

ELECTIONS TO THE EUROPEAN  
PARLIAMENT AS A CHALLENGE  
FOR DEMOCRACY

European Integration  
and Democracy Series

Vol 2

## **European Integration and Democracy Series**

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# ELECTIONS TO THE EUROPEAN PARLIAMENT AS A CHALLENGE FOR DEMOCRACY

European Integration  
and Democracy Series  
Vol 2

Edited by  
Elżbieta Kuźelewska and Dariusz Kloza

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# Foreword

## by Prof. Jerzy Buzek MEP

Why should we bother to elect someone to the European Parliament in the first place? For the voters – for EU citizens – this is the most important question.

Does the Parliament change something in my everyday life; does it affect my work; does it determine my comfort of living and the future of my family? We must answer these simple but fundamental questions. Especially in the face of today's general disappointment with politics, reflected in low electoral turnouts.

We know it is important to vote in local elections. We understand that the councils of our towns and districts settle questions related to our immediate environment. We know it is important to vote in parliamentary elections. They determine the composition of our countries' governments, their policies and the way they approach key issues regarding the development of the state.

And yet, we are still reluctant to pay similar attention to European elections. The European Union has proven to have a huge impact on the reality in which we live. And while we believe that this influence is almost entirely positive, we are still not convinced that the European Parliament can affect the lives of individuals in each of the Member States.

This impact cannot be overestimated. The Parliament is the only EU institution whose members are elected by universal suffrage. With the entry into force of the Lisbon Treaty – which I successfully fought for when serving as EP president – we have gained new, broad responsibilities. We decide about almost forty policy areas, including the budget, structural funds, energy or agriculture. The EP is involved in the creation of a common foreign and security policy. Moreover, it exercises control over the other EU institutions.

During the crisis, the Parliament has proven many times that it is not a dummy of national legislative chambers. Decisions that were made here saved the EU from bankruptcy. Contrary to governments' positions, MEPs blocked the Swift agreement that would allow American intelligence to use data from bank accounts of millions of Europeans. The EP fought hard and successfully to provide funds in the 2014-2020 EU budget for creating new jobs, support-

ing small and medium-sized enterprises and enhancing their competitiveness. Last but not least, the deputies buried the controversial ACTA agreement that aroused opposition of millions of citizens in all Member States.

In the spring of 2014 we will hold the most important general elections in the history of Europe. The next five years can determine the future of our continent for many decades to come. Can there be a more appropriate moment to listen to European issues and to reflect on the impact of “Brussels and Strasbourg” on the lives of citizens of Białystok, Parma or Lahti?

I am convinced that a good understanding of the EU, to which the book you have just opened will undoubtedly contribute, will encourage everyone to a more active participation in the shaping of European democracy. After all, the European Union is not “them”. It is “us”. All of us.

*Jerzy Buzek, MEP*

President of the European Parliament (2009-2012)

Prime Minister of Poland (1997-2001)

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# Preface: Eighteen Views on the Legitimacy Crisis and the Elections to the European Parliament

I.

There is a crisis in Europe [...] that is deeper than the euro crisis [...] and that is a legitimacy crisis. [There] is not only the low turnout in the elections to the European Parliament, but it is a decreasing turnout. [...] it is certainly not a sign of confidence in the principle institution, which is meant to be *vox populi*.<sup>1</sup>

This observation of Prof. Joseph H.H. Weiler, President of the European University Institute in Florence, made at the *State of the Union* conference on 9 May 2013, illustrates quite well the first of our concerns that has been a driving force for the present book.

A few further concerns of ours were captured too, *inter alia*:

[...] If there is a majority of voters who vote centre-left, you expect to see that translated into policy, into legislation. If there is the majority that votes centre-right, you expect that translated into preferences, into policies, into laws. And in Europe that is simply not the case. [...] You can have a majority of voters to the European Parliament of the centre-left or centre-right and you cannot track that that impacts political preferences of the Union.

[...] we have to realize that the word “democracy deficit” is not a good proxy for our problem. It is “political deficit”. [...] It sounds a contradiction, but the Union needs to be politicized. When people go and vote they need to feel that they are making a real choice about the destiny of Europe.<sup>2</sup>

Some two months later, on 4 July 2013, the European Parliament (EP; the Parliament) itself – in its *Resolution on improving the practical arrangements for the holding of the European elections in 2014* – struck a similar chord:

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<sup>1</sup> J.H.H. Weiler, intervention at the *State of the Union* conference, Florence, 9 May 2013. <http://stateoftheunion.eui.eu>

<sup>2</sup> Ibid.

[...] the resolution of the current crisis of governance in the EU requires a fuller democratic legitimization of the integration process.

[...] electoral campaigns continue to focus primarily on national issues, pushing debate on specifically European issues into the background, which has a negative impact on the level of participation in elections to the European Parliament.

[...] repeated opinion polls suggest that a large majority would be inclined to vote if they were better informed about the European Parliament, the political parties, their programmes and candidates; whereas all media outlets are therefore encouraged to bring maximum attention to the elections.<sup>3</sup>

Few readers would disagree.

## II.

The present book constitutes the second volume in a series of peer-reviewed publications on democracy and European integration, edited by the Centre for Direct Democracy Studies (CDDS) at the Faculty of Law of the University of Białystok, Poland.<sup>4</sup> Similarly to the first volume, more than twenty scholars from across Europe, predominantly young researchers, have kindly responded to the Centre's invitation to share their views on the elections to the EP.

The main motivation for this book came from a long-running debate – yet recently spirited – on the place of the European Parliament in the democratic life of the European Union (EU; the Union). The 18 chapters of this volume analyse a wide range of challenges for democracy posed by the EP elections. If we were to make a “word cloud”, it would be dominated by keywords such as democratic deficit, legitimacy crisis, low turnout, second-order elections, alternative voting methods, lack of European public space, non-existence of European parties as well as the need for a uniform electoral procedure.

The timing of this book is rather felicitous as the eighth direct elections are just a couple of months ahead (22–25 May 2014).<sup>5</sup> Furthermore, the importance of these elections is unprecedented: especially in the times of legitimacy and financial crises, on one hand, “voters across Europe will judge what [the

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<sup>3</sup> European Parliament, *Resolution on improving the practical arrangements for the holding of the European elections in 2014*, Strasbourg, 4 July 2013, P7\_TA-PROV(2013)0323.

<sup>4</sup> The first book was: E. Kuzelewska and D. Kloza (eds.), *The Challenges of Modern Democracy and European Integration*, European Integration and Democracy Series, Vol. 1, Aspra-JR: Warsaw-Białystok 2012, 249 pp.

<sup>5</sup> Council Decision of 14 June 2013 fixing the period for the eighth election of representatives to the European Parliament by direct universal suffrage (2013/299/EU, Euratom), OJ L 169, 21.06.2013, p. 69.



EU and its institutions] have achieved together in the last 5 years”<sup>6</sup> and, on the other, “the next five years can determine the future of our continent for many decades to come”.<sup>7</sup>

This book is divided into three parts. The first part explores the European Parliament as an institution, focusing predominantly on the elections thereto. In the opening chapter Rafał Trzaskowski MEP and Joanna Popielawska examine, from a historical perspective, the efforts of the Parliament to develop a uniform electoral procedure. The authors overview the path the EP elections went from the 1957 European Economic Community and Euratom Treaties through the 1976 Act and the 2002 Council Decision until the recent proposal of Andrew Duff MEP.<sup>8</sup> They conclude that throughout the years the Member States and the EU institutions have created a basis for a common system and agreed on quite a lot of common rules, yet a truly uniform election procedure – despite a number of efforts and proposals – still faces opposition, predominantly due to assertions of national sovereignty.

In the second chapter, Davide Denti analyses whether the political groups in the EP do form a party system. Having examined whether these party groups can be considered political parties and, subsequently, whether they form a party system, the author concludes that development of a moderate pluralistic party system may enable a further evolution of the political system of the EU analogous to the domestic model of parliamentary democracies, thus fostering the democratic legitimacy of the Union. Yet this development faces challenges such as sub-system dominance by national parties.

Elena Cîncea in chapter three considers whether “electoral engineering” can contribute to remedying the democratic deficit of the EU. The author observes that the introduction of direct universal suffrage was the first necessary step in this direction, yet still more is needed. She argues for, *inter alia*, a uniform electoral procedure and a stronger involvement of the European parties. These developments could generate genuine European political competition, mobilize the European electorate and – at the same time – bring the EU closer to the citizens. The need for a European polity is very timely as – in the context of economic and financial crises – the political legitimacy of the EU is being questioned.

In chapter 4, Magdalena Półtorak overviews gender quotas in the EP elections. Thus far, seven EU Member States have introduced them on the basis

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<sup>6</sup> J.M. Durão Barroso, *State of the Union address*, Strasbourg, 11 September 2013, SPEECH/13/684.

<sup>7</sup> J. Buzek, *Foreword*, in this volume.

<sup>8</sup> References in Chapter 1.

of generally applicable law (“hard quotas”), while political parties in three Member States apply them voluntarily, based on, *inter alia*, their statutes or gentlemen’s agreements (“soft quotas”). The author concludes that female representation in the EP is usually higher than in national parliaments, perhaps due to the second-order nature of the EP elections. Furthermore, she observes that the applied solutions vary considerably, e.g. with regard to the values of gender quotas or sanctions, and thus argues for harmonisation of “certain guidelines for the electoral law in terms of enhancing balanced gender representation in the EP”.

In the fifth chapter, Tomasz Dubowski explores the relationship between the citizen, the Parliament and the EU External Action. The author is particularly interested in the EP as a specific “link” between the interests of an individual and the conduct of – broadly understood – the Union’s foreign affairs. Assuming that an individual has a vital interest therein, he concludes that the influence of an EU citizen on the EU External Action is visible and the former is not excluded from shaping the latter. However, the relationship between each of these three, i.e. an individual, the EP and the External Action, is not homogenous and is driven by different dynamics.

Franciszek Strzyczkowski in the sixth chapter discusses the theoretical debate on the phenomenon of gradual empowerment of the European Parliament. Having described the historical development of the Parliament’s powers, including the recent treaty changes introduced after Lisbon, the author elaborates on the first attempts of theoretical conceptualization of the problem: when, how and under what conditions such an institutional empowerment takes place. Next, he presents two main competing schools arguing why the Member States decide to delegate their sovereignty and what are the reasons thereof, i.e. rational choice theory and sociological institutionalism. As a conclusion, the author expresses the necessity for further theoretical inquiry into the concept of democratic deficit as a key motive for the governments of the Member States to continue improving capacities of the EU representative bodies.

The second part examines national systems for the EP elections in selected Member States of the EU. These countries are presented here in alphabetical order in accordance with their names in their official languages. In chapter 7, Maaïke Geuens studies the EP elections on two levels: the EU and Belgium. For the former, she argues for genuine European political parties and that media should pay attention to European issues. For the latter, she considers the benefits and drawbacks of compulsory voting as well as coinciding regional and European elections. She concludes that these characteristics generally re-

sult in a higher turnout, but do not automatically imply a higher interest or satisfaction rate among Belgian citizens.

In chapter 8, Helena Bončková evaluates whether the EP elections in the Czech Republic can be considered second-order elections. Since there is “less at stake” in such elections, they are characterised by low turnout, fall in support for government parties, success of smaller and/or radical parties and a higher number of invalid votes. These features are checked against the results of the 2004 and 2009 EP elections in the Czech Republic. She concludes that the theory of second-order elections has proved to be a useful framework for analysing the Czech EP elections results, although some conclusions may be rather uncertain.

In chapter 9, Francisco J. Vanaclocha and Rubén Sánchez Medero offer the first of two analyses of the Spanish elections to the EP. The authors argue that the Spanish design of these elections supports three ideas: the highest possible proportional representation; the need for the representation of plurality of territorial identities as well as the resemblance of the essence of the electoral system to the Congress of Deputies. They examine how these principles were applied in the six Spanish EP elections already held. They conclude that the Spanish elections to the EP function “without provoking conflicts or being questioned by any relevant political entity”, achieve a satisfactory level of proportional representation and hardly present “any problems for the existence of an effective plurality of electoral offers”. However, these elections conform to a limited model of second-order elections.

The tenth chapter, authored by Guillermo Cordero and José Ramón Montero, constitutes in this book the second analysis of the Spanish elections to the EP. The authors start by recalling the criticisms from nationalist and regionalist parties that, *inter alia*, a nationwide constituency for these elections, although reinforcing proportionality, favours major national parties and thus is disadvantageous to smaller ones. In examining the validity of this claim, they draw on electoral results data and simulate absolute gains and losses of seats for each party in three different models: one if Spain were divided into five districts, another if it were split into 19, and – finally – if current arrangements were supplemented by a two-tier allocation of seats. Ultimately they come to the conclusion that such criticism from nationalist and regionalist parties should be considered ill-founded.

In chapter 11, Georgia Christina Kosmidou analyses Greece. The author starts with an analysis of the Greek electoral system to the EP, arguing it is one of the most proportional in the EU. Having investigated the exercise of voting rights and financing methods of political parties, she finally turns to problems

caused by “insufficient transposition” of the EU rules on the EP elections. Among other issues, the deprivation of the Greeks living outside the EU of the possibility to vote seems to raise the most controversies. She concludes her chapter by discussing the prospects of the EP elections. For the EU level, she argues that various proposed reforms would be ineffective without the support of the EU Member States. For the Greek level, she offers some recommendations *de lege ferenda*, of which solving the above-mentioned deprivation of voting rights seems to be the most urgent.

In chapter 12, Bernhard Kitous focuses on France. The author, having analysed the impact of the French centralized and multi-layered governance system on the elections to the EP, argues – following Arendt, Etzioni and Westen – for the recognition of citizens’ emotions and motivations, on the one hand, and for simplification of the governance system, on the other, so that the ordinary citizen understands elections in general and the EP elections in particular.

In chapter 13, Davide Denti investigates Malta, where politics is characterised by high polarisation along party lines and mobilisation of voters in a small society. The author argues that using for the EP elections the same electoral system as in domestic ones renders them more familiar to the voters and fosters turnout, but also sacrifices participation opportunities and accuracy of representation, due to the lack of cross-party vote.

In chapter 14, Andrzej Jackiewicz scrutinizes Poland. Concerned about low turnout in national and European elections in his country, the author analyses the new 2011 Electoral Code, regulating all types of elections, in order to see how the principle of universal elections is addressed therein. He argues that some 30% of eligible voters are faced with the so-called forced absence, i.e. when a voter is willing to cast her vote, yet she is unable to do so due to reasons beyond her control. To that end, the author examines if traditional as well as newly introduced alternative voting methods – such as two-days voting, the use of a proxy or voting by mail – can remedy such a situation. As a precondition, voters must be aware of these new solutions. The author concludes that these novelties certainly set the direction for Polish elections yet their efficacy will be tested for the first time during the 2014 EP elections.

Davide Carrino in the fifteenth chapter discusses Sweden, taking low turnout in Swedish EP elections – in comparison with national ones – as a starting point. The author, having highlighted the evolution of EP elections therein, compares electoral laws for EP elections and those for the *Riksdag* – the national parliament – and concludes that the former are distinguished by a higher degree of uncertainty and greater room for new, small and anti-establishment

parties. The success of the *Piratpartiet* in 2009 can be given here as an example. In his analysis of political participation in the European elections in general, which are characterised by low turnout in the new Member States and by general political apathy, he argues that the recent Duff's proposal sets the right path in the long term, but can be excessive in the present-day political conditions in Europe.<sup>9</sup> Finally, inspired by the Italian system, he proposes to create 28 constituencies with the threshold as low as 2%, but in which the winning party takes the "majority prize".

In chapter 16, Bogusia Puchalska offers a view from the United Kingdom (UK). The author discusses the origins of British euroscepticism and the causes and effects of electoral apathy in the EU. To that end, she identifies the three main weaknesses of European polity: the lack of European public space, the non-existence of European-wide political parties, and the limited presence of European media. She mentions also the marginal attention to EU issues in the schools' curricula. These critical observations are complemented by positive suggestions of electoral procedural reforms, such as the use of an open-list system, which might make the elections more attractive to voters. She concludes with two observations. Firstly, the Eurozone crisis might make the 2014 EP elections "a protest vote of no confidence in the EU as a whole". Secondly, as British party politics has recently taken a decisively Eurosceptic turn in the wake of the UK Independence Party's growing popularity, it is this party who is likely to win the majority of the EP seats in 2014. Under this scenario, the prospects of Europeanizing the EP elections will recede even further away, at least in the UK.

The third and the final part is devoted to comparative issues. In chapter 17, Elżbieta Kuźelewska and Izabela Kraśnicka compare e-voting mechanisms in Estonia and in the United States in order to see what the EP elections can learn from the experience of both. The authors argue that – with the exception of Estonia – this idea has not been yet commonly applied throughout the EU in the EP elections. However, the build-up of a comprehensive system for e-voting for Europe cannot be recommended for the time being due to cost-benefit considerations, technological issues and reasons of political legitimacy.

In the eighteenth and ultimate chapter, Marko Babić focuses on the EU's impact on party systems in Serbia and Montenegro – respectively the largest and the smallest republic of the former Yugoslavia, which prior to 2006 constituted a single state. Presently, one of their political goals is EU membership. From the viewpoint of a candidate country, the dynamics of the accession

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<sup>9</sup> Reference in Chapter 15.

process is characterised by interactions of various actors, of which the most important role is played by the state. However, as the author argues, a quite crucial role is also played by political parties. To that end, the author examines their membership in the European party federations and their interactions with the EU institutions. By analysing the stance of Serbian and Montenegrin parties on European integration, the author concludes that political parties in both countries converge towards classic European ideological patterns and these parties have been rapidly integrating with the European party federations.

### III.

In producing such a volume there are many people the editors need to thank. We would like to express our gratitude to all authors that contributed to this book for their fresh look on the elections to the European Parliament as a challenge for democracy. We thank Prof. Jerzy Buzek MEP for kindly providing this book with a foreword. We also would like to thank the reviewers, the series editors and the peer-reviewers whose comments were invaluable. Furthermore, throughout the gestation of this book we have received valuable help from Davide Denti and Marco Benatar; we thank them all. Last but not least, we are, of course, indebted to the Faculty of Law of the University of Białystok for its intellectual and financial support.

In respect of the diversity of nationalities, disciplines and perspectives represented in this book, the editors and the publisher have left the choice concerning the use of reference systems to the authors of the contributions. In addition, in recognition of the professionalism of the authors, the editing of the contributions has been truly light-handed.

The editors welcome any comments and suggestions at *ekuzelewska@gmail.com* and *dariusz.kloza@interia.pl*, respectively.

Dariusz Kloza  
Elżbieta Kuźelewska

Białystok – Brussels, October 2013

# List of Abbreviations

AD	<i>Alternativa Demokratika</i> [Maltese Green Party]
AFSJ	Area of Freedom, Security and Justice
AP	People's Alliance ( <i>Alianza Popular</i> ) [Spain]
CD	Congress of Deputies [Spain]
CDS	Democratic and Social Centre ( <i>Centro Democrático y Social</i> ) [Spain]
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
CiU	Convergence and Unity ( <i>Covergència i Unió</i> ) [Spain]
EA	Basque Solidarity ( <i>Eusko Alkartasuna</i> ) [Spain]
ECI	European Citizens' Initiative
EH	We Basque Citizens ( <i>Euskal Herritarrok</i> ) [Spain]
ELDR	European Liberal Democrat and Reform Party
EP	European Parliament
EPP	European People's Party
EU	European Union
FOE	First-order elections
HB	Popular Unity ( <i>Herri Batasuna</i> ) [Spain]
ICT	Information and Communications Technologies
IPU	Inter-Parliamentary Union
IU	United Left ( <i>Izquierda Unida</i> ) [Spain]
LBT	Local border traffic
LOREG	Organic Law 5/1985, of 19 June, concerning the General Electoral Regime [Spain]

## Abbreviations

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MEP	Member of the European Parliament
MLP	Malta Labour Party
MP	Member of Parliament
MS	Member State (of the European Union)
NP	Nationalist Party [Malta]
NPs	National parties
PES	Party of European Socialists
PNV	Basque Nationalist Party ( <i>Partido Nacionalista Vasco</i> ) [Spain]
PP	Popular Party ( <i>Partido Popular</i> ) [Spain]
PR	Proportional representation
PSOE	Spanish Socialist Workers' Party ( <i>Partido Socialista Obrero Español</i> )
STV	Single Transferable Vote
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom of Great Britain and Northern Ireland
UKIP	United Kingdom Independence Party
UPyD	Union, Progress and Democracy ( <i>Unión, Progreso y Democracia</i> ) [Spain]
US	United States of America



Part One

# THE INSTITUTION



# How European are the European Elections?

## The European Parliament's Long Struggle for a Direct and Universal Suffrage Conducted According to a Uniform Electoral Procedure

RAFAŁ TRZASKOWSKI\* AND JOANNA POPIELAWSKA\*\*

The European Union is of a truly *sui generis* character and so are its institutions, mixing intergovernmental and supranational dimensions. The role of the European Parliament in the institutional set-up of this unique system of collaboration between the European states is to secure it with a democratic scrutiny by linking it directly to the citizens. For that link to be truly established it was not enough for the parliamentary arm of the European Communities to be composed of national MPs. Their primary role was and remains today to scrutinise their respective governments, also when they take decisions in the European context. While competences of the communities grew, the European Parliament remained for years a body composed of delegations from national parliaments, which was merely consulted on issues initiated by the European Commission and decided by national governments. Frustrated by this lack of power and eager to bury the growing democratic deficit of this system, MEPs fought for years for, on the one hand, greater competences for the assembly and, on the other, for its greater legitimacy. The latter could only come from a direct and universal suffrage, which as this chapter proves took place after a two decades-long struggle. One could contest, however, that a fully democratic legitimacy of the EP has been reached as the second piece of the puzzle

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is still missing. A uniform electoral procedure, which would mean that all MEPs, sharing now equal rights, were elected according to the same rules, has never been agreed upon. The European Union is neither a state nor federation and therefore establishing a common electoral system which would have an impact on now 28 sovereign states has proved immensely difficult. As this chapter concludes, it remains today one of the battles that the European Parliament still have to fight.

## 1.1 The European Parliament's struggle for a direct universal suffrage

A direct election to the parliamentary arm of the European Communities was already envisaged in the founding Treaties. The 1951 ECSC Treaty gave member states the option to elect their representatives to the Assembly directly or nominate them from national parliamentarians. The question of a direct universal suffrage appeared subsequently in the 1957 EEC and Euroatom Treaties (Art. 138 and 108 respectively). This time however, the Treaties spoke also of introducing a *uniform* procedure, giving the right of initiative in this regard to the Assembly. "*The Assembly shall draw up proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States. The Council shall, acting unanimously, recommend to the Member States for adoption in accordance with their respective constitutional requirements*"

The Assembly was quick to act on the Treaty provisions, adopting a proposal in 1960.<sup>1</sup> The document prepared by a working party led by a French representative Dehousse called for representatives to what would become the European Parliament to be elected by a direct universal suffrage (with a transitional period envisaged), allocated number of seats to member states and established a five-year long term of office for the new house. The Resolution as adopted stated further that representatives shall vote on individual and personal basis. It also proposed several common, albeit flexible, provisions on electoral systems in the then six member states. They contained rules such as minimum age allowing to vote and to stand in elections (21 vs. 25) and, interestingly, suggested that a citizen of one member states could stand in elections in another. It further proposed a common polling day (allowing for one day deviation) and a list of offices incompatible with that of an EP Member.<sup>2</sup> There were no provisions on the character of the electoral system, but a clear indi-

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<sup>1</sup> European Parliament. *Resolution on the adoption of a draft Convention on the election of the European Parliament by direct universal suffrage*. 2 June 1960, OJ 834/60.

<sup>2</sup> Apart from a member of a Government it listed functions in institutions connected to the Communities.

cation was made that new provisions on “as uniform procedure as possible” shall be laid down after a transitional period.

These proposals had not been considered by the Council for years, with the political debate at that time centred on the French plans to create a Political Union (which itself foresaw no direct elections).<sup>3</sup> This obstruction from the side of the Council led the Assembly to adopting in 1969 a resolution, in which it threatened to bring the Council before the Court of Justice for violating the Treaties by not pronouncing its view on the matter as it was obliged to.<sup>4</sup> This move worked only partly as the Council instructed shortly after its subordinate body to prepare the necessary discussions, but failed to take any further action. The issue was then briefly discussed during the Paris Summit of Heads of Government in 1972, but again no binding decision on direct elections was taken. The Assembly expressed on this occasion its regret and called for the emerging plans on transforming the Community into a European Union to be backed by strengthened democratic structure including introducing direct universal suffrage and ensuring effective participation of the Parliament in Community’s legislation.<sup>5</sup> It was not until 1974 that the Conference of Heads of Government when meeting again in Paris acknowledged that election of the European Assembly by universal suffrage “should be achieved as soon as possible” and asked the Assembly to put forward a new proposal on which it wanted to act in 1976 with the assumption that first direct elections could take place two years later.<sup>6</sup> This decision accompanied the one to formalise meetings of the Conference of Heads of Government on a regular basis as the European Council as was perceived as a kind of counterbalance to developing intergovernmental institutional structures of the EC.

The Assembly adopted its new proposal on time and in 1976 proposed a comparatively modest draft with even fewer suggestions as to give the elections a more uniform character.<sup>7</sup> It had become clear over the years that this particular treaty requirement will be most hard to fulfil. Representatives called again for a five-year term of office, for Members to vote on an individual and personal basis, repeated the list of incompatible offices (the office of national

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<sup>3</sup> *The case for elections to the European Parliament by direct universal suffrage: selected documents*. Directorate-General for Parliamentary Documentation and Information 1969, p.14.

<sup>4</sup> European Parliament. *Résolution relative à l’élection des membres du Parlement européen au suffrage universel direct*. 12 March 1969, OJ C 41/12 1.4.69.

<sup>5</sup> European Parliament. *Resolution of the European Parliament on the results of the Summit Conference of the Heads of State and Government from the Member States of the Community*. European Communities Bulletin 11-1972.

<sup>6</sup> Communiqué, EC Bulletin 12-1974.

<sup>7</sup> European Parliament. *Resolution on the adoption of a draft convention introducing elections to the European Parliament by direct universal suffrage*, 11 February 1975. OJ C 32/15.

parliamentarian would be still compatible) and called for elections to be held on the same day, while allowing for one day difference. No proposal over the minimum age allowing voting and standing in elections was made this time, nor were arrangements for non-citizens to stand in elections mentioned. This time the Parliament did however set a deadline (1980) by which a proposal for a uniform electoral system was to be put forward. The Council on the other hand took its decision in steps. First, during its meeting in Rome in December 1975 Heads of Governments decided to set the date for the first direct elections to the European Parliament in May or June 1978. There was still however no agreement over the Parliament's proposal with the question of distribution of seats being the most controversial issue (interestingly those numbers had substantially changed already during the parliamentary proceedings).<sup>8</sup> Decision on the seats was finally taken in July 1976 and this paved the way for the final adoption of the Act concerning the election of the representatives of the Assembly by direct universal suffrage one month later.<sup>9</sup> The most substantial change in the Parliament's proposal was the distribution of seats. The overall number of Members was 410 (as oppose to 355 proposed by the Assembly) with the biggest four Member States (West Germany, France, UK and Italy) receiving equally 81 representatives. Netherlands was given 26, Belgium 25, Denmark 16, Ireland 15 and Luxembourg 5 seats. The Council decided also that elections would not take place in principle on the same day, but instead during a common period starting on a Thursday morning (when traditionally the UK and Netherlands vote) and ending on a Sunday evening (which is a common day of elections for most Member States). As to the uniform electoral system, the Council did oblige the Parliament to draw up a proposal - after all, it still was the requirement of all three founding Treaties - but removed any reference to a specific deadline by which it was ought to happen. Until then, elections in Member States were to be hold according to national rules. The exact date of the first elections was to be fixed unanimously by the Council after consulting the Assembly and, despite the previous decision, it was finally set for 7-10 June 1979. The Assembly welcomed this decision as its nearly twenty-year long struggle for a direct universal suffrage was soon to find its positive ending. Not an entirely positive though, as the Treaty requirement for a uniform electoral system would not get fulfilled for another 20 years.

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<sup>8</sup> Originally the Draftsman proposed a total number of MEPs to be 550, while the final resolution as adopted in the plenary spoke of 355. Compare with: EP Political Affairs Committee. *Report on the adoption of a Draft Convention introducing elections to the EP by direct universal suffrage*. EP Working Documents 1974-75, 13 January 1975.

<sup>9</sup> European Council. *Act concerning the election of representatives to the Assembly by direct universal suffrage*, 8 October 1978. OJ L 278/5.

## 1.2 Towards a more uniform electoral system

The newly elected European Parliament commenced its work on a uniform electoral procedure very quickly by nominating a responsible rapporteur already in the year of its election in 1979. After two years of complex deliberations led by a French EPP Member Seitlinger, the Parliament adopted in 1982 a proposal for the Council's decision envisaging the election of MEPs by proportional representation in member states divided into multi-member constituencies where a minimum of three and maximum of fifteen members could be elected (exceptions for geographical or constitutional reasons were envisaged).<sup>10</sup> The questions of lists and minimum thresholds were left for member states to decide with the option of a preferential voting open. Seats were to be allocated to the lists according to the d'Hondt system. Other provisions included the right of residents to vote and stand in the European elections and securing similar rights for the citizens residing abroad in their country of origin. The new rules were to be adopted on time for the 1984 elections. Successful in the European Parliament, the proposal had not found the necessary unanimity in the Council. Mainly because it touched upon the very heart of the problem that was haunting the European Parliament for nearly next two decades, i.e. the British electoral system and its first-past-the post majority rule. Among all the different electoral systems applied in the European elections in all member states, the British one had often close to a decisive influence over the Parliament's political composition. It meant in practice that whichever of the two major British political parties won the elections it took nearly all seats allocated to the UK. This led to peculiar situations like e.g. in 1994 when the Socialist group topped by the British bonus had more seats than the European People's Party despite receiving in total numbers fewer votes across the EU.<sup>11</sup>

The next Parliament of 1984-1989 also considered some concrete proposals on the issue, but the final draft never reached the plenary stage. It was much more modest as while opting for a proportional representation it left the question of setting up constituencies entirely up to the member states.<sup>12</sup> The Parliament of the following term took what seemed a much more pragmatic

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<sup>10</sup> European Parliament. *Resolution on a draft uniform electoral procedure for the election of Members of the European Parliament*, 10 March 1982. OJ C 87/64.

<sup>11</sup> Corbett, Jacobs, Shackleton. *The European Parliament*. London: John Harper Publishing 2011, p.17.

<sup>12</sup> EP Political Affairs Committee. *Report on a draft uniform electoral procedure for the election of Members of the European Parliament*. European Parliament's Working Documents, Document A2-1/85, 22 March 1985.

approach and adopted its final proposal in 1992.<sup>13</sup> First of all, it stated that the ultimate goal was to harmonize *fundamentals* of the electoral systems and this aim is to be achieved gradually, giving the Member States the option of adjusting their electoral rules in stages. Proportional representation was to be that fundamental principle, but the question of setting up constituencies was again not regulated. As a reach out to the UK a single-member constituencies system was also allowed, as long however as not more than two thirds of seats allocated to this member state were distributed among these constituencies and overall proportional representation was ensured. A minimum threshold was proposed at the level between 3 and 5%. This proposal again did not find support in the Council. The only progress made in those years was regulating the EU citizens' right to vote and stand in the European elections when residing in another EU country. This right was given by the Maastricht Treaty, which introduced the concept of the European citizenship. Detailed arrangements for exercising this right were put in the 1993 Directive laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.<sup>14</sup> EU citizens were granted a right to stand and vote in the European elections in their country of residence under the same conditions as citizens of that country. Although it was a major novelty for a great majority of member states, where non-citizens were to take part in elections for the first time, equal conditions have never been entirely provided for. Countries were left with a possibility to impose additional conditions like e.g. a certain numbers of years spent in that country. Also the condition to provide a certificate on eligibility from the country of origin proved to be particularly burdensome and has been recently changed to a declaration, which has to be later verified by given member states.<sup>15</sup>

After years of failed attempts to fulfil the Treaty requirement it had become clear that no real progress could be made when it comes to introducing a truly uniform electoral system for the European elections. And so it became clear that the Treaty had to change. The opportunity came with the 1996 Intergovernmental Conference, which resulted in the Treaty of Amsterdam. The Treaty no longer spoke only of a uniform electoral system, but as an alternative pointed at *principles common* to all Member States (Article 3.4a), giving much needed flexibility in what could be achieved. There was new light on the horizon, which became even clearer with a change of government in

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<sup>13</sup> European Parliament. *Resolution on the draft uniform electoral procedure for the election of Members of the European Parliament* A3-0381/92, OJ C 115/121, 16.5.93.

<sup>14</sup> Council Directive 1993/109/EC.

<sup>15</sup> Council Directive 2013/1/EU.



London, which took place nearly at the same time, to a more pro-European Labour party. The Parliament acted immediately and adopted a new proposal in July 1999 drafted by a Greek EPP Member G. Anastasopoulou.<sup>16</sup> It basically repeated main points of the previous report taking proportional representation as the main principle, but left all other sensitive issues like preferential voting, 5% threshold and number of constituencies to the decision of member states. However, countries over 20 million inhabitants were required to establish territorial constituencies. The proposal found also office of a Member of a national parliament to be incompatible with that of a European Parliament's. There was also one great novelty, a proposal to establish a single constituency comprising of the territory of the European Union with a Euro-wide list, from which 10% of MEPs would be elected. This idea did cause a great controversy already within the EP, and in result the percentage included in the adopted text was smaller than initially proposed by the Rapporteur. European list was to be put into effect in time for the 2009 elections.

This time the Council did act upon the Parliament's proposal and approved it in 2002 with relatively small modifications. After the Parliament gave its assent to the modified decision of the Council, the 2004 elections could take place according to the new, *common principles*. These principles still remain the only principles that Member States share. Despite the European Union changing fundamentally over the years and the considerably strengthening of the European Parliament powers, any attempts to bring national electoral systems closer cause nowadays as much controversy as it they did 40, 30 and 20 years ago.

### 1.3 How much uniform are European elections today?

Council's Decision of 2002 amending the Act from 1976 sets the following common principles for the election of representatives to the European Parliament. Members have to be elected on the basis of *proportional representation*. This can be achieved by both using a system of lists (with a preferential vote optional) and a single transferable vote. Member states decide themselves on the number and size of *constituencies* as long as it does not affect the overall proportional character of the elections. Parliament's pledge to make territorial constituencies compulsory for countries over 20 million was thus not taken on board. The minimum *threshold* is set to up to 5%. Countries may also impose ceilings for candidates' spending on campaigning. Starting from 2004

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<sup>16</sup> European Parliament Report A4-0212/98.

the mandate of a Member of the European Parliament is no longer compatible with that of a National Parliament (transitional period was envisaged for members of the Irish and the British Parliaments). Period foreseen for European elections remained untouched. The Council did not agree on the pan-European list proposed by Anastasopolou.

Together with the 1993 Directive on the electoral arrangements for EU citizens residing in another member state with its subsequent amendment from 2013, the enlisted principles constitute today the only principles common to all EU countries. Considering the ambitious plans elaborated over the years in the European Parliament, which as we prove later is still not giving up on introducing a more uniform system, those changes seem rather modest. Differences in electoral systems remain thus considerable, as the Act states itself that electoral procedure in each member states is governed by national provisions.

The system of proportional representation is now in use in all Member States. Great majority of them use list system, with only three exceptions – Ireland, Northern Ireland within the UK and Malta – using the single transferable vote system. The Act does not prescribe a single method of calculating proportionality, nor does it require preferential voting.<sup>17</sup> Majority of states did allow for preferential vote, although in practical terms it also differed from country to country. In Sweden e.g. votes for individual candidate can override the order in which candidates are placed on their party list. For this to happen, a candidate must receive at least 5% of all votes casted for his or her party. Candidate with the highest number of votes takes then the first place. Moreover, in Sweden voters may delete or add candidate to a list. Luxembourg is also an interesting case, in which voters are allowed to split their votes (altogether 6) among different lists. Closed lists, where voters vote for a party and have no influence on the election of concrete candidates seem to dominate in Estonia, France, Germany, Greece, Portugal, Romania, Spain and the UK.<sup>18</sup> The size of constituencies was also considerably different. Considered as more proportional, but less favourable to establishing a closer link

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<sup>17</sup> In 2009 elections the most common were variations of the d'Hondt method. Hare-Niemeyer was used in Bulgaria and Cyprus. Sainte-Lagüe in Germany, Latvia and Sweden, Droop in Greece, Hagenbach-Bischoff in Lithuania, Luxembourg and Slovakia, often in different variations. Poland used a mix of two systems, d'Hondt for the national outcome and Hare-Niemeyer for the subsequent attribution of seats at the regional level to the winning lists while taking into account the regional turnout. After: Lehmann, Wilhelm. *The European elections: EU legislation, national provisions and civic participation*. Brussels: European Parliament 2009, p. 83.

<sup>18</sup> For detailed information about national electoral law see: Lehmann, Wilhelm (2009); Ehin, Piret et al. *Independent candidates in national and European elections*. Brussels: European Parliament Policy Department C 2013.

between elected Members and their electorate, country-wide constituencies were in place for the 2009 European elections in majority of Member States, including the biggest ones. In countries like Spain it has always been an issue of particular importance. There was always a difference of opinion between the proponents of open and closed lists. The open list is more democratic and gives the voters a choice over exact candidates. The proponents of the closed lists, especially Spaniards, always defended the idea that a given party should send specialised politicians to Brussels, not people who are popular in the particular regions.

The minimum threshold set by the Act to up to 5%, when applicable varied between 1.8% in Cyprus to 5% in e.g. Poland and Germany.

The conditions to vote and stand in the European elections are also common only to a certain extent. In all member states the minimum age allowing to vote is 18, with the exception of Austria where it is 16. In four countries – Belgium, Cyprus, Greece and Luxembourg – the vote is compulsory. Countries apply different rules in particular to citizens leaving abroad. Germany for instance deprives them of the right to vote after 25 years spent in another country, UK does it after 15 years. Countries like Czech Republic and Cyprus demand from EU citizens a certain years of residency. Rules applied to candidates are even more complex as apart from the minimum age, which varies from 18 to 25, and the residency requirements, there are different rules of political implications. In some countries only political parties can register candidates. Some require a financial deposit, while other demand the party or specific candidates to be endorsed by a certain number of signatures. In some countries independent candidates cannot stand in European elections. Finally, there are different rules on financing, with some countries allowing for public spending on political parties and their campaigning and other do not.

These and other existing differences all prove that despite the European legislation in place, European elections still remain widely fragmented. There is a common understanding that this situation is a serious obstacle for their greater visibility, which could increase the dropping turnout. Despite the European Parliament gaining over the years considerably in power to finally become a co-legislator for a great share of EU legislation with the Treaty of Lisbon entering into force in 2009, turnout in the European elections is dropping. This is due to the 2004 and subsequent enlargements to countries with a traditionally lower democratic participation, but this tendency has become visible in the European Union as a whole.

## 1.4 The European Parliament's latest struggle for a more uniform electoral system

European Parliament of the VII term commenced its work in 2009, the same year the Treaty of Lisbon entered into force, giving the Parliament powers equal to the Council's in majority of EU's fields of activity. The question of introducing a more uniform electoral system became thus more pending and 12 years after the Anastasopoulou report, the Constitutional Committee decided to revisit the issue appointing Andrew Duff, English Liberal, the Rapporteur.

First draft adopted by the Constitutional Committee envisaged both amendments to the Treaty and to the 1976 Electoral Act.<sup>19</sup> Its main points included the following:

### Election of 25 additional Members on a transitional pan-European list

The report proposed 25 additional MEPs to be elected in a single constituency comprising the entire territory of the EU by proportional representation using d'Hondt method. The candidates were to be drawn by European parties from at least one third of member states and compete on transnational, closed lists. Each citizen was to cast one vote for the EU wide list and another for the national or regional list. The report proposed further to create a European electoral authority that would regulate the conduct and verify the result of the election taking place from the EU-wide list.

As always the devil was in detail. The question was whether the 25 Members on the transnational list should be added to 751 members, which would necessitate Treaty change, or deducted from 751. If the second option was chosen, a question arose who should lose seats. There was also no agreement whether the transnational list should be open (voters would choose a specific person) or closed. Controversy also arose as to how the transnational list should be constructed, by whom and according to what rules and whether candidates could appear simultaneously on both lists: regional and transnational.

### Distribution of the existing 751 seats

The report stated also that the Parliament would initiate a proposal for a decision establishing the redistribution of the 751 seats among the member states. It proposed to enter into a dialogue with the European Council to explore the possibility of reaching agreement on a durable and transparent mathematical formula. Andrew Duff had initially proposed to use the so-called Cambridge formula; it had however caused fierce protests among MEPs com-

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<sup>19</sup> European Parliament Report A7-0176/2011.

ing from countries that would have to substantially cut back on their number of seats. Many MEP's were also reasoning that there is no objective mathematical formula and that every formula is set based on a set of certain political assumptions. The relation between a number of citizens represented by each Member was perceived as the most important point of reference, but there was no agreement which countries exactly should lose seats.

Both proposals caused great controversy within the major political groups. Most importantly the majority of members thought that Andrew Duff's approach was too ambitious and that it was premature to propose changes necessitating Treaty amendments, especially taking into account how cumbersome the process of Treaty change is. The idea of transnational list also was not met favourably by majority of Members. Within the EPP, even though it has been a long standing position of the group, 80% of all speakers pronouncing their views on the issue, were against it. Some thought that such a quasi-federal solutions was premature, others were concerned about additional costs (if 25 Members were to be elected on top of 751). Some thought that it would be a solution preferential to big member states, as they would stand a better chance to get their candidates elected.

Facing fierce opposition, Andrew Duff asked the Plenary to refer the report back to the Committee. His second draft, much more modest in its content, was adopted at the committee level seven months later.<sup>20</sup> All references to treaty changes and amending the 1976 Act were removed. The report became thus more of an own-initiative report not triggering the Treaty procedure that would require the Council to act upon the EP's proposal. It contained however a pledge for a negotiating team to be established by the Conference of Presidents (the highest political body of the EP comprising heads of political groups) that would enter into a dialogue with the Council with a view of preparing a comprehensive reform of the 1976 Act. Issues for discussions included establishing a trans-national list (albeit this time the report gave very little details on it) and the question of distribution of seats, although there was no mention of a mathematical formula, only that a transparent and durable method should be agreed on. The report still caused however opposition and finally has never reached the Plenary. Most Members did not appreciate the more modest postulates of the Duff's second report. They were convinced that it repeats the original proposals and remains too ambitions for current European reality. There was also another aspect to it. Among the more ambitious Members there was no agreement for a thorough change of the system

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<sup>20</sup> European Parliament Report A7-0027/2012.

of distribution of seats in the EP also because many Members were of the opinion that a reform is possible only in the context of a comprehensive institutional reform. Significant concession on seats should to be compensated with changes concerning other institutional questions, such as the system of distributing votes in the Council.

## 1.5 What next?

One year before the elections in the time of writing, the Constitutional Committee adopted a draft resolution containing few suggestions on how to improve practical arrangements for the European elections in 2014.<sup>21</sup> The report contained postulates similar to those expressed also by the European Commission in its *communiqué* on preparing the 2014 elections.<sup>22</sup> These include a pledge for logos of the European political parties to appear on the ballot next to the names of candidates. The committee called also on the European political parties to nominate their candidates for the President of the European Commission well in advance of the elections. The idea behind it is to give their respective electoral campaigns a real face that would make programmes of these parties known to a wider public by conducting a pan-European campaign. It could also have the effect of bringing electoral campaigns closer to European rather than national issues. This proposal has however no legal effect, moreover most of its points would require amending national laws and as such seem of little chances for succeeding. There is still little desire on the side of Member states and national parties to give e.g. European political parties greater visibility at home. One of these proposals will, however, most likely come into reality. Nomination of potential candidates for the head of the European Commissions is almost certain. Plans include organising debates among the candidates - one of them would take place in Spring 2014 in Strasbourg - and will certainly improve visibility of the European elections across the European Union. It gives also hope for a spill-over effect, which would in time allow European political parties for a greater presence in member states during the European electoral campaigns. The ongoing in the time of writing tough negotiations on creating a special European legal status for these parties, would certainly help the cause.<sup>23</sup> Functioning nowadays as NGOs or political associations established according to different national laws, makes it even harder for the European political parties to act effectively on the European scene.

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<sup>21</sup> European Parliament Report A7-0041/2013.

<sup>22</sup> European Commission COM (2013) 126.

<sup>23</sup> European Commission COM (2012) 499.

One of the two substantial changes that will take place next year is changing date of the elections from June to May and a slight change in the distribution of seats, necessitated by the accession of Croatia.<sup>24</sup> The Parliament's long standing call for elections to be moved by one month for the purpose of increasing the turnout has found the necessary support in the Council. The fact that the old date, i.e. 7-9 June coincides with Whit Sunday holidays facilitated the decision, however finding a common date that would not coincide with another holiday or other elections in 28 Member states proved difficult. The date was finally set to 22-25 of May, which means that the new Parliament will be sworn on the 1st of July.

The second decision on a new distribution of seats proved on the other hand to be European Parliament's great success. A proposal drafted by Rafal Trzaskowski and Roberto Gualtieri introduces necessary transitional measures for the distribution of seats for the parliamentary term of 2014–2020. These measures are due to the entry into force of the Treaty of Lisbon and Croatia's accession to the EU. The solution proposed by the rapporteurs aimed at minimizing the losses of seats by Member State through application of the principle "no one gains, no one loses more than one seat". Therefore, after 2014 elections no Member State will gain seats and 12 will lose one, with the exception of Germany which will lose three pursuant to the provisions of the Treaty. According to the method adopted, the reallocation should be viewed in two steps: first is the redistribution of seats in line with the principle of degressive proportionality and with due respect to the lower (6 MEPs/Member State) and upper (96 MEPs/Member State) limits set by the Lisbon Treaty; second step is a political compensation between the gains and losses according to the principle that no-one gains and no-one loses more than one seat. Moreover, the European Parliament agreed that any future system of the distribution of the EP seats among Members must be transparent, based on objective criteria and decided in conjunction with the reform of voting system in the Council. The Council accepted not only the numbers proposed by the Parliament, but agreed also largely to its pledge that there should be a permanent, transparent system established that would allow for a fair distribution of seats before every elections and that this system has to be established in a more general institutional context.<sup>25</sup>

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<sup>24</sup> European Parliament Report A7-0041/2013.

<sup>25</sup> European Parliament Report A7-0213/2013.

## 1.6 Conclusions

The European Parliament could not agree on a uniform procedure for years. And even when it did especially in the yearly days of the European Communities, it was the Council blocking any progress on the issue. It seemed that progressive constitutionalisation of the community legal order would allow for establishing of new rules. However, electoral procedure is connected so tightly with national sovereignty and more importantly with vested interests of particular MEPs that a thorough and ambitious resolution of that problem proved impossible. Even an introduction of an overhaul of the system of seats' attribution in the EP met fierce opposition. They had to concede to a pragmatic, transitory solution and leave more radical ideas for the future reform of the Treaties, when there will be room for more concessions and package-deals. A lot has changed, however. Throughout the years we have created a basis for a common system and agreed for quite a lot of common rules, proportional electoral system, incompatibility rules and even common salaries, as well as a set of general rules governing seat distribution. As a general rule, the European Union develops in an organic and path-dependent way. In recent months we have proposed a whole set of ideas aimed at Europeanization of the European elections. They are of a non-binding nature, but nevertheless should have a real impact on the future electoral system. Taking one step at a time, the EP of the VII term has certainly moved into the right direction.



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## Chapter 2

# Do the Groups in the European Parliament Really Form a Party System?

DAVIDE DENTI\*

## 2.1 Introduction

Scholars and practitioners have been debating since at least ten years on the democratic deficit of the European Union (EU).<sup>1</sup> As a result, it is now agreed that further transfers of competences from the national to the European level should be accompanied by strengthened democratic accountability of EU institutions, including the European Parliament (EP), which should be the place where the battle for the control of the political power and of the policy agenda is fought.<sup>2</sup> Following several reforms, the Parliament is now entrusted with legislative powers on an equal footing with the Council; an inquiry into its internal operation is therefore needed, to assess its functionality not simply as a debate chamber but as a valid legislature.

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<sup>1</sup> According to the “standard version” of the democratic deficit notion, the Union lacks legitimacy because the EU executive is not under the control of the Parliament and citizens’ will does not find representation through political parties. Other issues include the absence of truly “European election”, the distance between citizens and institutions, and the policy drift between voters and policy-makers. See J.H.H. Weiler, U.R. Alterm & F. Mayer, ‘European Democracy and Its Critique’, *West European Politics*, Vol. 18, No. 3, 1995, pp. 4-39; P. Mair & J. Thomassen, ‘Political Representation and Government in the European Union’, *Journal of European Public Policies*, Vol. 17, No. 1, 2010, pp. 20-35; A. Føllesdal & S. Hix, ‘Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik’, *Journal of Common Market Studies*, Vol. 44, No. 3, 2006, pp. 533-562.

<sup>2</sup> The German Constitutional Court, in its Lisbon judgment, has highlighted how the European Parliament needs demonstrate to work as a true legislature before further competences may be uploaded at European level. See also S. Hix, *What’s Wrong with the European Union and How to Fix It*. Polity Press, Cambridge, 2008.

Legislative bodies in liberal democracies are structured by political parties whose interaction makes up a system.<sup>3</sup> The aim of this chapter is to determine whether a party system exists and works at the EU level. First, it examines whether the European party groups comply with the definition of a political party, or at least share some of the fundamental characteristics; it therefore identifies the relevant factors, such as party organisation, cohesion, stability and structuring. Such a step is preliminary for assessing whether the party groups form a party system. The paper then focuses on the definition of a party system, and on its most relevant aspects: party alignments, competition versus collusion, and linkage and congruence. Finally, it draws some conclusions about the present form of the European Parliament party system, its challenges, and its implications for the EU.

## 2.2 European Party Groups: are they parties?

Political systems in liberal democracies are composed of parties, which run in elections in order to connect the policy preferences of the voters with the legislative production of the Parliament. Elections are thus “instruments of democracy”,<sup>4</sup> contributing to an “integrated electoral-parliamentary complex”.<sup>5</sup> Is this the same way the European Parliament works? It is actually not clear if European party groups<sup>6</sup> can be defined as parties. Sartori’s minimal definition of a party underlines three fundamental elements: its political nature, electoral participation, and the connection between elections and public office.<sup>7</sup> According to these criteria, party groups should be considered as parties, even though the electoral linkage remains uncertain.

According to stricter definitions that focus specifically on European party groups rather than on national political parties, however, European party

<sup>3</sup> According to E.E. Schattschneider, “modern democracy is unthinkable save in terms of the parties”. *Party Government*. Rinehart, New York, 1942, p.1, quoted in F. Sozzi, “National Parties, Political Processes and the EU Democratic Deficit: The Problem of Europarties Institutionalisation”, *EUI Working Paper RSCAS* No. 04, 2013. Fiesole, European University Institute, p. 27.

<sup>4</sup> G.B. Powell, *Elections as Instruments of Democracy: Majoritarian and Proportional Visions*. Yale University Press, New Haven, 2000, quoted in Sozzi, *op. cit.*, p. 10.

<sup>5</sup> M. Cotta, *Classe politica e parlamento in Italia 1946-1976*. Il Mulino, Bologna, 1979, quoted in Sozzi, *op. cit.*, p. 10.

<sup>6</sup> The European Parliament is organized in transnational political groups, which are either the parliamentary wing of a European political party (‘europarty’), or a coalition among several European parties, national parties, and independent politicians. European party groups do not contest European elections (that is the task of European and national political parties), and are required to have a set of common principles in order to be recognised by the Parliament.

<sup>7</sup> “A party is any political group that presents at elections and is capable of placing, through elections, candidates for public office”. G. Sartori, *Parties and Party Systems* (2nd ed.). Cambridge University Press, Cambridge, 2005, p. 57.

groups do not fulfil the criteria. Pedersen rejects them as “genuine parties” on the ground that they are not “organisations that span and control the electoral linkage”.<sup>8</sup> He argues that party groups do not qualify for three reasons: they do not have an electorate, as European Parliament elections are fought by national parties; they do not have an internal organisation and leadership; and they are not sufficiently cohesive.

Do European party groups meet these expanded criteria? In order to answer this question, the section singles out their features concerning party organisation, cohesion, stability and structure.

## 2.2.1 Party organisation

Being political agents of a multi-level polity, European-level parties (‘europarties’) are composite bodies, of which European party groups only constitute one of three elements.<sup>9</sup> First, national parties (NPs) are entrusted with the tasks of selecting candidate Members of the European Parliament (MEPs) and run in EP elections.<sup>10</sup> Second, in the European Parliament, party groups born by aggregations of national parties of the same ideological families have developed into deeply organised bodies and today constitute the parliamentary party branch.<sup>11</sup> Finally, transnational parties and federations, created as loose umbrella federations, slowly institutionalised as a discussion forum for brokering political agreements, especially at the Council level, and function as embryos of extra-parliamentary EU parties.<sup>12</sup>

Parties at the EU level have to be considered as complex, multi-layered organisations. Given their control over incentives and sanctions, national parties secure the allegiance of MEPs, implying a sub-system dominance on European parties and the whole party system. Still, national parties need party groups to ensure legislative influence at the EU level and are constrained by the manifestos of transnational parties.<sup>13</sup> Albeit fragmented, the high level of

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<sup>8</sup> Morgens Pedersen, ‘Political Parties and party systems’, in P. Graziano & M. Vink (eds.), *Europeanization: New Research Agendas*. Palgrave MacMillan, Basingstoke, 2006, p. 16.

<sup>9</sup> L. Bardi, ‘Transnational Party Federations, European Parliamentary Party Groups, and the Building of Europarties’, in: R. Katz & P. Mair (eds.), *How parties organize*. Sage, London, 1994, p. 357.

<sup>10</sup> T. Raunio, “Beneficial Cooperation or Mutual Ignorance? Contacts between MEPs and National Parties”, in: B. Steunenbergh & J. Thomassen, *The European Parliament. Moving towards democracy in the European Union*, Rowman & Littlefield, Lanham, 2002, pp. 87-112.

<sup>11</sup> C. Hay & A. Menon, *European Politics*. Oxford University Press, New York, 2007, p. 209.

<sup>12</sup> S. Hix, *The political system of the European Union* (2nd edition). Palgrave MacMillan, Basingstoke, 2005, p. 192.

<sup>13</sup> S. Hix, A. Noury & G. Roland, ‘Dimensions of Politics in the European Parliament’, *American Journal of Political Science*, Vol. 50, No. 2, 2006, pp. 495-6.

institutionalisation of internal interactions of the latter, through bureaus and meetings, indicate a certain level of unity.

### 2.2.2 Party cohesion

The internal cohesion of party groups, measured through MEPs loyalty in roll-call votes weighted by EP cohesion, shows rather elevated and surprising values: MEPs tend to vote most of the time with their party group.<sup>14</sup> The cohesion of the three central party groups was of 89.1 % in the 5<sup>th</sup> European Parliament,<sup>15</sup> with a rise of 7.1 % from the previous one, most likely correlated with its increased legislative powers following the Amsterdam treaty.<sup>16</sup> These cohesion levels position the European Parliament in the middle ground between the EU Member States' (MS) parliaments and the United States Congress.<sup>17</sup> Cohesion is growing over time and is positively correlated with exogenous increases in EP powers and with the party group's size. This runs against expectations of declining cohesions, due to the high number and heterogeneity of parties to accommodate in each party group (especially following the Eastern enlargement), the lack of pressure for government support (varying legislative coalitions), and the lack of means for party groups to ensure MEPs support (sub-system dominance of national parties). Sozzi finds a declining concentration of seats held by the two major parties within a group, over time, and an increasing fragmentation of party groups, in terms of the Laakso-Taagepera's index, i.e. the effective number of parties within a party group, together with a rising transnationality and inclusiveness of party groups. These indicators do not seem to limit the capacity of party groups to act as unitary actors, as their cohesions, measured by Hix's agreement index, is high and increasing.<sup>18</sup>

Several reasons for these high levels of party cohesion have been put forward. First, parties need to reach super-majorities in absolute majority voting procedures. Second, the issues at stake are usually not politicised, making it easier for MEPs and party groups to agree across ideological

<sup>14</sup> Ibidem, pp. 499-500.

<sup>15</sup> S. Hix, A. Noury & G. Roland, 'Powers to the Parties: Cohesion and Competition in the European Parliament 1979–2001', *British Journal of Political Science*, Vol. 35, No. 2, 2005, p. 216, quoted in C. Lord, 'The aggregating function of political parties in EU decision-making', in: *Living Reviews in European Governance*, Vol. 5, No. 3, 2010, p. 14.

<sup>16</sup> S. Hix, "Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam", *British Journal of Political Science*, Vol. 32, No. 2, 2002, pp. 226-228, quoted in C. Lord, *op. cit.*, p. 14.

<sup>17</sup> S. Hix, 'A Supranational Party System and the Legitimacy of the European Union', *The International Spectator*, No. 4, 2002, p. 52.

<sup>18</sup> F. Sozzi, *op. cit.*, pp. 15-16.

divides, and less relevant for national parties to control MEP voting patterns.<sup>19</sup> Third, party groups control attractive resources for both national parties and MEPs. National parties have to rely on the groups' agenda-setting powers to ensure influence in the legislative process, while MEPs need access to appointments in Committees and rapporteurships on bills. MEPs have little *voice* options and face high *exit* costs, in Hirschman's terms, within party groups.<sup>20</sup> As an outcome, Sozzi argues, political parties at the European level "experimented new organizational forms in order to control as efficiently and effectively as possible new resources created by the EU integration process".<sup>21</sup> Fourth, national parties benefit from groups' cohesion in terms of reducing transaction costs of coalition-building, overcoming information gaps, and allowing for sharing political expertise among MEPs.<sup>22</sup> Fifth, European party groups and national parties have congruent preferences due to the aggregation at EU level of similar and cohesive national delegations, providing with stronger incentives for cohesion when no major conflict arises.<sup>23</sup> The cohesion of party groups would thus be a by-product of similarities.<sup>24</sup> Sixth, the increase in the European Parliament's powers has strengthened its party groups, which have been able to impose party discipline over national delegations.<sup>25</sup> Seventh, both party groups and national parties are in a double principal/agent relationship, as the principals, with MEPs, the agents, possessing different sets of incentives.<sup>26</sup>

Other proposed factors have been found unable to explain the cohesion of party groups: socialisation effects over MEPs,<sup>27</sup> the number of national parties in each party group, and the rounds of EU enlargement<sup>28</sup> all showed no correlation with the measure of cohesion of party groups.

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<sup>19</sup>T. Raunio, *op. cit.*; S. Hix, 'Elections, Parties and Institutional Design: A comparative Perspective on European Union Democracy', *West European Politics*, Vol. 21, No. 3, 1998, p. 38.

<sup>20</sup>C. Lord, *op. cit.*, p. 21.

<sup>21</sup>F. Sozzi, *op. cit.*, p. 13.

<sup>22</sup>S. Hix, 'A Supranational Party System and the Legitimacy of the European Union', *op. cit.*, p. 57.

<sup>23</sup>S. Hix, *op. cit.*, p. 58; C. Lord, *op. cit.*, p. 15.

<sup>24</sup>Nevertheless, data shows that party groups' cohesion is on the rise, while national parties' one is declining. S. Hix, 'A Supranational Party System and the Legitimacy of the European Union', *op. cit.*, p. 54.

<sup>25</sup>*Ibidem*, p. 59.

<sup>26</sup>E. E. Coman, 'Reassessing the Influence of Party Groups on Individual Members of the European Parliament', *West European Politics*, Vol. 32, No. 6, 2009, pp. 1099-1117.

<sup>27</sup>R. Scully, "Going Native? Institutional and Partisan Loyalty in the European Parliament", in B. Steunenberg & J. Thomassen, *op. cit.*, pp. 113-138.

<sup>28</sup>C. Lord, *op. cit.*, p. 14.

The final outcome, as resumed by Hix *et al.*, is that “national parties might be forced to vote against their policy preferences on some issues, but on average will vote according to their policy preferences in the knowledge that they are more likely to achieve these preferences as their colleagues in the group will be voting the same way”.<sup>29</sup>

### 2.2.3 Party stability and structure

Two final criteria to analyse concern the stability and structure of party groups over time.

With regards to stability, the number of relevant party groups has remained rather constant over time. Parties born from the left/right cleavage still aggregate the majority of votes at both national- and EU-level, which show enough mutual congruence. Post-materialist parties, such as the Greens, have emerged but remained marginal. Change can be noticed at the periphery of the party system, but its core shows remarkable stability.<sup>30</sup> Relative support for party groups has seen the socialist group gradually losing support, to the benefit of centre and right wing groups. The 2004 enlargement has sped up this process, due to the peculiar characteristics of party systems in the Central and Eastern European (CEE) countries.<sup>31</sup>

With regards to party groups’ structure, their internal development is correlated to the exogenous changes in the institutional role of the European Parliament. Its increase in legislative powers translated into a bigger role for party groups, and less freedom for MEPs. Moreover, the change favoured big groups at the expenses of smaller ones, unable to coordinate and adapt their institutional rules, resulting in a relative centralisation of the power of political parties. Granting more legislative powers has proven instrumental to transform a debate chamber into a legislative body, at the cost of the marginalisation of smaller groups.<sup>32</sup>

Having analysed their organisation, cohesion, stability and structure, this section has shown how party groups do share some basic characteristics of political parties. European Parliament party groups appear surprisingly “normal”

<sup>29</sup> S. Hix, A. Noury & G. Roland, ‘Voting Patterns and Alliance Formation in the European Parliament’, *Philosophical Transactions of the Royal Society (B)*, Vol. 364, 2009, pp. 827.

<sup>30</sup> C. Hay & A. Menon, *European Politics*. Oxford University Press, New York, 2007, p. 211.

<sup>31</sup> CEE party systems feature weaker party organisation, more fluid ideological positioning and lower levels of identification, resulting in a higher volatility of votes. C. Hay & A. Menon, *op. cit.*, p. 214.

<sup>32</sup> A. Kreppel, *The European Parliament and Supranational Party System. A study in institutional development*. Cambridge University Press, Cambridge, 2002, p. 219.



when compared with national parties.<sup>33</sup> The European Parliament appears to be organised, as Steunenberg and Thomassen argue, into “well disciplined party groups that are based on the same issue dimensions rather than on national differences”.<sup>34</sup> It remains to be seen whether they also interact in a way to make up a political system. The next section examines this issue.

## 2.3 The party system of the European Parliament

Even if the European party groups were considered as parties, it is not to be taken for granted that they behave and interact in a way making up a system. A positive assessment of European party groups forming a party system is in fact not unanimously shared by the literature. In Peter Mair’s view, their interaction only constitutes a “basket of parties”.<sup>35</sup> In Sartori’s terms, to assess the presence of a party system, more than one party must be present, and their interactions should follow a foreseeable pattern.<sup>36</sup> The interaction of party groups may be defined as patterned according to some indicators, such as internal cohesive behaviour and group voting alignment following clear cleavages (e.g. left/right, integration/sovereignty). This section analyses the mechanisms of interaction among European party groups—alignment, competition, linkage and congruence—to assess the existence and functioning of an effective party system in the European Parliament.

### 2.3.1 Alignment

Studies focusing on the political dimensions of the EU arena have found a dominant one on the left/right axis, congruent with the main cleavage in most member states, combined with a minor one, defined either in terms of integration/sovereignty or of government/opposition at member state level.<sup>37</sup>

Group voting alignments have been found consistent with the main political dimensions. Hix *et al* quantitatively demonstrate how the left/right dimension remain the main explanatory factor of MEP voting patterns, both within and across party groups. Moreover, voting in the European Parliament appears

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<sup>33</sup> S. Hix, ‘A Supranational Party System and the Legitimacy of the European Union’, *op. cit.*, p. 59.

<sup>34</sup> B. Steunenberg & J. Thomassen, *op. cit.*, p. 10.

<sup>35</sup> P. Mair, “The Limited Impact of Europe on National Party Systems”, *Western European Politics*, Vol. 23, 2002, pp. 27-51.

<sup>36</sup> G. Sartori, *op. cit.*, pp. 117-124.

<sup>37</sup> S. Hix, A. Noury & G. Roland, ‘Dimensions of Politics in the European Parliament’, *op. cit.*, p. 495.

not to be driven by national interest. The participation of parties being members of national governments, and thus being represented also in the Commission and Council, is relevant in explaining the more integrationist stance of core party groups.<sup>38</sup>

Relative distances between parties did not see any major changes, as parties kept on aligning on a left/right dimension comparable to many domestic party systems of Western Europe. Party groups keep on voting more likely with their neighbour groups.<sup>39</sup> The collusive behaviour of core party groups, coupled with the lower cohesion of non-core groups, has allowed the firsts to strip the latter from any pivotal power.

### 2.3.2 Competition

Voting alignments of party groups follow the alternative patterns of bipolarity versus bipartisanship,<sup>40</sup> also defined as competition versus collusion.<sup>41</sup> Such voting patterns are correlated with policy areas and legislative procedures.<sup>42</sup> With regards to policies areas, voting records show high left/right competition on policies; on the contrary, core parties build consensus on common pro-integration stances, being opposed by sovereignist parties.<sup>43</sup> For what concerns legislative procedures, absolute majority voting pushes for a grand coalition voting pattern, as this represents the most ideologically compact winning coalition possible. Moreover, the need for further agreement on legislative texts with other EU institutions (inter-institutional bargaining) pushes for proposal moderation, and therefore tends to exclude extreme parties from contributing to policy outcome.

Yet, voting alignments do present some evolutions. The 3<sup>rd</sup> Parliament (1989-1994) has shown a grand coalition voting pattern, linked with inter-institutional bargaining and the Parliament asserting its prerogatives as defined by the Maastricht Treaty on the one hand, and with the need for supermajorities to pass absolute majority votes and reap institutional benefits on the other hand. Collusion has been more pervasive and extensive than expected or required by circumstances. Notwithstanding the persistence of ideologi-

<sup>38</sup> Ibidem, p. 502.

<sup>39</sup> S. Hix, 'A Supranational Party System and the Legitimacy of the European Union', *op. cit.*, pp. 54-55.

<sup>40</sup> C. Lord, *op. cit.*, p. 14.

<sup>41</sup> S. Hix, 'Elections, Parties and Institutional Design', *op. cit.*, p. 31.

<sup>42</sup> L. Thorlakson, *Constructing a European party system: congruence and linkage in the national and EP party systems*, Polis 2005 Plenary Conference, Paris.

<sup>43</sup> S. Hix, *The political system of the European Union*, *op. cit.*, p.185; B. Steunenberg & J. Thomassen, *op. cit.*, p. 6.

cal divides, party groups have been pushed by the inter-institutional structure to overcome them, to prevent the risk of irrelevance. Moreover, the pattern of enhanced party cooperation (e.g. the rotation accord for the Parliament presidency and the grant of agenda-setting powers to the conference of party groups' presidents) seems to work also as a remedy against the lack of effective control of MEPs by party groups.<sup>44</sup>

On the other hand, the 5<sup>th</sup> Parliament (1999-2004) has been the most competitive: it has been the first Parliament with an EPP-ELDR majority, opposing left-leaning Commission and Council, and with the socialists in the role of "minority governing party".<sup>45</sup> Consensus-based politics struck back with the 2004 European Parliament election and the return to a more even political composition of all three EU institutions.

### 2.3.3 Linkage and congruence

Linkage and congruence refer to the relations between political arenas at national and European level, through voter behaviour, party organisation and party system structures. An eventual low-fit between European and national party systems would imply the persistent exclusion from influence of some MEPs, and the possible decline of the integrative capacity of the party system.<sup>46</sup>

When measured by the percentage of MEPs and of national MPs not associated to core party groups, party system congruence appears to be high and increasing, even though some MEPs do not fit. Non-core power in the European Parliament is mainly associated with either a parallel high incidence of non-core power in the national party system, related to specific national cleavages, or with the presence in the European Parliament of "split parties", absent in the national political arenas (e.g. the UKIP), possible signs of politicisation of the EU level or expression of an integration conflict latent in the left/right dimension.<sup>47</sup> According to Thorlakson, the level of congruence is "compatible with a stable democratic party system constructed from vertically integrated parties".<sup>48</sup>

Commonalities between national party systems have been proved strong enough to allow their successful aggregation into few EU-level parties.<sup>49</sup> The

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<sup>44</sup> A. Kreppel, *op. cit.*, pp. 215-217.

<sup>45</sup> S. Hix, *The political system of the European Union*, *op. cit.*, p. 191.

<sup>46</sup> L. Thorlakson, *op. cit.*, p. 12.

<sup>47</sup> *Ibidem.*, p. 7.

<sup>48</sup> *Ibidem.*, p. 9.

<sup>49</sup> D. Caramani, 'Is There a European Electorate and What Does It Look Like? Evidence from Electoral Volatility Measures, 1976-2004', *West European Politics*, Vol. 29, No. 1, 2006, pp. 20-21.

2004 enlargement put the linkage under stress, as CEE party systems are less consolidated, and show less inclusivity and a higher volatility of voters. Still, their inclusion did not affect negatively the party groups. Even if only a minority of CEE MEPs joined core party groups, those who did fit well into the system.<sup>50</sup>

Although only of a second order nature, being fought by candidates selected and voted through national parties, European Parliament elections may lead to an effective representation of voters, thanks to the good fit between national and EU levels in both political dimensions.<sup>51</sup> Nevertheless, national parties are probably not always good proxies on EU issues,<sup>52</sup> and as Mair and Thomassen argue, congruence in the outcome but not in the process is not enough: “a full-fledged system of political representation at the European level would still require European political parties to compete for votes”.<sup>53</sup>

### 2.3.4 The party system of the European Parliament: prospects and challenges

Findings on the patterns of alignment, competition, and linkage of party groups support the view that the main feature of the party system of the European Parliament is its normality, when compared with national ones, once that its multi-level nature is taken into consideration. In 2002, the European Parliament party system was considered “ready for power”.<sup>54</sup> In the following years, it passed the EU enlargement test, successfully aggregating parties and representatives of new member states without losses in system coherence.

Sartori defined party systems according to the two criteria of polarisation (i.e. the ideological distance between parties) and fragmentation (i.e. the number of effective parties).<sup>55</sup> In such terms, the European Parliament party system may be defined as a moderate pluralistic system. The development of a ‘normal’ and congruent party system, in analogy to domestic ones and geared towards EU-level party politics, has strong normative implications, as

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<sup>50</sup> H. Schmitt Hermann & J. Thomassen, ‘The European Party System After Enlargement’, in Thomassen J. (ed.), *The Legitimacy of the European Union After Enlargement*. Oxford University Press, Oxford, 2009, pp. 23-43.

<sup>51</sup> See on this also G. McElroy Gail & K. Benoit, ‘Party Policy and Group Affiliation in the European Parliament’, *British Journal of Political Science*, Vol. 40, 2010, pp. 377-398.

<sup>52</sup> C. Lord, *op. cit.*, p. 18.

<sup>53</sup> P. Mair & J. Thomassen, ‘Political Representation and Government in the European Union’, *Journal of European Public Policies*, Vol. 17, No. 1, 2010, pp. 20-35.

<sup>54</sup> S. Hix, ‘A Supranational Party System and the Legitimacy of the European Union’, *op. cit.*, pp. 58.

<sup>55</sup> G. Sartori, *op. cit.*, p. 39.

it may play a useful role in the process of democratisation and legitimisation of the European Union.

Nevertheless, such an outcome is not to be taken for granted, as according to Lord it could still be prevented by lack of supply, lack of demand, or a reversal in the salience of issue dimensions. Firstly, incumbent national parties may try to block it (lack of supply). The depoliticisation of issues allows for swinging legislative coalitions, and collusive voting translates into muted competition. Yet, the risk may be mitigated by the lack of resources of national parties, who do not really check MEPs' loyalty, and are suffering from the shocks of second-order EP elections on national governments. Second, there may be no push for EU party politics (lack of demand). The current consensual mode of policy-making allows for accommodation of preferences, and the dispersion of legislative powers lowers incentives to seek politicisation, as any political change would have low marginal returns. Third, a dimensionality problem may arise, in case of reversal in the salience of issue dimensions. Party groups mostly take only the left/right political dimension into account, while the pro/anti-integration one may be acquiring more and more salience, especially in the context of the eurozone crisis.<sup>56</sup>

To these challenges one more should be added: the need for europarties to achieve both autonomy from the national level and integration between their two faces at the EU level – the party in power, i.e. the European Parliament party groups, and the party in office, i.e. the transnational party federations. If autonomy seems established, the integration between party groups and transnational federations is still limited. According to Sozzi, they “are still separated tables”,<sup>57</sup> thus hampering the “integrated electoral-parliamentary complex”, in Cotta's terms, at EU level. Effective political representation of EU citizens may be ensured only when europarties will act in both the electoral and the legislative arena.<sup>58</sup>

## 2.4 Conclusions

This chapter has analysed the party system of the European Parliament to assess its vitality in both its actors, the European party groups, and its structure, their interaction. Firstly, the European party groups have been evaluated in terms of party organisation, cohesion, stability, and structuring. The findings point to a surprising “normality” of European party groups in analogy

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<sup>56</sup> C. Lord, *op. cit.*, pp. 22-24.

<sup>57</sup> F. Sozzi, *op. cit.*, p. 24.

<sup>58</sup> F. Sozzi, *op. cit.*, p. 27.

to national parties, once their multi-level nature is taken into account. Party groups show high levels of cohesion, a good stability of core parties in identity and relative power over time, and a progressive development and structuring correlated to the increase in the powers of the Parliament. Sub-system dominance by national parties may persist, since party groups remain more present in the parliamentary arena than in the electoral one. Nevertheless, party groups constrain and provide resources for national parties, thus ensuring a certain degree of unity and autonomy

Secondly, the interaction of the party groups in the European Parliament has been assessed in order to define whether they constitute a party system, taking into account their alignments, competition, and linkage and congruence. The party groups align mainly on a left/right divide, combined with a secondary integration/sovereignty dimension. Competition, high on policies on the left/right divide, is limited on constitutional issues by patterns of grand coalition favoured by the integrationist consensus and government participation of core parties. Party system congruence is high and increasing, and cross-level linkages have successfully aggregated parties of different national origins into few groups, withstanding the impact of successive enlargement waves.

The development of a moderate pluralistic party system may enable a further evolution of the political system of the European Union in analogy with the domestic model of parliamentary democracies of several EU member states, fostering the democratic legitimacy of the Union. In order for this to be possible, nevertheless, the European party groups will have to overcome the challenges of sub-system dominance by national parties, disincentives to politicisation, and the increasing salience of the integration/sovereignty divide.

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## Chapter 3

# Can “Electoral Engineering” Bring Europe Closer to its Citizens?<sup>1</sup>

ELENA CÎNCEA \*

### 3.1 Introduction

The debate over the system of electing the members of the European Parliament is still very much alive, even after more than thirty years since the first direct elections. This is caused mainly by the fact that despite the intended role of direct elections to enhance the democratic legitimacy of the European Union and to bring it closer to its citizens, the latter do not give due weight to the EP elections, as evidenced by the low turnout. The question is what steps should be taken in order to determine citizens to get more involved in the democratic process at the European level and also engage in the very substance of pan-European political debate. Undoubtedly, direct elections were the first and most important step in this regard. However, this was not sufficient to reduce the democratic deficit of the Union. Not even the fact that the Parliament’s powers were extended by successive treaties managed to increase the influence of European citizens on EU decision-making. In view of these aspects, I think that the European Union should consider reforming the electoral system, in the sense of adopting at least a uniform electoral formula for all Member States, and take measures to increase the role of the European Political Parties in the elections. Through my approach, I argue that direct elections, a uniform electoral procedure and a stronger involvement of the European Parties in the electoral process could together contribute to building a true “people’s Europe”.

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### 3.2 Direct elections - a first step towards a European polity

As it is well known, the road towards direct elections was long and tortuous, because of the reluctance of some Member States who feared that the elections would undermine or weaken their sovereignty. Thus, even though article 138 par. 3 of the Treaty of Rome provided that the Assembly would draw up proposals for elections by direct universal suffrage and that the Council would, acting unanimously, adopt the appropriate procedure, it took almost eighteen years for the Member States to finally reach an agreement in the Brussels summit of July 1976.<sup>2</sup> Schelto Patjin, the Dutch politician who drafted the proposal for direct elections which was adopted by the Council, stated that one should not believe that direct elections constitute a sort of “Aladdin’s lamp” which would satisfy all aspirations to unification, but a necessary step towards the attainment of the European Union.<sup>3</sup> Therefore, what seemed to be a “politico-legal surrealism”<sup>4</sup> became a reality in 1979, when the citizens of the Member States elected for the first time their representatives to the European Parliament.

The purpose was of course to confer greater legitimacy to the EU and also to create a stronger connection between the Union and the citizens of the Member States. However, direct elections failed to strengthen the position of the European Parliament within the European institutional framework. Thus, even though the Parliament became in the eighties “one of the poles of the community, its legitimization remained theoretical and its powers heterogeneous”.<sup>5</sup> Moreover, even the members of Parliament at that time saw the EP as “a `benign tumour` on an institutional system, which had not even thought of giving its right place”.<sup>6</sup> The position of the EP was later consolidated by Treaty on the European Union, when its power to co-legislate was recognised, but that was not enough to make the Parliament a strong voice within the institutional framework. Not even the extension of the EP powers by the following treaties managed to raise the citizens’ influence on EU decision-making.

<sup>2</sup> This agreement led to the signature of the Act on 20 September 1976, when the Council adopted Parliament’s proposal (Patijn draft) on almost all counts.

<sup>3</sup> See Anastassopoulos, Dr. G.N., *The Debate On The System Of Electing The Members Of The European Parliament*, Ant. N. Sakkoulas Publishers, Athens, 2002, p. 31.

<sup>4</sup> This expression belongs to Fernand Dehousse, a Belgian socialist and academician, who drafted the first proposal for direct election to the European Parliament, which was approved in 1960 by the Assembly, but it was not adopted by the Council of Ministers.

<sup>5</sup> Moreau Defarges, P., *Les institutions européennes*, Armand Colin, Paris, 1995, p. 49, *apud.*, Anastassopoulos, Dr. G.N., *op. cit.*, p. 96.

<sup>6</sup> Cot, J.P., *Le Parlement Européen: Fausse Perspective and vrai Paradoxe*, Melange Rene-Jean Dupuy, Pedonne, Paris, 1991, pp. 121-132, *apud.*, Anastassopoulos, Dr. G.N., *op. cit.*, p. 96.

The Treaty of Rome also provided that the members of the Parliament should be elected in accordance with a uniform procedure in all Member States. The phrase “uniform procedure” was regarded as signifying a uniform European electoral system. It seems that this was the interpretation given by Gaetano Martino, the Italian Minister for Foreign Affairs at that time, when he introduced the term into the Treaty.<sup>7</sup> However, after all the endeavours made by the European Parliament to make direct elections possible, the Member States were not willing to agree on a uniform electoral procedure. The adoption of a uniform electoral system was considered to be the next step in strengthening the position of the Parliament in the European structure and, as for the electoral formula, a proportional system was regarded as being the most equitable voting method. Nevertheless, the objective of persuading all Member States to accept the proportional system principle was not at all easy to achieve. Fortunately, after several attempts, a change in the British law for European elections, in 1999, led to the first elections held on the basis of proportional systems in all fifteen Member States, with a reservation expressed for the single transferable vote (STV) in Ireland and also in Northern Ireland.<sup>8</sup> Although the changing of the British electoral law was thought to have lifted one of the main stumbling blocks in creating a uniform electoral system for the European Union,<sup>9</sup> this goal is still unattained. Currently, the 27 Member States<sup>10</sup> employ different proportional electoral systems for designating their representatives in the European Parliament, using either closed lists (with or without a threshold), proportional representation with preferential vote, or STV, in a single constituency (Romania, France, Austria, Spain and others) or in several constituencies (as in UK). As expected, these systems deliver different results, more or less proportional.

Considering these aspects, from my perspective, the harmonization of the electoral systems across the European Union should go a little bit further, at least concerning the seat distribution method and the electoral threshold. It is true that the concept of uniformity does not require for absolute uniformity, but I think that the method used to distribute the seats and the threshold level

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<sup>7</sup> See Anastassopoulos, Dr. G.N., *op. cit.*, p. 28, note 33.

<sup>8</sup> Even though Northern Ireland is part of the UK, STV has been used extensively not only for EP elections, but also for local government elections and elections to local assemblies (since 1973). For details, please consult Elliott, S., *Voting systems and political parties in Northern Ireland*, in Hadfield, B. (ed.), *Northern Ireland: Politics and the Constitution*, Open University Press, Buckingham, 1992 and also Northern Ireland Office (NIO), *Questions & Answers on Proportional Representation*, Northern Ireland Office, Belfast, 1973.

<sup>9</sup> *Idem*, p. 58, quoting G. Anastassopoulos, *Common principles for a European Electoral System*, Athens, 1999, p. 123.

<sup>10</sup> Before July 1<sup>st</sup> 2013.

represent substantial elements of the electoral procedure. I will detail this matter in the following section of the paper, when I will address the methods to increase the citizens' involvement in the electoral process.

The issue of the regulation of the system for electing the EP Members has come into light because of the low turnout and the lack of salience of the EP elections which also led to the discussion concerning the existence of a democratic deficit at the European level. There are conflicting opinions about the democratic deficit, with strong arguments on both sides. Thus, there are scholars who claim that the democratic deficit is just a myth and that the EU is as democratic as it can be, and others who argue in favour of the necessity to raise the level of democracy within the European structure. I will review these contrasting points of view with the arguments invoked by each side, but I must say that I support the opinion in accordance with which the EU suffers from a democratic deficit. Therefore, in my opinion the weak involvement of the European citizens in the EP elections cannot only be attributed to the economic crisis, but to other factors too, such as: the attitude towards the EU, the level of trust in the European institutions, the influence of the elections on the power distribution, the lack of pan-European political debate, the impact of the electoral outcome on the EU policy and last, but not least, the electoral system. There are of course other important factors that also influence voter turnout, such as the socio-economic status, the level of education and political knowledge, social pressure, the level of satisfaction with democracy, the intensity of political preferences and socio-demographic characteristics, but in this paper I will focus on the factors that are strictly connected to EP elections.

Consequently, direct elections were only the first and necessary step in the slow process of building a European polity. In order to give rise to a common political identity among the citizens of the Member States, there are more steps that should be taken. First of all, as I have mentioned, the electoral systems should be much more harmonized and, second of all, the European Political Parties should play a more important role in the elections and engage the citizens in pan-European political debates during the electoral campaign.

All these could stimulate the citizens to get more involved in the electoral process and also enhance the legitimacy of the European Parliament, which would result in a reduction of the democratic deficit. In the next section, I will address the matter of the democratic deficit and the institutional mechanisms that can be used to counteract it.

### 3.3 The role of European parties and electoral engineering in reducing the “democratic deficit”

Much has been said about the already famous “democratic deficit” of the European Union. The thesis of the democracy deficit takes into account the growing gap between the increasing role of policy makers in Brussels or Strasbourg and comparatively small capacity of citizens to hold them accountable within democratic procedures equivalent to national ones. It can lead to decreased attachment of individuals towards the Union, indifference or even hostility towards the European project, implicitly endangering it.

However, there are scholars who deny the existence of a democratic deficit at the European level and argue that the standards by which we assess the legitimacy of European integration and of the institutions that guide the process need to be reset.<sup>11</sup> Thus, Giandomenico Majone claims that the *sui generis* institutional architecture of the EU does not allow for analogies with the national institutions, because the Union is a system of limited competences and does not follow the classical separation-of-powers doctrine.<sup>12</sup> Moreover, he argues that as long as the majority of citizens of the Member States oppose the idea of a European super-state, we cannot expect democratic politics to flourish at the European level.<sup>13</sup> Actually, Majone recognises that there is a lack of democracy at the European level, caused by the fact that for the European citizens, the Member States remain the principal focus of collective loyalty and the real arena for democratic politics,<sup>14</sup> but he finds the “democratic deficit” as being democratically justified, because for him the EU is just a “regulatory entity”, that deals with specific functional tasks, delegated by the Member States. Andrew Moravcsik shares Majone’s point of view concerning the reassessment of EU legitimacy, when he states that “judged against existing advanced industrial democracies, rather than an ideal plebiscitary or parliamentary democracy, the EU is legitimate”.<sup>15</sup> However, he sees the Union not as a regulatory entity, but as a “multinational body” that lacks a common history, culture, discourse and symbolism, which impedes it to ever become a polity. Consequently, Moravcsik argues that the EU is sufficiently democratic, as “constitutional checks and balances, indirect democratic control via national governments, and the increasing

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<sup>11</sup> Majone, G., *Europe’s ‘Democratic Deficit’: The Question of Standards*, European Law Journal, Vol. 4, No.1, 1998, p. 6.

<sup>12</sup> *Idem.*, p. 8.

<sup>13</sup> *Idem.*, p.7.

<sup>14</sup> *Idem.*, p.14.

<sup>15</sup> Moravcsik, A., *In Defence of the ‘Democratic Deficit’: Reassessing Legitimacy in the European Union*, JCMS 2002, Vol. 40. No.4, p. 603.

powers of the EP are sufficient to ensure that EU policy-making is, in nearly all cases, clean, transparent, effective and politically responsive to the demands of European citizens”.<sup>16</sup> Even though he admits that transnational political parties, identities and discourses could generate incentives for the citizens to participate in EP elections, Moravcsik questions the fact that greater participation in European political institutions would lead to a deeper sense of political community in Europe or to a greater popular support for the EU.<sup>17</sup> To support his claim, Moravcsik invokes a series of arguments. Firstly, he argues that insulated institutions, despite their lack of direct democratic legitimacy, are often more popular with the public than legislatures.<sup>18</sup> Secondly, the issues tackled at the European level lack salience in the minds of European voters, so any effort to expand participation is unlikely to overcome apathy.<sup>19</sup> Thus, the most important issues for most citizens – education, healthcare provisions, taxation, social security, pension, law and order – are not primarily EU’s competence. As a consequence of these aspects, citizens are poorly informed about the European political agenda and have little incentive to get involved in the electoral process. Considering all these, Moravcsik concludes „that even if a common European ‘identity’ and the full panoply of” democratic procedures existed, it would be very difficult to induce meaningful citizen participation”.<sup>20</sup> In other words, as long as the European citizens cannot evaluate the costs and benefits of going to the polls, they will not change their political behaviour.

I agree with the fact that citizens should be able to foresee the benefits they could get from participating in elections and I also believe that new European political cleavages should emerge in order to polarize the European electorate, but I cannot support the idea that any endeavour in this regard is doomed to failure. I think that in time, efforts from both European Political Parties and the Member States could lead to the attainment of a common European identity. Unfortunately, there are other scholars who support the pessimistic view concerning the interest and involvement of citizens in EU politics. Thus, they argue that a truly European electorate and party system are unlikely to arise because “wide electoral competition and cleavage constellation would require important institutional reforms, with the creation of an elective executive and parliamentary control”.<sup>21</sup> Therefore, the European Parties are regarded

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<sup>16</sup> *Idem.*, p. 605.

<sup>17</sup> *Idem.*, p. 615.

<sup>18</sup> *Ibidem.*

<sup>19</sup> *Ibidem.*

<sup>20</sup> Moravcsik, A., *op. cit.* .p. 616.

<sup>21</sup> Caramani, D., *The Formation of a European Electorate. Evidence from Electoral Volatility Measures, 1970s-2000s*, Arbeitspapiere – Working Papers, Nr. 83, 2004, Mannheimer Zentrum für Europäische Sozialforschung, p. 2.

as being “basket parties”, which reflect the alignments within national party systems and “are rather juxtaposed to one another, than competing with one another in any predictable or patterned sense”.<sup>22</sup>

The arguments of Majone and Moravcsik were tackled by Follesdal and Hix, who disagree about one important aspect: whether a democratic polity requires contestation for political leadership and argument over the direction of the policy agenda.<sup>23</sup> In their approach, they reveal the importance of political competition and its impact on opinion formation. Competition leads to political debates which stimulate people to be more aware about the deliberations occurring during the electoral campaign. Thus, in order to be more active in the electoral process and be able to form political preferences at the European level, citizens must be engaged in pan-European political debates. Electoral contestation is essential because it has a powerful formative effect, promoting a gradual evolution of political identities.<sup>24</sup> It is obvious that the political parties would play an important role in developing a political identity among the European citizens, as they have the ability to foster and maintain dual political loyalties in multi-level polities to one’s own sub-unit and to the polity as a whole.<sup>25</sup> Consequently, the practice of democratic competition and institutionalized co-operation could generate the formation of a European democratic identity.<sup>26</sup> A genuine European party competition and an electoral campaign focused on European matters would polarize the citizens and transform the “second-order” nature of European elections. But a truly electoral competition cannot emerge as long as the European Parties remain weak and make no effort to bring the European issues into the attention of the people.

Accordingly, the creation of an autonomous political space, independent from national issues and structures, could only be achieved if European Parties played a more significant role on the European political arena and the electoral campaign was focused on European policies.

Regarding the need for pan-European issues in the electoral debate, despite some progress, such issues are still at an early stage and appear rather at times preceding some constitutional changes at the European level, than in an ordinary debate. For example, in the process of drafting the Constitutional

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<sup>22</sup> Mair, P., *The Limited Impact of Europe on National Party Systems, West European Politics* 23, 2000, p. 39.

<sup>23</sup> Follesdal, A., Hix, S., *Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik*, *JCMS*, Vol. 44, No. 3, 2006, p. 534.

<sup>24</sup> *Idem.*, p. 550.

<sup>25</sup> McKay, D., *The EU as a Self-sustaining Federation: Specifying the Constitutional Conditions*. In Dobson, L. and Follesdal, A. (eds) *Political Theory and the European Constitution*, Routledge, London, 2004, pp. 23–39, *apud*. Follesdal, A., Hix, S., *op. cit.* p. 550.

<sup>26</sup> Follesdal, A., Hix, S., *op. cit.* p. 550.

Treaty, the EPP and PES (the two main political parties represented in the European Parliament) got involved through proposals expressed as a result of pan-European meetings of decision makers. At the 14th EPP congress in Berlin (10-13 January 2001) was adopted “The Union of Values” resolution, containing a chapter on EU reform issues, which expressed the EPP’s attachment to the idea of a European Constitution. Unfortunately, these examples are isolated. Such mobilization has yet to pass from exception to rule. Pan-European themes in political debate could occur particularly in those areas related to the exclusive jurisdiction of the Union or – although within the scope of shared competences – in which the EU’s role is crucial.<sup>27</sup> I believe that the common foreign and security policy can be such a matter. The issue is obviously of general European interest, the implications can be major and action at European level is often more efficient.

Nevertheless, the electorate does not give due weight to the European decision factor, which has become increasingly influential. This attitude is determined not only by citizen’s lack of political interest and electoral education, but also by the absence of a genuine European media which could cover the themes of European interest and mediate the communication between the MEPs and the electorate. Thus, considering the strong impact it has on citizens’ electoral behaviour, the media should also get involved in the complex process of developing a European political identity.

As for the European Parties, in the present, they appear rather like federations composed of national parties. This is caused mainly by the fact that current electoral laws do not encourage the development of a true pan-European electoral competition.<sup>28</sup> In light of the co-decision-making role on legislative matters, recently acquired by the EP, the need for a real discussions on the very substance of Union policies appears more clearly now. However, virtually nothing that happens in Strasbourg, matters in the voting booth<sup>29</sup> and all evidence suggests that voters are almost unaware of any true European issue in the debates preceding the European elections, EP campaigns not giving them any guidance whatsoever in deciding how to vote.<sup>30</sup> In order to give con-

<sup>27</sup> Cîncea, E., Cioroianu, C.I., *The importance of electoral education in the context of Romania EU Membership*, International Symposium „Performance and Innovation in Education”, 28-29 October 2011, Dimitrie Cantemir University of Târgu Mureş, Risoprint Publishing, Cluj-Napoca, 2011, pp. 77- 84.

<sup>28</sup> Schleicher, D., *What if Europe Held an Election and No One Cared?*, Harvard International Law Journal, Vol. 52, No. 1, 2011, p. 114.

<sup>29</sup> Hix S., Marsh, M., *Punishment or Protest?*, *Understanding European Parliamentary Elections*, 69(2), J.Pol., 2007, p. 495-496.

<sup>30</sup> Marsh, M., Franklin M. (1996) *The foundations: unanswered questions from the Study of European Elections (1979-1994)*, in *Choosing Europe? The European Electorate and National*



sistence to the statement contained in art. 10 par. 4 of the TUE,<sup>31</sup> the European Parties must make their presence felt in the voting booths.

Aiming to raise citizens’ interest in European elections and to increase the role of European Parties, some scholars have expressed the idea of establishing a double threshold in EP elections, so that any national political party wishing to obtain seats would be compelled to appear under the name of the European party to which it belongs.<sup>32</sup> Such a change would contribute to the education of voters, by giving them the opportunity to develop opinions about the performance of European parties, independent of the relevant national parties, who seldom highlight their connections with European parties.<sup>33</sup> Hence, European parties would be encouraged to build their own brand name in the eyes of the electorate. Having EU-parties on the ballot would also stimulate campaigning on European issues, because domestic parties that thought they could be successful in EP elections by bringing up European issues, but were worried that doing so would prove harmful in later national elections, would face changed incentives.<sup>34</sup>

Yet, as the author of the proposal acknowledges, such an approach would be unfair to the parties that are not pro-European or which even share Euro-sceptical views. Considering these aspects, David Schleicher proposes potential reductions in the number of states in which a political party should gain significant votes, but in my opinion that would not solve the problem. Any electoral arrangement must not lose sight of the democratic principle of reasonable representation of minority trends. Clearly, such an option, especially given the current political sympathies of large sections of European societies, would signify that a consistent number of Euro-sceptical nationals would not be represented at all in Strasbourg, and this would only deepen their anti-European feelings. Thus, another solution must be found to strengthen the “European” dimension of EP elections.

The EP parties could also be brought on the ballot by establishing that a percentage of the seats be distributed on the basis of a proportional system, to tickets from a single electoral region, made up of the territories of

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*Politics in the face of the Union*, edited by Cees van der Eijk and Mark Franklin, University of Michigan Press, 1996.

<sup>31</sup> “*Political parties at European level contribute to forming European political awareness and to expressing the will of citizens*”.

<sup>32</sup> Schleicher, D., *op.cit.*, p. 153.

<sup>33</sup> Centre for European Integration Studies, edited by Karl Magnus Johansson and Peter Zervakis—*European Political Parties between Cooperation and Integration*, Nomos Verlagsgesellschaft, Baden-Baden, 2002, p. 173.

<sup>34</sup> Schleicher, D., *op.cit.*, p. 154.

all Member States.<sup>35</sup> In my opinion, this could be a viable solution because the existent European political parties would be forced to lead transnational election campaigns and come forward with ideas and projects for ‘Europe’. Besides, this could result in transnational political competition, which would give voters a reason to care about European issues. Thus, each European Party would create a transnational list with candidates drawn from at least half of the Member States (the ration could be lower). These MEPs would be elected through a pan-EU constituency and would be accountable both to their European political party and to their European electorate. The number of MEPs elected according to these procedure could be somewhere between 25 and 30. The introduction of transnational lists would allow European political parties to engage in real ‘European’ campaigns and create the vital space for political contestation.<sup>36</sup> A similar proposal made by Andrew Duff, a British MEP, was rejected recently (14 March 2012) during a plenary session in Strasbourg, which shows that the electoral reform is still a sensitive topic for the Member States. Duff’s proposal was criticised mainly by representatives of smaller EU countries, who feared this proposal would especially promote candidates from the larger member states. To this, Andrew Duff replied that in any case, “voters from large and small countries will have the option of supporting a candidate of another nationality - and my guess is that many will do so. That’s the essence of post-national Europe”.<sup>37</sup>

Besides this electoral mechanism aiming to strengthen the role of the European Parties, I think that the electoral formulae used for the conversion of votes into seats should be the same in every Member States. Thus, the principle of proportional representation should be kept, but the electoral threshold should be harmonized in all Members of the EU. The issue of the elector-

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<sup>35</sup> This proposal was provided by the Anastassopoulos Report (1998), but it was not accepted by the Council. A similar idea was promoted quite recently by Andrew Duff, British MEP and President of the Union of European Federalists, who proposed to set aside 25 additional seats for candidates elected through Europe-wide lists presented by the European political parties, but his proposal was criticised, especially by smaller EU countries, fearing this proposal would especially promote candidates from the larger member states. For more details, see Luigi Sementilli, A “Democratic Deficit” in the EU? The reality behind the myth, 2012, University of Brussels, p. 14, available at [http://www.academia.edu/1508020/A\\_Democratic\\_Deficit\\_in\\_the\\_EU\\_The\\_reality\\_behind\\_the\\_myth](http://www.academia.edu/1508020/A_Democratic_Deficit_in_the_EU_The_reality_behind_the_myth).

<sup>36</sup> European Parliament, *A big step forward for a United European Democracy: Duff on electoral reform*, Europarlnews, 2011, Available at: [www.europarl.europa.eu/news/en/headlines/content/20110415STO17908/html/A-big-step-forward-for-a-United-European-Democracy](http://www.europarl.europa.eu/news/en/headlines/content/20110415STO17908/html/A-big-step-forward-for-a-United-European-Democracy), Duff, A., *Federal Union Now*, 2011 (Chelmsford: Fedederal Trust), Duff, A., *Why do MEPs fear electoral reform?*, 2012, EU observer, Available at: <http://euobserver.com/7/115596>, *apud*. Luigi Sementilli, *op.cit.*, p.14.

<sup>37</sup> Duff, A., *op. cit.*, 2012, *apud.*, Luigi Sementilli, *op.cit.*, p.14.

al threshold is particularly relevant, because a high threshold can seriously diminish the proportionality of an electoral system. Plus, if at the national level a threshold requirement may be justified by the fact that it avoids an excessive political fragmentation of the Parliament, which favours an efficient governance, at the European level this argument does not have the same strength, considering that the European Parliament does not have to designate a government that needs the support of a stable majority. The German Federal Constitutional Court reached the same conclusion in a judgment delivered on 9 November 2011, when it stated that the legal provision setting a threshold of 5%<sup>38</sup> to obtain mandates, which was applied for the 2009 European Parliament elections, violates the principle of equal suffrage and the principle of equal opportunities for all political parties.<sup>39</sup> In its decision, the Court emphasized the importance and the increased prerogatives of Parliament in the European institutional framework and also the imperative that every vote has the same weight on the outcome of elections. For these reasons, the Court considered that the 5% threshold entails the waste of votes cast for parties that have not obtained the minimum percentage of votes, those voters having no influence on the electoral process, and it also implies a violation of the principle of equal opportunities for political parties. Moreover, the Court held that the violation of these principles cannot be justified by the general and abstract argument that the large number of political parties would prevent the shaping of a political will of the European Parliament. Therefore, as one can see, this element of the electoral system has important implications on the outcome of elections and implicitly influences voting behaviour. In my opinion, the national electoral threshold should be of 3% and the electoral formula used for the translation of votes into seats should be that of d’Hondt. Even though, the d’Hondt method does not usually generate the most proportional outcome, considering the low threshold (3%), I think that the level of proportionality would be reasonable, especially if the whole country is organized as a single electoral constituency.

I strongly believe that an electoral reform is necessary at the European level in order to generate a true political competition during the electoral campaign and to make the European institutions more accountable to citizens. The Lisbon Treaty was clearly a step forward towards a greater ‘politiciza-

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<sup>38</sup> Provided also by the Romanian electoral law (Law no. 33/2007).

<sup>39</sup> Reflets no. 2/2011, Brief information on legal developments of Community interest, Library, Documentation and Research Directorate; <http://www.juradmin.eu/en/reflets/pdf/Reflets%202011%20No%202.pdf>. For the content of the decision, consult [www.bundesverfassungsgericht.de/entscheidungen/cs20111109\\_2bvc000410.html](http://www.bundesverfassungsgericht.de/entscheidungen/cs20111109_2bvc000410.html).

tion' of the EU,<sup>40</sup> as it allows the European Parliament to “elect” the Commission President, in accordance with the Council’s proposal, which has to take into account the results of the latest European elections when proposing a candidate. Therefore, the EP must find a way to create a space for political contestation at the European level and must make the citizens aware of European matters. For this to happen the electoral system must be reconfigured and the position of the European Parties on the European political arena must be consolidated.

### 3.4 The effects of the electoral reform on the Romanian electorate

In 2007, when Romania joined the EU, the Romanian citizens faced a new challenge, as they were called to the polls to elect their representatives in the European Parliament. Even though the majority of Romanians were enthusiastic about the entrance of Romania in the EU, they had no idea about the European institutions, their attributions or about the European policies. Thus, despite the positive attitude towards the European integration, voter turnout was quite low. The first elections for the European Parliament in Romania were held on November 2007 and according to official data provided by the Central Electoral Bureau, the turnout rate was 29.46%. At that time, the Romanian government faced a fragmented parliamentary power structure and voter support for the principal governing parties was at a low point. The Justice and Truth Alliance of the National Liberal Party (PNL) and the Democratic Party (PD) that had emerged in 2004 collapsed in April 2007 because of internal conflicts aggravated by the withdrawal of the Conservative Party (PC) from the governing coalition. PNL assumed executive functions as a minority government with the support of the Democratic Alliance of the Hungarians in Romania (UDMR). Therefore, the EP elections took place against the background of a very tense political climate, marked by the lack of cooperation between the core political institutions – Presidency and government – and political infighting and factionalism in the party system, including personal conflicts between Prime Minister Popescu-Tăriceanu (PNL) and President Traian Băsescu (former PD leader).<sup>41</sup>

At the next elections, in 2009, there was a slight decrease in voter turnout, as only 27.67% of the electorate voted. The low turnout reveals the fact that

<sup>40</sup> Luigi Sementilli, *op.cit.*, p. 13.

<sup>41</sup> Stefanova, B., *The 2007 European elections in Bulgaria and Romania*, Notes on Recent Elections / Electoral Studies 27 (2008) 567–571, p. 567.

Romanian citizens show very little interest for the EP elections, because they cannot assess the way their vote will influence the European decision-making. The lack of salience of EP elections among the Romanian electorate can be explained by several factors, but from my point of view the most important of them is the low level of information about the functioning of the EU, the European Parties and the impact of the decision taken at the European level. Unfortunately, the national political parties seem to be indifferent to people’s lack of political and electoral knowledge, since during the electoral campaign they focus on national issues and not on European political debates. Even if a variety of European issues were present in the electoral discourse of Romanian politicians, they were reflected through the prism of the national political agenda. The degree of involvement of citizens in the European elections also depends on the electoral effectiveness, the level of identification with the European Union as a political community and on the endeavours of the political actors to inform and mobilize the electorate.<sup>42</sup> Therefore, the role of the political parties is crucial for the building of a European political identity. Despite the fact that most Romanians consider that Romania’s EU membership is a good thing, they do not perceive themselves as European citizens and do not feel represented as individuals on the European level.<sup>43</sup> Because of this and the little information they have, rationally ignorant voters rely on the party heuristics that is available on the ballot and this is how national party preference ends up reflected in EP elections. And, where voters are provided with party heuristics on the ballot that do not match the level at which elections are being held, reliance on those party heuristics will not lead to informed decision making.<sup>44</sup>

For all the exposed reasons, I consider that political actors at national and EU level should strive to raise citizens’ political awareness and highlight the importance and implications of the European elections. Political parties need to balance their interests, including their internal ideological unity, the relevance of EU policy to their voters and, where applicable, their basic pro-European attitude in order to incite the citizens to get seriously involved in the European elections. Moreover, European political parties must take a leading role in promoting debates about the very substance of EU policies and they

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<sup>42</sup> Wessels B. , Franklin, M.N., *Turning Out or Turning Off: Do Mobilization and Attitudes Account for Turnout Differences between New and Established Member States at the 2004 E.P. Elections?*, in *Journal of European Integration*, 31 (5), 2009, p. 609-626.

<sup>43</sup> Stănuș, C., *Eficacitatea votului, mândria de a fi cetățean European și prezența la vot la alegerile europene din iunie 2009*, in Comșa, M.(coord), Gheorghită, A.(coord.), Tufiș, C.D.(coord.), *Alegeri pentru Parlamentul European. România 2009*, Editura Polirom, Iași, 2010, p. 109-127.

<sup>44</sup> Schleicher, D., *op.cit.*, p. 115.

must build their political identity mainly in relation to issues of pan-European interest. Only then one can create pan-European political cleavages, leading to polarization of the electorate and providing substance to the very idea of electoral debates that could educate and stimulate the voters. Given this fact, I think that the European Union should adopt a legislation to serve the purpose of European elections, namely conferring greater legitimacy to the European political parties and encouraging the creation of common political identities through direct electoral mandate. So, the electoral law should change in order to bring the European parties into citizens' attention and to make them aware of the strong impact the decision taken at the European level may have on their lives.

Concerning the voting method, the change for the Romanian electorate would be insignificant, because the Romanian electoral law already regulates the proportional representation with d'Hondt method.<sup>45</sup> The only change would be the lowering of the national electoral threshold from 5% to 3%. Hence, the most important aspect of the electoral reform would be the presence of the European parties on the ballots. This could determine the Romanian citizens to engage more in the European project and to acquire more information about the institutional framework of EU and its competences.

### 3.5 Conclusions

Since the first direct elections, in 1979, the institutional role of the European Parliament was consolidated by successive treaties, with the aim of enhancing the democratic legitimacy of the EU. Nevertheless, the European Parliament remains weak compared to the Council or to the European Commission. Thus, the democratic deficit is not just a myth, but a reality. This is caused by the fact that EP elections are still regarded as "second order elections" or "midterm national contests" and the electoral discourse is rather dominated by national issues than by European matters. EU citizens can only vote for national parties and this leads to a total lack of political competition at the European level.

Besides, the quest to bring Europe closer to its citizens still remains a pressing challenge. The EU is simply too distant from its voters, institutionally and psychologically.<sup>46</sup> The citizens are alienated from the European decision-making and most of them cannot understand how the system functions. Therefore, the policies adopted by the EU are not supported by a majority of the European citizens. Plus, national parliamentary control in the EU is

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<sup>45</sup> Art. 20 and 21 of Law No. 33/2007.

<sup>46</sup> Luigi Sementilli, *op.cit.*, p.7.

very low. Even though national governments are accountable in front of their respective national parliaments, most decisions taken in the European Council are beyond parliamentary control as they are often discussed and prepared secretly in small diplomatic committees such as the Committee of Permanent Representatives.<sup>47</sup> As for the ‘early-warning mechanism’ introduced by the Lisbon Treaty, although the national parliaments may have the right to comment or denounce a legislative proposal on the grounds that it does not comply with the subsidiarity principle, they can in no way oblige the European Commission to withdraw a proposal. Moreover, the European Parliament does not have the right to legislative initiative, having only the possibility to suggest the Commission to legislate in a particular area.

Consequently, there is no wonder that EU citizens do not show any interest in the European Union’s political agenda and voter turnout is low. For this to change, the EU must reform the electoral system and strengthen the role of the European parties in the EP elections. These amendments could generate a genuine European political competition, mobilize the European electorate and, at the same time, bring the EU closer to the citizens.

The creation of a European polity and a common political identity still has a long way to go, but these reforms are necessary especially now, when in a context of an economic and financial crisis, the political legitimacy of the EU is more than ever called into question.

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<sup>47</sup> De Beaulieu, L., *Du déficit démocratique à l’Europe des citoyens*, Presses Universitaires de Namur, Namur, 1995 and Hayes-Renshaw, F., Wallace, H., *The Council of Ministers*, Palgrave Macmillan, Basingstoke, 1997, *apud*. Luigi Sementilli, *op.cit.*, p. 11.

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# Gender Quotas in the Elections to the European Parliament

MAGDALENA PÓŁTORAK\*

## 4.1 Introduction

Despite the fact that women account for more than half of the population, in politics they still maintain minority status. Research conducted by Drude Dahlerup, among others, indicates that a prerequisite for having real (not only theoretical) influence on the decision making process is a 30% participation in a particular structure. This is known as the *critical mass theory*.<sup>1</sup>

Therefore, in order to change the unequal status quo since mid 20<sup>th</sup> century various campaigns have been launched to increase political representation of women and they have been gaining increasing popularity. An example of these positive campaigns is the gender-related electoral quota system (as well as the parity being its equality variation) that introduced a fixed proportion (or number) of representatives in elective bodies.<sup>2</sup>

In Europe particularly, a significant role in creating gender-related decision making was played by the movement for parity democracy. Although the movement was related to American feminism and it perceived woman as a non-abstract subject, it had a different vision of equal rights (equal rights were not seen as theses of the women issue but they were to serve the whole society and its welfare). In contrast to feminism, the movement for the parity democracy did not assume existence of a conflict of sexes and claims against men, but it focused on uniting supporters of the concept aiming at improving the quality of democracy. Thus, this movement made an attempt to combine the concept of woman as an individual subject with the concept of woman as an integral component of the society, assuming that both men and women representing society enrich political culture through contributing to it elements

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<sup>1</sup> D. Dahlerup, *The story of The Theory of Critical Mass*, „Politics & Gender”, no. 2 (4), 2006.

<sup>2</sup> D. Dahlerup (ed.) *Women, Quotas and Politics*, Routledge, New York-London, 2006.

characteristic of both sexes. Thus, the “new” (i.e. feminine) elements are not assumed to be in conflict with the existing masculine elements but be in typical competition with each other.

Quota solutions have also been used by the EU member states since 1990s in the European Parliament (EP) elections and what should be emphasised, the representatives are directly elected.<sup>3</sup> Therefore, the EP election campaigns constitute a significant part of its activity, particularly in terms of supporting women’s political participation. With regard to this, the Parliament adopted a number of regulations,<sup>4</sup> which provided a basis for specific solutions aiming at improving gender balance in the process of political decision making. Thus, for the first time in the EU soft law a directive on implementation of electoral quota constituting legal warranties of gender equality in politics was adopted. In the context of strengthening women’s political activity, a significant role of the EWL<sup>5</sup> must be taken into account.

In the current term (i.e. 2009-2014) women account for more than 35% of the European Parliament. The purpose of this article is to prove if this reasonably good proportion results from the homogenous quota policy of the EU and its member states. The author also attempts to establish whether particular quota solutions applied by states are (not) able to ensure their improvement in 2014 and subsequent elections.

## 4.2 Definition, concept and types of quotas

The subject of this study concerns quota solutions in the EP elections, which are mainly the domain of the state law. However, before presenting specific solutions in different states, it seems essential to outline briefly the mechanism of quotas as an example of so called *positive activities*. The quotas in politics by definition aim at increasing both chances and opportunities for participation of specific groups in decision making. The notion of quotas, though sometimes unclear, usually refers to the minimum proportion of: 20, 30 or 40. As mentioned before, parity as such stands for equality. Therefore, while referring to gender equality, the value is always assumed to reach 50%.

<sup>3</sup> They are still perceived as categories called as second order elections. A. Turska-Kawa, W. Wojtasik (ed.), *Preferencje polityczne 2009. Postawy-identyfikacje-zachowania*, [The Political Preferences 2009. Attitudes – identifications – behaviours] 1/2010, Wyd. Centrum Innowacji, Transferu Technologii i Rozwoju Fundacja Uniwersytetu Śląskiego, Katowice 2010, *passim*.

<sup>4</sup> For example: the *Resolution of 11 February on women in decision making bodies*, A3 0035/94, O.J. C 61, 28.02.1994 or *Draft Report on Election 2004: How to ensure balanced representation of women and men*, A5 0333/2003, 7.10.2003, Committee on Women’s Rights and Equal Opportunities, European Parliament.

<sup>5</sup> European Women Lobby.

Although the history of the quota system is not very long and there are still places where it is regarded as “strange, unknown or incomprehensible”.<sup>6</sup> There have been a number of attempts made to provide its classifications, some of which seem to be controversial. Nevertheless, for the sake of clarity of this study, it is essential to make a distinction between quotas constituting legal guaranties and quotas-political guaranties. If the quota rules are included in the generally applicable law (in the constitution or electoral law), they are referred to as “hard”, however, if these rules are applied voluntarily by political parties (based on their statute or “gentlemen” agreement) they constitute the “soft” quota. It should also be noted that this tool can be applied at different stages of nomination: quota solutions can be used with regard to “aspiring” candidates (i.e. prospective candidates), “appropriate” candidates and the ones already elected.<sup>7</sup> Thus, depending on the advancement stage of the quotas, their application will have various consequences.

Potential effectiveness of the quota systems depends on a number of factors,<sup>8</sup> but in the author’s view, the crucial factors include political willingness (to prevent the quotas from becoming only a symbolic element of the election process) and a type of potential sanctions non-compliance with the

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<sup>6</sup>For example, in the USA due to the kind of electoral formula (FPTP) where it is voters who choose candidates so influence of a political party is rather limited. The idea of implementing candidates’ quota was not raised in political debates. Nevertheless, should be emphasised that both the Democrats and the Republicans quota solutions (called by them affirmative actions) with reference to internal structure of a party. This activity positively influenced situation of ethnic minorities (African-Americans and Hispanics) but not women. Currently they account for 17.8% members in the House of Representatives and 20% in the Senate. For further reading: M.L. Krook, J. Lovenduski, J. Squires, *Western Europe, North America, Australia and New Zealand. Gender quotas in the context of citizenship models* [in:] D. Dahlerup (eds.), *Women, Quotas and Politics*, Routledge, London-New York 2006, pp. 214-216.

<sup>7</sup>However, in the EU there are no quota rules for reserved seats like e.g. in India in local elections. According to Electoral law, among 28 states, some have raised the quota to 50% for both panchayats and municipalities, e.g. Andhra Pradesh, Kerala, Maharashtra, and Tripura, while others did it only for panchayats, e.g. Assam, Bihar, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Manipur, Rajasthan, Uttarakhand, and West Bengal. It should be noted that Indian Constitution determines that not less than 33% (including 33% of the total number of seats to be reserved for women belonging to the scheduled castes and tribes) of the total number of seats to be filled by direct elections in local bodies in each panchayat and municipality, shall be reserved for women. As well as that, since 1996 the Women’s Reservation Bill has been discussed repeatedly with various reformulations, but it remains pending. Finally, the Women’s Reservation Bill was approved by the Rajya Sabha (Upper House) on 9th March 2010. However, before it is legislated, the Bill must also be tabled in the Lok Sabha and approved with two-thirds majority, which has not happened yet. Source: [www.quotaproject.org](http://www.quotaproject.org) and for further reading: S.M. Rai, F. Bari, N. Mahtab, B. Mohanty, *South Asia: Gender quotas and the politics of empowerment – a comparative study* in: *Women, Quotas, Politics*, D. Dahlerup [ed], Routledge, London-New York, pp.222-245.

<sup>8</sup>Social and political context of their adoption, type of election system and formula, etc.

quota system. The “hard” quotas constitute *erga omnes* rules, which theoretically suggest higher effectiveness, and they are more difficult to evade. Voluntary party quotas, in turn, on the one hand, prove political willingness and, on the other hand, are in a way “optional”, which causes that they are not always correctly perceived. Therefore, there is no one universal “prescription” for the effectiveness of the quota system. In each case, it must be adjusted to the context of a specific country and accompanying circumstances. The article presents how the EU member states formulated their quota solutions in the EP elections. The “hard” solutions are discussed first.

Seven out of the 28 EU member states decided to potentially shape European political sphere on the basis of generally applicable law. Each case presented below is based on candidate quotas regulated by constitution or electoral law. The presented analyses are based on the biggest available data base of the quota systems.<sup>9</sup> Their purpose is to indicate sources of the quota solutions, their main assumptions and discuss potential sanctions for non-compliance with the quotas, and if applicable, rules for candidates positioning on electoral lists which can be perceived as mechanisms strengthening effectiveness of the implemented solutions. The author also makes an attempt to prove effectiveness of the existing quota system with regard to the EP.

### 4.3 Belgium<sup>10</sup>

**Genesis:** First quota regulations specified in the generally applicable law were adopted in 1994.<sup>11</sup> According to the assumptions of the first Gender Quotas Act (GQA), it was required that candidate lists had to include no more than two thirds of representatives of one sex, non-compliance with regulations resulted in rejection of the list.

This regulation was implemented in local elections, elections for province councils and, what is most significant, also in the the EP elections. Nevertheless, the full effect of the quota legislation was achieved only after adoption of the Gender Quota Acts<sup>12</sup> of 2002 with amendment related to the rule of

<sup>9</sup> Quota Project: [www.quotaproject.org](http://www.quotaproject.org).

<sup>10</sup> P. Meier, *Belgium: a best practice put in perspective* [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens’ Rights and Constitutional Affairs, 2008.

<sup>11</sup> It should be noted, however, that they were preceded by the ‘soft’ quotas adopted by the majority of Belgian political parties. P. Meier, *The Mutual Contagion Effect of Legal and Party Quotas: A Belgian Perspective*, “Party Politics”, 2004, 10, 5: 583–600.

<sup>12</sup> *Inter alia* the Act of 17 June 2002 to guarantee equal representation of men and woman on the electoral lists for the European Parliament, Belgisch Staatsblad, 28 August 2002.

equal representation, which was also correlated with the introduction of so the called parity clause to the Belgian constitution.

**Type of quotas:** statutory candidate quotas included in the electoral law.

**Main assumption:** number of candidates of one sex on electoral lists cannot outnumber the other sex. This rule also applies to candidates' proportion on supplementary lists.

**Sanctions for non-compliance:** if a party does not comply with the rule of sex ratio on electoral lists, the lists should be rejected by appropriate electoral bodies (electoral commissions).

**Rules of positioning:** first two candidates on the list cannot be of the same sex.

**Women in EP (2009-2014):** 8/22 (36.4%).

The results of the last EP elections indicate that there is a certain (though not particularly spectacular) evolution in this area. Belgium has 22 seats in the EP. The first EP elections in 1999 in which the quota solutions were used, resulted in 32% Belgian women participation. After the next elections in 2004, the number of women slightly fell to 29% to reach 36.4% in 2009.<sup>13</sup>

## 4.4 France<sup>14</sup>

**Genesis:** Although constitutionality of the quota rules in the French constitution aroused considerable controversy, France is regarded as a world pioneer in the field of gender equality on electoral lists. The law introduced in 2000<sup>15</sup> (colloquially known as the “parity law”) aiming at ensuring equal access for men and women to elective offices and posts. It obliged political parties to draft electoral lists which ensure equal proportion of candidates of both sexes and use alternation of male and female candidates on the lists. Thus, obligatory parity was applied in some local and regional elections as well as in the elections of the 50% of the Senate, and in the EP elections. Nevertheless,

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<sup>13</sup> P. Meier, *Belgium: the impact of gender quotas and placement mandates* in Electoral Gender Quota Systems and Their Implementation in Europe, D. Dahlerup, L. Freidenvall (ed.), and Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens' Rights and Constitutional Affairs, 2011, pp. 59.

<sup>14</sup> M. Sineau, *France: “parité” under the law*, [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens' Rights and Constitutional Affairs, 2008, 51-59. M. Sineau, *France: legislated „parité”* [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens' Rights and Constitutional Affairs, 2011.

<sup>15</sup> Law n° 2000-493 on Equal Access, amended 2009 (*Loi n°2000-493 du 6 juin 2000 tendant à favoriser l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives*, version consolidée au 14 mai 2009).

in order to ensure bigger effectiveness of the adopted solutions, they were amended in 2002 and 2007, which resulted in, among others, introduction of so called parity ticket and increasing financial penalties.

**Type of quotas:** statutory candidate quotas included in the electoral law and implicitly in the constitution.

**Main assumption:** political parties are supposed to contribute to implementation of the electoral law through the rules of equal access of men and women to elective posts.

**Sanctions for non-compliance:** if a political party fails to comply with the parity rule, the list is invalidated.

**Rules of positioning:** there is a requirement for alternation of male and female candidates on the lists.

**Women in EP (2009-2014):** 32/72 (44.4%)

Before the “parity law” was adopted, the proportion of French women in the EP was relatively high (40.2% in 1999). Five years later it increase to 43.6% and in 2009 it reached 44.4%. However, M. Sineau noticed that “*progress was hampered by the creation of 8 super-regions in 2004, which replaced the previous system of full PR.*”<sup>16</sup>

## 4.5 Spain<sup>17</sup>

**Genesis:** In Spain, with its relatively short democratic tradition, the issue of political participation of women had to “make its way through” in a way to the political agenda. However, after three extensive public debates in which the PSOE (*Partido Socialista Obrero Espanol*)<sup>18</sup> party played a significant role, eventually in 2007 the law implementing quota rules was introduced at all levels of election.<sup>19</sup> It should be emphasised, however, that obligatory quota system was introduced when the proportion of women in elective assemblies oscillated at around the *critical mass* (i.e. it was already relatively high). Therefore, the achieved progress can be regarded as less spectacular.

**Type of quotas:** statutory candidate quotas included in the electoral law.

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<sup>16</sup> M. Sineau, *France: legislated „parité”...*, pp. 73.

<sup>17</sup> Ch. Alnevall, *Spain: success and obstacles on the path to parity democracy* [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens’ Rights and Constitutional Affairs, 2011, s. 122-130.

<sup>18</sup> Spanish Socialist Workers’ Party.

<sup>19</sup> *Ley Organica 3/2007, de 22 marzo, para la igualdad defectiva de mujeres y hombres – BOE 23.03.2007.*



**Main assumption:** party electoral list for the EP elections among others, must consist of minimum 40% and maximum of 60% of representatives of each sex.

**Sanctions for non-compliance:** political parties are allowed a short time to amend electoral lists that do not meet quota requirements. If they fail to do so, the Electoral Commission will not approve the lists.

**Rules of positioning:** the quota rules are applied not only to the whole electoral list, but also separately each of the five seats. However, if the number of elective seats is less than five, then the whole list must reflect the 40 - 60% balance.

**Women in EP (2009-2014):** 18/50 (36%)

Since the first EP elections in 1989 with Spanish participation, women have achieved there a marked proportion of 32.8% of seats. Alnevall emphasises that “*the female share of the seats has remained almost the same, with 36% of representation in the last election in 2009*”. However, it is noteworthy that in the last elections women accounted for as much as 46% of candidates whereas in 2004 only 33%.<sup>20</sup>

**Table 1. Proportion of Spanish women elected for the EP**

	1987	1989	1994	2004	2009
European Parliament	15%	32.8%	34.4%	33.3%	36%

## 4.6 Portugal

**Genesis:** In 1999 the Parliament defeated two bills of the Socialist Party establishing a fixed number of candidates of each sex, nominated by parties. In 2006 amendments were adopted in the Law governing Political Parties (art. 29). Their purpose was to ensure the use of gender equality rule.<sup>21</sup>

**Type of quotas:** statutory candidate quotas included in the electoral law.

**Main assumption:** candidate lists for the EP elections among others, should be made in the manner that ensures the minimum of 33% representation of each sex.

**Sanctions for non-compliance:** if an electoral list is not in compliance with quota regulations, the incorrectness is to be made public and there will be financial sanctions proportional to the level of inequality on lists.

<sup>20</sup> Ch. Alnevall, *Spain: success and obstacles...*, pp. 129.

<sup>21</sup> *Lei Orgânica n. 3/2006, da 21 de Agosto . Lei da paridade: Estabelece que as listas para Assembleia da Republica, para o Parlamento Europeu e para as autarquias locais são compostas de modo a assegurar a representação mínima de 33% de cada um dos sexos.*

**Rules of positioning:** in multi-seat constituencies, the lists cannot include more than two consecutive names of the same sex

**Results in EP (2009-2014):** 8/22 (36.4%).

## 4.7 Slovenia<sup>22</sup>

**Genesis:** Among the new EU member states Slovenia was the first one to adopt the “hard” quota regulations. This process was complicated mostly because of the mental factor, due to the fact that the quotas were seen as the legacy of the ancient regime with its artificial influence on the shape of political representation. Finally, as a consequence of the activity of the Coalition for Parity, among others, and the EU accession in 2002 *the Act on equal opportunities for women and men* was passed. What is more, in 2004 an amendment to the constitution was made. At the same time, the 40% quota was introduced for the EP elections.

**Type of quotas:** statutory candidate quotas included in the electoral law.

**Main assumption:** minimum proportion of candidates of each sex cannot be lower than 40%.

**Sanctions for non compliance:** rejection of electoral list.

**Rules of positioning:** at least one candidate of each sex must be placed in the first half of each electoral list.

**Results in EP (2009-2014):** 2/7 (28,6%)<sup>23</sup>

Slovenia has only seven seats in the EP. Thus even the slightest quantitative change results in a significant change in the proportional representation of each of the sexes. Analyses of the 2009 elections revealed that each competing party included minimum 40% of women but they applied different ways of candidate positioning, depending on the party significance (only small parties positioned women on the top of their lists). The adoption of varied tactics was a party’s specific “calculation” (parties assumed that if they receive only one seat, a male candidate will receive it, but in the event of obtaining two or more seats – it will also be received by a woman). Although currently Slovenian women account for 28.6% of the country representation, immediately after the elections they accounted for as much as 43%. As a result, Slovenia was in the fourth place among all the EU member states, which probably would not have been possible without the introduction of the quota regulations.<sup>24</sup>

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<sup>22</sup> M. Antić Gaber, *Slovenia: from voluntary to legislated quotas* [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens’ Rights and Constitutional Affairs, 2011.

<sup>23</sup> After the 2009 elections Slovenian women accounted for 42,9% (3/7).

<sup>24</sup> *Ibidem*, pp. 119-120.

## 4.8 Italy

**Genesis:** Italians introduced the “hard” quota rules in the EP elections in 2004.<sup>25</sup> This law was adopted for a decade (i.e. until the 2014 elections).

**Type of quotas:** statutory candidate quotas included in the electoral law.

**Main assumption:** men and women respectively should account for no more than two thirds of all candidates on the list.

**Sanctions for non-compliance:** reduction of party funding (partial loss of subsidies).

**Rules of positioning:** no data available.

**Results in EP (2009-2014):** 16/72 (22.2%)

## 4.9 Poland

**Genesis:** Alike in Slovenia, the quota rules in Poland were relatively difficult to accept because of their “socialist connotations.” Nevertheless, in 2009 the Congress of Women (an initiative established by women’s cooperation network of: NGO members, entrepreneur organisations, women scientists, actresses, directors, journalists, women politicians etc., in other words, “*women from a wide range of circles, professions, interests and political options*”<sup>26</sup>) drafted a quota bill<sup>27</sup> with regard to the EP elections among others. After a heated political debate, it came into force in 2011.

**Type of quotas:** statutory candidate quotas included in the electoral law.

**Main assumption:** by law, the number of male and female candidates cannot be lower than 35% of all the candidates on the list.

**Sanctions for non-compliance:** if the list does not meet the quota requirements, an appropriate official body notifies the person in charge of submission of the list and requires to amend the list within three days. In the case of non-compliance the list may not be registered.

**Rules of positioning:** there are no rules (with regard to the EP elections).

**Results in EP (2009-2014):** 11/50 (22%).

Due to the fact that the EP elections with the use of quota solutions have not taken place yet, it is not possible to assess the effectiveness of the adopted mechanism.

<sup>25</sup> The Law no. 90 of 8 April 2004.

<sup>26</sup> M. Fuszara, *Poland: it’s time for women: gender quotas on electoral lists* [in:] *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens’ Rights and Constitutional Affairs, 2011, pp. 99.

<sup>27</sup> The bill assumed implementation of the parity on electoral lists but as a consequence of a political compromise the quota amount was reduced to 35%.

## ”Soft” quotas in the EP elections

**Table 2. Voluntary quotas in the EP elections – case study** (selection of characterised cases was determined by the research scope of the report)

Quotas	Germany		Sweden		United Kingdom	
	List PR*		List PR*		List PR*	
Electoral system						
Parties with quotas	The Left 50% (1990)	Social Democrats 40% (1990)	Green Party 50% (1986)	Green Party 50% (1987)	Labour Party 50% (2002)	Liberal Democrats 50% (1999-2002)
Quota rule (Year of introduction)	50%	40%	50%	50%	50%	50%
Rank-order rules	Zipper system: alternating women and men through the list	Zipper system: alternating women and men through the list, yet every fifth can be either a woman or man	Odd number reserved for women, including first place	50/50 Women and men should be placed at the party lists, minus one	Zipper system: alternating women and men through the list	Zipper system: alternating women and men through the list
Sanctions	The positions for women remain open and are filled in by-election	No	Women at election meeting has veto-right	No	No	No
Actual women candidates	N/A	N/A	N/A	42%	50%	49%
Elected women in EP group	50% (June 2011)	43% (June 2011)	50% (June 2011)	100%	60%	38%
Elected women in national parliamentary fraction	53%	38%	54%	58%	48%	31%
Elected women in EP (all parties)		37%		56%		33%

\* party-list proportional representation

Source: *Electoral Gender Quota Systems and Their Implementation in Europe*, D. Dahlerup, L. Freidenvall (ed.), Brussels: Directorate-General for Internal Policies, Policy Department C and Citizens' Rights and Constitutional Affairs, 2011, pp. 50.

## 4.10 Conclusions

As can be seen in the IPU ranking,<sup>28</sup> women account for more than 35% of all the EP members. The level of the critical mass was also achieved through the representation of 21 out of 28 member states. In four cases, the proportion of women is higher than 50% (Croatia,<sup>29</sup> Estonia, Sweden and Finland) whereas in one it is masculinised (Malta).

Nevertheless, for many years it has been possible to observe a clear discrepancy between the extent of women's representation in the EP and state parliaments (the EP representation seems to be more advantageous). The most likely reason for this is the fact that the EP elections are perceived as the elections of "secondary importance". That means that for political parties they are a "safe" area for testing new methods of both recruitment and promotion of candidates (which occurs less frequently in local elections or state-parliamentary elections that are seen as the "closer" and "more important"). While characterising the EP elections Barbarska also emphasises "weaker competition for seats" and "less confrontational style of political debates".<sup>30</sup>

However, it is hoped that more gender-balanced representation in the EP will also affect composition of the state parliaments because parties which will introduce a bigger number of female candidates will not be able to refuse application of an analogous rule in the state elections.

Another conclusion resulting from this research is an issue of the markedly varied electoral law. Although majority of the member states use a specific kind of election quota solutions, each state does it in its own specific way. Some states adopted "hard" solutions with "frightening" sanctions for non-compliance whereas others use "soft" quotas with "soft" sanctions or do not impose any sanctions. The value of quotas also varies and consequently effectiveness of the applied mechanism will differ in each case and should be individually assessed. The author's *de lege ferenda* conclusion is a postulate concerning harmonisation of certain guidelines for the electoral law in terms

<sup>28</sup> Inter-Parliamentary Union, Women in regional parliamentary assemblies: <http://www.ipu.org/wmn-e/regions.htm>.

<sup>29</sup> In Croatia only the SDP (Social Democratic Party) included the 'soft' quota in its statute (<http://www.sdp.hr/media/303876/statut-sdp.pdf>, art. 35). However, it does not suggest their direct application in the EP elections. In addition, Croatia accessed the European Union only on 1 July 2013 and its deputies were elected for 2013-2014, thus it will be possible to specify a particular 'quota' policy only with reference to future elections.

<sup>30</sup> O. Barbarska, *Polityka UE w zakresie zrównoważonego udziału kobiet w politycznych strukturach decyzyjnych (cz. I)*, [in:] *Studia Europejskie*, 3/2007, pp. 77.

of enhancing balanced gender representation in the EP, which has already been under consideration for some time.<sup>31</sup>

Moreover, there is no doubt that awareness of the facts discussed in the article as well as the quota rules should help women become more active in the political sphere starting with 2014 elections and thus systematically increase enhancing their representation.

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<sup>31</sup> The suggested amendments included among others a postulate of founding one additional constituency including the whole EU territory. The number of elected MPs would correspond to the number of member states, electoral lists would include candidates coming from minimum one quarter of all the states and would also respect the principle of gender balance.

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*Law no. 90 of 8 April 2004.*

*Ley Organica 3/2007, de 22 marzo, para la igualdad defectiva de mujeres y hombres – BOE 23.03.2007.*

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## Databases

QuotaProject – Global Database of Quotas for Women – [www.quotaproject.org](http://www.quotaproject.org)

InterParliamentary Union – [www.ipu.org](http://www.ipu.org)



# Citizen – European Parliament – External Action of the European Union: Selected Issues

TOMASZ DUBOWSKI\*

## 5.1 Introduction

The functioning of the European Parliament (EP) as an elected EU institution provokes several questions about a real influence of the citizens on the broadly understood activities of the European Union (EU). This is certainly an extremely wide and multifaceted issue. Among the potential problems emerging in this context what attracts our attention is the EP's role, as a rule, as a representative of the interests of individuals in a very sensitive area of the Union's activity, which remains its external action. What seems interesting is the question on the nature of the Parliament as a peculiar "link" between the will (and good) of the citizens of the Union and a real form of the Union's external policy. The main thesis this contribution concentrates on is the assumption, that a potential influence of EU citizens on EU's external action is visible and European citizens are not excluded from this particular field of EU's activity. The act of vote in EP elections might be perceived as an instrument of voters' potential influence on the aforementioned field of the EU's interests. The question about influencing EU external action through affecting the EP's composition becomes therefore very interesting.

In order to put this issue in the right context three selected aspects of the problem will be analyzed. Foremost it is important to determine, at last in general terms, how in the Treaty dimension the mechanism of EP elections was constructed and, consequently, how the citizens' influence on its composition is shaped. Second, it is necessary to define potential interactions on the line EU external action – citizen with pointing out potential motives for which this very domain might make a certain value from the citizen's perspective.

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Finally, it is important to refer in general to the EP's powers in the sphere of EU external action and the actual EP's position in this field.

In this light specific questions concerning organizing and carrying out EP elections as such seem to recede into the background. This contribution does also not aim at analyzing the details of EP internal structure and competence, neither does it aim at presenting the exhaustive analysis of EU external action along with the details of its internal differentiation and full legal characteristics. Only selected aspects of those issues will be mentioned pursuant to the main assumptions of the paper. In this way this contribution becomes rather a set of reflections signaling certain questions and, perhaps, is at the same time able to provoke a more intense discussion or more profound analyses of the matter under discussion.

## 5.2 Citizen – European Parliament. The concept of representation

The fact that the institutional structure of the European Union includes also an institution whose composition emerges through direct elections, naturally generates comparisons with the position and functioning of an individual in a democratic state. The European Union, however, is not a state and its current legal status seems to place it undoubtedly in the group of international law entities defined as “international organizations”. A closer look at the constitutive elements of this term<sup>1</sup> demonstrates that the present day Union satisfies them all.<sup>2</sup> Traditionally the term “international organization” defines a form of cooperation between states based on international agreements, equipped with its own organs<sup>3</sup> and certain scope of competences, which, as such, was instituted to implement common aims.<sup>4</sup> The Union indisputably remains a form of cooperation of European countries. It was established and functions by force of international treaties (*Treaty on European Union, Treaty on the Functioning of the European Union*<sup>5</sup>). It has its own institutions and a scope of competences

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<sup>1</sup> Cf. *Encyclopedia of public international law (published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Rudolf Bernhardt)*, Vol. 2, Amsterdam-Lausanne-New York-Oxford-Shannon-Tokyo 1995, p. 1289.

<sup>2</sup> However, the problems connected with EU legal nature are still under discussion, see: A. Rosas, L. Armati, *EU Constitutional Law: An Introduction*, Oxford; Portland 2012, p. 9 – 17.

<sup>3</sup> In case of the EU they are called „institutions”.

<sup>4</sup> *Encyclopedia (...), ibidem.*

<sup>5</sup> *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, OJ C 326, 26.10.2012.

at its disposal appropriate for implementing the adopted common goals.<sup>6</sup> What is more, those Treaty provisions according to which the *Union shall replace and succeed the European Community* (art. 1 TEU) and *shall have legal personality* (art. 47 TEU) become a kind of confirmation of the aforesaid status of the EU.

However, it is worth underscoring that including a body representing individuals into the institutional framework of an international organization is not a typical practice. Certainly, a quite common solution is establishing organs of the so-called extended composition, organs of the nature of an ‘assembly’. They are not, however, organs whose composition results from direct elections and it is difficult to attribute them with a position of the bodies representing entities other than states. The European Union is here an exception.<sup>7</sup> What is important, however, in the case of the Union the representation of the Member States’ citizens on the level of organization has strong grounds in the axiological layer confirmed by the treaties. From this perspective art. 10 TEU is essential. According to it, *the functioning of the Union shall be founded on representative democracy* (art. 10(1)). Every citizen shall *also have the right to participate in the democratic life of the Union and decisions shall be taken as openly and as closely as possible to the citizen* (art. 10(3)). In that context the role of the European Parliament becomes fundamental since *citizens are directly represented at Union level in the European Parliament* (art. 10(2)).

It is worth adding that the aforementioned provisions may be also evaluated from the perspective of the European Union’s law itself and its relations with national laws of the Member States. Due to the fundamental principles of the Union legal order – the principle of supremacy (primacy) and direct effect<sup>8</sup> – the law established on the level of an international organization (EU) determines, extremely intensely, the legal situation of private entities, including natural persons. Thus, the specificity of EU law justifies the tendency towards strengthening the Union’s democratic legitimacy as a legislator. The tendency, which in face of the exceptional nature of EU law seems natural, though in the traditional approach, let us remember, remains something rather exceptional. Consequently, a pursuit of taking into consideration the “voice of the citizens” in the broadest scope possible is desired and seeks to meet the values on which

<sup>6</sup> T. Dubowski, *Constitutional Law of the European Union*, Białystok 2011, p. 23 – 29.

<sup>7</sup> See also: B. Wessels, *Can the circle be squared? Political Representation and Political Integration in Europe* [in:] B. Steunenbergh, J. Thomassen (ed.), *The European Parliament: Moving Toward Democracy in the EU*, Boston 2002, p. 38.

<sup>8</sup> The judgement of the Court of Justice of 5<sup>th</sup> February 1963 in case 26/62 (*NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen*), ECR 1963, p. 1 and the judgement of the Court of Justice of 15<sup>th</sup> July 1964 in case 6/64 (*Flaminio Costa v E.N.E.L.*), ECR 1964, p. 585.

the Union is based. The system adopted, simplifying, is as follows: individuals, being entities of EU law were granted a certain influence on the substance of the Union legislation and an institutional guarantee (EP) of respect for their interests. If the situation of individuals is to be directly co-determined by EU law, these individuals should be enabled to affect the content of this law. The influence of the citizens on this sphere is simultaneously implemented through the work of EP, constituting, in accordance with the Treaties, their representation.

Thus, the importance of the representative institution within the framework of the Union finds its strong justification in both the values underlying the EU and a specific nature of its legislature.<sup>9</sup>

Finally, it is worth underscoring that regulation of the electoral procedure in EP elections so far has not been a full subject of the Union law. Specific rules in this respect currently remain the responsibility of the Member States. Certainly, the Union law, both in its Treaty dimension as well as on the level of secondary law, provides for certain requirements making up a foundation of the elections in point. In accordance with art. 14 TEU the *members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot*. Further, more specific provisions in this field are included in the *Act concerning the election of the representatives of the Assembly by direct universal suffrage*,<sup>10</sup> which also binds the Member States. The states, thus, regardless of the form of the regulations adopted, have to obey the rules resulting from EU law. This, however, does not change the fact that the specific mode of European Parliamentary elections is still subject to the proper national regulations. And however these regulations have to be in accordance with appropriate requirements of EU law, the unification of the rules in this matter on the EU level has not come true, although there are Treaty grounds for this. According to art. 223(1) TFEU the European Parliament is responsible for drawing up *a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States*. This is to be a basis for legislative actions of the Council, which, in accordance with the same provision, acting by unanimity within a special legislative procedure (after obtaining the consent of the European Parliament), shall

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<sup>9</sup>By the way, it is good to note that these spheres remain in an inseparable connection with each other. However, it is not the subject of this analysis.

<sup>10</sup>*Act concerning the election of the representatives of the Assembly by direct universal suffrage*, OJ L 278, 08.10.1976, p. 5 – 11.

lay down the necessary provisions in that respect.<sup>11</sup> In this way, the model of EP elections remains an interesting combination of EU provisions and, consistent therewith, more specific national regulations. Simultaneously, the European Parliament, in view of the aforesaid assumptions, remains a representation of the citizens of the Member States on the level of the Union itself, which – in comparison with classical international organizations – remains a unique solution. In this context, the direct nature of EP elections, based on Treaties themselves deserves a special attention.

Taking into consideration the above remarks it becomes quite obvious that EU citizens – through elections to the EP – have a real influence on the composition of one of the EU's institutions. It is however interesting whether – and to what extent – the voice of individuals, represented at EP level, is present in area of EU external action. In order to analyze this it is necessary to take a closer look at potential motives which might make EU external activity interesting and important from individuals' perspective.

### 5.3 Citizen – EU external action. Selected issues

Taking into consideration the specific character of EP as an European Union institution and attempting at evaluation of the peculiar transfer of the citizens' vote onto the form of the Union's external actions, it is worthwhile to raise a few more general questions.

Obviously, basing on the previous observations, EP should be recognized as a representative of individuals on the Union level. Simultaneously, remembering about the strict relation between the individual and the Parliament, it is important to be aware that in the context of the connections on the line citizen-EP-EU external action a peculiar reflection and question emerges: Are there any grounds for more intense interest of the citizens of the Union in its foreign policy? Is it (and to what extent) an area which can determine the situation of an individual, or, even indirectly or partly, can it affect the individual's status? And is the EU external action a sector of the Union's activity in which the participation of the citizens in “managing” the EU and its policies (through EP) should manifest itself to the strongest degree? The answer to these questions determines, at least to certain extent, the assessment of the formal mechanisms of including EP into the process of planning and implementing EU external action, to which we will return in the next point. Consequently, the relation between the citizen (voter) and the sphere of EU's external actions is worth considering.

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<sup>11</sup> What's interesting, *these provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements* (art. 223(1) TFEU).

We may assume, although it is an idealistic approach, that individuals should be vividly interested in the Union's foreign policy even for the catalogue of aims, defined in the treaties, which the EU implements on the international arena. They include, for example, strengthening democracy, maintaining peace and international security, supporting economic development and aid for nations affected by natural disasters (art. 21(2) TEU). However, it seems that it is important to look for those aspects of the Union's external actions, which by nature may involve the citizen and affect his situation more directly. Of course, it is impossible to relate to the EU external action as a closed – however internally diverse – area and to point out all of its aspects that might be of individuals' interest. It is more justified to concentrate on the most important elements thereof and to state whether they may be (and why) important from an individual's point of view.

Following this direction, a part of the EU external action in the form of Common Foreign and Security Policy (CFSP) seems to remain on the margin of the further considerations.<sup>12</sup> It is an area of a strongly political hue, whose instruments have so far been employed with different intensity and different effects. Simultaneously, it is this field of the Union's activity, in which differences of interests of the Member States manifest themselves relatively frequently. This, in turn, seems to be connected with perceiving foreign policy as a traditional domain of the state, determining, to a considerable extent, its sovereignty. As a result, the lack of stronger determination towards subduing this domain to supranational regime seems noticeable.<sup>13</sup> In institutional dimension it is worth emphasizing that the most important role in this field is played by intergovernmental institutions, namely by the European Council and the Council. To a huge degree this defines the role of the Parliament, which in this area remains, in fact, seriously reduced.<sup>14</sup>

The Union's external action consists, however, not only in particular CFSP. As it was mentioned above it is a large area of cooperation which evinces not unified legal character.<sup>15</sup> Development of integration within the framework of

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<sup>12</sup> It is worth adding that it is an error to identify this particular Union policy with the whole of external actions of the Union.

<sup>13</sup> For more on CFSP see: R. Wessels, *The European Union's Foreign and Security Policy*, The Hague, 1999; M. Holland (ed.), *Common Foreign and Security Policy: The First Ten Years*, New York 2004; see also: C. Gegout, *European Foreign and Security Policy: States, Power, Institutions, and American Hegemony*, Toronto, Buffalo, London 2010.

<sup>14</sup> The influence of the EP on the election of organs (for example High Representative for Foreign Affairs and Security Policy) responsible for CFSP implementation is however worth mentioning.

<sup>15</sup> On EU external action see: P. Eeckhout, *EU External Relations Law*, New York 2011; G. de Baere, *Constitutional Principles of EU External Relations*, New York 2008; M. Cremona

the Union (earlier the Communities), the integration which currently exceeds with its scope the primary model of basically economic cooperation made vivid relations with third entities necessary and natural.

Taking into consideration the peculiar nature of EU law manifesting itself, for example, through the principles of supremacy and direct effect, from the perspective of an individual the common commercial policy may turn out to be an important element of EU external action. In the substantive matter it embraces questions connected with the functioning of the internal market (customs union) referring to, among other things, *the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies* (art. 207(1) TFEU). These issues are important from natural and legal persons' perspective – especially those, who remain economically active on international arena.<sup>16</sup>

It is also important that EU's external action includes the problem of concluding international agreements (Part V, Title V of the TFEU). Such agreements are of course instruments of external policy in different aspects. In this context international agreements are invoked already in area of common commercial policy mentioned above (art. 207 (3) TFEU). We can however imagine that such an agreement might be used in many other fields of EU activity. If so, it cannot be excluded, that in particular cases also problems important from individuals' perspective might be subject to an international agreement. Common commercial policy together with its individual-oriented potential does not have to be the only one example in that respect. Other elements of EU's external action such as cooperation with third countries and humanitarian aid could be listed here as well.

What is more, international agreements – or more generally – external activity of the Union is quite often necessary also in areas which formally, according to the systematics of the Treaties, are not subject to the EU external action. From the point of view of individuals, those areas of the EU's activity may also turn out important. At the same time, due to their subject, they may assume a certain scope of relations with third entities. An example thereof becomes the Area of Freedom, Security and Justice (AFSJ), which, as such, fits the framework of Part 3 TFEU – *Union Policies and Internal Actions*. A cru-

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(ed.), *Developments in EU External Relations Law*, New York 2008; M. Cremona, B. de Witte (eds.), *EU Foreign Relation Law: Constitutional Fundamentals*, Oxford, Portland 2008.

<sup>16</sup> It is also important that common commercial policy remains one of the fields subject to Union's exclusive competence.

cial part of them is constituted by the Policies on border checks, asylum and immigration. The essence of the Union's activity in this area is simultaneously largely based on relations with the external environment. It may be of importance for private entities not only on the level of the economic exchange but also in the area of academic, cultural or simply family contacts. This concerns, among other things, liberalizing visa rules, whose palpable effects are, for instance, international agreements concerning this question (e.g. the Agreement with Russia)<sup>17</sup> or the rules of local border traffic (LBT) at the external borders of the EU.<sup>18</sup> In both cases we deal with issues that from EU citizens (and citizens of third countries as well) are of particular importance. The way the visa regime is organized defines detailed requirements for border-crossing. Potential liberalization of this regime (such as LBT) introduces exceptions in that respect which might also be very important for particular groups of Member States' citizens.

Interesting enough, in both cases other instruments were used: an international agreement and an act (regulation) of the Union secondary law. It means that EU external action – to a certain extent – might be co-defined by means of secondary law instruments. Such instruments are at the same time typical for Union's policies and internal actions including the area of freedom, security and justice mentioned above.

The above remarks lead to a conclusion that there are reasons for which an individual may be interested in the way EU external action is shaped. There is however one factor that probably remains on the margin of the core considerations of this paper but seems to be quite important. The issues posed above have a broad context and are inherently connected with the question of the Member States' citizens' awareness of European affairs and of the EU functioning: its competences and effect on the Member States' laws as well as the ability to affect the external environment. It is worth to note one element, which tells relatively much about aforementioned question and leads to a certain general, and perhaps not very optimistic, reflection: interest should be raised in the increasingly falling attendance in European Parliamentary election.<sup>19</sup>

<sup>17</sup> *Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation*, OJ L 129, 17.05.2007, p. 27. There are other so-called VFA's (Visa Facilitation Agreements) between EU and third countries (among others: Georgia, Serbia, Ukraine or Albania) in force.

<sup>18</sup> *Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention*, OJ L 29, 3.2.2007, p. 3–9.

<sup>19</sup> From over 60% in 1979 to approx. 43% in the last elections. Compare data and interesting analyses in: A. Malkopoulou, *Lost Voters: Participation in EU elections and the case for compulsory voting*, CEPS Working Document No. 317/July 2009.



What does this situation mean? What does it signal? Certainly the reasons for the low turnout may be “multiplied”, categorized and evaluated from different perspectives. In view of these considerations, however, the factor of significance may be the fact of a peculiar apathy, euroscepticism<sup>20</sup> or even lack of trust in the EU itself.<sup>21</sup> The mentioned above deficiency of knowledge of the bases of the Union’s functioning, the rules on which it is based, its competences and importance that its activity may have from the point of view of individuals is also not meaningless. Like the lack of awareness of the character of EP as a legislative institution, expressing, as a rule, interests of the citizens or voters.

Thus, it seems that an important problem is a peculiar unawareness of being a real entity of European Union law, which includes an element of ignorance, lack of orientation as to actual powers of the EU perceived in general categories. Meanwhile the spectrum of domains subject to the Union’s competences is extremely extensive and the range of its legislative or decisive powers is uniquely far-reaching.<sup>22</sup> It also includes external action as a special, broad, area, internally diverse and subject to, to a certain degree, specific rules and procedures (Common Foreign and Security Policy: art. 24(1) TEU).

Nevertheless, we have stated clearly, that there are aspects of EU external action that – at least potentially – might be of individuals’ interest. Just the aforesaid examples make us aware that from the perspective of the citizens the sphere of external action of the Union does not have to remain a distant, vague and actually abstract sphere. On the contrary, there are cases where the effects of the Union’s external action may effectively affect the situation of individuals. That’s why it is necessary to analyze whether the European Parliament as a representation of EU citizens possesses formal instruments of influence on the areas mentioned above. We will refer to this question taking into consideration the problem of concluding international agreements by the EU and the problem of EP presence in decision-making procedures leading to the adoption of secondary law acts that might affect EU’s external action. As it was stated above both instruments might be used in different areas interesting from the point of view of individuals.

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<sup>20</sup> Cf. M.N. Franklin, S.B. Hobolt, *The legacy of lethargy: How elections to the European Parliament depress turnout*, Electoral Studies, Volume 30, Issue 1 (March 2011), p. 67-76. See also: M. Mattila, *Why bother? Determinants of turnout in the European elections*, Electoral Studies, Volume 22, Issue 3 (September 2003), p. 449-468.

<sup>21</sup> On citizens involvement in EU affairs see interesting considerations: A. Moravcsik, *In Defence of the “Democratic Deficit”: Reassessing Legitimacy in the European Union*, Journal of Common Market Studies, Vol. 40, Issue 4, November 2002, p. 615-617.

<sup>22</sup> See art. 2 – 4 TFEU.

## 5.4 European Parliament – EU external actions. Selected issues

The observations established hitherto lead to the conclusion that within the framework of the European Union there exists a strong, direct relation axiologically grounded and formally confirmed, between the citizen and the European Parliament as an EU institution. This connection underscores the exceptional nature of the EU as an international organization and corresponds with the specificity of its legislation. On the other hand, however, there also exists, though perhaps less evident, relation between the direction and the form of the Union's external action and the position and situation of the very individual/voter. The missing link of the three-part system under discussion is then the role of EP understood as a peculiar link between the citizen and the Union and its decision-making activity in the field of EU external action. Examining this element in its general approach, should enable us to draw final conclusions concerning a potential influence of democratic act of vote on one of more interesting and special Union policies, not remaining, however, unimportant from the perspective of an individual/voter.

Let us stay with the aforementioned areas of the Union external actions, those which, as pointed out, may become a field of interest of individuals. Simultaneously, in a natural way, it is important to go beyond their substantive dimension and pay attention to the procedural aspect of the issues discussed. This will enable us to determine to what extent EP, the representative of the EU citizens, stands a chance of co-deciding on selected elements of the Union's external action.

First of all, the problem of international agreements concluded by the EU was named. These agreements should certainly be perceived as an instrument of achieving Union's aims determined by the Treaties, including also the aims of the Union foreign policy. It is worth adding that the question of signing international agreements itself, according to the systematics of the treaties, constitutes a part of external action of the Union. It is important to examine, then, how these Treaties involve EP in this procedure.

It turns out that the role of the Parliament is not marginal in this field. Obviously, in accordance with art. 218, being a basic provision as the matter of fact, it is the Council, as an inter-governmental institution, that concentrates most of power in its hands. It is the Council that decides on initiating negotiations, it adopts negotiating directives, it authorizes the signing of agreements and it concludes them. This is, however, a multi-stage process and in its decisive phase the competences of EP become more than sym-

bolic. A certain group of agreements may be concluded only after receiving the EP's consent (art. 218(6)(a) TFEU). This concerns, for example, association agreements or agreements with important budgetary implications for the Union.<sup>23</sup> From our perspective, however, what seems essential is also the category of agreements, which the Treaty defines as agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required. The mere reference to the ordinary legislative procedure clearly underscores the importance of EP in the scope of entering into international agreements, since it is a basic procedure for the Union's legislative process, whose application remains a rule. Signing an agreement concerning the issues regulated on the Union level in the ordinary legislative procedure, requires EP's consent then. Moreover, also in the cases where the Treaties refer to this variant of the special legislative procedure which requires EP's consent to adopt a Union act of secondary law, to sign an agreement a similar consent is necessary if this agreement includes questions being subject to the procedure in point on the Union level. This construction results in the situation where the powers of the Parliament in the scope of entering into international agreements by the Union become significant. Thus, the Council cannot sign an agreement without EP's consent, and this consent, in relatively many cases, may prove necessary.

In the remaining situations (art. 218(6)(b) TFEU) in order to sign an agreement it is necessary to obtain EP's opinion. Apparently this could be recognized as "weakening" EP's role. Let us note, however, that entering into the most significant categories of agreements are restricted by the condition of obtaining the Parliament's consent. On the other hand, the fact that in other cases it is necessary to obtain simply EP's opinion does not have to mean that its position is of purely "advisory" nature and the possibility of its expression is just a diplomatic courteous bow addressed to the Union voter and his institutional representative. First, EP's opinion seems to have a status of an essential procedural requirement, infringement of which may result in recognizing the decision on the agreement as invalid (compare art. 263 TFEU).<sup>24</sup> Second, the mosaic of inter-institutional agreements and the practice of relations between the decision-making centres of the Union seem to deprive EP's opinion

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<sup>23</sup> They are also: agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and agreements establishing a specific institutional framework by organising cooperation procedures.

<sup>24</sup> The Council may act without EP's opinion only in the situation where it sets a time-limit for the opinion submission (which the Council may do taking into consideration the urgency of the case) while EP does not meet this deadline (art. 218(6)(b) TFEU).

the character of a “pure formality” and grant it the status of a real instrument influencing the Council.<sup>25</sup>

To supplement the aforesaid observations it is worth, for short while, going to the example of those Union instruments which are formally proper for the area of the EU’s internal affairs but, for their peculiar subject matter, go beyond the Union borders and co-constitute an image of “external” activity of the Union. As an example certain elements of the Union Area of Freedom, Security and Justice were adduced, especially the policy on border checks and immigration. The specific domains subject to this area are not regulated through international agreements of the Union but are rather a subject of acts of secondary law. In the above mentioned area TFEU indicates as proper the ordinary legislative procedure. In this mode the Council and EP adopt appropriate acts of law binding in the scope of the Union border regime and developing the immigration policy.<sup>26</sup> It is worth underscoring that the construction of the ordinary legislative procedure (art. 294 TFEU) makes both institutions named above actual co-legislators. It is based on their far-reaching cooperation and in this way emphasizes the role of EP as a legislative institution. Already in the first reading it is possible to adopt an act in the wording which corresponds with EP’s position (art. 294 (4)). Of course, it is possible that the Council does not approve EP’s position. In this case, however, the Council may not legislate alone. Next steps of the procedure depend on Parliament’s decision. Only if it approves Council’s position (or does not take any decision) the act is adopted. EP may also reject Council’s position which means that the act is not adopted. Parliament may also propose amendments to Council’s position. Only if the Council approves all of them the act is adopted. If not – a special Conciliation Committee is established. It works on a joint text of an act. The act is adopted only in case a compromise project of the Committee is approved by both institutions – EP and the Council. Already this short description of the ordinary legislative procedure shows the important role of the EP as a legislator. In light of previous consideration it has to be remembered that in some cases EP’s the legislative function is really referred to the Union’s external relations, which the European Parliament also co-creates in this very way.

The participation of the Parliament in adequate decision-making procedures seems to prove that EP has relatively important instruments for af-

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<sup>25</sup> See an interesting analysis of inter-institutional relations in the EU in: K. Lenaerts, P. van Nuffel, R. Bray, N. Cambien, *European Union Law*, London, 2011, p. 633 – 685.

<sup>26</sup> A sufficiently clear example remains here the aforementioned local border traffic (*Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention*, OJ L 29, 3.2.2007, p. 3–9).

fecting the area of the EU external action. It is perhaps not the key role but it would be, however, difficult not to appreciate the potential EP has in this matter. The way of actualization of this potential obviously depends on several factors. One of them is, perceived in a subjective measure, interest of the Parliament in the domain in point and preparation of its members for implementing challenges in this measure. These circumstances are, in turn, determined by the current composition of EP, on which the citizens of the Union have serious influence.

## 5.5 Conclusions

The set of reflections, issues and observations presented above is certainly not an exhaustive analysis of connections between the citizen of the Union and the act of vote performed thereby and influence on the area of the Union's external action implemented through the activity of EP. However, it signaled a few threads that enable to draw some cautious conclusions in this matter.

Undoubtedly there is a strong connection between the individual, the citizen of the EU Member State and the European Parliament. The composition of the Parliament is a result of direct elections, which gives the voter a particular influence on the final EP composition. In the case of international organizations the possibility of shaping the composition of one of the institutions directly by the citizens is not a typical solution. In the context of the European Union it is, however, well-grounded by a set of values on which the Union is based and on a special nature of Union's law. In this light the act of vote might be considered a specific instrument of individuals' influence on areas where EP possesses decision-making powers.

Simultaneously, there are certain doubts as to involvement of the citizens in the democratic life of the Union and reasons of diminishing attendance in EP elections. Certain skepticism towards the Union itself and the lack of awareness of the basic mechanisms of its functioning seem to be of particular importance in that respect. Nevertheless, certain practice and social circumstances do not change the systemic solutions established by the Treaties. These, in turn, make EP a representative of the citizens on the level of the Union in relation to all areas subject to its interests and power.

Within the framework of these competences there is also a certain part of the Union external action. Consequently, through direct elections, the "civil factor" is present also in the field of the European Union's activity under discussion. It may be stated that the degree of involvement of the EU's citizens in the area of its foreign affairs corresponds with the very specificity of this do-

main as well as with the specificity of the European Union as an international organization. It is worth noting in this context that the decision-making influence of the Parliament as a democratic representation of the Union's citizens on the sphere of external action is not illusory and includes several questions which have or may have influence on the situation of individuals, the examples of which were outlined above.

In this way, it is good to assume that between the tops of the triangular relationship mentioned in the title there occur quite significant yet not homogeneous connections. In the system citizen-EP-EU external action the voter's influence on EP seems evident, EP's influence on the decision-making process in the area under discussion remains essential, and the relation between the individual and the area of foreign affairs of the Union turns out to be noticeable. Simultaneously, it is just this lack of homogeneity that emphasizes the unique nature of the Union itself, the specificity of its institutional structure as well as the complexity of its external action. This makes the problems in point extremely interesting and, perhaps, worth profound analyses.

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# The Empowerment of the European Parliament in Political and Constitutional Discourse

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## 6.1 Introduction

The European Parliament is the most democratic institution within the institutional design of the European Union polity. From a relatively weak consultative assembly with little power to influence actions of the European Council, composed until 1979 of delegates from national parliaments, the European Parliament has been gradually empowered to finally become an important co-decision institution as a lower chamber of the European governance's legislative branch. Because of its growing role, the European Parliament has been also a subject of an extensive theoretical inquiry and empirical research since the beginning of its existence. One of the first attempts to conceptualize the problem of the direct democracy applied to the legal system of integrating Europe was presented by Eric Stein.<sup>1</sup> In his work, Stein successfully described a dichotomy between democratic principles and technocracy by providing a comprehensive description of the previously existing European Parliamentary Assembly's control powers. The greatness of Stein's writings rely on his ability to foresee the necessity of the "growing impact of the Assembly upon executives in future",<sup>2</sup> which in the course of years became a reality and the subject area of subsequent scientific research.

Currently, the literature on political science and constitutional law doctrine presents a wide range of scientific investigations, focusing its attention on three main areas: (1) respective powers of the European Parliament and the European Council, (2) the Parliament's participation in legislative process,

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<sup>1</sup> E. Stein, *The European Parliamentary Assembly: Technics of emerging the "political control"*, International Organization, (1959).

<sup>2</sup> *Id.* at 255.

and (3) the voting power of various Member States in the European Council. Correspondingly, the doctrine of the constitutional law did not overlook the problems of institutional empowerment, while addressing the issue of the constitutionalization and the process of delegating sovereignty.<sup>3</sup>

For the purposes of this article, we intend to give a special attention to all three aspects of the empowerment of the European Parliament.

## 6.2 Historical account

Regarding mutual relations between legislative and executive powers, in the classical terms of the political structure, the power of the Parliament towards the European Union was not designed in a way of the parliamentary model,<sup>4</sup> where the majority in a legislative body has a power and respective competence to establish executive branch of the government.

Under the Treaty of Rome (1958), the Parliament had no role in the process of appointing the Commission's President, which would be an essential for allocation of powers in a democratic structure. Nevertheless, since the first direct elections it obtained an informal right of "vote of confidence" on the every next President and *veto* rights regarding to the Commission as a whole. Undoubtedly, the Parliament, as a representative body at the European level, took a very different understanding of this competence, following much more extensive interpretation of the informal consultations, and perceived it as a formal *veto* right on the choice of the Commission's President. This factual right remained informal until 1999, when the Amsterdam Treaty finally validated it. Mimicking United States Senate's hearings of the US President's nominees, the European Union similarly introduced with the Maastricht Treaty (1993) an institution of the committee hearings. Although differing from the American legislature, the European Parliament did not have and still does not have a power to reject an individual Commission's member, but the Commission as a whole. The Nice Treaty (2003) changed the provisions on voting in the European Council regarding the selection of the President and the Commission by providing for qualified majority voting. This was a clear example of the European Parliament's empowerment,

<sup>3</sup> See, e.g., D. Eisenhut, Delimitation of EU-competences Under The First and Second Pillar: A view Between *ecowas* and the Treaty of Lisbon, *German Law Review* 10, (2009); S. C. Sieberson, Did symbolism sink the Constitution? Reflections on the European Union's State-like Attributes, *UC Davis Journal of International Law and Policy*, 14, (2007); N. Zalany, The European Union Constitution and its Effects on Federalism in the UE, *Ohio State Law Journal*, 66, (2005); Markus G. Puder, Constitutionalizing Government in European Union: Europe's new institutional quartet under the Treaty establishing a Constitution for Europe, *Columbia Journal of European Law*, 11, (2004).

<sup>4</sup> S. Hix, A.G. Noury, G. Roland, *Democratic Politics in the European Parliament*, Oxford University Press, 13, (2007).

increasing its influence over the selection of the Commission's President. The Parliament was empowered because it was less likely for the Council deciding by qualified majority voting to impose on the Parliament its will, making the Parliament at the same time more immune from suggestions coming from a much smaller majority built in the Council. Subsequently, the Constitutional Treaty (2004), which has never come into force, set forth even more parliamentary type of arrangement, according to which the European Council would take into consideration the results of the parliamentary elections<sup>5</sup> when nominating candidate for the Commission's President, in the way following the domestic constitutional settlements, where the head of the state officially nominates a leader of the victorious party to form the government. The Treaty of Lisbon (2009) introduced a power to appoint the President of the Council and the right to grant consent to the appointed Commissioners. The relation between the Parliament and the Commission remains an example of the gradual empowerment of the Parliament resembling increasingly parliamentary model of governance, respecting the principle of check and balance.

In terms of legislative powers, as a second questionable area of study, over the course of the 1980s and 1990s, the Parliament's competences have been growing sequentially. Initially, according to the Treaty of Rome, the European Parliament held only power to be consulted on legislation. The first big change came in the 1970s together with an introduction of the procedure for budgetary adoption, in which the Parliament was taking a part. Both the Council and the European Parliament determined the annual expenditure with fixed amount set forth by the Member States. Another step in terms of the legislative empowerment was a "cooperation procedure". This procedure provided by the Single European Act (1987) was again designed in similar way to national state constitutional arrangements, giving a right for participation in agenda-setting politics, by introducing two readings in legislature process and reducing the influence of the Council over the legislative process.<sup>6</sup> The Maastricht Treaty (1993) replaced the cooperation procedure with co-decision procedure. It seems to be essential to point out that it was for a first time when the Council and the Parliament did not share the common understanding of what should be the scope of the Parliament's participation in legislation process. Raised controversy between these two European institutions fueled also theoretical debate on the Parliament's empowerment. This debate was concentrated around two competing approaches, i.e. the rational choice theory and sociological institutionalism, both trying to provide comprehensive explanation of a subsequent

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<sup>5</sup> Art. 26, Treaty establishing a Constitution for Europe.

<sup>6</sup> S. Hix, *supra* note 3, at 19.

growth of the legislative powers that Parliament was granted. Despite the fact that the provisions of the Treaty of Maastricht contained a clause thanks to which Council was able to find the leeway if the negotiations with the Parliament conducted in the committees failed, presenting the text of the proposal, agreed by the governments of the Member State before it was read in the committees, the growth role of the Parliament in the legislation process continued. Although the rules of Maastricht allowed Member States to maintain a major position as a dominant actor, this position was shaken by the later events. The first instance was when the European Parliament and the Council failed to reach an agreement happened with respect to the directive on Open Network Provision in Voice Telephony. It was for a first time when the Parliament successfully blocked legislation, at the same time establishing a new precedential practice, according to which the legislation procedure ends whenever both institutions cannot reach an agreement on a given proposed piece of legislation in a conciliation committee. In result, the next Treaty reform changed co-decision and again legitimized already established practice that legislation could not be passed without consent given by Council by qualified majority voting and by the Parliament by simple majority voting. The Constitutional Treaty proposed co-decision as a general procedure for legislative actions. Subsequently, the Treaty of Lisbon, according to Art 289 TFEU, established co-decision that became an “ordinary legislature procedure”, which requires joint adoption of the European legislative acts with the Council on a proposal from the Commission. The Treaty extended procedure to about thirty more polices and within fourteen new legal areas where qualified majority voting co-decision procedure is also applied. Similarly to legislative procedures at the national level, Art 294 TFEU provides for two readings, involving discussion and agreement on the Commission proposals with conciliation committee help, if the agreement is not reached. Since the Treaty of Rome, the European Parliament developed different legal means to influence and amend the European legislation and ways of involvement in agenda-setting mechanisms.

The Treaty of Lisbon brought also certain change regarding the European Parliament composition, describing its members as “representatives of the Union’s citizens”. The new language of the Treaty emphasizes the democratic mandate of the representatives elected in direct elections, who represent all European Union’s citizens at the European level. The composition of the Parliament favors smaller states with smaller population with unbalanced representation since no Member States shall be allocated more than ninety-six seats.

The control powers of the Parliament were also increased with revision of the Second Comitology Decision of 2006, introducing new procedure, thanks to

which the Parliament together with the Commission gained the power to block the adoption proposals emerging from committees. The Lisbon Treaty partly reduced scope of the comitology replacing non-legislative acts adopted by the Commission acts with delegated acts where the Parliament exercises power of control.

With regard to legislative initiative, primary law now enables the Parliament to request the Commission to submit proposals on matters, which on the basis of the Treaties rest within the scope of its competences. In case of non-submission, the Commission is obligated to inform the Parliament on the reasons behind. The Parliament has a power to elect the President of the Commission and to approve newly created office High Representative of the Union for Foreign Affairs and Security Policy and to other Commissioners. The Treaty of Lisbon introduced the procedure of the election of the President of the European Council, who – previously only approved – now is elected by the European Parliament in majority voting after being proposed by the Council, which, in turn, votes by the qualified majority voting. The budgetary powers were also increased if compared to the previous legal regime. The Parliament is now entitled to co-decide with the Council on all expenditure.

In terms of the international relations, the European Parliament provides consent, after consultation, to all external agreements. Moreover, there is an obligation to inform the Parliament on all stages of the negotiations of the agreements being entered. Additionally, the Council, according to Art 27(3) TEU, must consult the Parliament on all actions of the newly established of the European External Action Service. The Treaty of Lisbon brought also the so-called flexibility clause under Art 308. After Lisbon, adoption such acts now requires the consent of the Parliament. Finally, after Lisbon, the most elementary changes in the primary European Union legislation, in the form of treaty revisions, may be also submitted by the European Parliament to the Council, by means of ordinary or simplified procedure.

## 6.3 Discourse

This expansion of the legislative powers, extending and widening democratic participation by means of incremental institutional empowerment, received considerable attention in literature. One of the first and the most prominent voices in this debate over the change from consultation procedure to cooperation and assent procedures was taken by George Tsebelis.<sup>7</sup> In his article he argued that provisions granting the European Parliament, under certain conditions, access to agenda-setting power had a special significance. Their

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<sup>7</sup> G. Tsebelis, *The Power of the European Parliament as a conditional agenda setter*, *American Political Science Review*, 1994.

establishment can be explained best as a delegation existing between the principal and the agent.<sup>8</sup> Tsebelis, invoked, developed later on the notion of the efficiency gains obtained by the Member States if a given policy is performed collectively. Furthermore, he claimed that if those gains are high, the Council can resolve certain integration aspects (redistribution and investment issues) on its own. Contrary, if the efficiency gains are low, the European Parliament is empowered to solve the problem. This, what Tsebelis called “equilibrium selection”,<sup>9</sup> is one of the key elements of the conditional delegation, the concept describing gradual altering the position of the European Parliament.

## 6.4 Rational choice theory

The change in the empowerment of the European Parliament was a subject of the theoretical inquiry in subsequent years. Taking into account Treaties’ revisions, the theoretical debate was conducted from the rational choice theory or from sociological institutionalism angle. One of the best analyses of rationalism engaged to international relations and European integration was proposed by Berthold Rittberger.<sup>10</sup>

According to Rittberger, the realist approach can be simplified to the main assumption that social actors create the change “if they help to maximize their (exogenously given) preferences”.<sup>11</sup> According to this theory, actors whenever they take their strategic actions, they proceed them with profound evaluation of the consequences and also with taking into consideration that other actors do the same, willing to obtain the most preferable outcome. In terms of institutional building, institutions are an effect and arise from bargaining conducted between rational actors, perusing optimization of their interests in joined institutions. In the field of international relations, there is well-rooted distinction between interest-based and power-based theories explaining terms and circumstances of the international cooperation, addressing the question how and when such a cooperation emerges and operate. States join or withdraw from international institutional systems once the expected economic or efficiency benefits exceed costs of gains. Similar description of state’s preferences was presented by Frank Schimmelfenning<sup>12</sup> who draws comparable distinctions between security, power

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<sup>8</sup> Id. at 139.

<sup>9</sup> Id.

<sup>10</sup> B. Rittberger, *Building Europe’s Parliament Democratic Representation beyond the Nation-State*, Oxford University Press, (2005).

<sup>11</sup> Id. at 17.

<sup>12</sup> F. Schimmelfenning, *The EU, NATO and the Integration of Europe. Rules and Rhetoric*, Cambridge University Press, (2003).

and welfare based type of preferences. From this perspective, state actors decide to institutionally cooperate whenever potential gains exceed the cost of opting out. Contrary to that, states decide to cooperate basing on security perspective, when jointly they can collaborate against a common threat.

Functional theory overlapping with rationalist perspective, represented by Robert Keohane,<sup>13</sup> also delivers additional explanation. Functional logic proposes certain perspective on the Member States behavior, where states look for maximization of the effects creating “account for their causes in terms of their effects”.<sup>14</sup> From both functional and rationalist perspectives, phenomena of institutional building reflects “mutually perceived attractiveness of and efficient solution to a given action problem”. Mark Pollack,<sup>15</sup> basing on the premise of anticipating profits of international cooperation, developed a theory in which he argues that collective actors expect institutionalized cooperation, in order to be mutually beneficial. Those institutions are created with the premise of the lowering the transaction costs that could possible emerge if they were cooperating in the state of anarchy. Thus, institutions have a function created in order to reduce transaction cost. This thinking is similar to arguments proposed by Stein, who also proposed two modes, *ex ante* where efficient decision making and provision enacting takes a place, or *ex post*, understood as monitoring compliance and identifying transgressors.

The rationalist perspective in this sense would expect the creation and empowerment of the European Parliament basing on the hypothesis that Member States empower the European Parliament whenever they share expectation of efficiency gains which come from delegating control, budgetary and legislative competencies, exceeding profits from either sustaining from action or from acting unilaterally.

Contrary to rationalism, assumption of individualist ontology intends to present socially build character of state’s preferences, emphasizing the function of the norms, on both supranational and subnational level. This approach drew conclusions from this premise stating that social actors act on the basis of internalized norms and concepts, as being non-logical basis for action. This logic of appropriateness was mainly argued by James March and Johann Olson<sup>16</sup> who stressed that logical explanations do not take into account impor-

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<sup>13</sup> R. O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton University Press, (1984).

<sup>14</sup> *Id.* at 80.

<sup>15</sup> M. Pollack, *Delegation, Agency, and Agenda Setting in the European Community*, *International Organization*, 51(1), (1997) and *The Engines of Integration? Delegation, Agency and Agenda Setting in the European Union*, Oxford University Press, (2003).

<sup>16</sup> J. G. March, J.P. Olsen, *Rediscovering Institutions. The Organizational Basis of Politics*, New York: Free Press, (1989), *The institutional dynamics of international political orders*, In-

tance of norms and ideas that influence actors' preferences. According to behavioral scientist March and organization theorist Olsen, a proper terminology is not *choices* or *alternatives* but rather *duties* and *obligations*, which indicate power and character of strategy that actors follow. States do not create supranational institutions in order to maximize an externally prearranged set of the preferences but rather those actions are the reflection of internalized norms and ideas not meeting the current social situation. This dynamics is based on states' desire to find a solution for a tension that comes from collision of what is appropriate and of demands of a given social conditioning. Institutionalized cooperation spreads not necessary because of functional logic or because of the need to decrease transaction costs but rather due domestic solution may be applied successfully, not only domestically but also to social settings created on the supranational level. According to Paul DiMaggio and Walter Powell,<sup>17</sup> those supranational institutions raise and alter because of isomorphic process, where actors creating them strive for designing those institutions, in a similar way to the domestic institutions, operating under the same social conditions. Isomorphism means a transfer of institutional forms triggered by the need to comply with domestic and external pressures following those institutions that are generally considered as a successful ones. States' institutions seem to be a pattern helping to make an institutional choice at the level European level.

Within framework of the sociological institutionalism, isomorphic mechanism may be referred to the European integration process when discord between commonly recognized principles and standards of representative democracy and democratic deficit within institutional structured occurred. It may take place because of Member State's perception of the European Union as a system of governance with state-like characteristics. Following up this thinking, the problem of so-called democratic deficit rise from the situation when internalized standards and principles of democracy and the citizens' participation do not meet the actual arrangement of the European Union legal and institutional system. Sociological institutionalism builds a hypothesis according to which Member States strengthen and widen European Parliament's competences once the mismatch occurs between internalized norms and principles on democracy and the norms and principles of the collectively built institution on the supranational level.

Here it is worth to bring an example how those two competing approaches could be applied to the actual European system of governance and the em-

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ternational Organization 52, (1998).

<sup>17</sup> P.J. DiMaggio, W.W. Powell, The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields, in: W.W. Powell and P. J. DiMaggio (eds.), The New Institutionalism in Organizational Analysis, University of Chicago Press, (1991).



powerment of the European Parliament. One of the most prominent attempt to articulate the theory of empowerment and its application to European governance was presented by already mentioned Berthold Rittberger,<sup>18</sup> who emphasized explanatory valor of both rational choice and sociological institutionalism accounts. Elaborating rational institutionalism, Rittberger refers foremost to the one of the most prominent researchers of the European parliamentarianism, Simon Hix.<sup>19</sup> Hix carried out his analysis focusing on the change from the co-decision procedure under the Maastricht Treaty to co-decision procedure introduced by the Amsterdam Treaty, which is a change that indicates the growth of influence and capacity to impact on the side of the European Parliament. Hix provides an explanation how the outcomes of the Amsterdam Treaty should be understood in the context of the European Parliament's empowerment. He claims that the reform of the European primary law was in fact a formalization, a factual existing practice and the way of operationalization of binding law, i.e. the Maastricht Treaty. Rittberger signalizes three premises of the Hix's account. First, despite the fact that Member States fashion the European Parliament in the way of constitutional design of power allocation, in doing so they expect to retain actual power over its legislature. Second, members of the European Parliament consider any interpretation of the legal rules supporting the position of Council as a main legislator as a threat. Because of the composition of the Council and the fact that most of the Member States are uncertain of what the operation of the law and rules *de facto* is, it is highly unlikely that such an impasse can be prevailed. Third, during constitutional reforms that take a place in the integration process, the European Parliament calls for formalization of the already operating practice and interpretations. Nevertheless, Member States are in position to choose a little bit moderate reforms, cautiously getting closer to their ideal. Thus, some of the Parliament's propositions are accepted by the most of governments. According to Hix, changes introduced by the Amsterdam Treaty should be understood as a consequence of recognition of already existing practice that was born after the Maastricht Treaty came into the force. Hix builds his mode of such an automatic formalization that takes a place only under two conditions; first, there should be a lack of redistribution of the powers between *de facto* operation of the constitutional rules and the previous *status quo* of the proposed new legislation, and second, there has to be a common perception of efficiency gains that might be achieved by the rules; Hix mention examples of such a gains, e.g. transparency or simplicity. Yet, Rittberger points out the

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<sup>18</sup> B. Rittberger, *supra* note 9, at 19.

<sup>19</sup> S. Hix, Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam, *British Journal of Political Science*, 32(2), (2002).

lack of sufficient data that would support the second of the Hix's premises. There is no evidence, neither empirical proof that would tell us why exactly Member States decided to reform first co-decision procedure binding under the Maastricht Treaty. There is no doubt that Hix uses a functional logic building his account of the nature of the Parliament empowerment. Rittberger's claim is to some extent different. Based on the fact that functional logic of the institutional-building may take into account also the instance where not only Member States expect efficiency gains. Rittberger invokes the writings of Brauning's<sup>20</sup> that sustain, functional argumentation, yet changing efficiency gains with policy gains. This assumption involves a hypothesis that actors prefer to create and maintain the institutions in order to maximize the realization of the given policy. Brauning argues in favor of policy-shaped behavior of the Member States, where policy choices precede constitutional change. This assumption can be then applied to the institutional changes and changes of the voting regulations in the Council and in the European Parliament, but only if we agree first that all Member States expect the gains from those changes, even if these gains differ across all governmental actors, and second, those changes meet the expectation on better fulfillment given policy goals. Those two conditions fall under the account of the voting changes in the Council.

However, there are some serious doubts whether the two premises hold when applied to the empowerment of European Parliament in legislation process. Brauning introduces a notion of so-called "central ideas" that determine when the Member States decide on revision of the voting rules. Along the line of this argumentation, the concepts of the democratic deficit and of democratic legitimation help to even those differences and variations of the Member States preferences. Pollock supports such a conclusion by pointing out that States in the past Treaties' reforms extending Parliament's participation and influence over legislative procedure, always took into account possible effect in certain policy areas.<sup>21</sup> Having to decide whether explanation build on efficiency or policy oriented expectations of the Member States is the most accurate one, it still remains unclear why Member States decided to take decision on empowerment. According to Rittberger, accounts based on rational choice theory premises are still insufficient.<sup>22</sup>

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<sup>20</sup> T. Brauning, C.T. König, T. Schuster, The dynamics of European integration: a constitutional analysis of the Amsterdam Treaty, in: G. Schneider, M. Aspinwall (eds.), *The Rules of Integration. Institutional Approaches to the Study of Europe*, Manchester University Press, (2001).

<sup>21</sup> M. Pollock, *supra* note 14, at 257-8.

<sup>22</sup> B. Rittberger, *supra* note 9, at 23.

## 6.5 Sociological institutionalism

Second explanatory attempt regarding to the empowerment of the Parliament's competences comes from the theory of sociological institutionalism. According to this theory, empowerment of the European Parliament can be explained by providing examination of all the specific sets of factors that influence Member State governments. Those factors are internalized norms and principles of the democracy. Representing the school of the liberal institutionalism, Andrew Moravcsik, together with professor of the international relations Kalypso Nicolaidis argue that Member States do not share exactly same concerns on the problem of the democratic legitimacy and democratic deficit, even though the Treaties' revisions regarding the Parliament's legislative powers represent governments' ideas on democratic legitimacy applied to decision-making process on the European level.<sup>23</sup> Member States observe strong relation between democratic institutions on both domestic and European level. Governments act in order to transfer their political practices, norms and institutions at the supranational level of the European Union.

But how does this mechanism of translation norms on democratic governance works? Current writings offer explanation of the institution building mechanism improving European Parliament that takes into account the importance of the internalized norms. German social psychologist Wolfgang Wagner<sup>24</sup> represents the idea which argues against rational choice theory, stating that politicians at the domestic level, operating in the environment of what he calls "political culture" which is a source and main determinant of what is politically appropriate. This appropriateness should be understood as a response to the issues of the democracy on the supranational levels by engaging the democratic principles developed at the national level. Wagner links a political culture with preferences of the governmental actors relating to democratic mechanism at the European level. He claims that the member states of a federal system of governance, where policy at the domestic level is legitimized by directly elected regional parliaments, would support direct parliamentary legitimation. Consequently, countries of unitary systems, where regional policy is legitimized indirectly, favor indirect parliamentary representation in the European Parliament. Rittberger opposed to Wagner's findings, pointing out on the lack of the evidence indicating the direct link between the political culture and preferences of the political actors and the changes happened in

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<sup>23</sup> A. Moravcsik, K. Nicolaidis, *Explaining the Treaty of Amsterdam: Interests, Influence, Institutions*, *Journal of Common Market Studies* 37(1), (1999).

<sup>24</sup> W. Wagner, *The Subnational Foundations of the European Parliament*, *Journal of International Relations and Development* 5(1): 24–36, (2002).

decision-making in the European Union. For Rittberger, within the framework presented by Wagner, causal relation between those two elements remains unclear and unproven. Nevertheless, in the literature on international relations and political science, along the line of sociological institutionalism, we can find not only explanations presented by Wagner.

Here, we should refer another German scholar writings, Markus Jachtenfuchs. Jachtenfuchs offers a more precise definition of common belief of the political actors on legitimate political order, which preforms essential role in the development of the constitutional order. In his writings he showed that policy gains that differ cross-nationally can help to understand how given institutional settings in the European Union are shaped. According to Jachtenfuchs, concepts and political ideas, because of their inconsistency, have to be sufficiently detailed to have influence on actor's preferences. They have to determine concrete ways of conduct and their articulation have to be presented by the major and relevant actors at the domestic level. In this paradigm, political parties, at the national level are vehicles to convey the political agendas on the supranational level, expressed by a way of the parliamentary debates. National governments are seeking the best justification for a conducted policy before they national constituencies. Four different areas are identified: inter-governmental corporation, notion of the federalism, economic community and networking, which are the cause for different way of acting. This division indicated that the way the actors answer to given political problem addressed will depend on which polity idea or normative beliefs this problem is related to. Jachtenfuchs applied this argument to the problem of the European Parliament empowerment. Unlike Wagner, he presented more sophisticated analysis touching upon political ideas considered as an appropriate for the supranational structures of the governance. Again, Rittberger finds some theoretical vacuum in Jachtenfuchs explanations. Jachtenfuchs did not relate to the time of the Treaties' revisions, and how those reforms affect powers of the European Parliament. Rittberger shows also a lack of sufficient clarification how the set of political ideas influence each other to be later transferred to the supranational politics.

The presented discussion does not answer completely to the question what are the sole reasons of the European Parliament. Rittberger remains skeptical about explanatory value of both rational choice institutionalism and sociological institutionalism. Anticipated efficiency, as a factor that drives transfer of the competences and eventual empowerment may not find its reflection in the reality since the European Parliament's participation in democratic processes causes reduction of decision-making efficiency as such. The same goes to

the proposed policy gains as sources of Parliament's improvement. Because of the changing political nature of the Parliament's composition, it would be very difficult to foresee a stable political trend and preferences over longer period. It seems that Rittberger estimates sociological institutionalism a little bit higher as a theory that helps to understand better the motives for appropriate role for the European Parliament as the elites of the Member States determine for it.

## 6.6 Conclusion

As a conclusion, let us invoke again one the original idea of Rittberger's, who argues for appropriateness of the notion of democratic deficit as a factor having explanatory value. It has been proven that this notion occupies not only scientific discourse, which in this article we were trying to elaborate. Democratic deficit is a concept having profound influence and function of "dependent variable".<sup>25</sup> According to Rittberger, there is a great gap in conceptualization of its implications on the institutional arrangements and the scope of powers delegated upon the supranational organizations. Thus, political and constitutional discourse has to address this question, providing sufficient explanations on the empirical and theoretical basis catching up political debate. Despite the clear lack of scientific research, it remains obvious that important idea of democratic deficit played important role for the political elites responsible for the great extent of empowerment of the European Parliament.

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<sup>25</sup> B. Rittberger, *supra* note 9, at 33.

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Part Two

VOTING SYSTEMS TO THE  
EUROPEAN PARLIAMENT  
IN SELECTED MEMBER STATES  
OF THE EUROPEAN UNION



## Chapter 7

# European Parliamentary Elections in Belgium

MAAIKE GEUENS\*

## 7.1 Introduction

As one of the founding members of the EU, Belgium is well experienced in organising the elections for the EP. Originally the Members of the EP (MEP) were appointed by the national governments. Belgian voters now elect their MEP via a direct and single vote.<sup>1</sup> The most recent elections in 2004 and 2009 show that the European and Belgian citizens are not always interested in the European politics, nor are they familiar with the role of the European Parliament (EP) or even the European Union (EU).

Firstly, this chapter will study the European legislation with regard to the European Parliamentary elections. Via a general assessment we will attempt to provide a brief overview of the existing challenges occurring at the EU level and examine the decline in voter turnout. We will then present possible solutions, as proposed by European and Belgian practice. We will further provide a short analysis of the existing Belgian situation and consider the benefits and drawbacks of coinciding federal, regional and European elections in Belgium. We will also take a closer look at compulsory voting, the theory of second-order elections and recent developments. Where needed, possible solutions for the adaptation of the current legislation or practices will be offered.

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<sup>1</sup> M.N. Franklin and S.B. Hobolt, “The legacy of lethargy: How elections to the EP depress turnout”, *Electoral Studies* 2011, 75; A. Siaroff, “Elections to the EP: testing alternative models of what they indicate in the member nations”, *Journal of European integration* 2001, vol.23, 238. The direct elections were introduced to improve the democratic dimension of the EU.

## 7.2 European context

### 7.2.1 European electoral legislation

European elections are regulated by the 1976 Act on the election of the members of the EP by direct universal suffrage,<sup>2</sup> as amended by Council Decision 2002/772/EC,<sup>3</sup> which lays down the common principles for all Member States. This entails, among others, the obligation to use proportional representation and ensuring that the polling days in all Member States fall within the same period starting on a Thursday and ending on the following Sunday. Arrangements allowing EU citizens to participate in European elections in the Member State where they reside are laid down in Directive 93/109/EC.<sup>4</sup> In addition to several rules concerning registration on electoral rolls and checks to prevent double voting and candidacy, the Directive provides for a derogation to be granted to Member States where the number of residents who are nationals of other Member States exceeds twenty per cent of the total number of EU citizens residing there who are of voting age.<sup>5</sup>

The EU citizens right to vote and stand as a candidate in the European elections has been enshrined in the Treaty on the Functioning of the EU, namely article 22.<sup>6</sup> Article 22 TFEU clearly states that everyone has “*the right to vote and to stand as candidates in elections to the EP and in municipal elections in their Member State of residence, under the same conditions as nationals of that State*”. Member States are obligated to inform citizens about their rights and the rules applicable to electoral procedures.

<sup>2</sup> Act of 28 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage, *OJ L 278*, 08.10.1976, p. 5-11, hereafter “Act 1976”

<sup>3</sup> Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the EP by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, *OJ L 283*, 21.10.2002, p. 1–4.

<sup>4</sup> Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the EP for citizens of the Union residing in a Member State of which they are not nationals, *OJ L 329*, 30.12.1993, p. 34–38, hereafter “Council Directive 93/109/EC of 6 December 1993”.

<sup>5</sup> Art. 14 of the aforementioned Council Directive 93/109/EC of 6 December 1993. This derogation concerns the possibility for the Member States to restrict the right to vote and stand as a candidate in the European elections, even though the Directive grants this right to all European nationals in principle. The right to vote, with regard to residents having an EU nationality but residing in another Member State, can be limited when they have been a resident in the Member State applying the derogation less than five years, the right to stand candidate can be limited when they have been a resident in the Member State applying the derogation less than ten years of residency. Belgium has not made use of this derogation, Luxemburg for instance has.

<sup>6</sup> Treaty on the functioning of the EU (TFEU), *OJ C 115*, 9 May 2008, 49-182.

## 7.2.2 Voter turnout on the EU level

### 7.2.2.1 General assessment

In the aftermath of the first European Parliamentary elections in 1979 it became clear that one could not speak of real “European” elections. Several reasons were given as to why the elections were unpopular.

First of all, the EP election campaigns were and are primarily based on solely national or regional matters, the media focus on national items and elections and a European identity does not exist in all Member States.<sup>7</sup>

Authors consider the European elections to be *second-order national elections*.<sup>8</sup> *First-order elections* are meant to decide who will be in power and which political coalition will be able to pursue a certain policy in the future. Voters rather focus on the national campaigns and themes for the *first-order elections*, thereby overlooking the European dimension in the *second-order elections*.<sup>9</sup> In *first-order elections*, voters often choose a specific party because they want this specific party to be part of the national government. On the EU level they are only choosing representatives, so the dimension of forming a government is irrelevant.<sup>10</sup> Parties in power on the national level will lose votes in the EP elections, smaller or extremist parties will gain votes.<sup>11</sup> According to Schmitt electoral participation will be lower in *second-order elections*, as is the case for EP elections.<sup>12</sup> The *second-order* effect of the EP elections has to be nuanced somewhat, since in the recent years more decisions are being made at the EU level, rather than the national level. The EU is thus no longer “unimportant”—much unlike before. Since the power of the EU will continue to grow in future years, a decline in the *second-order* effect is plausible.<sup>13</sup> The national political parties can no longer afford to ignore the European dimension.<sup>14</sup> The balance could shift altogether: by an increase in the power and importance of the EU, the national level could

<sup>7</sup> A. Siaroff, *op.cit.*, 238.

<sup>8</sup> K. Deschouwer and M. Hooghe, *Politiek – een inleiding in de politieke wetenschappen*, Den Haag, Boom Lemma, 2011, 307. The concept was originally developed by Reif and Schmitt in 1979.

<sup>9</sup> H. Schmitt Mzes, “The EP Elections of June 2004: Still Second-Order?”, *West European Politics* 2005, 651.

<sup>10</sup> M. Marsh, “Testing the Second-Order Election Model after Four European Elections”, *British Journal of Political Science* 1998, 593.

<sup>11</sup> M. Marsh, *op.cit.*, 592-593; P. van Aelst and J. Lefevere, “Has Europe got anything to do with the European elections? A study on split-ticket voting in the Belgian regional and European elections of 2009”, *EU Politics* 2011, 4.

<sup>12</sup> H. Schmitt Mzes, *op.cit.*, 651.

<sup>13</sup> H. Schmitt Mzes, *op.cit.*, 653-654.

<sup>14</sup> M. Marsh, *op.cit.*, 607.

become less important and the European elections could become *first-order elections* themselves.<sup>15</sup>

The absence of real European political parties adds to the problem: because the political parties participating in the European elections are the national or regional political parties, they mainly focus on national themes. The EU is not a priority for most political parties.<sup>16</sup> Although political parties exist on the European level, only topics of value for the national party will make their way onto the program of the European parties,<sup>17</sup> as their members are representatives of the national parties.<sup>18</sup> The national parties only seek national winnings, even in the European elections.<sup>19</sup> However, the more power the EU and its institutions gain, the more substantial it will be for national political parties to take an interest in the European politics. It would be hard to imagine national government parties to having a single MEP present.<sup>20</sup> Complemented by a lack of media coverage and a general trend whereby citizens are no longer interested in the EU, this inevitably leads to a lower turnout in the EP elections.<sup>21</sup>

The 2004 elections presented a new challenge for the EU. Throughout the EU Member States, the number of voters for the European elections dropped dramatically that year. The turnout was the worst since 1979, when the first parliamentary elections on the European level took place.<sup>22</sup> Citizens mostly voted against parties who disappointed them on the national or local level and the votes for the Eurosceptic parties rose.<sup>23</sup> Experts had foreseen a decline in the number of voters; however the low turnout still came as a surprise.<sup>24</sup> The voter turnout in the EU just reached 45.7 per cent.<sup>25</sup>

<sup>15</sup> M. Marsh, *op.cit.*, 607.

<sup>16</sup> D. Auers, "European elections in eight new Member States", *Electoral Studies* 2005, 748.

<sup>17</sup> J.J. Spoon "How salient is Europe? An analysis of European election manifestos, 1979-2004", *EU Politics* 2012, 558.

<sup>18</sup> It is often said that the European political parties are more elaborate co-operations between national political parties with a similar political view than they are real political parties. The candidates for the EP for instance are usually put forward by the national political parties, rather than by their European counterparts.

<sup>19</sup> M. Marsh, *op.cit.*, 607.

<sup>20</sup> Ibid.

<sup>21</sup> D. Stockemer, "Citizens' support for the EU and participation in EP elections", *EU Politics* 2011, 43.

<sup>22</sup> M. Adshead, and J. Hill, "Elections to the EP, June 2004: The 15 established member states", *Electoral Studies* 2005, 537.

<sup>23</sup> S. Hix and M. Marsh, "Punishment or Protest? Understanding EP Elections", *The Journal of Politics* 2007, Vol. 69, No. 2, 497.

<sup>24</sup> M. Adshead and J. Hill, *op.cit.*, 537-538; D. Auers, *op.cit.*, 748.

<sup>25</sup> H. Schmitt Mzes, *op.cit.*, 654.

The voter turnout for the European elections in 2009 added up to 46.2% EU-wide, which was even worse than the elections of 2004.<sup>26</sup> As was also the case for the 2004 elections, the turnout was significantly lower in the new Member States, where most political parties paid virtually no attention to the European elections and citizens were not sensitized to the significance of the European elections.<sup>27</sup> Some suggest that the decline in voter turnout is therefore not related to a negative attitude of the citizens towards the EU.<sup>28</sup>

#### 7.2.2.2 Why a decline in voter turnout?

The EU has been suffering from a democratic deficit for several years.<sup>29</sup> Although the national governments still play a crucial role in the decision making process, they have transferred considerable aspects of their sovereignty to the EU. This implies sometimes EU decisions will be implemented, even without the support of the national governments. The loss of power by the Member States has to be corrected by various instruments and institutions on the EU level to guarantee the democratic legitimacy. However, the introduction of the qualified majority vote, the dominant position of the Council, non-election of the European Commission and the practice of package deals and bargaining, have not improved the democratic nature of the Union.<sup>30</sup> Because of the different institutions involved in the decision making process, it is impossible to hold one specific institution accountable for EU decisions.<sup>31</sup> This has a negative impact on the transparency of the procedures. Naturally, this influences the perception of citizens, organisations and national governments. As it will be examined further in this contribution, several solutions have been proposed by the EU institutions. However, there has been no unified approach. More so, the democratic deficit seems on the rise, not only at the EU level, but also in the Member States.<sup>32</sup> This could lead to a more negative perception of the citizens, less interest in the EU and thus a decline in voter turnout.

Studies published in the aftermath of the 2004 and 2009 elections underlined that European citizens generally were unfamiliar with the function and power of the EP and did not feel obliged to vote for the parliamentary elec-

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<sup>26</sup> D. Stockemer, *op.cit.*, 27.

<sup>27</sup> D. Auers, *op.cit.*, 750.

<sup>28</sup> D. Stockemer, *op.cit.*, 27.

<sup>29</sup> C. De Vreese, S.A. Banducci, H.A. Semetko and H.G. Boomgaarden, "The News Coverage of the 2004 European Parliamentary Election Campaign in 25 Countries", *EU Politics 2006*, Vol. 7, 478.

<sup>30</sup> C. De Vreese, S.A. Banducci, H.A. Semetko and H.G. Boomgaarden, *op.cit.*, 478.

<sup>31</sup> A. Warleigh, *Democracy in the EU - Theory, Practice and Reform*, London, Sage Publications, 2003, 7.

<sup>32</sup> A. Warleigh, *op.cit.*, 1-2.

tions.<sup>33</sup> Citizens often found that the European Council, Council of Ministers and the European Commission were responsible for legislation and considered the Parliament – and by extension voting for the parliamentary elections – irrelevant.<sup>34</sup> Citizens were not convinced by the EU and its institutions and therefore did not make the effort to vote.<sup>35</sup> They often remained unaware of the impact EU decisions could have on their daily lives.<sup>36</sup> The EP for instance has gained more power in the last two decades, but this has not led to an increase in support or interest of citizens.<sup>37</sup> The EP has been victimised by its lack of profiling and remains in the shadow of the European Council.<sup>38</sup>

Also, there is a recent trend in some of the Member States: the majority of the citizens no longer support their country's membership in the EU.<sup>39</sup> Schmitt however states that this is not a general trend and that the lower turnout is only occasionally influenced by negative feelings or Eurosceptic feelings towards the EU.<sup>40</sup>

Because the results of the European elections do not have a direct impact on the national elections, citizens can also cast so-called *signal votes*.<sup>41</sup> In other words, they can vote against the parties in power on the national level whom they would like to change their program or to direct their attention towards different matters.<sup>42</sup> The government popularity tends to be lower in mid-term, so government parties will receive fewer votes when the EU elections take place within the national electoral cycle.<sup>43</sup> Such practice has nothing to do with the European vision of that specific political party, but more with the perception of that party on the regional or national level.<sup>44</sup> This also means that radical or Eurosceptic parties are more likely to receive votes.<sup>45</sup> It

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<sup>33</sup> European Commission, *EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final; P. Magnette, "European Governance and civic participation: Beyond elitist citizenship?", *Political Studies* 2003, Issue 1, 148.

<sup>34</sup> M. Adshead and J. Hill, *op.cit.*, 540-541.

<sup>35</sup> *Ibid.*, H. Schmitt Mzes, *op.cit.*, 668.

<sup>36</sup> H. Schmitt Mzes, *op.cit.*, 668.

<sup>37</sup> S. Hix. and M. Marsh, *op.cit.*, 507; A. Warleigh, *op.cit.*, 78-79.

<sup>38</sup> M. Adshead and J. Hill, *op.cit.*, 538; A. Warleigh, *op.cit.*, 78.

<sup>39</sup> D. Stockemer, *op.cit.*, 42.

<sup>40</sup> H. Schmitt Mzes, *op.cit.*, 659.

<sup>41</sup> S. Pini, "Analysing turnout in European elections: national differences, the peculiarity of the EU's system and the abstention of young people", *European View* 2009, 150; A. Siaroff, *op.cit.*, 240.

<sup>42</sup> S. Hix. and M. Marsh, *op.cit.*, 496; S.B. Hobolt, J. Spoon and J. Tilley, "A Vote Against Europe? Explaining Defection at the 1999 and 2004 EP Elections", *British Journal of Political Science* 2009, Volume 39, Issue 01, 93-94; H. Schmitt Mzes, *op.cit.*, 651.

<sup>43</sup> M. Marsh, *op.cit.*, 594.

<sup>44</sup> S.B. Hobolt, J. Spoon and J. Tilley, *op.cit.*, 93.

<sup>45</sup> K. Deschouwer and M. Hooghe, *op.cit.*, 308; S. Hix. and M. Marsh, *op.cit.*, 495.



does not, however, mean that citizens automatically harbour negative feelings towards the EU,<sup>46</sup> nor that they are uninterested.<sup>47</sup> The *second-order effect* can also, up to a certain point, explain the lower voter turnout on the European level.<sup>48</sup>

A third important factor is the media-attention concerning European elections. Following the 2004 elections for instance, it became clear that more media coverage of European elections was present in the newer Member States compared to the older Member States.<sup>49</sup> When there is little media coverage, citizens will be less likely to vote in the European elections. With the focus mainly directed at national themes, European themes will become less significant.<sup>50</sup> Conversely, when the EU is depicted as a positive organisation, with benefits for all citizens, voter turnout will be higher in European elections.<sup>51</sup> Most of the European citizens use traditional media to gain information on the elections and electoral themes. The impact of the media can therefore not be underestimated.<sup>52</sup> A “Europe-minded” media could strengthen the European democracy. Citizens will be mobilised and public debate will be stimulated.<sup>53</sup> Although media coverage on the EU has increased over the past years,<sup>54</sup> additional steps still need to be taken.<sup>55</sup> Media can assist in developing a common European framework and European identity.<sup>56</sup> Media attention also needs to be permanent, not just cyclical. Media now often focus on European matters when important events take place, but the attention vanished after the events.<sup>57</sup>

The lack of linkage between citizens and politicians on the European level adds valuable insights as well. The citizens can no longer identify themselves

<sup>46</sup> S. Hix. and M. Marsh, *op.cit.*, 495; S.B Hobolt, J. Spoon and J.Tilley, *op.cit.*, 95.

<sup>47</sup> S.B Hobolt, J. Spoon and J.Tilley, *op.cit.*, 95.

<sup>48</sup> H. Schmitt Mzes, *op.cit.*, 656.

<sup>49</sup> C. De Vreese, S.A. Banducci, H.A. Semetko and H.G. Boomgaarden, *op.cit.*, 477.

<sup>50</sup> S. Pini, “*op.cit.*”, 147.

<sup>51</sup> S.B Hobolt, J. Spoon and J.Tilley, *op.cit.*, 111.

<sup>52</sup> A.R.T. Schuck, G. Xezonakis, M. Elenbaas, S.A. Banducci and C.H. De Vreese, “Party contestation and Europe on the news agenda: the 2009 European Parliamentary elections”, *Electoral Studies* 2011, 41.

<sup>53</sup> A.R.T. Schuck, G. Xezonakis, M. Elenbaas, S.A. Banducci and C.H. De Vreese, *op.cit.*, 41; D. Stockemer, *op.cit.*, 40. Individuals, who use media regularly, will be inclined to vote more often.

<sup>54</sup> A.R.T. Schuck, G. Xezonakis, M. Elenbaas, S.A. Banducci and C.H. De Vreese, *op.cit.*, 48. This study also shows that media coverage will be higher in countries affected by the EU more, for instance countries that suffered from the economic crisis. Media will focus on European themes.

<sup>55</sup> *Ibid.*, 42 and 46.

<sup>56</sup> C. De Vreese, S.A. Banducci, H.A. Semetko and H.G. Boomgaarden, *op.cit.*, 478.

<sup>57</sup> *Ibid.*, 481.

with a specific political party, which leaves them incapable of choosing a specific candidate or party. Schmitt argues that “(...) *EU politics lacks faces. There is not much personalisation of EU policies. However, mass communication – in particular the televised branch of it – requires faces, i.e. the personalisation of political claims. But there is no such confrontation in sight. Bush vs. Gore, Blair vs. Howard, Schröder vs. Merkel – such a confrontation of personalities would certainly be instrumental for the communication of EU policy alternatives to the voters. For the time being, however, this is or seems to be unthinkable in EU politics*”.<sup>58</sup> Nonetheless, articles 10(2) and 10(3) TEU clearly state that the citizens have to be represented by the EP and that all decisions have to be taken in an open and transparent manner “*as closely as possible to the citizen*”. Unfortunately, a study in 2010 showed that citizens are not always aware of their rights, specifically with respect to their rights to vote and stand as a candidate in the European elections.<sup>59</sup>

In addition to the previous aspects, the enlargement of the EU also has to be taken into account. With the increase in Member States, the decision making process has become less transparent and more difficult. For instance, the number of MEP has grown, which poses difficulties in the voting process in the EP and the manner in which a majority can be attained. There is also diversity in cultural heritage between Member States, as well as a wide range in the national electoral systems. The compromises on the EU level become harder to attain with each enlargement, which will further complicate the policymaking process.<sup>60</sup>

### 7.2.3 Possible recommendations on the European level

The European Commission and EP are deeply concerned with the drop in voter turnout, as well as the causes for the lack of attention or interest in the European elections and the EU as a whole.<sup>61</sup> It is often thought that a low turnout in European elections poses a threat to democracy.<sup>62</sup> Following the results of the 2004 and 2009 Parliamentary elections and taking into consideration several studies on the European elections, the general interest of the EU citi-

<sup>58</sup> H. Schmitt Mzes, *op.cit.*, 668.

<sup>59</sup> European Commission, *EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, 17, 20.

<sup>60</sup> H. Schmitt Mzes, *op.cit.*, 653.

<sup>61</sup> Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the EP, *OJ L 79*, 29-32.

<sup>62</sup> M. Rosema, “Low turnout: Threat to democracy or blessing in disguise? Consequences of citizens' varying tendencies to vote”, *Electoral Studies* 2007, 612.

zens and the EU itself, the European institutions made recommendations to improve the situation.<sup>63</sup>

The Treaty of Lisbon<sup>64</sup> itself has enshrined the role of the citizens as a true political actor.<sup>65</sup> The instruments provided by the Lisbon Treaty should, according to EP Secretary-General Klaus Welle, remedy the democratic deficit in the EU.<sup>66</sup> The president of the European Commission will be elected by the EP and the representation of the political parties and electoral results have to be taken into account. The fact that citizens will have a say in the future of the president of the European Commission, means that their votes will weigh on the actual appointment process.<sup>67</sup> Welle also states that adjusting the closing hours of polling stations and nomination procedures within Member States could strengthen democratic legitimacy with regard to the elections. He also suggests several partnerships with other EU institutions, such as the Committee of the Regions and the Social and Economic Committee.<sup>68</sup> The Lisbon Treaty has also improved the openness and transparency with regard to the Council of Ministers' decisions. The Council is now obligated to deliberate in public.<sup>69</sup>

Several studies indicated that citizens tend to be rather neutral but have no negative feelings towards the EU.<sup>70</sup> The European institutions therefore launched numerous actions to improve the involvement of citizens in the European process. They hope to spike their interest in the EU, thereby leading to a higher voter turnout.<sup>71</sup> A higher support from the citizens for the EU, will in turn lead to a higher turnout in the EP elections.<sup>72</sup> Citizens need to be convinced that the EU and EP elections are beneficial for both

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<sup>63</sup> European Commission, *EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, 1-26; Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the EP, *OJ L* 79, 29-32.

<sup>64</sup> Treaty of Lisbon amending the Treaty on EU and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *OJ C* 306, 17 December 2007, 1-271.

<sup>65</sup> Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the EP, *OJ L* 79, 29.

<sup>66</sup> Euractiv, "Parliament piles up tools to turn democratic deficit into surplus", *Euractiv.com*, 28 June 2013, <http://www.euractiv.com/future-eu/european-parliament-piles-tools-news-528928>, last accessed 28 June 2013.

<sup>67</sup> J. Piri, *The Lisbon Treaty – A legal and political analysis*, Cambridge University Press, New York, 2010, 136-137.

<sup>68</sup> Euractiv, *op.cit.*

<sup>69</sup> J. Piri, *op.cit.*, 137-138.

<sup>70</sup> S. Hix and M. Marsh, *op.cit.*, 495.

<sup>71</sup> M.N. Franklin and S.B. Hobolt, *op.cit.*, 68; M.A. Gorecki, "Electoral context, habit-formation and voter turnout: A new analysis", *Electoral Studies* 2013, 140. Once citizens start to vote, the chances of them voting in the next elections improve significantly.

<sup>72</sup> D. Stockemer, *op.cit.*, 34.

the citizens as well as the Member States.<sup>73</sup> It also has to be made clear what decisions are made by the European institutions and which impact these might have on the citizens. The national institutions no longer have the central role in the decision making process.<sup>74</sup> The EP for instance has known an increase in power over the last years, but as long as citizens remain unaware of the possibilities and the work the EP can do on their behalf, they will remain uninterested. All Parliamentary decisions are in essence based on a consensus between different political parties, which citizens elect.<sup>75</sup> Voters can nevertheless have a considerable impact on the development of the future policies of the EU by voting for particular parties or candidates.<sup>76</sup> Furthermore, the legislative procedure is hardly transparent enough for most of the EU citizens.<sup>77</sup> The EU could organise a public debate, where European institutions, political parties and citizens discuss political ideas and future policy.<sup>78</sup> The EU needs to convince the Member States that European elections are of the utmost importance, for the EU, the Member States and the citizens. The higher the voter turnout, the more democratic legitimacy the EP will have.

A higher turnout could also be achieved by imposing compulsory voting in all Member States.<sup>79</sup> This would result in up to 25 per cent more voters in the EP elections. Coinciding elections would also improve the voter turnout, as confirmed by Stockemer.<sup>80</sup> Implementation in all Member States, however, could be difficult to achieve, taking into account the different national electoral traditions. An EU-wide electoral code would resolve this matter, should all Member States agree.

Media of course play a key role in improving the citizens' perception of the EU.<sup>81</sup> Since no real European media exist, Pini believes the national media should be educated on how to provide information on EU topics. The neutrality of the media should be guaranteed. The new social media provide ample opportunities.<sup>82</sup>

<sup>73</sup> D. Stockemer, *op.cit.*, 38.

<sup>74</sup> M. Adshead, and J. Hill, *op.cit.*, 541.

<sup>75</sup> X, "Editorial comments: European elections – is the EP important today?", *Common Law Market Review* 2009, 768-770.

<sup>76</sup> *Ibid.*, 767.

<sup>77</sup> M. Adshead, and J. Hill, *op.cit.* 541.

<sup>78</sup> X, "Editorial comments: European elections – is the EP important today?", *op.cit.*, 770.

<sup>79</sup> S. Pini, *op.cit.*, 145. The effect of the introduction of compulsory voting is dependent on the sanctions attached to the voting obligation, i.e. financial sanctions, administrative sanctions, or both.

<sup>80</sup> D. Stockemer, *op.cit.*, 38.

<sup>81</sup> S. Pini, *op.cit.*, 148.

<sup>82</sup> *Ibid.*, 149.

The European Citizens Initiative (ECI) is one of the steps taken by the EU.<sup>83</sup> It was specifically designed to enhance the democratic functioning of the EU. Citizens will be able to participate in everyday life of the EU and will have a say in the decision-making process.<sup>84</sup> Following the introduction of an ECI, the European Commission either has to take legislative measures in a certain area or field as proposed by the ECI or has to thoroughly motivate why it will not take further action.<sup>85</sup> An ECI has to be supported by at least one million citizens, residing in at least seven Member States. Per Member State the regulation puts forward a minimum of signatories.<sup>86</sup> The organising committee of the ECI will have the right to be heard at a public hearing.<sup>87</sup> When these initiatives become successful, they will lead to more involvement of citizens within the European policy making process.<sup>88</sup> This consequentially leads to more interest of the citizens – which is key to a higher voter turnout. The ECI will improve the relation between the European Commission and the citizens, will make the existing representative democracy more representative and will improve the overall integration in the EU.<sup>89</sup>

Furthermore, various authors have also suggested using deliberative democracy as a tool in the democratic process, before the actual voting takes place. This would ensure participation of the citizens and politics that work around themes, supported by citizens and politicians.<sup>90</sup> The G1000 initiative in Belgium for instance showed that it is indeed possible to sensitise citizens and to convince them of a need for political debate and participation.<sup>91</sup> Citizens participated in the online survey and the debate taking place afterwards. The G1000 initiative was able to gather several important issues, concerning the Belgian public, and kindled a national debate.

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<sup>83</sup> As implemented by Regulation (EU) No 211/2011 of the EP and of the Council of 16 February 2011 on the citizens' initiative, *OJL* 65, 11.03.2011, 1-22.

<sup>84</sup> Consideration 1 of Regulation (EU) No 211/2011, *op.cit.*

<sup>85</sup> Art. 10 and consideration 20 of Regulation (EU) No 211/2011, *op.cit.*

<sup>86</sup> Art. 7 of Regulation (EU) No 211/2011, *op.cit.* Belgium for instance needs at least 16.500 signatories.

<sup>87</sup> Art. 11 of Regulation (EU) No 211/2011, *op.cit.*

<sup>88</sup> European Commission, *EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, 20-21; M. Geuens and H. Mapaey, "Europees burgerinitiatief in de startblokken", *Juristenkrant* 7 March 2012, 10-11.

<sup>89</sup> A. Gross, B. Kaufmann, J.W. Pichler and A. Sigmund, "The European citizens' initiative consultation process – impulses and suggestions of the European Citizens' Initiative Office", in Kaufmann, B. and Pichler, J.W. (eds.), *The European Citizens' initiative – Into new democratic territory*, Intersentia, Antwerp, 2010, 123.

<sup>90</sup> D. Caluwaerts, "Van stemmen naar praten: het ideaal van de deliberatieve democratie", *sampol* 2011, 80-81.

<sup>91</sup> See *infra*.

Additionally, several best practices have been developed in the EU Member States and could be transposed to the European level. Estonia for instance is one of the few Member States in which it is possible for citizens to vote via their electronic id-cards. This ensures participation for those who cannot make it to the actual voting agencies and bureaus. The fact that the voting can be done from the comfort of their homes, might be an incentive to vote. Another possible adjustment would be to implement e-voting in the EU. This method would then have to be complemented by raising awareness, by media campaigns for instance, but could also form a possible solution on a European level.<sup>92</sup> In the UK there have been several initiatives to empower citizens with regard to global events. They are supported by the European Commission as well as the British Council. It provides education, debate opportunities, etc. in order to promote civic involvement and participation. Several actions have been taken in different Member States to help develop leadership skills, intercultural competencies, to run social action projects in local areas as well as sharing ideas and practice with other networks in order to help address problems of the local community as well as wider European issues.<sup>93</sup> Citizens are sensitised on a local and European level, using the existing networks. A similar EU-wide approach could benefit the EU.

Not only the citizens are an important factor, but attention has to be paid to the political parties as well. They are a key element in reforming the European constellation and a possible solution in attacking the democratic deficit in the EU.<sup>94</sup> Citizens should be represented by the political parties and through the political parties.<sup>95</sup> Today, the political parties on the European level present almost identical candidates on a national, regional and European level. The electoral programs mainly focus on national and regional themes. The European parties are influenced by the viewpoints of the national parties. In order to fully convince the citizens of the importance of the EU decisions and the significance of voting for the EP elections, it is essential that the political parties themselves are involved and persuaded by the importance of the EU. In

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<sup>92</sup> E. Maaten, "Towards Remote E-Voting: Estonian case", in Prosser, A. and Krimmer, R. (Eds.), *Electronic Voting in Europe*, Technology, Law, Politics and Society, Workshop of the ESF TED Programme together with GI and OCG July, 7th–9th, 2004 in Schloß Hofen/Bregenz, Lake of Constance, Austria, 83-90.

<sup>93</sup> X, *Active Citizens – globally connected, locally engaged*, <http://activecitizens.british-council.org/empoweringeuropeancitizens>, last accessed June 25, 2013.

<sup>94</sup> Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the EP, *OJ L* 79, 29.

<sup>95</sup> J. Adams, L. Ezrow and Z. Somer-Topcu, "Is Anybody Listening? Evidence That Voters Do Not Respond to European Parties' Policy Statements During Elections", *American Journal of Political Science* 2011, Vol. 55, 370.

some Member States the function of an MEP is no longer regarded as a career opportunity or a desirable function. Politicians are not enthusiastic about EU elections, so one can hardly expect citizens to be just that.<sup>96</sup> Moreover, political campaigns are focused on national themes without any of hardly any attention or passion for the EU.<sup>97</sup> By using the party discipline of the European political parties, a strong signal could be communicated to the citizens.<sup>98</sup> The European Commission stated in its Recommendation earlier this year that the European political parties have a key role to play in forming European awareness and have to express the will of the citizens. In order to do so, the affiliation between the European and national parties also has to be made clear. Citizens can then cast an informed vote.<sup>99</sup> Of course the visibility of the political parties throughout the political process, from the electoral campaigns to the actual voting, has to be improved. The European Commission has also introduced a new Regulation on the statute of the political parties to remedy any problems in the future.<sup>100</sup>

Since the enlargement of the EU, the policymaking process has become more difficult and less transparent. This could be remedied by improving information transfer towards the citizens on the EU and its institutions and sufficient and correct media coverage. The specific view and background of the Member States have to be taken into account, however. Different Member States call for different approaches and thus different solutions.<sup>101</sup>

However, not everyone agrees that a lower turnout in elections should be considered a negative element, or even a threat to the European legitimacy.<sup>102</sup> It could also mean that only interested and informed citizens cast their votes. This implies that citizens, who do not believe in the European project, do not vote.<sup>103</sup> The solution would then be to sensitise citizens on the importance of the EU, its institutions and decisions.<sup>104</sup>

<sup>96</sup> S. Pini, *op.cit.*, 148.

<sup>97</sup> S. Pini, *op.cit.*, 149.

<sup>98</sup> J. Adams, L. Ezrow and Z. Somer-Topcu, *op.cit.*, 380.

<sup>99</sup> Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the EP, *OJ L* 79, 29.

<sup>100</sup> *Ibid.*

<sup>101</sup> S. Pini, *op.cit.*, 149.

<sup>102</sup> H. Schmitt Mzes, *op.cit.*, 651.

<sup>103</sup> M. Rosema, *op.cit.*, 613; D. Stockemer, *op.cit.* 40.

<sup>104</sup> A. Walczak and W. Van Der Brug, "Representation in the EP: factors affecting the attitude congruence of voters and candidates in the EP elections", *EU Politics* 2012, 8.

## 7.3 Belgium<sup>105</sup>

### 7.3.1 National electoral legislation applicable to European Parliamentary elections

The Belgian Electoral Code regulates both the right to vote as well as the right to stand as a candidate in the elections.<sup>106</sup> The Code however only regulates the national (federal) and regional elections, not the European elections. European elections are regulated by the Act of 1976 as mentioned above. The Directive provides for a derogation to be granted to Member States where the number of residents who are nationals of other Member States exceeds 20% of the total number of EU citizens residing there who are of voting age. Belgium has not yet invoked this exception, even though 23 per cent of its residents are currently of a non-Belgian nationality.

In theory, only Belgian nationals have the right to vote for the Belgian national, regional and European elections.<sup>107</sup> Exceptions have been granted to nationals from other EU Member States with regard to the European elections and for non-EU nationals with regard to the local elections, albeit after being registered as a voter.<sup>108</sup> EU-nationals only have to register once, they remain registered until they asked to be stricken from the list or no longer fulfil the conditions. Detailed arrangements for allowing EU citizens to participate in European elections in the Member State where they choose to live are laid down in Directive 93/109/EC.<sup>109</sup> Not everyone of non-Belgian nationality has registered for the elections.<sup>110</sup> Several authors believe that the mere registration of citizens as a voter has a negative effect on the voter turnout. Furthermore, there are other obstacles that prevent the nationals of EU-Member States to stand as a candidate in another EU Member State,

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<sup>105</sup> In this article we will analyze the Belgian (federal) situation and will not distinguish between the Flemish, the Walloon and the capital region of Brussels. There are small differences in voter behavior, but the analysis of these results falls outside the scope of this contribution.

<sup>106</sup> Kieswetboek (electoral code), 12 April 1894, last amended by Law of 21 January 2013, *B.S.* 14 June 2013.

<sup>107</sup> K. Deschouwer, *The politics of Belgium – governing a divided society*, 2<sup>nd</sup> edition, Palgrave Macmillan, 2012, 117.

<sup>108</sup> K. Deschouwer, *op.cit.*, 117. This does have a slight discriminatory effect, seen as Belgian nationals are registered automatically.

<sup>109</sup> Council Directive 93/109/EC of 6 December 1993.

<sup>110</sup> K. Deschouwer, *op.cit.*, 117. This also means that non-Belgian nationals can choose whether or not they want to vote, while Belgian nationals are obliged to present themselves at the polling stations.



including the language barrier and the rather closed character of the national political organisations.<sup>111</sup>

The Belgian electoral code introduced a direct and single vote, and also provides a system of compulsory voting.<sup>112</sup> Every citizen is obligated to vote, although it is possible to cast a blank vote. Citizens face penalties when failing to vote.<sup>113</sup> Prosecution of non-voters, however, is rather rare.<sup>114</sup> Compulsory voting generally results in a higher voter turnout.<sup>115</sup> Some authors even claim that there is a spill-over effect taking place. This would suggest that in electoral systems with compulsory voting, the overall participation of citizens in the democratic process is significantly higher.<sup>116</sup>

### 7.3.2 Belgian turnout in European elections

In the 2004 EP elections, Belgium was one of the only Member States where around ninety per cent of the population eligible for voting cast their vote and it showed no decline in voters. The number of blank votes has remained virtually unchanged over the past years and hovers around five per cent of the vast votes.<sup>117</sup> As there are coinciding elections (the regional and the European Parliamentary elections take place on the same day) and compulsory voting, Belgian voters are more likely to vote.<sup>118</sup> The voting also takes place at a single time, by first voting for the European elections, directly followed by the vote for the regional elections. Belgian

<sup>111</sup> European Commission, *EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights*, COM(2010) 603 final, 17, 20-21.

<sup>112</sup> D. Caluwaerts, *Bestuurswetenschappen en overheidsmanagement*, Vrije Universiteit Brussel, 2012-2013, 69-70; K. Deschouwer, *op.cit.* 116-117; D. Stockemer, *op.cit.*, 34; P. Van Aelst and J. Lefevere, "*op.cit.*", 9. This is also the case for Luxemburg and Greece.

<sup>113</sup> S. Pini, *op.cit.*, 145; D. Stockemer, *op.cit.*, 34. In Belgium sanctions comprise of a financial and administrative component.

<sup>114</sup> J. Fitzmaurice, "Notes on the 1994 elections to the EP", *Electoral Studies* 1994, 331. Prosecution for failure to fulfill civil responsibility at the voting polls however, does take place quite often, see for instance A. Verstraete, "Boetes tot 600 euro voor afwezige bijzitters", *Dere-dactie*, 16 April 2013, [http://www.dere-dactie.be/cm/vrtnieuws/regio/westvlaanderen/130416\\_brugge\\_bijzitters](http://www.dere-dactie.be/cm/vrtnieuws/regio/westvlaanderen/130416_brugge_bijzitters), last accessed April 19, 2013.

<sup>115</sup> D. Stockemer, *op.cit.*, 27.

<sup>116</sup> D. Caluwaerts, *op.cit.*, 69-70.

<sup>117</sup> A. Carr, *Psephos Adam Carr's Election Archive*, <http://psephos.adam-carr.net/>, last accessed June 6, 2013; Norsk Samfunnsvitenskapelig Datatjeneste AS, European Election Database – Belgium, 2012, [http://www.nsd.uib.no/european\\_election\\_database/country/belgium/](http://www.nsd.uib.no/european_election_database/country/belgium/), last accessed April 16, 2013.

<sup>118</sup> A. Siaroff, *op.cit.*, 241; P. Van Aelst and J. Lefevere, "Has Europe got anything to do with the European elections? A study on split-ticket voting in the Belgian regional and European elections of 2009", *EU Politics* 2011, 9.

voters therefore automatically vote for both elections. It became quite apparent that the European trend of a rise in right-wing parties also applied to Belgium. The extreme-right party, *Vlaams Blok*, gained two additional seats.<sup>119</sup> The federal coalition remained at a status quo.<sup>120</sup>

In the 2009 European elections Belgium showed no real signs of a decline in participation of citizens, contrary to other EU Member States. The Belgian turnout was around 90 per cent.<sup>121</sup> Again the political parties in power on the federal level lost votes and smaller parties gained seats.

### 7.3.2.1 Coinciding regional and European elections

The higher voter turnout in Belgium can be explained by the simultaneous elections at both the regional and the European level.<sup>122</sup> A positive effect of the coinciding elections is the higher voter turnout. When several elections take place at the same time, the citizens will be aware of what is at stake and will be inclined to vote.<sup>123</sup> Schmitt believes that coinciding elections, specifically when *first-order* and *second-order elections* take place at the same time, increase political mobilisation and participation.<sup>124</sup>

Due to the coinciding regional and European elections however, citizens do not always distinguish between the European and regional elections. This is mainly triggered by the political parties.<sup>125</sup> Their campaigns will focus on the local or regional matters, not so much on the European agenda.<sup>126</sup> Citizens therefore get the impression that they are voting for a specific regional policy, proposed by the political parties, while forgetting the European dimension. The attention of the citizens is drawn away from the EU, which could explain the low interest in the EP. Some authors suggest nevertheless that a minority of the citizens do distinguish between the local and European

<sup>119</sup> M. Adshead, and J. Hill, *op.cit.* 540.

<sup>120</sup> *Ibid.*, 539.

<sup>121</sup> A. Carr, *Psephos Adam Carr's Election Archive*, <http://psephos.adam-carr.net/>, last accessed June 6, 2013; Norsk Samfunnsvitenskapelig Datatjeneste AS, *European Election Database – Belgium*, 2012, [http://www.nsd.uib.no/european\\_election\\_database/country/belgium/](http://www.nsd.uib.no/european_election_database/country/belgium/), last accessed April 16, 2013.

<sup>122</sup> H. Schmitt Mzes, *op.cit.*, 657.

<sup>123</sup> D. Stockemer, *op.cit.*, 35 and 38.

<sup>124</sup> H. Schmitt Mzes, *op.cit.*, 657.

<sup>125</sup> Regional parties are the most common political parties. For instance, there is a liberal party in Flanders and a Walloon counterpart in the French-speaking region. Their views are often quite similar, with limited differences. Those same regional parties will also participate in the national and European elections. Candidates will also appear in the regional, national and European elections, see P. Van Aelst and J. Lefevere, *op.cit.*, 9.

<sup>126</sup> J. Fitzmaurice, *op.cit.*, 331.

level when voting.<sup>127</sup> They also put forward that citizens who are interested in politics, are more likely to vote differently in the regional and European elections.<sup>128</sup>

Because of this the results of the European elections will tend to have a regional “feel”: when the Belgian federal or regional government in power is popular, they get equally positive results in the European elections.<sup>129</sup> When citizens are unhappy, the political parties in power will get fewer votes, in both the regional and the European elections.<sup>130</sup> Citizens cannot always see the difference between regional, federal and European politics, as the politicians often compete in all three elections.<sup>131</sup> The decline in votes in the 2004 elections was less obvious in Belgium as the newly elected federal parliament of 2003 more or less held its position during the 2004 European Parliamentary elections.<sup>132</sup> The regional elections have become more important in recent years nonetheless, and are considered to be *first-order elections*, not unlike the federal elections.<sup>133</sup> One also has to take into account that the manner in which both elections take place, is different. The regional elections take place based on 11 constituencies on a provincial basis, while the European elections take place via the constituencies based on the language divide in Belgium.<sup>134</sup> This appears to have an effect on the distribution of votes, voter turnout and behaviour.<sup>135</sup>

An additional problem with regard to the coinciding elections is the fact that there is a limited time between federal and regional/European elections. In the past, political parties seemed to be preparing for the com-

<sup>127</sup> P. Van Aelst and J. Lefevère, *op.cit.*, 3 and 12. This focus on European issues is mainly the case for so-called split-ticket voters. Split-ticket voters often choose to vote for a specific candidate in the European elections.

<sup>128</sup> P. Van Aelst and J. Lefevère, *op.cit.*, 14-15.

<sup>129</sup> M. Adshead and J. Hill, *op.cit.*, 539; T. Kousser, “Retrospective voting and strategic behavior in EP elections”, *Electoral Studies* 2004, 7; P. Van Aelst and J. Lefevère, *op.cit.*, 3.

<sup>130</sup> S. Hix and M. Marsh, *op.cit.*, 496; H. Schmitt Mzes, *op.cit.*, 652. This largely depends on the time period between both elections. When the national elections have taken place shortly before the European elections, they will do well. If the opposite is true, the political parties that are in power on the national level will lose votes.

<sup>131</sup> P. Van Aelst and J. Lefevère, *op.cit.*, 9.

<sup>132</sup> The federal and European elections in Belgium will be held at the same time, while the municipal and provincial elections take place the year before or after the federal elections. Because of simultaneous elections, citizens are more likely to vote for the identical parties on the national level as on the European level. The next federal and European elections will be held in 2014. The most recent municipal elections took place in October 2012. Several politicians have opted to hold all elections at the same time, from 2014 onwards.

<sup>133</sup> A. Siaroff, *op.cit.*, 242; P. Van Aelst and J. Lefevère, *op.cit.*, 9.

<sup>134</sup> K. Deschouwer, *op.cit.*, 123. There are 13 seats for the Flemish speaking community, 8 for the French-speaking community and 1 seat for the German-speaking community.

<sup>135</sup> P. Van Aelst and J. Lefevère, *op.cit.*, 9 and <http://verkiezingen2009.belgium.be/nl/eur/ballots/ballots.html>. Every constituency has a different ballot.

ing federal elections even during their campaigns for the regional or European elections.<sup>136</sup> This would lead to national themes, rather than European ones.<sup>137</sup> This might still be an issue, since all elections will coincide from May 2014 onwards.<sup>138</sup> The regional elections are already obscuring the campaigns for the European level. In May 2014 the federal campaign will be added.<sup>139</sup> It seems as though for politicians and political parties, the European elections are no more than an opportunity to reshuffle the political personnel.<sup>140</sup>

Furthermore, almost all political parties in Belgium, both on the federal as the regional level, tend to have the same view on the European integration and the EU as a whole. Citizens often find it hard to choose between candidates, who in essence, all represent the same ideas.<sup>141</sup>

### 7.3.2.2 Compulsory voting

As mentioned before, Belgium uses a system of compulsory voting. This results in a higher voter turnout.<sup>142</sup> However, citizens are not obligated to vote as such. They simply have to present themselves at the polling stations, but can still choose to vote blank or invalid.<sup>143</sup> Some authors claim that there is a spill over effect, caused by the compulsory voting method. This would suggest that in electoral systems with compulsory voting, the overall participation of citizens in the democratic process is significantly higher.<sup>144</sup> Studies also put forward that citizens continue voting in subsequent elections and a “voting habit” is created.<sup>145</sup>

### 7.3.2.3 Second-order elections

On the European level as a whole, there is still evidence that the EP elections are indeed *second-order elections*, compared to the national parliamentary elections, as mentioned before. In Belgium, this does not seem to be the case. Schmitt states that several criteria could influence the *second-order* ef-

<sup>136</sup> S. Hix. and M. Marsh, *op.cit.*, 495. This all depends on the time between the national and European elections.

<sup>137</sup> J. Fitzmaurice, *op.cit.*, 332.

<sup>138</sup> Also see Recent developments. The coinciding elections do pose other challenges.

<sup>139</sup> K. Deschouwer, *op.cit.*, 236-237.

<sup>140</sup> *Ibid.*, 237.

<sup>141</sup> A. Siaroff, *op.cit.*, 246.

<sup>142</sup> D. Stockemer, *op.cit.*, 27; H. Schmitt Mzes, *op.cit.*, 657. The effect of compulsory voting thus depends on the sanctions applicable when citizens do not comply with their obligation to vote.

<sup>143</sup> The number of blank votes has remained virtually unchanged over the past years.

<sup>144</sup> D. Caluwaerts, *op.cit.*, 69-70.

<sup>145</sup> M.N. Franklin and S.B. Hobolt, *op.cit.*, 68; M.A. Gorecki, *op.cit.*, 140.

fect, namely compulsory voting, elections on Sundays, the coincidence of both *first-order* and *second-order elections* on the same day and lastly, whether the elections took place in a post-communist environment.<sup>146</sup> There is compulsory voting in Belgium, the elections take place on Sundays and both regional as well as EP elections take place on that same day. This leads to the conclusion that, contrary to other EU Member States, Belgium only experiences a limited effect of the *second-order elections*.<sup>147</sup>

#### 7.3.2.4 Recent developments

The next regional, federal and the EP elections will be held on the same day, namely May 25, 2014. This entails that the distinction between the elections will become even less clear for the citizens, unless they are sufficiently sensitised to the differences between those levels. It also implies that the political parties will have to campaign on three fronts: the regional, national and European level. Considering that the distinction between the various parliaments and elections is already unclear for the citizens in the current constellation, organising three elections on the same day will most probably only complicate the matter. However, it could be seen as a positive evolution: citizens will be able to vote for three levels at once, which will reduce the risk of *election or voter fatigue*.<sup>148</sup>

Moreover, Belgium is one of the founding EU Member States.<sup>149</sup> Some studies suggest that this could influence voter turnout in the future. The longer a state is a Member State, the lower the voter turnout will become.<sup>150</sup> In Belgium however, this could be countered by the effect of compulsory voting.

### 7.3.3 Possible recommendations for Belgium

In addition to the European recommendations mentioned above, specific actions have to be taken at the national level. Some authors have suggested focusing on the use of deliberative democracy as a tool in the democratic process, as a step before the actual voting takes place. This would ensure participation of the citizens and several themes or policy areas would then

<sup>146</sup> H. Schmitt Mzes, *op.cit.*, 656-657.

<sup>147</sup> This of course has a direct influence on voter turnout.

<sup>148</sup> M.N. Franklin, S.B. Hobolt, *op.cit.*, 75. This voter fatigue does exist in other countries, with succeeding elections at regular intervals.

<sup>149</sup> K. Deschouwer, *op.cit.*, 233. Deschouwer states that Belgium is not just Member of the EU; the EU is also a part of Belgium. This would suggest that Belgians feel somewhat connected to the EU, more so than other EU-nationals.

<sup>150</sup> S. Pini, *op.cit.*, 146.

be supported by citizens and politicians.<sup>151</sup> In Belgium, G1000, a Platform for democratic innovation, was launched in 2011. The goal was to stimulate a debate concerning the future of democracy and the possible role of citizens within the Belgian and global system. This process is still ongoing, but has produced promising results. Belgian citizens were invited to participate in the G1000 and were asked their opinion on various matters.<sup>152</sup>

The lack of media coverage on European topics also applies to Belgium.<sup>153</sup> The media often focus on national candidates, political parties and themes, while virtually ignoring the European representatives. Of course, this is greatly influenced by the lack of attention from most political parties for to the European elections. This will reflect in the media coverage.<sup>154</sup> Studies show that the media attention concerning the EU is the lowest in Belgium. It has however increased over the years.<sup>155</sup>

Since coinciding elections will become even more apparent in the future, it is essential to make citizens aware of the differences between the national, regional and European level. It is of the utmost importance that citizens vote for the right reasons and can distinguish between all levels of policy. This is even more so in Belgium, than it is the case on the European level. Political parties need to stimulate a European debate on a national level. Belgians do believe that Europe is a good thing, but this could very well change in the future. Also, because Belgium is one of the founding Member States, it seems that Europe has been accepted as an axiom, something that is ever present, without questioning or debating. In order to have a real European community, discussion is needed. This would only improve the integration.<sup>156</sup>

## 7.4 Conclusion

It is clear that the challenges arising on the European and national level are of a different nature. Citizens remain largely unaware of the importance of the

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<sup>151</sup> D. Caluwaerts, “Van stemmen naar praten: het ideaal van de deliberatieve democratie”, *Sampol* 2011, 80-81.

<sup>152</sup> For more information on the G1000 initiative, see <http://www.g1000.org/en>, last accessed June 25, 2013. The G1000 initiative started with an online consultation, whereby citizens were asked various questions and could voice their opinion on problems within the Belgian society and political arena. In October 2011, a clustered list of the main issues was published online and discussed.

<sup>153</sup> See *supra*.

<sup>154</sup> A.R.T. Schuck, G. Xezonakis, M. Elenbaas, S.A. Banducci and C.H. De Vreese, *op.cit.*, 43.

<sup>155</sup> *Ibid.*, 46.

<sup>156</sup> European Commission, *Standard Eurobarometer 78 - Autumn 2012, Public Opinion in the EU – First results*, December 2012; K. Deschouwer, *op.cit.* 234, and 236.

European elections and their participation in these elections. Furthermore, the voter turnout on the European level is significantly lower than on the national level. This of course calls for specific recommendations. Consequently, European voters need to be convinced of the importance of the EU, its institutions, as well as their own pivotal role in the European constellation.

The European elections undoubtedly form an intrinsic part of the democratic functioning of the EU. Citizens can participate in the EP elections and choose whomever they feel is best suited to represent them and the policy they would like the EP – and the whole of the EU – to develop. The lack of interest and the low numbers in voter turnout however, pose a direct threat to the democratic legitimacy of the EU. A broad plan of action, as well as cooperation between both the national and European level to boost the citizens' interest in the EU is needed.

First of all, political parties and media today mainly focus on national themes, visions and politicians. In the future, all actors must focus (more) on European aspects, albeit through national or regional political and media campaigns. They need to make citizens aware of the importance of the EU and of the impact of European decisions on their daily life.

Secondly, there is a need for genuine European political parties. When European political parties emerge, citizens will have a different choice on the European and the national level. The political parties and MEP are responsible for a European debate and form an important link between the institutions and the citizens, which is needed to remedy the current democratic deficit in the EU.

Thirdly, a European media is needed. Currently mostly national media are followed by citizens, which leads to a “national-oriented” media coverage and perception.<sup>157</sup>

Finally, the issue of future enlargement needs to be addressed. The addition of future Member States will most likely influence the decision making process, as well as the efficiency and transparency of the European bodies and institutions. A growth in the number of Member States will affect the number of MEP, the manner in which the EP functions, etc. A policymaking method has to be developed by which the procedures itself remain transparent, whilst still taking into account the characteristics of each Member State.

Concerning Belgium, the situation is somewhat different. Issues with regard to the national media and political parties likewise need to be addressed.

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<sup>157</sup> Of course some European media exist, but the information gathered and used by citizens is mainly derived from national media. The European media should be developed and promoted more, in order to truly become a prime source of information. Questions of neutrality and financing will arise.

Belgium however has – contrary to most other Member States – coinciding elections and compulsory voting. These generally result in a higher voter turnout, but do not automatically imply a higher interest or satisfaction rate among citizens. Information campaigns and attention from the political parties and media could boost the interest of the Belgian population. Especially the coinciding elections of May 2014, in which regional, national and European elections will take place, will require a well-thought-out approach. Without a real interest of the citizens, the participation in the EP elections will be seen as a duty, rather than an opportunity to participate in the European policy making process.



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# Voting to the European Parliament in the Czech Republic: the Second-Order Elections

HELENA BONČKOVÁ\*

## 8.1 Introduction

The elections to the European Parliament (EP) are often referred to as second-order national elections. The prevailing conceptual framework for an analysis of the EP election results suggests that there is a qualitative difference between different types of elections depending on a perception of what is at stake. The aim of this paper is to evaluate whether elections to the European Parliament in the Czech Republic fall into the category of the second-order elections. The structure of the paper is as follows. Second chapter presents the theory of second-order elections and its basic propositions, including existing research on the topic. Third chapter describes the methodology of the paper and provides four hypotheses which are further tested in the context of the 2004 and 2009 EP elections (see chapters five, six and seven). Fourth chapter contains a short description of different types of elections, electoral systems and party landscape in the Czech Republic. Finally, the last chapter summarizes the findings of the research and concludes that a further analysis of the results of subsequent elections to the European Parliament will be necessary in order to establish whether all propositions of the theory of second-order elections are applicable in the context of EP elections in the Czech Republic.

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## 8.2 Theory of second-order elections

The conceptual framework of EP elections as second-order national elections was developed by Reif and Schmitt in their seminal paper on ‘nine second-order national elections’ which was based on analysis of the first direct elections to the European Parliament in 1979. This conceptual framework has proved, as Norris put it, ‘strikingly prescient and immensely influential’ (Norris 1997, 109). It is built on the idea that although the EP elections have ‘no institutionally binding consequences on government or opposition policies at the national level’, there is an ‘existing political connection’ between these elections and the national political configuration (Reif, Schmitt 1980, 8).

In order to understand this connection the authors make a distinction between two categories of elections. They suggest that, with the exception of the election ‘that fills the most important office of the entire system and therefore is the first-order election’, all elections are national second-order elections, ‘irrespective of whether they take place in the entire, or only in part of, the country’ (Reif 1997, 117). The first-order elections are therefore the most important category of elections, because they enable voters to choose who should govern the country. The first-order elections are the national parliamentary elections in parliamentary systems and the national presidential elections in presidential systems. Apart from these, there is a variety of second-order elections (for instance by-elections, municipal and regional elections, second-chamber elections etc.) which are less important as they determine the outcome for lesser offices in the system.

The main characteristic of second-order elections is that there is ‘less at stake’. In the founding treaties the European Parliament was envisaged as an institution representing the people, but with relatively weak powers at hand. Although these powers were increased considerably since the first direct elections in 1979, the European Parliament is still not what one normally considers to be the ‘full grown parliament’ (Reif 1997, 120). This leads to certain consequences that differentiate results of the EP elections from the national first-order elections. According to Reif and Schmitt these consequences are as follows: (1) *lower level of participation*; (2) *brighter prospects for small, new and radical political parties*; (3) *higher percentage of invalidated ballots*; and (4) *government parties lose* (Reif, Schmitt 1980, 9).

The theory of second-order elections is the most widely tested and supported conceptual framework of voting behavior in elections to the European Parliament (see, inter alia, Hix; Marsh 2007; Koepke, Ringe 2006; March 1998; Marsh, Mikhaylov 2010; Schmitt 2005; from Czech authors see, for instance, Jogheevá, Havlík 2010). Some of the propositions made by Reif and

Schmitt have already been tested in the context of EP elections in the Czech Republic. However, as stems from the overview of existing literature, most of the studies are based only on results of the first elections to the European Parliament in 2004.

In this context Linek and Lyons tested hypotheses concerning the voter participation, biggest prospects of small political parties and losses of the government parties (Linek 2004; Linek, Lyons 2007a; Linek, Lyons 2007b). Šaradín, for instance, compared the second-order elections to the European Parliament in 2004 with the elections to the Chamber of Deputies, i.e. the first-order elections in the Czech Republic (Šaradín 2007b). He also discussed in general the use of second-order election model on different types of elections in the Czech Republic (Šaradín 2008). Jan and Kamil Kovář, on the other hand, focused on the campaign dimension of second-order elections and analyzed TV news coverage and campaign themes of the 2004 and 2009 EP elections in the Czech Republic and Slovakia in a comparative fashion. They concluded that the campaigns were domesticated rather than Europeanized (Kovář 2010; Kovář, Kovář 2012a). They also discussed women's representation in the EP elections in the Czech Republic and Slovakia, suggesting that women candidates have more positions and better ranking on ballot lists as well as better chances of getting elected in the second-order elections (Kovář, Kovář 2012b).

### 8.3 Methodology

In the present paper I will test basic hypotheses as stem from the propositions made by Reif and Schmitt. I will base my analysis on results of the 2004 and 2009 elections to the European Parliament and compare them with the results obtained in other types of elections in the Czech Republic, especially with the results obtained in elections to the Chamber of Deputies, which are the first-order elections in the Czech political system. Based on the theory of second-order elections following hypotheses can be formulated:

**Hypothesis 1:** *Level of voter participation in the EP elections will be lower than in the elections to the Chamber of Deputies.* From the view point of citizens there is less at stake in the elections to the European Parliament in comparison to the national parliamentary elections therefore fewer citizens actually bother to enter the ballot box.

**Hypothesis 2:** *Government parties will experience a fall in support in the EP elections as compared with support which they gained in the previous elections to the Chamber of Deputies, particularly in the mid-term period.* The electoral research has shown that the support of government parties increases shortly after the elections, but declines not long afterward, and reaches the

lowest point in mid-term period. Citizens thus treat elections to the European Parliament as an opportunity to protest against the current government (Reif, Schmitt 1980, 9-10).

**Hypothesis 3:** *Smaller political parties, including new parties or parties espousing radical views, will be more successful in the EP elections than in the elections to the Chamber of Deputies.* Due to the fact that there is less at stake in the elections to the European Parliament citizens tend to opt for small political parties as they may more precisely represent their opinions. Consequently, more established large political parties experience a fall in support in the EP elections.

**Hypothesis 4:** *There will be a higher percentage of invalidated ballots in the EP elections than in the elections to the Chamber of Deputies.* Due to the fact that citizens consider voting in the elections to the European Parliament as a form of protest against the politics of governing parties, their displeasure more likely finds expression in the invalidation of the ballot.

## 8.4 Elections, electoral systems and party landscape

In order to understand better the nature of the EP elections in the Czech political system it is necessary, first, to make a short presentation of different types of elections, electoral systems and party landscape in the Czech Republic.

In accordance with the Constitution the elections in the Czech Republic are held by secret ballot on the basis of universal, equal, and direct right to vote. In elections to the Chamber of Deputies, in regional and municipal elections as well as in elections to the European Parliament the principle of proportional representation is applied. In the case of elections to the Senate (i.e. the second chamber of the Czech Parliament) as well as in the case of presidential elections the principle of majority rule has been adopted.<sup>1</sup>

Table 1 provides a comparison of the respective features of different types of elections in the Czech Republic. The setting of electoral rules in EP elections is almost the same as in elections to the Chamber of Deputies. It is thus unlikely that the difference in electoral rules could serve, for instance, as an

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<sup>1</sup> Until 2012, the office of the President was filled following an indirect election at the joint session of the Chamber of Deputies and the Senate. On the basis of the new constitutional amendment adopted in 2012 the first direct elections of the Czech President took place in January, 2013. In the second round of the elections Miloš Zeman (former leader of the Czech Social Democratic Party, ČSSD; now representing the Party of Citizens' Rights, SPOZ) won by 54,8% of votes beating Karel Schwarzenberg (Tradition, Responsibility, Prosperity; TOP 09) who received 45,2 % of second-round votes.



explanation for a lower turnout in the elections to the European Parliament, because practically the same rules apply here as in the in first-order arena.

**Table 1: Types of elections in the Czech Republic**

TYPE OF ELECTIONS	ELECTORAL SYSTEM	TERM/ MANDATES	ACTIVE/ PASSIVE RIGHT TO VOTE	THRESHOLD	METHOD	PREFERENTIAL VOTING
<b>Chamber of Deputies</b>	Proportional	4 years/ 200 deputies	18/21 years	5 %	D'Hondt	Yes (4 votes)
<b>Senate</b>	Majority	6 years/ 81 senators; every 2 years is elected 1/3 of them	18/40 years	–	–	–
<b>Presidential elections</b>	Majority	5 years	18/40 years	–	–	–
<b>Regional elections</b>	Proportional	4 years/ no. of members depends on a circuit	18/18 years	–	D'Hondt (modified)	Yes (4 votes)
<b>Municipal elections</b>	Proportional	4 years/ no. of members depends on a circuit	18/18 years	–	D'Hondt	Yes (no. of votes equals no. of members of a representa- tive body)
<b>European Parliament</b>	Proportional	5 years/ 22 MEPs (24 in 2004)	18/21 years	5 %	D'Hondt	Yes (2 votes)

*Source: Author according to the respective Election Acts.*

From the standpoint of relevant political parties the Czech party system is considered very stable in comparison to the other post-communist countries. Hloušek argues that at present, especially on the parliamentary level, the Czech party system has departed from polarized pluralism and fits the model of moderate pluralism. The structure of a party competition is basically bipolar as there are relevant political parties on the left (Czech Social Democratic Party, ČSSD) and on the right of the political spectrum (Civic Democratic Party, ODS) which constitute nucleuses for alternating coalitions with smaller parties. The structure of the party competition can be also considered centripetal as the relevant political parties are able to attract cen-

trist voters (Hloušek 2010, 101-105).<sup>2</sup> Although some parliamentary parties sometimes drop from relevance, the main right-left dividing line remains relatively stable in the Czech party system.<sup>3</sup>

## 8.5 Voter participation in European Parliament elections

The first elections to the European Parliament in the Czech Republic took place soon after the accession to the European Union, concretely, in June 11-12, 2004. The results surprised both political parties as well as political scientists. The pre-election polls predicted election turnout of approximately 40 % therefore the voter participation at 28,3 % was completely unexpected (Linek 2004, 1). The second elections to the European Parliament in June 5-6, 2009, confirmed, however, that the low turnout is a trend. The pre-election polls once again predicted turnout of approximately 41 %, but eventually only 28,2 % of eligible voters took part in the elections (STEM 2009a).

The voter participation in EP elections is one of the lowest in Czech elections in general (see figure 1). The gap in turnout between the elections to the European Parliament and the elections to the Chamber of Deputies is enormous. The number of voters, who take part in the first-order elections, is normally double in comparison to the EP elections in the Czech Republic. The results on voter participation thus confirm the hypothesis 1. Linek applies the limit of 50 % as a criterion to distinguish elections of the first and second-order nature (Linek 2004, 3). In this regard, it is apparent that from the standpoint of voter participation elections to the Senate, municipal and regional elections as well as EP elections belong to the category of second-order elections.<sup>4</sup> The

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<sup>2</sup> A difficulty, however, comes with classification of the Communist Party of Bohemia and Moravia (KSČM). The KSČM does not completely fulfill criteria of isolation within the political system in order to serve as an evidence for a model of polarized pluralism. The Communists cooperates on some issues with other parties, at the same time, however, these parties are not willing to form a government with the KSČM. The Czech political scientists therefore classify it as a 'masked anti-systemic party that promotes an anti-systemic ideology, but does not behave according to that ideology' (Hloušek 2010, 95). The KSČM is also the only anti-EU political party in the Chamber of Deputies (see Baun, Dürr, Marek, Šaradin 2006).

<sup>3</sup> It is possible, however, that it will be necessary to reconsider the characterization of the Czech party system after next elections to the Chamber of Deputies in October, 2013. According to recent polls several new political parties have a chance to pass the threshold of 5 %. At the same time, the support for the ODS has due to the recent corruption scandal dropped remarkably and oscillates slightly above the electoral threshold (see, for instance, STEM 2013).

<sup>4</sup> It is also interesting to note that the first direct elections of the Czech President with the turnout at approximately 60 % can be also classified as the first-order elections. This may come as a surprise, especially taking into account the fact that the Czech Republic is a parliamentary

turnout in elections to the European Parliament is closest to the voter participation in elections to the Senate which is interesting as the Senate is often not considered credible or necessary among Czech citizens (Rulíková 2004, 9). Is it possible that the European Parliament is considered in a similar vein?

In fact, one can find such a low turnout in the EP elections quite surprising due to the fact that the turnout in the referendum on accession of the Czech Republic to the European Union in 2003 reached 55,21 %. It could be therefore assumed that Czech citizens are rather interested in European matters. However, the polls made after the 2004 and 2009 EP elections suggest that citizens perceive elections to the European Parliament useless and uninteresting as the unimportance of EP elections was one of the main reasons why many eligible voters decided not to take part in the elections. In 2004 the main reason for voter non-participation was the skepticism about the purpose of the EP elections (33 %). The second reason given by non-participants was the distrust of political parties (19 %) and the third was the distrust or lack of interest in the EP elections (13 %). According to the polls in 2009 the main reason why citizens did not take part in the EP elections was the general disgust with politics (30 %). The second argument was the unimportance of the EP elections (15 %) and the third the lack of interest in European matters (12 %) (STEM 2005, 2009b).

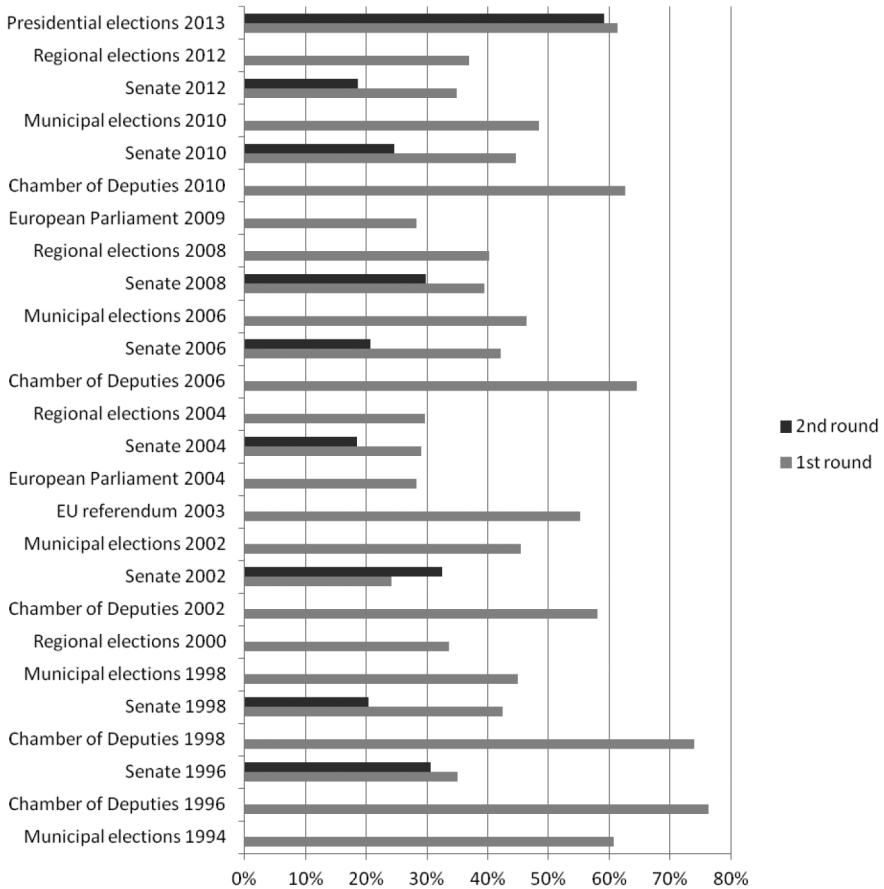
The turnout in elections to the European Parliament in the Czech Republic is also one of the lowest in the European Union (see figure 2). The voter participation in these elections in the Czech Republic is significantly lower than the average turnout in all the member states (i.e. 45,5 % in 2004 and 43 % in 2009). It is also considerably lower than the average voter participation in the new member states which share a common history due to the existence of communist regimes before 1989 (i.e. 38,6 % in 2004 and 38,4 % in 2009). On the other hand, the turnout in the European elections in post-communist new member states is normally considerably lower than in 'old Europe' (i.e. 52,7 % in 2004 and 52,4 % in 2009).<sup>5</sup> This gap between voter participation in new and old member states is most often explained by the instability and low institutionalization of the 'young democracies' in the new member states (see, for instance, Schmitt 2010, ed., or Šaradín 2007a, ed.).

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democracy. According to the logic of theory of second-order elections the presidential elections in parliamentary systems should be rather of the second-order nature.

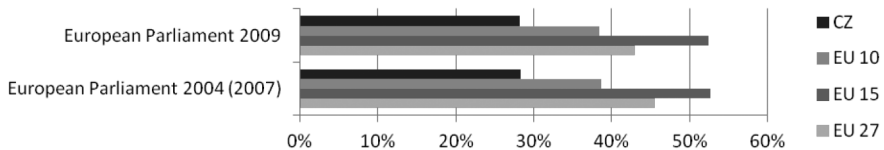
<sup>5</sup> It is important to note, however, that in Belgium, Luxembourg and Greece voting is compulsory and in Italy it is considered a civic obligation. Therefore in these member states the turnout is always considerably higher than in the rest of the European Union which certainly helps the average turnout in the old member states to score a higher value.

**Figure 1: Voter turnout in elections in the Czech Republic (1994-2013)**



*Source: Author according to the Czech Statistical Office.*

**Figure 2: Voter turnout in elections to the European Parliament (2004-2009)**



*Source: Author according to the Eurostat. The EU 10 comprises post-communist countries of the new member states, i.e. Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovenia and Slovakia. The EU 10 and EU 27 averages for 2004 consider 2007 elections for Bulgaria and Romania.*

## 8.6 Surprising results of the first European Parliament elections

The 2004 EP elections in the Czech Republic were not only marked by the low level of voter participation but they were also used by many voters as a channel for expressing their dissatisfaction with the then governing coalition (Pitrová 2007). The elections to the European Parliament took place two years after the last elections to the Chamber of Deputies, which made them timed precisely in the mid-term of the then government. The public support for Vladimír Špidla's left-wing coalition, which comprised of the ČSSD, the Christian Democratic Party (KDU-ČSL) and the Union of Freedom – Democratic Union (US-DEU), was gradually decreasing as the government was not able to implement reforms of the pension system, health care and education as promised in the coalition agreement.

Vladimír Špidla was thus deemed by many as a forgettable Prime Minister and party leader (Rulíková 2004, 3). His position among Social Democrats was not easy as he belonged to the fraction inside the ČSSD that opposed the idea of nominating the former chairman and Prime Minister Miloš Zeman as the party candidate in the upcoming presidential elections. Due to the disunity inside the ČSSD Václav Klaus, the leader of the strongest opposition party (i.e. the Civic Democratic Party), won the presidential elections despite the nominal majority of the governmental coalition in the Parliament.

In a complicated situation was also the Špidla's coalition partner, the US-DEU. Public support for the Union of Freedom rapidly deteriorated. The reason for that was the inability of the party to communicate with its voters as well as personal ambitions of some US-DEU members, which did not always correspond with the party program (Rulíková 2004, 3). In this situation the ODS openly approached the EP elections as a test vote for the elections to the Chamber of Deputies and encouraged voters to manifest their dissatisfaction with current political configuration. The same tactics was applied by the KSČM, which used the elections mainly as an opportunity for faithful voters to affiliate themselves with the party (for a detailed analysis of respective campaigns and party programs, see Bradová, Šaradín 2004 or Pitrová 2007).

Thirty-two political parties, movements and coalitions registered for the elections to the European Parliament, fourteen of them were newly established entities. Rulíková speculates that some marginal political parties were motivated rather by the possibility to obtain financial compensation that was

guaranteed to all parties receiving more than 1 % of votes rather than by gaining the mandates (Rulíková 2004, 4). As it was mentioned before, the results of the first EP elections in the Czech Republic surprised many, especially the governing coalition, but they can be easily explained in the light of the theory of second-order elections.

The highest election gains received the opposition parties, the ODS and KSČM, whereas two out of three government parties, the ČSSD and the US-DEU, suffered a substantial failure (see table 2). The most significant losses sustained the Social Democrats as they gained only 8,78 % of votes and two mandates out of twenty-four. In comparison to their results in the previous first-order elections they lost more than 21 % of votes. On the other hand, two parties that had never been represented in the Chamber of Deputies, respectively the Association of Independent Candidates – European Democrats (SNK-ED) and the Independent Movement, newly gained mandates in the European Parliament.

**Table 2: Results of the 2004 EP elections as compared with the election results to the Chamber of Deputies**

STANDINGS	PARTY (32 IN TOTAL)	POSITION	VOTES	MANDATES	PREVIOUS FOE (2002)	NEXT FOE (2006)
1.	<b>ODS</b>	Opposition	30,04 %	9	24,47 %	35,38 %
2.	<b>KSČM</b>	Opposition	20,26 %	6	18,51 %	12,81 %
3.	<b>SNK-ED</b>	X	11,02 %	3	2,78 %	2,08 %
4.	<b>KDU-ČSL</b>	Government	9,57 %	2	14,27 %	7,22 %
5.	<b>ČSSD</b>	Government	8,78 %	2	30,20 %	32,32 %
6.	<b>Independent Movement</b>	X	8,18 %	2	X	0,61 %
7.	<b>SZ</b>	X	3,16 %	0	2,36 %	6,29 %
8	<b>US-DEU</b>	Government	1,69 %	0	14,27 % (+ KDU- ČSL)	0,30 %
9.	<b>PB</b>	X	1,17 %	0	0,59 %	0,36 %
	<b>Others (23)</b>	–	5,97 %	–	–	–

*Source:* Author according to the Czech Statistical Office. The abbreviations of the respective political parties are as follows: Civic Democratic Party (ODS), Communist Party of Bohemia and Moravia (KSČM), Association of Independent Candidates – European Democrats (SNK-ED), Christian Democratic Party (KDU-ČSL), Czech Social Democratic Party (ČSSD), Green Party (SZ), Union of Freedom – Democratic Union (US-DEU), Right Block (PB). The abbreviation ‘FOE’ stands for the first-order elections.

The 2004 EP election results therefore clearly confirm the hypotheses 2 and 3. The government parties experienced a fall in support in the EP elections as compared with support which they gained in the previous elections to the Chamber of Deputies. In this respect, the EP elections eventually led to the resignation of the Špidla's government and an establishment of a new governing coalition under the leadership of a young Social Democrat Stanislav Gross. At the same time, small and new political parties, which had not yet been successful in the first-order arena, gained in the elections to the European Parliament five mandates out of twenty-four. The success of the third coalition party, the KDU-ČSL, can be explained by the fact that Christian Democrats changed in the meantime its leadership and chose more charismatic Miroslav Kalousek over Cyril Svoboda. The KDU-ČSL also entered the EP elections without its coalition partner from the previous elections to the Chamber of Deputies, the US-DEU. Rulíková also argues that in comparison to the other political parties Christian Democrats in their campaign best demonstrated their European dimension as they cleverly promoted their close ties with one of the most important EP political groups, the European People's Party (Rulíková 2004, 7-8).

## 8.7 Winners and losers of the second European Parliament elections

The 2009 EP elections took place in a completely different situation and political atmosphere than the first elections to the European Parliament. They happened in time of a crisis that had been escalating for more than two years following the very tight results of the 2006 elections to the Chamber of Deputies. The main two political parties, namely the Civic Democrats and Social Democrats, struggled for a parliamentary majority as the national elections resulted in a stalemate between the left (the ČSSD and KSČM) and center-right coalition (the ODS, KDU-ČSL and Green Party, SZ) both of them controlling 100 seats in the Chamber of Deputies. The center-right government was finally appointed in January 2007 thanks to votes of two Social Democratic deputies. However, the new Prime Minister and the chairman of Civic Democrats Mirek Topolánek had to face constant attempts of the opposition to tear his government apart and resisted four no-confidence votes initiated by Social Democrats. The problems of the governing coalition were further strengthened by the disunity of the smallest coalition party, the Green Party, which finally led to the suspension of their two deputies (Hloušek, Kaniok 2009, 2-3).

Another important aspect of the 2009 EP elections was the ongoing Czech Presidency of the Council of the European Union (for further analysis, see, for instance, Beneš, Karlas 2010). Unfortunately, the negotiations between the ODS and ČSSD over a truce during the hold over the EU Presidency failed and the crisis escalated to a successful vote of no-confidence against the government in the middle of the Czech Presidency (Kárníková 2010, 65). The interim caretaker government was appointed in May 2009 following an agreement between the ODS and ČSSD concerning early elections. The new Prime Minister became the President of the Czech Statistical Office Jan Fischer who consulted the nomination of ministers with both former coalition and opposition parties (with the exception of the KSČM) which, at the same time, set certain limits to the governmental program of the new cabinet (Hloušek, Kaniok 2009, 6).

If the campaigns in the 2004 elections to the European Parliament served as a mere test vote before elections to the Chamber of Deputies, the EP elections in 2009 ‘worked as a prelude to the grand finale’, i.e. the upcoming parliamentary elections in 2010 (Kárníková 2010, 67). In other words, most of the political parties focused in their campaigns solely on domestic issues and rhetoric. However, due to specific circumstances at the Czech political scene it is not easy to interpret the results of the 2009 EP elections in the context of the theory of second-order elections.

The large political parties (ODS, ČSSD and KSČM) definitively dominated the overall election results (see table 3). At the same time, the small political parties, which succeeded in the last EP elections, this time failed. The SNK-ED received only 1,66 % in comparison to 11,02 % of votes in 2004. The Sovereignty party, which was established by Jana Bobošíková, the former Member of the European Parliament on behalf of the Independent Movement, did not pass over the 5% threshold. The Independent Movement itself received even less than 1 % of votes. The success of the KDU-ČSL which retained the two mandates in the EP can be explained by the stable electorate of Christian Democrats. Many were also surprised, shocked even, by the relative success of the radical far-right Workers’ Party (DS) which received 1,07 % of votes and therefore qualified for the respective financial compensation.<sup>6</sup>

On the other hand, if we look at the total gains of the large and small parties in the EP elections (including the 2009 election results) in comparison to their gains in the elections to the Chamber of Deputies (see table 4), it is possible

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<sup>6</sup> Following an arson attack on Roma family in Vítkov, which was carried out by far-right extremists connected to the Workers’ Party, the government filled a petition for the ban of the party. The Supreme Administrative Court granted the petition and in 2010 banned the Workers’ Party for its forbidden ideology. Its members, however, later established a new party named the Workers’ Party of Social Justice (DSSS).



to conclude that in the EP elections small parties normally obtain more votes (i.e. 40,75 % and 31,84 % in the 2004 and 2009 EP elections) than in the elections to the Chamber of Deputies (i.e. 26,69 % and 19,36 % in the 2002 and 2006 parliamentary elections). However, the total gains of small parties in the 2010 elections to the Chamber of Deputies seem to contradict this conclusion as the small parties obtained in total 46,32 % of votes which is more than in the EP elections.

At the same time, although it is not possible to conclude that former government parties lost – as both the ODS as well as the KDU-ČSL retained their mandates in the European Parliament,<sup>7</sup> moreover, the Civic Democrats becoming the clear winner of the 2009 EP elections with nine mandates out of twenty-two – the relative loss<sup>8</sup> of the former largest opposition party, the ČSSD, on the other hand, can be explained by the fact that Social Democrats likely harvested voter dissatisfaction with the vote of no-confidence during the Czech Presidency (Kárníková 2010, 68). Therefore the existence of protest voting and fall in support in the EP elections in comparison with the elections to the Chamber of Deputies was evident also in 2009, even though it was the former opposition party which suffered the biggest loss obtaining almost 10 % of votes less than in the previous elections to the Chamber of Deputies (see table 3).

Thus it very much depends on our interpretation of the 2009 EP election results whether we conclude that the hypothesis 3 is or is not confirmed. However, with regard to the recent polls concerning the upcoming elections to the Chamber of Deputies in October 2013, which once again predict a relative success of the small parties, similar to the 2010 parliamentary elections (see STEM 2013), I therefore tend to conclude that it is not possible to confirm the hypothesis 3 as it is not completely evident that small parties are in general doing better in the EP elections than in the elections to the Chamber of Deputies. Due to the specific political configuration in 2009 (especially the existence of the caretaker government), it is also not possible to confirm the hypothesis 2 based on the proposition that government parties lose in the EP elections. It was in fact the former opposition party which lost the most of the votes in the 2009 EP elections in comparison with the previous elections to the Chamber of Deputies.

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<sup>7</sup> The third coalition party, the SZ, lost in the 2009 EP elections in comparison with the 2006 elections to the Chamber of Deputies due to the complete fragmentation of the member and voter base as even three ‘green’ parties entered the 2009 EP elections (the Green Party, The Greens and the Democratic Green Party).

<sup>8</sup> The ‘relative loss’ in the sense that the ČSSD in fact obtained more mandates than in the previous EP elections (i.e. seven in comparison to two mandates in 2004).

**Table 3: Results of the 2009 EP elections as compared with the election results to the Chamber of Deputies**

STANDINGS	PARTY (33 IN TOTAL)	POSITION	VOTES	MANDATES	PREVIOUS FOE (2006)	NEXT FOE (2010)
1.	<b>ODS</b>	(Government)	31,45 %	9	35,38 %	20,22 %
2.	<b>ČSSD</b>	(Opposition)	22,38 %	7	32,32 %	22,08 %
3.	<b>KSČM</b>	(Opposition)	14,18 %	4	12,81 %	11,27 %
4.	<b>KDU-ČSL</b>	(Government)	7,64 %	2	7,22 %	4,39 %
5.	<b>Sovereignty</b>	X	4,26 %	0	X	3,67 %
6.	<b>EDS</b>	X	2,88 %	0	X	X
7.	<b>VV</b>	X	2,40 %	0	X	10,88 %
8.	<b>Mayors</b>	X	2,28 %	0	X	(16,70 %) <sup>a</sup>
9.	<b>SZ</b>	(Government)	2,06 %	0	6,29 %	2,44 %
10.	<b>SNK-ED</b>	X	1,66 %	0	2,08 %	X
11.	<b>SSO</b>	X	1,26 %	0	X	0,74 %
12.	<b>DS (DSSS)</b>	X	1,07 %	0	X	1,14 %
13.	<b>PB</b>	X	1,00 %	0	0,36 %	0,47 %
	<b>Others (20)</b>	–	5,33 %	–	–	–

<sup>a</sup> In the next elections to the Chamber of Deputies in 2010 the Mayors supported the Tradition, Responsibility, Prosperity party (TOP 09) which eventually gained 16,70 % of votes.

**Source:** Author according to the Czech Statistical Office. The abbreviations of the respective political parties are as follows: Civic Democratic Party (ODS), Czech Social Democratic Party (ČSSD), Communist Party of Bohemia and Moravia (KSČM), Christian Democratic Party (KDU-ČSL), European Democratic Party (EDS), Public Issues (VV), Green Party (SZ), Association of Independent Candidates – European Democrats (SNK-ED), Party of Free Citizens (SSO), Workers' Party, later Workers' Party of Social Justice (DS, DSSS), Right Block (PB). The abbreviation 'FOE' stands for the first-order elections.

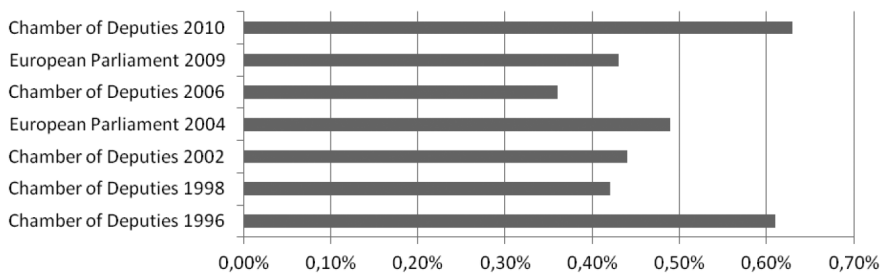
**Table 4: Votes of large and small political parties in EP elections and elections to the Chamber of Deputies**

EUROPEAN PARLIAMENT	LARGE PARTIES	SUCCESSFUL SMALL PARTIES	OTHER SMALL PARTIES	SMALL PARTIES TOTAL
<b>2004</b>	59,08 %	28,77 %	11,99 %	40,76 %
<b>2009</b>	68,01 %	7,64 %	24,20 %	31,84 %
CHAMBER OF DEPUTIES	LARGE PARTIES	SUCCESSFUL SMALL PARTIES	OTHER SMALL PARTIES	SMALL PARTIES TOTAL
<b>2002</b>	83,18 %	14,27 %	12,42 %	26,69 %
<b>2006</b>	80,51 %	13,51 %	5,85 %	19,36 %
<b>2010</b>	53,57 %	27,58 %	18,74 %	46,32 %

**Source:** Author according to the Czech Statistical Office. As large political parties are considered the Civic Democratic Party (ODS), the Czech Social Democratic Party (ČSSD) and the Communist Party of Bohemia and Moravia (KSČM) due to the number of their members. As successful small parties are considered the parties which obtained the respective mandates.

The figure 3, showing the percentage of invalidated ballots in the elections to the European Parliament and Chamber of Deputies, also does not enable to conclude that there is a higher percentage of invalidated ballots (i.e. protest votes) in the EP elections than in the elections to the Chamber of Deputies. In the 1996 and 2010 parliamentary elections there were much more invalidated ballots than in the 2004 and 2009 EP elections (i.e. 0,61 % and 0,63 % of votes in comparison to 0,49 % and 0,43 % of votes which were invalid). Therefore the hypothesis 4 has not been confirmed.

**Figure 3: Invalidated ballots in EP elections and elections to the Chamber of Deputies**



*Source: Author according to the Czech Statistical Office.*

## 8.8 Conclusion

The analysis has shown that even in the case of the Czech Republic, the theory of second-order elections has proved to be a very useful framework for an analysis of the EP election results, although some conclusions may be rather uncertain. The low voter turnout in the elections to the European Parliament in the Czech Republic clearly confirms the second-order nature of these elections in comparison with the elections to the Chamber of Deputies as the first-order elections. The propositions concerning the government parties' losses and small parties' gains have also proved to be a very helpful tool for understanding the 2004 EP election results in the Czech Republic, as these results clearly follow the typical patterns of second-order elections.

On the other hand, the situation is more difficult in the case of the 2009 EP elections. Due to the very specific political configuration in the Czech Republic at the time of the European Parliament elections in 2009, it is not possible to conclude that the propositions of theory of second-order elections proved to be completely valid. It has been also shown that the overall election results do not confirm the hypothesis concerning a higher percentage of invalidated ballots in the EP elections in comparison with the elections to the

Chamber of Deputies. It is thus evident that a further analysis of the results of subsequent EP elections will be necessary in order to establish whether the elections to the European Parliament in the Czech Republic fully correspond to the propositions of the theory of second-order elections.

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# The Spanish Electoral System for the European Parliament: Proportional Representation vs. Territorial Identity

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## 9.1 A new electoral system for Europe

On January 1<sup>st</sup>, 1986, Spain became part of the European Community, thus making reality the dream shared by several generations of Spaniards and by practically the entire political elite that had made possible the transition and the consolidation of the democratic regime.<sup>1</sup>

The Act of Accession signed on June 12<sup>th</sup>, 1985, assigned Spain a quota of 60 members of the European Parliament (EP). The first elections were to be held within a maximum period of two years and finally took place on June 10<sup>th</sup>, 1987. Until that time, Spain was represented by the same number of delegates, designated from among its members by the Cortes Generales (the Congress of Deputies and the Senate), in proportion to the importance of the different political groups represented in each of them.<sup>2</sup>

In April 1987, the Spanish Parliament approved the reform of the Electoral Law (LOREG)<sup>3</sup> to incorporate Title VI, regarding the “Special Dispositions for Elections to the EP”, in accordance with the principles established by the Eu-

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<sup>1</sup> Diez Medrano (2001) and Álvarez-Miranda (1994), among others, agree with this interpretation.

<sup>2</sup> Thus, the Socialist Group designated 36 representatives, the Democratic Coalition 17, the groups of CiU 2, the Centrist groups another 2, the Basque group (PNV) 2 also, and the mixed Groups 1, designated by lot to Euskadiko Ezkerra (EA).

<sup>3</sup> Organic Law 5/1985, of 19 June, concerning the General Electoral Regime, reformed by Organic Law 1/1987, of 7 April, for the regulation of elections to the EP.

ropean Parliamentary Act of 20 September 1979. In 1994, a new reform of the LOREG<sup>4</sup> would recognize the right to active and passive suffrage, not only for Spanish citizens over 18, as before, but also for the rest of citizens of the EU living in Spain, provided that they met the same requirements as the Spaniards, and also because they had the same right in their member State of origin.<sup>5</sup>

The electoral system implemented in Spain in 1987, which has been applied in the six elections to the EP held so far, pursues three fundamental objectives:

- To incorporate the maximum number possible of elements comprising the electoral system of the Congress of Deputies, the axis and reference point of Spanish political competition.
- To attain a sufficiently high level of effective proportional representation.
- To construct a system that, in the electoral process and in the configuring of representation, would make visible the plurality of the territorial identities that constitute the very identity of Spain without excluding the nationalist parties.<sup>6</sup>

These three objectives were in conflict, and it was necessary to find formulas to create a balance among them.<sup>7</sup>

## 9.2 The configuration of the Spanish electoral system for the EP

The political composition of the Spanish Lower House is vital to the functioning of the system of parliamentary government and the party system.<sup>8</sup> It is essentially that confrontations between government and opposition and between the various parliamentary parties take place there. It is logical, therefore, that the electoral system of the Lower House – whose essential structure persists since 1977 – has become the key element of the institution’s construction and the structure of the political arena, and that it has become in this way the model of reference for the great majority of the electoral systems used in Spain, including that used for the EP.

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<sup>4</sup> A consequence of the approval of Council Directive 93/109/CEE, of 6 December 1993 (OJEC N° 329 of 30 December).

<sup>5</sup> This corrected what Vanaclocha and Ruiz de Azúa considered being a “missed opportunity” in 1987 to advance in the construction of European Citizenship (1993: 230).

<sup>6</sup> We must take into account that, when nationalist parties are mentioned in Spain, it is understood that we’re referring to those who have a territorial or sub-state character.

<sup>7</sup> On the parliamentary proceedings regarding the reform of the LOREG when the system of elections to the EP was debated and approved, see García Atance (1987) and Vanaclocha and Ruiz de Azúa (1993).

<sup>8</sup> This House has the responsibility for the investiture of the President of the Government and the approval of censure motions and vote of confidence. It also has clear supremacy over the Senate in the legislation process.



In the design of the system for electing European delegates, three fundamental elements in the composition of that of the Congress of Deputies are accepted with no difficulty:

- *Universal and direct suffrage*, conceived as a legitimate and indispensable element, or as a basic premise for the construction of the whole electoral system.
- *Closed and blocked lists*, which dictate the manner of structuring the vote with no possibility of indicating the preferences of the voter regarding the candidates and which permit the automatic allocation of the seats that become vacant.
- And the *D'Hondt proportional formula*.

These three potentially controversial elements have not provoked a parliamentary or media debate on the European elections, as they are associated with the system components of the Congress of Deputies. The criticism of some of them, especially those oriented toward introducing unblocked or open lists, or those directed against the D'Hondt method, appear principally in relation to elections to the Congress, although it seems evident that the reform of any of these elements would affect all the electoral systems in which they were present.

The electoral system for the EP is completed by three other characteristic elements:

- The single constituency (of high electoral magnitude)
- The inexistence of legal barriers
- And the “polyhedral” form of the list of candidates.

**Table 1. Spanish electoral systems for the European Parliament and the Spanish Congress of Deputies**

<b>Electoral system for the European Parliament</b>	<b>Electoral system for the Congress of Deputies</b>
Direct universal suffrage	Direct universal suffrage
Number of deputies elected: 60, 64, 54, 50	Number of deputies elected: 350
Single constituency*	50 multi-member district provincial and 2 single-member districts
Single voted on closed, blocked list	Single voted on closed, blocked list**
D'Hondt electoral formula	D'Hondt electoral formula
No legal minimums	Legal minimum of 3% of valid votes issued in respective constituency

Source: Vanaclocha and Ruiz de Azúa, 1993: 232.

\*There are two possible options for structuring the official ballot sheet: (a) showing complete candidacy for entire national constituency, or (b) showing list of candidates linked to the respective Autonomous Community included in the corresponding candidacy for the national list.

\*\* Ballot sheet show complete candidacy for the constituency.

Subsequently, we will refer successively to these three elements. But first of all, we must pay attention to another fundamental element: the *number of Spanish representatives* to be elected. According to the quota of seats assigned to Spain in the successive treaties of the EU, it varies between the 50 of 2009 and the 64 of 1999, passing through the 60 of 1987, 1989 and 1994, and the 54 of 2004. This number will determine the freedom of action in designing the division by constituencies.

The implementation of the *single constituency* presented then and now, a profound debate on the territorial formation of political representation in Europe and, more specifically, on the appropriateness or coherence of the idea that compound states such as Spain, may make visible, via their representatives in the EP, the plurality of political identities, territorial or national, existing within them.

In the context of this debate, the principal alternative to the single constituency was to divide the Spanish territory into as many constituencies as autonomous communities.<sup>9</sup> This would have resulted in 17 constituencies (or more, depending on the position accorded to the North-African cities of Ceuta and Melilla) very unequal in population and with a very different electoral magnitude, independently of the chosen process for the distribution among them of the Spanish seats or of the applied proportional formula of decision. This configuration would have entailed the existence of a large number of electoral arenas with majority or quasi-majority competence and, consequently, the complete renunciation of the aim of finding a system with widely proportional effects. The single constituency means the triumph of the criterion of proportional and eminently political and party representation over the representation of the territorial (sub-state) plurality and singularities. With the single constituency, the option of transferring to the European representation the political dynamics area of the entire space of the Spanish State prevails.

A complement of this bid for the maximum proportionality possible could be the *elimination of legal barriers* to obtaining seats. In Spain there is a certain tradition of legal barriers,<sup>10</sup> and its excluding logic would have made sense in the framework of a single constituency with a high electoral magnitude. Actually, in the 1987 debate there was a proposal (from the then Popular

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<sup>9</sup> The Implementation of the model of provincial districts characteristic of the Congress was never considered.

<sup>10</sup> Examples very indicative of this are, among others, the 3% valid vote at provincial level in the elections for the Congress of Deputies, the 5% vote in the local elections, or the percentages applied in various elections in the autonomies, at times on a scale of the whole Autonomous Community and at others on a scale of the constituency.

Coalition Group) to introduce a barrier of 5% of the valid vote. It was, however, discarded, above all when it was understood that it could effectively make it difficult to obtain seats for parties present exclusively in one single or just a few autonomous communities. Taking into account that the sub-state constituencies had been rejected, what prevailed was the interest of an ample majority in maintaining the possibility that the nationalist parties of Catalonia, the Basque Country and Galicia would obtain representation, given that they frequently occupy strategic positions in the Spanish party system and in the interplay of parliamentary majorities, as well as bringing to the Spanish political arena a conditioning factor of relevant identity sensitivity. The option of eliminating barriers was chosen even at the risk of permitting the presence in the EP of party representatives that were marginal, opportunistic or even aggressively anti-system, as would happen indeed (For example, Ruiz Mateos Voters' Association in 1989).

In line with the foregoing, the single constituency leads the nationalist parties and in general those of sub-state status, to form coalitions among themselves (inter-territorial candidacies) in order to take advantage jointly of their mutual electoral support. And in such cases, Spanish legislation (art. 222 LOREG) consciously opts for a solution that is imaginative, though not free of criticism: to favor the electoral visibility of the coalition parties, allowing that, within its respective territory and at the request of the interested groups, the vote don't need to comply with the general model of the complete slate but rather show only the list of those candidates of the party established in that particular territory, together with the party's name, acronym and symbol. This means that the list of one same candidature can be shown on the ballot papers in various forms, as happens in effect, that is, appearing on the ballots a different list of candidates depending on the autonomous community in question, and in the voters' view, with a certain appearance of also being a different party. They have rightly been called "*polyhedral lists*" (Vanaclocha and Ruiz de Azúa, 1993:239), as they offer different "faces" depending on the territory where they are presented.

Actually, the *polyhedral lists* are not strictly a configuring element of the electoral system. It is a kind of voting form that is embodied in the ballot and not a way of structuring the vote (understood as structuring the electoral decision transformable into quotas of representation), which is the authentic configuring element of the electoral system. Nevertheless, it affects or can affect the voter's decisions, both to vote for one party or another and to vote or not to vote. For this reason it can perfectly well be accorded the character of inductor or quasi-configurator.

Critical positions argue that these lists are deceptive for the voter, since they offer an appearance of nearness, of exclusive belonging, that does not conform to reality. Their defenders, however, adduce that, in any case, this way helps to promote the candidature of the inter-territorial coalition by simply making more visible the political connection between the party in the coalition (nationalist or regionalist) and its respective electorate, without the presence of candidates from other territories to distort the perception of the link of representation.

From the perspective of the whole, it can be said that, in synthesis, the Spanish electoral system for the EP is shaped by elements with which it is attempted to achieve, on the one hand, political balances that combine sufficiently wide levels of effective proportional representation and, on the other hand, formulas that will guarantee or promote the non-exclusion of the nationalist parties.

## 9.3 Political consequences of the electoral system applied

### 9.3.1 Results of effective proportionality

As indicated above, the electoral system allows for a moderately high proportionality, mitigating the biases of the D'Hondt method because of two factors: on the one hand, the mechanical effect resulting from the implementation of the single electoral district and the inexistence of legal barriers, and, on the other hand, the significant electoral of the single district (60, 64, 54, 50).

In this sense, even with the limitations presented by each of them, the calculation of the principal indices used to measure the proportionality/disproportionality of the electoral systems based on the relation between votes and seats obtained, such as Rae's index (1971), Loosemore-Hanby's index (1971), Gallagher's least square index (1991) o Lijphart's index (1990), shows a clear evolution from an adjusted proportionality in the early elections to a moderately high proportionality as is the case at the present time. The highest proportionality is reached in the 1999 elections (see Table 2), coinciding with the largest size of the electoral district (64 seats). Afterward, with the reduction of the EP seats assigned to Spain, the cost of the seat increases and the proportionality of the electoral system are attenuated slightly, with rates that are maintained because of the limited fragmentation of the electoral offer and the concentration of the vote in just a few party options.

This proportionality is, in any case, greater than that resulting from the elections to the Congress of Deputies, in which the structuring of the province

as an electoral district intensifies the effects of the used formula,<sup>11</sup> favoring governability over representation. Likewise, the expected mechanical effects prefabricate majorities in which a concentration of votes is produced around the two main parties, thus limiting the effective number of parliamentary parties (see Table 2), a limitation that the electoral system for the EP reproduces, given the importance that the large nation-wide parties have in the political-electoral scene.

### 9.3.2 Limited fragmentation and small effective number of parties

In spite of the fact that a high proportionality situation offers, in general, a high level of fragmentation, this is not the case in the Spanish elections to the EP, mainly for two reasons: closed and blocked electoral slates and the dynamics of the national party itself. The choice of this type of candidature is a result of the continuity of the majoritarian model of the Congress of Deputies. In the designing of the axis model, this type of candidature was chosen in an attempt to strengthen the functionality and prestige of the offer of several recently legalized parties. This intention is reproduced in the electoral system of the EP, in spite of the apparent consolidation of the democracy and of the party system in the middle of the 1980s. This type of candidacies avoids the dispersion of the vote and makes difficult the development and consolidation of political formations outside the consolidated party offer.

Furthermore, the lack of an effective transfer of the elections results to an European party system,<sup>12</sup> the particular character of minor elections and the common political offer of opportunistic or anti-system groups do not modify the voter's behavior, at least not as one might think they would in this type of electoral situation. There is a reproduction of the characteristic features of the party system resulting from the elections to the Congress of Deputies that we can situate within a model of "limited pluralism" structured around a prevalent two-party competition: a system validated by the results of the six elections, which show a high concentration of votes and seats centering on the two principal parties (see Table 2) and a strategic and nuanced presence of the nationalistic-type parties (see Table 3).

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<sup>11</sup> In the electoral system of the Congress of Deputies the average size of the electoral districts is widely reduced: 6,7 seats; this is the lowest limit possible for the electoral formula to not to have irremediably majority effects (Montero, 1997: 12).

<sup>12</sup> This does not mean that there is no party system in the EP. It is organized around 7 major Parliamentary Groups that adhere to a system very similar to the one in the Congress of Deputies.

Table 2. Indicators for Spanish electoral systems for the European Parliament and Congress of Deputies

	Effective number of electoral parties	Effective number of parliamentary parties	Loose-Hanby's index	Galagher's index	Electoral fragmentation	Parliamentary fragmentation	Electoral concentration 1° & 2°	Parliamentary concentration 1° & 2°	Electoral competitiveness	Parliamentary competitiveness	Wasted vote
CD 1986	3,63	2,68	12,9	7,5	0,725	0,627	68,94	82,57	17,8	22,57	14,1
EP 1987	4,34	3,15	6,53	5,75	0,769	0,682	63,71	75,00	14,41	18,33	11,92
CD 1989	4,15	2,85	15,3	9,1	0,759	0,649	64,91	80,57	13,71	19,43	15,7
EP 1989	4,61	3,57	6,1	4,36	0,783	0,72	60,98	70,00	18,16	20	7,79
CD 1993	3,53	2,67	12,2	7,0	0,716	0,626	73,16	85,71	4	5,14	11,4
EP 1994	3,60	2,63	6,89	5,9	0,722	0,621	70,91	83,33	9,33	10	7,13
CD 1996	3,27	2,72	8,4	5,6	0,694	0,633	76,05	84,86	1,15	4,29	7,6
EP 1999	3,44	3,03	2,19	1,7	0,709	0,672	75,07	79,69	4,41	4,69	3,91
CD 2000	3,12	2,48	9,2	6,1	0,680	0,596	78,15	88,00	10,29	16,57	9,8
CD 2004	3,05	2,50	8,5	5,1	0,672	0,600	80,26	89,14	4,88	4,57	8,7
EP 2004	2,75	2,44	4,05	3,02	0,636	0,585	84,67	90,74	2,25	1,85	2,99
CD 2008	2,82	2,34	8,5	4,9	0,645	0,572	83,27	92,29	3,91	4,29	8,2
EP 2009	3	2,34	4,39	3,19	0,666	0,608	80,90	88,00	3,34	4	3,58
CD 2011	3,43	2,60	11,7	7,3	0,709	0,615	72,44	84,57	15,66	21,71	11,4
CD Mean	3,37	2,60	10,83	6,57	0,7	0,614	74,65	85,96	8,92	12,32	10,86
EP Mean	3,62	2,86	5,02	3,98	0,714	0,648	72,70	81,12	8,65	9,81	6,22

Source: Own elaboration. Data from Ministry of the Interior.

**Table 3. EP Election: Winning candidacies**

Candidacies	1987		1989		1994		1999		2004		2009							
	% Rv	% Pv	S	% Rv	% Pv	S	% Rv	% Pv	S	% Rv	% Pv	S						
PSOE	26,44	39,44	<b>28</b>	21,43	40,08	<b>27</b>	18,12	31,14	<b>22</b>	22,10	35,94	<b>24</b>	19,42	43,72	<b>25</b>	17,30	39,33	<b>21</b>
PP*	16,69	24,89	<b>17</b>	11,59	21,68	<b>15</b>	23,62	40,59	<b>28</b>	24,85	40,42	<b>27</b>	18,42	41,47	<b>24</b>	18,79	42,72	<b>23</b>
IU+Others	3,56	5,31	<b>3</b>	3,28	6,14	<b>4</b>	7,91	13,60	<b>9</b>	3,61	5,87	<b>4</b>	1,85	4,17	<b>2</b>	1,66	3,77	<b>2</b>
CiU+ Others	3,00	4,48	<b>3</b>	2,28	4,26	<b>2</b>	2,74	4,72	<b>3</b>	2,77	4,51	<b>3</b>						
PNV+ Others				1,03	1,94	<b>1</b>	1,64	2,82	<b>2</b>	1,81	2,95	<b>2</b>						
CiU+PNV+ Others													2,30	5,18	<b>2</b>	2,28	5,18	<b>2</b>
CDS	6,95	10,36	<b>7</b>	3,87	7,24	<b>5</b>												
UPyD																1,27	2,89	<b>1</b>
HB-EH	1,27	1,89	<b>1</b>	0,92	1,72	<b>1</b>			0,91	1,47	<b>1</b>							
Others	1,15	1,71	<b>1</b>	4,9	9,15	<b>5</b>			3,03	4,93	<b>3</b>	1,10	2,47	<b>1</b>	1,11	2,53	<b>1</b>	

Source: Own elaboration. Data from Ministry of the Interior.

% Rv – Registered voters

% Pv – Popular vote

S - Seats

\* People's Alliance (AP) in 1987.

For this reason, in spite of the existence of a series of psychological effects that could uninhibited voters, a concentration of votes centering on the preexisting two-party competition is reproduced. That is to say, a behavior is reproduced similar to that of the elections to the Congress of Deputies. But unlike the legislative elections, here the quota of representation in seats is reduced by the proportionality of the system, which obtains a more equal distribution of the House seats. Furthermore, this tendency toward concentration has minimized the characteristic fragmentation generated by the proportional systems. Only a small number of parties have obtained representation, reaching the maximum number in the 1987 elections, with 11 parties and the greatest number of parties with just one seat (see Table 2), something very characteristic of the EP party system.<sup>13</sup> Nevertheless, as the system has evolved, the number of candidacies that obtain representation is situated around 5-6 (with an average of 7 in all the elections). The number of parliamentary parties has been drawing closer to the number of winning parties, as happens in the Congress of Deputies.

### 9.3.3 Institutionalization and diminished representation of the nationalist offer

For its part, the behavior of the nationalist offer should be observed separately. The creation of the *inter-territorial candidacies*, via the formula of the *polyhedral lists*, has permitted these parties to avoid the supposed disadvantage that the size of the district offers to an electoral group whose small percentage of the vote on a national level could make its access to representation in the EP difficult.

As we have already pointed out, one of the purposes with which the Spanish electoral system was designed, was to assure the representation of territorial interests in Europe, derived from the crystallization of the party system that produced the institutionalization of the nationalist electoral offer. The access to the Congress of Deputies, favored by the establishment of the province as an electoral district, has permitted the incorporation of territorial questions into the national debate. This is a constant debate there, which has been called “*senaduration*”. It is expected that, with the objective of extending this institutionalization, inter-territorial candidacies will be formed, in clear reminiscence of the formula of the electoral coalitions present in the Spanish political-electoral tradition.

Given the diversity of candidatures, which are distributed in different points of the regionalist, nationalist and independentist plane and also in the

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<sup>13</sup> In 2009 the EP had 165 parties, of which 49 had just one seat.



**Table 4. Territorial (sub-state) and inter-territorial candidacies for EP represented in Congress of Deputies and EP**

Congress of Deputies					European Parliament			
Election	% Rv	% Pv	Seats	% Seats	Seats	% Pv	% Rv	Election
1986	5,71	8,27	44	12,57				
				8,34	5	8,08	5,42	1987
1989	5,9	8,58	31	8,85				
				10,01	6	11,3	6,04	1989
1993	6,4	8,47	26	6,34				
				8,33	5	7,54	4,38	1994
1996	6,4	8,7	27	7,71				
				14,07	6	13,86	9,22	1999
2000	5,67	8,43	27	7,73				
2004	6,27	8,63	28	8,01				
				5,55	3	7,65	3,4	2004
2008	4,55	6,27	21	6,00				
				10,00	5	11,48	5,05	2009
2011	6,03	8,99	34	9,71				

Source: Own elaboration. Data from Ministry of the Interior.

% RV – Registered voters

% Pv – Popular vote

left-right ideological axis, it is complicated to classify this type of offer within a single category. Therefore, it is appropriate to reduce the analysis of the behavior of these candidatures to those that are composed of parties represented in the Congress of Deputies. This will permit us to establish analytic judgments and compare the electoral behavior.

If we observe the data from Table 4, we can see how the electoral offer of a territorial character is limited as to the number of parties. Nevertheless, its level of performance is very similar to that obtained in the Congress of Deputies, with very similar quotas of vote and representation. Therefore, the establishing of a differentiated offer, such as the case of CiU or HB/EH in various elections, or the establishing of multi-party coalitions with an ample base,<sup>14</sup> fulfills their aim. They obtain a representation adjusted to the number of votes obtained as a group and a representational quota very similar to, and on occasion higher than that of the Congress of Deputies.

<sup>14</sup> Multi-party coalitions in which prevails a dynamic focus. For example, with the formation of GALEUSCA (2004), in which the nationalist component prevails over the ideological one in a coalition made up of CiU and PNV (center-right nationalist) and BNG (left-winged nationalist).

If the system gets a small loss of votes and a high proportionality, it can be induced that the electoral system for the EP is highly representative. However, we cannot confuse representation with proportionality. The translation of votes into seats can be performed with a full numerical equality. Nevertheless, this does not imply a mathematical accuracy in the effective translation of the axes of political debate at the Houses of representation. This may be the case of a system that favors national candidates (capitalized by parties with state implementation). The presence of territorial elements is limited by a decrease on the number of nationalist parties. An election bid that focuses on a few coalitions, which facilitates access to the proportional representation but limited its representativeness.

### 9.3.4 Scarce presence of small parties in a situation of electoral opportunity

The levels of votes without representation are low. With an average of 6,22%, we can see a gradual descent from the maximum value, 11,92%, the first elections of 1987, that reaches 3,58% in 2009 (see Table 5). This progressive descent represents an increment in the efficiency of the votes in this kind of election until it reaches high levels, thus insuring a great effectiveness of the votes.

In this same sense, the high level of effectiveness attained by the electoral offer should be noted. If we analyze the distribution of seats that takes place during the vote count, we can see that the last seat assigned (threshold for representation)<sup>15</sup> corresponds to 1,5% of the votes (1,55% on average), and the first candidature without representation obtains slightly more than 1,2% of the votes (1,29% on average)<sup>16</sup>, with a differential of 0,26, which represents some 40.000 votes. This indicates a low cost for the seat, an electoral advantage that, a priori, could facilitate this type of candidatures but that nevertheless is not exploited.

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<sup>15</sup> These do not indicate the proportionality of the system, but rather the number of votes that a specific party (and only one) needs to obtain a seat in that system, which is considerably different [...] Saying that the thresholds should not be interpreted in terms of the system proportionality does not mean that they are not useful (Urdániz Ganuza, 2008: 140-142).

<sup>16</sup> Figures below the electoral barrier of reference, the system of the Congress of Deputies, which is 3%, or the 5% proposed, during the designing of the system, by the Parliamentary Group of Popular Coalition. These are thresholds that would have impeded access to representation of a greater number of parties, limiting, as well, the presence of parties and candidatures of a nationalistic character.

**Table 5. EP Elections: Winning and Losing candidacies (% of vote)**

	Winning candidacies		Losing candidacies	
	Nº	%	Nº	%
1987	7	88,08	28	11,92
1989	11	92,21	22	7,79
1994	5	92,87	30	7,13
1999	8	96,09	28	3,91
2004	5	97,01	26	2,99
2009	6	96,42	29	3,58
Mean	7	93,78	27	6,22
$\sigma$	(2,28)	(3,42)	(2,85)	(3,42)

Source: Own elaboration. Data from Ministry of the Interior.

**Table 6. EP Election: Threshold of representation (includes a simulation of 3% and 5% electoral threshold)**

Election	Seats	Threshold of representation		First candidacy out of EP		Difference	3% electoral threshold	5% electoral threshold
		Votes	%	Votes	%			
1987	60	268.668,07	1,41	261.328	1,37	0,04	572.144,91	974704,9
1989	60	226.334,33	1,45	197.095	1,26	0,19	469730,28	801113,8
1994	64	259.266,00	1,41	239.339	1,3	0,11	550943,82	933202,75
1999	64	305.391,50	1,46	300.874	1,44	0,02	624260,43	1066747,4
2004	54	266383	1,72	197.231	1,27	0,45	462518,04	783324,55
2009	50	290016,391	1,85	178.121	1,14	0,71	468458,88	796757,35
Mean		269.343,22	1,55	228.998	1,29	0,25	524.676,06	892.641,79

Source: Own elaboration. Data from Ministry of the Interior.

In spite of the fact that the small parties usually see in this kind of elections as a platform for projection not always available on a national scale (Morata: 2000: 23-24), it should be noted that without doubt the number of votes for candidatures that are opportunistic, anti-system or from small parties (apart from the inter-territorial candidatures) is limited. As we have already pointed out, as the system becomes more consolidated, a concentration of the vote around the characteristic electoral offer of the national elec-

tions is produced. This impedes, at least partially, the “wasting of votes” in minor candidatures. As can be seen in Table 5, in spite of the relatively large number of candidatures that obtain no representation, with an average of 27, although they are far from being considered marginal, they are situated at very low levels (6,22%).

## 9.4 The situation of political competition in the elections for the EP: a limited model for second order elections

The situation of the European elections in Spain corresponds, although not perfectly, to the model of “second order elections” proposed by Reif and Schmitt (1980), based on five observable indicators:<sup>17</sup> less participation, a political debate centering on national questions, a descent in the vote of the party in government, also of the group of the large parties (which should be larger as the size of the party is larger) and great dependence with regard to the moment of the electoral cycle in which the elections are held. In the case of Spain, compliance with the first two indicators is evident: the discourse and political debate center on questions of national policy instead of on European topics and there are high rates of abstention (more than 50%).

The fact that an Executive is not elected, the low visualization of a European party system, and the unawareness of the tasks performed by members of the EP result in the voters expressing their political preferences mainly in terms of national policy. It is the strategic elements of the national political arena, the domestic factors that are the motivating force in the European vote (Bellucci, Garzia and Rubal, 2012: 26), principally in matters concerning information. The citizens, at least a priori, have a lesser understanding of the affairs that are at the center of EP activity. In the absence of information about the position of the national parties with respect to European questions, the voters find themselves obliged to evaluate political formations based on their performance at the national level (Bellucci, Garzia y Rubal, 2012: 27). Such is the case of Spain, where the voters declare that they follow the campaigns to only a small extent. As can be seen in Table 7, more than 70% on average in the last three elections declare they have not followed the electoral campaign for the EP with interest.

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<sup>17</sup> Reif and Schmitt (1980) identify a second order model of elections referring to the EP, in which they emphasize five elements: national debate; the political parties use a smaller number of resources; they can be used to influence the next national elections; the opportunity of the “sincere vote”, and finally, a direct relation with the electoral cycle.

**Table 7. With how much interest did you follow the electoral campaign for the EP?**

	1994	1999	2004	2009	Average
With a great deal or quite a lot of interest	27	23,9	31,5	30,3	28,17
With little or no interest	72,8	76,1	68,2	69,0	71,52
No reply	,2	-	,8	,1	-

Source: CIS. Studies 2108, 2350, 2567, 2807.

This manifest a lack of interest, however, is in conflict with the great importance that the Spanish citizens give to the EP within the institutions of the EU. As can be seen in Table 8, the values “very important” and “fairly important” account for almost 70% of the replies.

**Table 8. To what extent do you think that the EP is important in the life of the EU?**

	2009	2004	1999	Average
Very important	16,5	16,0	14,8	15,76
Fairly important	53,7	54,7	52,1	53,5
Not very important	14,4	11,9	12,8	12,8
Not important	2,7	1,4	2,0	2,03
Does not know	12,4	15,6	17,9	15,3
No reply	,3	,4	,4	,36

Source: CIS. Studies 2350, 2567, 2807.

We find, therefore, an apparent situation of conflict in which the citizens attach great importance to the European institutions and to the EP but show little interest in the campaign. This divergence is resolved thanks to the importance that party competition has for the direction of the political debate, a competition which exists mainly between the two large parties and in which national topics of debate take preference. This permits a double strategy: employing the voting mechanisms of the national elections and, owing to this, investing a smaller amount of their resources<sup>18</sup> to mobilize the electorate.

As can be seen in Table 9, maintaining the axes of the national debate produces an ample profit for the parties. For the majority of Spanish citizens

<sup>18</sup> It can be done, for example, by investing fewer economic resources in the electoral campaign. According to the Court of Auditors, the fiscal control body for the economic activity of political parties in Spain, the parties spent 67,7 million Euros in the legislative elections of 2008 (report N° 828) and 65 million in those of 2011 (report N° 967), while in the European elections of 2009 only 36.8 million Euros were spent (report N° 860).

the main elements of judgment in deciding their vote are topics related to problems of internal policy (54,2% on average in the last three elections), to the detriment of questions that are essentially European, which occupy very minor positions.

**Table 9. Personally, at the time of deciding your vote (or deciding whether to vote or not) in the past elections to the EP, what did you take into account most, or what influenced your decision most?**

	2009	2004	1999	Average
The topics related to the EU and the EP	13,7	17,1	13,4	14,73
The topics related to the situation in Spain	58,6	47,7	56,3	54,2
Both topics equally	16,9	23,3	16,5	18,9
Does not know	7,1	9,2	10,8	9,03
No reply	3,7	2,8	3,0	3,16

Source: CIS. Studies 2567, 2807.

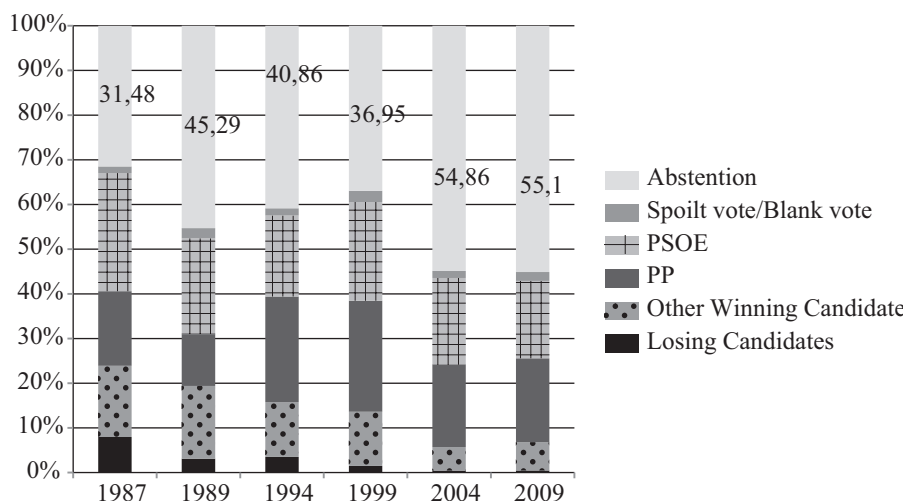
In short, this lack of stimulus, of interest for the campaign, plus the re-course of the mechanisms of mobilization typical of the national party offer, results in a lower participation of the electorate and, therefore, in an almost progressive increase in abstention. Nevertheless, ratings lower than 50% in the last two elections place Spain within the average of the member States of the EU,<sup>19</sup> a level of participation that has, at the same time, been descending within the framework of the “normal” behavior of the European electorate.<sup>20</sup>

If we consider the electoral behavior beyond the data yielded by the results, Spanish citizens show higher rates of fidelity to their preferred party options. Electoral behavior in this type of scenario reveals a shortage of sophisticated voters, rewarding a vote of nature more expressive and answering to “more uninhibited guidelines” (Vanaclocha, 1997: 78). That is, they support the party they consider most congenial instead of supporting the candidatures that can

<sup>19</sup> The average abstention in the European elections of 2009 was 56,45%. Source: <http://www.europarl.europa.eu>.

<sup>20</sup> In this sense we can mention the research of Mattila (2003) and Franklin (2005), authors who analyze the evolution of the European citizens electoral behavior. They point out that in the countries that hold their first elections after admission to the EC there is a participation between 8 and 11 points higher than in the following elections, which descend in successive elections until it reaches levels lower than in the national elections.

**Graph 1. EP Election: Spain results (registered voters)**



Source: Own elaboration. Data from Ministry of the Interior.

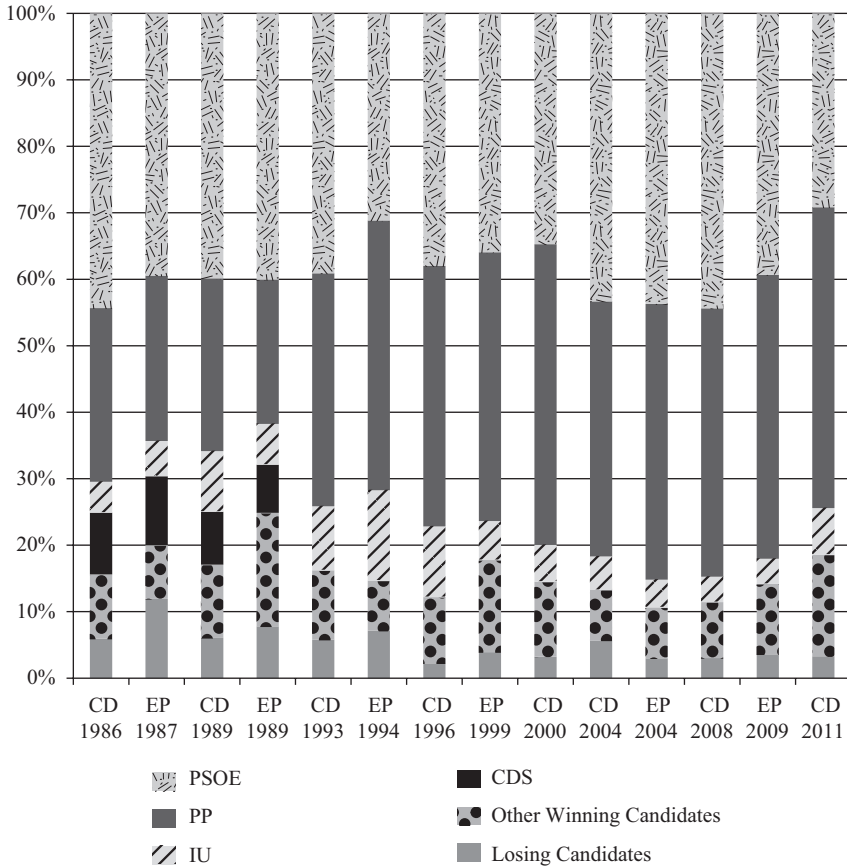
be of most interest to them, or looking for other forms of “punishment”, a typical exercise in “second order” situations.

In this sense, the post-electoral studies are clear: a great majority of the voters exclude from their electoral choices the party options different from those already known. That is, just as happens with the guidelines for European electoral behavior (Franklin, 2005), Spanish voters vote essentially as they would in national elections. As can be seen in Graph 2, barely a third of the voters take into consideration party options different from the habitual ones. Nevertheless, if we review the electoral results, this fact has not passed over into a significant change in the configuration of the resulting party system.

**Table 10. I am now going to read you two opinions on voting. Please tell me which best expresses your own opinion.**

	2009	2004	1999	Average
The normal thing is to vote for the same party in the European and in the general elections.	53,0	57,2	50,7	53,63
In the European elections it can be advantageous to vote for a different party from the one voted for in the general elections.	31,1	28,5	34,6	31,4
Does not know	13,9	12,9	13,0	13,26
No reply	2	1,4	1,7	1,7

Source: CIS. Studies 2325, 2564, 2800.

**Graph 2. European Parliament and Congress of Deputies elections compared (popular vote)**

Source: Own elaboration. Data from Ministry of the Interior.

Although some authors relate second order elections to electoral behavior within what has been called the “electoral cycle”, the Spanish case, as we have seen in Graph 2, does not reproduce sufficiently these situations of tactical voting.<sup>21</sup> Although there have been indications of electoral changes in the elections of 1994 and 2009, when an electoral change was advanced that later was confirmed in the legislative elections of 1996 and 2011 respectively,<sup>22</sup> the

<sup>21</sup> In the elections to the EP, we identify as a tactical vote one that is used as a signal, an expression of dissatisfaction, a form of sending a message to the party that the citizen normally votes for by abstaining or voting for a different party (Marsh, 1998:593).

<sup>22</sup> To confirm the change of the electoral cycle, the results of the local elections are traditionally used, mainly because, unlike what occurs in elections to the EP, these results do translate into quotas of effective power. Thus the local elections of 1995 and 2011 anticipate the defeat of the party in government, and, therefore, the change of cycle.



minimal relevance that the political parties accord to this kind of elections does not permit them to be classified under the category of “*quasi-switching*” (Oppenhuis, van der Eijk and Franklin, 1996). Or we could also call it a “vote of alarm” that the voters do not make use of to express their disconformity with the policies and actions of the Government or the opposition parties by voting for a party they would not normally choose, principally because of the very slight reaction obtained after this kind of electoral “turnover”; given the little practical relevance of the European elections, both in 1994 and 2009 (the party in government lost), no substantial change in the governmental policies is perceived.

In view of all the above, we can affirm that the behavior offered by the electorate and the party, as well as the configuration of the competition of the party system, offers a limited model of second order elections. Although they agree with some of the indicators, such as the more than evident descent of electoral participation and the practically inexistent European political debate, the results do not really permit to affirm the existence of elections in which the “vote of alarm” is used. In spite of the very slight importance according to this type of elections, we do not find a large number of voters who want to support different party options, reproducing the electoral behavior of the national elections with, for example, similar levels of concentration of votes (Electoral 74,65-72,70 / Parliamentary 85,96-81,12) or competitiveness (Electoral 8,65-8,92 / Parliamentary 9,81-12,34) in the elections to the Congress of Deputies. Only if we identify abstention as a critical reaction does this “opt-out” option constitute the most marked change in electoral behavior in the elections to the EP.

## 9.5 Efficiency and functionality of the electoral system applied. Conclusions

The six elections held to date have been a test of the system applied in the election of the Spanish representatives to the EP and have permitted the political consequences it has provoked to be known. In summary and as our conclusions, we offer the following observations:

- The electoral system has functioned in practice quite normally without provoking conflicts or being questioned by any relevant political entity, not even in relation to its most sophisticated aspect, the “polyhedral lists”.
- The electoral system has helped to achieve satisfactory levels of effective proportional representation: moderately high levels that tend to rise as the Spanish quota of seats increases and as the fragmentation of

the electoral offer diminishes as well. The implementation of the single district and the inexistence of legal barriers to obtaining seats have, therefore, met this objective.

- The single district has hardly presented any problems for the existence of an effective plurality of electoral offers or for the competitive presence of the nationalist parties established in certain autonomous communities. In this sense, the “polyhedral” form of closed and blocked lists, because of its compensatory character, has proved to be functional.
- The electoral system has institutionalized the potential conflict that would have been generated by the exclusion of the nationalist parties, thereby making viable and normalizing the presentation of candidatures of inter-territorial electoral coalitions, which have even enjoyed certain stability over time.
- The system has made possible the presence – limited but significant – in the EP of minority formations of an opportunistic character (*flash parties*) or even anti-system ones (is significant, in this respect, HB or EH), without this having distorted the general framework of political representation. This is a result that is considered acceptable by the principal political actors, and we should interpret it in the framework of a tendency, characteristic of Spanish political culture, favorable to options of institutionalization, which might be unthinkable in other States.
- In spite of the differences existing between the elections to the EP and to the Congress of Deputies regarding the electoral system, the electoral offer or electoral behaviors, it must be emphasized that the system of parliamentary parties reflected in the Spanish representation in the EP does not undergo substantial changes in comparison with that of the Congress of Deputies. This is demonstrated by the corresponding indices of fragmentation, the actual number of parties, the concentration of the vote (bipartisanship) and competitiveness.
- The Spanish elections to the EP present some of the characteristic features of what are understood as second order elections (greater rates of abstention and clear prevalence of national over European debate), but this is not the case with other characteristics. Specifically, there is no substantial erosion of the vote for the party in government or of the vote for the two main parties; nor can the results of the European elections be linked exactly to the national electoral cycles, (a characteristic that is more typical of Spanish local elections). All this leads us to consider that the Spanish elections to the EP conform to a limited model of second order elections, a consideration ratified by the preceding observation.

- The elections to the EP, within the framework of the electoral cycle, have anticipated certain changes that have been made at the national electoral level, but the scarce importance afforded them and the faint repercussion that they have in the modification of governmental policies limit their impact to the role of observer of the political climate, to that of a formalized survey of internal political preferences.

The next European elections will be held in May 2014, in a situation very probably affected by an economic crisis with grave social consequences. In this context Europe takes on an unprecedented importance for Spanish citizens (and not only the Spanish citizens). With the elections just a few months away, the European institutions and actors are seen as an opportunity and as a threat, and now, in this double dimension, with nearness and a concern qualitatively different from those of previous occasions. In this context there will doubtless appear new unknowns regarding the benefits of the system of representation of the European and Spanish citizenry in the EP. We cannot rule out significant changes in the behavior of the voters and in the strategies of the political actors. This may be a horizon of uncertainty for the citizens, but also one of maximum interest for the analysts.

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# European Parliament Elections in Spain: on the Proportionality and Representation of Nationalist and Regionalist Parties

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Ever since the first elections for the European Parliament (EP) held in Spain in 1987, the debate about the electoral system has been inexorably linked to criticisms from nationalist and regionalist parties.<sup>1</sup> Since the whole country forms a large single-district, their arguments lie on the unfairness of the electoral system for allegedly over-representing major parties and penalizing much smaller parties, particularly those whose electorates are limited to only a specific region of the Spanish territory. According to their claims, the current system forces nationalist parties to join occasional and often unnatural electoral coalitions with parties belonging to very disparate families. For this reason, nationalist parties have been demanding the substitution of the current single-district model by several regional districts whose borders should match those of the Spanish regions (or *comunidades autónomas* – autonomous communities).<sup>2</sup>

In this chapter, we will examine the extent to which the design of the nationwide electoral constituency is biased against the chances of nationalist parties. By computing some basic simulations, we will therefore analyse the impact of the Spanish electoral system for the EP elections. We aim to discuss the consequences of the eventual modification of the current magnitude by

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<sup>1</sup> In this paper, and for the sake of brevity, we will use the terms *nationalist parties* for referring either to regional, nationalist, and/or regionalist parties.

<sup>2</sup> See for instance the proposal submitted by the nationalist coalition *Convergència i Unió* (CiU) at the Congress of Deputies for changing the 1985 electoral law; *Boletín Oficial de las Cortes Generales, Congreso de los Diputados*, # 25-1, B, 11 April 2008.

alternative smaller regional districts. These simulations will help us to verify the validity of the arguments defended by nationalist parties and will shed some light on the debate about the representation of region-based parties in supranational political institutions.

## 10.1 The electoral system for the European Parliament in Spain

In Spain, the elections to the EP are similar to most other European countries regarding its condition as “second-order elections” (Reif and Schmitt 1980; Schmitt 2006). As explained in other chapters of this book, this *second-orderness* generally determines that turnout is much lower than in national elections, that incumbent parties suffer decreasing levels of electoral support, and that both opposition and smaller and/or more extremist parties enjoy substantive increases in their vote. The Spanish case also shares with many other European countries a set of features differentiating the electoral system for the EP and the system being applied to national elections. In fact, the number of differences between those two electoral systems outweighs that of similarities (Montero and Cordero 2009; Montero, Llera, and Torcal 1999). These differences and similarities are shown in Table 1, and discussed in more detail in this section (Hix 2004):

**Table 1. Electoral systems for the Congress of Deputies (2011) and the European Parliament (2009) in Spain**

Elements	Congress of Deputies	European Parliament
Size of Chamber	350	736
Seats available	350	50
Districts	52	1
Other sub-national constituencies	No	No
Apportionment	2 seats per province/district, 1 more according to the quota of 248: population in the province	Established by the treaties
Ratio seats/electorate	102.227	709.851
Electoral formula	D’Hondt	D’Hondt
Threshold	3% at district level	None
Lists	Closed	Closed
Effects	Majoritarian and conservative	Proportional
Disproportionality index <sup>a</sup>	7.3 <sup>b</sup>	2.4 <sup>c</sup>

<sup>a</sup> Based on Gallagher (1991) index  $DI = \sqrt{[\frac{1}{2} \sum (s_i - v_i)^2]}$ , where  $v_i$  is the percentage of votes for every party, and  $s_i$  is the percentage of seats.

<sup>b</sup> In the November 2011 general elections.

<sup>c</sup> In the June 2009 European Parliament elections.



(i) In contrast to the 52 provincial constituencies and 350 seats in the Congress of Deputies, the whole country forms a single-district in the EP elections. This was the model followed by 21 out of the 27 countries belonging to the European Union (EU) in 2009. The number of seats to be distributed in Spain has varied from a maximum of 64 in 1994 and 1999 to 50 in the 2009 elections. In these latter elections, Spain was the fifth country by number of seats (Poland also distributed 50), only below that of Germany (99 seats), France (72), Italy (72), and the United Kingdom (69).

(ii) One of the most relevant characteristics of the electoral system for the Spanish Parliament lies both in its majority and conservative biases (Lago and Montero 2005). Those deviations result from the combination of an acute malapportionment and a majority of small-magnitude districts, precisely in the most conservative provinces. However, the design of the EP electoral system points to opposite effects. The existence of a single-district avoids the over-representation of least populated areas and obviously produces a fair and proportional relationship between votes and seats (Montero and Cordero 2009).

(iii) In national elections, the electoral threshold of 3 per cent of valid votes at the district level has been applied very rarely since the 1977 founding elections. Despite the much bigger magnitude of the EP single-district, Spanish legislators decided not to establish any electoral barrier to prevent the access of minor parties. This has been the strategy followed by most EU countries. In 2009, only 13 of them included thresholds that varied between 3 and 5 per cent.<sup>3</sup>

(iv) The two common elements between the electoral systems for the Spanish Parliament and the Spanish representation to the EP reside in the formula and the lists. Both use the D'Hondt formula for the assignment of seats and also closed lists. D'Hondt is the favourite electoral formula for the EP, being applied in 15 countries, and closed lists are in use in only nine countries, whereas in 14 countries voters can change the order of the candidates and in the other three, lists are open and allow the *panachage* system.

In short, the Spanish electoral system for the EP is proportional, has a single nationwide constituency, does not include any threshold, and excludes any variant of preferential voting. Thus, the high magnitude of the electoral district should produce fairly high levels of proportionality (Lijphart 1994; Taagapera 2007; Carey and Hix 2011). This is clear from Table 2, which reproduces the results of the last election for the EP, held in June 2009. The two major parties were able to receive almost 81 per cent of the valid votes and 86 per cent of seats. The impact of the electoral system is roughly measured in the last column of Table 2, where

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<sup>3</sup> Those countries were Austria, Czech Republic, France, Germany, Greece, Lithuania, Poland, Romania, Slovakia, Slovenia, and Sweden.

differences (in percentage points) between seats and votes are included. Again, the two main parties are over-represented. In contrast, all other parties suffer a certain infra-representation. Nonetheless, the advantage and disadvantage ratios of the electoral system for the EP are much lower than those for the Congress. In the 2011 general elections, for instance, the level of over-representation achieved by the conservative Partido Popular (PP) as the winning party was +8.5 percentage points, whereas the left-wing coalition Izquierda Unida (IU) was punished with an infra-representation of -3.8; the results of nationalist parties in this regard were equiproportional. Table 3 contains the basic indicators of disproportionality, fragmentation, and competitiveness for the series of elections to the EP since the very first one held in 1987. The sustained decline in the disproportionality indices throughout the period is remarkable. This result has also been underlined in the case of the Spanish Parliament as the consequence of the learning process of both voters and parties in combination with the increasing competition among parties at different election levels (Riera and Montero 2010).

**Table 2. Elections for the European Parliament in Spain, 2009**

Parties/ coalitions	Votes		Seats		Differences % seats- % votes <sup>i</sup>
	In thousands	%	<i>N</i>	%	
PP <sup>a</sup>	6.670	42.1	23	46	+3.9
PSOE <sup>b</sup>	6.142	38.8	21	42	+3.2
CEU <sup>c</sup>	808	5.1	2	4	-1.1
IU-ICV-EUiA-BA <sup>d</sup>	588	3.7	2	4	-0.3
UPyD <sup>e</sup>	452	2.8	1	2	-0.8
Edp-V <sup>f</sup>	395	2.5	1	2	-0.5
Others <sup>g</sup>	781	5.0	0	-	-
Total <sup>h</sup>	15.836	100	50	100	

<sup>a</sup> Partido Popular.

<sup>b</sup> Partido Socialista Obrero Español

<sup>c</sup> Coalición por Europa (Convergència i Unió, Partido Nacionalista Vasco, Bloc Nacionalista Valencià, Unió Mallorquina, Unió Menorquina, Coalición Canaria y Partido Andalucista).

<sup>d</sup> Izquierda Unida, Iniciativa per Catalunya, Esquerra Unida i Alternativa y Bloque por Asturias: la Izquierda.

<sup>e</sup> Unión Progreso y Democracia.

<sup>f</sup> Europa de los Pueblos-Verdes (Esquerra Republicana de Catalunya, Bloque Nacionalista Galego, Aralar, Eusko Alkartasuna, Chunta Aragonesista, Entesa per Mallorca, Partido de El Bierzo y Confederación de Los Verdes).

<sup>g</sup> Distributed among 29 other electoral lists, mostly nationalists or regionalists.

<sup>h</sup> Turnout was 44.9% of valid votes; white and blank votes were 2.01%.

<sup>i</sup> In percentage points; positive signs denote over-representation; negative signs, infra-representation.

Source: Spanish Ministry of Interior.

**Table 3. Indices of proportionality, effective number of parties, and competitiveness in European elections in Spain, 1987-2009**

Indices	European Elections					
	1987	1989	1994	1999	2004	2009
Disproportionality <sup>a</sup>	9.0	6.3	5.8	3.9	2.7	3.3
Effective number of parties <sup>b</sup>						
Electoral	4.4	4.6	3.6	3.4	2.7	2.9
Parliamentary	3.2	3.6	3.0	3.1	2.4	2.6
Competitiveness <sup>c</sup>						
Electoral <sup>c</sup>	14.4	18.2	9.3	4.4	2.3	3.4
Parliamentary <sup>d</sup>	18.3	20.0	9.4	4.7	1.9	4.0

<sup>a</sup> Based on Gallagher (1991) index  $DI = \sqrt{[\frac{1}{2} \sum (s_i - v_i)^2]}$ , where  $v_i$  is the percentage of votes for every party, and  $s_i$  is the percentage of seats.

<sup>b</sup> Based on Laakso y Taagepera (1979) index, following the formula  $N = \frac{1}{\sum_{i=1}^n p_i^2}$ , being  $p$  the share of votes, or the share of seats, of the party  $i$ .

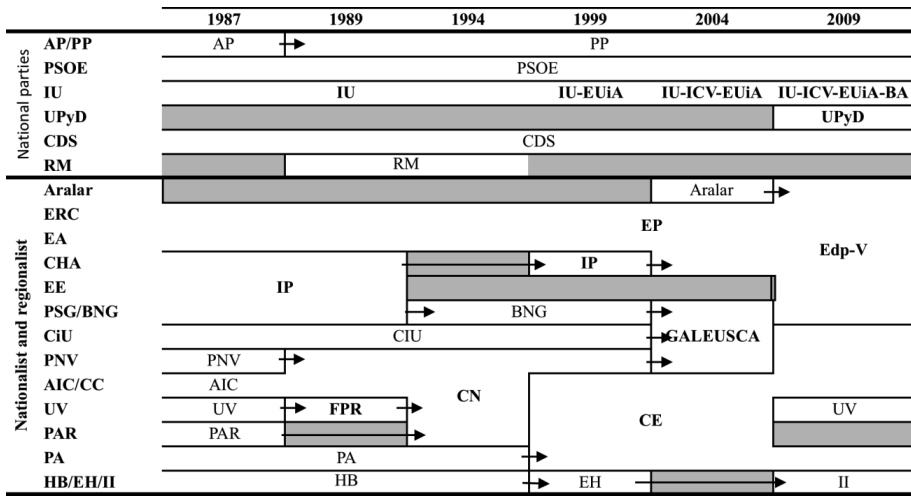
<sup>c</sup> Difference in the share of votes of the two main parties; the lower the index, the higher the electoral competition.

<sup>d</sup> Difference in the share of seats of the two main parties; the lower the index, the higher the parliamentary competition.

The formation of coalitions in the case of nationalist parties is another consequence of this process (Tavits and Annus 2006; Taagepera 2007). The single constituency has provided nationalist parties with incentives to implement different strategies of electoral coalition-making in order to maximize their chances of representation at the EP (Molins 1989). Although the magnitude of the district and the absence of any kind of threshold should favour the electoral prospects for those smaller parties, their chances to receive seats are also challenged by their low share of votes at national level and the vote concentration achieved by the two main parties. As stated in Figure 1, while national parties have avoided coalescing in almost every election, nationalist parties have made different coalitions depending on ideological rather than territorial proximity as they have also been learning the effects of the electoral system. On the other hand, these coalitions and the subsequent reduction in the psychological effects of the electoral system have also lowered the party supply, as measured by the indices of effective number of electoral and parliamentary parties included in Table 3 (Laakso and Taagepera 1979). In the 1984 European elections, the relatively high party-fragmentation denotes both the permissiveness of the electoral system and the nature of the second-order elections. In the 2009 European elections however, the growing competition between PSOE and PP and the increasing coordination among small nationalist parties through the formation of electoral coalitions reduced these rates (Torcal and Font 2012). Lastly, the indicators of electoral and parliamentary

competitiveness, that measure the distance between the two main competing parties in the party system, clearly shows how this distance has also been considerably reduced. This denotes as well the evolution from a predominant party system, in which the Partido Socialista Obrero Español (PSOE) was the dominant party and for over ten years enjoyed superiority over its main competitor, the conservative PP, to a subsequent model where the swinging between PSOE and PP depends on a reduced share of votes (Montero 2008).

**Figure 1. Parties<sup>a</sup> and coalitions<sup>b</sup> in European elections in Spain, 1987-2009<sup>a</sup>**



<sup>a</sup> Parties were the following:  
 AIC: Agrupaciones Independientes de Canarias.  
 AP: Alianza Popular.  
 BNG: Bloque Nacionalista Galego.  
 CC: Coalición Canaria.  
 CDS: Centro Democrático y Social.  
 CHA: Chunta Aragonesista.  
 CiU: Convergència I Unió.  
 EA: Eusko Alkartasuna.  
 EE: Euskadiko Ezkerra.  
 EH: Euskal Herritarrok.  
 ERC: Esquerra Republicana de Catalunya.  
 HB: Herri Batasuna.  
 II: Iniciativa Internacionalista.  
 IU: Izquierda Unida.  
 PA: Partido Andalucista.  
 PAR: Partido Aragonés.

PNG: Partido Nacionalista Galego.  
 PNV: Partido Nacionalista Vasco.  
 PP: Partido Popular.  
 PSG: Partido Socialista Galego.  
 PSOE: Partido Socialista Obrero Español.  
 RM: Agrupación Ruiz Mateos.  
 UPyD: Unión, Progreso y Democracia.  
 UV: Unió Valenciana.

<sup>b</sup> Coalitions were the following:  
 CE: Coalición por Europa.  
 CN: Coalición Nacionalista  
 Edp-V: Europa de los Pueblos-Verdes.  
 EP: Europa de los Pueblos.  
 GALEUSCA: Galeusca - Pueblos de Europa.  
 IP: Izquierda de los Pueblos.

## 10.2 Proportionality, (regional) representation, and nationalist parties

At the European level, 21 out of the 27 countries of the European Union, including Spain, have adopted single-district. Only Belgium (4),<sup>4</sup> France (8), Ireland (4), Italy (5), Poland (13), and the United Kingdom (12) had multiple districts in the 2009 EP elections. In Spain, the decision to switch from the 52 districts for the parliamentary elections to the single-district for the EP has been accompanied by a protracted debate among parties. Ever since the very first European elections held in Spain in 1987, the issue of the type of district has been always contested by regional, regionalist, and nationalist parties. When the electoral law for the EP was drafted by the Congress, the incompatible strategies of nationwide parties – favouring a single constituency – and nationalist parties – demanding regional districts in accordance with autonomous communities – made it impossible to reach a consensus. Every nationwide party, regardless of its size and location within the party system, supported the single-district because of its contribution to the proportionality of electoral results and its basic agreement with the very nature of the EP as an assembly for representing *people* more than territories.<sup>5</sup> On the other hand, nationalist parties strongly defended the necessity of breaking down the single constituency into a number of districts suited to the regional territories in which these parties compete: for them, the principle of proportionality should become subordinated to the principle of regional autonomy declared by the Spanish Constitution (Santaolalla 1987: 95-96).

As a consequence, nationalist parties have been demanding a radical change of the electoral system by entering diverse combinations of autonomous communities as a sort of *natural* district for the European elections (Rubio and Biglino 2009: 161 ff.). Following a series of legal and political initiatives, the issue was brought to the Constitutional Court by the Parliament of the Basque Country; the Court declared in 1991 the constitutional validity of both national and regional district designs, and also the freedom of the national legislator to choose any of them.<sup>6</sup> In most European elections, the manifestos presented

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<sup>4</sup>There are four electoral districts, but only three electoral colleges, because in the Brussels bilingual area and its surroundings it is possible to vote for French or Dutch lists (belonging to one of the two electoral colleges); see [www.elections2009.belgique.be/fr](http://www.elections2009.belgique.be/fr). Last accessed on 10 July 2013.

<sup>5</sup>Art. 1 of the *Act Concerning the Election of Representatives of the Assembly by Direct Universal Suffrage*, passed by the Council on 20 September 1976, stated that “the representatives of the Assembly of the peoples of the States brought together in the Community shall be elected by direct universal suffrage”; see *Official Journal L 278*, 8 October 1976, pp. 5-11.

<sup>6</sup>The sentence is reproduced at the *Boletín Oficial del Estado*, 64, 15 March 1991.

by nationalist parties contained the substitution of the single constituency by a variety of proposals; most of which consisted in at least establishing the regional district for the autonomous community identified with the party making the proposal. In the 2009 contest, for instance, the Partido Nacionalista Vasco (PNV) in the Basque Country, *Convergència i Unió* in Catalonia, *Coalición Canaria* (CC) in the Canary Islands, the *Chunta Aragonesista* (ChA) in Aragon, and the *Partido Andalucista* (PA) in Andalusia, among others, all included in their respective platforms requests for their own regional constituencies.<sup>7</sup> Their rationale underlined different dimensions of representation. For the CiU, the main goal of having regional districts reflecting “the multinational character of Spain” is that they would facilitate “a most genuine representation of the will of voters, particularly the Catalans”.<sup>8</sup> For the PA, the relevance for Andalusia of having its constituency lay in the possibility of guaranteeing “the information and debate about its situation, and its own representation for defending its interests within the European institutions, particularly in the case of the European Parliament”.<sup>9</sup> And the PNV criticized (against all evidence) that the “single-district designed by the [Spanish] electoral law to the European parliament was the exception among member states”. The party attributed this alleged anomaly to the strategy of diluting the projection in Europe of the communities making up the *Estado de las autonomías*, and blamed it for the low turnout in European elections. As a consequence, the PNV defended a new European legislation in which electoral districts should reflect “the respect and coherence with the internal territorial distribution [in Spain] *vis-à-vis* the elections for the European Parliament”.<sup>10</sup> Finally, at the national parliamentary level, several nationalist parties have persistently attempted to voice their demands for regional districts. As far as we know, the last occasion was in 2008-2010, after the Congress set up an *ad hoc* parliamentary committee for revising the 1985 current electoral law. CiU presented some initiatives based upon an EP recommendation by which member states should both acknowledge “regional specificities” for establishing regional districts, and particularly so in the case of states having more than twenty million inhabitants; among other advantages for the goal of representation, the new design of regional districts was enhanced as a perfect tool for achieving a closer

<sup>7</sup> These platforms have been collected from the webpage Ciudadano100, *Programas electorales, Elecciones al Parlamento Europeo 2009*, at [www.ciudadano100.com/programas.html](http://www.ciudadano100.com/programas.html), last accessed on 29 June 2013.

<sup>8</sup> CiU, *Programa Electoral CiU, Elecciones Europeas 2009*, p. 73, in Ciudadano100, *Programas electorales*.

<sup>9</sup> PA, *Elecciones Europeas 2009. Programa*, p. 3, in Ciudadano100, *Programas electorales*.

<sup>10</sup> PNV, *Programa Electoral Elecciones Europeas-09*, p. 5, at [http://www.eaj-pnv.com/documentos/programa-elecciones-europeas-20092014\\_8515.html](http://www.eaj-pnv.com/documentos/programa-elecciones-europeas-20092014_8515.html), last accessed 29 June 2013.

relationship between voters and members of the EP.<sup>11</sup> At both regional and national levels, those initiatives have been systematically rejected on the basis of the superiority of the principle of proportionality over any other related to the territorial representation of specific parties.

Is this really the case? To what extent does maintaining the single-district produces more proportional results than any other district design favoured by nationalist parties? In the next section, we will consider these questions by designing and applying a number of simulations, which should differentiate the hypothetical effects of distinctive types of districts on electoral results received by both nationwide and nationalist parties at European elections.

### 10.3 Electoral simulations: The real system and three alternative models

When defending the reform of the magnitude of the districts, nationalist parties' proposals used to be based on calculations that allegedly aimed at maximizing both their ideological preference of having their respective regions as their natural and only constituencies and their electoral results. These two aims should come together, or at least the latter should prevail over the former. Parties are, of course, rational actors, and the strategy of winning votes and consequently seats is superior to pursuing solely ideological goals even at the price of both votes and seats. While nationwide parties underline proportionality (of which representation is a sequitur), nationalist parties prioritise their actual presence in their regional districts even at the prize of losing representation given the likely decrease in proportionality. Nationalist parties seem thus to overestimate their willingness to represent their regions and to underestimate the permissiveness of districts which, in this trade-off, may have become smaller. Being apparently aware of these risks, nationalist parties have proposed some alternative models. Table 4 compares the different magnitude of districts resulting from the apportionment criteria used in the current electoral system and those analysed in this chapter, based on the proposal of nationalist parties. Each of them contains distinctive regional criteria for designing the new apportionment, and therefore different district magnitudes.

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<sup>11</sup> The bill submitted by CiU to the Congress of Deputies is included in *Boletín Oficial de las Cortes Generales, Congreso de los Diputados*, # 25-1, B, 11 April 2008. And the EP Resolution A4-0212/98 was issued on 2 June 1998 by the Committee on Institutional Affairs, being rapporteur Georgios Anastassopoulos, on “ a proposal for an electoral procedure incorporating common principles for the election of the Members of the European Parliament”; it is at [www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1998-0212&language=MT](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A4-1998-0212&language=MT), last accessed on 29 June 2013.

**Table 4. Seats in the elections for the European Parliament, 2009, and in three alternative models of didtrict apportionment**

Districts	2009 <sup>a</sup>	Model A <sup>b</sup>	Model B <sup>c</sup>	Model C <sup>d</sup>
Nationwide	50			National tier – 14
Regional	-			Regional tier – 36
Andalusia	-	9	7	2
Basque Country	-	3	3	2
Catalonia	-	8	6	2
Galicia	-	3	3	2
Aragon	-		2	2
Asturias	-		2	2
Balearic Islands	-		2	2
Canary Islands	-		2	2
Cantabria	-		1	2
Castile and Leon	-		3	2
Castile – La Mancha	-	27	2	2
Extremadura	-		2	2
Madrid	-		5	2
Murcia	-		2	2
Navarra	-		1	2
La Rioja	-		1	2
Valencia	-		4	2
Ceuta	-		1	1
Melilla	-		1	1
Total	50	50	50	50

<sup>a</sup> This is a current electoral design, being in place since the 1987 electoral law for the EP.

<sup>b</sup> Only five districts, one for each of the four “historical” communities, and the fifth for the rest of them, plus the cities of Ceuta and Melilla.

<sup>c</sup> Seats should be distributed among the 17 communities, plus another two to the cities of Ceuta and Melilla.

<sup>d</sup> Seats should be assigned in two tiers: in the first, each community should have two seats, plus another two for the cities of Ceuta and Melilla, which will be distributed according with the regional share of party votes; at the national tier, the 14 remaining seats would be distributed among parties on the basis of their share of vote at the national level.

Proceeding from the simplest to the most complex proposal, we have designed four models and labelled them as models *A* (substituting the current single constituency by five districts), *B* (proposing 19 districts, one per each autonomous community plus two others for the cities of Ceuta and Melilla), and *C* (complementing the current design with an allocation of seats in two



tiers). We will undertake a simulation with each model to consider alternative results for the six European elections held so far since 1987. As is well known, those results should be received *cum grano salis* as simulations deny the *ceteris paribus* clause, which is essential in any exercise of comparative statics. In the simulations, electoral results have already incorporated choices by voters which could have actually been different had the criteria used in the simulation been taken into account by voters. Moreover, we will discuss the outcomes of simulations focusing only on the mechanical effects of the electoral system. In spite of all those caveats, the three simulations that will be summarised in the following pages will shed some light on the consistency of arguments put forward by nationalist parties when attempting to strengthen their regional representation in supranational parliamentary institutions. But before entering into simulations, let us analyse how the real electoral system for the EP works.

*The real model: the single constituency*

This model is based upon the current Spanish electoral system for the European Parliament as described in the first section of this chapter. As such, it will be taken as the baseline for comparisons with the three simulations that follow. In this model, and given the high magnitude of the single constituency with its 50 seats, both voters and parties have gradually learnt to vote efficiently. As for the voters, the last column in Table 5 is clear evidence of how the decrease of disproportionality evolved with their voting being concentrated on parties with real chances of getting at least a seat. This applies particularly for the most relevant nationwide parties both in general and European elections. All of them – except the Agrupación Ruiz Mateos (ARM), a populist party which only competed in those two elections – were able to get seats, even in the case of the minor parties such as IU, Centro Democrático y Social (CDS), and more recently Unión Progreso y Democracia (UPyD).

Nationalist parties were forced to learn to coalesce with other similar parties in order to minimize the restriction of their regional scopes when competing for seats in a district as big as the whole country. For this reason we have included in Table 5, which also shows the seats obtained by parties in every European election, two necessary variations to make our simulations understandable. Firstly, the seats are assigned to *single* parties, and not to coalitions. To do so, we have given the seat to the party within the coalition that received the highest share of votes in its own region. Secondly, when the number of parties forming a coalition is larger than that of the seats actually received, those seats were *divided* among parties as if they were

to be shared among the coalesced parties. This is why Table 5 shows the (otherwise impossible) fractions of each seat distributed among two or more parties during the legislative session according to the arrangements of the coalition. This is the case, for instance, of the Coalición Nacionalista (CN) in the 1989 elections, which obtained one seat to be shared by the parties making up the coalition: the PNV enjoyed 0.6 of the seat, the Agrupaciones Independientes de Canarias (AIC, now CC), 0.2, and the Bloque Nacionalista Galego (BNG), another 0.2. In practical terms, the agreement was that the PNV candidate would occupy the seat at the EP for 3 years (or 0.6 of the five years parliamentary mandate), and the AIC and BNG for the remaining two years (0.2 each).

**Table 5. Number of seats in elections for the European Parliament in Spain, per party and election, 1987–2009<sup>a</sup>**

Years	National parties						Nationalist parties										Number of seats	Index of disproportionality <sup>i</sup>	
	PP <sup>b</sup>	PSOE	IU <sup>c</sup>	UPyD	CDS	ARM	CiU	ERC	PNV	HB <sup>d</sup>	EA <sup>e</sup>	EE	BNG <sup>f</sup>	PA	CC <sup>g</sup>	PAR <sup>h</sup>			UV
1987	17	28	3	-	7	-	3	0	1	1	0	0	0	0	0	0	0	60	9.0
1989	15	27	4	-	5	2	2	0.5	0.6	1	0.5	1	0.2	1	0.2	0	0	60	6.3
1994	28	22	9	-	0	0	3	0	1	0	0	-	0	0	0.3	0.3	0.3	64	5.8
1999	27	24	4	-	0	-	3	0.5	1	1	0.5	-	1	0.5	0.5	0.5	0.5	64	3.9
2004	24	25	2	-	0	-	1	0.6	1	-	0.2	-	0	0	0	0.2	0	54	2.7
2009	23	21	2	1	0	-	1	0.5	1	0	0.3	-	0.2	0	0	0	0	50	2.4

<sup>a</sup> Decimals indicate that parties included within a coalition shared their seat with one or several of the parties also in the coalition. See Table 2 and Figure 1 for full names of parties.

<sup>b</sup> PP refers to AP in 1987 elections.

<sup>c</sup> IU refers to IU-EUiA, IU-ICV-EuiA, and IU-ICV-EUiA-BA.

<sup>d</sup> In 1999 HB refers to EH, in 2009, to II.

<sup>e</sup> The shared seat of EA in 2009 belongs to Aralar (joining the coalition with EA).

<sup>f</sup> The shared seat of BNG in 1989 belongs to CG (Coalición Galega).

<sup>g</sup> CC refers to CC and AIC.

<sup>h</sup> The shared seats of PAR in 2004 and 2009 belong to ChA.

<sup>i</sup> See Table 3.

With the exception of the two major nationalist parties – CiU and PNV – the remaining regional parties did not get a *full seat*, as it were, in the last two elections without being integrated into a coalition. Only exceptionally smaller parties such as BNG, Herri Batasuna (HB), and PA were able to achieve it during the 1980s and 1990s. In the case of a single candidacy, the representation of PNV remained almost constant with one deputy at the EP, while the representation of CiU did vary between three and only one seat. In contrast, nationwide parties did not need to resort to coalitions. Among them, the electoral competition between the PP and the PSOE as the two major parties changed from the hegemony of PSOE during the 1980s to the much higher levels of competitiveness between them since 1994. Although the electoral contests for the EP have been performing as a sort of *primary elections* for the subsequent general elections, their results have shifted in parallel with changes in the national arena. As a minor party, IU has always been severely under-represented by the majoritarian biases of the electoral system for elections to the Congress of Deputies. However, it has achieved a better balance between its share of votes and seats in the EP, and has been represented at the EP ever since the first 1987 elections precisely because of the purely proportional design of the single nationwide constituency, which enables a better representation of small parties with geographically dispersed support; the same applied to UPyD in 2009.

As mentioned earlier, the current results in terms of seats, included in Table 5, will be used as a baseline for comparison with the three simulations that will be performed with three selected models of district design. In each of these models only the size of the district will be manipulated, keeping constant the remaining elements of the electoral system (i.e., the size of the delegation to the EP, the electoral formula, and the legal threshold). By doing so we hope to be able to examine the different effects of district design on the gains and losses in terms of seats for Spanish parties at the EP.

#### *Model A: five regional districts*

In the 2009 European elections, 21 out of 27 countries coincided in including in their electoral systems a single constituency. Only Belgium in 1994, France in 2004, and Italy in 1999 reformed their electoral systems in order to increase the number to 4, 8, and 5 districts, respectively. In France and Italy their rationale was to group smaller regions into bigger districts, while Belgium chose to distribute their seats among its three traditional linguistic communities, with Brussels as a special district.<sup>12</sup> In Spain, model *A*, proposed by

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<sup>12</sup> See footnote 4.

several nationalist parties,<sup>13</sup> sets five districts for the European elections: four for each of the so-called *historical* communities (or *nationalities*), Catalonia, the Basque Country, Galicia, and Andalusia to a lesser degree, and a fifth for the remaining 13 communities. Their goals were twofold. On the one hand, to adjust the wide panoply of electoral activities for the EP to the peculiarities of each of these communities; on the other, to avoid the electoral coordination with other nationalist parties into circumstantial and perhaps *unnatural* coalitions. It is a somewhat hybrid design, in which parties defending it propose also that other communities could voluntarily ask to become their own constituency. For undertaking our first simulation, we have apportioned seats to those five districts according to a proportional distribution of their population.

To what extent do the results in this model match the actual distribution of seats included in Table 5? Despite the goals of nationalist parties to prioritise (regional) representation over proportionality, the results in Table 6 are not entirely those to be expected (Latner and McGann 2005). The PSOE is in the winning side by the change from one single-district to five districts: it would add one seat in three of the elections – even three additional seats in 1989 – although it would lose one representative in 1994, when its share of the vote was the lowest in the series. Those gains are mainly the consequence of the balanced representation of regions with many seats that have traditionally supported PSOE, such as in Andalusia and Catalonia. In contrast, PP’s representation is relatively less notorious, with increments between one and two seats, but keeping its actual number in half of the elections. Smaller nationwide parties (IU, CDS, ARM, and more recently UPyD) would lose one seat on average in every election, while IU would lose two in 2009. The fate of nationalist parties would depend upon their size. While in Catalonia (CiU and ERC) and the Basque Country (PNV and HB) their main nationalist parties would increase their seats marginally – but clearly, the smaller parties would lose in the Basque Country (EA and EE), Galicia (BNG), Andalusia (PA), and in the communities making up the residual district such as Aragon (PAr), and Valencia (UV).

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<sup>13</sup> Those were the most relevant ones in some autonomous communities; some of them have been quoted in the preceding section of this chapter.

**Table 6. Model A: gains and losses in seats assigned to parties in five districts in elections for the European Parliament in Spain, 1987-2009<sup>a</sup>**

Years	National parties						Nationalist and regionalist parties											Number of seats	Index of disproportionality
	PP	PSOE	IU	UPyD	CDS	ARM	CiU	ERC	PNV	HB	EA	EE	BNG	PA	CC	PAR	UV		
1987	0	1	-1	-	-1	-	1	0	0	0	0	0	0	0	0	0	0	60	7.2
1989	1	3	-1	-	-2	-1	2	-0.5	0.4	0	-0.5	-1	-0.2	0	-0.2	0	0	60	8.4
1994	1	-1	-1	-	0	0	1	0	0	1	0	-	0	0	-0.3	-0.3	-0.3	64	4.0
1999	2	1	-1	-	0	-	1	-0.5	0	0	-0.5	-	0	-0.5	-0.5	-0.5	-0.5	64	4.8
2004	0	1	-1	-	0	-	0	0.4	0	-	-0.2	-	0	0	0	-0.2	0	54	4.2
2009	0	0	-2	0	0	-	1	0.5	0	1	-0.3	-	-0.3	0	0	0	0	50	4.3

<sup>a</sup> Figures are the differences between the actual number of seats received by every party in each election (included in Table 5) and the number of seats obtained after computing the simulation. See Table 2 and Figure 1 for full names of parties.

In short, this alternative design would adversely affect the representation of smaller nationalist parties in the European elections for three reasons. Firstly, it would generally increase the effective barrier of access, preventing the representation of many of these parties (Taagepera and Shugart 1989; Lijphart 1994). Secondly, it would discourage coalitions between parties from different regions – and therefore belonging to different constituencies – and this lack of coordination would also diminish their chances to receive seats. Finally, coalitions among nationalist parties belonging to the same regions would very likely be deemed as unnecessary, additionally reducing the chances of small parties while increasing those of relevant parties within each autonomous community.

#### *Model B: 19 regional districts*

The next simulation is a system with 19 electoral districts (one for each autonomous community, plus the cities of Ceuta and Melilla), following the proposal of parties like PNV,<sup>14</sup> which considers necessary the adaptation of

<sup>14</sup> See the PNV Manifesto to the 2009 EP Elections, p. 7, at [http://www.eaj-pnv.com/adjuntos/pnvDocumentos/8515\\_archivo.pdf](http://www.eaj-pnv.com/adjuntos/pnvDocumentos/8515_archivo.pdf). See also the question posed by the PNV to Government at [www.ianasagasti.blogs.com/mi\\_blog/2009/06/pregunta-a-rubalcaba-sobre-la-abstenci%C3%B3n-en-las-elecciones-europeas.html](http://www.ianasagasti.blogs.com/mi_blog/2009/06/pregunta-a-rubalcaba-sobre-la-abstenci%C3%B3n-en-las-elecciones-europeas.html), last accessed on 3 July 2013.

districts to the “current territorial distribution” of the country. Thus, for each region, at least one seat has been assigned, with the remaining seats proportionally distributed among regions according to their population. In the event of adopting this model, Spain would become the country with the highest number of constituencies for EP elections.<sup>15</sup> This high number of districts and the reduction in the number of seats allocated for Spain for the 2004 and 2009 European elections offer some clues about the negative impact of a model like this for the proportionality of the electoral system (Table 7). Since two deputies would represent most regions, those with less population would become over-represented, and small national parties would suffer a severe under-representation. In the 2009 European elections, for instance, both IU and UPyD would lose their current seat. The PSOE would also suffer both the over-representation of the less populated, and also more conservative regions, and the under-representation of two of the larger regions – Catalonia and Andalusia. In the case of the nationalist parties, it would be CiU and HB who would benefit from the reform, and once again at the expense of smaller parties, which would lose their representation at the EP. Only PA in 1989 would keep its seat, due to the high magnitude of the district in Andalusia.

**Table 7. Model B: gains and losses in seats assigned to parties in 17 regional districts in elections for the European Parliament in Spain, 1987-2009<sup>a</sup>**

	National parties						Nationalist parties										Number of seats	Index of disproportionality	
	PP	PSOE	IU	UPyD	CDS	ARM	CiU	ERC	PNV	HB	EA	EE	BNG	PA	CC	PAr			UV
1987	2	5	-2	-	-5	-	0	0	0	0	0	0	0	0	0	0	0	60	13.3
1989	2	8	-3	-	-4	-2	1	-0.5	0.4	0	-0.5	-1	-0.2	0	-0.2	0	0	60	14.9
1994	5	0	-5	-	0	0	0	0	1	0	-	0	0	-0.3	-0.3	-0.3	0	64	9.7
1999	5	-1	-3	-	0	-	1	-0.5	0	0	-0.5	-	0	-0.5	0.5	-0.5	-0.5	64	7.8
2004	4	-2	-2	-	0	-	0	0.4	0	-	-0.2	-	0	0	0	-0.2	0	54	7.9
2009	2	0	-2	-1	0	-	1	-0.5	0	1	-0.3	-	-0.3	0	0	0	0	50	6.6

<sup>a</sup> Figures are the differences between the actual number of seats received by every party in each election (included in Table 5) and the number of seats obtained after computing the simulation. See Table 2 and Figure 1 for full names of parties.

<sup>15</sup> Although the United Kingdom had 84 uninominal districts in 1994, since 1999 it is formed by just 12.

*Model C: two tiers of seat assignment*

The former model *B* shared its disproportionality with the electoral system for the Congress, mainly caused by the high number of constituencies and its low magnitude, designed to obtain a better territorial representation. In order to avoid these negative consequences, model *C* is set to achieve a better trade-off between the proportionality of parties and the territorial representativeness of regions in which nationalist parties compete. This is pursued through the design of two tiers of seat assignment, one at the regional level with 36 seats (two for each of the 17 autonomous communities plus one for each of the cities of Ceuta and Melilla), and a second at the national level with the remaining seats (between 12 in 2009 and 28 in 1994 and 1999).

However, the extremely low magnitude of regional districts as well as the fairly small magnitude of the national tier make it impossible to achieve those goals: electoral disproportionality comes together with a poor territorial representation. As Table 8 shows, the main beneficiaries of this model are the two main national parties, not the nationalist parties, nor the small national parties. In fact, the PP would systematically increase its representation in 4 or 5 seats during the eighties and nineties. Also the PSOE would increase their representation in every European election, especially in 1989, when it was the predominant party. By contrast, and similarly to the previous models, the fragmented district design would be especially harmful for CDS, IU, and UPyD. These parties have generally occupied the third or fourth position in terms of votes in most of the regions, an evident *loser* position considering that with this model every region is guaranteed only two seats. In addition, nationalist parties in larger regions such as Catalonia would lose seats: both CiU and ERC would suffer a decrease in their number of EP members. And with the exception of CC, PNV, and HB, whose results would be just slightly modified, all the remaining nationalist parties would end up losing their parliamentary representation at the EP. The failure of this model for striking a balance between proportionality and regional representation is still present when we refined it through the assignment of only one seat to every autonomous community, thus increasing the national tier from 12 to 31 seats in 2009. Although not shown in the text because of space constraints, the results are similar. PP and PSOE would continue to be the major beneficiaries, much at the expense of nationalist parties. The main differences relate to CDS, IU, and UPyD, which would get a slightly less disproportional representation.

**Table 8. Model C: gains and losses in seats assigned to parties in two tiers in elections for the European Parliament in Spain, 1987-2009<sup>a</sup>**

	National parties						Nationalist parties										Number of seats	Index of disproportionality	
	PP	PSOE	IU	UPyD	CDS	ARM	CiU	ERC	PNV	HB	EA	EE	BNG	PA	CC	PAR			UV
1987	3	3	-2	-	-3	-	-1	0	0	0	0	0	0	0	0	0	0	60	11.2
1989	4	6	-3	-	-3	-1	0	-0.5	0.4	0	-0.5	-1	-0.2	-1	-0.2	0	0	60	13.6
1994	5	2	-5	-	0	0	-1	0	0	0	0	-	0	0	-0.3	-0.3	-0.3	64	10.5
1999	4	2	-3	-	0	-	-1	-0.5	0	0	-0.5	-	-1	-0.5	0.5	-0.5	-0.5	64	7.3
2004	1	1	-2	-	0	-	0	-0.6	0	-	-0.2	-	0	0	0	-0.2	0	54	6.5
2009	2	2	-2	-1	0	-	0	-0.5	0	0	-0.3	-	-0.3	0	0	0	0	50	7.9

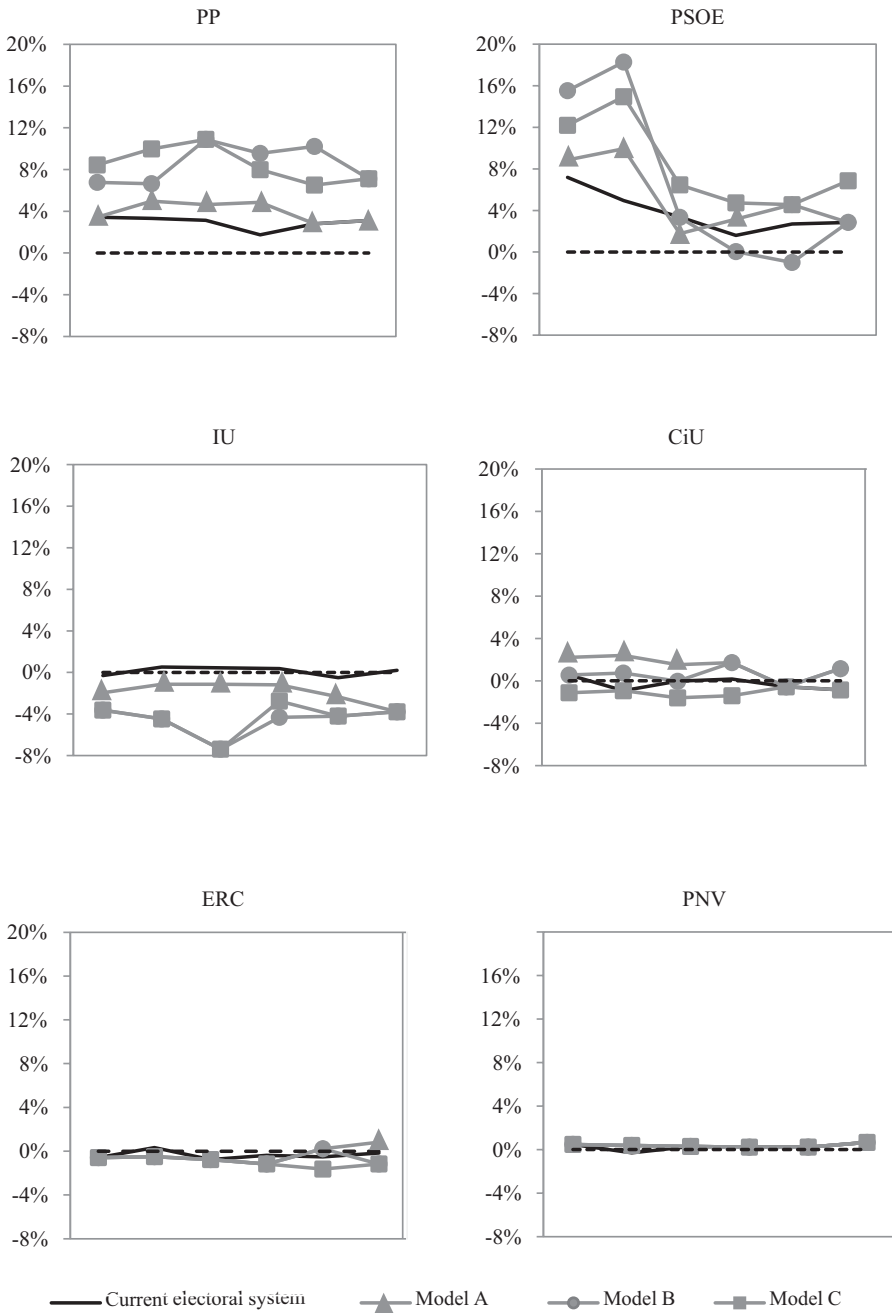
<sup>a</sup> Figures are the differences between the actual number of seats received by every party in each election (included in Table 5) and the number of seats obtained after computing the simulation. See Table 2 and Figure 1 for full names of parties.

## 10.4 Disproportionality and number of parties

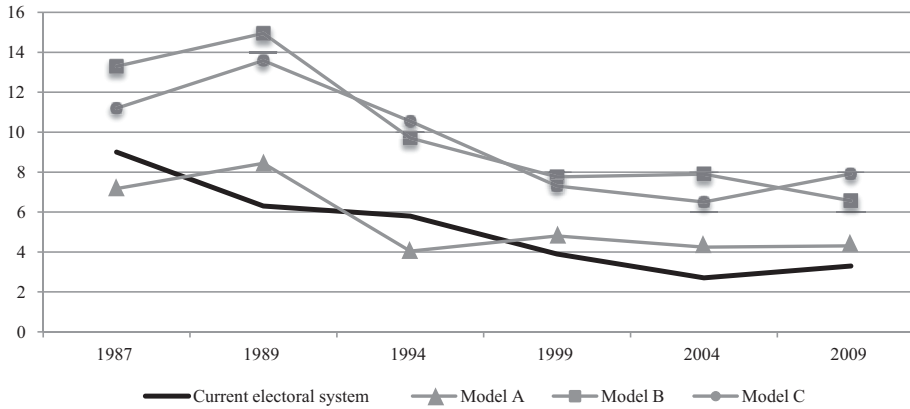
As discussed in previous sections, nationalist parties have repeatedly rejected the single national constituency for the elections to the EP. Their criticisms rest on its design and its consequences. For them, the design of only one district entails a blatant contradiction to the *Estado de las autonomías*, included in the 1978 Spanish Constitution as one of the main pillars of the entire political system. In spite of that, the 17 Spanish regions or autonomous communities lack any territorial representation at least in the form of separate districts for the European elections. As they also complain, this design has consequently forced them to coalesce with other similar regional parties in order to avoid ending up without seats at the EP. Nationalist parties have therefore proposed several models for designing alternative districts in which the communities could be territorially represented. In term of seats, however, the simulations we have undertaken with three of these models pointed to somewhat contradictory results. Only CiU and HB would increase their representation at the EP – in two out of three simulations. But the many remaining nationalist parties appear to receive a worse share of seats in most of the mod-



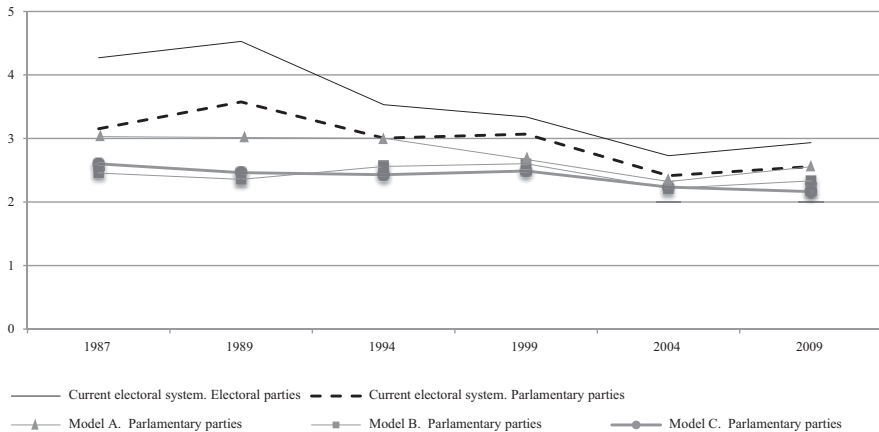
**Figure 2. Differences between percentage of votes and percentage of seats for several parties for the European Parliament and in models A, B, and C, 1987-2009**



**Figure 3. Disproportionality in the Spanish electoral system for the European Parliament and in models A, B, and C, 1987-2009**



**Figure 4. Effective number of parties in the Spanish electoral system for the European Parliament and in models A, B, and C, 1987-2009**



els. Also small nationwide parties like CDS, IU, and UPyD would considerably decrease their presence at the EP, usually to the benefit of PP and PSOE as the major parties.

If we now look from seats to the disproportionality between votes and seats and the number of parties, the picture is fairly similar. Figure 2 shows the evolution of the differences (in percentage points) between votes and seats of the main Spanish parties following the current model and the proposed alternative models. It is clear that PP and PSOE would get a remarkable over-representation with models B and C, while their application would cause harm especially

to IU. On the other hand, only small changes are perceived in nationalist parties, especially in the case of PNV, the main Basque nationalist party, while the Catalans ERC and CiU would be over-represented by applying models *C* and partially model *B*. In any case, the current national district is the one that minimizes the distance between the vote share and the seat share remaining as the most proportional system in almost every European election.

This information is summarized in Figure 3. It represents the Gallagher's (1991) index of disproportionality,<sup>16</sup> which confirms that models *B* and *C* are those with the highest levels of disproportionality. In contrast, both model *A* and the current electoral system enjoy the maximum adjustment between votes and seats and thus the lowest disproportionality. In 1987 and 1994, model *A* was even less disproportional. Its translation into the number of parties is included in Figure 4.<sup>17</sup> In parallel with the decreasing evolution of the index of disproportionality, the number of parties has also been directly reduced. Electoral parties have shrunk from 4.2 to 2.9 since 1987 as a direct consequence of the higher concentration of votes in the two main parties, PP and PSOE. The variations in this evolution are particularly well-captured by the current electoral system, which furthermore has reduced the distance between electoral and parliamentary parties over these years. As expected, Model *A* comes immediately after, while models *B* and *C* kept almost constant the number of parliamentary parties regardless of the election cycles and the growing concentration of votes in the two main parties.

## 10.5 Concluding remarks

Since the very first elections to the EP held in Spain in 1987, nationalist parties have complained about the side effects of one element of its electoral system: the current single-district. According to them, this model reinforces proportionality at the expense of territorial representation, ignoring the political, economic, and social history of Spain, as well as contradicting its quasi-federal system, enshrined in the 1978 Constitution. In their view, the electoral competition between only a few large national parties and the many much smaller *regional* parties is unfair since it severely under-represents the latter.

In order to test the validity of this argument, we have analysed the mechanical effects of different simulations. Following the proposals made by

<sup>16</sup> It is based in the well-known least squares index; its formula is the following:  $LSq = \sqrt{\frac{1}{2} \sum_{i=1}^n (v_i - s_i)^2}$ , where  $v_i$  is the percentage of votes for every party, and  $s_i$  is the percentage of seats.

<sup>17</sup> See Laakso and Tagerpera's (1979) index, which has the following formula,  $N = \frac{1}{\sum_{i=1}^n p_i^2}$  being  $p$  the share of votes, or the share of seats, of the party  $i$ .

nationalist parties, we have shown diverse alternatives for the Spanish district division to the EP elections. Drawing on electoral results data, we have computed the gains and losses of seats for each party following three different simulations: Firstly, a model with 5 districts (one per each so-called *historical* community and one for the remaining regions); secondly, a model with 19 districts (one per community); and finally one simulation supplementing the current electoral system with an allocation of seats in two tiers (at regional and national level).

These models have revealed contradictory results in terms of absolute gains and losses in seats. First, the simulations have primarily benefited the two major parties at national level - PP and PSOE - while the main victims of the fragmentation of the national constituency have been the smaller national parties (CDS, IU, and UPyD). Among nationalist parties, only CiU and HB would experience partial increases in their number of seats applying two out of three of the simulations, while most of the remaining (usually smaller nationalist parties) would lose their chance to be represented at the EP.

Also in terms of proportionality PP and PSOE would obtain a substantial over-representation with two of the models, mainly at the expense of the third and fourth parties (usually IU and, more recently, UPyD). Very small differences are shown in Basque nationalist parties, while the two main Catalan parties would be over-represented by applying two of these simulations. However, the model that has shown the highest level of proportionality since 1987, and for every and all parties, has been the current single-district model.

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# The Transposition of the Common Electoral Rules for the European Parliament into National Legislation in Greece

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## 11.1 Introduction

As early on as during the initial negotiations for the creation of the “Assembly of Representatives” in 1957, the predecessor of what we know today as the European Parliament, the idea that a “uniform procedure” ought to be established, was present – albeit controversial. Unfortunately, there was no consensus among the member states and the idea was shelved until 1976.<sup>1</sup> The “1976 Act on the election of the members of the European Parliament” established that each parliamentary term would last five years. It also established that elections would be held in all member states from Thursday until Sunday of a previously designated week and that no results should be announced until all polls are closed in every country. This set of minimum common principles was complemented and refined by Council Decision 2002/772/EC, Euratom, which endorsed the principal of proportional representation, instituted a maximum threshold of 5% of the total number of votes for the election of one Member of the EP and made provisions for an incompatibility between the positions of a national parliamentarian and a European parliamentarian.<sup>2</sup>

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<sup>1</sup>Jaume, Duch Guillot, “United in Diversity: Rules for the European Parliament Elections”, European Parliament Publications, [www.elections2009.eu](http://www.elections2009.eu) accessed on 27 July 2013.

<sup>2</sup>Council Decision 2002/772/EC, Euratom and 1976 Act on the election of the members of the European Parliament.

The aforementioned European legal texts spell out the lowest common denominator among member states by ensuring universal suffrage in free elections by secret ballot on the basis of proportionality. Nonetheless, much is left to the discretion of the national legislator who is entrusted with the responsibility to hone the principles and rules that govern the electoral procedure for the European Parliament in each member state. Practice varies on a series of particularly crucial issues, such as the determination of constituencies and the election by predetermined lists as opposed to a preference system.

This paper aims to examine these different parameters set in the Greek electoral law for the European Parliament elections as well as the deficiencies of the transposition of the EU legislation in the national legal system. We will look into the transposition into the Greek legal system of the 1976 Act on the election of the members of the European Parliament, as amended by Council Decision 2002/772/EC, Euratom and Directives 93/81 and 93/109, which combined lay down the common principles for these elections. However, the abovementioned legal framework aims to set some minimum standards and gives member states sufficient room for manoeuvre in order to shape, to a significant extent, their own EP electoral systems. So, in the first part, we will closely examine the electoral process and the allocation of seats system as it is set out in the national Law 1180/81, as well as its implications for the outcome of the EP elections in Greece. Law 1427/84 on the exercise of electoral rights of Greek nationals living in the EU will be analysed in the second part of the paper. In the third part of this paper we will examine Law 3023/02 on the financing of political parties which contains specific clauses for the public and private financing of political parties running in the European Parliament elections. We also consider that the Presidential Decree that governs the allocation of free advertising time and air time during the electoral campaign period merits our attention. Finally, in the fourth part, we will address two issues related to the insufficient transposition of the EU legislation, resulting in the deficient exercise of the electoral rights of non-Greek EU nationals in the EP elections and make relevant suggestions.

## 11.2 The electoral process and the system of allocation of seats

The legal documents that lay down the principles for the elections of the representatives in the European Parliament allow the member states to determine a series of issues that could be of vital importance for the final outcome of the electoral process. In this section we will look into Law 1180/81 and



Presidential Decree 351/03 in order to determine the electoral system, the constituency boundaries, and the system of allocations of seats.

For these particular elections, Greece has adopted one of the most proportional electoral systems around the EU. Law 1180/81 establishes a very low threshold for the election of one representative in the European Parliament by each competing party.<sup>3</sup> While in most major European countries have set a threshold ranging from 5% (which is the maximum allowed under Council Decision 2002/772/EC, Euratom) to 4%, Greece applies a 3% threshold, which is similar to the legal threshold used for the national elections.<sup>4</sup> This condition means that any party achieving 3% of the total number of votes will be entitled to one seat in the European Parliament. In this manner, the national legislator ensures that representation of the will of the Greek electorate is as wide as possible.

In the same vein, the method for the allocation of seats in the European Parliament is purely proportional, as opposed to the weighted proportionality method used in many other EU countries. Greece currently holds 22 seats in the European Parliament.<sup>5</sup> However this number will be reduced to 21 for the elections which are going to be held in May 2014. This reduction of the available seats stems from the limit that Lisbon Treaty set to the total number of Members of the European Parliament, combined with the accession of Croatia to the EU on July 2013, which was allotted 12 seats.<sup>6</sup>

Article 6 of Law 1180/81 institutes a very elaborate way of allocating the seats in up to 3 rounds. In the first round of allocations the electoral power of each party is divided by the “electoral meter” which is calculated by the division of the total number of valid votes by the 21 available seats. For the second round a new electoral meter is establish, which is calculated by the total number of votes not calculated during the first round divided by the number of seats that have not been allocated during the first round plus one. The unused electoral power of each party is divided by this new electoral meter in

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<sup>3</sup> Article 6, Law 1180/81.

<sup>4</sup> France and Germany have instituted a threshold of 5%. Notwithstanding, the German Constitutional Court has recently declared this threshold unconstitutional. Italy, Austria and Sweden, as well as the majority of the new member states of the EU have established a 4% threshold. For more information on this issue consult: “The European Parliament: Electoral Procedures”, Fact Sheets on the European Union -2013, [http://www.europarl.europa.eu/factsheets/1\\_3\\_4\\_en.htm](http://www.europarl.europa.eu/factsheets/1_3_4_en.htm) , accessed on 11 September 2013.

<sup>5</sup> Article 1 para. 2 Law 1180/81.

<sup>6</sup> “How many MEPs will each country get after European Parliament elections in 2014?”, European Parliament, <http://www.europarl.europa.eu/news/en/news-room/content/20130308STO06280/html/How-many-MEPs-will-each-country-get-after-European-Parliament-elections-in-2014>, accessed on 12 September 2013.

order to allocate the seats in the second round. The parties that did not receive a seat during the first round participate in the second with their entire electoral power. In the third and final round any seats still available are allocated one by one starting from the parties which did not receive any seats during the second round of allocations.<sup>7</sup>

Apart from the abovementioned provision which is striking because of its complexity, the Greek electoral process for the European Parliament bears significant similarities with most major European states. In European elections most Member States comprise one, national electoral constituency and Greece is no exception to that rule.<sup>8</sup> Moreover, just like in many other Member States, European elections are conducted by party lists that are closed and blocked, meaning that the voters do not have any influence on the actual individuals who will be representing their country, or the order in which the names are listed. The order of the names in each party list is important because the seats allocated to a party are distributed to each candidates starting from the name appearing on the top of the electoral list.<sup>9</sup> That is to say, the Greek EP electoral law does not allow for preferential vote for the each candidate.

Finally, the procedure of the registration and proclamation of candidates for the different party lists merit our attention. The electoral campaign period begins a month before the election date; the deadline for registration of candidates is 13 days after the electoral period is officially opened.<sup>10</sup> Nonetheless it must be noted that parties dominate this procedure, since according to Law 1180/81 only parties or their coalitions are allowed to partake in the European Parliament elections, which in turn deprives individual from the ability to present their own platform and run independent of a party. If a party decides to compete in the EP elections it needs to submit the name and emblem of the party to the Prosecutor of the Court of Cassation (Areios Pagos) nine days after the beginning of the official campaign period.<sup>11</sup> The lists of candidates which are also submitted to the prosecutor of the Court of Cassation must state the name, the profession, and the legal address of the candidates and must be accompanied by a declaration of acceptance of the candidature undersigned by

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<sup>7</sup> Article 6 of Law 1180/81 interpreted with analogous implementation of articles 7 and 17 of Law 2196/1994.

<sup>8</sup> France, Ireland, Italy and the UK have divided their territory in regional electoral districts. For more on this issue: "The European Parliament: Electoral Procedures", Fact Sheets on the European Union -2013.

<sup>9</sup> Article 3 para.8 Law 1180/81.

<sup>10</sup> Article 3 para.1 Law 1180/81 interpreted in the light of art. 34 para. 5 of Presidential Decree 96/2007.

<sup>11</sup> Art. 37 para.1 Presidential Decree 96/2007.

each candidate.<sup>12</sup> Obviously the list cannot be longer than 21 names. Attached to the proposed list the party must provide a certificate from the payments office of the Athens Public Treasury, declaring that 2934,7 Euros have been deposited as an electoral fee. The candidate's ineligibility criteria are the same as the national elections' criteria and are determined by the Constitution.<sup>13</sup> The incompatibility criteria, which are stated in art 57 of the Constitution apply also to the EP elections and are complemented by the additional restrictions dictated by the EP electoral rules as stipulated in the 1976 Act. The proclamation of candidates takes place on the 14<sup>th</sup> day preceding the polling day and is conducted by the First Chamber of the Court of Cassation.

### 11.3 The exercise of the electoral rights of Greek nationals living in the EU and EU nationals living in Greece

According to EU law all European citizens should be able to exercise their right to vote in European Parliament elections irrespective of the country of their permanent residence. This basic principle is underscored, clarified and further elaborated upon in the Directive 93/109 which governs the details of this process. This directive entered the national legal system with Law 2196/94. The text of the Greek law bears vast similarities with the actual text of the original directive. To such an extent that one could be justified to say that the two documents are almost identical.<sup>14</sup> This entails the obvious advantage that the adoption of the Directive in the Greek legal system is done properly and correctly. Greece cannot be accused of imposing additional requirements for EU citizens seeking to cast their ballot in Greece or stand as a candidate. The addition of such requirements is in fact contrary to the Directive and its very accurate transposition accounts for the avoidance of breaches of that sort. Nonetheless, this very similarity of the national law to the European legal instrument also creates a generic legal text which does not specify and further elaborate on the issues that the European legislation intentionally left for the national legislator to determine.

Now we will turn to the procedure according to which Greek nationals who have their permanent residence in another member state register in the nearest consular authority in order to be able to vote for the lists of Greek candidates in the EP elections. The first thing to be noted is that this possibility is given

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<sup>12</sup> Art 3 para. 1-7 Law 1180/81.

<sup>13</sup> Art. 56 para 1 and 4 Constitution.

<sup>14</sup> Law 2196/94 transposes directives 93/81 and 93/109. The part of it that refers to directive 93/109 barely adds anything to the original text.

only to Greek nationals who reside within the territory of the EU, meaning that the Greek nationals who happen to live in a non-EU country even for a small period before the EP elections are de facto forced to either forfeit their right to vote or return to European soil in order to be able to exercise their right. According to Law 1427/84, the deadline for the submission of these registration applications is specified by a presidential Decree before the beginning of the formal electoral campaigns. In practice the date that the Presidential Decrees have set up to now are always around two months before the actual polling date. However, the fact that there is no predetermined set deadline included within the body of the legal text can create some confusion and ambiguity.

The requirements that a Greek national needs to fulfil in order to be able to be included in the special Greek electoral catalogue for nationals residing in the EU are the following: a) to be registered in an electoral catalogue of a municipality or a community of the Hellenic Republic, b) to fulfil the criteria in order to have the right to vote (legal age, etc.) and not be deprived of those rights due to criminal offenses and c) to submit the aforementioned registration application in the nearest consular authority.<sup>15</sup> To be fair, this process, albeit ambiguous, limits the amount of demanded red tape to the bare minimum. In fact the citizen is able to fill in and submit this registration form simply by demonstrating a document confirming that he/she is a Greek national. Thirty eight days before the election date, the special electoral catalogue for nationals residing abroad is issued and published and the actual elections take place one day before the elections are held in Greece, namely the Saturday before the election Sunday. This is the case due to efficiency reasons because the votes need to be collected and calculated in advance in order to be able to deliver the overall comprehensive results of the country as quickly possible. Needless to say that those results are not announced prior to the sealing of all polls, in conformity with European electoral rules.

## 11.4 The financing of political parties running in the EP elections

Political parties in Greece acquired explicitly legal personality with the adoption of Law 3032/2002 on the Financing of Political Parties. Until 2002 the problem of legal personality of the political parties and the concurring issues of their rights to property was circumvented through an interpretation of the provision of the constitution which referred to political parties as cen-

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<sup>15</sup> Article 4 Law 1427/84.

tral institutions for the country's political system.<sup>16</sup> Currently, Law 3023/2002 grants political parties full economic freedom, including the right to pursue profit, as long as this activity does not become the predominant goal of the party, since this would transform it to a firm.

The same law establishes state financing of political parties in Greece. This financial aid can take two forms: regular financial aid and electoral financial aid.<sup>17</sup> The aid is not subjected to taxation and aims to sustain part of the operational and electoral needs of the parties.

The regular state aid to political parties is granted on an annual basis, and it amounts to 1,02% of the state's budget for the respective economic year. Eligible for this aid are three categories of political parties: a) those represented in the Greek Parliament, b) those representing Greece in the European Parliament, c) those parties which had a complete voting lists in at least 70% of the municipalities and managed to garner support from 1,5% of the valid votes in the latest national or EP elections. The first category aggregately receives 80% of the total sum of the aid while the rest 20% is divided equally between the other two categories. In each category the final sum of money that a party receives is calculated by dividing the sum of available funds for that category by the total amount of valid votes in the elections which are used as reference and then multiplying this ratio to the electoral power of each party in that particular election.

The electoral financial aid comprises 0,22% of the government capital inflows for that economic year and it can reach up to 0,35% in cases where multiple elections or multiple electoral rounds are held. This form of financial aid is allocated to the parties in two phases: in a pre-election phase and in a post-election phase. During the first phase 60% of the total funds are distributed to the parties which were represented either in the national or in the European Parliament for the electoral term that just expired. The second phase allocate the remaining 40% to the parties that are represented in the EP or national parliament after the election as well as to the parties that passed the 1,5% threshold of valid votes in the elections that have just taken place.

The political parties that belong in the three aforementioned categories also receive in kind financial aid from the state during the electoral campaign period. They receive free advertising space in all the municipalities of the country, free air time and generally free media time for their advertisement during the electoral campaign period and the news TV and radio shows are obliged to host one representative of each party in every emission. Finally the snail

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<sup>16</sup> Article 29 para. 1 and 2 of the Constitution.

<sup>17</sup> Article 1 para 1, article 5 para 2 and 3, article 6 para 2 Law 3023/2002.

mailing and telephone expenses of the political parties eligible are also subsidised. This in kind donation by the state is regulated by the principle of equal opportunities interpreted in the light of the relative power of each party. This would mean that a political party that has greater electoral power will receive more free air time and more advertising space in the municipalities.

## 11.5 The insufficient transposition of the EU legislation on the matter at hand

With the Lisbon Treaty the right to vote and the right to stand as a candidate acquires the value of a fundamental right.<sup>18</sup> One can extract some interesting findings from the close examination of the electoral provisions on who has the right to vote and who has the right to run in the Greek elections for the European Parliament. Any Greek national who is over 18, registered on the electoral law of municipality and is not subject to a guardianship order under the provisions of the Civil Code, should have the right to vote in the European Parliament elections as they do in the national elections.

However, Law 1427/84 makes an interesting distinction. Only Greek nationals who are residents of an EU member state are eligible to vote for the EP elections. This provision introduces an arguably unconstitutional exclusion of Greek nationals who permanently reside in a country outside the EU. The logic behind this exclusion clearly is centred on the lack of immediate interest in EU elections demonstrated by non-EU resident, Greek citizens. However this fact should not hinder them from being on par with the rest of the Greek electorate. The right to vote is the most fundamental civil right and the fact that a small number of people would alleged fall into the category of those wanting to exercise their right and being hindered by this provision should serve as no excuse for this *de facto* deprivation of a political right. This is especially true if one compares this *de facto* deprivation with the cases where the legislator intentionally introduced a similar punishment. Only the gravest criminal offenses or the most serious mental illnesses, always accompanied by a complete guardianship, justify measures that have such an effect.

Here it is interesting to note as passing that this poor record of Greece regarding the political rights of its nationals living abroad is not unusual. In fact, while the Constitution clearly states that Greek nationals living abroad are entitled to voting for national elections in their country of residence, this provision has remained inactive and no polls are set up in the Greek consulates during national elections. On the contrary, all nationals living abroad

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<sup>18</sup> Article 39 Charter of Fundamental Rights of the EU.

have to return to Greece for the Election Day in order to be able to cast their vote. This is the case because the Constitution mentions that the procedure of the vote abroad is regulated by a more specific law and to this day no such law has been passed in the Greek Parliament. Thus one could safely conclude that had it not been for the 1976 Act, this would have been the case for EP elections as well.

Another impediment to EU citizens' enjoyment of their electoral rights is related to the restrictions some member states impose regarding the membership of foreigners in political parties and the conditions laid down by the law for the founding of political parties. Some member states restrict the membership of political parties to their own nationals preventing other EU citizens from running in the European Parliament elections. The Greek law governing the formation of political parties allows for membership of non-Greek citizens in the ranks of a party.<sup>19</sup> Notwithstanding non-nationals are not allowed to found parties competing in any election held in the country. This provision was initially introduced to harness the control exercised by Turkey on the Muslim minority which lives close to the borders. However it clearly impeaches on the right of non-national EU citizens to candidate in the European Parliament election on equal footing as the Greek citizens. If non-national EU citizens are not allowed to found political parties but can only join existing ones, they are denied the chance of creating platforms not represented by the existing parties. The fact that no independent candidates but only political parties and coalitions of parties can participate in the elections is another important parameter to this restriction.<sup>20</sup>

Last but not least, a de facto problem in the transposition of the Directive 93/109 can be identified. In theory the Directive is accurately and fully transposed into the national law. The Directive provides for the data of non-nationals EU citizens "sufficiently in advance of polling day" in order to prevent double voting. However, the Greek authorities in 2009 did not process any of the information provided by the other member states where Greek nationals were residing, since all the information was received after March 2009 when the electoral rolls of Greece have closed and could not be modified.<sup>21</sup> The lack of a common European timeframe for registering voters and sending data can be considered as an impediment to the functioning of the mechanism set up by the Directive.

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<sup>19</sup> Article 30 Law 3023/02.

<sup>20</sup> Article 3 para 1-7 Law 1180/81.

<sup>21</sup> Report from the Commission, "Report on the election of Members of the European Parliament and on the participation of European Union citizens in elections for the European Parliament in the Member State of Residence", COM(2010) 605 final, Brussels, 27.10.2010.

## 11.6 Prospects

Next year the European Parliament will for the eighth time seek the votes of European citizens. In light of the looming elections, a fierce debate was once more initiated in the European Parliament regarding issues of electoral law. Since the 1960s the European Parliament has voiced its opinions and formed proposals on such issues and the adoption of a uniform procedure was constantly on the agenda. The Treaty of Lisbon now provides the appropriate legal basis for the formation of a uniform procedure which will later be endorsed by the European Parliament in order to initiate negotiations with the Council.<sup>22</sup> However the continuous lack of progress in this front demonstrates the degree of difficulty involved in the process of harmonization of the different national traditions as well as different state or party interests.

The most controversial proposal in the whole debate is the creation of a single European constituency for the election of 10% of the seats of the parliament. This plan has been on the table since the negotiations of 1997 which led to the 2002 amendment we previously discussed. Nonetheless the fathers of the idea of a single constituency in order to eliminate the link of national political parties between European citizens and European politics failed to convince their eurosceptic counterparts and the proposal had to be shelved in order for the amendment to be agreed upon and passed.

Today, that the issue of raising awareness and interest in the European Parliament is more pressing and relevant than ever, the issue is back on the table and the federalists who rally for the independence of European politics from national politics have one more chance. This proposal is very controversial and radical because on the one hand it detaches EP elections from the issues of the national political agenda that in Greece, more often than not, dominates the debate during European campaigning period and puts European issues and European politics in the center of the attention. Inevitably the candidates who will run for these positions on a pan-European level will have to address issues that are truly important for the whole Union and in so doing they will generate more debate on these topics and raise awareness. On the other hand, there is a high risk that these new positions will be overwhelmingly occupied by candidates coming from the bigger member states. Apart from the fact that this proposal doesn't create a level playing field for all the candidates by introducing an indirect discrimination on the basis of nationality, it has also stirred many polemics because it will further weaken the position of each member state and its ability to garner support for a piece of legislation it considers vi-

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<sup>22</sup> Article 223 TFEU.



tal by further decreasing the number of seats allocated to each state. In other words, if this measure is introduced the ratio of representation of each member state will plummet.

The abovementioned is just one of a host of recommendations that have been put forth in order to boost participation in the upcoming election and make European Politics the center of the debate in the preceding campaigns. National parties are asked to clarify and make their affiliations to European Parties known and to help the candidates focus on the issues that are truly relevant for the Union. This in EU jargon, after the release of the famous “Duff report on the electoral review of the European Union” came to be known as the “development of European public space” and lies at the heart of the new initiative.<sup>23</sup> These actions converge with initiatives taken by the Commission such as EU citizenship report. However all the effort by the European institutions will prove to be ineffective for a change in the electoral turnout in case it is not accompanied by a similar course of actions by the member states.

On this issue Greece still has a long way to go. On top of trying to foster debate on European issues, the Greek political system should try to resolve the de facto deprivation of the political right of Greek nationals living outside the EU; it should work on establishing a bureaucratic procedure that prevents double voting due to flawed registration of non-Greek EU nationals and Greek nationals with permanent residence in another EU member state. Consideration of an amendment of the electoral law in order to allow independent candidates to compete in the elections and EU nationals to found their own party would also be considered a step in the right direction. However, the current economic crisis and its concurrent political conundrums are highly likely to hinder a reform process in this direction in the foreseeable future. Unfortunately, the upcoming elections, will most probably engender more debate on national economic policy choices and a polarization against the rising extreme right and the aforementioned issues will be overlooked.

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<sup>23</sup> Viviane Reding speech at the EP on 3<sup>rd</sup> July 2013, “Duff report: improving the organisation of the elections to the European Parliament in 2014” available on [http://europa.eu/rapid/press-release\\_SPEECH-13-604\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-604_en.htm) , accessed on the 13th of October 2013.

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### Legal Materials

#### EU

- Treaty on the Functioning of the European Union
- Charter of Fundamental Rights of the European Union
- Council Decision 2002/772/EC, Euratom
- 1976 Act on the election of the members of the European Parliament
- Directive 93/81
- Directive 93/109

#### National

- Constitution of the Hellenic Republic
- Law 1180/81
- Law 1427/84
- Law 2196/1994
- Law 3023/2002
- Presidential Decree 96/2007

# The Fatal Republic: how France is Going Full Speed Towards its Multi-Layer Electoral Walls which Create Incoherency and Uncertainty for the Future

BERNHARD KITOUS\*

## 12.1 Introduction

The constantly decreasing share of voters at the European Parliament elections in France is a sign of deep-seated administrative distortions created by the disparity between the republican four levels of administration (President – Parliament – department – commune), on the one hand, and the superimposition of eight other levels of administration to account for the French modernization and European integration, on the other hand.

“Modernization/Europeanization” are key words which seem to have fostered for 70 years the belief that “everything was possible”, namely the coexistence of willingness for France to be one of the founders of the United Europe and the unwillingness of political and administrative elites of France to renounce the legacy of the French Revolution and/or their own status in the system.

Three results stem from this piling up of “all and everything together”:

- 1) loss of understandability of the political and administrative system for the French man-in-the-street who is ultimately the citizen who comes voting or not;
- 2) complexity and costs of an administration which bites its own tail by requiring every process in double or triple, and which hurts its own walls by a process of sorts within a “mille-feuille cake”, an image suggested by actors themselves;

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- 3) the practice for the political personnel to present itself as a candidate at multiple levels to be at power facing the complexities of the French administration; it is called “accumulation of mandates” and cartooned appropriately below.

This paper works on “le mal français” and proposes hypotheses on the current situation of high electoral risks both for the European Parliament elections and for the other elections that will take place in the 2014-2017 period. Superimposing a discourse on French sovereignty with European political bonds entertains a fundamental uncertainty which leads to provisional forecasts of risky results.

The red thread which lines up this paper concerns the hollowing out of Europe by today’s crisis in France: a certain lack of courage, the default of political clout, the constituency lassitude, all lead to a quite worrying situation. As an instance of the uncertainty brought forward by the indeterminacy now real in the French system, this paper sums up an analysis based upon 35 years of European Parliament elections in France, with an assessment of how the 2014 elections may operate in such a complex system.

The diagnosis leads to call on Arendt, Etzioni and Westen to build appropriate answers to the French challenge through a proposal based upon the recognition of citizens’ emotions and motivations. Moreover it is suggested to simplify the 12-levels multi-governance system so as to obtain a lean, coherent and stimulating political frame taking care of how the citizen-in-the-streets understands elections to the European Parliament.

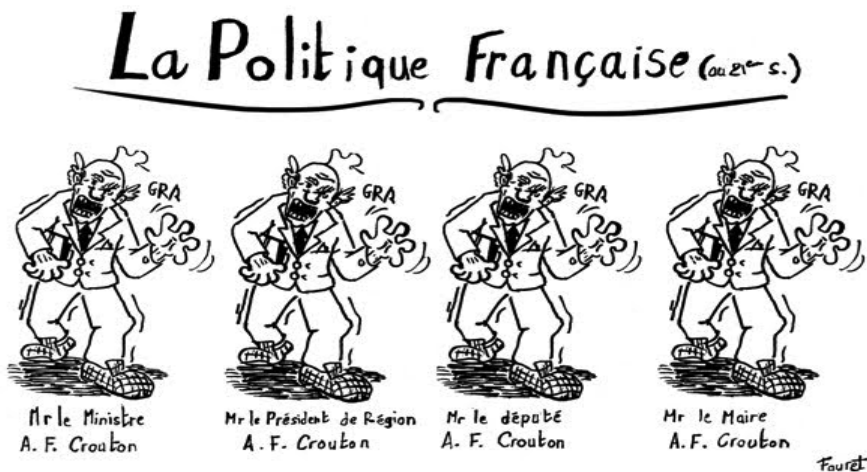


Figure 1. La Politiqué Française (au 21eme Siècle), by Christophe Fauret. Source: courtesy of the Artist (christophe.fauret@gmail.com)

M. Crouton's cartoon stigmatizes the accumulation of mandates:

- M. le Ministre Crouton (Minister),
- M. le président de région Crouton (Region chairman),
- M. le député Crouton (deputy to the National Assembly),
- M. le Maire Crouton (mayor of any city).

Just to give one typical instance of the real character of this cartoon, the president of region Aquitaine is simultaneously deputy at the French Assembly and mayor of a city near Bordeaux; and he also is “girondin”...

Nota bene, Monsieur Crouton is best translated by “Mister Crumbles”, or rather “Mister Peanuts”, meaning the politician agitates her/himself to get only crumbs, the more she/he seek desperately to belong to all levels of governance.

The complexity of the games for power as well as the generalized inefficiency of French bureaucracies add to the impossible disclosure in such a system of top-down elevators. The expression “un prêté pour un rendu” gives a feeble account of how the office holders of political powers (communal, departmental, regional, European, national) give each other a hand to help pursue their own projects.

Accumulation of salaries comes along with accumulation of political positions but also with efficiency in “reaching Paris by any means”. The scandal of public salaries accumulation has resulted in the 10 youngest deputies at Palais-Bourbon asking in June 2013 for a diminishing of the retirements pension regime which gives political personnel the highest public pensions in France.<sup>1</sup> As a last point, the weight of Paris hinders local initiatives of any ambition: decision-making in France still being prepared, checked on, done and later controlled in the capital; the years of discourses and expenses to decentralize from Paris to regional capitals such as Rennes, Toulouse, Marseille, Lyon, Bordeaux, Strasbourg, etc. seem now at a loss.

## 12.2 Figuring out reality from maps: republican France from 1789 on

From the 1789 Revolution up to 2013, France as a state has enjoyed the same administrative basis with its three top-down levels – state, departments, communes. The verb “enjoy” being taken to its fullest extent: today, as yesterday, political elites like to be elected or designated essentially at national, departmental as well as communal levels. This truly three level pancake goes together with the very notion of a French Republic as follows:

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<sup>1</sup> Bon (2013).

- 1) *Municipal council level*: France accounts for 37,000 communes which represent 40% of the total number of cities in the European Union, with more than 700,000 elected members of municipal councils among whom 37,000 mayors;
- 2) *Departmental general councils' level*: France holds 101 general councils, representing roughly 5,000 elected people which a recent reform on Parity (to be applied to next departmental elections in 2014) would like to be half women – half men, according to an idiosyncratic scheme of “voting for two = man + woman” at once. This French “parity” motivates a lot of talks and debates at a basic population level, while European elections leave people cold as marble;
- 3) *national level*: the state which is represented by the triple bodies of Parliament (Senate and Assemblée Nationale with 1,300 elected Deputies and Senators), Government (approximately 700 top-administration and cabinet members) and the state administration (4,400,000 civil servants).

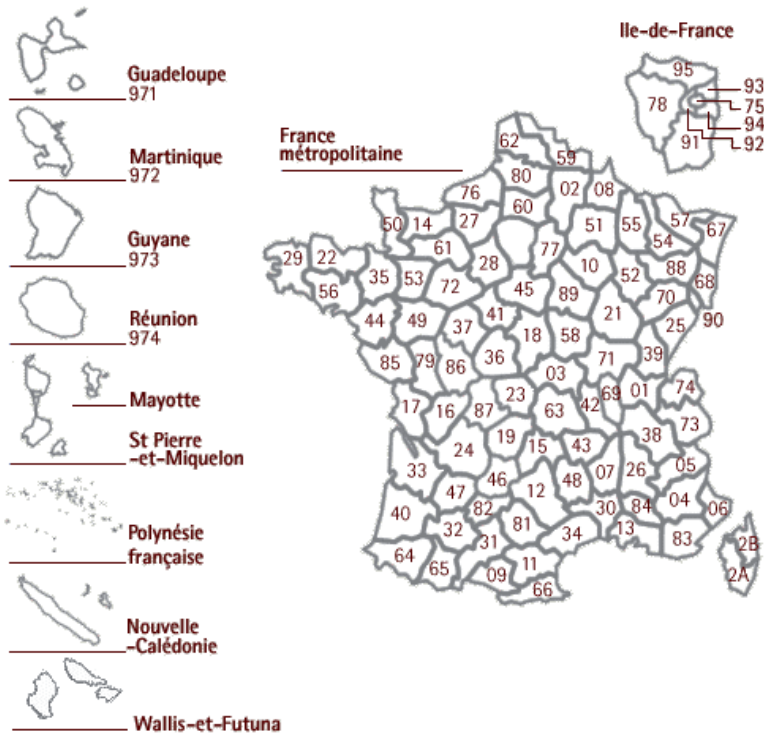
From a republican viewpoint, one may say that France enjoys 44,000 elected citizens who share the burdens of political power to be implemented through a total of multiplied by 100 times as much administrative personnel. The administration is basically directed from Paris, the center, with 101 state representatives called “*préfets*”, top civil servants who have full powers of the state representation locally. The Deferre’s laws of decentralization (1981-1985) have proposed that the departments’ general councils take a portion of state prerogatives (such as the management of schools), and this process of “deconcentration” is still going on.<sup>2</sup>

Basically the administrative structure of France has contented itself for 50 years with the superimposition of a European logic to the 220 years-old French republican frame; “accommodation rather than assimilation”, this has been the French motto of all governing bodies understating their fear to touch upon the sacred-saint republican creed: the result is a generalized adding-up of new structures to old ones; but is it possible to pour new wine into old jars? Today the administrative system of France resembles the thousand-layers patchwork called “*mille-feuille*” in French pastry: “inconsistent, fuzzy, incoherent, contradictory, unbearable, costly”, those are a few qualifiers of the present situation.

The following maps illustrate the basis of administrative France as a nation-state endowed with three layers of action: national, departmental and communal.

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<sup>2</sup>Cotton (2012).



**Map 1: The departments (created in 1790) and overseas territories.**

Source: [http://www.zone-motards.fr/dossiers/\\_reportage/dossiers\\_infos/carte\\_et\\_liste\\_de\\_deputes\\_de\\_france.html](http://www.zone-motards.fr/dossiers/_reportage/dossiers_infos/carte_et_liste_de_deputes_de_france.html)

Since the first Republic and Consulate era (1792 to 1804) structured France into departments, the facts have more and more confirmed this as an efficient level of administration. Taking care of the diversity of the population, grown from 23 millions to 68 millions over the 210 years between 1803 and 2013, France now still has a strong demographic renewal (birth rate and immigration). It includes within its administration nine overseas territories (i.e. Guadeloupe, Guyane, Martinique, Mayotte, Polynésie Française, La Réunion, Saint-Pierre et Miquelon, Nouvelle-Caledonie, Wallis & Futuna), all part of the European membership (contrarily to Greenland, a Danish territory not included in Europe). On average, each department is populated 700,000 people, and each commune averages 2,000 people allowing for local services. In spite of plans to cut departments to the benefit of regions, the fear of street upheavals has cooled down all plans and reinforced the role of departments in parallel with the rise of European “levels”.

France is a centralized nation of “jacobins” (from the name of the ex-Jaco-



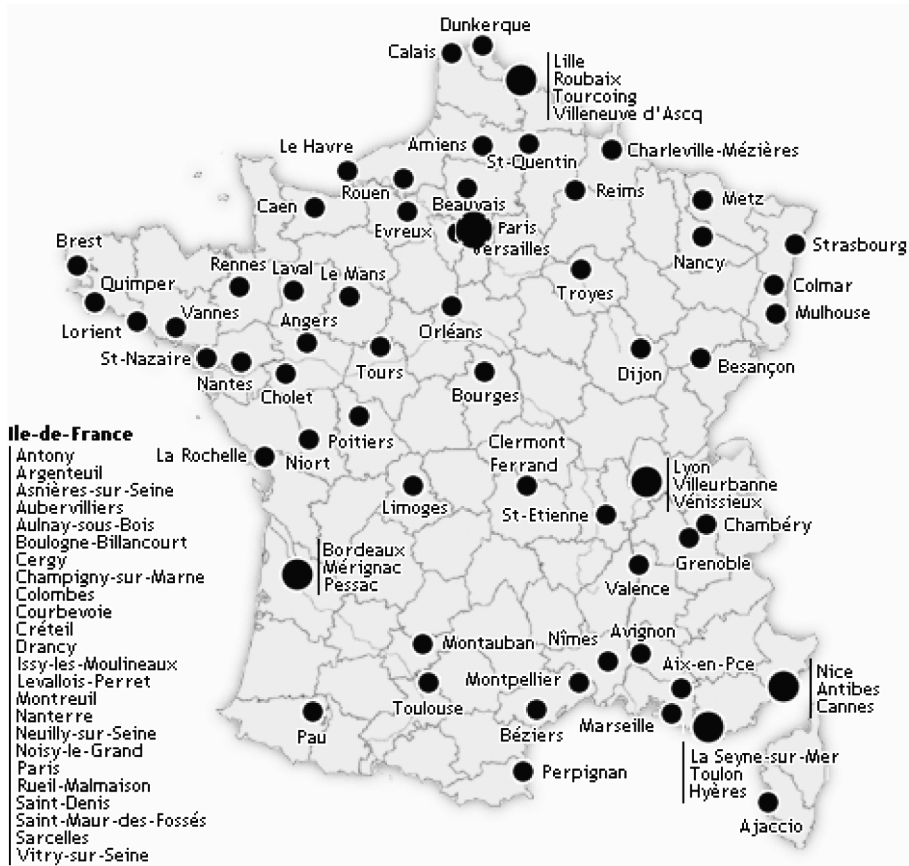
**Map 2. The centrality of the state (Paris is a capital since 1450).**

Source: courtesy of Le lutin savant, <http://le-lutin-savant.com/g-france-geographique.html>

bite monastery where Robespierre convened his party in 1789-1793); all roads come and go through Paris while the defeat of “girondins” (from Gironde river in Bordeaux) show that the de-centralized ideals remain a minority. Indeed the strength of France’s kings supporting the Royal Post Roads, of her emperors financing the Imperial Courier and of her first five Republics (sustaining alike the Post and Telegraph administration) is based upon keeping Paris a capital. As soon as 1756 Giacomo Casanova wrote that he fled from Venice to Paris to find the optimal protection offered by the “most centralized state in Europe” as it was easier to insure security aside Mr de Bernis (minister of foreign affairs) than in the Serenissima Republic of Venice. In 1917-1918 Georges Clemenceau himself made use of the centrality of



France by devising with Foch a counter-attack against German commander-in-chief Ludendorff by making usage of the “centralized jacobin roads” to cut Ludendorff’s lines. There are hundreds of instances where France won its share by sticking to its identity of a centralized jacobin nation.



**Map 3. Main cities in France (reaching more than 100,000 inhabitants).**

Source: [http://www.cartes-de-france.fr/carte\\_france\\_villes.html](http://www.cartes-de-france.fr/carte_france_villes.html)

Communes were quite incoherent under the Royal Regime, which allowed for various statuses depending on the Roman Church, on patent letters, and on the local trades. In 1789 there was a total change and unification of communes under the same systematized rules. This led to a dispersion of 37,000 communes. Since 1999 the law has opened four ways by which associate (rather than merge) several communes into one common entity:

- First intercommunal way: “community of Communes” (no conditions),

- Second intercommunal way: “community of agglomeration” (at least 50,000 inhabitants around a city-pole with more than 15,000 inhabitants),
- Third intercommunal way: “urban community” (more than 450,000 inhabitants),
- Fourth intercommunal way: since 2010, cities above 500,000 inhabitants may declare themselves “metropolis” which gives them some priority in negotiations with the State and the departments.

### 12.2.1 European project for France imposed administrative reforms

The rather simple 3-layers Republican frame of state – departments – communes could have been stable since 1792 if the French governments had not endeavor to be part of the Union for a Europe free of wars. But the very movement for Europe had its own logical path, which – by encouraging some benchmark comparison between Member States’ structures – generates some form of “convergence”.

For 160 years, France stuck to its 1792-1802 structures; it has not been able (up to now) to converge to other more European-compatible internal political institutions and, over 70 years of Europe, it has kept stubbornly its very core institutions still adding to them a whole series of addenda and appendices; from 3-levels we went to 12-levels, but what actually happened is never said because political elite would deny that no courage was placed on the trade-off made between the risk to go forward into the European new look, and the pride and/or political clout and positions asserted by clinging to the old republican consensus. This silence hides a choice, rather than having the French system re-designed, to favor super-imposing European-compatible administrative entities with the well-established traditional republican system; a form of schizophrenia seized the political decision-makers in France who saw the solution in multiplying the levels of governance without simplifying them.

Indeed the invention of the *region* has been a celebrated locus of French fantasy, especially with respect to federal states like Germany and Spain. There has been an effort to create a regional level structure, but no effort whatsoever to integrate nor to simplify the complexity stemming from this new level of territorial administration called “region”; from 1977 until today the regions in France are suspect of reconstituting the royal provinces while not bringing any efficiency to the French administrative system. In reality regions intervene on transportation and education with some degree of efficiency but, so to speak, “by the side of the beast”. What is the use of a region in France when depart-

ments already exist? This question never received an answer and debates over the very composition of regions go on for years: should Basse-Normandie be merged with Haute-Normandie? Would the Loire-Atlantique department be joining the Brittany region? And on and on, empty questions find out empty answers, in the best of administrative worlds.

Since the famous 1950 Robert Schuman conference at the Salon de l'Horloge (Quai d'Orsay, Paris) approved by Chancellor Adenauer, France has engaged herself – let us here speak on Nations as ladies, as Charles-Maurice de Talleyrand (1754-1838) was accustomed in International negotiations – into a lengthy process, which is now becoming painful. Why? Essentially because the growing pressure for a United Europe has led France to create and implement over its three (revolution-set) republican levels, eight more political and administrative levels, namely:

- A – the Gaullist Constitution (1958 till 2014 Revision) with three new key levels of governance *inside* France:
  - A1 – the creation of a President elected by universal suffrage;
  - A2 – the possibility for the President to call for a referendum on any subject-matter deemed important;
  - A3 – the possibility of a referendum by popular initiative (created in 2008, this article will be implemented in 2014);
- B – The Constitution again, but regarding the *external* engagements of France towards Europe, with the recognition of three bodies:
  - B1 – The European Parliament (after the 1958-1979 Parliamentary Assembly);
  - B2 – The European Commission (in recognition of the Treaties of Rome);
  - B3 – The European Council of the heads of States (with the Giscard-Schmidt agreement);<sup>3</sup>
- C – Two more layers resulting from
  - C1 – the creation of administrative *regions* over and above departments (but not replacing them);
  - C2 – the permanent policy towards “Inter-communality” that is pooling communes.

Let us detail the most important of those levels now: *The European Parliament (EP)*: besides its sovereign Assemblée Nationale, a share of the EP is allotted to France (72 deputies elected by French citizens represent approximately 9,5% of the total number of total MEP); the French MEPs being elected since 2004 on a new territorial and administrative basis called “electoral

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<sup>3</sup>Germond (2012).

circonscription” with a rule “one-tour vote at the highest mean”, this complex system does not correspond to anything already existing. Indeed foreseeing misunderstandings (like in 2004 and 2009 EP elections) with the coming 2014 European Parliament elections, the French government attempted to introduce a bill coming back to the ante-2004 MEP electoral process: but this late attempt was rebuked by the French Parliament in early 2013, thus limiting once again the legitimacy of the EP to its smallest definition.

*The Regions:* the French administration is dispersed by its 101 departments features; stabilizing a regional level of administration has been a constant subject of worry for the French Republic since De Gaulle’s failure in his 1969 referendum (the majority voted “no” and De Gaulle left). President Giscard’s government created the then 27 Regions (22 in France itself and 5 in overseas French territories) which are now administered by regional councils with approximately 1,000 elected “regional counselors”, and which have their own representative of the state, a high-level civil servant (also a “*préfet*”).

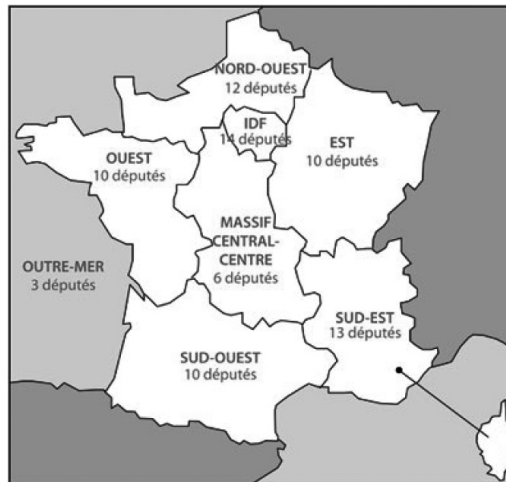
*The Inter-communality:* this complex word designates the process by which the 37,000 communes in France have incentives to work together through different formats such as inter-communal syndicates (for water, sewage, food, etc.) or “community of communes”, etc. Not being possible to enter here the hundred ways for communes to associate themselves to other communes, let it be said that the inter-communality word designates a complex reality with no real homogeneity over French elites who cling to keep the acquired advantages for 37,000 mayors and 500,000 members of municipal councils almost alike 1792.

*The European Council:* the European Council is now part of the French administrative landscape, to the extent it adds up on top of all the six previous layers. The Council is a key collective decision-making body whose official definition has evolved over time to becoming that of a real Senate for Europe. The word “senate” has emerged recently in the European Commissions files and it seems appropriate only to underline the fact that all Heads of State (Presidents or Prime Ministers) have been elected in their own countries. Not long ago, the European Council was presented more as a political administration body that, according to circumstances, would take on different formats – from the Concilium building permanent political administration to specialized meetings between ministers like the ECOFIN Council, or the Transport Council (ministers of transportation). Today the “European summits” held under each Nation-state presidency (in June 2013 the Summit was in Brussels) are an actual top governing meetings with struggles to be solved within this “government”.

Provided these precisions, the set of administrative maps now encompasses not only the 3 initial republican maps but all in all eight different maps whose variety accounts for today's complexity of the French administration:

- Level 1 on top = the European Council based upon the membership to the Union,
- Level 2 top sovereign = the French state (based upon the national territory),
- Level 3 = the European Parliament (*sui generis* set of 8 electoral districts with no common grounds with French regions, departments and communes),
- Level 4 = the national parliament (based upon the 101 departments),
- Level 5 = the regions (based upon the 27 regions since 1977),
- Level 6 = the departments = 101 general councils with their own counselors (they also play an important role in the designation of senators),
- Level 7 = the inter-communal cooperation through a variety of formats (1999 law),
- Level 8 = the 37,000 communes as a basis for administration since 1790.

In sum, for one to understand today how France administers its territories and populations, it is necessary to decipher how a whole set of administrative maps converge or diverge over the European issues; and one must admit that six out of those eight maps diverge from a logic for Europe. The legal and physical-geographic dimension of the problem comes to the surface if one considers how the electoral districts for European elections are drawn below.



**Map 4: Newly “Sui Generis” EP electoral districts (they meet no other definition).**  
Source: <http://www.christinedeveyrac.fr/le-depute/mode-de-scrutin>

European Parliament elections in France do not use any of the channels procured by the republic neither the commune, nor the department, nor the region, but a mix and go-between outfit putting together one, two, three, or four regions, and in some cases some communes and departments. According to the electoral Law 2003-327 of April 11<sup>th</sup> 2003 it was created eight electoral “circonscriptions” with different numbers of MEP to be elected (78 MEPs in 2009 to be reduced to 72 MEP in 2014):

- North-west circonscription (12 MEP) with 4 regions: Basse-Normandie, Haute-Normandie, Nord-Pas-de-Calais et Picardie,
- Western circonscription (10 MEP) with 3 regions: Bretagne, Pays de la Loire et Poitou-Charentes,
- Eastern circonscription (10 MEP) with 5 regions: Alsace, Bourgogne, Champagne-Ardenne, Lorraine et Franche-Comté,
- West-Southern circonscription (10 MEP) with 3 regions: Aquitaine, Languedoc-Roussillon et Midi-Pyrénées,
- East-Southern circonscription (13 MEP) with 3 regions: Corse, Provence-Alpes-Côte d’Azur and Rhône-Alpes,
- Central circonscription (6 MEP) with 3 regions: Auvergne, Limousin and Centre.
- Capital circonscription (14 MEP) with only one region, Île-de-France,
- plus the Overseas circonscription (3 MEP), unfolding in three sections (one MEP each) the mass of all territories of Saint-Pierre-et-Miquelon, Guadeloupe, Saint-Martin, Saint-Barthélemy, Martinique, Guyane, Réunion, Mayotte, Nouvelle-Calédonie, Polynésie française and Wallis-et-Futuna.

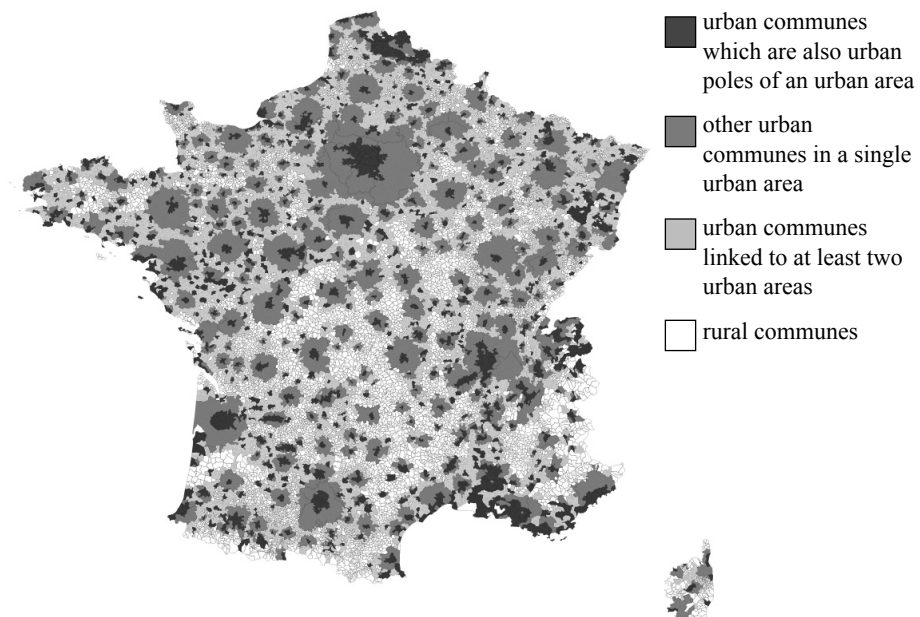
The 27 regions themselves exist since more than 30 years, but what is their degree of efficiency? For the time being they struggle to survive amidst a competition with the general councils (of departments) and the communes.

The question of communes: the fragmentation of the territory into 37,000 fragments, seen as a danger in terms of budget and financing, led to laws proposing various ways for communes to associate with each other without losing their independence. Statistics show “inter-communality” process is maturing to reach 85% of France’s populations. It thus seems to be a rather far-reaching ambition, which is under some progress, but its modalities still seem rather fuzzy.



**Map 5: Regions (defined in 1970s), presently under scrutiny for budget deficits.**

Source: image in public domain via Wikimedia Commons, [http://commons.wikimedia.org/wiki/File:Régions\\_de\\_France.svg](http://commons.wikimedia.org/wiki/File:Régions_de_France.svg)



**Map 6: Inter-communality to overcome the 37,000 fragmented communes.**

Source: Poulpy, work licensed under Creative Commons BY-SA 3.0 via Wikimedia Commons, [http://commons.wikimedia.org/wiki/File:Map\\_of\\_urban\\_areas\\_of\\_France\\_with\\_communes\\_and\\_departments.svg](http://commons.wikimedia.org/wiki/File:Map_of_urban_areas_of_France_with_communes_and_departments.svg)

**Table 1: Inter-communality concerns 85% of the French population**

2 major ways	Tax Status	Number of agreements	Number of communes	Laws at stake	Millions inhabitants	% population
Syndicat Intercommunal	Subordinate tax	2500 still operational	4200	1999; 1983; 2010 reform	Not significant	n/a
Communauté	Own tax	2580	35300	1935; 1959	59,3	85 %

### 12.3 Figuring out the contradictions inherent in the electors (from electoral data)

Elections are, to the extent citizens are called to obey voting according to maps and electoral rules, the concrete application of a logic of territories in order to re-distribute (and share) both political and administrative powers at various levels. However, one must remember that the republican legacy of France is apt at keeping the strongest roles to the three revolution-set layers of communes, departments, and the state, and to consider the “other” elections (especially to the regional councils and the European Parliament) as being of less “added-value”. From 1792 where communes were formed to destroy the monarchy with its tendency to absolutism and privileges, abrogate the local powers of the Roman Church as well as the aristocracies who governed provincial parliaments (such as the Britton Parliament in Rennes and the Languedoc Parliament in Montpellier) and confirmed with departments by Napoleon Bonaparte’s 1<sup>st</sup> Empire as being the locus for exerting with the “*préfets*” the governing clout through administrative strength.

De Gaulle’s 5<sup>th</sup> Republic Constitution in 1958 confirmed this architecture of the departments and communes, adding up two unique additional features based upon the universal suffrage: (1) direct election of the President of the Republic on a nation-wide poll basis, and (2) a possibility to call for a referendum on important matters (to be set up by the President on a call of a number of signatures from the French Parliament members). Article 11 of the Constitution states that the President may call on a referendum to ask the whole of citizens to give their opinion on any grave issue, provided the referendum is backed by the Government (Prime Minister) or by a joint committee of the Senate and the National Assembly. The questions on which a referendum is justified are preferably questions of public powers and international treaties. Indeed, referendums have been set up by Presidents of the Republic in order to assess the position of France on European issues, starting with the Maastricht Treaty in 1992.



This referendum procedure does not interfere with the prevailing three layers (state - departments - communes) as they were reinforced by Mitterrand-Deferre's laws for decentralization which is still operating full speed nowadays, giving the departments a role larger than ever. Indeed, the present minister for administrative reform, Mrs Lebranchu, is preparing the 12<sup>th</sup> revision of the structures of French administration with extreme caution for the political left/right balance of France; candidate F. Hollande's promise to limit the accumulation of mandates is difficult to implement due to the inner resistance of political personnel holding on the average 2,5 mandates per each French Parliament deputy (mayors, department counselors, etc.) Regarding Europe, there exists a paradox in the way French citizens vote which is to be seen from the diverging participation whether the votes are for the European Parliament or for some referendum on Europe.

On the one hand, European Parliament elections in France show a long-term trend, slowly but surely decreasing from approximately 60% turnout in 1979 (first EP direct elections) to 40% turnout in 2009, as shown on Table 2 below.

**Table 2: Decreasing Rate of participation in EP elections**

<b>Year</b>	<b>Rate of participation (France)</b>
1979	60,7%
1984	56,7%
1989	48,7%
1994	52,7%
1999	46,8%
2004	43,1 %
2009	40,65 %

On the other hand, the existing constitutional opportunity for French Presidents to set up a consultation through national referendum, has led to decisive votes on two occasions as shown on Table 3 below.

**Table 3: Rates of participation in Referendums by French presidents**

<b>Date</b>	<b>Topic</b>	<b>President</b>	<b>% Registered votes and outcome</b>
6 November 1988	New Caledonia	Mitterrand	37% Voted => 70% YES
7 February 1992	EU Maastricht Treaty	Mitterrand	70% Voted => 51% YES
24 September 2000	Mandate's length 5 years	Chirac	30% Voted => 61% YES
24 October 2005	EU Constitution	Chirac	70% Voted => 53% NO

Interestingly enough, the referendum procedure is exceptional (it was used approximately six times in 60 years) but if one considers the last four referendums held since 1988 by presidents Mitterrand and Chirac, two of them are in direct connection to the European issues. When one so compares the results of the votes on European deputies (MEP elections) and European issues (referendums), four features strikes the eye:

- (a) when referendums concern European issues, the French people vote “in mass” at polling rates close to 70% of the registered voters;
- (b) when referendums bear on issues other than Europe, the rate of registered voters’ participation fall to 35% from 60% registered voters, noticeably below the rate for European consultations;
- (c) in both cases of referendums on Europe, the balance between Yes and No votes is very tight, showing the sensitivity of the French people to the European issues; moreover as the process of a referendum engages the President’s responsibility and all his political clout, it makes sense to consider the 2005 vote against the EU Constitution as a grave disavow not only at Chirac but to the European Union itself;
- (d) in France, as elsewhere in Europe, the question of sovereignty is transverse to the left as well as to the right and the votes are crossed over the classical left/right divide, providing for an actual thinking on what future is fetched for.

Basically Europe, in spite of 70 years of institutions-building where France played a key role, remains at least virtual and at most unknown to the Frenchman-in-the-street. Even Jacques Delors, who presided over the EU Commission during the crucial years leading to the Single Europe Act, used to say: “Europe is another UFO”, namely an Unidentified Flying political Object.

This joke reminds of Tocqueville’s questioning of the 1848 Revolution<sup>4</sup> which created the Second French Republic almost sixty years after 1789: “Revolution, Revolution, what is it? The more it goes, the less we see clearly its term; will we succeed into a deeper social transformation as forecast by our fathers’ will? Or should we simply reach a state of intermittent anarchy, a sort of chronic illness well-known for older peoples?” All the same, De Gaulle used to say in 1963, lifting his arms “Europe? Europe? What is this schmiblick?” The same could be said 50 years later of the French perception of Europe: “plus c’est l’Europe, moins c’est clair” so that we need then to enter some form of diagnosis on perception of the European Parliament by French citizens who massively abstain from voting.

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<sup>4</sup> de Tocqueville (2004), p. 8.

## 12.4 Diagnosis of the perception of the European Parliament in France

Although it may be difficult to assess the real nature of the French disease, several contributors help us diagnose (literally know across) what has been going on as a process of growing complexity from 1950 to the 2015s: Minister A. Peyrefitte's in-depth study of "mal français", Prime Minister Churchill's significant courage, and psychoanalyst F. Dolto insistence on the "symbolic function" in the management of human psyche bring altogether key pieces for a possible diagnosis of failure and fatality.

Alain Peyrefitte (1920-1999) was a diplomat in the 1950s in Germany and Poland, then in Brussels French government's head delegate, later the first ministry of information under De Gaulle's presidency (1961-1967), and the Minister of Justice under Pompidou's presidency (1969-1974). Besides being a political lion, much criticized by his adversaries both outside the Gaullist party and inside of it, Peyrefitte contributed substantially to a criticism of French bureaucracy. Both as a minister in Paris, and as the mayor and deputy of Provins, Peyrefitte presents a clinical approach at how public service does not function properly, how decisions are not made, or when made not applied, or else wrongly applied. During his own term as a minister he launched a good number of inquiries that ended up in the sands of centralized bureaucracy. To a certain extent, France presents a form of durable mindset of elites playing superiority to shame "inferior ranks", which the film "Ridicule" illustrates in the 1780s with the adventures of an engineer chased of the Royal Court; according to Peyrefitte this illness of the mind is already described around 1670 as: "Se croire un personnage est fort commun en France, On y fait l'homme d'importance, c'est proprement le mal français".<sup>5</sup>

By fear to be ridicule, and/or by ambition, and/or by incompetence, French bureaucrats and politicians never really face actual problems, they delay their treatment, they flee them into other issues, they eventually hide them behind a curtain of illusion. Peyrefitte in his 1976 book titled "The French Disease"<sup>6</sup> goes very far into diagnosing the harsh realities and quasi-Soviet troubles created by the French system and its actors. In a successor book, "The Society of Trust",<sup>7</sup> Peyrefitte's analysis is still more pertinent when facing how French elections to the EP suffer from the flaws accumulated over 70 years in a fossilized system which entertains a dual France which stick at variance from the European Union.

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<sup>5</sup> Jean De La Fontaine's fables.

<sup>6</sup> Peyrefitte (1976).

<sup>7</sup> Peyrefitte (1995), p. 240.

There is no French exception, but according to Peyrefitte, who quotes D'Hallbach (1776), it is the lack of connection between politics and morale that makes France a system which works by explosion. The constantly decreasing share of voters at the European Parliament elections in France is a sign of deep-seated distortions created by the disparity between:

- (a) four levels of republican administration (President – Government of State – department – commune);
- (b) superimposition of eight more levels of administration to account for France Europeanization (European Council – European Commission – European Parliament electoral districts – French national Parliament – referendum decided by the President – referendum “d’initiative populaire” – Region – Inter-communality).

Everybody agrees that the piling up of “all and everything together” fosters:

- 1) loss of understandability of the political and administrative system for the French man-in-the-street who is ultimately the citizen who comes voting or not to both national and European elections;
- 2) complexity and costs of an administration which bites its own tails by requiring every process in double and which hurts its own walls by a process of sorts within a “mille-feuille cake”, this image being suggested by political actors themselves;
- 3) the practice for the political personnel to present itself as a candidate at multiple levels to be at power facing the complexities of the French administration. It is called ‘accumulation of mandates’ and cartooned appropriately above (Figure 1).

But concretely no political personnel has enough clout to address the issues and to fight for clarity, simplicity and understandability. The quality of *courage* has been banished from the average French political candidate, contrarily to someone like W.S. Churchill<sup>8</sup> who dared to pronounce the following words on 2 July 1942:

“This long debate on a motion de censure against my Government has now reached its final stage. What a remarkable example it has been of the unbridled freedom of our Parliamentary institutions. Everything that could be thought or raked up has been said to weaken the confidence in the Government, has been used to prove that Ministers are incompetent ... to make the workmen lose confidence in the weapons they are trying so hard to make, to present the Government as a set of nonentities over whom the Prime Minister towers, and then to undermine him in his own heart... Every vote counts. If those who have assailed us are reduced to contemptible pro-

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<sup>8</sup>Churchill (2009), pp. 280-285.

portions and their vote of censure on the National Government is converted to a vote of censure upon its authors, make no mistake, a cheer will go up from every friend of Britain...”.

This is precisely the form of courage that has not been present to advocate the importance of the European Parliament in the French elections; quite the contrary, every member in the political arena plays “consensus mou” (loose consensus) so that there seems to be only two ways for the future:

Null Hypothesis: Stay Conservative of the Jacobin system: in spite of all investments made over the political concept of a European Union, France clings to her 230 years-old administrative model of centralism; this may be seen in the top-down tight structure linking vertically the state (and its capital, Paris) with the local 68 million people whatever their areas of living. The shortness of the link between state (Paris) and departments (local) is asserted through the generalized practice for a political leader to hold several mandates (local and national) at once in order for her/him to “obtain from Paris” what she/he is looking for his constituency. Since the political personnel acts by accumulating national mandates with local mandates, the citizen-in-the-streets does not feel concerned by Europe, the more so when the national identity of France is magnified and the European identity vilified. This hypothesis stands as a confirmation that in times of turmoil, the only system which may help France survive is the republican 3-layers centralized jacobins’ framework.

Alternate Hypothesis: Accumulate still more of the heavy combination between the republic and the federal union: The peculiar complex way chosen by the French republic to accommodate its integration within the European Union is a transitory illusion but nobody would dare to say “le Roi est Nu”.

Neither the null hypothesis nor its alternate are satisfying as they both neglect to deal with the symbolic dimension on which the European Union is built. Françoise Dolto, the psychoanalyst, devotes her writings<sup>9</sup> to what she calls the symbolic function which accompanies all vital processes in human beings. Today France resembles a person who would have forgotten or buried its symbolic function and would not take care to what Dolto calls “signals”:

“The importance of the symbolic function for human beings is its relational nature, connecting our senses, our thoughts, and our affects. The symbolic function escapes all conditioning in space and time; it is rather space and time which need it to get a semantic meaning in human beings. Any fact, any event, may be, for human beings a signal; in every signal, a human being may read a symbol; and in every symbol a tool to act on other humans and/or on reality. The symbol extracted from the signal creates a positive articulation to memory and action”.

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<sup>9</sup>Dolto (1986), pp. 93, 129-130.

The French system today receives signals that it is caught in the middle of the ebb flow; it meets a “kairos” (a turning point) with the absolute necessity to choose and to resolve which administrative model give priority: clinging to the old republican references (with the abandonment of Europe) or creating some simplification by harmonizing levels and simplifying them to some new coherent political system?

This coherent system should be both fully compatible with European principles and comprehensible by the citizen-in-the-street, still somewhat coherent with the basic republican ideals of Liberty, Equality and Fraternity. It is possible to find it, but it requires political clout and impetus, courage and will. They rest upon an intensive care to the symbolic function of politics for the basic French citizen.

A symbolic key point relates to the Euro system: would France revert to the Franc if the financial crisis degenerates into a world-wide great depression, in light of the looming collapse of Greece and Cyprus, and maybe Portugal?

Our diagnosis is that France as a European Union Member State has not to date the courage to make the resolute choice, which would upgrade its republican ideals within a resolute European hyper-choice. When this choice will be made, both Europe and France will get better; as long as this choice is not made, the French Republic may be fatal to the European Union. The red thread of French risk which permeates this research is the French hollowing out of Europe through economic and financial Depression: Would France (as a nation-state) spoil what Europe has brought forward and gained during the past 70 years, because it would threaten too much of the French Republican identity itself?

#### 12.4.1 Monarchy versus the republic benchmark

Jean Monnet<sup>10</sup> wisely said that when Britain and France go hand in hand they both succeed; and when they make war at each other they both fail.

This is why we consider here interesting to benchmark the ideals of a republic (France) with a monarchy, which stands for another type of strong political system, exactly what the United Kingdom and its Commonwealth itself rest upon, a set of principles linked to a royalty which refuses to go astray. The reader saw above how maps and electoral data might show electoral facts which make highly visible the top of the “political iceberg”, but it seems equally important to look below the surface towards deep waters which, as Freud used to say, encompass both conscious and unconscious di-

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<sup>10</sup> Monnet (1976).

mensions. Thus proceeding in-depth may we ask the reader to let aside her/his own made-up ideas on Europe since it is necessary to go beyond the ordinary “standard talk” on what the EU is and where it is going. In times of a massive depression comparable only to 1929-1933 which lead to World War II, it appears important not to hide the other side of the European coin, or, to use Arthur Koestler’s very words, to consider also a possibility of some “darkness at noon” in Europe. Being a member of the House of Europe does not mean being blind-folded over the very differences between political systems qualified republic versus those proclaimed monarchies.

The very notion that a monarchy is set up for long under the principle of divine right (“Dieu et mon droit”, says the British royal coats of arms) is radically at odds with the principle of a republic which says “power to the people, for the people, by the people”. Today’s European Union has, among its 28 members, seven democracies which entertain royal families with an official sovereign function (Sweden, Denmark, Spain, United Kingdom, Belgium, Luxembourg, the Netherlands). By contrast, the values of a republic like France (such as Liberty, Equality and Fraternity, including Secularity) are bond to justify elections (or democratic designation) of a President or Head of State at periodic times with no assurance of continuity whatsoever; it may even be said that a republic possesses two traits which make it differ in essence. First, any republic is “uncertain over time” since its Head will change anyhow. Second, “res publica” is a concept essentially at variance with “rex” (the king in a monarchy) since “res publica” incorporates, so to speak, the eventuality of a revolution. Therefore, one key trait of a monarchy is stability over time by its name and identity, while a key trait of a republic is variability and change over time. Therefore a republic has more “engrained instability” which it must compensate by a strong identity. Is the European Union a stable concept enough to survive the effects of crisis and decay? Prime Minister Cameron is a navigator who does not hesitate at setting up a large referendum to consult the British people on the future of Europe and Britain. No republican regime would dare do the same today in Europe, and this should make us think about a basic deficiency of the European Union; it lacks guts, deep-seated identity, physical realizations, while it has a plethora of virtual fables to tell and sell.

Indeed for a political sciences scholar, the Iron Lady was iron to feeble-minded political leaders in Europe who dare not resist Prime Minister Thatcher’s insistence at “getting her money back”; this political feebleness led in turn to accept the several diktats of the UK to benefit immediately from Europe at the expense of other Member States, thus enacting an impressive series of

exceptions to the common framework, including the British opt-out from the social clause of Maastricht, the British opt-out of the regulation on the European “Societas Europaea” corporation, and the “British rebate” amounting to 1 billion euro per year over 30 years to lighten the British participation to the common budget.

A deep signal of a symbolic disruption between Member States is the question of the Euro as the unique currency chosen by 18 Member States amidst the 28 Members, is a factor of division; not only do ten Member States stay out of the Euro, but also two Euro members at least (Greece and Cyprus) are threatened by the EU Commission to be thrown off the Eurozone if they behave badly; this is almost a religious spill of Good and Bad, Heavens or Hell being promised to the “bad boys”. Clearly the risks over the Euro as a unique currency are in part a reflection of the fear within the guts of European bureaucrats; since the 18<sup>th</sup> Member State, Latvia, is supposed to enter the Eurozone by January 2014, this will a proof-of-concept test because meanwhile there may happen a confirmation of the impossibility for Greece and/or Cyprus to meet their engagements within the Eurozone. Would then we see a Member State entering the Eurozone while two other Member States are forced to leave it? If so, in 2014 Europe would resemble the class of a mediocre college where more and more “bad guys” are thrown outside while “good guys” shrink to not even a club’s size. In this case the ideals of De Gasperi, Schuman, Adenauer, Spaak and Monnet at once killed by bureaucrats’ allegiance to fear and its neighboring ally, stupidity.

When the divergences on the Eurozone, as well as the nature of the links between the UK and Europe are questioned by Prime Minister Cameron himself (with London’s Lord-Mayor they both congratulate for “never, never, never” having chosen to enter the Eurozone), it is no longer possible to ignore the deep-seated variables of monarchy versus republic which put the peoples of Member States in the middle of nowhere. How to vote for or against Europe when the object remains unidentified? The argument of sovereignty may be a resurgence of deep-seated unconscious threats to citizens’ beliefs on what a political and administrative system should be. It is regrettable that the European Union is not sexy because dullness is the basic fuel for claims of “sovereignty at a bay”: divergences between the political regimes (monarchy versus republic) of the 28 Member states should not be kept to silence any more but worked upon in order to find suitable ways to conciliate their value systems and promote a political consensus beyond monarchy and republic systems.

The misfortune in all the “British exceptions” is not so much a question of money than a question of principles and symbols; firstly the UK is never alone



but often followed by other Member States such as Denmark (another monarchy) and Spain (another monarchy); secondly, the breach to common sharing was a signal for the European Commission not to go beyond some lines i.e. a lack of support for investing means into the solid construction of a genuine European identity; clearly there could have been other policies to have the peoples of Europe rejoice together at certain key dates and on certain capital events than this superficial so-so, almost snobbish, approach to Europe by the top. Efforts made in the design and redaction of a European Constitution have not been shared downstream to the populations of Europe; once more we have had the picture of a committee of wise men with the intact figure of “Giscard president”, who enacted in their magnificent heads a fabulous Constitution; but who took care of the national sovereign identities? Who worked on the arts and cultural dimensions to be dealt with, especially in the vulnerable republics of Italy, Greece (since 1981 a Member State), Spain and Portugal (since 1986)? If the notion of Europe is to be promoted it cannot be top/down since populations are millions at the bottom. Again here there is a contrast with the process of a monarchy.

Indeed there is a symbolic link between the two republican regimes of Germany and France born as “res publica” – a thing of the people – after much toils and wars both based upon laity and elective principles; since 1950 both republics have acted in order to reconcile with each other and to prevent any more war in Europe, following the ideals of Unity set forth by Konrad Adenauer and Robert Schuman. According to Robert Mischlich,<sup>11</sup> Schuman cabinet’s member:

“there are dates which foster History; one of them is May 9th, 1950 where I was sent to Bonn as a envoy of French prime minister President Schuman to carry to German Chancellor Adenauer two written messages:

1 – the first letter was typed and proposed a deal to be submitted the same day to the French Council of Ministers in Paris, « offering that the production of coal and steel of France and Germany be placed as a whole under a Joint-Authority which would be opened to all other European countries »;

2 – the second letter was hand-written and privately expressed Schuman’s hopes that the coal and steel proposal be considered a true political move rather than just an economical one. Steel being the matter of guns and weapons, the offer was about eternal peace between former belligerents. On the same day, May 9th, 1950, Chancellor Adenauer, after reading both letters, gave me an audience where he formally expressed his entire approval of both letters contents, an agreement to be transmitted immediately to my minister [Schuman – B.K.]”

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<sup>11</sup> Mischlich (2000).

According to the Treaties, France and Germany have both adopted European regulations and adapted European directives to their legal idiosyncrasies but while Germany was able to adapt (through the enormous efforts to integrate Eastern Germany), France has still to meet the challenge of transforming its administrative organization: the European Parliament elections are but the top of an iceberg of problems of incompatibilities between sovereign France and federal Europe. Why? Mainly because it is always easier to find errors in others than errors in oneself. Happily enough diversity is such that the European Union has not been built on French principles only, but on a host of “rounds” bringing up the variety of European Member States considered as equal partners, a process which culminates each year in the diplomatic “European Summits” (of the Heads of State). Those summits are by excellence the place where institutional differences between member states with similar republican systems, say France, Poland and Germany, should be taken care of so that they associate more and more into political parenthood as time passes by, thus preventing Europe from disunity. This path is necessary to help France overcome not only her self-entertained illusions, but also the aggression from the European Union itself.

Such a shallow signal of the symbolic misunderstanding between national and European identities happened in June 2013, precisely one week before the European Summit between the European Council of the Heads of States and the European Commission. From the public assertion made in front of journalists by the president of the European Commission Barroso, that “the position of France is reactionary”, a huge political turmoil swept out the French press and TV culminating into the declaration by A. Montebourg, French Minister of industrial renewal, that “Barroso makes up the bed for the Front National”.<sup>12</sup>

This recent conflict between the European Commission’s President and French ministers is significant of the troubles accumulating over time from the fact that no care is given to the conflict of identities between:

- 1) anyone of us as national citizens in *national* systems entertaining huge differences (such as between a monarchy and a republic), and
- 2) anyone of us as *European* citizens, a Europe who does not assess herself as highly responsible for problems of governance it harvests now.

Realism in the analysis of voting behaviors requires us to dig into the relative efficiency (or inefficiency) of the administrative structures of Member States. We may learn from the personal journey of a Member of the European Parliament who himself, through the 20<sup>th</sup> century, envisioned European ideals from the Austrian-Hungary empire to the European Union itself. Otto von

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<sup>12</sup> Europe1 (2013).

Habsburg-Lorraine (1912-2011) was both the legitimate heir of the Emperor of Austria, a possible pretender to the French Bourbon's inheritance as the duc de Lorraine and the king of France, and a member of the European Parliament! What a richness in his remarkable autobiography on how both Hungary and Austria suffered and changed their structures from 1905 to 2005 from a monarchy-empire to a republic; he called this change more "radical and omnipotent" for Austrian and Hungarian administrations than for himself who lose almost everything but his name.

How the administrative systems were separated and modified to accommodate to a Republic of Austria (keeping Western influence) and a Hungarian Popular Republic (under the Soviet influence), both entering later the European Union, brings a lot to learn on how to make the French system move forward. Von Habsburg could not enter Austria for a large number of years and he was happy to live in Strasbourg where he developed a European mind. Indeed it would be possible here to point to another such split between the East Germany and West Germany, the argument by Otto von Habsburg being that monarchy would have preserved a form of humanism that was definitely impossible under any "democratic socialist republic", and, according to him, threatened under totalitarian states such as the German Nazi regime. It is noticeable that von Habsburg argues that the European Parliament being located in Strasbourg offers a legitimate place for dialogue and sharing of experiences better than any national parliament in any of the Member States. By saying so, Otto von Habsburg calls for some European common policy to recognize a common identity, which would over time play as much a constructive role for citizens as the Erasmus exchange programs for students. Realism goes through the paradox of sharing emotions, historical catharses, and liberation from prejudices.

## 12.5 Questions raised by the notion of legitimacy for the European Parliament

Legitimacy is a political good which every politician claims for; the Nazi party got 35% of votes in the 1933 German elections, under the Weimar Republic, arguing being "republican"; history has shown how dictatorship followed suite. In Greece today the Golden Dawn party uses the same trick, self-proclaiming itself "republican"; in Belgium, the Flemish Vlaams Blok national party argue in favor of a Flemish independent republic against King Philip of Belgium.<sup>13</sup>

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<sup>13</sup> Ricard (2013), p. 4.

No wonder that the same process holds in France where “sovereignty at a bay” issues are baptized “republican” with four political parties ask for a come back to the Franc currency (quitting the Euro). If the French citizens were to vote today, those parties (from extreme right to extreme left) would reach almost 45% of votes (among which 35% for the Front National alone) both at the communes and European Parliament elections. The basic French citizen believing Front National is “legitimate” because it proclaims itself to be republican, the question of the EP legitimacy in France is raised definitely. Since nothing has been done seriously since 1979 to re-assure the simple French citizen as to the permanence and coherency of the republican conventional framework, the proposed approach would be to try to interconnect together the French and the European institutions.

Focusing on France, Table 4 below summarizes the 12 layers multilevel governance created by the superimposition of the European system over the French Republic frame. This French “mille-feuille cake” encompasses eight levels with direct voting procedures (people’s sovereign elections at the city, department, region, French Parliament, European Parliament, national President, and two types of referendums) while 4 levels of governance obey only indirect procedures (disconnect from the voters): European Council; European Commission; Prime Minister and Government; Inter-communality.

**Table 4: The French “mille-feuille” complexity in political powers system.**

LEVEL of Governance (date of creation)	DIRECT VOTE by French citizens	HOW MANY POWER HOLDERS (approximate estimations)	Election Forecast 2014-2017 % Participation % Sovereign Nationalists
European Council 1957, 1975, 2009	NO	CONCILIUM circa 5,000 + contractors	
European Commission 1957	NO	COMMISSION circa 35,000 + contractors	
European Parliament 1979 (common ECSC assembly, 1952, parliamentary assembly 1958)	YES	EUROPEAN PARLIAMENT circa 780 MEP staff circa 5,500 + circa 2,000 assistants + contractors	2014 35% participation 40 % sovereign & nationalist votes

The Fatal Republic: how France is Going Full Speed Towards...

President de la Republique, 1848, 1871, 1946, 1958	YES SINCE 1965	One President Circa 2,500 top civil servants	2017 60% participation 30 % sov + nationalist votes
Referendum of the President 1958	YES	One President decides over the Referendum for the whole 45 million registered voters	
Conseil des Ministres 1792	NO	Premier Minister + 50 ministers /or/ state secretaries + circa 25,000 top civil servants + circa 2,5 millions civil servants	
Parliament 1792, 1804, 1815, 1830, 1848, 1871, 1946, 1958	YES/ASSEMBL NO/SENATE	National Assembly = 580 deputies and 1,500 civil servants Senate = 350 senators and 1,200 civil servants	2017 50% participation 40% sov + nationalist votes
Referendum 2003 Initiative Populaire	YES	10 % of the Assembly + 5% of the registered voters (4,5 million signatures)	
Region 1977	YES	1,200 elected Regional councilors + circa 0,3 million servants	2014 40% participation 35% sov + nationalist votes
Department 1792	YES	6,500 elected Department councilors + circa 0,8 million civil servants	2015 35% participation 40% sov + nationalist votes
Intercommunality 1959, 1983, 1999, 2003	NO	70,000 civil servants (shared with Communes) + contractors	
Commune 1792	YES	700,000 municipal councilors 0,7 million civil servants + contractors	2014 45% participation 35% sov + nationalist vote

Sources: [http://ec.europa.eu/civil\\_service/about/figures/](http://ec.europa.eu/civil_service/about/figures/); French Cour des Comptes reports; and <http://openeuropeblog.blogspot.fr/2007/01/how-many-people-work-for-eu.html>

Facing such a governance electoral system, the average citizen is properly lost; if she/he figures out the *local* bodies (mayors) plus the Parliament (deputies), she/he doubts the roles of intermediary bodies (such as the region) and distrusts far-away “Brussels”. Two-thirds of French people do not even know that the EP seat is in Strasbourg!<sup>14</sup> The question “how to improve EP legitimacy” is then both crucial over the future of European institutions, and over short-term considerations, i.e. the 2014-2020 elections to come. Basically, the French citizen is led to attribute legitimacy only to French republican institutions, especially to the French Parliament, all European entities being blurred into a cloud of growing ignorance, which justifies voting for the nationalist/sovereignist candidates. While there is some “information on Europe”, it is judged irrelevant for daily life by the human in the street. Table 4 therefore shows on its last column tentative forecasts regarding:

- 1) rate of participation (percent of registered voters) and among the actual voters,
- 2) total score obtained by so-called “sovereign parties” (left and right) among which Front National (extreme-right) weighs 70%. This forecast is based upon estimates (in 2013) stemming from panels of electors, which cannot be said to be fully reliable. The intention here is not precision but to disclose the tendency.

In sum, the French system is becoming schizophrenic with a risk of a “false and artificial voting behavior” in European Parliament elections in 2014 and beyond:

- 1) with a record low rate of 35% participation, EP legitimacy could plummet;
- 2) with 40% voters in favor of sovereignty and nationalism, one could observe that less than 15% of the French electoral body would take power over the remaining 85% registered voters. Indeed the ultimate outcome of the 2014 elections could be to definitely give entry to nationalists in the French government, keeping more than ever the European Parliament “out of the game”, that is at the far outskirts of a political system which would be able to orchestrate a xenophobic cacophony.

Since 1950 we have in France build a double discourse (which is nowadays de facto inaccessible to reason and/or understanding) incorporating a claim to please all parties, including:

- (a) permanent lip-service to “republic” without working to actualize its key roots;
- (b) a claim to satisfy nice-looking principles, including:

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<sup>14</sup> Marcy (2013).

- 1) the principle of subsidiarity whereby Europe would let each national system manage as much as possible its own implementation on practical issues, with Europe intervening at its proper level, so to speak;
  - 2) the principle of proportionality in decision-making, meaning to take care fairness in the choices to be made; it is significant of an effort to find in each occasion of a problem the answer which is actually and reasonably appropriate;
- (c) Unfortunately these nice principles do not say anything about enforcement of political measures, nor about making choices amidst scarcity of resources. This is why a third principle, titled “of conditionality”, was put forward according to which European decision-makers would associate each concrete measure, such as budgetary allowances to a region in France, to conditions to be realized in the very action implemented. Otherwise the European authorities would claw back the budget and cancel their support.

The principle of open sanctions being now used to support and control nation-states like Greece and Cyprus, maybe Portugal, threatened by financial ruin, the question of the legitimacy becomes critical; when the Troika (European Commission, European Central Bank, European Council) is in Athens to “recommend action” to the Greek government, and this government cuts the state Radio-TV system, everyone realizes that there is something “strange”.<sup>15</sup> Europe looks like an instance of control and sanction and this new dimension – if not explained nor built by appropriate political means – as a symbol of enforcement may be interpreted as “illegitimate” by some of the national bodies.

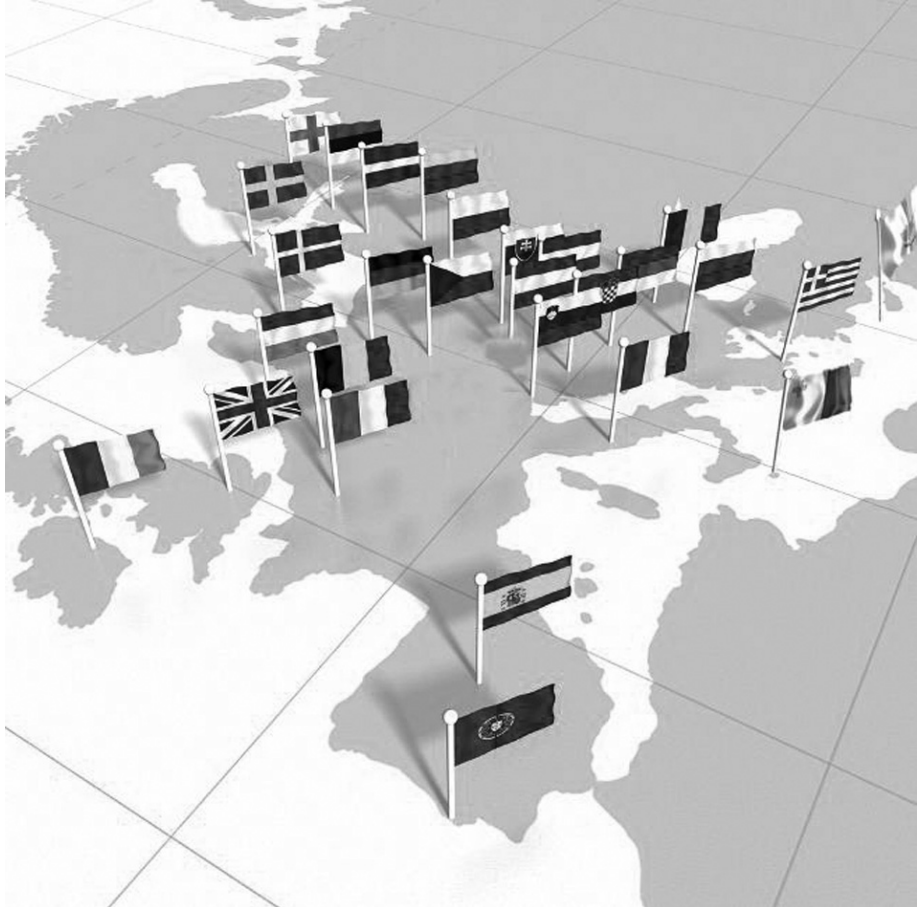
In Paris the threatening situation when a European Troika would come to require a total change of financial policy is seen as a dangerously approaching risk which would put French sovereignty “at a bay”. The question of legitimacy is the more so pregnant when the European Parliament (only elected body among the European institutions) is absent from the financial confrontation between Member States and key European decision-makers. Sanctions to a Member State (which also is a nation) are presented as an “obligation” and never addressed as a political choice; seen from the national fields, Europe looks like maximizing, not minimizing national risks, and therefore threatening the “republic”. This is not what Schuman and Adenauer envisioned; nor is it what we know of the federal frames in Canada, the US or Brazil.

One must then recognize that the European model of governance is of a pathological nature, pretending the “one nation = one silo” image (28 independent Member States) while enforcing the European Central Bank diktats.

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<sup>15</sup>Robinson (2013).

Indeed, when there is no possible way by the European Parliament either to tackle transverse issues (across countries) nor to ponder by its own initiatives the terrible brawls engendered by the European Troika, one may say: “Houston, we have a problem!”.



**Figure 2: Europe of national “silos” and flags (Croatia is included since July 1st, 2013).**

Source: European Economic and Social Committee, copyright by the European Union, <http://www.eesc.europa.eu/?i=portal.en.staffan-nilsson-comment.21190>

## 12.6 How to create and later improve Legitimacy for the European Parliament?

Going further towards legitimacy requires associating our search observations to three political scientists who placed it at the center of their quest for democracy.



The dimension of time and community is found in Hanna Arendt; the necessity to work on emotions and motivations comes from D. Westen; and the discipline of addressing values, wishes and fears will proceed from A. Etzioni. From them we may foresee how to give legitimacy to the European Parliament in the French case.

Coming from her own European odyssey, Hannah Arendt<sup>16</sup> stresses the fact that legitimacy disappears when there is a rupture (and no more visible connection) between the political system of today and the national past; she quotes René Char, the French poet of the Resistance, who described the hectic situation of legitimacy loss as: “Notre héritage n’est précédé d’aucun Testament”. Arendt herself goes further and writes that totalitarianism proceeds from nothingness, when the heirs of a system lose track of its origin, leaving nothing to share between themselves and their successors (next generation): “They are estranged Heirs; they have let the treasure go away; they forgot about it: therefore the very meaning of events escapes them, they have nothing to tell, and nothing to transmit”.

Hannah Arendt goes even further by taking up Tocqueville’s expression: “le passé n’éclairant plus l’avenir, l’esprit marche dans les ténèbres” and observes a situation which resembles the problem tackling the European Parliament today. She writes:

“The company of others is essential to one who confronts legitimacy issues; when the breach between the past and the future is so visible and tangible as to be a problem for all citizens, then we are confronting a political fact and we need to think; the aim here is not so much to think by oneself as to insure that other understandings, other brains, will join to promote a common world vision (Weltanschauung) that would permit a renewal of history.”

More recently in the US, Drew Westen<sup>17</sup> puts forward the roots of legitimacy as belonging to the “mind, brain and emotions in politics”. Westen writes:

“Emotions serve an adaptive function, especially in readiness to attend each others’ needs, through a variety of postural, facial and other nonverbal communications. Emotions are also one of the more potent sources of motivation that drive human behavior ... The same Latin root *movere*, to move, is engrained in both words, motivation and emotion ... To move is connected to instinct, and what tend to drive instinct in peoples’ political behavior? Wishes, Fears and Values, all feed secretly underground emotions”.

Our third source of reflection is Etzioni’s moral dimension<sup>18</sup> in which he insists on Normative/Affective factors (he writes N/A factors) which, he says,

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<sup>16</sup> Courtine-Denamy (1994), pp. 200, 251.

<sup>17</sup> Westen (2007), pp. 70, 77.

<sup>18</sup> Etzioni (1988), pp. 93-113.

explain why, beyond rationalism, political actors are dominated by values and emotions:

“To consider as a residual realm the non-rational and to confuse it with irrationality tends to carry a negative connotation and to prevent any objective in terms of policy-making ... hence the prevalence of rationality and the void in the area of emotions. An attempt is made to follow some breakout of the rationalist framework by positing a different view of human nature: a concept of individuals governed by normative commitments and affective involvements, referred to as N/A factors. The central thesis advanced here is:

1 - that the majority of choices people make are completely based on N/A considerations, not merely with respect to selection of goals, but also of means;

2 - that the limited zones in which other, rational considerations are paramount, are themselves defined by N/A factors that legitimate and otherwise motivate such decision-making”.

As we observe today a dramatic collapse of the European voting in France which may be a sign of some fatal non-renewal of adhesion to Europe, the above

- Time dimension (H. Arendt),
- Motivational dimension (D. Westen),
- Values, Wishes and Fears (A. Etzioni)

provide means of acting before it is too late: reconcile the present with the past, work on emotions and motivations, promote Normative/Affective factors to deal with fears, understand wishes and build common values of belief would be priorities.

Too much promotion of the European Union (in France) is based upon hyper-rational arguments, especially with figures and finances. We acknowledge the importance of data and reason if interpreted with due care and support of daily life; the overarching weight given to pseudo-rational justifications for financial sanctions of restriction while nothing qualitative and relative to European cultures is done to counterbalance the drastic trend amounts to make believe that Europe is about “surveiller et punir” (to keep an eye on, denounce and punish, M. Foucault). Is this mindset so different from the Soviet Union? The only visible encouraging programs which the European Union has promoted are exchanges of students all over Europe (Socrates-Erasmus) but it was recently threatened by budget cuts, so that one wonders whether Erasmus could generalize into other areas.

Thinking about Normative/Affective factors we need to develop music, arts, dance, and self-expression as basic areas where a European policy backed by the European Parliament is present and active; according to Etzioni, we need to tune down the hyper-rationalist accents of European propaganda which do not reach their target any more. Neither dullness (of European humbug) nor

aggression (of Troika's action in Greece) speak to peoples in the streets; dullness and aggression bring along with them risks of mis-identity and disaffection for "fortress Europe", perceived as a technological and money-making heartless entity, neither human nor moral nor social.

By contrast, the question of monarchy as such is not a problem as long as a proper democracy is operating; it is only necessary to remind oneself that a king or a queen plays an important role as a powerful symbol of continuity and of arbitrage on issues involving the nation and its sovereign rights. This is why the protocols of Queen Elizabeth II public presences and weekly audiences of the British Prime Minister mean a lot in terms administrative influence. Beyond politics and policy, a monarch possesses an essential quality of guarantor of continuity amidst all times. Reciprocally, it also means – since a monarchy will get more sovereign vigilance (two-levels of asserted sovereignty) than a republic (one level of sovereignty) – that in the European Union, Member States with republican regimes must be more attentive (and preserved) to threats on national identity.

The European principles look beautiful and are, in appearance, compatible with whatever political regime is in place, be it a royal patron, or with a republican fabric. But as far as administrative practices are concerned, a Member State like France could topple over to become an opponent to some of the European Union components such as the Euro-system or the European Parliament, on the basis of a majority of its expressed voters swinging to nationalists arguments in the future. In France, the fuzzy overlaps between European and sovereign Governments create in the citizens' minds a huge misfit in perceptual ability, With twelve layers of Governance making a challenge of complexity well-beyond the "magical number Seven" which cognitive psychology research (G. Miller) sets as the human optimum, nobody understands the system. The feeling of dispersion is amplified by signals of bureaucratic distortions created by the disparity between:

- the basic long-seated republican levels of administration (President – Government of the state - department – commune) which are still taught from primary school to the Ecole nationale d'administration as historical and institutional basis of "French nation";
- the superimposition of 8 more "non-republican" layers of administration to account for France insertion within the European Union and modernization (European Council – European Commission – European Parliament electoral districts – French national Parliament – referendum by the President – referendum "d'initiative populaire" – region – Inter-communality).

This is why we would suggest to create a subtle connection and a real simplification by linking together one level of European governance with one level of French institutions; the following Table 5 shows two possibilities of interconnections among which decision-makers could chose the most appropriate.

**Table 5: Two options to connect French institutions and European elections**

Option 1	French parliament	Connected to =>	European Parliament	Timing & campaign
Option 2	Regional elections (27 regions or French territories)	Connected to =>	European Parliament	Timing & campaign and candidates

The first option would be to create a connection between the national parliament and its European counterpart, so that national elections and European elections are organized the same day within the same campaign. The second option would be to assign to each of the 27 French regions a number of seats in the European Parliament so that MEP would be elected in structures representative of the French system, therefore bringing to the EP legitimacy built from the ground and from the peoples themselves.

In both cases emotions and reflections would then be both present in people's choices (voting) rather than disconnected as they are today in France. This would increase European identity as such and give more and more visible and understandable aspects to the citizens locally. This essay proclaims that it has been a pity to see how "hyper-rational principles" have been applied so as to discourage goodwill and citizens' participation in European elections. This research may seem irrelevant to the extent there exists a blind consensus to neglect the clashing nature of the disparate administrative systems of Member States; whether an administrative system is based on common law and royal privilege, or code law and a republican heritage, has not been considered a relevant question since the UK admission to the European Communities. Every Member State being supposed alike and equivalent to the others, it is supposed there is no need for a comparative approach on sovereignty affairs. This equality in principle is an entertained illusion which promotes a politically correct expression of sameness among researchers themselves, not true research on what is actually going on. The freedom of questioning is indeed forbidden by the ideological discourse which the European Commission entertains since 2004.

As a consequence, the administrative impact of the application of European principles, to the extent their conflictual interactions with national identi-

ties, is neglected in principle; they are not worked upon in practice; this lack of care is to the detriment of Europe but also – beyond Europe – to its partnership with the neighborhood policy. Indeed one of the evident signs of political neglect of the identity dimension is the growing anger of Turkey against the European Union and its sinking into a religious ideology. Clearly the ten years between 2004-2014 are a tragedy of commonplace thinking and banality at Europe's helm. Instead of innovator builders, European leaders behave like rent-seekers. One may then assume that the United Kingdom may be bold enough to leave present-day Europe, in which case Spain may follow suit, abandon the Euro and why not France?

Political and administrative coexistence between 28 Member States would justify a policy acting on symbols and motivations promoting the European implication of peoples' from artistic and emotional materials; the area of fears, hopes, and values requires now a policy as strong and encompassing in a time of depression as was the Marshall Plan fostered by the US in order to save Europe from turmoil, ruin and fatality. If France was to become a fatal Republic in old disguise, then Europe would become very odd.

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# The Electoral Law for the European Parliament in Malta. Effects for Europe of a Single Transferable Vote System in a Polarised Society

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## 13.1 Introduction

With 416,515 citizens,<sup>1</sup> Malta is currently the smallest EU member state, counting up for slightly less than 0.001% of the total EU population of 503 millions. In the European Parliament, Maltese voters elect 6 MEPs (5 until 2011), with a population per seat ratio of 69,342, the lowest in any EP constituency,<sup>2</sup> 10 times smaller than the EU average of 680,000 voters per MEP and 20 times smaller than the biggest one.<sup>3</sup> Malta thus stands at one very extreme of the continuum of the regressive proportionality function allocating European Parliament seats to member states according to their population. For its EP election, Malta uses a Single Transferable Vote (STV) system, consistently with its domestic electoral system and with EU standards.<sup>4</sup>

This chapter reviews the context and operation of the European Parliament election in Malta. It argues that using for the EP election the same electoral system as in domestic ones renders them more familiar to the voters, fostering turnout, but also brings along all the domestic issues consolidated in the use of STV in the context of a small society deeply polarised along party lines.

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<sup>1</sup> 2011 census data.

<sup>2</sup> Malta is followed by the German-speaking community of Belgium (75,000) and Luxembourg (83,000).

<sup>3</sup> Lubusz and West Pomeranian (Poland), 1,350,000.

<sup>4</sup> The elections must be based on proportional representation and use either the list system or the single transferable vote (Article 223 TFEU and Council Decision 2002/772/EC, Euratom).

The first section introduces the context of Maltese politics, resulting in unusually high turnout levels, and it describes the STV voting system in use in domestic elections and its outcomes given the local scope conditions. The second section focuses on the electoral law for the European Parliament in Malta, highlighting the outcomes of using STV also for European elections. The third section reviews the 2004 and 2009 EP elections in Malta, highlighting their main features. Finally, the conclusions include some prospects for the upcoming 2014 European Parliament election and on how its European side could be made more salient.

## 13.2 The context of Maltese politics

### 13.2.1 Polarisation of society along party lines and high turnout levels

Elections in Malta take place in the context of a parliamentary system of government dominated by the duopoly of the Nationalist Party (NP) and of the Malta Labour Party (MLP) since at least the 1920s. After failure to secure integration in the United Kingdom in the 1950s, also due to the opposition of the local Catholic Church (“the closest to a national Maltese symbol”, Baldacchino 2002: 196), Malta acquired independence in 1964 as a “second best” option (*Ibid.*: 195). Subsequent Labour governments proclaimed the Republic in 1974, severing all ties left with the United Kingdom, and moving Malta in a non-aligned position. Right-wing hegemony since the late 1980s provided for economic liberalisation and the push towards EU accession which, after a stop-and-go in 1996-1998 due to a Labour government interlude, was secured with the 2004 wave of enlargement.

Notwithstanding its status as a small island state, according to Baldacchino, the people of Malta never developed a definite national identity through XIX century-style nationalism, since it lacked an external ‘other’ over which to project identity and alterity: “the obvious other – the colonial master – was hardly an enemy” (Baldacchino 2002: 199). Malta may be understood as a case of ‘upside-down decolonisation’, “where the colonial ruler is the one keen to ditch the colony and force it into independence, while the colonised are generally keen to extend the colonial relationship” (Baldacchino 2009: 151).

Malta’s unitary national identity thus developed a character which is “anti-nationalist externally and proto-ethnic internally” (Baldacchino 2002: 202).<sup>5</sup>

<sup>5</sup> Baldacchino arrives at defining Malta as a “nationless state”, on the lines of “a variety of scattered small island dependencies of Britain and the Netherlands” (2002: 194). Others have taken a less clear-cut stand. H. Frendo (2002) recalled that “Malta is a very young and a very



On the one hand, Maltese people's external options have hinged between irredentism and integration with different mainlands over time (France, Italy, the United Kingdom), i.e. fostering the incorporation in a larger entity, the antithesis of sovereign independence. In fact, "political affiliation grants substantial economic advantages to small, non-sovereign, island units" (Baldacchino 2009:151),<sup>6</sup> at the price of over-dependency on metropolitan fiscal transfers.<sup>7</sup>

On the other hand, within Maltese society, the lack of a clear-cut national identity has led to the institutionalisation of "a local form of bicomunalism based on political ethnicity" (Baldacchino 2002: 198). The three main identity markers in Malta have been the two political parties and the Catholic Church, in an asymmetric relation with each other. The acute population density (1300/kmq) and the pervasive socialising powers of the parties and the church have led to a "claustrophobic social atmosphere" in which "the presence, if not control, of the party is supreme" (*Ibid*: 197) and "partisanship... is so pervasive, ingrained and linked to class ideology and locality that preference patterns are known by street. Loyalties are strong, stable and rooted in social and family background" (Hirczy 1995: 258). In such an environment, the two parties act as "total institutions" to which "the Maltese are, from cradle to grave, called upon to express loyalty and commitment", thus taking on "the characteristics of an *ethnie*, a moral community, extending the locus of empathy, trust and identification with other as if in an extended family" (Baldacchino 2002: 197; italics in the original). In Lijphart's (1968) terms, Malta shows out as a stably pillarised society, "split down the middle in terms of partisan support: a distinguishing feature in other societies" (Baldacchino 2009: 154).

Once the context of a small insular society polarised along party lines is taken into account, it is not difficult to understand the reasons why turnout

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small nation-state, less than 40 years old" and likened Maltese identity to the Luxembourgish, "defining it by elimination on the lines adopted by the leading Luxembourgese historian Gilbert Trausch in his voluminous history of Luxembourg. Ni Francais, ni Allemands, ni Belges! (said Trausch). Ni Italiens, ni Anglais, ni Arabes! (said I)". Such reconstructions admittedly though limit themselves to a negative, subtractive view of identity. What is clear from these conflicting stands is the Maltese inability to "reach a consensus on self-identity" (Frendo 1994: 14, quoted in Cini 1995: 271).

<sup>6</sup> "These benefits include: free trade with, and export preference from, the parent country; social welfare assistance; ready access to external capital through special tax concessions; availability of external labour markets through migration; aid-financed infrastructure and communications; higher quality health and educational systems; natural disaster relief; and provision of external defence costs (McElroy and Mahoney 1999)". (Baldacchino 2009: 151).

<sup>7</sup> Others have rather seen the alternative constructions of Maltese identity as bifurcated between a Mediterranean, non-aligned, anti-clerical identity, and a European, Western, pro-clerical one (Cini 1995: 271), though such a distinction may look like an *ex-post facto* reconstruction from Maltese history and political culture.

levels in Maltese legislative elections hover around 90-95%, even in absence of compulsory voting provisions, and why the difference in votes between the two main parties has always been below 13,000 in the 1971-2013 period. The conditions conducive to such high turnout levels are summarised by Hill and Louth (2004: 7): “a small, urbanized and geographically concentrated population (Siaroff and Merer, 2002, 917); unitary, concentrated government; high levels of partisanship; proportional representation; ‘highly competitive elections resulting in one-party governments despite [proportional representation]’; extremely intense election campaigns and a polarized electorate of partisan, committed voters (Hirczy, 1995, 255).”

**Table 1: Elections in Malta**

<b>Election</b>	<b>1971</b>	<b>1976</b>	<b>1981<sup>a</sup></b>	<b>1987</b>	<b>1992</b>	<b>1996</b>
Turnout	92.9%	94.9%	94.6%	96.1%	96.1%	96.3%
NP	80,753 (48.1)	99,551(48.5)	114,132(50.9)	<b>119,721(50.9)</b>	<b>127,932(51.8)</b>	<b>132,497(50.7)</b>
MLP	<b>85,488 (50.8)</b>	<b>105,854(51.5)</b>	109,990(49.1)	114,936(48.9)	114,911(46.5)	124,864(47.8)
Votes of difference*	4,735	6,303	4,142	4,785	13,021	7,633

<b>Election</b>	<b>1998</b>	<b>2003</b>	<b>2004 (EP)</b>	<b>2008</b>	<b>2009 (EP)</b>	<b>2013</b>
Turnout	95.4%	96.9%	82.3%	93.3%	78.8%	93.0%
NP	<b>137,037(51.8)</b>	<b>146,172(51.8)</b>	<b>118,983(48.4)</b>	<b>143,468(49.3)</b>	<i>100,486(40.5)</i>	132,426(43.3)
MLP	124,220(47.0)	134,092(47.5)	<i>97,688(39.8)<sup>b</sup></i>	141,888(48.8)	<b>135,917(54.8)</b>	<b>167,533(54.8)</b>
Votes of difference*	12,817	12,080	<i>21,295</i>	1,580	<i>35,431</i>	35,107

\* difference of votes between the two major parties

<sup>a</sup> At the 1981 election, NP got the highest popular vote, but MLP got the most Parliament seats, fostering a Constitutional crisis solved with the 1987 amendments.

<sup>b</sup> The very low share of votes for the Labour Party at the 2004 European Parliament election was likely due to the very negative stance the party had had on the issue of European Union accession, up to supporting the “no” in the accession referendum the year before. The party subsequently mainstreamed its EU stance.

Sources: Nohlen and Stöver (2010); <http://electoral.gov.mt/>

### 13.2.2 The Single Transferable Vote system for the domestic elections in Malta

Legislative elections, in Malta, foresee for 65 seats to be allocated in 13 multi-seat constituencies. Both passive (entitlement to vote) and active (eligibility to stand for election) electoral rights are set at age 18.

The voting follows the Single Transferable Vote system, part of the proportional representation (PR) family. STV differs from the “party list” PR

systems, widespread on the European continent, in that it asks the voter to provide a preference order for the list of candidates, by placing a cardinal number ('1' for the first choice, '2' for the second, and so on) besides their name on the ballot list. Voters do not have to fill all their ballot, nor are they obliged to stick to candidates of one same list. STV thus highlights the choice among candidates rather than among political parties and, though within limits, it allows each vote to contribute in electing one of the voter's choices. Candidates are elected once they reach a 'quota' of votes, obtained dividing the number of valid votes by the number of seats on offer plus one, and adding again one to the result (Pace 2005: 123).<sup>8</sup> All votes received by the same candidate beyond the quota (surplus votes) are transferred to other candidates, as expressed by the second option marked by the voter. In parallel, the votes of the candidates with the fewest first-count preferences are also passed on to their second-choices, until all available seats are filled (Strauch and Pogorelis 2011: 29).

The STV system is rather rare in continental Europe but in use in several former territories of the British Empire, including the Republic of Ireland and Australia. Only Malta and the Republic of Ireland use STV as electoral law for legislative elections, and both from the early 1920s. Already endorsed by John Stuart Mill in the XIX century, STV has been encouraged by the Electoral Reform Society in the United Kingdom. As summarised by Michael Gallagher, "its proponents point principally to the power that it gives to the voters: to convey rich information about their preferences; to give primacy when voting on issues that cross party lines; to maximise their power to choose their representatives; or to influence the direction that their favoured party should take, by supporting particular candidates" (Gallagher 1996).

The STV system may be added to the list of conditions conducive to high electoral turnout, as relatively straightforward for the voter, who simply ranks the preferred candidates with a cardinal number. According to Malkopoulou (2009: 7), STV "is highly proportional and therefore attracts more voters to the polls". On the other hand, the system is rather convoluted in the counting procedure, involving the transfer of preferences from one candidate, once elected, to the following. "Counting is notoriously long and complicated, with

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<sup>8</sup> The Droop quota is a variety of the largest remainder method. "The largest remainder (LR) methods allocate seats in two stages. At the first stage, an electoral quota is used to determine how many votes each party list must receive to be allocated one seat. Each party list then receives as many seats as the number of times it satisfies the electoral quota. Some seats remain unfilled at this stage. They are allocated to the political parties which have the largest remainder of votes" (Strauch and Pogorelis 2011: 23). "The Droop quota (a modification of it is called the Hagenbach-Bischoff quota) is calculated by dividing the number of [valid] votes by the number of seats plus 1, adding 1, disregarding any fractional parts." (*Ibid*: 25).

election officers recruiting mathematically adept citizens from chess clubs to help them determine the results!” (Malkopoulou 2009: 7).

Moreover, the STV system has the theoretical advantage of working as a non-partisan election method, and providing an avenue for voters to express cross-party preferences, not having to go straight for their second-best option in order to avoid wasting their votes.<sup>9</sup> Nevertheless, the conditions of the electoral competition in Malta make it so that this advantage is not reaped by Maltese voters. The political polarisation pushes almost all voters to support only candidates of one single party; less than 1% of preferences are usually transferred to candidates from other parties. This also prevents minor parties, which attract by themselves only a very tiny fraction of votes, from receiving preferences from voters mainly affiliated with the two major ones. The effect is thus the same as a tight two-party open list PR system in which each party uses STV within its own lists, engendering dense intra-party competition in which candidate MPs strive to secure a personal support base through clientelistic networks.<sup>10</sup>

The 65 Maltese MPs are elected in 13 district of almost equal population size, each electing 5 MPs. Since each district is a constituency on its own, the system works against the emergence of small third parties that might be able to garner a substantial amount of votes on the national level but not in a single district, thus including an implicit (and rather high) electoral threshold.<sup>11</sup> The STV system might instead, in principle, reward localised parties and independent candidates.<sup>12</sup>

<sup>9</sup> In this, the PR-STV has similar effects than a first-past-the-post with two rounds of voting, as in France.

<sup>10</sup> Wikipedia includes a well-informed explanation of the effects of the Maltese conditions on the use of STV: “The effect of this voting pattern is similar to a tight two-party open list PR system simultaneously using STV within each party to decide its representatives whilst using the indicated first preference candidate’s party as the voter’s preferred party. Because of the transfer behaviour of the voters, each party can stand many more candidates than there are winners in total without being adversely affected. Strangely, some candidates stand and are elected in more than one constituency, leading to vacancies filled by countback” (Wikipedia 2013: History and use of the single transferable vote#Malta)

<sup>11</sup> As highlighted by Strauch and Pogorelis (2011: 28), “when designing an electoral system, district magnitude is in many ways the key factor in determining how the system will operate in practice. It influences the strength of the link between voters and elected members and the overall proportionality of election results.”

<sup>12</sup> As explained by Pace (2005: 125), “for example, in the 2003 [national] election, the size of the quota in each of the 13 districts ranged from 3,379 to 3,787. Thus a party obtaining around 33,000 votes (11.7 per cent) nationally, but which were more or less evenly spread among the 13 districts, thus failing to achieve a quota in any of them by the smallest of margins, would not win a seat in Parliament. In contrast, a smaller party with just 4,000 votes concentrated in one district would win one seat.”

In fact, Maltese electoral outcomes seem to disprove Duverger's 1964 law, according to which majoritarian laws foster two-party systems, while proportional laws push for multi-party ones. In Malta, after a pattern of unstable coalitions in the 1950s, voters' preferences shifted towards a polarised duopoly. The puzzle may be explained by taking into account how, starting from an initial advantage due to their long-date presence in the political panorama, the two main parties consolidated by creating complex organisation structures on the territory, starting from local political clubs, able to mobilize voters and ensure their loyalty over time (Pace 2005: 124-125).

To sum up, when compared with other similar methods of proportional representation (open and closed lists), STV is particularly effective in ensuring the personal accountability of MPs to their constituents, and in maximising the opportunities for participation, while it is slightly less effective in ensuring the accuracy of representation of voters' preferences (Strauch and Pogorelis 2011: 44). Nevertheless, in Malta the scope conditions (a deeply divided society, polarised along party lines) neutralise the second and third benefit of STV (maximising participation and ensuring representation) and risk leading the first one (MPs' accountability) to the hedge of patronage and clientelism.

### 13.3 The electoral law for the European Parliament election in Malta

The electoral law for the European Parliament in Malta uses a version of the Single Transferable Vote system within proportional representation (PR-STV), consistently with the Maltese domestic electoral system. Together with the Republic of Ireland and the UK's Northern Ireland, Malta is one of the few EP constituencies to use STV. Also among other very small member, Malta is the only one to use a STV system for the EP election, as shown in table 2 below.

How does the Maltese system compares with other national EP electoral laws? Farrell and Scully (2005: 975-976) build a typology of the electoral systems used for EP elections, by taking into accounts two dimensions: categorical versus ordinal systems, with regards to the expression of voters preferences, from Douglas Rae (1967), and candidate-based versus party-based systems, with regards to whether a candidate's chances to be elected are better put in his accountability to its constituency<sup>13</sup> or in his loyalty to the party apparatus. Malta is among the few EU member states to adopt an 'open system', both allowing for an ordinal expression of preferences and for candidate-based campaigns.

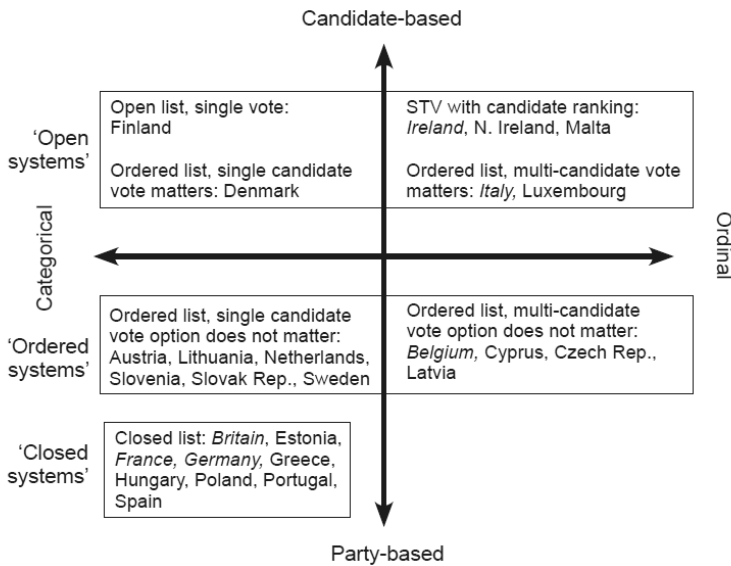
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<sup>13</sup> "the degree to which electoral systems reward politicians' personal reputations" (Carey and Shugart 1995: 419, in Farrell and Scully 2005: 976).

**Table 2: EP constituencies and electoral systems in very small EU member states (European Parliament, 2011)**

	Population (2011 census)	MEPs	Population-per-seat ratio	Constituencies	Electoral system
Malta	416,055	6	69,342	1	PR –STV –Droop
Luxembourg	512,353	6	85,392	1	PR with vote-splitting, Hagenbach-Bischof
Cyprus	838,897	6	139,816	1	PR with Preferential vote, Hare-Niemeyer
Estonia	1,294,455	6	215,742	1	PR with closed lists, D’Hondt

**Figure 1: Typology of EP electoral systems, based on ballot structure characteristics, from Farrell and Scully (2005: 796). Regionalised EP constituencies in italics.**



The six MEPs are elected by Maltese voters in a single national constituency. The EP electoral system thus effectively mimics on a smaller scale the Maltese domestic legislative system, in which 5 MPs are elected in each district, and it brings along all its advantages and disadvantages.

First, the EP electoral law replicates the incentive structure of the national elections, with the same actors playing. Given the high polarisation of society, this allows for a repetition of the high turnout levels seen in domestic politics (though with some *caveats*).

Secondly, the same actors play at European and national level. The NP and MLP easily found their place in European politics in the European People's Party and in the Party of European Socialists, testifying of the salience of the left/right dimension and its ability to accommodate parties from the 2004 enlargement countries too.

Thirdly, a single-district STV electoral system, coupled with domestic polarisation and the lack of cross-party vote, turned out to have highly distortive effects on representativeness and resulted in a high hidden threshold to achieve representation at EU level. Malta records a very high disproportionality index (10.54 on the Gallagher index), together the lowest effective number of parties (1.92) in EP elections (Farell and Scully 2005: 978).

Finally, due to the low number of seats available and the traditional prevalence of men in Maltese politics, the electoral system resulted in the absence of women elected (together with Cyprus).

For what concerns timing, EP elections in Malta are in mismatch with the domestic electoral calendar, being held in the first year after the general elections. Even in the highly polarised and mobilised Maltese context, European Parliament elections suffer of a turnout lower by 10-15% from the general elections. Moreover, at least in the 2009 case, EP elections seem to punish incumbent and reward the opposition, as it is the case in the rest of Europe.

Given the conditions above, it is possible to understand how even in Malta the EP vote may be defined as a second-order election, although many features make it easy and familiar to the voters to participate, enhancing turnout levels. The following section reviews the two EP elections Malta took part in, to highlight common trends and differences.

## 13.4 European Parliament elections in Malta in 2004 and 2009

### 13.4.1 The 2004 European election: reversing the result of the accession referendum

On June 13, 2004 the Maltese voters cast for the first time their ballot for the European Parliament, with their usual Single Transferable Vote system. Each major party had presented 8 candidates, while other parties and independents fielded 11 more candidates. The Labour opposition attracted a plurality of the valid votes, 118,983 (48.4%) exceeding the 97,688 votes of the governing Nationalist Party (39.8%).

Turnout scored 82.4% of the 304,283 registered voters, rather low by Maltese standards, though very high compared with other EP constituencies (only

Belgium and Luxembourg, where voting is compulsory, scored even higher turnout values). Turnout may have been affected by several factors. On the one hand, among the factors spurring a high turnout, there were the familiarity of voters with candidates and the electoral system, the traditional polarisation and mobilisation patterns, a campaign run mostly on domestic issues (unemployment, environment and general government performance), and the fact that voters may have been attracted by a “first time” election.<sup>14</sup> On the other hand, voters could have felt some fatigue for the third election in a 15 months period (after the accession referendum and the general elections), and those voters having voted ‘no’ in the EU accession referendum only few months earlier could not have felt the urge to take part in the ballot.<sup>15</sup> All in all, the two sets of factors produced a turnout around 10% lower than in domestic elections, yet the highest among the EU constituency with voluntary vote laws. This, a striking difference with most acceding countries, seem to relate to the patterns of polarisation and party loyalty in Malta, and to a general higher underlying support for EU accession than expressed in the 2003 accession referendum.<sup>16</sup> In fact, it seems that the outcome of the 2003 referendum had been skewed by the acute political polarisation on the island, and that a sizeable minority of traditional MLP supporters was already in favour of EU integration (Pace 2005: 124).

The 2004 EP elections are a good example of the implicit electoral threshold in the STV system. A third party, *Alternattiva Demokratika* (AD), the Green Party, fielding as a candidate its leader Arnold Cassola, scored a strong result by polling 22,938 votes (9.3%), mostly by attracting NP voters who were already pro-EU, notwithstanding its poor results (1,929 first-count votes) at the earlier 2003 general election. The lack of agreement and the bitter campaign between NP and AD led the Labour party to gain also a third EP seat, while leaving AD outside the Maltese EP delegation.<sup>17</sup>

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<sup>14</sup> This seems to be the reason why European elections, where couples with local elections, fostered a higher turnout in local elections too.

<sup>15</sup> It could actually have been a strategic choice for the MLP, having campaigned for the ‘no’ in the EU accession referendum, to steer the EP election campaign towards domestic issues in order to encourage to go to the polls also those voters who were still not ready to express their loyalty to EU representative institutions.

<sup>16</sup> On March 8, 2003, a referendum was held on whether Malta should accede the European Union. The ‘Yes’ won with a 52.9% of the ballots, against 45.7% of ‘No’. Turnout reached 90.9%.

<sup>17</sup> “An electoral pact between the two sides [NP and AD], in which both parties would have urged their supporters to continue giving their preferences to the other Party after voting for their candidates, could have produced a situation in which AD or the NP inherited enough preferences to beat the MLP for the third seat” (Pace 2005: 130).



Voters seemed to reward especially those candidates judged knowledgeable in EU issues, starting with AD's Cassola, but also in the Nationalist and Labour field, where the leading figures, Simon Busuttil and Joseph Muscat, had a EU-oriented CV. Seasoned politicians, notwithstanding their resources in terms of networks and patronage, scored worse.

Transfer of votes among candidates happened only within each political parties, due to high political polarisation making cross-party voting very unlikely, as illustrated by table 3. After the counting, the five MEP posts were filled by three Labour candidates and two Nationalists (Maltadata 2004).

**Table 3: Intra-party and inter-party vote transfers in the 2004 EP election (Maltadata 2004)**

Count	Candidate Whose Votes Were Transferred	No. of Transfer Votes	Party	Votes % Transferred to Candidate(s) of:				Non-Transferable
				MLP	PN	AD	Other	
3	(several)	3,021	Ind.	20.99	16.78	33.37	5.73	23.14
5	Carmelo Farrugia	3,308	Ind.	38.81	27.63	1.69		31.88
4	Wenzu Mintoff	3,216	MLP	95.83	0.59	1.52	0.12	1.93
7	Robert Micallef	3,688	MLP	95.12	0.98	2.49		1.41
10	Owen Bonnici	7,796	MLP	97.05	0.58	1.33		1.04
11	Joseph Muscat	1,030	MLP	98.64	0.29	1.07		0.00
14	Joe Debono Grech	16,113	MLP	98.21	0.15	0.55		1.09
15	Glenn Bedingfield	21,988	MLP	97.74	0.24	0.77		1.25
16	John Attard Montalto	4,778	MLP	99.60	0.13	0.27		0.00
2	Simon Busuttil	17,933	PN	0.38	96.80	2.67	0.15	0.00
6	Michael Falzon	3,551	PN	1.33	94.29	2.61		1.76
8	Ian Spiteri Bailey	4,431	PN	0.72	92.71	4.97		1.60
9	Anton Tabone	6,615	PN	1.71	91.32	3.24		3.73
12	Roberta Tedesco Triccas	9,339	PN	0.55	93.46	3.58		2.42
13	Joe Friggieri	12,113	PN	0.95	91.55	4.14		3.36
17	Joanna Drake	24,132	PN	0.27	90.46	5.32		3.95
18	David Casa	11,739	PN	0.49		11.56		87.95

Greyed-out cells indicate that no candidate of the party remained eligible to receive transfer votes.

Besides party candidates, several single-issue independents vied for election (though with no fortune) including a party for divorce, the far-right *Imperium Ewropa*, the Federation of Bird Hunters, Trappers and Conservation-

ists, as well as the Nigerian-Maltese citizen Damian Iwueke Chunkuemeka. No serious eurosceptic formation contested the election, notwithstanding the recent bitter campaign on the accession referendum, signalling a fast internalisation of the choice for the EU by the Maltese people, including the Labour party (Pace 2005: 134).

### 13.4.2 The 2009 European election: the consolidation of “normal” elections

The second European Parliament election in Malta was held on June 6, 2009. Again, a STV system was used to elect five MEPs and one observer, to occupy a sixth place since the entry into force of the Lisbon Treaty. The parties filed 34 candidates: 12 from the Labour, 10 from the Nationalists, and 12 among minor parties and independents. Turnout scored 78.8% of the 322,411 registered voters, once again relatively low by Maltese standards but high by EU ones. The Labour party gained an absolute majority of votes (135,917, 54.8%) against the Nationalists (100,486, 40.5%). Minor parties and independent candidates remained marginal, and even AD declined to only a 2.3% of votes, as the major parties had absorbed some of its social and environmental proposals, thus making the choice less salient. Moreover, although the campaign saw a large debate on irregular migration with rather xenophobic overtones, the two minor parties with an open anti-immigration stance, *Imperium Ewropa* and National Alliance, only scored around 2% altogether. Once again, transfers of votes remained strictly within party perimeters, as shown in the table below. Four out of the six MEPs elected (4 Labour, 2 Nationalists) were incumbents; Simon Busuttil (NP) was the only candidate to be elected on the first count with 68,782 (27.72%) single votes (Maltadata 2009).

**Table 4: Intra-party and inter-party vote transfers in the 2004 EP election (Maltadata 2009)**

Count	Candidate Whose Votes Were Transferred	No. of Transfer Votes	Party	Votes % Transferred to Candidate(s) of:				Non-Transferable
				LP	PN	AD	Other	
3	Jones, Cecil Hubert	48	KUL	18.75	14.58	12.50	37.50	16.67
4	Spiteri Gingell, John Frederic	68	AN	8.82	14.71	2.94	66.18	7.35
5	Bonnici, Nazzareno	83	AJ	21.69	18.07	2.41	20.48	37.35
6	Attard, Rauben	85	IE	4.71	5.88	1.18	75.29	12.94
7	Bezzini, Emmy	121	Alpha	17.36	8.26	25.62	32.23	16.53
8	Seychell, Malcolm	127	AN	8.66	13.39	7.09	59.84	11.02
12	Muscat, Josie	1,616	AN	18.81	20.11	12.56	19.00	29.52
19	Lowell, Norman	4,266	IE	25.79	20.00	13.55		40.67
23	Cassola, Arnold	7,514	AD	29.78	27.77			42.44
10	Borg, Stephen	1,200	PL	91.00	2.00	2.75	1.17	3.08
14	Camilleri, Maria Dolores	2,163	PL	94.91	1.39	1.11	0.60	1.99
16	Micallef Stafrace, Kirill	2,849	PL	93.33	2.70	0.98	0.88	2.11
18	Zammit, Christian Joseph	4,215	PL	95.04	1.28	0.55	0.33	2.60
20	Bedingfield, Glenn	5,693	PL	96.93	0.56	0.35		2.16
22	Ellul Bonnici, Sharon	7,058	PL	95.58	1.01	0.61		2.81
26	Abela Baldacchino, Claudette	16,167	PL	98.14	0.27			1.58
29	Mizzi, Marlene	23,099	PL	95.40				4.60
2	Busuttill, Simon	27,420	PN	1.29	97.09	1.17	0.44	0.00
11	Demicoli, Edward	1,569	PN	2.66	90.31	2.10	1.08	3.82
13	Perici Calascione, Alex	1,741	PN	3.04	91.04	1.38	0.86	3.68
15	Cini, Rudolpf	2,539	PN	2.84	91.65	0.83	0.83	3.86
17	Portelli, Frank	3,991	PN	2.18	90.90	1.43	1.60	3.88
21	Deidun, Alan	6,714	PN	3.02	89.80	3.35		3.83
24	Portelli, Marthese	8,247	PN	1.94	91.03			7.03
25	Farrugia, Vincent Victor	10,087	PN	1.94	93.23			4.83
27	Metsola Tedesco Triccas, Roberta	20,859	PN	2.81	87.54			9.65
28	Casa, David	15,157	PN	1.65				98.35
9	Zammit, John	208	ALD					
9	Arqueros Ebejer, Yvonne	609	AD	10.43	10.61	56.23	9.11	13.62
9	Gauci, Mary	314	LIB					

## 13.5 Conclusions

Malta is an interesting case to study concerning European Parliament elections. As a small island with strong political polarisation and mobilisation, it shows that European Parliament elections can be effective and lose some of their ‘second order’ character when electoral laws and the electoral offer are in line with the expectations of the citizens, but this may also end up entrenching local political cultures and not allow citizens a different possible avenue of expression of their preferences.

If the effects of the use of the single transferable vote system of proportional representation for the Maltese elections to the European Parliament are to be resumed, few points may be set out straight.

First, using the same electoral system for the EP elections as in national elections produces an effect of “normality” for voters, who are already familiar with it. Turnout levels are amplified. On the other hand, it also stifles the possibility of a debate on European issues, by strongly linking EP elections to the domestic scene and reproducing the schemes of local politics. Here there may be a hidden trade-off between wide participation to elections and the issue-specificity of EU affairs.

Secondly, the scope conditions of party politics in Malta (high polarisation and mobilisation of voters in a small society) do not allow reaping the theoretical benefits of STV also in EU elections. Participation opportunities and accuracy of representation are sacrificed, due to the lack of cross-party vote. A hidden threshold, implicit in the magnitude of a single-district constituency, makes it impossible for third parties to have a viable chance of electing MEPs.

Given the points above, it is clear how the chance to underline the European issues in the upcoming EP elections lie not much in formal changes to the electoral law, as much as in informal and behavioural change. First, the two main parties should accept to focus the campaign on European issues; a (relatively) lower turnout should be deemed acceptable; cross-party preferential vote should be socially allowed if not fostered, in order to achieve representation of minor parties too. These changes are anyway unlikely to happen, unless the political mobilisation level of the Maltese society dramatically and suddenly lowers.

The prospects for the 2014 EP election in Malta thus do not include much change. Third parties are unlikely to make any *exploit*, and to achieve representation in any case, while the balance between the MLP and the NP will depend on the length of Malta’s honeymoon with the newly-elected MLP government. Turnout is set to remain high for EU standards, though likely

around 15% lower than in national elections, in par with 2009 levels. Both the prime minister, Joseph Muscat, and the leader of the opposition, Simon Busuttil, have previously run in EP elections; though they are unlikely to run for EP seats again, they have the chance to lead the campaign to include also European issues, although these are not going to supplant domestic ones as the major focus. Overall, the election will be fought as a test for the incumbent government and for the renewed leadership of the opposition. A clear vision from Malta about the future of Europe on many issues is yet to come.

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# Polish European Parliament Election Law in the Context of Universality of Elections and Civic Participation

ANDRZEJ JACKIEWICZ\*

## 14.1 Introductory remarks about the problem of low voter turnout

### 14.1.1 European elections as a second order elections

One of the contemporary challenges faced by European democracies is the problem of low voter turnout;<sup>1</sup> according to J. Zbieranek, its occurrence in many European countries in the recent decades has been the cause of significant concern among scientists and politicians.<sup>2</sup> The problem can be noticed in Poland in the context of not only the elections to the European Parliament,<sup>3</sup>

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<sup>1</sup> J.Blondel, R.Sinnott, P.Svensson, "Representation and voter participation," *European Journal of Political Research*, 1997, no. 32, pp. 243-244.

<sup>2</sup> J.Zbieranek, "Nowe procedury: głosowanie korespondencyjne i przez pełnomocnika" [New procedures: voting by mail and by proxy], in: K.Skotnicki, ed., *Kodeks wyborczy. Wstępna ocena* [Electoral code. Preliminary evaluation], Warsaw 2011, p. 36. Also see the literature cited there: R.L.Pintor, M.Gratschew, eds., *Voter Turnout Since 1945: A global Report*, Stockholm 2002, and A.Ellis, M.Gratschew, J.H.Pmmet, E.Thiessen, *Aktywizowanie wyborców. Inicjatywy z różnych państw świata* [Activation of voters. Initiatives from different countries of the world], Warsaw 2008, pp. 13-15.

<sup>3</sup> On the voter turnout in elections to the European Parliament in countries that accessed the European Union in 2004: D.Auers, "European elections in eight new EU member states," *Electoral Studies*, 2005, no. 24, p. 750. The author notices, that, "voter turnout was well below that in the older member states, and the number of wasted votes much higher. The mean average turnout in the new member states was just 31.2%, less than half the average turnout at the most recent national election (and 23 percentage points lower than in the 2003 national referendums on EU accession). The low turnout in the new member states pushed the average turnout among

but also other electoral procedures. It appears that the Republic of Poland, as a nation that regained its sovereignty in 1989, should be an example of a democracy where the citizens, having regained the possibility to decide about the fate of their country after several decades of dependence, will take this opportunity in large numbers. This is compounded by the general problem, observed practically from the very first direct European Parliament election, of lack of interest among the voters in all countries of the European Union in “European matters”<sup>4</sup> and in the aforementioned elections, which causes them to become second-order elections. This situation leads to the fact that the programs presented by the candidates in the European elections differ not on matters related to the EU but on domestic matters.<sup>5</sup> This lack of interest in the European elections and the fact that their results depend on domestic matters<sup>6</sup> may actually lead to questions about the sense of such a form of representative democracy on the European Union level.<sup>7</sup>

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all EU member states to a new low of 45.7%. Only in Lithuania was turnout above the EU-25 average, due largely to a highly contentious first round of the presidential election (following the impeachment of the previous incumbent, Rolandas Paksas) held on the same day.” Also, see: C.Fauvelle-Aymar, M.Stegmaier, “Economic and political effects on European Parliamentary electoral turnout in post-communist Europe,” *Electoral Studies*, 2008, no. 27, pp. 661-672.

<sup>4</sup>M.N.Franklin, S. B.Hobolt, “The legacy of lethargy: How elections to the European Parliament depress turnout,” *Electoral Studies*, 2011, no. 30, p. 67. As the authors rightly observe, even though the powers of the EP were significantly expanded, the “turnout at EP elections remains stubbornly low.” C.van der Eijk, M. van Egmond, “Political effects of low turnout in national and European elections,” *Electoral Studies*, 2007, no. 26 , pp. 414-426.

<sup>5</sup>P. Norris, “Second-order elections revisited,” *European Journal of Political Research*, 1997, no. 31, pp. 110-111, 114. Also see: K.Reif, H. Schmitt, “Nine second-order national elections: A conceptual framework for the analysis of European election results,” *European Journal of Political Research*, 1980, no. 8, pp. 3-44., K. Reif, “European elections as member state second-order elections, Revisited,” *European Journal of Political Research*, 1997, no. 31, pp. 115-124. However, see: M.N.Franklin, S. B. Hobolt, “The legacy of lethargy...,” p. 68, where the authors point at the fact that “some scholars and commentators, however, argue that low and apparently declining turnout in these elections is nothing to do with institutional design but rather is a sign of democratic malaise in the European Union.”

<sup>6</sup>S.Hix, M.Marsh, “Second-order effects plus pan-European political swings: An analysis of European Parliament elections across time,” *Electoral Studies*, 2011, no. 30, p. 4; on the strategy of political parties running in elections to the EP, see: T.Kousser, “Retrospective voting and strategic behavior In European Parliament elections,” *Electoral Studies*, 2004, no. 23, pp. 1–21, C van der Eijk, M.Franklin, M.Marsh, “What Voters Teach Us About Europe-Wide Elections: What Europe-Wide Elections Teach Us About Voters,” *Electoral Studies*, 1996, no. 15, p. 160.

<sup>7</sup>Also, see: D.Auers, “European elections in eight new EU member states,” *Electoral Studies*, 2005, no. 24, p. 748, B. Stefanova, “The 2007 European elections in Bulgaria and Romania,” *Electoral Studies*, 2008, no. 27, pp. 566-571. However, as demonstrated by the research presented by C.van der Eijk, M. van Egmond, “Political effects...,” pp. 414 – 426, “there seems to be little reason for the concern that declining levels of turnout diminish the efficiency of elections as channels to express the distribution of party preferences in a population.”



### 14.1.2 Polish perspective of low voter turnout

Looking at this problem from the Polish perspective, one must take into account the issue of low voter turnout, which is typical of post-communist countries. According to J. Zbieranek, in the Polish People's Republic, the official voter turnout was nearly 99% of the eligible citizens. On the other hand, the statistics concerning voter turnout after the political transformation demonstrated that the results were falsified and the real voter turnout in the free Poland is very low and equal, on average to 40-50%, which is the lowest rate of all the countries of the former Eastern Bloc.<sup>8</sup> In the European doctrine, there are documents that classify the causes of low voter turnout in elections to the European Parliament.<sup>9</sup> J. Blondel, R. Sinnott, and P. Svensson point at a division "between those who abstain in a European Parliament election for some circumstantial reason (absence from home, illness or disability, pressure of work, registration problems, etc.) and those who can be described as voluntary abstainers, namely those who do not vote because they feel that they were uninformed about, or uninterested in, or critical of the European Union, or are uninterested in or distrustful of politics or because of some other political attitude."<sup>10</sup>

In Poland, too, besides the traditional causes of low voter turnout, such as discouragement, lack of trust of voters in politics, lack of alternative candidates, and limited need to become involved in public life (the so-called culpable absence), there are other causes, described as forced absence, i.e. ones

<sup>8</sup> J.Zbieranek, "Nowe procedury...", [New procedures...], op. cit., pp. 36-37.

<sup>9</sup> Interesting conclusions from research are presented by M.N.Franklin, S. B. Hobolt, "The legacy of lethargy...", p. 75. In their opinion, "it is in the nature of these elections to produce low voter turnout. More specifically, we have tested the proposition that the experience of voting for the first time in a second-order EP election has a negative socializing effect (...) At these elections about the only reason to vote, for most people, is the fact that they have already acquired the habit of voting. For those who have not acquired this habit, European Parliament elections are no help. Indeed, they appear to provide a negative experience that, at least for some people, seems to stand in the way of acquiring that habit." On the factors that affect voter turnout, also see, among others: C van der Eijk, M.Franklin, M.Marsh, "What Voters Teach...", pp. 152-155, P.Söderlund, H. Wass, A. Blais, "The impact of motivational and contextual factors on turnout in first- and second-order elections," *Electoral Studies*, 2011, no. 30, pp. 689-699; on the economic and political factors affecting voter turnout, see: C.Fauvelle-Aymar, M.Stegmaier, "Economic and political...", pp. 661-672, A.Ellis, M.Gratchew, J.H.Pmmet, E.Thiessen, "Aktywizowanie wyborców..." [Activation of voters...], op. cit., pp. 17-23.

<sup>10</sup> J.Blondel, R.Sinnott, P.Svensson, "Representation...", pp. 247-250, M.N.Franklin, S.B. Hobolt, "The legacy of lethargy...", pp. 67. Cf.: C.van der Eijk, M. van Egmond, "Political effects...", pp. 416-417. Also, see: P.Söderlund, H. Wass, A. Blais, "The impact of motivational...", p. 698, where the author make a conclusion regarding the results of their research by saying that "compared to first-order elections, the role of personal motivation is more important in EP elections."

where the voter intends to cast a vote but, for reasons beyond his or her control (lack of physical possibility to vote), the voter does not take part in the election. The importance of this issue is emphasized by the fact that such barriers affect about 30% of voters in Poland.<sup>11</sup>

### 14.1.3 The Electoral Code – new Polish act containing electoral regulations

On 1 August 2011, the Electoral Code,<sup>12</sup> which is a new act that comprehensively regulates electoral matters, became effective and replaced the previous electoral regulations that were in effect in Poland. Besides provisions on the elections to the two chambers of the Polish parliament, the elections of Poland's president and the members of the local and regional authorities, the Electoral Code contains detailed regulations pertaining to the elections to the European Parliament.<sup>13</sup> The purpose of the present article is to answer the questions concerning the method of implementation of the principle of universal elections in the Polish electoral law, the way that the Polish legislator strives to strengthen the involvement of citizens in the public life,<sup>14</sup> and whether the new act constitutes any progress in this regard. Of note is the fact that while the article focuses on selected aspects of the European Parliament's electoral procedure, the large majority of the solutions that the Polish legislator uses in order to influence the voter turnout levels applies to all electoral procedures in Poland.<sup>15</sup>

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<sup>11</sup> J.Zbieranek, "Nowe procedury..." [New procedures...], op. cit., pp. 37–40. The author makes references to the results of research on voter turnout. Also, see: A.Błaszczak, J.Zbieranek, "Gwarancje korzystania z czynnego prawa wyborczego przez osoby starsze i osoby z niepełnosprawnościami" [Guarantees of exercise of the right to vote by elderly and handicapped persons], *Biuletyn RPO. Źródła*, 2012, no. 8, pp. 9-10, where the authors present the demographic data that demonstrates the scale of importance of various physical barriers that hinder or even prevent voting.

<sup>12</sup> Act of 5 January 2011, Electoral Code, Journal of Laws of 2011, no. 21, item 112, as amended.

<sup>13</sup> On the idea of adopting one law that would cover the entire subject matter of elections and on the legislative work on the Electoral Code, see: K.Skotnicki, "Przebieg prac nad Kodeksem wyborczym" [The works on the Electoral Code], in: K. Skotnicki, ed. *Kodeks wyborczy...* [Electoral Code...], op. cit., Warsaw 2011, pp. 11- 35.

<sup>14</sup> Proper shaping of the electoral law, which truly enables the voters to participate in elections, is one of the state's duties; "an interpretation that broadens the principles of universality of the electoral leads to the legislator's duty to create real possibilities to vote to every person who enjoys the right to vote" – according to M.Chmaj, W. Skrzydło, *System wyborczy w Rzeczypospolitej Polskiej* [Electoral system in the Republic of Poland], Warsaw 2011, p. 39.

<sup>15</sup> On the factors associated with the electoral system of a specific state that influence the voter turnout in European elections, see: M. Mattila, "Why bother? Determinants of turnout in the European elections," *Electoral Studies*, 2003, no. 22, pp. 449-468. The author lists the

## 14.2 Provisions of the Electoral Code

### 14.2.1 Sources of electoral law in Polish legal system

Elections to the European Parliament are not regulated in the Polish constitution but instead are regulated in a comprehensive manner in a dedicated statute, i.e. the aforementioned Electoral Code, which replaced the European Parliament election law, in force until 31 July 2011.<sup>16</sup> With regards to the elections to the European Parliament (this was emphasized in the law-making process), the Electoral Code implements the provisions of the Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.<sup>17</sup>

### 14.2.2 Principle of universal elections

The fundamental issue in the context of the principle of universal elections, which, according to M. Chmaj and W. Skrzydło, “defines the group of people who enjoy electoral rights”<sup>18</sup> is, in the context of voter turnout, the definition of the scope of the right to vote. In art. 10, the Electoral Code grants the right to vote to every Polish citizen and every citizen of the European Union who is not a citizen of Poland but who permanently resides in the territory of Poland, who have turned 18 at the latest on the day of the election. The age criterion given in this provision is a standard applicable in Poland with regards to all universal elections provided for in the Constitution (see art. 62 of the Constitution).<sup>19</sup> According to art. 10 (2), the right to vote is not granted to persons who are deprived of public rights by a valid court verdict or a valid verdict of the Tribunal of State, or incapacitated by a valid court verdict. On the other hand, the right to run for

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following factors: compulsory voting, weekend voting, dividing the country into multiple constituencies, having other elections simultaneously with EP elections, timing of the elections, country is a net contributor in the EU budget, high support for the EU membership, first elections in new member countries, using strict party lists (decreases turnout). Also, see: J.Blondel, R.Sinnott, P.Svensson, “Representation...,” op. cit., pp. 245-250.

<sup>16</sup> Act of 23 January 2004, European Parliament Electoral Law, Journal of Laws of 2004, no. 25, item 219.

<sup>17</sup> On the other hand, with regards to local government elections – Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

<sup>18</sup> M.Chmaj, W. Skrzydło, *System wyborczy...* [Electoral system...], op. cit., p. 39.

<sup>19</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, no. 78, item 483, as amended.

office (the passive electoral right) is granted to every person who has the right to vote and who, at the latest on the day of the election, has turned 21 and has permanently resided in Poland or in the territory of another member state of the European Union for at least 5 years. According to Art. 11 (2), the right to stand as a candidate in elections is not granted to persons sentenced by a valid court verdict to a jail sentence for a deliberate indictable offense or a deliberate fiscal offense, or to persons toward whom a valid court verdict has been pronounced concerning the loss of the right to stand as a candidate in elections due to the failure to submit a true lustration declaration.<sup>20</sup> The right to stand as a candidate in elections is also not granted to citizens of the European Union who have been deprived of this right in member states of which they are citizens. The categories of persons to whom the legislator grants the voting rights constitute the electorate; however, what is of key importance in the context of participation is implementation of such solutions in the electoral law that will lead to the largest part of the electorate participating in specific elections.<sup>21</sup>

### 14.2.3 Location of the voting stations

There is no doubt that appropriate location of the voting stations does contribute to enabling the largest number of voters to participate in elections. According to art. 12 of the Electoral Law, elections are held in electoral circuits that are formed on the basis of the basic unit of the state's administrative division, i.e. the commune. The Electoral Code distinguishes between two types of voting circuits: permanent and separate. Permanent voting circuits, which are required to cover a population of 500 to 3,000 residents, are established by the decision-making body of the unit of local government, namely the commune council; the Code allows that a circuit cover a smaller population if this is justified by local conditions (geography or population density in a given part of the commune). The justification for establishing separate voting circuits is the need to enable persons who are outside of the places of their permanent residence to vote in elections. This pertains mostly to healthcare institutions, social welfare homes,<sup>22</sup>

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<sup>20</sup> See art. 21a (2a) of the Act of 18 October 2006 on disclosing information on documents of state security bodies from the years 1944-1990 and the contents of such documents (Journal of Laws of 2007, no. 63, item 425, as amended).

<sup>21</sup> According to M.Chmaj, W. Skrzydło, *System wyborczy...* [Electoral system...], op. cit., pp. 42-43, this is not in conflict with the deprivation of two categories of persons, i.e. those deprived of public rights or voting rights by a valid court verdict or those incapacitated by a valid court verdict, which is practiced in nearly all democratic countries.

<sup>22</sup> A solution that facilitates voting and is used in electoral circuits in healthcare institutions and in social welfare homes is the possibility to cast the ballot cards into an ancillary ballot box which is the second ballot box in such an electoral circuit (art. 44).

penitentiary institutions and custody suites, as well as student dormitories, provided that during the elections there are at least 15 voters there or 50 voters in the case of a student dormitory.<sup>23</sup> Another solution that facilitates voting is the creation of permanent electoral circuits for Polish citizens who are staying abroad (art. 14) and separate electoral circuits for voters staying on Polish sea ships that are in route on the day of the election (art. 15) if there at least 15 voters in the circuit. Also, of note is the fact that according to art. 186 (1), in each commune at least 1/3<sup>rd</sup> of the premises used by the circuit electoral commissions should be suitable for use by handicapped voters.<sup>24</sup>

#### 14.2.4 Voter registers and lists of voters

Another mechanism intended to prevent situations where eligible voters coming to cast a vote are not included in the list of eligible voters is voter registers and lists. A permanent voter register covers all persons who are permanent residents of a commune and who have the right to vote.<sup>25</sup> Such persons are put in the register based on data from residents records or, if they do permanently reside in the commune but are not officially recorded as residents, upon their written request. The register confirms the right to vote and the right to stand as a candidate in elections and is used for preparing lists of voters eligible to vote in specific elections. Registers of voters are kept by communes and are made accessible so that the persons who are not included can file a complaint with the commune executive body (*wójt*) concerning irregularities in the register of voters, the failure to include a voter in the register; the *wójt* is required to consider the complaint within 3 days and a decision rejecting the complaint can be appealed with the district court of proper jurisdiction for the commune (art. 22). Similarly, voters may check in the commune office (21 to 8 days before the elections) where a list of voters was prepared whether they are included in the list and may file complaints concerning possible irregularities (art. 36 and 37).

<sup>23</sup> If on the election day in such a unit there are less than 15 voters, a separate electoral circuit may still be established there based on the opinion of the manager of the unit.

<sup>24</sup> Audits conducted by the Supreme Chamber of Control and the Human Rights Defender during the parliamentary elections in 2011 demonstrated, however, that in practice a large majority of voting stations do not meet the requirements of the Electoral Code and the Regulation of the Minister of Infrastructure of 29 November 2011 concerning voting stations of circuit electoral commissions modified to accommodate handicapped persons adopted on the basis of the Electoral Code (Journal of Laws no. 158, item 938) – this is discussed by A. Błaszczak, J. Zbieranek, “Gwarancje korzystania...” [Guarantees of exercise...], op. cit., pp. 61-66.

<sup>25</sup> The register of voters is divided into Part A and Part B. Part A covers Polish citizens (their basic personal data) and part B covers citizens of the European Union who are not Polish citizens but who permanently reside in the commune and have the right to exercise their electoral rights in Poland.

Also, the Electoral Code provides for adding one's name to the list of voters prepared for specific elections, which is also intended to facilitate voting by persons who are away from their place of residence on the day of the election. This is because, according to art. 28 of the Code, voters who are temporarily present in a commune<sup>26</sup> on the election day may be added to the list of voters upon their written request filed with the commune office not later than 5 days before the elections. Similarly, soldiers and rescue staff performing their basic service in the civil defense away from their places of residence may be added to lists of voters. Also, voters staying abroad may be added to lists of voters, but not later than 3 days before elections, prepared by the respective consul (art. 35); voters traveling on Polish sea ships that are in route on the election day enjoy similar rights.

Of note is the provision of art. 32 which enables voters who are traveling before the election date to obtain, upon a request filed in writing, by fax, or by electronic mail, a certificate regarding his or her right to vote in the location where they are to be present on the election day. Such a certificate enables voters to be added to the list of voters on the day of the elections; similarly, a person who is not included in the list may be added to the list if he or she demonstrates his or her permanent residence in a given electoral circuit and if the commune office confirms that it has not been notified that the person has lost the right to vote or that the person was added to the list of voters in another circuit. Another important fact is that in elections to the European Parliament<sup>27</sup> circuit electoral commissions can add to the lists of voters on the day of the election also Polish citizens who permanently reside abroad but who intend to vote in Poland based on a valid Polish passport, if they demonstrate their permanent residence abroad.<sup>28</sup>

#### 14.2.5 Time of voting and the issue of the two-day vote

Other mechanisms aimed to enhance voter turnout can be found in chapter VI on the act of voting. Another significant factor is the opening and closing times of voting stations, which are 7 AM and 9 PM, respectively (art. 39). The special care that the legislator pays to achieving the highest voter turnout can be seen, among others, in art. 39 (4), which provides that if the chairman of the circuit electoral commission announces the end of the voting, the voters

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<sup>26</sup>To include voters without any place of residence.

<sup>27</sup>Also in elections to both chambers of the Polish parliament and the presidential elections. In such a case, the committee takes note of the passport number, the place and date of its issue in the "remarks" column of the list and puts its stamp and date of voting on the last free page of the passport, which is intended for visas – see art. 51.

<sup>28</sup>In the parliamentary elections of 2011, certifications confirming the right to vote were very popular and were used by 188,549 voters; see: A. Błaszczak, J. Zbieranek, "Gwarancje korzystania..." [Guarantees of exercise...], op. cit., p. 60.

who have arrived at the voting station before the end-of-voting time are still allowed to cast their votes.

Traditionally, according to the Polish electoral law, elections are held on non-working days.<sup>29</sup> A solution that significantly improves voter turnout is the two-day vote provided for in the Electoral Code (art. 4). Although, in its verdict of 20 July 2011,<sup>30</sup> the Constitutional Tribunal declared that, with regards to parliamentary elections and presidential elections, such a vote, due to express constitutional provisions that such elections must be held on non-working days, is unconstitutional, the Constitutional Tribunal stated that such a mechanism is possible in the case of local and regional elections and elections to the European Parliament.<sup>31</sup> If voting in such elections takes place on two days (depending on the body announcing the elections, i.e., in the case of elections to the EP, the President of Poland), then the elections are held on a non-working day and on the day immediately before it.

#### 14.2.6 Voting by proxy

Other solutions that must be pointed at are connected with the departure from the principle of voting in person, in situations where strict adherence to this principle would cause either physical inability to vote or a significant obstruction, which would practically discourage voters from taking part in elections. According to G. Kryszewski, the requirement to cast votes in person at voting stations is not mandatory in a large number of countries, and exceptions to it are made mostly with the view to increasing voter turnout and, consequently, to promoting the universal nature of elections.<sup>32</sup>

A new solution in the Electoral Code is voting by proxy; this solution is present in many countries, such as Belgium, France, Ghana, Georgia, Guiana, Spain, Netherlands, Latvia, Mali, Sweden, and the United Kingdom. The laws of the different countries have different provisions regarding the groups that enjoy the right to assign proxies and to be proxies, the number of proxy rights that can be accepted by a single voter, the period of validity of proxy rights, and the way that proxy rights can be granted.<sup>33</sup>

<sup>29</sup> On the impact of voting on Sunday on voter turnout in European elections, see: J. Blondel, R. Sinnott, P. Svensson, "Representation..." op. cit., pp. 251-253, 267.

<sup>30</sup> File no. K 9/11 (Journal of Laws no. 149, item 889).

<sup>31</sup> The idea of a two-day long election was found to be controversial at the stage of parliamentary works; see: K. Skotnicki, "Przebieg prac..." [The works...], op. cit., pp. 15, 25.

<sup>32</sup> G. Kryszewski, *Standardy prawne wolnych wyborów parlamentarnych* [Legal standards of free parliamentary elections], Białystok 2007, p. 222.

<sup>33</sup> The differences are discussed by: J. Zbieranek, "Nowe procedury..." [New procedures...], op. cit., pp. 42-44, and J. Zbieranek, *Alternatywne procedury głosowania w Polsce na tle państw*

The Polish statute focuses on this matter in chapter VII.<sup>34</sup> In Poland, too, this solution is subject to a number of limitations pertaining to its subject: according to art. 54, only handicapped voters with significant or moderate degree of handicap<sup>35</sup> or voters who have turned 75 on or before the election day may exercise this right. Such persons may grant proxy rights for voting on their behalf in elections. Moreover, the legislator has decided that this voting method is not possible in the case of voting in separate electoral circuits and in electoral circuits established abroad and on Polish sea ships, as well as when the handicapped voter has declared his or her intent to vote by mail. The Electoral Code precisely defines who can be a proxy<sup>36</sup> as well as the procedure for granting and withdrawing the proxy rights. Due to the need to ensure security of elections, the procedure is formal, although quite simple: the voter must file a request to prepare the proxy deed with his local commune office and must submit relevant data and documents that confirm his right to vote in this manner. The proxy deed is prepared before the *wójt* (or the mayor or city president), or an official appointed by the *wójt*, in the place of residence of the voter or another place in the commune, requested by the voter.

While the very institution of voting by proxy is certainly advantageous from the point of view of universal nature of elections, one must keep in mind that it is controversial from the point of view of other electoral principles. Considering the doctrine, G. Kryszewski points at the doubts regarding the compliance of voting by proxy with the principle of direct election and the principle of secret vote<sup>37</sup> and

*Unii Europejskiej* [Alternative voting procedures in Poland on the background of countries of the European Union], in: D.Dziewulski ed., *Wybrane problemy systemów wyborczych* [Chosen Issues of Electoral Systems], Biuro Analiz Sejmowych, 2011, no. 3, pp. 96-98. Also, see: A.Krasnowolski, *Głosowanie przez pełnomocnika, głosowanie antycypowane i głosowanie korespondencyjne w krajach europejskich i Kanadzie* [Voting by proxy, anticipated voting, and voting by mail in European countries and in Canada], Warsaw 2006, pp. 10ff; K.Skotnicki, *Zasada powszechności w prawie wyborczym. Zagadnienia teorii i praktyki* [The principle of universality in electoral law. Theoretical and practical issues], Łódź 2000, pp. 263ff.

<sup>34</sup> The idea of voting by proxy, like voting by mail, was one of the areas disputed in the extraordinary parliamentary committee working on the draft statute; see: K.Skotnicki, "Przebieg prac..." [The works...], op. cit., p. 25.

<sup>35</sup> In the meaning of the Act of 27 August 1997 on vocational and social rehabilitation and on hiring of handicapped persons (Journal of Laws of 2011, no. 127, item 721). The groups of persons who may take advantage of this method of voting was the object of controversy during the works on the Electoral Code as well as soon after its coming into force; see: J.Zbieranek, "Nowe procedury..." [New procedures...], op. cit., p. 56.

<sup>36</sup> One may be a proxy of only one person – an exception is provided for in the case of an enumerated of a category of persons – one may additionally be the proxy of two persons of whom one is a family member of the proxy, a person adopted by the proxy, or a person over whom the proxy exercises custody or guardianship.

<sup>37</sup> J.Mordwilko, "W sprawie ustanowienia w polskim prawie wyborczym instytucji pełnomocnika oraz możliwości głosowania drogą pocztową (głosowania korespondencyjne-



concludes that voting by proxy is contradictory to “elementary requirements of free elections.”<sup>38</sup> The fundamental risk associated with voting by proxy is a situation where the proxy votes in accordance with his own views and opinions and not as asked by the person granting the proxy rights.<sup>39</sup> As for the concerns associated with voting by proxy, the Constitutional Tribunal has expressed its positive opinion of this institution and considered it to be a guarantee of exercise by citizens of their right to vote. The Constitutional Tribunal rejected the arguments that voting by proxy violates the principle of direct election by saying that the principle means that the voting act must be a single-step one and does not lead to the requirement to vote in person.<sup>40</sup>

Considering the views expressed in the doctrine, which point at the risks associated with voting by proxy, the Polish normative model of this electoral mechanism, which is limited with regard to its subject and is rather formal, appears to be cautious enough and, if regarded as an exception to the principle of voting in person, meets the standards of a democratic state; nevertheless, only the next several elections in Poland will demonstrate if this mechanism is subject to abuse.<sup>41</sup>

Also, of note is the fact that the Electoral Code defines penal measures associated with the institution of voting by proxy, which are intended to prevent pathological behavior aimed at earning profits by granting proxy rights, both on the part of the person granting the rights and on the part of the proxy. According to art. 511, charging the person granting proxy rights with a fee for voting on his or her behalf carries a penalty of a fine and, according to art. 512, granting proxy rights in exchange for any financial or personal benefit carries a penalty of detention or a fine.

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go)” [On the establishment in the Polish electoral law the institution of a proxy and the possibility to vote by mail], *Przegląd Sejmowy*, 2001, no. 1, pp. 67-71; the author presents a brief review of the opinions of the doctrine on the contents of the principle of direct elections and the doubts related to the issue of personal voting; with regards to the principle of secret vote, because it does not fully guarantee this principle, in essence the power of a proxy does not constitute authorization to vote but rather substitution of the voter.

<sup>38</sup> G.Kryszewski, *Standardy prawne...* [Legal standards...], op. cit., p. 223.

<sup>39</sup> K.Skotnicki, *Zasada powszechności...* [The principle of universality...], op. cit., p. 267.

<sup>40</sup> Verdict of the Constitutional Tribunal of 20 July 2011, K 9/11. The Tribunal also rejected the claim of violation of the principle of equality in the formal aspects and stated that the proxy votes on behalf of the voter and not in his or her own name. Thus, the proxy does not have two votes but one: his or her own (as the voter) and one vote used on behalf of another voter.

<sup>41</sup> During the works on the Electoral Code, voting by proxy was introduced to the electoral laws applicable to presidential and local government elections, which were in force during the 2010 elections. The voting by proxy method was then used by between ten and twenty thousand voters, mostly elderly or handicapped. See: Patrz A.Błaszczak, J.Zbieranek, “Gwarancje korzystania...” [Guarantees of exercise...], op. cit. p. 22.

### 14.2.7 Voting by mail

Another solution that appears for the first time in the Electoral Code is voting by mail.<sup>42</sup>

This voting method, too, is controversial, but it is permitted in member states of the Council of Europe<sup>43</sup> and, according to G. Kryszewski, is more common than voting by proxy; it is provided for in electoral laws of Australia, Bangladesh, Bosnia and Herzegovina, Estonia, Finland, Greece, Spain, Netherlands, India, Ireland, Iceland, Japan, South Korea, Canada, Lesotho, Pakistan, Portugal, Germany, Slovenia, Switzerland, Sweden, United Kingdom, Lithuania, Latvia, and Philippines. G. Kryszewski points at the fact that in a large majority of those states, voting by mail is limited to persons who are staying outside of the state and only in some of those countries the right to vote by mail has been granted to citizens present within their borders; in some countries (Spain, Canada, Germany, Switzerland, and United Kingdom), all voters enjoy this right, while in others, only some categories (handicapped or elderly persons) do.<sup>44</sup>

The Polish Electoral Code provides for two procedures concerning voting by mail: one for handicapped persons and one for voting in electoral circuits established abroad.

In the case of voting by mail in electoral circuits established abroad, the intent to vote by mail may be reported to the relevant consul until the 15<sup>th</sup> day before the election day; immediately after the consul receives the ballot cards from the relevant committee, but not later than until the 10<sup>th</sup> day before the election day, the consul sends the voting package to the voter who has expressed his or her intent to vote by mail and is included in the list of voters. The voting package includes:

- 1) return envelope;

<sup>42</sup> Of note is the fact, observed by J. Zbieranek, that the first serious, although eventually failed attempt to introduce the vote by mail mechanism took place during the work on the electoral law for the European Parliament elections in 2002/2003; see: J. Zbieranek, "Nowe procedury..." [New procedures...], op. cit. pp. 48-49, 51-56. The same author also discusses the process of introduction of alternative voting methods into the Electoral Code.

<sup>43</sup> Venice Commission – the Code of good practice in electoral matters includes this voting method, although with some subjective reservations as well as reservations connected with reliable operation of the mail system; Code of good practice in electoral matters. Guidelines and explanatory reports, Adopted by the Venice Commission at its 52<sup>nd</sup> session (Venice, 18-19 October 2002), Opinion no. 190/2002, CDL-AD (2002) 23 rev, p. 21; the Venice Commission discusses remote voting in the Report on the Compatibility of Remote Voting and Electronic Voting with the Standards of The Council of Europe. Adopted by the Venice Commission at its 58<sup>th</sup> Plenary Session (Venice, 12-13 March 2004) on the basis of a contribution by Mr. Christoph Grabenwarter (substitute member, Austria), Study no. 260 / 2003, CDL-AD(2004)012. Both documents can be found at [www.venice.coe.int](http://www.venice.coe.int).

<sup>44</sup> G. Kryszewski, *Standardy prawne...* [Legal standards...], op. cit., pp. 224-225; also, see: J. Zbieranek, "Nowe procedury..." [New procedures...], op. cit., pp. 46-48 and J. Zbieranek, *Alternatywne procedury głosowania...* [Alternative voting procedures...], op. cit., pp. 99-102.

- 2) ballot card(s);
- 3) envelope for the ballot card(s);
- 4) instruction for voting by mail;
- 5) declaration regarding personal and secret voting on a ballot card.

After the voter has filled out the ballot card, he or she puts it in the envelope intended for the ballot card, seals the envelope, and puts the envelope in the return envelope together with the signed declaration, and sends the envelope at his or her own cost to the address of the relevant consul. The consul transfers the return envelopes that he or she has received until the end of the voting time to the relevant circuit electoral commission. The envelopes for the ballot card that were taken out from the return envelopes submitted by the consul are cast into the ballot box.

Voting by mail, as a right enjoyed by handicapped persons, first appeared in the Electoral Code as a result of the amendment of 27 May 2011.<sup>45</sup> It is subject to the same limitations as voting by proxy, i.e. it does not apply to voting in separate electoral circuits and in electoral circuits established abroad and on Polish sea ships, as well as when a handicapped voter has declared his or her intent to vote by proxy.<sup>46</sup> Handicapped voters who have declared the intent to vote by mail more than 21 days before the election day receive a voting package from their commune offices, in person only and upon presentation of a document confirming their identity and with written confirmation of the receipt, not later than 7 days before the election day.<sup>47</sup> After the voter has filled out the ballot card, he or she puts it in the envelope intended for the ballot card, seals the envelope, and puts the envelope in the return envelope together with the signed declaration, and sends the envelope to his or her circuit electoral commission. The envelopes with the ballot cards taken out from the return envelopes delivered to the circuit electoral commissions are cast into the ballot box.

The Polish regulations pertaining to voting by mail should be considered as moderate. The legislator limited the groups of voters eligible to vote in this manner, which appears to be justified by the fact that this is a novelty in the Polish electoral law and, similar to voting by proxy, only the next several elections will show if this mechanism is not subject to abuse.<sup>48</sup> P.L. Southwell

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<sup>45</sup> Journal of Laws of 2011, no. 147, item 881.

<sup>46</sup> Also, it does not apply to voters who have turned 75 on the date of the elections at the latest.

<sup>47</sup> The contents of the voting package is similar to the content of the voting package who vote by mail abroad. In their declarations, handicapped voters may demand that, along with the electoral package, he receive ballot card covers made in the Braille alphabet. In both cases, the formats of the documents sent to voters are defined by the National Electoral Commission.

<sup>48</sup> In the parliamentary elections held in 2011, 807 voters took advantage of the right to vote by mail within the country and only a part of them (647) did id effectively; see: A. Błaszczak, J. Zbieranek, "Gwarancje korzystania..." [Guarantees of exercise...], op. cit., pp. 69-70.

points that “opponents of vote by mail elections have numerous concerns, but among their arguments is a refutation of the assumption that turnout will increase. Instead, they argue that voter turnout may rise temporarily as a result of the novelty of this type of election, but subsequently revert to previous levels. Others argue that many ballots will fail to reach the voter at his or her correct address, especially to the more transitory strata of society such as young people. Therefore, the typically low rates of participation among this age group will be unaffected by vote by mail elections.”<sup>49</sup> There are also other risks concerned with the postal voting like the possibility of voter fraud.<sup>50</sup> Despite such doubts, the Venice Commission includes this voting method in its Code of good practice in electoral matters, but makes certain reservations as to the subject and the reliability of the mail system – Code of good practice in electoral matters.<sup>51</sup> Of note is the fact, that the Polish legislator finds to be particularly dangerous to voting by mail is unauthorized opening or damage to the electoral package or the sealed envelope; the legislator focuses on this problem in the penal provisions (art. 513a) which provides for the penalty of a fine for such behavior.

As in the case of voting by proxy, the Constitutional Tribunal has expressed its opinion on voting by mail in the aforementioned verdict, where it stated that voting by mail does not violate the principle of secret voting or the standards of reliability

<sup>49</sup> P.L. Southwell, Analysis of the turnout effects of vote by mail elections, 1980–2007, *The Social Science Journal* 2009, nr 46, p.212 and the literature referred to therein.

<sup>50</sup> See also G. Will, Mail vote subverts democracy. Register-Guard, 1995 (October), 26 – as observed by G. Will “what really worries opponents of mail voting is the specter of “ballot – making parties” where voting is not secret.” G. Kryszewski points at the risks associated with voting by mail, such as threats to the principle of secret vote and to the freedom of choice, due to the possible pressures faced by voters, the lack of confidence of the voters in the anonymity of their votes, casting multiple votes, voting for other persons, trading in votes, or bribing voters. Based on some literature on this subject, he gives the example of France where voting by mail was abandoned in 1975 because of large scale abuse. Fraud related to voting by mail has taken place also in the United Kingdom and, to a lesser extent, in the United States. The same author points at a serious disadvantage of this mechanism, namely the fact that it reduces the influence of personal participation in elections on shaping democratic and civic culture. On the other hand, he sees the advantages of this method, such as a fuller implementation of the principle of universality of elections, the positive attitudes of voters to this method, and the reduced cost of organization of elections. See G. Kryszewski, *Standardy prawne...* [Legal standards...], op. cit., pp. 224-227; in this regard, the author refers to: M. Qvortrup, First past the Postman: voting by Mail In Comparative Perspective, *The Political Quarterly* 2005, Vol. 76, No. 3, pp. 416-418, which contains notes on the origins of voting by mail and the effects of introduction of this voting method in the United Kingdom, Australia, and New Zealand.

<sup>51</sup> Code of good practice in electoral matters. Guidelines and explanatory reports, Adopted by the Venice Commission at its 52<sup>nd</sup> session (Venice, 18-19 October 2002), Opinion no. 190/2002, CDL-AD (2002) 23 rev., p. 23, available at: [www.venice.coe.int](http://www.venice.coe.int)

of democratic state and considered this voting method to be a good alternative voting method that implements the principle of universal nature of elections.<sup>52</sup>

### 14.2.8 Meaning of the information on the new solutions

Besides the abovementioned solutions, which are provided for in the Electoral Code, of great importance is the information aspect: the voters who are to take advantage of such mechanism must be aware of their existence. Thus, voter turnout may be influenced by both the campaigns run by the candidates,<sup>53</sup> which may raise interest in the elections, and the very information about the elections and the solutions that facilitate voting.<sup>54</sup> However, in Poland, before the parliamentary elections held in 2011, the information on the new solutions was fairly limited and most likely delayed.<sup>55</sup> The above-mentioned data concerning the number of persons who have taken advantage of the new voting methods in 2011 demonstrate the importance information and the fact that voters' awareness of the new solutions does not bring immediate results.<sup>56</sup>

## 14.3 Conclusion

The new provisions of the Electoral Code certainly constitute an important step towards a fuller implementation of the principle of universal elections. In the author's opinion, both the solutions that are traditionally present in the Polish electoral law and the new alternative voting methods warrant

<sup>52</sup> Verdict of the Constitutional Tribunal of 20 July 2011, no. K 9/11.

<sup>53</sup> Interesting conclusions regarding the impact of voter turnout on the results of elections are reached by: C. van der Eijk, M. van Egmond, "Political effects...", op. cit., pp. 424-425. According to the authors, "the consequences of variations in turnout for parties' vote shares are generally small in the member states of the EU, for national as well as for European elections."

<sup>54</sup> J. Blondel, R. Sinnott, P. Svensson, "Representation...", op. cit., pp. 257-261. P. Söderlund, H. Wass, A. Blais, "The impact of motivational...", op. cit., p. 698; the authors are probably right in observing that in the case of PE elections, in general there is a lesser mobilization of political parties and interest in the mass media. The issue of interest of the mass media in the 2009 PE elections is discussed in: A.R.T. Schuck, G. Xezonakis, M. Elenbaas, S.A. Banducci, C.H. de Vreese, "Party contestation and Europe on the news agenda: The 2009 European Parliamentary Elections," *Electoral Studies*, 2011, no. 30, pp. 41-52 and A. Ellis, M. Gratschew, J.H. Pmmet, E. Thiessen, *Aktywizowanie wyborców...* [Activation of voters...], op. cit., pp. 28-36.

<sup>55</sup> See: A. Błaszczak, J. Zbieranek, "Gwarancje korzystania..." [Guarantees of exercise...], op. cit., pp. 51-54. The same authors also discuss more broadly the potential of the information factor and the propositions in this regard (pp. 84-93).

<sup>56</sup> It must be noted that the Electoral Code requires the local and regional government bodies, the National Electoral Commission, and the circuit electoral commissions to perform a number of information duties, in particular with regards to handicapped persons (see chapter 5a of the Electoral Code).

considering Poland as a state that strives to overcome electoral barriers that hinder participation in public life by large groups of voters. Even though the new alternative voting methods introduced into the Polish electoral law are of a limited nature, they certainly set the direction for Polish elections. Both the normative solutions and the verdict of the Constitutional Tribunal demonstrate the attention paid to the principle of universal elections, despite the threats associated with the alternative voting methods.

However, only the upcoming 2014 elections to the European Parliament, which will be the first election held under the new Polish Electoral Code, will enable a preliminary answer to the question about the extent to which the mechanism introduced in the Code and discussed in this article are effective and improve the turnout of the entire voter population and of individual groups of voters. Observations of the electoral process, in particular the use of alternative voting methods, should indicate whether voters are willing at all to use such forms, which will certainly depend on the effectiveness of the information campaign. The next year's election will also demonstrate if the procedures introduced in Poland are free of defects and prevent abuse. In the author's opinion, only after the Electoral Code has been used in the elections to the European Parliament it will be possible to evaluate the usefulness of the Polish solutions and experiences and their suitability for implementation in other EU member states, in particular in countries of Central and Eastern Europe, which face similar problems with regards to the implementation of the principle of universal elections and to voter turnout. In this context, the present article defines the field for further research on the impact of the electoral mechanisms discussed herein on the election statistics. Of course, each successive election held in accordance with the new principles, thanks to the new relevant data, will further facilitate observation of the functioning of those mechanisms and will substantiate the assessment of their functioning in Poland and possible usefulness in other EU member states.

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# Low Turnout in European Elections: the Swedish Electoral System and Prospects for a Single Voting System in the European Union

DAVIDE CARRINO\*

## 15.1 Introduction

The recent accession of Croatia to the EU as 28<sup>th</sup> member state and the almost deserted election (only 20,74% of registered voters participated) of its first 12 MEPs, showed once again the hotly debated paradox faced by the European Parliament: it remains a unique supra-national institution hosting transnational family parties and representing over 500 million citizens, but its raising influence since the launch of the Single European Act in 1986, coupled with larger media coverage, did not spur greater political participation. Conversely, European elections have been marked by continued decline in turnout levels, hitting record low 43% (EU27 average) in 2009. Although scholars pointed out that political apathy in ‘post-modern’ (Giddens 1991) or ‘liquid’ societies (Bauman 2000) and the EU enlargement (due to structural lower turnout, especially in Eastern Europe) affected participation in the last two - three decades, data on the eight European elections held from 1979 to 2009 are unambiguous. Not only average participation has decreased by almost 20 percentage points in thirty years, but turnout remains low compared to other electoral contests (at national level). One could argue that being the EP the only democratic institution of the Union, voters could see these elections as an opportunity to influence directly policy-making at European level, but the electorate seems to find it difficult to disentangle national and European motivations (Clark & Rohrschneider 2009).

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Interestingly, countries with historically high political participation and ‘social capital’ (Putnam 1993) do not represent an exception to this pattern: Swedish national elections constantly register turnouts as high as 80 – 85% (with peaks above 90% between the 1970s and the 1980s), whereas voters halve when called to elect their representatives in Brussels and Strasbourg. EP elections in Sweden seem to represent an interesting case both at national level and for the European elections as a whole for several reasons: first, in addition to the low turnout, the first European elections held in the country in 1995 did not bring the so-called ‘first election boost’ (41,6% of voters casted their ballot for the MEPs, over 86% voted for the Riksdag a year earlier), as it normally seems to be the case for other countries when joining the EU (Franklin 2001). Secondly, EP elections in the country seem to hold a large degree of uncertainty: in 2004 the new and eurosceptic *Junilistan* (June List) got three members elected. More importantly, in 2009 the Pirate Party, a single-issue movement almost inexistent until then, gained 7.13% of the votes and elected a 25 year old MEP. Founded in 2006, the *Piratpartiet* made headlines around the world for its unconventional approach, based on massive use of social media and direct contact with the electorate (Erlingsson & Persson 2011), leading in a few years to the creation of similar movements across Europe. Finally, the size of the country (9,5 million inhabitants and it currently elects 20 MEPs under the Treaty of Lisbon) allows to make comparisons of the electoral system for the European elections, pointing out its strengths and drawbacks in terms of democracy and political participation.

Many works in the literature already focused on whether European elections should be labelled as ‘second order’ contests or truly European ones: the goal of this paper, instead, is to analyze the EP elections in Sweden, with a close look at the electoral law, suggesting potential reforms of the electoral system at European level.

## 15.2. European Elections in Sweden: a short story, many highlights

### 15.2.1 Riksdag and EP elections compared: same electorate, different outcomes

Sweden joined the EU only in 1995, thus our analysis can only take into account four sets of European elections. However, especially the EP elections 2004 and 2009 enjoyed large media coverage because two new parties emerged on the political scene, representing a complete novelty for an extremely ‘one-dimensional’ and stable political system (Joensson 2010). Inter-

estingly, they both gathered consensus in European elections and quickly ‘disappeared’ politically thereafter: in 2004 *Junilistan* (June List) gained 14,47% of votes, becoming the third-largest party behind the two main established parties, the social democrats and the moderates. After a successful campaign based on euroscepticism and opposition to the single currency in 2004, the June List scored less than 0,5% in the 2006 national elections and did not go beyond 3,55% in the last EP elections of 2009, electing no MEP because a 4% electoral threshold applies. Similarly, the Pirate Party stood out supporting a ‘free Internet’ in terms of file sharing and privacy rights, opposing a law that regulates traffic data launched in June 2008: thanks to the visibility gained, the promise to bring this debate at the European level, abundant use of social media and ‘direct’ contact with (especially young) voters, it managed to obtain 7,13% of the votes.<sup>1</sup> As the June List, the Pirate Party did not confirm its success in the following national elections: in September 2010 it gained less than 1% of the votes, although the party still exists and it is expected to run again in 2014 for both EP and national elections.

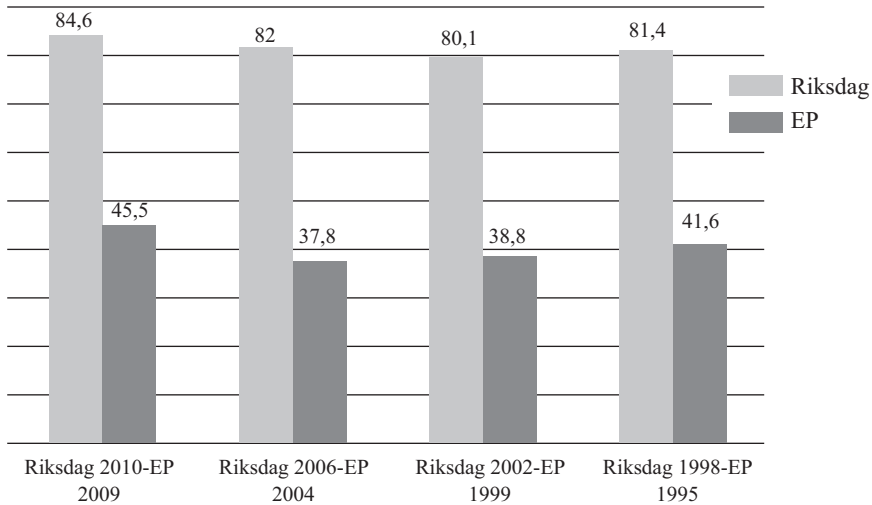
Looking into political participation and electoral laws as the main focus of this paper, turnout variations between parliamentary and European elections in Sweden is remarkable, to the point that one may think they involve a different electorate. Thanks to a large share of registered ‘first time voters’ and raising interest in the role of the EU (Joensson 2010), the 2009 EP elections reached their highest turnout with 45,5%: a year later, over 84% of the Swedes voted to elect the new parliament. Although there is no compulsory voting, turnout for national election in Sweden has been among the highest across democratic systems, slightly below 80% only three times since 1948.<sup>2</sup> The graph below compares voters turnout between the two sets of elections closer in time for the EP and the *Riksdag*: the gap is very large, around 40 percentage points, with a record-low of 45 for the 2004 EP elections, where less than half of the voters casted their ballot in comparison with the national election held in 2006.

A more extensive analysis of the factors causing turnout fluctuations would obviously be useful, as the literature highlighted the role of several aspects, such as socioeconomic traits, attitudes (general political interest and sense of civic responsibility), political behaviour (party affiliation and membership) or even

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<sup>1</sup> The Pirate Party was successful in showing a ‘different approach’ than the traditional parties, especially addressing young voters: throughout the months before the 2009 elections, for instance, young activists carrying the violet flag of the movement approached people about to enter night clubs, bars or *Systembolagets* (the government owned monopoly chain of liquor stores), raising awareness about their role of ‘watchdog’ for a ‘free Internet’ in the upcoming European elections.

<sup>2</sup> Data from: <http://www.idea.int>

**Figure 1 – Voters turnout in Swedish Parliamentary and EP elections (1995 – 2010)**

‘timing’ of the election, as EP elections preceding general elections are deemed to have higher turnout due to raising interest and ‘politicization’ of the society in the short run (Flickinger & Studlar 2007, Franklin 2001).<sup>3</sup> However, it is noteworthy that turnout for EP elections in Sweden is significantly lower even in comparison with local elections, whereas in several countries data variations between European and local elections are less significant, confirming the idea of ‘second order’ elections: parties have fewer incentives and lower budgets, thus voters are less informed about these elections, where the stakes are not estimated as high as in ‘races’ for national governments (Hix and Lord 1997).<sup>4</sup>

This work looks into institutional factors, namely the electoral system, one of the most important aspect voters consider when deciding whether to vote (Blais & Dobrzynska 1998). The EU does not provide a common electoral law, but only three general rules that countries need to apply in their own method chosen to elect their MEPs. These concern a) proportional representation; b) the option to divide countries in several constituencies if it does not affect the proportionality of the system and c) a maximum electoral threshold of 5%.

The 20 Swedish MEPs are elected through a proportional system in a single constituency (representing the whole country), the threshold is set at 4%

<sup>3</sup> On ‘election timing’, European elections in 2014 hold particular interest in Sweden, since they will be followed shortly by parliamentary elections in September 2014.

<sup>4</sup> This is particularly the case for European elections, as the EP is not supporting a ‘government’ and it remains difficult for the voter to see the impact of the vote.

and besides casting their vote for a party, voters can use preference voting, meaning that they can support one candidate within the party chosen. This opportunity is widely used, as personal votes were as high as 60% in the EP elections of 2009. The electoral system to elect the members of the *Riksdag* is also proportional, with a 4% threshold and preference voting, but the country is divided into 29 multi-members constituencies, running for the 349 seats in the parliament.<sup>5</sup> However, 310 seats are attributed directly to the parties that obtained more votes, while the remaining 39 are used as ‘adjustment seats’, in order to balance the effects of the constituencies and add some proportionality to the system (Linusson 2010). All parties that reached the threshold of 4% (or 12% in a constituency) obtain extra-seats, but the method applied is the Sainte-Laguë with a first divisor 1,4 instead of the commonly used 1: it means that when granting the adjustment seats parties’ votes are divided by 1,4. This divisor favors medium-large parties and penalizes small ones that struggle to obtain their first seat: the issue has been widely discussed after the 2010 elections (when the two biggest parties obtained a surplus of four extra-seats) showing clearly the disproportional effect to average voters as well (Valmyndigheten 2010).

### 15.2.2 The electoral system for the Riksdag and European elections

What does this comparison tell us about the two systems? Their structure is very similar, as they are both ‘PR’ (list) systems with fairly limited disproportional effects: nevertheless, the EP system is closer to a pure PR as it has no adjustment seats and the same amount of voters (slightly more than 7 millions) elect only 20 MEPs versus the 349 seats of the *Riksdag*. In terms of size, the average constituency for the national parliament elects 10,6 members (excluding the adjustment seats), opposed to 20 for the EP, thus smaller and ‘anti-establishment’ parties have better chances to win seats. However, as pointed out above, differences between them remain quite technical, therefore it can be implied that voters have a good grasp of the electoral system for EP elections and it does not seem to hinder participation because of its supposed complexity.

Another relevant aspect concerns electoral systems for EP elections in other countries: since PR systems are mandatory as ruled by the EP, the main criterion will be the size of the constituencies. Excluding the most populat-

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<sup>5</sup> If a party does not reach the 4% threshold at national level, but gains at least 12% of votes in a constituency, it is still included in the count for seats. More details on the electoral procedures for the *Riksdag*: [www.val.se](http://www.val.se)

ed states (Germany, France, Italy, Poland and the UK, plus Ireland, where four micro-constituencies electing three MEPs have a very disproportional effect, balanced by Single Transferable Vote) and smaller ones (in countries like Luxembourg, Malta or Cyprus the small population has similar effects to the Irish case), the rest of the countries represent a single constituency, as in Sweden.<sup>6</sup>

In the light of this analysis, the Swedish system seems to serve best the purpose of the EP elections, since creating more constituencies would limit the proportionality, thus penalizing smaller parties or dissuading new movements from running for seats in Brussels and Strasbourg. The same can be said for the preference voting, which is very popular in Sweden and allows voters to have their say and influence the party-lists. However, the 4% threshold at national level remains quite high: lowering it to 2% would represent a valid opportunity, with a potential ‘spinoff effect’ on turnout, offering broader choice to voters that look for parties very close to their views before turning out. At the same time, such a low threshold would not affect the overall result: political fragmentation is limited systemically in the country, adding to the fact that there is no need for a clear majority in European elections due to the lack of ordinary ‘government’ to support (Hix 2002).

### 15.2.3 Between protest voting and national politics: an analysis of the low turn-out in EP elections in Sweden

When analyzing the reasons that motivate voters to turnout, the ‘rational choice’ approach puts forth that the likelihood of individuals voting increases significantly when they estimate that the benefits outweigh the costs (Downs 1957). Recent research emphasized the importance of electoral rules besides the rational choice approach: voters consider the potential impact of their vote before making the decision to turnout, thus low turnout is often due to the lack of parties that represent faithfully the voters’ views (Singh 2011). On the one hand, plurality systems (*first past the post*, as well as contests where the ‘race’ to win a seat or the majority in the government is clear) may prompt parties to campaign more actively, bringing more people to vote. On the other, empirical studies have shown that, other conditions being equal, turnout in PR systems is three points higher than in non-PR systems, mainly because of a fairer system, with broader political offer and enhanced competition (Blais & Dobrzynska 1998).

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<sup>6</sup> Only Belgium represents an exception because its 22 MEPs are elected in three constituencies crafted across the linguistic communities of the country.

This scenario may be considered to explain the Swedish EP elections of 2009, when turnout increased by almost 8 percentage points (up to 45,5%) compared to the previous elections (2004): Swedish voters went against the European trend of decreasing turnout, which was for the first time above EU27 average (43%). A 'generous' electoral system as described above may, for instance, have pushed first the Pirate Party to run, and then young voters to express their preference (600 000 'first time' voters went to the voting booths).<sup>7</sup> In other words, besides the low turnout, EP elections also created more room for 'single issue' parties and let voters push forward short-term interests. This let them bring at the top of the political arena issues normally neglected (as for instance euro-skepticism with *Junilistan* in 2004) or that raised concerns throughout the parliamentary term, *i.e.* the new law proposed by the *Riksdag* to regulate the Internet in 2008, used by the *Piratpartiet* to gain visibility and consensus ahead the European elections of 2009. Similarly to other countries, governing and larger parties loose votes in EP elections in Sweden, but it appears clearly that we cannot talk of 'punishment' or 'protest' vote. Although based on low turnout, EP elections in the country may be used as a 'forum' where the priorities of the moment are given an electoral boost, and an 'active minority' takes the chance to let its voice heard rather than simply 'throw the rascals out' (Taggart 1998). In this regard, they clearly represent an added-value for the Swedish democracy, offering another chance for political inputs coming from the electorate.

Finally, it remains a matter of discussion how far European elections in the country are drifting away from their inner purpose, namely electing MEPs on European affairs, ideally putting EU issues (or the direct link between EU policy-making and compliance at national / local level) on top of the agenda, keeping in mind the influence of the EP intertwining with the other EU institutions. It appears clearly that EP elections in Sweden continue to be dominated by 'national politics', to a similar extent to most of the other member states (Caramani 2004). Nonetheless, especially in 2009 we assisted to a gradual 'Europeanisation' of the campaign: parties did not discuss anymore on the Swedish membership of the Union (as it still happened in 2004), but rather on the role the country should play and whether it is justifiable to delegate further competencies to legislators in Brussels (Joensson 2010). In this regard, the debate moved closer to the pattern observed in the 'old' member states, where the discussions concern the 'direction' the European project should take rather than putting into question European integration *tout court* (Beaudonnet 2010).

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<sup>7</sup> Source: [http://www.scb.se/Pages/PressRelease\\_\\_\\_\\_280644.aspx](http://www.scb.se/Pages/PressRelease____280644.aspx)

The upcoming European elections of 2014 are, therefore, of particular interest to see if they will confirm the trends described above. Voters turnout may increase again (although not dramatically), as the European debate gains further visibility in the country, together with the favourable ‘timing’ because for the first time EP and national elections will be held in the same year (May-June for the EP and September for the *Riksdag*). Smaller parties will try to use the European election as a springboard for their subsequent national campaign, but on the other hand, larger parties will invest heavily since the first months of the year, potentially gathering greater support than in previous EP elections.

## 15.3 Twenty-eight countries, one electoral system? A long way to go and the ‘Italian option’

### 15.3.1 Participation in EP elections: the factors underlying a constant decline

Why is that political participation is so low in European elections, hitting in many countries record-low performances in their democratic history? Is it because voters do not perceive their vote as influential, or is the EP itself part of a multi-layered and complex institutional framework whose elections do not create a ‘standard government’? Or, it may be the case that there can be no proper EU wide election lacking an actual European *demos*.

Many authors have tried to provide exhaustive explanations for the decreasing interest and turnout in European elections (Flickinger & Studlar 2007, Hix 2002), but there seems to be no flawless argument: as we are talking about the ‘biggest transnational election of all time’ (Directorate General Press and Communication, p. 2), several factors linked to local and national specificities are interrelated, thus making it very unlikely for researchers to produce unambiguous results. For instance, previous works have taken into account factors as broad as ‘political attitudes and behaviour’, election timing and partisanship, EU policy experience (Flickinger and Studlar 2007) and citizens’ support for the EU (Stockemer 2011), including even – among others - economic development, degree of illiteracy, population size and the number of parties. The conclusion of a very comprehensive study on turnout variations across democracies is that high turnouts (up to 90%) are likely in a “small, industrialized, densely populated country, where the national lower house election is decisive, voting is compulsory and the voting age is 21, having a PR system with relatively few parties and a close electoral outcome” (Blais & Dobrzynska 1998, p. 252).



However, without neglecting all the reasons underlying low political participation, this work focuses on practical aspects that could increase turnout levels and improve the quality of democracy at EU level. For instance, it is surely noteworthy that ‘social capital and economic development are correlated to greater participation, but in practical terms little can be done on such far-reaching issues, and this would surely be out of the scope of our contribution. The table below shows the continued decrease of turnout since the first European elections of 1979. Although there are significant variations across countries (take Sweden, where turnout went up by 8 percentage points between 2004 and 2009, or remarkable differences already in national elections), the data show a protracted reduction of voters: average turnout dwindled from 62% to 43% in seven elections across thirty years.

**Figure 2 – Turnout in EP elections 1979 – 2009<sup>8</sup>**

Year	Average Turnout EU members (%)
1979	61,99
1984	58,98
1989	58,41
1994	56,67
1999	49,51
2004	45,47
2009	43
2013 (Croatia)	20,74

Scholars also pointed out that analyses should consider that the object of study (EP elections themselves) changed since 1979, mainly because a) the 12 countries of the 2004 and 2007 enlargement have structural lower turnout than ‘older’ member states; b) since 1981 (when Greece joined the EU), there has been no other member except Cyprus with compulsory voting, which is estimated to guarantee high turnouts in Belgium, Greece, Luxembourg and Italy (Giurcanu 2010) and c) the overall political context, characterised by the fall of the *Weltanschauungen* and political disillusionment, affecting voters participation at all levels.<sup>9</sup> In addition, Franklin (Franklin 2001), who studied the effects of structural factors on turnout variations, pointed out that – putting aside the issue of timing and independent variables in single member states – the decline in turnout has technically ‘stopped’, although voters had the necessary time to familiarize with the ‘limited powers’ of the EP. Nonetheless, the

<sup>8</sup> Source: [www.idea.int](http://www.idea.int)

<sup>9</sup> Compulsory voting in Italy was abolished in 1993, but it has been given for granted that it had an impact even in the following years.

work of Franklin does not consider elections after 1999, since when turnout went down by over 6 percentage points and the EP gained further powers with the entry into force of the Treaty of Lisbon (2009).

### 15.3.2 An attempt to make EP elections ‘European’: the Duff report

For all the reasons mentioned above, it remains of great importance to focus research efforts on the underlying reasons of low turnout. Differences across electoral systems for EP elections have been recently debated: holding elections for a common parliament in different days and especially with 28 electoral laws does not favour neither participation nor personal identification with the institution. The fact that each country sets its own rules to elect its representatives is a symbol of European elections dominated by ‘national politics’, as the theorists of the ‘second order’ model predict (Mair 2000). The EP launched in 1997 a proposal for a uniform electoral procedure, aimed at creating a single European constituency for the election of 10% of the seats. As this first attempt was not successful to present a common position of the EP to the European Council, in 2010 the British MEP Andrew Duff (liberal) drafted a proposal to modify the current system and move towards a ‘United European Democracy’.<sup>10</sup>

The core of his reform concerns the creation of an extra pan-European constituency, where 25 MEPs would be elected on a proper ‘European’ campaign. It implies that the candidates, coming from at least a third of the member states and balanced by gender, would have to persuade voters across the 28 member states.<sup>11</sup> Duff suggested to elect them with a PR system and the Sainte-Laguë method, as it is currently done in Sweden. Such a system is expected to strengthen the European dimension of the contest and stirring the interest of the media. The radical change of the electoral procedure is also seen as a tool to increase turnout and stepping up the development of European political parties. This latter goal should pass through increased visibility over the election of the new president of the European Commission: European parties would have to present their candidates well in advance of the election, enabling them to arrange an EU-wide campaign. Voters would acquire further information on the European party platforms, leading to a potential rise of interest in EU is-

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<sup>10</sup> For a detailed description of Duff’s proposal: <http://andrewduff.eu/en/document/electoral-reform-of-the-european-parliament>.

<sup>11</sup> The full text of the Duff’s report is available here: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA7-2013-0219%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

sues, thus motivating them to cast their vote in the 2014 elections.<sup>12</sup> However, the proposal not only will have to face opposition in the European Council (as a treaty change is required and it requires unanimity) but also in the EP itself: national parties do not seem enthusiastic to engage in such a difficult exercise, and Duff is currently re-drafting his text to make sure that it can be approved by the whole EP. Thus, the likelihood is that voters in 2014 will be asked to cast their ballot with the same electoral law of 2009.

Besides the legislative hurdles, does Duff's proposal represent the change needed to foster participation? The idea of a pan-European constituency presents innovative features as it aims at stimulating an actual debate at European level. The system could also spur positive influence on the candidates: parties would need to favour members with good language skills and knowledge of European affairs, or at least have a good grasp of the priorities the electorate faces across different countries. However, in realistic terms, the idea of running an effective campaign to gain votes in many member states does not seem an easy task: how many of the current MEPs would be able to communicate effectively even in a second language? Should they choose to express themselves in English, how persuasive their messages would be considering that only about half of the EU population declares to speak Shakespeare's language (Eurobarometer 2012)? Moreover, since all 28 members would be part of the same constituency, candidates will be likely to craft their campaign to obtain more votes in larger states. In other words, it can be said that the proposal goes in the right direction, trying to make EP elections genuinely European, but in the light of the current Euro-crisis and raising opposition to the European project as led from the what the press calls 'Brussels', it may represent an overambitious leap with potentially counterproductive effects in the long run.

### 15.3.3 Towards a single voting system: the 'Italian option'

Taking into account the analysis carried out on the Swedish electoral system for the EP elections, we can draw some conclusions on its structure and point out potential reforms. The three rules currently applied in all member states (PR system and the possibility to divide countries in constituencies, 5% maximum threshold) are not responsible for the limited participation, but should definitely be strengthened to provide a well defined framework to the member states.

A new solution could be found looking at the current Italian electoral law, as approved in 2005: it is a PR system, with low threshold (2% or 4% according

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<sup>12</sup> Further information on the works of the Constitutional Affairs Committee of the EP can be found here: <http://www.europarl.europa.eu/committees/en/afco/home.html>

to the chamber, the former would suit the EP elections) but compensated with a majority prize for the winning party (or coalition). At European level, this means distributing the 751 seats of the EP throughout 28 constituencies, corresponding to the member states of the EU. In order to increase competition between the parties, ‘national prizes’ are guaranteed to the largest party (or coalition). For instance, regardless the difference in votes between the first and the second competitor, it can be decided that in Sweden the winner gets 9 out of the 20 seats available. Majority prizes are obviously based on the dimension of the country, and should push smaller parties to run for a seat, as bigger parties will try to build up coalitions to obtain the ‘extra-seats’ coming from the prize. The threshold should be lowered, setting it around 2%, not to discourage new movements which find fertile ground in EP elections even more than at national level.

Why should this system increase turnout? The idea is that, on the one hand, larger parties will take the campaign more seriously, reaching out to voters well in advance and with greater resources to make sure that are competitive to gain the majority prize. In Sweden, for instance, it has been shown that just four weeks before the vote, only about 30% of the electorate knew that a European election was going to be held (Engzell & Larsson 2008). If voters are exposed well in advance to communication from the parties, a higher share of people will know about the elections and eventually turn out. On the other hand, the low threshold represents an incentive for smaller parties: they can either try to gain a few seats on their own or join a larger party (or coalition) aiming at a more ambitious results. With this logic, even parties likely to obtain less than 2% of the votes can count, as their votes may be decisive in a coalition to win the majority prize, asking for political benefits in return. The system has been largely criticized in Italy as it failed to produce a government (it happened twice, in 2006 and 2013), because if the two main coalitions win the prize in a similar amount of ‘regions’ (‘countries’ in our scenario here) there will be no clear majority. However, as the EP does not need a ‘standard majority’ to support a government, therefore its main flaw would be neutralized. Conversely, combining proportional representation and a low threshold with a majoritarian push given by the ‘national prize’, both parties and voters may find greater incentives to participate, leading to higher turnouts than those seen until now.

## 15.4 Conclusions

The analysis carried out in this paper highlighted the evolution of EP elections in Sweden, from the accession and the vote for the first MEPs in 1995 until the surprising results of 2009, marked by increased turnout and the success

of the *Piratpartiet*, a unique actor on the European political scene. In order to gain further insights into the Swedish system, electoral laws for EP elections and the national parliament are compared. The two systems are quite similar, although MEPs are elected with higher degree of proportionality, characteristics that seems appropriate to the nature of EP elections in Sweden. Looking at results and turnout levels starting from 1995, it is argued that European elections in Sweden represent an 'added-value' for democracy, distinguished by a higher degree of uncertainty and greater room for new (or smaller parties) to bring issues on top of the political agenda. In the attempt of increasing political participation, it is suggested to lower the threshold for EP elections from 4% to 2%, following the argument that more voters may be motivate to turnout as the political offer increases.<sup>13</sup>

In the second part of this work, the focus shifted on political participation at the overall European elections. Although arguments related to the enlargement process (in 'new' member states turnouts are structurally lower and no country adopts compulsory voting) and generalized political apathy tend to justify the continued decrease of turnout levels, we conclude that the data indicate a worrisome tendency. Following the approach taken for the Swedish case, I describe the current electoral system overarching national laws for EP elections, and discuss the Duff's proposal. It is argued that the idea of creating a pan-European constituency sets the right path in the long term, but it might represent an excessive leap in the context of the 'Euro-crisis' and rising hostility towards the European project.

Finally, a solution inspired by the current Italian electoral law is proposed: creating 28 constituencies divided along member states, with a threshold as low as 2% but where the winning party (or coalition) at constituency (thus, national) level obtains a 'majority prize'. This system is seen as a potential drive to increase turnout levels, because large parties will campaign more actively, while small parties are favoured by the low threshold and the possibility to join a coalition that runs for the prize.

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<sup>13</sup> The political offer would increase as a result of the lower barrier to enter the system for new movements.

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# Europeanising European Elections: A view from the United Kingdom

BOGUSIA PUCHALSKA \*

## 16.1 Introduction

In his 2012 State of the Union Address, José Manuel Barroso called for the Europeanisation of the European elections.<sup>1</sup> Paradoxical as it may sound, this message captures the long-held concerns – well documented in the literature – about the poor state of the ‘house of European democracy’,<sup>2</sup> and the related democratic shortcomings of the electoral and political processes in the European Union (EU). Mr Barroso suggested a number of measures that should lead to the establishment of European elections as the ‘first order’ electoral contest.<sup>3</sup> The most important of these were the reclaiming and developing of a European public space, enhancing the role of the European Parliament (EP) and the strengthening of the European political parties, which would also be empowered to present their candidates for the Commission Presidency as early as in the next EP elections in 2014.<sup>4</sup>

These ideas are eminently sensible, but not entirely new. In fact, a huge chunk of academic literature and political commentary have offered those and

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<sup>1</sup> Barroso, J. (2012), State of the Union 2012 Address, *European Commission*, Speech/12/596.

<sup>2</sup> The literature on this topic is too voluminous to quote here. The following are some of the best known readings: Hix, Noury, and Roland (2007); Hix and Marsh (2007); Judge and Earnshaw (2008); Schmitt (2005)

<sup>3</sup> This is in contrast with the ‘second order elections’ thesis (Reif and Schmitt 1980; van der Eijk and Franklin 1996).

<sup>4</sup> Art. 17 (7) goes some way towards increasing the EP’s relevance in that it requires that the candidate for the President of the Commission to be selected ‘taking into account the elections to the EP’.

similar suggestions over the past decades.<sup>5</sup> The persistence of such concerns raises at least two serious questions: whether the Europeanisation of European elections, in the sense outlined by Barroso, is likely ever to be achieved, and if such successful reclaiming of the first-order character of the European elections will be enough to engage the European citizens.

In the first part of this paper I discuss some of the most pertinent aspects of those two general issues in the context of the British politics and electoral system. In the second part I shift the discussion to the European level and continue to discuss the UK in this context, with the aim to evaluate how the specific European-wide suggestions might or might not work, also in the UK.

## 16.2 The UK – the most Eurosceptic member of the EU

### 16.2.1 Origins and nature of British Euroscepticism

There are probably as many varieties of Euroscepticism as there are Member States.<sup>6</sup> The UK variety is rightly considered the most extreme, deeply rooted, enduring and effective in influencing both the national political agenda and the attitudes of the British people (Gifford 2006 & 2010; Daddow 2012; Wallace 2012).<sup>7</sup> The UK/EU relations, which were never entirely straightforward, reflect these troubled dynamics. The UK's heightened sensitivity to any potential limitations of its sovereignty (Baun 1995: 610), which was behind the reluctance to join the first communities,<sup>8</sup> has since become the strongest factor defining the UK attitude to the EU. The reasons for this are complex and relate to the specific historic and legal heritage of the UK which combined to create a perception of a dramatic impact of EU membership on Britain's constitutional make-up, its historical allegiances and national identity.

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<sup>5</sup> See n.2 above.

<sup>6</sup> Compare with Sørensen (2008).

<sup>7</sup> Denmark is the other EU state that is generally considered Eurosceptic. It has earned this reputation after the failed referenda on the Maastricht and Nice Treaties and its opt-out from the Euro. Danish Euroscepticism, however, differs from the British variety: the Danes are critical of the democratic standards in the EU governance, but are generally positively inclined towards the EU whereas in Britain, the popular opinion hardened into predominantly anti-EU stance, and the benefits of the EU membership are the main contested issue.

<sup>8</sup> Norman Davis, on the other hand, argued that the main obstacle was the 'habit of clinging to America's apron strings' (1999: 1015). Most likely, both factors played a role.

## 16.2.2 Historic background and national identity

Gifford convincingly argued that the growing ‘political currency of [right-wing] Euroscepticism’ in Britain can be best explained by the ‘structural susceptibility of the British post-imperial order to politics of populism’ (Gifford 2006: 867). There seem to be a number of key elements of such susceptibility: imperial mentality, British exceptionalism and national identity defined in opposition to Europe. I will consider those in turn.

Imperial mentality – one of the main reasons for the UK to stay outside of the three European Communities in the 1950s was the British Commonwealth - the source of Britain’s power and influence on international scene. By 1963 this power and influence started to wane with most colonies regaining independence. The disappearance of Britain’s international power base within the space of two decades created a vacuum and posed a question mark over the UK’s future global standing. As noted by Nairn (1973), the dismantling of the empire threw Britain into a post-imperial hegemonic crisis. The main aspect of this crisis related to the gap between the imperial mentality shaped over two hundred years and the reality of the physical loss of the empire, coupled with the diminishing role of Britain in the post WWII Europe.<sup>9</sup>

Related to the imperial mentality is the concept of British exceptionalism<sup>10</sup> – the assertion that British political development, its history and culture, and even its geographical location are unique, hence antithetical to Continental Europe. Such a construction, in turn, defined British national identity as incompatible with the European one, thus providing a fertile ground for Euroscepticism to offer a narrative that allowed to reclaim Britain’s special status, which had eroded by the loss of the colonies. The distinctive concept of the British state which was built on the tradition of Magna Carta and English common law, centrality of Parliamentary sovereignty was used to project Britain as ‘a free country confronting the unfree European Continent’ (Wallace 1991: 69).

Those cornerstones of the British constitutional arrangements are routinely contrasted with the EU’s faceless bureaucracy and the infamous ‘democratic deficit’. In particular, the rule of law and the legality principle entrenched in the constitution since Magna Carta and the English common law - described as democratic and responsive to the concerns of the people (Steilen 2011: 437). The sovereignty of Parliament, an elected assembly that represents the

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<sup>9</sup> Part of this was the weakening of the special relationship between Britain and the US that formed during the WWII. The main reason was the US pressure for Britain to be more closely involved in the European integration in 1950, 1954, 1959-60 and after 1989 (Wallace 1991: 71).

<sup>10</sup> This term became widely used in literature, which is too voluminous to quote here.

people, is seen as the very embodiment of popular democracy.<sup>11</sup> Those myths of national constitutionalism have been skilfully employed by the Eurosceptics to re-invent the national identity that has been in crisis after the fall of the British empire (Wallace 1991: 69; Gifford 2006: 855).

### 16.2.3 Impact of the accession and political Euroscepticism

The UK's accession to the (then) EEC was marked by a 'stormy' passage (Wallace 2012:532) through the Parliament of the European Communities Act.<sup>12</sup> There were at least two sources of this storm: constitutional anxiety related to the potential undermining of the Sovereignty of Parliament,<sup>13</sup> and the shifting positions of political parties on the issues of Europe. Partisan divisions over Europe that surfaced before and during accession were set to continue to influence decisively the nature of UK dealings with the EU. At the time of EEC accession, Parliament, just like the Cabinet, and in particular the Labour party, remained split over this issue. In contrast, the British people voted overwhelmingly for membership of the EEC.<sup>14</sup> Despite this popular support, however, the first campaign to withdraw from the EEC was organized by Labour already the 1983<sup>15</sup> (Labour reversed its position five years later).

A true watershed in the historical development of UK Euroscepticism was the ratification of the Maastricht Treaty. Some of the reforms introduced by this Treaty<sup>16</sup> were perceived as the greatest threat yet to British sovereignty due to the potential of 'the gradual transformation of the European Community into 'a European Union of a federal type'.<sup>17</sup> The government's decision to ratify the Treaty was challenged in judicial review.<sup>18</sup> The negative outcome

<sup>11</sup> Contrast with Hugo Brady's suggestion that 'lectures' on this lustrous history of the British institutions is likely to irritate the other EU MSs which all have 'stories to tell about the uniqueness of their own legal systems' (2013: 3).

<sup>12</sup> European Communities Act 1972 c. 68. This is the Act of UK accession to the European Communities.

<sup>13</sup> The Sovereignty of the Parliament (or the Queen in the Parliament) is the core principle of the British unwritten constitution.

<sup>14</sup> 'UK embraces Europe in referendum': 67.2% for; 32.8% against, 64.5% turnout. BBC News, 6 June 1975, available at: [http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid\\_2499000/2499297.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/june/6/newsid_2499000/2499297.stm)

<sup>15</sup> This issue led to a split that led to the formation of the Social Democratic Party.

<sup>16</sup> These were, in particular, the extension of the qualified majority voting to new areas and new powers given to the EP.

<sup>17</sup> Phrasing used in Preamble B of the European Parliament Resolution of 14 March 1990 on the Intergovernmental Conference in context of Parliament's strategy for European Union ([1990] OJ C 96/114). The 'F'-word, since became in the UK a synonym of the threat posed by the EU to British sovereignty.

<sup>18</sup> R v Foreign Secretary, ex parte Rees-Mogg [1994] QB 552.

for the claimant of the case did not entirely manage to lay to rest the constitutional conundrums that keep re-emerging with almost all subsequent reforms of the EU Treaties. These legal wrangles, due to their very nature, failed to penetrate the public opinion which remains relatively uninformed about the perceived threat of the EU Treaty to the UK's constitutional arrangements (Davis 1999:925). The political argument, questioning the transfer of sovereign powers to Brussels, on the other hand, became firmly embedded in the collective mind of the British people. This particular undercurrent of Euro-scepticism represented a significant political capital ripe for exploitation. The United Kingdom Independence Party (UKIP), established in 1993, set out to do just this. Its main objective, as stated in the UKIP Constitution is:

[...] it shall be the policy of the Party that the United Kingdom shall cease to be a member of the European Union and shall not thereafter make any Treaty or join any international organisation which involves in any way the surrender of any part of the United Kingdom's sovereignty.<sup>19</sup>

As this document shows, the UKIP's political agenda is best understood as right-wing aggressive Euroscepticism, or even Euro-hostility. It defines the EU as an alien, and contrasts it with the national order - the only possible guarantor of British interest - both as an integral, self-contained sovereign political entity, and as a protector of the interests of its people. Such statements refer back to the UK's 'splendid isolation', an idea expressed in the famous 1930 newspaper headline 'Fog in Channel. Continent cut off.'<sup>20</sup> UKIP was undoubtedly instrumental in injecting this type of Euroscepticism into mainstream of British politics - for this, it had been rewarded by electoral success in the two EP elections, in 2005 and 2009, and a by-election in Eastleigh, in March 2013, when it beat both the Conservatives and Labour by a significant margin.<sup>21</sup>

The 2009 EP elections saw the main political parties - the Conservatives, Labour and the Liberal Democrats - receiving a serious bashing. At the same time, UKIP secured thirteen seats - the same number as the much bigger Labour party.<sup>22</sup> This dramatic outcome led to some serious soul searching among political commentators and academics alike. The results were described as

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<sup>19</sup> UKIP Constitution, available at: <http://www.ukip.org/page/constitution-of-the-uk-independence-party-ukip>

<sup>20</sup> There is no agreement as to the exact date and the source - whether 'The Daily Mirror' or 'London Times'. The phrase, however, entered the British language as a symbol of British isolationism.

<sup>21</sup> The Guardian, available at: <http://www.guardian.co.uk/news/datablog/2013/mar/01/eastleigh-byelection-results-2013#table>

<sup>22</sup> This pushed Labour into second place in the overall share of votes. *The Telegraph* 8 June 2009, available at: <http://www.telegraph.co.uk/news/worldnews/europe/eu/5478468/European-elections-2009-Ukip-claims-political-breakthrough.html>

‘Britain’s Oddest Election’ (Kellner 2009) and ‘The Worst of All Words?’ (Kelly 2010). Various explanations ranged from the use, for the third time in Britain, of the closed list (or party list) coupled with proportional representation (PR), which made it easier for the smaller parties, such as UKIP to win seats.

The investigations also confirmed a ‘clear anti-EU bias among the British public’ (Kellner 2009: 476). Those explanations are, however, only partially useful, as they fail to sufficiently account for the growth of the peculiar type of Euroscepticism that developed *despite* the absence of a European agenda from the platforms of the political parties contesting those elections. That is, if European policies were not discussed, why, or on the basis of what, did the British people form negative opinions about EU laws and policies? The likely explanation for this paradox lies in the second-order nature of EP elections. Hix and Marsh confirm that ‘the position a party takes on Europe is largely irrelevant to its performance’ (2007: 498). Furthermore, according to Whitaker and Lynch, the majority of British voters use European elections to punish the mainstream parties, as well as to endorse UKIP policies encapsulated in the populist anti-EU message ‘Say No to European Union’ (2011: 5). In the first-order national elections, however, the support for smaller parties such as UKIP is expected to be much weaker. Hence, the source of UKIP’s success is largely due to the protest vote and the second-order nature of the European elections, reinforced by the use of closed-list and proportional representation.

UKIP’s rising popularity can also be taken as evidence of growing receptiveness of the British public to UKIP’s main concerns: British sovereignty, which, according to UKIP, can be protected only by withdrawing from the EU, and immigration, which can be controlled only by the same action. These two issues started to emerge as part of the mainstream political agenda of the Conservative party too, which added those to its own package of EU hostile policies of repatriating some powers from Brussels and opting out of the Criminal co-operation pillar before its full incorporation into the TFEU in November 2014.<sup>23</sup> These trends are likely to grow in the aftermath of the 2 May 2013 local elections in which the Conservatives suffered heavy losses, mainly to UKIP.<sup>24</sup> The Conservative backbenchers, anxious to limit the political damage are demanding of David Cameron to adopt, in effect, a stronger version of UKIP agenda of anti-European and anti-immigration policies.

It is obvious that British Euroscepticism has been on the rise for some time, and nowadays it seems to have become a firm part of British identity. It

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<sup>23</sup> See Protocol 21 ToL.

<sup>24</sup> <http://www.bbc.co.uk/news/uk-politics-21240025>

is also relatively clear that the growing contentiousness of the European issue is increasingly visible in the partisan politics between as well as within, the main parties and that it provides ‘connective glue’ to the national debate on the state of Britain’s economy and Britain’s role in Europe.<sup>25</sup> Wallace asked if the Eurosceptic public opinion forces political parties to take ‘defensive position on EU policies’, or if the political parties use the Eurosceptic rhetoric for their own political gain, and influence the public. (2012: 545). I suggest that these two factors are best seen as interwoven, but for fuller understanding, the role of the media must be added to this mix – particularly the rabidly anti-European tabloid press.

It seems that the Eurosceptic politicians supported by the media created a self-perpetuating circle, or rather a spiral of Euroscepticism sucking in also the British people in its vortex. The main terms of Eurosceptic debate have not changed much since the 1970s – UK sovereignty/exceptionalism and immigration continue to be the key issues.

#### 16.2.4 The latest developments

William Hague, the UK foreign secretary, said recently that the ‘disillusion’ with the European Union in the UK is deeper than it has ever been. ‘People feel that in too many ways the EU is something that is done to them, not something over which they have a say. [ . . . ] If we cannot show that decision making can flow back to national parliament, then the system will become democratically unsustainable’ (*The Guardian*, 23 Oct. 2012). Hague’s idea echoes Jack Straw’s earlier call for the abolition of the European Parliament altogether (*The Guardian*, 21 Feb. 2012) for the same reason. If Hague and Straw were correct in gauging the depth of and the reasons for the Eurosceptic sentiments in the UK, their proposed solution of empowering Westminster in European matters and abolishing the EP rings hollow, since, arguably, problems with democracy and representation in the UK are not less serious than in the EU. It is clear that the critique of European politics has been used effectively to divert attention away from domestic politics in a manner that has since become rather typical across the EU: critique of the European politics is used to hide similar serious domestic problems. Domestic politics, in turn, is validated as the only mechanism that can address such failings of ‘Europe’.

Another strand of the current version of Euroscepticism à la Conservatives focuses on the potential threat of immigration within the EU to British welfare benefits and health services, yet again seizing the traditional UKIP

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<sup>25</sup> Compare with Wallace (2012: 545).

agenda.<sup>26</sup> The extreme stand of David Cameron, who proposed to limit access to benefits and services in anticipation of the lifting of restriction on the freedom of movement for Romanians and Bulgarians has been condemned by the Council of Europe's human rights watchdog as 'shameful, fuelling stereotypes and hostility towards migrants [...] and xenophobia'<sup>27</sup>

## 16.3 British Euroscepticism and Europe's democratic failings

A number of systemic problems associated with the electoral apathy at European level play a role in shaping British Euroscepticism. In this section, I will analyse a selection of those problems and link them to European context.

### 16.3.1 Lack of European public space and the British media

One of main tenets in academic debates on the EU democratic deficit is the weakness of European 'public space',<sup>28</sup> defined as 'communicative space (or spaces) in which relatively unconstrained debate, analysis and criticism of the political order can take place' (Fossum & Schlesinger 2007: 1). I focus on just one aspect of this complex issue – the role of the media. My discussion centres on the UK, and I use the European level only as a background. This approach reverses Fossum & Schlesinger's conclusion that the quality of the media debate on the national level has influences European public sphere. Instead, I suggest that the weakness of the European communicative space contributes to the deteriorating quality of the media coverage of Europe on national level. It can be argued, for instance, that British media have been successful in infecting the British public with Euroscepticism of an aggressive variety mainly because of the unavailability of any competing coverage of European matters on European level. A contributing factor was the UK politicians' tacit acquiescence to the hostility in the UK media's style of reporting on Europe.

There are at least two additional explanatory home-grown factors: the fall-out from the debate on the 'EU as a threat to British sovereignty' that inten-

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<sup>26</sup> After the Eastleigh by-elections, the Conservatives' rhetoric on immigration hardened considerably, attracting comments accusing David Cameron of hijacking the political agenda traditionally belonging to UKIP. Also, Nigel Farage predicted that the right to work under the freedoms of movement rules on the EU Treaties, will be the chief source of his party's future popularity (*The Guardian*, 25 March 2013, p. 6).

<sup>27</sup> *The Guardian* 30 March 2013, p. 6.

<sup>28</sup> This is obviously one of the many issues identified as part of the EU 'democratic deficit' phenomenon.



sified at the time of ratification of Maastricht Treaty, and has grown to epic proportions; and the huge concentration of private media ownership in the Murdoch media empire. I start with the latter, although the two phenomena should be seen as interrelated.

The glaring absence of European-level newspapers, magazines, or TV channels arguably made it easier for the Murdoch-owned media empire to fill this gap with EU-hostile coverage. This was exacerbated by the gradual closure of British newspaper offices in Brussels - from six in 2005 to only three that remained open in 2012. David Rennie in his report for the Centre for European Reform (CER), which contains this statistic, explains the reason for these closures by quoting a newspaper executive – ‘true eurosceptics hate Europe so much that they don’t want to read about it’ (2012: 31). These developments made it possible to turn what should have been a conversation or a debate into a monologue, a one-sided anti-European rant of the Murdoch papers, the effectiveness of which has been strengthened by the scant coverage of the EU affairs in the independent printed media and the TV news services.<sup>29</sup> Yet, historically, this has not always been the case.

The media seized on anti-European stirrings in the political debate in the wake of the signing of the Maastricht Treaty. It is clear that both politicians and the media must have sensed in the British public a receptive audience for their Eurosceptic rhetoric at that time. More importantly, the introduction of Eurosceptic discourse into the mainstream political debate that gradually took place a decade or so after Maastricht, legitimised it and turned it into a respectable platform, in contrast with its previous fringe position associated with the UKIP and BNP. Such a move arguably facilitated a further ‘hardening’ of the ‘hard Euroscepticism’<sup>30</sup>, that is a fundamental opposition to political and economic integration with the EU understood as ‘a principled objection to the current form of integration in the European Union on the grounds that it offends deeply held values, or more likely, is the embodiment of negative

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<sup>29</sup> The printed media in the UK are generally anti-European, with only some exceptions, such as *The Independent* and *The Guardian*. One of the more aggressively anti-European papers is *The Sun*, a Rupert Murdoch title, which is said to have a huge influence over the UK electorate. *The Sun*, and the Murdoch empire more generally, is widely considered as determining the final outcome of elections in the UK – the clearest example of such influence. With a circulation of 2.5 million (down from 3.5 million 2003) *The Sun* is by far the most popular of the British tabloids, followed by *The Daily Mail*, at just under 2 million. By comparison, the quality broadsheet *The Guardian* sells only just over 200 thousand copies a day on average. Even the broadsheets and the TV coverage tend to veer towards the Eurosceptic in the wake of the Eurozone crisis.

<sup>30</sup> In contrast, ‘soft Euroscepticism’ denotes qualified opposition which may be relative to perceived threat of certain EU policies to vital national interests (Szczerbiak & Taggart 2003: 6). See also Kopecky & Mudde’s critique of the soft/hard distinction (2001: 300).

values' (Szczerbiak & Taggart 2003: 6). There is a strong correlation between affiliation with the Conservative party (and, most obviously UKIP) and Euro-scepticism (Clements & Nanou 2012: 445) of the 'hard' variety.

The dramatic change in the British media treatment of European issues has often been described as 'a journey [...] from permissive consensus to destructive dissent' or from 'uninterested acquiescence' (Daddow 2012: 1219) to spreading the 'hard' version of Euroscepticism.<sup>31</sup> Available evidence suggests that this transition is best seen as a reflection of wider changes in political discourse on Europe deployed by successive UK governments and the main political parties.<sup>32</sup> For the media, the change of tone of the political debate on Europe that took place after the signing of the Maastricht Treaty presented a business opportunity (Spiering 2004: 139). The commercial imperative motivated the editors to sensationalize the EU related stories, hoping to attract a bigger readership and to gain a competitive advantage in a crowded media market. As a result, the British media coverage of EU-related matters became 'hysterical' and 'sensationalist', using the worst stereotypes<sup>33</sup> (Wallace 1991: 68; Daddow 2012: 1221; Rennie 2012: 31). The politicians not only failed to counter such a tone of media reporting, but contributed their own agenda: immigration and the referendum of the EU, leaving the public subjected to, in effect, a successful, concerted anti-EU propaganda campaign. This failure to counterbalance the EU debate lead to accusations of politicians' complicity in 'denigrating the EU for party gain' (Daddow 2012: 1221). The inevitable, if depressing, conclusion is that the logic of 'gain' - political (political parties) and commercial (the media) - continues to shape the public debate on Europe in Britain.

It is clear that all this had a decisive impact on the socialisation of the British people in European politics, particularly in light of a recent study that conclusively demonstrated that 'the way the media covers an EU political development is more prevalent and relevant to the public than often considered in the literature' (Dursun-Ozkanca 2011: 154). Consequently, the effects on British people of the media reporting on European matters should be seen as having a crucial impact on inspiring, or failing to inspire, an interest and the will to take active part in European politics. This argument finds support in the latest Eurobarometer survey<sup>34</sup> where 84 per cent of people think that being better in-

<sup>31</sup> Compare with Hooghe & Marks, who suggested that the level of Euroscepticism increased throughout Europe since the signing of the Maastricht Treaty (2009: 5 & 9).

<sup>32</sup> See Daddow 2012 and the sources quoted there, particularly on pp. 1222-1227.

<sup>33</sup> For example, *The Daily Mail* (17 Aug. 2011) accused Germany of turning the Eurozone into a 'Fourth Reich'

<sup>34</sup> Flash Eurobarometer 364, March 2013.

formed about the EU's impact on their daily lives would have a positive impact on the turnout in EP elections. In case of the UK, objective information of this type could also lead to a more realistic view on the many benefits of the EU regulations that would have no chance of seeing the light of day if it was left to the UK media and politicians to provide such information.

### 16.3.2 The absence of European political parties

'We have very often a real disconnect between political parties in the capitals and the European political parties here in Strasbourg' (Barroso 2012). At the heart of this 'disconnect' is the fact that the current groupings in the EP do not correspond to the political affiliation of candidates in the elections. This situation breaks the link between a vote cast and the political parties in the EP, and with it, the electoral influence over the share of power on European level.

The tenacity of this link became obvious in June 2009, when the UK Conservative Party decided to leave the European People's Party grouping and form the new 'European Conservatives and Reformists group', which manifesto stresses commitment to 'sovereign integrity of the nation state and opposition to EU federalism'.<sup>35</sup> This move attracted critical comments across the UK political spectrum: both *The Guardian* and *The Daily Telegraph*<sup>36</sup> reported in tones of incredulity the move that was predicted to result in marginalisation of the Conservatives. The right-wing, often extremist, views and policies of the Conservatives' new political allies attracted no fewer critical comments. Most crucially, this move was neither consulted nor mandated by the Conservative Party's constituency – it is likely that the majority of the voters who put the Conservative Party in the EP might not even be aware of this development.

The latest recommendation by the Commission (Com 2013), asking political parties to display their European party affiliation, may be seen as the first step towards reconnecting the voters with their electoral choices at European level. For this practice to be effective in reaching its stated aims the electorate must be informed about the composition and political programmes of all the parties in the EP.

Following Barroso's State of the Union 2012 Address, the Commission published two documents aimed at facilitating the revival of European-wide

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<sup>35</sup> The Prague Declaration of Principles of the Conservative and Reformist Group in the EP. Available at: [http://www.conservatives.com/News/News\\_stories/2009/06/~~/media/Files/Downloadable%20Files/Prague%20Declaration%20and%20Principles.ashx](http://www.conservatives.com/News/News_stories/2009/06/~~/media/Files/Downloadable%20Files/Prague%20Declaration%20and%20Principles.ashx)

<sup>36</sup> Both papers covered this story on the 22 June 2009.

parties: a proposal for the regulation [...] on the statute and funding of European political parties and political foundations (Com 2012), and the Commission's working document on amendments to the financial regulation on the financing of the European political parties (Com 2012a). In the supporting statement the Commission argued: 'Truly transnational European political parties and political foundations are key to articulating the voices of the citizens at European level' (Com 2012). The success of the second of the Commission's recommendations in reviving an interest in EP's elections – the nomination of a candidate for the Commission's President (Com 2013) – would potentially contribute towards reducing the distance between the power holders and the electorate.

If successful, the trans-European parties could be a vital tool in creating the European public space of democratic debate and political contestation. The UK's European politics would most likely be transformed – it would no longer be possible for UKIP to hold a sway using its essentially anti-European agenda. The creation of European parties would almost certainly open up more space for positive, not just negative political contest on Europe. This should lead to improvement of visibility of parties such as the Greens and the Liberal Democrats, and put those two parties in a position of a viable alternative to UKIP.

In the long term, the success of these initiatives will depend, in a crucial way, on the effectiveness of communicating these ideas to the European citizens. Keeping the Europeans aware of the day-to-day working of parties in the European Parliament, raising awareness of the relevance of EU policies and regulations for everyday lives, and opening the channels of communication between the EU institutions and the electorate would be the absolute minimum for building the foundations of more democratic and more representative political system on the EU level. Yet, the prospects of such a development seem quite remote as long as the European-wide media are largely absent. The recently launched *European Daily*<sup>37</sup> is a step in the right direction, but it will probably struggle to establish a presence in the UK. It is available only in electronic format, which will make it difficult for it to find a niche in the crowded UK media market.

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<sup>37</sup> See <http://www.businessinsider.com/we-cant-work-out-if-this-plan-to-launch-a-europe-wide-newspaper-is-great-timing-or-terrible-timing-2012-6> for more information. See also <http://europeandaily.com/>, the paper's website, and <http://www.theeuropean-magazine.com/>, the *European Magazine*, published in Germany.

### 16.3.3 The EU's place in schools syllabi

A more permanent and long-term solution to the European voters' apathy might be the introduction of the EU as a topic to be covered in primary and secondary education across the Member States, as suggested by Barcz & Janusz-Pawletta (2009: 83). However, though this idea is eminently sensible, there might be some problems implementing it: should there be an EU-wide textbook or could the MSs be trusted to produce national versions? If the second possibility is allowed, should there be EU-wide quality control? If so, would the EU run the risk of being accused of censorship, or even indoctrination? The importance of asking these questions was confirmed recently in the UK, where MPs initiated a Parliamentary debate about an A-level history book which was criticised as too Eurosceptic (*The Guardian*, 12 Feb. 2013). The fact that this issue was raised in the Westminster Parliament suggests that whole generations of British children might already have been indoctrinated in Euroscepticism by a biased educational system.

## 16.4 Some other procedural reforms

The organisation of elections (weekend voting, convenience); postal votes; close proximity of voting venues; multiple constituencies – all these have been identified as factors influencing electoral turnout (Mikko 2003: 449). The Commission added to this catalogue by suggesting a common voting date for the elections across the EU (Com 2013). On the face of it, these organisational factors should be relatively easy to implement. More of a challenge will be the introduction of fully uniform electoral procedures, which were confirmed as influencing peoples' willingness to vote. This was the case in Britain where after the adoption of proportional representation people were more likely to vote. However, despite partial success on this reform, there is still a variety of approaches to organising elections – some Member States use open-, and some use closed-list system.

Yet, the refusal to use of open-list systems continues to create problems: a study conducted by Farrell and Scully suggested that an open-list system is more attractive to voters (Farrell & Scully 2007: 205). This was confirmed by Hix & Hageman – voters were 10 per cent more likely to vote in systems with open ballot compared with closed or ordered types (2009: 29). The main attraction of the open-list for many voters seems to be the potential ease to identify with individual MEP as their representative. That is likely to create a sense of personal connection and a sense of reassurance of a more effective representation of individual citizens and a better motivation to act in their

interest<sup>38</sup> - one of the basic reasons for having an elected EP in the first place (Mény: 2009).

In the UK, switching from closed to open ballot, apart from other potential benefits, can also undermine UKIP's electoral success, which on procedural level has been linked to the system of proportional representation and to the use of closed-list system. This may be because such a system often diverts voters' attention from the individual candidates and specific policies towards the main agenda of the party. Using an open-ballot, on the other hand, make the elections more personal and focussed also on individual candidates and their values and convictions. Such close scrutiny may be detrimental to the UKIP's popularity, since the party is known as a single-issue anti-EU political formation, not offering much of a strategy or programme for the future.

## 16.5 The Eurozone crisis

The Eurozone crisis created the perception of the EU institutions, including the EP, as taking the side of banks and big business against the interest of the people, and putting a further strain on the idea of the EP as a champion of the electorate. From this perspective,<sup>39</sup> the crisis might yet prove to be the most decisive factor undermining EU's aspirations to achieve better standard of democratic governance, as it exposed new aspects of the EU's infamous democratic deficit: the breakdown of democratic process on the EU level, where decisions were taken by the 'troika'<sup>40</sup> without any democratic consultation; and in countries worst affected by the economic slump, where democratically elected heads of state were replaced by technocrats.<sup>41</sup> This was done partly 'to prevent with *the dangerous idea* of giving the people a say on austerity through a referendum' (*The Guardian*, 13 Nov. 2011).<sup>42</sup> The EU siding with the financial institutions against citizens' interests – most clearly when Cypriots were asked to part with their savings to secure a bailout of Cyprus banks.<sup>43</sup>

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<sup>38</sup> Tackling poverty and social exclusion came top in the list of EU priorities in the 'Europeans and the crisis' Eurobarometer survey 74.1 (2010), and unemployment tops the list of people's concerns (Eurobarometer 77, Spring 2012).

<sup>39</sup> More fundamentally, the crisis can be understood as EU's failure to deliver on some of its core objectives such as economic prosperity and well-being.

<sup>40</sup> IMF, ECB and the European Commission.

<sup>41</sup> Italy and Greece were affected. See, for instance: <http://www.ft.com/cms/s/0/abccdedc-0ae3-11e1-b9f6-00144feabdc0.html#axzz2QuUM51Pf>

<sup>42</sup> Available at: <http://www.guardian.co.uk/commentisfree/2011/nov/13/europe-rise-tech-nocracy-editorial>

<sup>43</sup> *The Independent*, 30 March 2013, available at: <http://www.independent.co.uk/news/world/europe/customers-at-cyprus-biggest-bank-stung-by-60-raid-on-savings-8555078.html>

In the wake of the Eurozone crisis, the recent Eurobarometer figures show a dramatic decline in public trust in the EU – the biggest in Spain where 72 per cent do not trust the EU, up from 23 per cent in 2007.<sup>44</sup> Both Germany and Italy recorded a steady rise of Euroscepticism. The smallest variation occurred in France – from 41 to 56 per cent, and the UK, from 49 to 69 per cent during the same period. In Greece, the resurgence of extreme right-wing parties is posing a more general question mark over the EU's role as a champion and guarantor of democratic governance. In the UK, the perception of the Eurozone as a source of immigrants and also as a factor contributing to the UK slump will be likely to fuel even more the Eurosceptic politics of UKIP and the Conservative Party. It is likely, that the 2014 EP elections in the UK will be used as a protest vote not only against the governing coalition, but also against the EU, in which case the turnout might be the least of the problems.

## 16.6 Conclusions

The quest to Europeanise the European Parliament's elections over the years has become a type of perpetual, yet acute challenge. The electoral apathy proved to be one of the most stubbornly persisting aspect of such challenge. It must be then seen as ironic that just when the Commission (and Barroso himself) suggested and put in place a number of promising measures aimed at addressing this particular challenge, the Eurozone crisis added a new and worrying dimension by exposing the frailty of the EU democratic politics, and by pitching the EU institutions on the opposite side of the electorate. The politics of austerity forced on the struggling MSs by the EU Commission, ECB and IMF arguably damaged people's trust in the EU institutions on an unprecedented scale. It is likely that next year the electoral mood will reflect this damage and translate into yet another troubling rise in electoral apathy, or, possibly, in the significant protest vote of no confidence in the EU as a whole.

In the UK - the most Eurosceptic of the MSs - party politics has been thrown into turmoil over the government's stance on Europe. The rapid rise of popularity of UKIP and its impressive success in the May 2013 local elections resulted in an almost wholesale adoption, by the governing Conservative Party, of the UKIP's Euro-hostile agenda. The well-publicised referendum on the UK EU membership planned to take place in 2017 placed this agenda at the top of political priorities, and is forcing the public to make 'in' or 'out' decision on this issue. The outcome of the referendum is obviously impossible

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<sup>44</sup> Eurobarometer 78, Autumn 2012.

to predict. It is certain that the run-up to 2017 will be most likely to be dominated by the tabloid anti-EU propaganda campaign playing on the sentiments deeply rooted in post-imperial Britain's collective mind – British exceptionalism linked to historic myths of liberal freedom and parliamentary democracy. The 2014 EP elections might be a start of such campaign. As a result, we are likely to see UKIP scooping a majority of the EP seats, with voters who might not bother to partake in great numbers in the knowledge that the possibility of Britain quitting the EU is just a couple of years away.

Despite this grim scenario, a measure of optimism in the future is promised by the idea of educating Europeans, by including EU as an object of study in the school syllabi across the MSs. Such a plan carries its own challenges and risks, but these are well worth taking, as the alternatives are to continue allowing the EU to be a bargaining chip of partisan politics at national level and the tabloids' favourite focus of sensational reporting. Challenging these two phenomena can only take place through an open debate conducted by future generations of voters well-informed and educated in European matters.



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Part Three

# VOTING SYSTEMS IN A COMPARATIVE PERSPECTIVE



# E-voting to the European Parliament and United States Congress. An Attempt of Comparison

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## 17.1 Introduction

The European Parliament's (EP) role and powers reflect its status as a supra-national body. The European Union (EU) legislation prevails over national law of the Member States (MS) and a lot of EU rules directly affect everyday lives of the EU citizens. Thus it is desirable that elections to the EP meet the same standards as those to any national parliament.

Currently twenty-eight distinct political environments, cultures and traditions characterize elections to the EP.<sup>1</sup> We have a hypothesis that the electronic voting (e-voting), and in particular its Internet-mediated variation (I-voting), seems to be the easiest way to unify various voting systems to the EP. Internet voting has intrigued people's interest as being a modern and contemporary alternative to traditional methods of elections. The introduction of Internet voting also serves the goal to encourage people to vote by enlarging accessibility, which is especially important for disabled or ill citizens.<sup>2</sup> The youngest electorate should also accept electronic voting, un-

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<sup>1</sup> *Elections to the European Parliament 4-7 June 2009*, OSCE/ODIHR Expert Group Report 11-30 May 2009, Warsaw 2009, p. 5.

<sup>2</sup> Ü. Lepp, E. Loide, *E-voting – a Key to Independence for All*, <http://ceur-ws.org/Vol-415/paper10.pdf>, p. 1.

derstood as a possibility to vote in elections without a need of going to the polling station.<sup>3</sup>

E-voting, according to Kang, is defined as voting through any computer-mediated device (e.g. desktop computer, cellular telephone, personal digital assistant, Internet appliance) from any geographical location that the voter chooses, through a communications network such as Internet.<sup>4</sup> However, the development of technology allowed distinguishing the Internet voting method (so called I-voting) as a separate category of e-voting. While e-voting refers to voting by way of an electronic system which records a voter's secret ballot (the votes are eventually sent to a centralized location), the I-voting is performed only via the Internet and as such is considered "remote" – vote may be cast from anywhere.<sup>5</sup> In other words, Internet voting may be referring to actions that are used by voters to obtain and potentially return marked ballots using the Internet.<sup>6</sup>

The aim of this article is to analyse and compare laws on electronic voting to the EP, using the example of Estonia, and to the United States (US) Congress. Since more and more European constitutionalists declare the need for modification of election law in order to encourage voters to participate in EP elections<sup>7</sup> and since these elections are characterised by low turnout,<sup>8</sup> a new method of voting might remedy this situation. Considerable experience has been gained in the recent year in Europe (Estonia), and in America (United States). This has inspired us to ask what EP elections can learn from these experiences in order, predominantly, to remedy the low turnout. This paper is divided into three parts. The first part focuses on e-voting to the EP. We demonstrate legal issues, challenges of I-voting to the EP and also to participation. The second part is devoted to the voting system to the US Congress. In this part we talk about legal issues, participation and architecture of e-voting. The

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<sup>3</sup> K.-H. Lauder, *e-Voting: a new political institution for the network society? New life for an old democratic procedure*, [in:] A.H. Trechsel, F. Mendez (eds.), *The European Union and e-Voting. Addressing the European Parliament's internet voting challenge*, Routledge 2005, p. 203.

<sup>4</sup> J. Kang, *E-racing, E-lections*, 34 Loy. L.A. L. Rev. 1155 2000-2001, p. 1158.

<sup>5</sup> J.F. Clowers, *I E-vote, U I-vote, Why Can't We All Just Vote?!: A Survey of the Changing Face of the American Election*, 42 Gonz. L. Rev. 61 2006-2007, p. 69.

<sup>6</sup> J. Epstein, *Internet voting, security and privacy*, 19 Wm. & Mary Bill Rts. J. 885 2010-2011, p. 886.

<sup>7</sup> See: J. Mayoral, *Democratic improvement in the European Union under the Lisbon Treaty*, Robert Schuman Centre for Advanced Studies, 2011, [www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOREport922011.pdf](http://www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOREport922011.pdf); C. Stratulat, J.A. Emmanouilidis, *The European Parliament Elections 2014. Watershed or, again, washed out?*, 2013, European Policy Centre, [www.epc.eu/documents/uploads/pub\\_3699\\_ep\\_elections\\_2014.pdf](http://www.epc.eu/documents/uploads/pub_3699_ep_elections_2014.pdf)

<sup>8</sup> D. Stockemer, *Citizens' support for the European Union and participation in European Parliament elections*, "European Union Politics" March 2012, vol 3, no. 1, pp. 26-46.



last part offers Estonian experience in I-voting to the EP since this country is a pioneer and the only state conducting e-voting to the EP. We would like to conclude by asking what the EU could learn from both the Estonian and American experience and how can it change the results of European elections.

## 17.2 Electronic voting (e-voting) to the European Parliament

### 17.2.1 Background

Electoral rights regard not only voting issues but also procedural matters, such as the establishment of polling stations, time and manner of voting, procedures for legal review, etc. As Auer and Mendez state, the existence of a detailed body of rules relating to the electoral process taken as a whole is both a condition and consequence of the rule of law, upon which the EU as well as the Member States are founded. It means that e-voting is a process that would need to be strictly defined, organized and put into operation by law.<sup>9</sup> The question is: Of which law? The EU law? The law of the Member States? Or maybe a combination of both?

### 17.2.2 Legal issues

Article 223(1) of the Treaty on the functioning of the European Union<sup>10</sup> provides: “the European Parliament shall draw up a proposal to lay down the provisions necessary for the elections of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States”. E-voting could certainly fall under the “principles common to all Member States”, however Estonia is, as of now, the only Member State using this voting method in the EP elections.

It is worth to mention why the Estonians decided to introduce I-voting. Their decision resulted from low turnout and fight against political alienation.<sup>11</sup> In May 2005 the Estonian parliament passed legislation to introduce

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<sup>9</sup> A. Auer, M. Mendez, *Introducing e-voting for the European Parliament elections. The constitutional problems*, [in:] A.H. Trechsel, F. Mendez (eds.), *The European Union and e-Voting. Addressing the European Parliament's internet voting challenge*, Routledge 2005, p. 125.

<sup>10</sup> Treaty on the functioning of the European Union, OJ C 326, 26.10.2012.

<sup>11</sup> Ü. Madise, T. Martens, *E-voting in Estonia 2005. The first practice of the country-wide binding Internet voting in the world*, [http://neu.e-voting.cc/wp-content/uploads/Proceedings%202006/1.1.madise\\_martens\\_e-voting\\_in\\_estonia.pdf](http://neu.e-voting.cc/wp-content/uploads/Proceedings%202006/1.1.madise_martens_e-voting_in_estonia.pdf), p. 16.

online voting possibility for the country's local elections coming in October. In February 2007 Estonia extended I-voting to its national parliamentary elections<sup>12</sup> and eventually it used it further during the 2009 EP election.

A more optimistic evaluation could be offered by the first option under Article 223(1). Drawing up a proposal for a uniform electoral procedure is a difficult task. The requirement of the Council unanimity, combined with the assent of the EP by an absolute majority, an adoption by the Member States in accordance with their respective constitutional requirements is an imposing standard. A great deal of political energy would need to be expected to generate support for anything resembling a uniform electoral procedure. That is why the Treaty on the Functioning of the EU introduced the alternative option based on principles common to all Member States. The first option prescribed in Article 223(1) might provide a suitable opening on which to hang the e-voting agenda.<sup>13</sup>

A convincing argument, in order to have a truly uniform electoral procedure, is the idea to make different modalities of voting in EP elections of a uniform one. The EU citizens should have the same available voting methods, including e-voting. We should remember that since polling stations, ballot boxes and some other practicalities of voting are run and managed by regional or local Member States agents, e-voting would also have to be administrated in a decentralized style.<sup>14</sup> It means that every Member State is likely to have its own particular e-voting scheme tested, implemented and worked out at the national level.<sup>15</sup>

### 17.2.3 The challenges of electronic voting in the EU

The five cardinal principles of European electoral heritage and electoral law include: 1) universal suffrage, 2) equal suffrage, 3) free suffrage, 4) secrecy of ballot, 5) direct suffrage. To the extent that e-voting is offered as a supplementary voting pose the problems that arise from the introduction of it for each of the fundamental principles (also from legal perspective).

<sup>12</sup> A Charles, *The Electronic State: Estonia's New Media Revolution*, „Journal of Contemporary European Research” 2009, vol. 5, no. 1, p. 107.

<sup>13</sup> A. Auer, M. Mendez, *Introducing e-voting for the European Parliament elections. The constitutional problems*, [in:] A.H. Trechsel, F. Mendez (eds.), *The European Union and e-Voting. Addressing the European Parliament's internet voting challenge*, Routledge 2005, p. 128.

<sup>14</sup> *Ibidem*, p. 127.

<sup>15</sup> *Ibidem*, p. 128.

### 17.2.3.1 E-voting vs. one vote only

Article 8 of the 1976 European Parliament Act<sup>16</sup> provides for the “one man, one vote” rule, i.e. no one may vote more than once in any election of representatives to the European Parliament. As remote e-voting can take place everywhere, even outside the EU, there is a risk that the violations of the “one vote only” rule could go unnoticed and unsanctioned. The problem is more complex as e-voting schemes will almost certainly rely on different and possibly incompatible programs, standards and authentication procedures in every single Member State. It is required to establish e-voting legislation to limit the right to vote on-line to Member State nationals. On the other hand, we cannot reject the idea of electronic voting because of lack of satisfied security guarantee. As we know, even in traditional voting system some mistakes happen.

### 17.2.3.2 E-voting vs. equal voting

Electronic voting is a challenge for voting equality. Introducing e-voting is seen as a negative consequence for equality of voter influence, understood as unequal access to the information. If e-voting was the only way of voting in the EP elections, it would be contrary to universal electoral rights, because no citizen is required to have the access to the Internet or the abilities to use it.<sup>17</sup>

Online voting may be conducted via regulated computer at conventional polling stations, but its most ambitious use is as a means of remote voting, allowing voters to participate in elections wherever they have access to an Internet connection.<sup>18</sup> That is why e-voting was never considered as an exclusive technique, rather as a mechanism additionally complementing the traditional voting methods. As such, voters have possibility, not obligation to use electronic voting.

Some Member States argue for introduction of electronic voting, some prefer to stick to traditional methods. Is it then possible to accept the situation where some states implement the e-voting while other do not? The European law is quite rigid in this respect. It states that what is not subject to the amended Act of 1976, stays within the powers of Member States and their internal

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<sup>16</sup> Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ, L 278, 8.10.1976.

<sup>17</sup> Figures on the Internet usage around the world show that, even in the more advanced industrialized democracies, it is generally only a minority of the population that have access to, and are using the new medium regularly, R.K. Gibson, *op.cit.*, p. 38.

<sup>18</sup> A Charles, *The Electronic State: Estonia's New Media Revolution*, „Journal of Contemporary European Research” 2009, vol. 5, no. 1, p. 99.

legal orders.<sup>19</sup> In other words, differences in the EP election laws are and will be common even if the e-voting is introduced.

The equality problem seems to arise depending whether the elections are to be carried out on the Union or national level. It may be framed as dual standard, under scenario where a Member State introduces e-voting in the elections to the EP based on own initiative or European law, but it does not extend such possibility to the national parliamentary elections. Such differentiation would be insignificant from the EU perspective. The voters however could feel frustrated and not necessarily understand why a new method is used in the European elections and not in the national ones. This problem would evolve if the elections to the EP and to national parliament would be held on the same day but with different voting methods to be used.

### 17.2.3.3 E-voting vs. secret ballot

Secrecy of voting is secured by a number of international regulations, including Article 1(3) of the 1976 Act (amended by the Council Decision of 25 June 2002 and 23 September 2002)<sup>20</sup> stating: “Elections shall be by direct universal suffrage and shall be free and secret.” Article 39 of the Charter of Fundamental Rights of the European Union<sup>21</sup> confirms that the Members of the European Parliament are to be elected by direct universal suffrage in a free and secret ballot.

Some authors believe that the I-voting (distance voting) will not comply with the principle of secret voting as guaranteed by Article 1 of the 1976 Act.<sup>22</sup> Those beliefs are based on the fact that identification requirements are stricter for I-voting. The use of PIN and e-signature allow officials to track the electronic path linking the casted vote with the voter. This is not possible in case of regular paper ballot voting. It does not seem very probable as the limits of the complete loyalty toward the secret voting principle were removed somehow with the acceptance of voting by mail or voting through a proxy.

Let us try to follow the problems. It is necessary to quote the table presented by Garrone.<sup>23</sup> The table below illustrates the problems connected with the electronic voting and its impact on the principal electoral law.

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<sup>19</sup> Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, Decision 76/787 ECSC, EEC, Euratom, Official Journal L 283, 21/10/2002.

<sup>20</sup> Decision 76/787 ECSC, EEC, Euratom, Official Journal L 283, 21/10/2002.

<sup>21</sup> Charter of Fundamental Rights of the European Union 2000/C 364/01.

<sup>22</sup> See: R.K. Gibson, *op.cit.*, p. 39.

<sup>23</sup> P. Garrone, *Electoral Disputes – Substantive Aspects*, [http://www.venice.coe.int/web-forms/documents/?pdf=CDL-UD\(2009\)006-e](http://www.venice.coe.int/web-forms/documents/?pdf=CDL-UD(2009)006-e)

**Table 1. E-voting vs. principal electoral law**

Principle	Specific problem	Legal novelty
Direct suffrage	None	
Universal suffrage	e-voting as the only modality of voting: would exclude voters	Mainly new
	Lack of reliability, security	Not really new
Equal suffrage; equal voting rights	Risk of multiply voting and similar problems	Not new – settled by prohibition of anonymous voting
Equal suffrage; accessibility of voting procedure	Making a computer available to every voter	New
	Access barred to non-initiated voter	Mainly new, but the extension of postal voting could avoid legal inequalities
Equal suffrage; no discrimination on the basis of age, race, or ethnic origin	Access barred to non-initiated voter	Mainly new, but the extension of postal voting could avoid legal inequalities
Equal suffrage; equal opportunity	See next item	
Free suffrage; freedom of voter to form their own opinion	Neutrality of official information provided to the voter via the Internet	Not new
	Neutrality of the links to other (political) web sites	New
Free suffrage; freedom of voter to express their opinion	Family voting and other types of “collective” voting	Not new
Free suffrage; accurate recording of the outcome of the ballot	Lack of security or reliability	Partially new (risk of automated fraud increased)
Secret voting	Lack of security or reliability	Partially new
	Undue intervention of election officials during the voting process	

Source: A.H. Trechsel, F. Mendez, R. Kies, *The European Parliament and the Challenge of Internet Voting*, EUI The Robert Schuman Centre for Advanced Studies, Policy Paper 03/3, [http://www.eui.eu/RSCAS/WP-Texts/03\\_03p.pdf](http://www.eui.eu/RSCAS/WP-Texts/03_03p.pdf) p.10-11.

## 17.3 Electronic voting to the US Congress

With the world's fastest developing technology and everyday use of Internet for all kinds of transactions, the US would seem like a place where e-voting becomes a natural way of the citizens' participation in the elections. Yet, as a fact, even though e-voting in the US constitutes one of the voting electronic methods possible to be used, its actual use is limited and varies throughout the states.

### 17.3.1 Background

American democracy has of course witnessed an evolution of voting systems and use of voting machines and methods. Lever machines and punch cards in 1970s replaced the paper ballots originally used throughout the states. The new era of direct recording electronic (DRE) systems came next at the beginning of the new millennium.<sup>24</sup> DRE systems include possibility of voting via computers and voting over Internet but some terms' explanation is necessary to comprehend it.

The I-voting itself may be divided into two models: Internet Voting at the Polling Place (where votes are cast at the officially established polling stations and then transmitted to the election officials) and the Remote Internet Voting (RIV) which applies to voting from any place and/or location and casts the vote directly to the elections officials. The latter one is the most sophisticated and most risky method as the voter ID is checked only through a digital signal.<sup>25</sup>

### 17.3.2 Participation

In March 2000, the Arizona Democratic Party held the first binding political election in the US in which the voters were allowed to cast a binding vote over the Internet (RIV method). The Democratic Party offered Internet voting as one of four ways to select delegates to the Democratic National Convention. 41.16% of votes were cast over the Internet comparing to 37.68% by mail, 16.36% by polling paper and 4.80% by electronic but not Internet voting. It seemed clear that this type of voting would become popular.<sup>26</sup> There

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<sup>24</sup> More on the history of voting methods and instruments in the American elections see: Daniel P. Tokaji, *The Paperless Chase: Electronic Voting and Democratic Values*, 73 *Fordham L. Rev.* 1711 (2005), pp. 1711 and next.

<sup>25</sup> R. Gibson, *Elections Online: Assessing Internet Voting in the Light of the Arizona Democratic Party*, *Political Science Quarterly*, Vol. 116, No 4, (Winter 2001-2002), pp. 565-566.

<sup>26</sup> Detailed analysis and statistics of these historical elections are described in: R.M. Alvarez, J. Nagler, *The Likely Consequences of Internet Voting for Political Representation*, 34 *Loy. L.A. L. Rev.* 1115 2000-2001, pp. 1135-118.

were hopes to improve turnout especially among young voters who would hopefully use this method and get involved in the democratic processes of presidential and congressional elections in the future. The statistics revealed that only 16.6% of young voters (18-24 years old) participated in the 1998 congressional elections.<sup>27</sup> In the Arizona primary elections in 2000 the turnout among young voter was still very low but 75% of those who actually voted reported they had done it on-line.<sup>28</sup>

The idea of on-line voting methods was significantly supported by a federal law passed in 2002 after the controversies occurring in the 2000 Presidential elections in Florida.<sup>29</sup> In the Help America Vote Act of 2002 (HAVA)<sup>30</sup> special funds were provided for states to replace the old voting systems with new technologies so that more Americans (especially disabled citizens) would have possibility to participate in the democratic life of the country.<sup>31</sup>

Other federal laws were introduced or amended so that voting over the Internet would improve voter turnout in the elections held in foreign countries (through the Uniformed and Overseas Citizen Absentee Voting Act of 1986 – UOCAVA), as well as in the elections in military bases [through the Military and Overseas Voter Empowerment Act of 2009 (MOVE)].<sup>32</sup> In addition, the American Uniform Law Commission worked out a model uniform state law that would standardize and improve the voting options available to military and overseas voters. The Uniform Military and Overseas Voters Act (UMOVA) is currently enacted in 12 states.<sup>33</sup>

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<sup>27</sup> *Voting and Registration in the Election of November 1998. Population characteristics*, United States Census Bureau 2000, p. 5.

<sup>28</sup> See: R. Gibson, *op. cit.*, p. 576.

<sup>29</sup> Voters in Florida were confused by the butterfly ballots used in some counties and the vote count got complicated and recount was conducted due to the punch card ballots with difficult to operate chads. It led to the situation where both candidates (George W. Bush and Al Gore) challenged the results in Florida and the case made it to the US Supreme Court. In its decision the Supreme Court severely criticized the voting methods which clearly made the right to vote difficult or impossible to execute in Florida. See: *Bush v. Gore*, 531 U.S. 98 (2000)

<sup>30</sup> Pub. L. No. 107-252, 116 Stat. 166 (codified at 42 U.S.C.A. §§ 15301–15545).

<sup>31</sup> For more on the act and the outcomes of the new law see: S. Ramirez, A. Organick, *Taking Voting Rights Seriously: Race and the Integrity of Democracy in America*, 27 N. Ill. U. L. Rev. 427 2006-2007, pp. 435-440.

<sup>32</sup> Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973 ff –ff6 (2006), Military and Overseas Voter Empowerment Act (MOVE), Pub. L. No. 111-84, 123 Stat. 2190, 2321-22 (2009) passed as part of the National Defense Authorization Act for the 2010 Fiscal Year.

<sup>33</sup> See information on the website of the Uniform Law Commission available at: <http://www.uniformlaws.org/Act.aspx?title=Military+and+Overseas+Voters+Act>. More on the military and overseas voting issues see: S.F. Huefner, *Lessons from Improvements in Military and Overseas Voting*, 47 U. Rich. L. Rev. 833 2012-2013, pp. 833 and next.

As a result, every overseas citizen (i.e. an US citizen residing outside the US who is unable to vote in-person, including a US citizen born overseas who has reached voting age without having resided in the United States) and every member of any military base located outside the US territory may receive their blank ballots electronically. Depending on the state regulation the return of votes can be done via e-mail, fax or Internet download.<sup>34</sup> Special federal agency runs the Federal Voting Assistance Program which assists those absentee voters.<sup>35</sup> The UOCAVA voters are therefore the only American voters entitled to use the Internet voting methods in both state and federal elections.

In 2005 the US Government Accountability Office (GAO) prepared a report to the Congress on the examination of the electronic voting systems. The GAO's findings sent a clear message: „While electronic voting systems hold promise for a more accurate and efficient election process, numerous entities have raised concerns about their security and reliability, citing instances of weak security controls, system design flaws, inadequate system version control, inadequate security testing, incorrect system configuration, poor security management, and vague or incomplete voting system standards, among other issues”. A recommendation was also made by GAO that the federal Election Assistance Commission should define specific tasks, processes, and schedules to improve national electronic voting systems, standards, testing, and support for state and local election officials.<sup>36</sup> The modern voting methods were not used in the 2006 elections and the specifications were not completed for the 2008 elections.<sup>37</sup>

### 17.3.3 Congressional Elections of 2010

The 2010 congressional elections marked an important step in the development and evaluation of the I-voting possibilities as Americans witnessed a variety of privacy, fraud and technical problems while testing this convenient method.

The symbolic problem of the on-line voting occurred in Washington, DC. The Internet system – “Digital Vote by Mail” was planned to be used for the absentee, military and overseas voters. It was composed of two elements: an

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<sup>34</sup> Department of State information available at: [http://travel.state.gov/travel/living/overseas\\_voting/overseas\\_voting\\_4754.html](http://travel.state.gov/travel/living/overseas_voting/overseas_voting_4754.html)

<sup>35</sup> Federal Voting Assistance Program: <http://www.fvap.gov/>

<sup>36</sup> U.S. Government Accountability Office, *Elections: Federal Efforts to Improve Security and Reliability of Electronic Voting Systems are Under Way but Key Activities Need to be Completed*, GAO-05-956 (Sept. 2005), p. 2 and 53.

<sup>37</sup> G. B. Delta, J. H. Matsuura, *Law of the Internet*, Aspen Publishers, §§ 17.05, LOTIN s. 17.05



on-line blank ballot distribution system and a system designed to allow for the return of voted ballots. While the hopes were high, the system was hacked in the test just one month before the actual Election Day. A group of students was able to find a number of vulnerabilities including possibility to collect the data such as usernames and passwords as well as to take control over the system. As a result, District of Columbia did not allow its voters to cast ballots digitally and further developments on the security increase of mechanisms of the method were ordered by the District of Columbia Board of Elections & Ethics.<sup>38</sup>

Other US states became more sensitive about privacy issues but some still proceed with I-voting methods. Once again, Arizona seemed to be the most advantageous of the US states and allowed a voting system in which authorized voters were e-mailed a ballot (as one of the voting possibilities), which they were able to print, fill out and then upload and return.<sup>39</sup>

### 17.3.4 Architecture of American e-voting

Successful programs and systems have been tested also in some other US states in 2010. West Virginia enacted the Uniform Services and Overseas Voter Pilot Program and tested it in eight of the counties. The West Virginia's Pilot Program allowed for the use of e-mail, fax, and web-based Internet voting. In the process of casting a ballot using the web-based system the voter:

1. Submitted a Federal Post Card Application (FPCA) or the West Virginia Electronic Voting Absentee Ballot Application.
2. Received an e-mail from either the county clerk or a voting system vendor which contained a username and URL for a website to access the ballot.
3. Logged into the website using the supplied credentials.
4. Made ballot selections on the computer screen.
5. Selected the "Cast Ballot" button.
6. Received a receipt code.

The system worked without any problems. Moreover, 100% of the respondents rated the system's ease of use as "simple" or "somewhat simple". Still, the state authorities (Secretary of State) did not decide to use it in the actual elections. The recommendation was made to convene a study committee

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<sup>38</sup> More information: <http://www.dcboee.us/>

<sup>39</sup> A. Altman, *Will Online Voting Turn Into an Election Day Debacle?* Time, Oct. 15, 2010 available at: <http://www.time.com/time/politics/article/0,8599,2025696,00.html#ixzz2cbCdv1yY>. On Arizona and DC elections see also: A Survey of Internet Voting, US Election Assistance Commission, September 2011, p. 16 and p. 19.

to consider number of factors including the estimations of costs and security issues.<sup>40</sup>

As a result, the use of the Internet in the 2010 elections was very minimal. According to the statistics, the 2010 election saw a substantial increase in the number of US states that received voter registration applications directly over the Internet. Eight states reported such registration in 2008, compared to 17 states in 2010. The census estimation of the number of Americans eligible to vote in 2010 was 237,3 million of which 78.7% registered. Among those who registered, total of 768,211 sent or filled their applications using Internet that is only 0.32%.<sup>41</sup>

90.810.679 American voters participated in the 2010 congressional elections. As reported, however, nearly 63% of them voted in the traditional way of casting their ballots in person at their local polling place on the Election Day. Domestic absentee accounted for 15.6% where mail voting reached 4.5%. Only 0.2% voter were UOCAVA but no data is available on the use of the Internet among those voters.<sup>42</sup>

The 2010 survey collected data on over 350,000 voting machines used throughout the country. Optical or digital scan booths were found to be mostly used in the elections. 212,506 of them were used in 20 states. In 44 states the optical or digital scan counters in the amount of 67,990 were used in at least some jurisdictions within the state and as such it constituted the most common type of technology used for voting within the country.<sup>43</sup>

### 17.3.5 Further attempts of 2012

Congressional and presidential elections of 2012 once again raised questions and concerns about new technologies used and meant to be used to improve American voting system. As many commentators noted, American can presently buy, sell, book, invest, meet, talk and message using the Internet. Using the World Wide Web as a platform for voting should make it more simplified, more convenient and thus increase the turnout in the elections.<sup>44</sup> Most of the US states, however, backed out from the Internet voting development options. West Virginia did not follow up with the success of the Pilot Program

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<sup>40</sup> N.E. Tennant, *Legislative Report, West Virginia Uniformed Services and Overseas Citizen Online Voting Pilot Project*, January 2011, available at: <http://www.sos.wv.gov/news/topics/elections-candidates/Documents/Report%20Final%202010%20General%20Election.pdf>

<sup>41</sup> *2010 Election Administration and Voting Survey. A summary of key findings*, US Election Assistance Commission, December 2011, p. 6.

<sup>42</sup> *Ibid*, pp. 7-8.

<sup>43</sup> *Ibid*, pp. 13-14.

<sup>44</sup> See J. Epstein, *op. cit.*, p. 885.

and the threat of the District of Columbia hacking is still present and shadows over the enthusiasm of many Internet users.<sup>45</sup> It is worth to mention that in the Netherlands the idea of e-voting was withdrawn after the security system had been broken.<sup>46</sup> In 2006 a group of citizens named “We don’t trust voting computers” started a campaign against voting via computers carrying out technical tests of the machines and computers that were used. From a comparative perspective, in 2007 the Dutch government decided to ban the existing electronic voting machines. In Austria constitutional law does not allow for the use of Internet voting in parliamentary elections, yet Austria used an Internet voting system for the 2009 Federation of Student’s Union election.<sup>47</sup> There are also some pilot projects related to local elections in the United Kingdom.<sup>48</sup>

At the moment there no complete data is available on the statistics of the 2012 elections. The report of the US Election Assistance Commission is to be released at the end of 2013. The report on the Uniformed and Overseas Citizens Absentee Voting Act shows that states transmitted 876,362 ballots to UOCAVA-covered voters for the 2012 election (comparing to 611,058 in 2010 taking into account that in 2012 more jurisdictions participated in the survey).<sup>49</sup>

It is to be emphasized that the total of 32 US states and District of Columbia allows military and overseas voters return ballots electronically. Among those, only New Jersey requires the UOCAVA voters to return paper ballot in addition to the electronic form. 18 states allow the return by fax and e-mail, 9 states allow return fax or e-mail (restricted), 5 states allow fax only and 1 state allows the use of an Internet portal. No state allows transmission of voted ballots for stateside voters. Arizona is the one state which allows its UOCAVA voters to return their completed ballots by regular mail, facsimile or Arizona’s secure ballot upload system (an Internet portal). The last one was used in three counties in 2010 and 2012 elections and the available data shows it was used 5 to 12 people only.<sup>50</sup>

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<sup>45</sup> See interview with West Virginia Secretary of State Natalie Tennant aired February 16, 2012 on PBS, available at: [http://www.pbs.org/newshour/bb/politics/jan-june12/internetvoting\\_02-16.html](http://www.pbs.org/newshour/bb/politics/jan-june12/internetvoting_02-16.html)

<sup>46</sup> M. Musiał-Karg, *Elektroniczne głosowanie. Wybrane dylematy dotyczące e-votingu*, [in:] M. Marczewska-Rytko (ed.), *Demokracja elektroniczna. Kontrowersje i dylematy*, Lublin 2012, p. 93.

<sup>47</sup> R. Krimmer, A. Ehringfeld, M. Traxl, *The Use of E-Voting in the Federation of Students’ Elections 2009*, (paper presented at the EVOTE 2010 conference, Lochau/Bregenz, Austria, July 22, 2010).

<sup>48</sup> U.S. Election Assistance Commission. *Testing and Certification Technical Paper # 2, A Survey of Internet Voting*, September 2011, <http://www.eac.gov/assets/1/Documents/SIV-FINAL.pdf>, pp. 68-79.

<sup>49</sup> *Uniformed and Overseas Citizens Absentee Voting Act. Survey findings*, US Election Assistance Commission, July 2013, p. 1.

<sup>50</sup> Verified Voting, <https://www.verifiedvoting.org/resources/internet-voting/>

One further step was taken to enact new federal legislation supporting the use of the Internet for voting as a result of the lines of voters waiting to cast their votes in the cold. Just one month after the Election Day, the Congress worked on the new law. The proposed Voting Line Reduction and Online Registration Act aimed to, as the full title had it, “modernize State voting systems by allowing for increased use of the internet in voter registration, and for other purposes”. The present status of the proposal indicates: “Died (Referred to Committee)”.<sup>51</sup>

## 17.4 The Estonian e-voting system

The developments of the Estonian information society were influenced by three significant regulations: the Principle of Estonian Information Policy (PEIP) of 1998, the Public Information Act (PIA) of 2000 and Estonian Information Society Strategy (EISS) of 2013.<sup>52</sup> One of the strategic goals set by the PEIP was the use of information and communications technologies (ICTs) for prompting and strengthening democracy. The EISS aimed at ensuring public sector websites’ accessibility for all, including people with special needs.

### 17.4.1 Background

According to Morshed Chowdhury nearly half of Estonians have a computer at home and more than 4/5 of them are connected to the Internet. Estonia is one of the first few countries in the world where an ID card with remote identification and binding digital signature functions is compulsory for personal authentication. Almost all Estonian inhabitants are already electronic ID cardholders. Therefore introducing I-voting was a logical step to take.<sup>53</sup> From 2011 Estonia has introduced mobile e-voting, a kind of authentication system by a mobile phone.

Estonia recognizes different ways to identify a person and to give digital signature while I-voting: by means of ID card, by means of digital ID and by means of mobile ID.<sup>54</sup>

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<sup>51</sup> H.R. 6632 (112th): Voting Line Reduction and Online Registration Act, Status available at: <http://www.govtrack.us/congress/bills/112/hr6632>

<sup>52</sup> [unpan1.un.org/intradoc/groups/public/documents/unpan/unpan033997.pdf](http://unpan1.un.org/intradoc/groups/public/documents/unpan/unpan033997.pdf)

<sup>53</sup> M.J. Morshed Chowdhury, *Comparison of e-voting schemes: Estonian and Norwegian solutions*, <http://courses.cs.ut.ee/2010/security-seminar-fall/uploads/Main/chowdhury-final.pdf>

<sup>54</sup> Estonian National Electoral Committee, <http://www.vvk.ee/voting-methods-in-estonia/engindex/>

### 17.4.2. Legal issues

The Estonian European Parliament Election Act (2002)<sup>55</sup> regulates electronic voting. Paragraph 20 states that electronic lists of electors are delivered to the National Electoral Committee by the eleventh day before the election day. The person who prepares a polling list signs it no later than on the seventh day after the close of voting. The chairman of the National Electoral Committee (NEC) signs the list of voters who voted electronically after the close of voting. Voting election day opens at 9 AM and closes at 8 PM. Advance poll are to be held: from the tenth day to the fourth day before election day by electronic means. Voting opens on the sixth day before the day of election at 9 AM and lasts on 24-hours basis until voting closes on the fourth day before the election day at 8 PM [Paragraph 37(3)].

The procedure of electronic voting is prescribed in Paragraph 43. A voter may vote electronically on the webpage of NEC on days prescribed by Paragraph 37(2)(3). A voter votes herself. She identifies herself on the basis of a certificate on identity documents permitting digital authentication. After identification of the voter, the consolidated list of candidates is displayed to the voter on the webpage. The voter may change her electronically given vote by either voting again electronically at the time prescribed by Paragraph 37(2)(3) or voting with a ballot paper from the sixth to the fourth day before election day pursuant to the procedure provided for in that Act.

As far as counting of electorally given votes is concerned, the NEC verifies the results of electronic voting after 8 PM on the election day. At least one-half of the members of the NEC, including the chairman or deputy chairman of the Committee, shall be present at the counting of votes. Voting results shall be verified in the NEC in public.

### 17.4.3 Architecture of Estonian e-voting

The main principle of e-voting should be as similar as regular voting. Electronic voting should ensure free will and anonymity of the voter. The voting procedure is as follows:

1. For the voter identification ID-cards or Mobile ID is used,
2. E-Voter can vote any number of votes during the advance voting time. Only the final vote will be counted. Thus if voter is under any kind of pressure to vote, she/he can vote later and the last vote will be counted. It will ensure coercion-free voting,
3. Traditional voting is prioritized. If the voter cast her vote in the polling

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<sup>55</sup> [http://www.vvk.ee/public/dok/EPestonia\\_eng.pdf](http://www.vvk.ee/public/dok/EPestonia_eng.pdf)

- station than all her e-votes will be cancelled,
4. All the servers in the voting system are secure and always under monitoring during the voting period,
  5. Vote storage server is behind the firewall. Nobody can access the vote storage server from open Internet,
  6. Vote counting server is offline and secure with shared private key,
  7. All communications in Internet use Secure Sockets Layer (SSL) encryption,
  8. Encryption and digital signature use RSA encryption mechanism.<sup>56</sup>

#### 17.4.4 Participation in Estonian elections to the European Parliament

Estonians elected their MEPs twice: in 2004 and 2009. In 2004, after Estonia's accession to the European Union, the turnout was low (26,8%).<sup>57</sup>

**Table 2. Internet voting in Estonian elections 2005-2009**

	Local 2005	National 2007	<b>European 2009</b>	Local 2009	National 2011
Total votes	1 059 292	897 243	<b>909 628</b>	1 094 317	913 346
Internet votes	9 317	30 275	<b>58 669</b>	104 413	140 846
Internet votes...					
... as % of all votes	0,9	3,4	<b>6,5</b>	9,5	15,4
... as % of advance votes	7,2	17,6	<b>45,4</b>	44	56,4

Source: A. Sikk, *European Parliament Election Briefing No. 41. The 2009 European Elections in Estonia*, EPERN, p. 7; <http://www.vvk.ee/voting-methods-in-estonia/engindex/statistics> (24.05.2013).

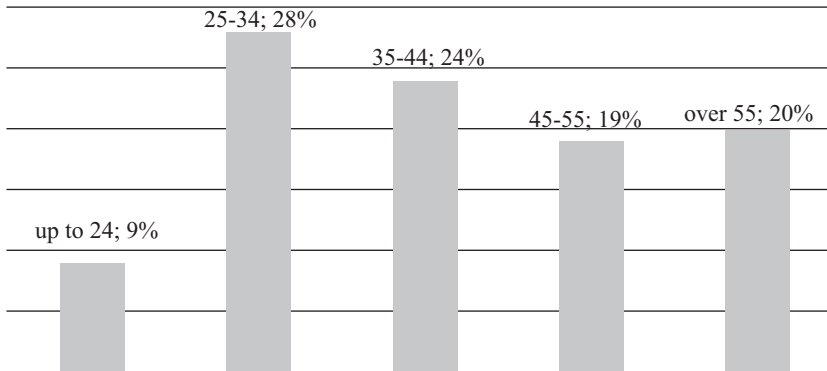
As Table 2 shows, the number of Internet votes was not particularly high, however their share almost doubled in comparison to 2007 national elections and Internet votes constituted nearly half of advance votes. The results show that e-voting did not have a strong influence on the increase of turnout.

Let us try to analyse the age of electoral voters. Graph 1 shows interesting data.

<sup>56</sup> M.J. Morshed Chowdhury, *Comparison of e-voting schemes: Estonian and Norwegian solutions*, <http://courses.cs.ut.ee/2010/security-seminar-fall/uploads/Main/chowdhury-final.pdf>

<sup>57</sup> J. Kivirähk, *Estonia: the European Debate and Politics at a Time of Economic Crisis*, EuPI Policy Brief, June 2009, p. 1.

**Graph 1. e-Voters by age in European Parliament elections 2009**



Source: <http://www.vvk.ee/varasemad/?v=ep09?lang=eng>

Surprisingly, there were twice as many people over 55 who chose electronic voting (20%) in comparison to the youngest voters up to 24 (only 9%). Looking for the reasons of low percentage among the youngest e-voters, we cannot agree with the opinion of Czakowski<sup>58</sup> who notes that elderly people follow new technologies while the youngest voters not necessarily do so. In our opinion, the fact that only 9% voters were up to 24 years of age results from the low turnout in general. It is worth to note that the youngest group of voters (not only in Estonia, but generally in Europe) is the most reluctant as regards participating in elections.<sup>59</sup>

#### 17.4.5 How the Estonians ensure the principle of one vote only?

Estonia introduced quite interesting solution concerning single vote rule. Firstly, for voter identification an ID-card is used. The ID-card is the only independent means of electronic communication which enables electronic personal authentication at a maximum security level and digital signature. Secondly, another e-voting is permissible when e-voter can electronically vote second time and his previous e-vote is deleted. Despite the fact that multiple voting is generally recognized as an offence, in this case electronic re-voting cannot be recognized as “multiple”, because the system will account only

<sup>58</sup> M. Czakowski, *E-voting na przykładzie Estonii i Brazylii*, „Studia BAS” 2011, no. 3(27), p. 125.

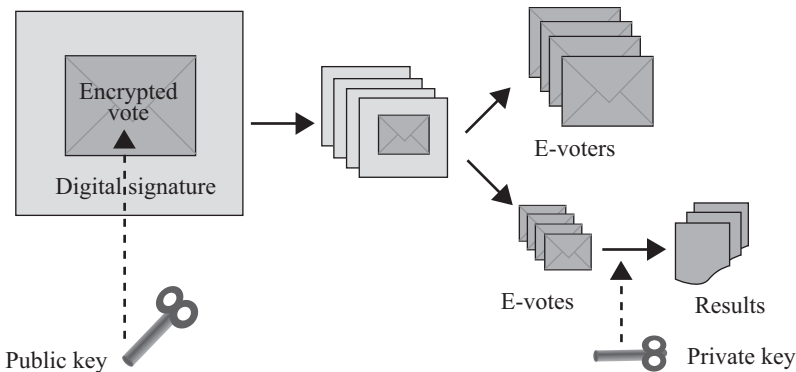
<sup>59</sup> A. Torline, *Civic Education and Youth Voter Turnout: The Federal States of Germany during Elections for European Parliament*, <http://polisci.indiana.edu/undergraduate/theses/Torline.pdf>, p. 1.

one e-vote (the last one submitted). Thirdly, traditional voting is preferential. E-vote is deleted when the voter goes to the polling station where she votes in traditional way.<sup>60</sup>

#### 17.4.6 How the Estonians ensure the anonymity of e-voting?

It is worth to take a look at the Estonian solutions. Paragraph 60 of the 1992 Estonian Constitution reads that members of the national parliament are elected in free elections on the principle of proportionality. Elections are general, uniform and direct. Voting is secret.<sup>61</sup> There are no provisions concerning the e-voting included in the Constitution. For Madise and Martins it is absolutely clear that remote voting with the use of Internet does not guarantee privacy protection.<sup>62</sup> Principle of secret voting relates to anonymous voting, conducted in some seclusion. Estonians decided that voting in seclusion should not constitute as goal as such. Confidentiality of voting is most important at the moment of casting the vote. Its function is to protect the voter from political pressures of third persons and/or not to give in to them. Since it was not possible to apply, while e-voting, obligatory seclusion to guarantee the freedom of vote, Estonians found a different solution.

**Figure 1. The envelope-in-envelope-principle transferred to e-voting**



Source: The Estonian National Electoral Committee, [http://www.vvk.ee/public/Verification\\_of\\_I-Votes.pdf](http://www.vvk.ee/public/Verification_of_I-Votes.pdf)

<sup>60</sup> More: M. Musiał-Karg, *op.cit.*, p. 106.

<sup>61</sup> Constitution of the Republic of Estonia, text available at: <http://www.president.ee/en/republic-of-estonia/the-constitution/>

<sup>62</sup> Ü. Madise, T. Martens, *E-voting in Estonia 2005. The first practice of the country-wide binding Internet voting in the world*, [http://neu.e-voting.cc/wp-content/uploads/Proceedings%202006/1.1.madise\\_martens\\_e-voting\\_in\\_estonia.pdf](http://neu.e-voting.cc/wp-content/uploads/Proceedings%202006/1.1.madise_martens_e-voting_in_estonia.pdf), p. 18.



Digital signatures consist of private and public key. The private key is secret and stored on a smart card. The public key is assigned to the identity of the holder of the identity card. After inserting the smart card into the card reader, the voter has to open the voting homepage of the National Electoral Committee in order to download and initiate the voter application. After that, the private key is activated with the submission of a secret PIN. The cast vote is encrypted with a public key and can only be decrypted with a corresponding private key, which is officially known by the NEC.

Should the voter go to the polling station in advance on election day and cast a vote, her electronically cast vote shall be deleted. According to Madise and Martens, „virtual cabin election” is created: e-voter is entitled to choose the moment of voting, when she is alone, free and independent from any pressures. She can change his/her e-vote for unlimited times during elections (only her last vote is valid).<sup>63</sup> In other words, voting is secret, but changing decision means that it is possible to identify both voting and e-voter. Electronic votes go to the National Electoral Committee, where personal data is decrypted.<sup>64</sup> How does that stand against confidentiality of voting? No unauthorized person has access to personal data of e-voters and no such person may have a possibility to identify them. Only authorized officials can do that and it can be done *post factum*, not at the moment of casting the vote.

## 17.5 Conclusions

The Washington Post noted the success of Estonian I-voting system and tried to find a comparative answer to why is it not working in the US. In short, two major problems make the difference. First, Estonians (as most Europeans) are assigned with a unique government ID number, which makes the system workable (the US citizens do not have such numbers). Second, the proportional representation voting system adopted in Estonia, in contrary to the American “winner takes it all” system, makes it less attractive to fraud as the candidates have more at stake in the US model. In addition, the studies show that most electoral reform measures mainly benefit voters who were already highly motivated to vote which stands against the argument of increasing the turnout with on-line possibilities.<sup>65</sup>

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<sup>63</sup> Ibidem, p. 19.

<sup>64</sup> Ibidem, p. 20.

<sup>65</sup> B. Plumer, *Estonia gets to vote online. Why can't America?*, Washington Post, November 6, 2012, available at: <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/11/06/estonians-get-to-vote-online-why-cant-america/>

Searching for solutions to increase election turnouts have led to the idea of electronic voting. So far, with exception of Estonia, the idea has not been commonly applied in the EP elections. In couple or few years however, more states will try it as confirmed by some symptoms of the use of electronic voting in the local and/or parliamentary elections in some Member States of the EU, e.g.: Belgium,<sup>66</sup> Ireland,<sup>67</sup> the Netherlands,<sup>68</sup> Austria.<sup>69</sup> It seems it is a matter of time for Member States to include e-voting in their electoral laws. It is not unlikely that in the future the EP will choose electronic voting a common method in the election procedure; it will be rather an exclusive form of voting. The US would certainly welcome the increase in turnout and use the votes lost in overseas and military voting ways. This time however, they will let the EU try those solutions first.

Establishing e-voting as a common principle to all Member States is a real challenge yet it is not impossible. Nowadays, it is rather wishful thinking. Even if e-voting were established in many Member States, it lacked the political salience of issues, such as a dual-mandates and the type of electoral system.

The build-up of a comprehensive system for e-voting in Europe cannot be recommended for the time being. The main reasons for this are cost-benefit considerations, technological issues and reasons of political legitimacy. E-voting seems to be more convenient than traditional voting. In reality it is more complicated than traditional voting because it requires digital signatures, PINs, complex authentication processes, encrypted transmission procedures, dedicated server structures, etc. These elements are (with the exception of Estonia) currently not available in European countries or in the US.

For the reasons above it is desirable that MS provide for optional e-voting for the EP elections. However, if we look at Article 223, it is politically impossible today that a uniform procedure in all EU MS, inclusive of e-voting would be accepted. As technology develops, we can expect only more MS accepting e-voting.

What the EP could learn from Estonian experience? First of all, introduction of electronic ID cards for all European citizens is required. The elec-

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<sup>66</sup> C. Vegas González, *The New Belgian E-voting system*, [http://www.e-voting.cc/wp-content/uploads/downloads/2012/07/199-211\\_Vegas\\_Belgian-E-voting.pdf](http://www.e-voting.cc/wp-content/uploads/downloads/2012/07/199-211_Vegas_Belgian-E-voting.pdf), pp. 198-211.

<sup>67</sup> M. Mc Galey, J.P. Gibson, *Electronic Voting : A Safety Critical System*, <http://evoting.cs.may.ie/Project/report.pdf>, pp. 1-12.

<sup>68</sup> B. Jacobs, W. Pieters, *Electronic Voting in the Netherlands: from early Adoption to early Abolishment*, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.159.9956&rep=rep1&type=pdf>

<sup>69</sup> P. Heindl, *E-voting in Austria. Legal Requirements and First Steps*, <http://subs.emis.de/LNI/Proceedings/Proceedings47/Proceeding.GI.47-17.pdf>, pp. 165-170.

tronic ID cards hold the digital signature of respective person. It would be a difficult and risky venture because of technological, economical and legal reasons. Secondly, as we mentioned above, 4/5 Estonians have regular access to the Internet. As far as the rest of the European citizens, data seem to be less optimistic.<sup>70</sup>

What could the EP learn from the US experience? Firstly, both Americans and European do not have their ID cards and as a consequence the identification process is very complicated and difficult. Secondly, technological issues play an important role. The opponents of e-voting say that I-voting will never reach an acceptable level of security and reliability, as hackers will always find ways to manipulate the system.

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<sup>70</sup> H. Seybert, *Internet use in households and by individuals in 2012*, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-12-050/EN/KS-SF-12-050-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-12-050/EN/KS-SF-12-050-EN.PDF)

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# The Impact of the European Union on Party Systems. The case of Serbia and Montenegro

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In order to determine (with all the risks related to it) development of social and political processes in a country, it seems relevant to observe objectives and contents of the most influential social actors – political parties. This can be applied to all European countries and former Yugoslavia's republics seem to be of no exemption neither. After Croatia became the full European Union Member-State on July 1, 2013 (Slovenia has been a Member-State since 2004), the question of other former Yugoslavia's republics integration perspectives remains open. Today they find themselves at the historical turning point with no obvious alternative - their ultimate goal is membership in the European Union (EU) and political parties determine paths of achieving the goal.

In this paper I will focus on two of the former Yugoslavia's republics: the largest one - Serbia<sup>1</sup> and the smallest one - Montenegro.<sup>2</sup> Interestingly, after the dissolution of Federal Yugoslavia in 1991 they had continued to create subsequent political structures<sup>3</sup> of a mutual state until 2006 when Montenegro declared its independence. Identical political views of their political elites in the early 1990s transformed into a fundamental political disagreements and split up of the mu-

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<sup>1</sup> Population: 7,220,000; territory: 88,361 km<sup>2</sup>.

<sup>2</sup> Population: 621,000; territory: 13,800 km<sup>2</sup>.

<sup>3</sup> The two republics initially formed the Federal Republic of Yugoslavia in 1992 following the dissolution of Socialist Federative Republic of Yugoslavia in 1991. In 2003 the Federation was reconstituted as a State Union of Serbia and Montenegro. On May 21, 2006 Montenegro held a referendum to seek for full independence. Final official results indicated that the referendum was a success. The State Union effectively came to an end after Montenegro's formal declaration of independence on June 3, 2006 and Serbia's formal declaration of independence on June 5, 2006.

tual state. The aim of this paper though is not an analysis of the political scene in both countries. My primary research interest would be the nature of interrelations between their political parties and European Union (institutions) in terms of the latter prestigious structures, powerful symbolic component in an area of common European ideas. What is the role of EU's institutional "soft powers" in the case of Serbia and Montenegro's political and party systems? How extensive is value standardization process due to these interrelations? Finally, does these relations accelerate the process of European integrations of the countries?

I find relevant two ways of describing this issue: through an analysis of membership in the European party federations and through their relations with the European Parliament.

## 18.1 Political Parties and integration processes

The European integration process in its broadest sense shall be defined as the process leading to a full membership in the European Union (EU). The membership itself, although understood as the final point in the relations between the countries and EU, is a result of many forms of mutual cooperation, which, depending on the phase of the process of association have different economic and political significance. Communication channels with the EU are based on several different levels due to the structure of the EU itself as well as the nature of the process of integration. Although there are various actors/institutions in a candidate country that might have lesser or greater impact on efficiency and speed of this process, there is no doubt that a key player in the process of European integration is the state. Official communication between the candidate countries and the EU is being conducted throughout state institutions. In the accession process however, the most visible role possess governments and national parliaments.

Nevertheless, one of the main preconditions of a functioning democratic political system is existence of a party system, which articulates different interests and offers a (political) choice in the government-opposition relationship. Accordingly, democratic political systems need political parties to re-establish the link between politicians and the electorate, and to ensure the government's political responsibility.<sup>4</sup> As such, political parties certainly have a crucial role in processes of modernization, i.e. the processes of democratization and Europeanization. Briefly, political parties play a central role in contemporary European policy. The majority of politicians in the EU are party politicians, including those in the European Council, European Commission, and Euro-

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<sup>4</sup>H. Abromeit, *Democracy in Europe. Legitimising Politics in a Non-State Polity*, Berghahn Books, New York 1998 pp. 33-34.



pean Parliament. As the main actors in election campaigns, political parties are the key actors in domestic elections and in elections to the European Parliament, while as the main actors connecting governments to parliaments and parliaments to voters, they are central to the relations between the EU institutions and between the national and EU levels. Party organizations take centre stage in the case of EU politics as well.<sup>5</sup> Political parties are both subjects and objects of changes caused by the process of European integration. While the old member-states created both European policies and European politics, new members are in position merely to incorporate *acquis de l'Union* into their legal and political system.<sup>6</sup>

In the Western Balkan region, political parties have been the key players establishing new independent states following the disintegration of the former Socialist Federal Republic of Yugoslavia. In case of Serbia and Montenegro, political parties had the position of key constitutional and institutional political engineers. In the context of war throughout 1990s, the politicization of ethnic feelings and intensive institutional engineering in favour of the parties in power, it was impossible to talk about democracy and potential membership in the European Union. In Serbia the polarized pluralism anti-democracy oriented Milošević's Serbian Socialist party (Socijalistička Partija Srbije – SPS), with its satellite The Yugoslav Left (Jugoslovenska Levica – JUL), were able to occupy the central position and take advantage of a situation. On the contrary, the Montenegrin party system developed in a moderately pluralistic way and became more polarized only in the context of Montenegro distancing itself from Serbia in the 1997-2000 period. The first peaceful change in power occurred in Montenegro with presidential elections in 1997 and parliamentary elections in 1998. In 2000 change also happened in Serbia.<sup>7</sup>

Today European integration processes make impact on political parties as well as the party systems in the region. The factor that should unavoidably be taken into consideration is the European socialization of national parties of the region understood in terms of social constructivism theory.<sup>8</sup> It explains Euro-

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<sup>5</sup> S. Hix, *The Political System of the European Union*. Palgrave London 1999 p. 168.

<sup>6</sup> When mentioning new member-states I am referring to the 2004 „big bang” enlargement of the post-communist Central and Eastern European countries (Malta and Cyprus as non-postcommunist countries), although this can apply to a certain extent to earlier enlargements as well.

<sup>7</sup> D. Fink-Hafner, *Factors of Party Europeanization: A Comparison of Croatia, Serbia and Montenegro*, In: Democratization and Europeanization of Political Parties in Central and Southeastern Europe, *Politics in Central Europe* vol. 3 (1+2), 2007, 37.

<sup>8</sup> T. Diez, *Riding the AM-track through; or the Pitfalls of a Rationalist's Journey through European Integration*, *Millennium: Journal of international Studies* 28 (2): pp. 355-369; T. Risse, *Social Constructivism and European Integration*. In: A. Wiener, T. Diez (eds.), *European Integration Theory*, Oxford University Press, 159-176.

pean integration process as the creation of shared conceptions of identity or role which further influences the creation of preferences of further cooperation and integration. National party elites joining European party federations do interact with their counterparts from EU member states. The expectations that these interactions have an impact on national party elites has so far received inconclusive empirical support.<sup>9</sup> According to the quite limited research on post-socialist countries' parties' linkages with European party federations, European party linkages could lead to minor and sometimes modest national party changes.<sup>10</sup> However, Enyedi and Lewis<sup>11</sup> point out Europarties' impacts on the political orientations of some existing EU member parties as a result of the parties of the new EU member states moving toward membership of one of the standard European families, including a party name, or a rethink of existing EU member parties' relationship with other national parties. Although Europarties sometimes encourage collaboration or even the merging of national parties, so far there has been no evidence of the direct impact of Europarties on national parties' ideological or behavioural change.<sup>12</sup> Fink-Hafner suggests that since the political parties of the countries have been largely based on the extreme politicization of ethnic feelings, it is expected that the European socialization of national parties may be relatively important factor in the recreating of party system institutionalization.<sup>13</sup> According to Mainwaring and Torcal "institutionalization refers to a process by which a practice or organization becomes well established and widely known, if not universally accepted. In politics, institutionalization means that political actors have clear and stable expectations about the behavior of other actors. (...) An institutionalized party system then is one in which actors develop expectations and behavior based on the premise that the fundamental contours and rules of party competition and behavior will prevail into the foreseeable future".<sup>14</sup> It is a continuum of a party system characteristics expressed in several aspects: stability of the

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<sup>9</sup> D. Fink-Hafner, *ibidem*. 32.

<sup>10</sup> D. Lajh, A. Krasovec, *Cooperation between Slovenian Parliamentary Political Parties and European Party Federations*, in: L. Cabada, A. Krasovec (eds.), *Europeanization and National Political Parties*, Fakulteta Humanitnih Studij v Plzni; P. Lewis, Z. Mansfeldová, (eds.), *The European Union and Party Politics in Central Europe*, Palgrave Macmillan 2006, Houndmills, Basingstoke, Hampshire and New York

<sup>11</sup> Z. Enyedi, P. Lewis, *The Impact of the European Union on Party Politics in Central and Eastern Europe*, in: P. Lewis, Z. Mansfeldová, (eds.), *The European Union and Party Politics in Central Europe*. *Ibidem* 231-249.

<sup>12</sup> D. Fink-Hafner, *Factors of Party Europeanization*, *ibidem* 32.

<sup>13</sup> *Ibidem*.

<sup>14</sup> S. Mainwaring, M. Torcal, *Party System Institutionalization and Party System Theory after the Third Wave of Democratization*, in: R. Katz, W. Cotty, (eds.) *Handbook of Party Politics*, Sage, London, Thousand Oaks, California and New Delhi, 2006, p. 206.

main parties in the party system, strong party roots in society and according political legitimacy to parties on behalf of political actors.<sup>15</sup>

The above mentioned European socialization as a factor of a party system institutionalization is a phenomena which – according to Fink-Hafner – will be evident in countries with potential losers in the approaching process of European integration – both in society (voters from the losing sectors of society) as well as in the elite (especially in those parts of elites with war-related responsibilities and/or illegally gained wealth).<sup>16</sup> This applies both for Serbia and Montenegro. When it comes to institutionalization of the party systems it should be also emphasized that in both countries: “the strength of nationally influential centres of economic and political power which are outside political parties. In a situation where these centres of power do not see their interests in integration processes with the EU, political parties can only follow general voters’ preferences of joining the EU with a general pro-EU discourse – without doing anything significant in relation to fulfilling the EU’s preconditions. From this point of view, another aspect of party system institutionalization is obviously insufficient for the full development of party system mechanics responsive to pressures from the top and from the bottom in the field of EU matters”.<sup>17</sup>

Although some Western researcher have shown no significant EU impact on national party systems,<sup>18</sup> and other studies of the post-socialist 2004 EU member states has mostly shown that there has been little direct impact of the EU on national party politics,<sup>19</sup> it seems that European integration processes do make impact on political parties as well as the party system (especially in the case of Serbia, and to a lesser extent in Montenegro). These effects may be direct and indirect. Direct effects are visible through debates, party divisions and questioning European issues. Indirect effect is caused by the necessity of adaptation, thus reducing degree of influence and control of national actors. However, the condition *sine qua non* for the above effects is a transnational party cooperation, especially within the family party - similar program spectrum, both inside and outside the European Parliament. These are the European party federations and parliamentary groups within the European Parliament (cross-national alliances in and outside the EU institutions). Formally, European political parties (infor-

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<sup>15</sup> S. Mainwaring, M. Torcal, *Ibidem*.

<sup>16</sup> D. Fink-Hafner, *Factors of Party Europeanization*, *ibidem*.

<sup>17</sup> D. Fink-Hafner, *ibidem*. 45.

<sup>18</sup> See: R. Ladrech, (2002). *Europeanization and Political Parties: Towards a Framework for Analysis*. *Party Politics* 2002, 8 (4), pp. 389–403; P. Pennings, *An Empirical Analysis of the Europeanization of National Party Manifestos, 1960–2003*, *European Union Politics*, 2006, 7 (2), pp. 257–270.

<sup>19</sup> P. Lewis, Z. Mansfeldová, (eds.), *The European Union and Party Politics in Central Europe*. Palgrave Macmillan 2006, Houndmills, Basingstoke, Hampshire and New York.

mally, Europarties) are supranational party alliances and their ideological program are close to the parties of EU Member States. Members of the European parties are not individuals - the people - but the National Party: somewhat “the parties of the parties”. Their key role is to directly represent citizens of the Union in the European Parliament. Europarties act as an union of national parties of the same basic ideological direction. However, this compound does not provide a new hierarchical level. Europarties are parallel to the national level - the national parties retain its full autonomy. Although the criteria are not precisely defined, there are several conditions for a party to fulfill in order to obtain the status of European political party:

- The European criterion: the party should deal with European issues (pro - European attitude may not be substantiated);
- The democratic criterion: the party must uphold the principles of democracy, to respect human rights and the rule of law;
- Planning and participation in political discussions at the European level: the party should establish a political group in the European Parliament or participate in one of the existing factions in the Parliament.
- The criterion of representativeness. The party must be represented in at least one quarter of the Member States, by Members of the European Parliament (or in the national or regional Parliaments or regional assemblies), or it must have received, also in at least one quarter of the Member States at the most recent European Parliament elections.<sup>20</sup>

The table below shows the current political federations in the European Parliament:

GROUPS	MEP's
Group of the European People's Party (PPE)	273
Group of the Progressive Alliance of Socialists & Democrats (S&D)	190
The Alliance of Liberals and Democrats for Europe (ALDE)	89
The European Free Alliance Greens (Verts/ALE)	58
The European Conservatives and Reformists (ECR)	56
European United Nordic Green Left (GUE/NGL)	36
Non-Attached Members	31
Europe of Freedom and Democracy (EFD)	29
Total	762

Source: <http://www.itsyourparliament.eu/groups>

<sup>20</sup> Regulation (EC) No. 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding; At: [http://europa.eu/legislation\\_summaries/institutional\\_affairs/institutions\\_bodies\\_and\\_agencies/l33315\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/institutions_bodies_and_agencies/l33315_en.htm)

## 18.2 The case of Serbia and Montenegro

The relationship of political parties of both countries with the EU institutions is primarily determined by their program orientation. These two factors largely determine the degree, scope and communication channels between parties and EU institutions.<sup>21</sup> On the other hand the structure of the EU affects forms of cooperation, depending on whether they are institutions that is consisted of representatives of Member States, European party group or the European Commission officials (with responsibilities of supranational character). A detailed overview of relevant parties in the countries shows that none of them explicitly opts against their countries' membership in the EU.<sup>22</sup> Differences can be seen between the parties with pro-European politics in their programs and the ones whose pro-European orientation is not their top national priority given their party programs.<sup>23</sup> Although the EU has in principle accepted divisions between pro- and anti-European political parties in these countries, in practice the communication only takes place with the former regardless of whether the particular party is in power or in opposition.

By their nature political parties in power generate higher level of communication with the institutions of the EU consisted of representatives of the Member States as well as with the European Commission with its supranational character. This in particular applies to the former as it corresponds directly with state authorities responsible for negotiations. Cooperation between the EU institutions and opposition political parties takes place largely through communication with European party groups represented in the European Parliament as well as through opposition parties representations within parliamentary delegations during visits to the EU Member States. EU itself initiates contacts with opposition parties which support European integration processes. The parties (although not in power) are still able to influence vari-

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<sup>21</sup> K. Milivojević, *Saradnja političkih stranaka u Srbiji sa institucijama Evropske Unije*, in: Z. Lutovac (eds.), *Političke stranke Srbije I Evropska Unija*, Friedrich Ebert Stiftung and Fakultet Političkih Nauka, Beograd 2007, p. 107

<sup>22</sup> In case of Serbia, in 2008 the Serbian Progressive Party (Srpska Napredna Stranka SNS) broke away from the eurosceptical Serbian Radical Party (Srpska Radikalna Stranka SRS), soon became the strongest opposition party but accepted in its political program a possibility of Serbian EU integration. For the first time after October 5, 2000 and downfall of Milosevic's regime, a consensus about Serbia's joining the EU was reached among the strongest political parties in Serbia. F. Ejduš, *Cognitive dissonance and security policy in Serbia*, in: *Western Balkans Security Observer* 6 (20), May-August 2011, Belgrade Centre for Security Policy

<sup>23</sup> In Serbia this pro- and anti-European division is somewhat artificial since it is not based on traditional distinction between parties of the left, right and centre. It gets however practical importance if bearing in mind the degree of democratization, speed and effectiveness of the integration process after 2000.

ous decision-making centers within the EU and provide support for their political views. That way they put their governments under pressure if it lacks effective reform enforcement and/or slows down integration processes. The structure and nature of the EU institutions define their relations with different actors in the countries in terms of openness for cooperation. In this sense the most “open” institution is the European Parliament – representing European party groups based on political parties program similarities within the Member States. Political parties in Serbia and Montenegro can cooperate with European party federations with similar programs and thus influence decision making in the European Parliament in cases when decisions are of importance for the countries.<sup>24</sup>

Cooperation of the European political groups with political parties of the non-member countries is carried out in accordance with their political programs. Closer relations are established between parties with similar political programs. Issues related to the process of European integrations are of particular importance for both sides. The main goal of both Serbia’s and Montenegro’s political parties is to provide greater support for faster acquiring full membership in the EU. Most of relevant political parties in these countries have established cooperation with European political groups that correspond with their political programs and enjoys certain position in their structures. In addition to providing regular communication between the parties, an official status in a European political group enables certain potential impact on decision-making within the group that may eventually affect the voting members in the European Parliament. Given the fact that still neither Serbia nor Montenegro are full member states, their political parties have no influence on decisions concerning European policy and regular legislative activities within the European Parliament. In communication with European political groups, parties are focused on lobbying in the field of Common Foreign and Security Policy, in particular its elements that have a direct impact on both countries.

### 18.2.1 Serbia

Some relevant parties in Serbia became members of European party federations (Europarties). Democratic Party (Demokratska Partija DS) was admitted to the Party of European Socialists (PES), a federation of social-democratic, socialist and labourist EU parties in the status of observer in December 2006 (later as a associated member). Serbian Democratic Party (Demokrat-

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<sup>24</sup> K. Milivojević, *Saradnja političkih stranaka u Srbiji sa institucijama Evropske Unije*, ibidem., 108.

ska Stranka Srbije DSS) along with G17 Plus were accepted in the European People's Party (EPP), a federation of conservative, Christian-democratic and people's EU parties in the status of associated member in June 2005.<sup>25</sup> In 2012 DSS resigned from the membership in EPP accusing the former to have been supporting Kosovo's independence. Currently in power – Serbian Progressive Party (Srpska Napredna Stranka SNS) was admitted to the EPP just recently – in spring of 2013. Former SNS's coalition partner – United Regions of Serbia (Ujedinjeni Regioni Srbije URS)<sup>26</sup> also belong to the EPP. Besides parties' membership in supranational federations, typology of party families is founded also based on social conflicts and parties political orientation (Beyme). When party programs are concerned, certain changes in some parties are coming to sight.<sup>27</sup> The example of the Democratic Party (DS) is interesting. The impact of membership in the Socialist International (and later also in PES) is very visible in this party's case. It started to transform from the position of the "civic centre" to social-democratic orientation. DS defined itself as a "modern party of the civic centre" (Electoral Program, 1992). The Program of 1997 offers a more developed definition of the DS as a party of the centre, while in the Program adopted in October 2001 ideological positioning of the party is completely abandoned. With admission to the Socialist International, the Party turns toward social-democratization (Electoral Program of 2007). Although some Serbian parties have not changed their formal programs, pro-European rhetoric is far more present in public appearances.<sup>28</sup> When it comes to the position of the extremist parties in the party systems the moderation or decline of radical nationalist forces has undoubtedly occurred (especially in the case of Serbia). In recent years anti-EU parties such as Serbian Radical Party (SRS) have tended to cluster on the margins of the party system. Some of its leaders (Tomislav Nikolić – current president of Serbia and Aleksander Vučić, deputy prime minister) have persisted and continued to show serious political ambitions, moderated their outlook and moved towards the political centre which resulted in breaking away from SRS, forming a new pro-European party SNS (won Parliamentary and presidential elections in 2012).

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<sup>25</sup> Orlović, S. *Evropski parlament i evropske stranke – perspektiva za Srbiju*, In: Lutovac, Z. (eds.) *Političke stranke u Srbiji I Evropska Unija*, Fakultet Politickih Nauka, Friedrich Ebert Stiftung, Beograd 2007, 140.

<sup>26</sup> Due to the Cabinet reshuffle in July 2013, United Regions of Serbia (URS) was left out the coalition.

<sup>27</sup> *Ibidem*.

<sup>28</sup> *Ibidem*. 141.

### 18.2.3 Montenegro

Contrary to Serbia, the pro-European political stream gained predominance in Montenegro as early as in 1998.<sup>29</sup> It can be said that cooperation between Montenegrin political elites and the EU institutions have been in effect for years (at least from the technical point of view): for example, parts of the political élite have been involved in the process of negotiations on accession to the EU due to their work for the Government and Council for European integration - The (Montenegrin) Council for European integration was established in April 2004 and its head is the President of Montenegro. Its members include the Prime Minister; the President of Parliament; the deputy Prime minister for European integration issues; the Rector of the State University, President of the Montenegrin Academy of Sciences and Arts, President of Constitutional Court and the President of the Supreme Court. PMs and party members responsible for EU matters are involved in the accession process participation in government negotiations with EU representatives; participation in European Parliament political parties' joint bodies; participation in the cooperation between the national and European Parliaments, including parliamentary delegations in the Parliamentary Assembly of the Council of Europe, the Organization for Security and Cooperation in Europe and the Partnership for Peace; finally, participation in the work of the National Parliamentary Board for European Integration.<sup>30</sup> Montenegro has so far had delegations in Parliamentary Assemblies of Council of Europe, Organization for Security and Cooperation in Europe and North Atlantic Treaty Organization Parliamentary Assembly. These delegations are being chosen by a special Committee gathered around the President of the Parliament. According to the electoral results, standing members of the delegations include two members from Government and one member of opposition who is appointed by the opposition. These are the first steps towards participation in decision making at supranational level.<sup>31</sup>

Montenegro began its access negotiations with the EU on June 29, 2012 at an intergovernmental conference in Bruxelles where the negotiations were declared officially open. The first two most important chapters: 23 – Judiciary and Fundamental Rights and 24 – Justice, Freedom and security, opened the negotiations. These two chapters will be open throughout the process and will be closed at the end of the negotiations. On December 15, 2008 Mon-

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<sup>29</sup> Goati, V., *Partije Srbije i Crne Gore u politickim borbama od 1990 do 2000*, Conteco Beograd 2000, 182

<sup>30</sup> Komar, O., Vujović, Z. *Europeization of National Political Parties and Party Systems, The Case of Montenegro*, in: *Politics in Central Europe* 3 (1+2) 2007, 65

<sup>31</sup> *Ibidem*.



tenegro submitted applications for membership; the European Commission gave a positive opinion for the candidacy in November 2010. As Komarov and Vujović notice, once EU candidate status was granted to Montenegro in December 2010, a permanent Montenegrin delegation to European Parliament opens possibilities for stronger influence of European party system on Montenegrin political parties: “The expected consequences are as follows: 1) more clear ideological profiles; 2) ideologically close parties working together more closely; 3) better understanding of European institutions functioning; 4) improvement of party administrations functioning; 5) improvement of the work of members of parliament and their clubs in parliaments; and 6) connecting and receiving support for improving party resources from partners outside Montenegro”.<sup>32</sup>

It should be noticed that regardless of the consensus between major political parties in Montenegro: Democratic Party of Socialists (Demokratska Partija Socijalista Crne Gore DPS), Social Democratic Party (Socijaldemokratska Partija SDP), Democratic Front (Demokratski Front)-Movement for changes (Pokret za Promjene PZP), Serbian National Party (Srpska Narodna Stranka SNS) and the Socialist National Party (Socijalistička Narodna Partija SNP) on mutual goal of joining the EU, it does not mean something more than general rhetorics. Most programs include a mention of the EU or Europe in different contexts but there are no visible organizational adaptations to the process of Europeanization. Nevertheless contacts of Montenegrin parties with their counterparts across the Montenegrin borders are noticeable. Two political parties currently in power – Democratic Party of Socialists (DPS) and Social Democratic Party (SDP) are associated members of Party of European Socialists (PES). Montenegrin Liberal Party (LP) which plays a rather minor role at the political scene is a member of Liberals and Democrats for Europe (ALDE). Due to the internal characteristics of Montenegrin society and politics, the deepening of the pro-European and anti-European cleavages may become more important in the future integration processes.

## 18.3 Conclusions

Both in Serbia and Montenegro this type of membership in the Europarties does not entirely correspond to program contents of these parties or the way they are perceived by the electoral body.<sup>33</sup> However, new relations with

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<sup>32</sup> Komar, O., Vujović, Z. *Europeization of National Political Parties and Party Systems, The Case of Montenegro*, in: *Politics in Central Europe* 3 (1+2) 2007, 68.

<sup>33</sup> Goati, V. *Partijske borbe u Srbiji u postpetohtobarskom razdoblju*, Institut društvenih nauka, Friedrich Ebert Stiftung, Beograd 2006, 48.

European party federations provides them a privileged position in relation to rival parties in their countries concerning European legitimacy and increase of possibilities for further lobbying. It is a signal of recognition for political subjects which bring and share European values and beliefs. For parties in both countries membership in Europarties can represent crucial mechanisms of program and value standardization.<sup>34</sup> Their important role is to explain the importance and necessity for carrying out the reforms in a society that pretends to the EU membership.

In general, political parties in both Serbia and Montenegro converge towards the classic European ideological patterns and, as shown above, are rapidly integrating with the European party federations. It is remarkable that even parties with leaders who felt anti-European just few years ago and with currently comfortable electoral support (the case of Serbian Progressive Party) have actively sought membership in a Europarty. It either shows the strength of the European Union or a lack of alternatives in the parties political strategies. It seems that the former gives more truthful explanation. It should be emphasized that in relation to party politics in these countries both EU involvement in terms of the impact of pan-European structures and processes as a dominant part of the environment in which the institutions operate gradually become (even if it looks only rhetorics) more important component of the parties programs and their overall political strategies for the future.

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<sup>34</sup> P. Lewis, Z. Mansfeldová, (eds.), *The European Union and Party Politics in Central Europe*, ibidem. 263.

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