *Declaration number 19 on Article 8 of the TFEU* annexed to the Treaty makes an explicit reference to action on domestic violence.

Although the mentioned references to equality between women and men are celebrated by feminist scholars, many also note that gender was not effectively mainstreamed into the whole Treaty (Kantola, 2010: 216). In fact, gender is absent from areas such as culture, education, and health, where references to combating gender stereotypes would have been relevant, also in other areas such as finance and foreign and security policy that have a significant gendered impact (Lombardo, 2007: 145). Besides, the principle of gender mainstreaming was introduced in the Treaty of Amsterdam and by the time the negotiations of Lisbon were happening, several experts and feminist scholars had already alerted about the inefficient implementation of the principle in practice, and the need for innovative solutions (Mazey, 2001; Pollack and Hafner-Burton, 2000; 2009; Stratigaki, 2005). However, the new Treaty did not undertake notable modifications in the gender mainstreaming provision.

Importantly, the Treaty of Lisbon made the *Charter of Fundamental Rights of the European Union* legally binding to member states, by providing the Charter the same legal value as the Treaties (Article 6.1. TEU). While some considered the integration of the Charter as a possible gateway to channel demands on gender equality (Bisio and Cataldi, 2008; Woodward, 2012: 100; Kantola, 2010: 18); others acknowledged some concerns about the real effectiveness of the Charter with regards to women's rights and progress on gender equality at the EU level (Kantola, 2010: 18). Some of these concerns focused on the absence of some rights of key importance to women such as contraception and abortion rights; the “opt out” option of Poland and the United Kingdom (UK) (Bisio and Cataldi, 2008: 12); and the weak formulation of some fundamental rights and the principle of gender mainstreaming that were stronger in previous EU legislation (Koukoulis-Spiliotopoulos, 2008: 16).

However, the Charter prohibits discrimination on any ground, including sex (Article 21); recognizes the right to gender equality in all areas and the necessity of positive action for its promotion (Article 23); and proclaims rights related to family protection and gender equality (Article 33) (Koukoulis-Spiliotopoulos, 2008: 15). Experts in law have acknowledged that gender equality is a fundamental right in the EU which goes beyond the prohibition of discrimination (Koukoulis-Spiliotopoulos, 2008). Considering the role of the European Court of Justice (ECJ) in shaping and providing effect to the provisions of Union law (Koukoulis-Spiliotopoulos, 2008), the Charter provides further legal basis to gender equality and has potential to advance on the effective implementation of the fundamental right of gender equality.

In conclusion, the Treaty of Lisbon enhanced the democratic processes and structures of the EU's governance architecture and included gender equality as an EU value and fundamental right. Although the democratic framework provided by the Treaty has some weaknesses and could still be further improved, these legal changes have been relevant both to democracy and gender equality in the EU.

4. European crises in the first decade of the Treaty of Lisbon

The legal analysis of the Treaty of Lisbon is not sufficient to understand the democratic functioning of the EU with gender lens. As Holzleithner (2018: 136) states, “legal provisions do not implement themselves –they have to be effectuated. And herein lies the challenge”. For the implementation of a given legal framework, political will is necessary and that is why this second part of the article provides a feminist political analysis of some of the main European crises and its effects on European democracy during the first decade of the Treaty of Lisbon. This article explores the responses to economic crisis (2008–2014), the Brexit negotiations (2017–

2020) and the democratic decline and triggering of Article 7 TEU against Poland and Hungary (2017 and 2018 respectively)⁷.

When analysing these crises, the general political context in Europe is to be considered too. In the last decade, the support of far-right political parties has increased in Europe and the world. Support for these parties is higher than it's been at any time over the past 30 years (Tartar, 2017). Electoral gains have taken far-right parties to the government in several EU countries and regions. While these parties' nationalist ideology is often antagonising the EU, they also challenge democratic and gender equality values (Irigoien, 2018: 27). It is not the purpose of this article to examine the rise of the far-right in Europe, but references to the de-democratisation effects that this trend has had in Europe are made through the text, in the analysis of the multiple crises faced by the EU, and especially with regards to the crisis created by the Polish and Hungarian cases.

4.1. The economic crisis

What started as a financial crisis in the United States in 2008, spread to countries in Europe as a serious economic crisis which damaged national economies severely. The policy responses to the crisis were driven by a prominent neoliberal approach and resulted in large austerity measures which entailed the cut on public services and others (Kantola and Lombardo, 2017). The effects of the economic crisis lasted for several years in many of the EU member states and involved major changes in legislation (such as the EU regulations that demanded member states to keep their debt below 60% of GDP and their annual budgetary deficit below 3%), and the institutions, which resulted on the modification of several democratic processes in EU decision-making (Kantola and Lombardo, 2017: 9).

When exploring to what extent women were involved in the decision-making of the responses to the economic crisis in Europe, feminist scholars have argued that men have been the dominant actors in the institutions which provided the official "solutions" to end the crisis, and not only that, some argued that it was a men's crisis in the sense that men were dominant in the institutions that created the crisis too (Pearson and Elson 2015: 14). An early report of the Advisory Committee on Equal Opportunities for Women and Men of the European Commission acknowledged that fewer women than men were being involved in the European financial and economic decision-making (European Commission, 2009: 9). In fact, all of the three European financial institutions, the European Central Bank, European Investment Bank, and European Investment Fund, were led by men, and women accounted for only 16% of the highest decision-making bodies of these institutions (European Commission, 2009). This means that women were not included and did not participate on an equal foot to men in the European responses to the economic crisis (2008-2014), resulting in a failed descriptive representation in the key economic institutions operating within the European democracy. Again, the question of the diversity among those "few women" that participated remains to be explored⁸.

With regards to the consideration of gender in the EU's responses to the economic crisis, different analyses have reached the same conclusion: gender was not mainstreamed either in policy design or implementation of the measures (Bettio et al. 2012; Villa and Smith, 2011, 2014; Karamessini and Rubery, 2014; Klatzer and Schlager, 2014; Kantola and Lombardo, 2017: 10). Similarly, only in 9.8% of the cases of national policies implemented in response to the crisis, there was some assessment of the measures from a gender perspective (Bettio et al. 2012; Villa and Smith, 2011; Kantola and Lombardo, 2017: 10). The European responses to the economic crisis were gender blind. The disregard of gender and intersectionality meant that the austerity measures and cuts to the public sector services, benefits and jobs, impacted severely on women, with women with disability, minority women from different ethnic backgrounds and others, being disproportionately affected (Pearson and Elson, 2015). Feminist scholars have shown that cutting down the public sector means the reliance on and reproduction of traditional gender roles which put the responsibility of care (in the form of unpaid work in the family) on women (Karamessini, 2014; Kantola and Lombardo, 2017).

In addition to the gendered consequences of the crisis, equality policies were also affected by the crisis because fewer resources were used for tackling gender inequality and many equality institutions and policies in the EU and member states were either dismantled or restructured (Kantola and Lombardo, 2017: 14).

More interestingly, Kantola and Lombardo (2017) show how the "new economic governance regime" that emerged to respond to the economic crisis, negatively impacted on democratic structures and processes in the European level (and also in many member states) in particular gendered forms. This governance regime comprised institutions (mainly the European Central Bank, the International Monetary Fund and the European Commission), rules and procedures to coordinate member state's macroeconomic policies. The European Parliament had limited powers in this new regime (Kantola and Lombardo, 2017). In fact, the "new economic governance regime" and its tools "challenged representative democracies by moving powers from parliamentary to executive branches of politics both at the national and supranational levels" (Bruff and Wöhl, 2016: 98). Therefore, the values of gender and wider social equality within the EU were further marginalized by this go-

⁷ Other crises, such as the so-called "refugee crisis" (2015), and the recent Covid-19 pandemic crisis, have not been analysed due to space (word-limit) and resource limitations.

⁸ No numerical data has been found in this regard.

vernance regime, not only because of the stronger neoliberal ideology but also because the key actors in favour of gender equality –such as the FEMM Committee (European Parliament’s Committee on Women’s Rights and Gender Equality)⁹ and women’s and civil society organisations– were side-lined (Kantola and Lombardo, 2017: 12). Kantola and Lombardo (2017: 18) argue that “austerity politics in the EU has been accompanied with a trend of de-democratization”.

4.2. Brexit

In the referendum of June 2016, 52% of the United Kingdom’s (UK) citizens voted to leave the EU (Electoral Commission UK, 2019), and in March 2017 the UK triggered Article 50 TEU thus officially starting the process of withdrawal and the negotiations between the UK and the EU (European Council, 2020). The decision of the UK to leave the EU prompted concerns on the future of Europe and was a great setback to the European project given that the UK was the first member state ever leaving the EU since its establishment. On 31 January 2020, the UK officially left the EU, which led to the so-called “post-Brexit negotiations” that determined the relationship between the UK and the EU in the new post-Brexit scenario (European Council, 2020). Several actors have raised democratic concerns over the lack of transparency of the negotiations and the post-Brexit plans, especially regarding the UK (Koutrakos, 2019). At the same time, feminist scholars have raised awareness over the gendered dimensions of Brexit.

In the context of the referendum, Hozic and True (2017) examined the “paradox of men’s dominance of the Brexit campaign and women’s rise in the political crisis that ensued after the referendum vote”, where women would have become visible “as actors in Brexit ostensibly to ‘clean-up’ the mess left by their male counterparts” (Hozic and True, 2017: 271). They have argued that the limited representation of women in the public referendum debate– which foregrounded largely white, male elites and technocrats– purged the diversity of voices including women of all classes and races, which led to an outcome unreflective of the range of views and experiences from within and across social groups (Hozic and True, 2017: 271).

Concerning the participation of women in the Brexit process after the referendum, the English Brexit negotiation team was led by a man as the chief-negotiator and was composed of nine members, of which one was a woman and eight men, and all were white (Achilleos–Sarll and Martill, 2019: 33). The British Prime Minister at the time of the referendum David Cameron resigned after the results of the public vote and Theresa May was appointed as successor, which meant that a woman became the leader dealing with the Brexit process in the UK. However, some feminist scholars argue that this ascension to the top is more a reminder that women “reach positions of leadership at precarious or risky times” (Hozic and True, 2017: 276) rather than an indication of gender equality in politics within the Brexit context. The prominence of discourses valorising the “strength” during the Brexit negotiations reinforced stereotypes of “manliness” and the male archetype as the only means of achieving the ‘best deal’ (Achilleos–Sarll and Martill, 2019: 37). Unsurprisingly, criticism of Theresa May largely focused on her “weakness” (Achilleos–Sarll and Martill, 2019: 37). After intense negotiations and failures to come to a “Brexit-deal”, May officially resigned in June 2019¹⁰.

The chief negotiator of the EU was also a man and the front-line European negotiators were seven, out of which two were women (Aries, 2017; Rankin, 2017). However, since the negotiations started in 2017, some of the people involved in the process has changed.

Regarding the substantive aspects of Brexit, gender and equality have been left out of public debate and discourse during the EU referendum campaign (Guerrina and Masselot, 2018: 320) and it has not seemed to be central in the negotiations. Responses to the European economic crisis helped to side-line key gender actors in the EU institutions and have, ultimately, undermined the ability to gender mainstreaming in all policy areas, including the Brexit (Guerrina and Masselot, 2018: 320). According to Chilcott, “the government’s lack of attention to gender mainstreaming in recent economic policy has already seriously disadvantaged women, and a similar lack of attention to the issue is expected after Brexit” (Chilcott, 2017: 20).

More importantly, feminists and human rights scholars and activists have argued that the post-Brexit scenario is very likely to be detrimental to women’s rights and (minority groups) in the UK (Dustin et al., 2019; Chilcott, 2017; Barr, 2017; Guerrina and Masselot, 2018; Guerrina and Murphy, 2016; Fagan and Rubery, 2018). Research has shown how the UK –and especially English women– have benefited from the EU’s *gender acquis* and in particular, its legal framework to adopt legislation which protects women’s rights (Dustin et al., 2019; Barr, 2017; Guerrina and Masselot, 2018; Fagan and Rubery, 2018). In post-Brexit, the UK will have the ability to reshape legal principles related to key social legislation, most likely with a negative effect for women and minority groups (Syrpis, 2017), as the example of the vote of the House of Commons against the amendments to the Bill aimed at safeguarding the rights established under the 2010 Equality Act, in No-

⁹ In this regard, Kantola and Rolandsen–Agustin (2016) note that there was a broad consensus in the FEMM Committee about the need to tackle the gendered aspects of the crisis at first, but at the end contestations between political groups managed to shatter the consensus on the importance of the gender perspective in the crisis responses, further undermining the role of the European Parliament in promoting a gender perspective to the austerity politics.

¹⁰ On 24 July 2019 Boris Johnson was appointed as new Prime Minister.

vember 2017, seems to point at (Guerrina and Masselot, 2018: 319). In fact, Fagan and Rubery (2018: 297) have already concluded that “Brexit will harm the pursuit of gender equality in the UK due to decoupling from the EU’s equality framework and policy pathway”. They show how the EU’s gender equality framework, and specially its employment policy, has been relevant for building the UK’s gender equality architecture and that the UK has sought to divert, stall or dilute legal measures in this field, instead of being a pace setter (Fagan and Rubery, 2018: 312).

Several authors have given particular attention to intersectionality and have warned about the detrimental effects of the Brexit on women belonging to minority groups. For example, black and ethnic minority women had already experienced the impact of Brexit because after the “leave” referendum result, they were the target of racist and Islamophobic attacks and assaults due to the combination of misogyny and xenophobia that appeared to find legitimisation in the new context (Gill and Ahmed, 2019: 44). Other authors have noted that the hostile environment and racism enhanced by Brexit might have consequences in asylum law, which will impact on women asylum seekers and refugees (Querton, 2019); and that progress on LGBTIQ+ people’s rights might stagnate after Brexit (Danisi et al., 2019).

4.3. Democratic decline and triggering of Article 7 TEU against Poland and Hungary

Article 7 TEU establishes a mechanism to ensure that all member states respect the common values of the EU, referred in Article 2 TEU: “human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. On a reasoned proposal about the “risk of a serious breach” of EU values by a Member State, the European Council “may determine the existence of a serious and persistent breach by a Member State” of the values of the EU after inviting the Member State in question to submit its observations. The European Council needs to act in unanimity to determine that such a breach has occurred. Once the breach has been determined, the Council may decide to suspend certain of the rights of the EU Treaties to the Member State in question. Unanimity has proven very difficult –if not impossible– to obtain, which has put the utility and effectiveness of the legal mechanism of Article 7 TEU under question.

On 20 December 2017, the procedure against Poland was opened by the European Commission, and on 12 September 2018, it was the European Parliament who initiated it against Hungary, based on concerns about the respect of the rule of law. The EU institutions worried that Polish and Hungarian governments were deliberately trying to weaken democratic checks and balances (Gostyńska-Jakubowska, 2016). Since then, the Council has been dealing with the matter, but without concrete results to date (Wahl, 2019). The concerns about democracy in these member states and the consequent triggering of Article 7 posed –and still poses– a crisis to the EU, because it made its democratic foundations and unity (with the East-West recurrent divide) staggered.

One of the dimensions that this article looks at is the participation of women. In the process against Hungary, the MEP Judith Sargentini led the process. In the process against Poland, women’s involvement in the Commission’s endeavours is more difficult to track. Two men leading in the European Commission (Jean-Claude Juncker, President; and Frans Timmermans, First Vice-president) were the visible faces of the process, but the internal or external actors and forces which influenced the Commission’s decision to examine Poland’s respect of the rule of law are –at least officially and publicly– unknown. Therefore, it is not clear to what extent women were involved in the process against Poland, but the leading voices were all male.

The other dimension to explore is if gender equality was a salient issue in the process against Poland and Hungary and if gender was mainstreamed in the reports triggering the process. In the Hungarian case, the issues regarding gender equality were highlighted mainly in the Opinion of the FEMM Committee annexed to the report¹¹, although the general concerns on the right to equal treatment and other rights mentioned through the report also concern gender equality and women. This finding is in line with the existing literature on the role of the Parliament and democracy in advancing the equality cause. Mainstream research on the democratic backsliding of Hungary has focused on the issues of judicial independence, academic and media freedoms, and the rights of migrants; and the attacks and dismantlement of gender equality principles and policies have been often overlooked as a reason of concern (Bugarcic, 2016; Meyerrose, 2017)¹².

In the Polish case, the European Commission’s report¹³ focused on the rule of law and the independence of the judiciary and made no reference to equality between women and men. Yet, before triggering Article 7 TEU, the Commission had already started a dialogue with Poland under the Rule of Law Framework¹⁴ and one of the concerns over Poland’s respect of the rule of law and independence of the judiciary was a reform that

¹¹ The European Parliament’s “Report on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL))”.

¹² However, several feminist authors have analysed the gendered dimensions of de-democratisation process in Hungary, as addressed below (Roggeband and Kirzsán, 2019; Szczygielska, 2019; Krizsán and Sebestyén, 2019).

¹³ The European Commission’s “Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law” of 20 December 2017.

¹⁴ The dialogue took place from January 2016 to December 2017. The Commission adopted one opinion and four recommendations (Communication from the Commission. Further strengthening the Rule of Law within the Union. 3.4.2019)

lower the retirement age of judges and public prosecutors, which established different retirement ages for women (60) and men (65) judges (Rule of Law Recommendation (EU) 2017/1520). According to Reuters's news agency, Poland's Deputy Prime Minister Mateusz Morawiecki defended the government's change underlying that women and men had different roles in society (Reuters, 2017). The European Commission launched an infringement procedure against Poland¹⁵ based on gender discrimination on 28 July 2017¹⁶. However, it did not include the concern over gender equality in its report for triggering Article 7, something that could have framed as a breach on the value of gender equality, as well as a breach on the rule of law, considering that the Polish Constitution enacts the right to equal rights between women and men, among other provisions on equality (Articles 32 and 33.2 Polish Constitution)¹⁷. This constitutes a lost opportunity on further strengthening EU's commitment to gender equality and also evidence of the insufficient gender mainstreaming in the European Commission's actions against Poland¹⁸.

In addition, some feminist scholars have extensively explored the gendered aspects of the democratic backsliding in Central and Eastern European Countries, including Poland and Hungary (Roggeband and Kirzsán, 2019). The decline of democracy in these countries has had specific effects on gender equality. In fact, the governing political parties in Poland and Hungary have come close to anti-gender discourses often supported by extreme and far-right groups and have increasingly team-up with these groups to foster their political agenda (Szczygielska, 2019: 134). In both countries the most blatant forms of gender equality laws and policies' dismantling have taken place on the fields on reproductive rights, family (understood in a traditional form), sexual education and violence against women (Roggeband and Kirzsán, 2019: 200). In general, more subtle forms have occurred, such as the marginalization and delegitimization of gender equality as a right and a goal, the instrumentalization of women's rights towards nationalist and demographic objectives, the reduction and dismantlement of the institutions or bodies coordinating gender equality policies and the obstruction of the cooperation with women's rights groups, among many other (Roggeband and Kirzsán, 2019).

The attacks on gender studies and hostility towards feminist organisation's and activists have been particularly severe (Roggeband and Kirzsán, 2019). Women from ethnic minorities have been specially targeted due to the xenophobic approaches of the leading political parties in these countries, such as in Hungary, where women belonging to the Roma communities have been especially targeted (Kirzsán and Sebestyén, 2019: 94). For Kirzsán and Roggeband (2019), the most remarkable findings of the Hungarian case study are the resulting "weakness and incapacity of democratic resistance in general, and within that, the decreasing capacity of the women's movement" (Kirzsán and Roggeband, 2019: 22). In Poland, similar de-democratization tendencies have been found but over a much shorter time; and the potential of a strong grassroots women's movement mobilization that is well connected to wider pro-democracy forces seems more encouraging in the Polish case (Kirzsán and Roggeband, 2019: 22).

4.4. Gender-blind responses to European crises

The above analyses of three of the main European crises since the entry into force of the Treaty of Lisbon –the economic crisis (2008–2014), Brexit (2017–2020) and the triggering of Article 7 against Hungary and Poland (2017 and 2018 respectively) – have shown that women have not participated in an equal foot to men in the decision-making of the developed European responses to the crises and that these responses have been gender-blind. However, there have been some variations in the participation of women and the gender sensitivity of responses between the European crises analysed in this article.

In the economic crisis (2008–2014) women were overwhelmingly underrepresented in European decision-making. All of the three European financial institutions (European Central Bank, European Investment Bank, and European Investment Fund) were led by men, and women accounted for only 16% of the highest decision-making bodies of these institutions (European Commission, 2009: 9). The participation of women in the Brexit process has been more varied, although men's prevalence has also been salient. Before the vote, men dominated the public debates on Brexit (Hozic and True, 2017), but more women's voices were heard after the vote. Theresa May was appointed as Primer Minister and led the direction of the negotiations for two years. However, the English Brexit negotiation team was male and all-white dominated (Theresa May resigned in June 2019). On the EU side, the chief negotiator was also a man and men negotiators outnumbered women, although the people in the process has changed since the negotiations started. The European crises with Hungary and Poland, women's participation in EU responses have been varied too. MEP Judith Sargentini led the process against Hungary (and gender equality issues were considered), but in the process against Poland, the European Commission's leading actors were both men. Overall, although with some variations mainly in the

¹⁵ It refers to taking legal action against a Member State referring to the Court of Justice of the European Union (CJEU).

¹⁶ The CJEU ruled that that provision was discriminatory according to sex and therefore contrary to EU law (5 November 2019 Judgment in case C-192/18 Commission v Poland)

¹⁷ On a legal modification of 21 November 2018, Poland equalled the retirement age for women and men judges and prosecutors.

¹⁸ Further research and a whole new article would be interesting on gender equality, democracy and the case against Poland. This article due to limited space and resources cannot cover it more extensively.

case against Hungary and to a lesser extent in the Brexit, women did not participate in an equal foot to men in the European decisions to the main faced crises.

When looking at the gender sensitivity of the European responses to the examined crises the results are no better. Extensive feminist research has shown how the European responses to the economic crisis (2008–2014) have been gender-blind and have disproportionately affected women, mainly due to the gender-blind austerity measures prioritised in the crisis management (Kantola and Lombardo, 2017; Karamessinni and Rubery, 2014). In fact, the European gender-blind responses to the economic crisis have contributed –among other factors– to the deterioration of the European democracy, which has also, in turn, contributed to restraining progress on gender equality and exacerbating gender inequality in some member states. Besides, the economic crisis –including the emerged new economic governance regime– has led to a de-democratization of the EU governing system which has particularly impacted on gender equality (Kantola and Lombardo, 2017). The analysis of the crisis generated by Brexit also shows that gender was not sufficiently considered neither before nor after the referendum vote and during the negotiations. Indeed, both English and European actions on Brexit seem to be gender-blind. Feminist scholars have already noted that the post-Brexit scenario is and will very likely be detrimental to women's rights and minorities groups in the UK, considering that the EU's equality framework and policies have been important to advance on UK's legislation in the field (Syrpis, 2017; Guerri-
na and Masselot, 2018; Fagan and Rubery, 2018).

The above analysis has also found greater gender sensitivity in the crises shaped by the triggering of Article 7 TEU against Poland and Hungary, although it has not been anywhere near central to the debate and the responses adopted. In the official reports triggering Article 7 TEU, gender was considered mainly thanks to the FEMM Committee's opinion in the Hungarian case, whereas in the Polish case, gender was not considered. In both processes the dominant debates and discourses have focused on the classical dimensions of the democratic system (i.e. division of powers, rule of law), marginalising the fundamental principle and European value of equality between women and men as a democratic concern for the EU. Considering the gendered effects of the democratic backsliding highlighted by Krizsán and Roggeband (2019), and the particular interdependent connections of democracy and gender –in these countries and beyond–, the failure to effectively mainstream gender in EU responses poses further democratic concerns. The analyses have also shown that European responses to the crises had lacked an intersectional approach too, which also impacts negatively in the substantive functioning of the EU democratic system.

5. Conclusions

The analysis of the Treaty of Lisbon and the main European crises since its entry into force through gender lens, particularly examining the two dimensions of the double democratic deficit of the EU – women's representation and gender sensitivity–, informs about the state of democracy in the EU in different ways.

The European democracy system established by the Treaty of Lisbon, although it improved the democratic foundations and commitment to gender equality of the EU, still fell short descriptively and substantively representing women and gender equality from its origins. Women were alarmingly underrepresented in the adoption of the Treaty (Mushaben and Abels, 2012) and gender was not effectively mainstreamed (Lombardo, 2007). However, the Treaty of Lisbon's legal changes have been relevant both to democracy and gender equality in the EU; reinforced women's power thanks to the Parliament; and have the potential to further foster gender equality if they are effectively implemented and progressively interpreted by EU caselaw. The Treaty not only enhanced the democratic processes and structures of the EU's governance architecture, such as increasing the power of the Parliament –an institution that has often channelled gender equality concerns–, but it also included gender equality as an EU value and fundamental right.

Tackling some of the noted legal democratic and gender equality-related weaknesses that the Treaty still has (i.e. the Council's blocking powers, lack of effective gender mainstreaming) would help assuring a stronger legal base for democracy and gender equality in the EU. It would also contribute to posing gender equality as a prerequisite of the EU's democratic governance system. However, the analysis of the crises helps to understand that legal provisions such as those upholding the EU' democratic and gender equality principles, are not sufficient by themselves, but that these need to be implemented in practice. The functioning of a democratic system is shaped by diverse political, economic, and societal trends and developments.

In fact, the gendered analysis of the three examined crises faced by the EU during the first decade since the entry into force of the Treaty of Lisbon (2009–2019) has revealed that women did not participate in an equal foot to men in the decision-making of the European responses to the crises and that those responses were largely gender-blind. Intersectionality was neither considered. Therefore, the two dimensions of the double democratic deficit through gender lens are met in the context of the examined crises. There are some variations in the extent of these dimensions in each of the crisis, as the above comparison has shown. While in the economic crisis women were overwhelmingly underrepresented in European decision making and responses were not gender sensitive, women's participation and gender sensitivity in the triggering of Article 7 TEU against

Hungary was more salient, although it was not central. Having looked at the intertwined connections of gender equality and democracy in each of these European crises, this article has argued that these gender-blind European responses have contributed –among other factors– to the deterioration of the EU’s democratic structures and procedures and the low quality of democracy in European state today. It has further argued that the gender-blind responses to the crises have as well, in turn, contributed to restraining progress on gender equality and exacerbating gender inequality across different member states. Indeed, feminist knowledge of democratisation and de-democratisation processes have already shown that gender and democracy are interdependent and mutually reinforce or weaken each other (Alonso and Lombardo, 2018; Verloo, 2018).

In 2019, Ursula von der Leyen was elected as the new President of the European Commission, becoming the first woman to hold that position. In her Opening Statement in the European Parliament, she expressed her ambitions for “a new push for European democracy”¹⁹. The details of this “new push” are still on the making. The analysis of the Treaty of Lisbon and main European crises of the first decade since its entry into force through gender lens has enlighten some aspects of the democratic foundations and functioning of the EU. These findings, together with the extensive feminist contributions on gender and the European democracy, might be worth considering in this new push. As the EU (and the world) is immersed in a new crisis due to the Covid-19 virus pandemic, considering these findings might be relevant in the European decision-making and responses to the crisis. In fact, the understanding of democracy through gender lens will be key to the success of Von der Leyen’s plans to push European democracy and of the European responses to new crises.

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¹⁹ Ursula von der Leyen’s Opening Statement in the Plenary Session on 16 July 2019.

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