

9 DICEMBRE 2015

A New Uniform Electoral Procedure
to Re-Legitimate the Process of
Political Integration in Europe.
About the EU Parliament Resolution
of 11 November 2015 on the
Reform of the 1976 Electoral Act

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A New Uniform Electoral Procedure to Re-Legitimate the Process of Political Integration in Europe. About the EU Parliament Resolution of 11 November 2015 on the Reform of the 1976 Electoral Act^{*}

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Table of contents: 1. Introduction. 2. Main issues of the European political representation. 3. Towards European political awareness. 4. Reforming the electoral law of the EU. 5. “Much ado about nothing” or a fundamental step towards truly “pan-European” elections?

1. Introduction

The starting point of my presentation is a question strictly related to the title I have chosen for my speech: “In what sense the process of political integration in Europe should be re-legitimated?”; i.e. “Isn’t it legitimate anymore?” or, perhaps, “Isn’t it legitimate enough?”.

From a Constitutional-Law perspective, which is my own, it is clear that the issue I am referring to with this question is the well-known, persistent, inadequate democratic legitimacy of the Union decision-making process. Indeed, it seems has not yet been resolved, in spite of the strengthening of the role of the Parliament after the entry into force of the Treaty of Lisbon and the new rules on the functioning of the Union¹.

^{*} Lecture held at the International Conference “Blazing the trail of a new narrative for a new Europe”, organized by the “European Institute” of the London School of Economics and “Globernance - Instituto de Gobernanza democrática” (Bilbao-Spain, 30 November -1 December 2015).

¹ See A. MANZELLA, *Verso un governo parlamentare euro-nazionale?*, in *Il sistema parlamentare euro-nazionale*, A. Manzella-N. Lupo eds., Giappichelli-Torino, 2014, p. 5 ss.

Actually, it is certain that major progress has been made on this issue compared to the previous Treaties. Fundamentally it is a result of the expansion of the legislative powers of the Parliament², which – I remind myself - is the only European institution with direct democratic legitimacy and which has now gained an equal status as co-legislator with the Council in most areas of the Union's policy. So democracy seems to be respected, at least from a “formal” point of view, as it has long been argued by who finds the “essence” of democracy in the circumstance that in the very heart of the political decision-making process the constitutional setting provides bodies whose members are directly elected by the citizens through their votes and thus are representative of the people³. But, this same notion of political representation and the concept of representativeness, when transposed to the European level, show some symptoms of tension, due to certain issues which have yet to be resolved⁴.

2. Main issues of the European political representation

The first unresolved issue concerns the failure to create a structured and stable system of genuinely European political parties with the result that the entire management of European election campaigns is left in the control of national political parties⁵. Undoubtedly, some recent progress in this direction derives from the new rules on the “Statute and funding of European political parties” - adopted in 2003 (Reg. EC No. 2004/2003, 4 November 2003)⁶, amended a first time in 2007 (Reg. EC No.1524/2007, 18 December 2007)⁷ and again in 2014 (Reg. Eu, Euratom No. 1141/2014, 22 October 2014, entering into force in 2017)⁸, finally granting European Political Parties a uniform European legal personality⁹. However, European politics still lacks a truly

² C. FASONE–N. LUPO, *Il Parlamento europeo alla luce delle novità introdotte nel Trattato di Lisbona e nel suo regolamento interno*, in *Studi sull'integrazione europea*, VII, 2012, p. 329 ss.

³ H. Kelsen, *Essenza e valore della democrazia*, in *La democrazia*, Il Mulino-Bologna, 1995, p. 128 ss.

⁴ As already argued, see A. CIANCIO, *Nuove strategie per lo sviluppo democratico e l'integrazione politica in Europa. Relazione introduttiva*, in *Nuove strategie per lo sviluppo democratico e l'integrazione politica in Europa*, A. Ciancio ed., Aracne-Roma, 2014, p. 14 ss.

⁵ M. R. ALLEGRI, *I partiti politici a livello europeo fra autonomia politica e dipendenza dai partiti nazionali*, in *federalismi.it*, 2013, n.22, p. 29 ss.

⁶ OJ L 297, 15.11.2003, p. 1. For further details G. GRASSO, *Partiti politici europei*, in *Dig. Disc. Pubbl., Agg.*, UTET-Torino, 2008, p. 615 ss.

⁷ OJ L 343, 27.12.2007, p. 5. See A. CIANCIO, *I partiti politici europei e il processo di democratizzazione dell'Unione*, in *federalismi.it*, 2009, n.9, p. 19 ss.

⁸ OJ L 317, 04.11.2014, p. 1. See M.R. ALLEGRI, *Il nuovo regolamento sullo statuto e sul finanziamento dei partiti politici europei: una conclusione ad effetto ritardato*, in *Riv. AIC*, 2014, n.2, p. 1 ss.;

⁹ See A. CIANCIO, *Sistema europeo dei partiti e integrazione politica nell'UE*, in *Forum di Quaderni costituzionali. Rassegna*, 11 September 2015.

European ‘trait d’union’ between voters and institutions. This function should be provided by European parties, debating the general interests of the Union and conveying the political will of the electorate into decision-making bodies. Rather, it is still national parties that nominate candidate MEPs for elections, even though the Treaty of Lisbon changed their mandate, making them direct representatives of the Union citizens¹⁰ instead of “*representatives of the peoples of the States brought together in the Community*”, as previously laid down by the Treaty establishing the European Community¹¹. This anomaly slows down the process of political integration in Europe, not least because it fails to duly bring to the electorate the different political visions and interests concerning the Union, its role in the global context, its policies, its future, etc. Rather, European election campaigns are run first and foremost in national political arenas, leaving electors in the dark about what European policies will actually result from their votes. The circumstance that until today European citizens still vote for the European Parliament through national parties instead of real European parties represents a sharp contradiction in the Parliament’s own nature as a truly European body and an equal co-legislator in the European Union’s institutional set-up.

There have been only weak positive signs to enhance the creation of a European political party system, dating to 2014 before the parliamentary elections in the form of candidatures for the post of Commission President proposed jointly by national political parties with political affinities, as a sign of shared transnational policies¹². Actually, it acted as a reinforcement of the political role of the Parliament in its relationship both with the Council - due to the fact that the Treaty of Lisbon gave the European Parliament the right to elect the Commission President, instead of merely giving its consent to the Council’s choice¹³ - and furthermore with the Commission itself, in line with a more parliamentary type of governance of the EU¹⁴. However, despite all efforts, the leading candidates were unknown to the majority of Union citizens and for many voters even the affiliation of the national parties to the European families was unclear or even unknown.

¹⁰ Articles 10.2 and 14.2 TEU.

¹¹ Article 189.1 TCE.

¹² As argues, among others, M. CARTABIA, *Questa volta è diverso*, in *forumcostituzionale.it*, 2014, n.11.

¹³ From this point of view G. BONVICINI – G.L. TOSATO – R. MATARAZZO, *I partiti politici europei e la candidatura del presidente della Commissione*, in *Il Diritto dell’Unione europea*, 2009, n.1, p. 182 ss.

¹⁴ In this line also C. CURTI GIALDINO, *L’elezione di Jean-Claude Juncker a presidente della Commissione europea: profili giuridico-istituzionali*, in *Le elezioni del Parlamento europeo del 2014*, B. Caravita ed., Jovene -Napoli, 2015, p. 29 ss. More generally on the topic, also, R. BIN – P. CARETTI – G. PITRUZZELLA, *Profili costituzionali dell’Unione europea*, Il Mulino – Bologna, 2015, p. 359.

The second major unresolved issue affecting representativeness (closely linked to the former) concerns the persistent lack of a uniform electoral system for the European Parliament, despite long-standing exhortations by the European institutions. Whilst these admonishments have been expressed legally - since the Treaty of Rome itself in 1957, that already envisaged the possibility of elaborating a uniform electoral procedure based on direct universal suffrage, to current Article 223, par.1 TFEU - their implementation has not progressed beyond the formulation of certain highly-general and commonly-shared principles which have been incorporated in single acts of national legislation¹⁵. No comprehensive agreement on a truly uniform electoral procedure has yet been achieved and only some convergence of electoral systems has taken place gradually among Member States, as a result of the adoption of secondary legislation (such as Council Directive 93/109/EC). The only reform of the Electoral Act dates back to 2002¹⁶ requiring Member States to abolish the dual mandate for MEPs and to conduct elections on the basis of proportional representation using either a list system or a single transferable vote system.

It means that up until today the allocation of seats in the European Parliament is not determined by one true European election, but rather through 28 national elections.

But, to give effectiveness to the European democracy, unitary lists of candidates, grouped on the basis of shared European political programs elaborated by actual European political parties, should be presented to all European voters and MEPs should be elected on the basis of a uniform electoral procedure across the whole Union within transnational constituencies.

Nevertheless, up until now European elections are still governed for the most part by national laws, electoral campaigning remains national and European political parties are still too weak - being only the “projection” outside the institution of political groups existing inside the Parliament by the reunion of MEPs sharing only some generic political affinities¹⁷ - to fulfill their constitutional mandate and “*contribute to forming European political awareness and to expressing the will of citizens of the Union*”, as required by Article 10.4 TEU.

¹⁵ See G. CHIARA, *Elezioni del Parlamento europeo e nuovi assetti istituzionali comunitari: guardando, con un po' di scetticismo, oltre le legislazioni nazionali*, in *Nuove strategie per lo sviluppo democratico e l'integrazione politica in Europa*, cit., p. 77 ss.

¹⁶ Council Decision 2002/772 EC-Euratom.

¹⁷ More widely S. BARONCELLI, *I gruppi parlamentari nell'esperienza del Parlamento europeo*, in *Rappresentanza politica, gruppi parlamentari, partiti: il contesto europeo*, S. Merlini ed., Giappichelli-Torino, 2007, I, p. 7 ss.; and A. CIANCIO, *I gruppi parlamentari. Studio intorno a una manifestazione del pluralismo politico*, Giuffrè-Milano, 2008, p. 70 ss.

3. Towards European political awareness

The outcome of the above-described system of European elections is that, even if the democratic legitimacy of the Parliament, and more widely, democracy itself, is “formally” respected at European level, it probably lacks effectiveness. Indeed, if elections are the main instrument of democratic participation, then the current functioning of European elections points out to an unbridgeable gap between the electorate and the European Parliament, exacerbated by the fact that Union citizens are still prevented from fully take part in European political debates¹⁸.

This gap contributes to explain the trouble which Europeans have in understanding, and hence living to the full, their own status as European citizens, alongside the traditional citizenships of their respective countries of origin. It also contributes to explain the widespread skepticism for the process of political integration in Europe that led in May 2014 to the most anti-European Parliament ever elected¹⁹ in history since 1979, year of the first direct election of this Institution²⁰. Skepticism comes together with a recent increase in mutual distrust between citizens of countries that are still economically stable and those whose countries run large budget deficits, along with complaints from both groups of citizens (although for opposite reasons) towards “technocrat” decisions taken in Brussels²¹. Actually the common perception is that in Europe there is still too much technocracy, too much bureaucracy, too much lobbying²² and too little politics, as clearly shown also during the last Greek crisis in July 2015, when the Parliament seemed to have “disappeared” from the scene and left at the corner in the complex management of the crisis²³, whilst other institutions played the role of main characters, first among them the European Central Bank despite its low accountability and lack of political legitimacy²⁴.

¹⁸ As already argued by D. GRIMM, *La forza dell'UE sta in un'accorta autolimitazione*, in *Nomos*, 2014, n. 2, p. 2 ss.

¹⁹ For the results of 2014 elections see the essays collected in *Le elezioni del Parlamento europeo del 2014*, cit., p. 3 ss.

²⁰ Dec. 1976/787 CECA/CE/ Euratom.

²¹ See A. CIANCIO, *How we might recover from the economic and social crisis through European integration deepening?*, in *Przegląd Prawa Konstytucyjnego*, 2014, n. 3, p. 162 ss.

²² On this issue S. SASSI, *I rappresentanti di interessi nel contesto europeo. Ruolo e sinergie con le istituzioni*, Giuffrè-Milano, 2012; and ID., *La regolamentazione della rappresentanza di interessi nell'Unione europea. Le (timide) novità introdotte dal nuovo accordo interistituzionale*, in *Dir. Pubbl. Eur. – Rass. On-line*, 2015.

²³ In this line B. CARAVITA, “Parlamentarizzare” la crisi greca, in *federalismi.it*, 2015, n.14.

²⁴ See A. CIANCIO, *I nodi della governance europea: euro, politica fiscale, bilancio unico dell'Unione. Per una nuova legittimazione democratica della BCE*, in *federalismi.it*, 2015, n. 16.

In order to win back European citizens' trust towards the Union, it is necessary to place politics at the core of the decision-making process in Europe, through the Parliament itself, which, being the only political body directly elected, must necessarily be granted public-policy-decision powers. However, such evolution cannot take place unless the Parliament becomes “substantially” representative of the political will of European voters, through a major strengthening of the European dimension of European elections²⁵. The alternative is the spreading social perception of an irreversible decline of the European Union²⁶, perception which is fostering the rise of populisms, nationalisms and xenophobia, as the big challenges of immigration and international terrorism are showing right now.

It is therefore urgent to “re-legitimate” the process of political integration in Europe mainly giving a new meaning to the European political elections, i.e. the time has come to give a new truly supranational dimension to the European elections themselves.

4. Reforming the electoral law of the EU

Big hopes in this sense are laid in the recent Proposal for amending the 1976 rules on the election of the MEPs, approved by the European Parliament last November, 11th and currently waiting for the Council's final decision. Resorting to its power laid down in Article 223.1 TFEU, the Parliament initiated a reform of its electoral procedure well ahead of the 2019 elections, with the ambitious aim of *“enhancing the democratic and transnational dimension of the European elections and the democratic legitimacy of the Union decision-making process, reinforcing the concept of citizenship of the Union and electoral equality, promoting the principle of representative democracy and the direct representation of Union citizens in the European Parliament (...), improving the functioning of the European Parliament and the governance of the Union, making the work of the European Parliament more legitimate and efficient, enhancing the effectiveness of the system for conducting European elections, fostering common ownership among citizens from all Member States, enhancing the balanced composition of the European Parliament, and providing for the greatest possible degree of electoral equality and participation for citizens of the Union”*²⁷.

²⁵ A. CIANCIO, *Quali prospettive per l'integrazione politica in Europa dopo le elezioni?*, in *federalismi.it*, 2014, n. 11, p. 1 ss.

²⁶ About the distance between the social perception, on the one hand, and the effective implementation, on the other hand, of the European legal order, recently B. CARAVITA, *Quanta Europa c'è in Europa?*, Giappichelli-Torino, 2015.

²⁷ Point 1 of the EU Parliament Resolution of 11 November 2015 on the Reform of the electoral law of the European Union [2015/2035 (INL)], in www.europarl.europa.eu.

Actually, a big part of the proposed reforms concerns the need to ensure that European citizens exercise their right to vote (and to stand as a candidate in elections for the EU Parliament) under comparable conditions across Member States, in accordance with democratic principles – and equality above all - irrespective both of their national citizenship and their country of residence. Indeed, even though European citizenship includes in itself the right of Union citizens to participate in European (and municipal) elections in any Member State of residence under the same conditions as nationals of that State²⁸, different national electoral rules still make the effective implementation of this principle problematic at best.

For example, the deadlines for finalizing electoral lists ahead of the European elections vary greatly among Member States (currently ranging from 17 to 83 days), and this variance puts candidates and voters across the Union in an unequal position when it comes the time they have to campaign or to decide for their voting choice. Furthermore not all Member States give their citizens the possibility of voting from abroad and - among those that do - the conditions for deprivation of the right to vote vary greatly, whereas granting all Union citizens residing outside the Union the right to participate in elections would contribute to electoral equality. Besides, the existing European electoral rules allow for a non-obligatory threshold not exceeding 5% of the votes cast and some Member States - but not all - have availed themselves of this opportunity introducing a threshold between 3% and 5%. Moreover the minimum age for eligibility across the 28 Member States varies both for standing as a candidate and for voting, due to the divergent constitutional and electoral traditions of the Member States, while harmonization of the voting age as well as the legal age for candidates is considered highly desirable to provide Union citizens with real voting equality and to avoid discrimination in the right to participate in the democratic process, “the most fundamental area of citizenship”²⁹.

Thus several new rules (submitted to the Council for approval by unanimity and then to be ratified by the Member States according to their respective constitutional requirements) concern the right of all European citizens to participate in the democratic life of the Union on an equal basis, also between men and women. With this goal the Parliament determines: the introduction of a common

²⁸ More generally on this topic, *ex multis*, V. LIPPOLIS, *La cittadinanza europea*, Il Mulino-Bologna, 1994; M. CARTABIA, *Cittadinanza europea*, in *Enc. Giur.*, Treccani-Roma, VI, 1995; C. PINELLI, *Cittadinanza europea*, in *Enc. Dir.*, Ann., Giuffrè-Milano, I, 2007, p.181 ss.

²⁹ Lett. AC of the EU Parliament Resolution of 11 November 2015 on the Reform of the electoral law of the European Union [2015/2035 (INL)], in www.europarl.europa.eu.

deadline of twelve weeks before election day for establishing lists at the national level (Art. 3a), in order to enhance electoral equality by providing candidates and voters across the Union with the same period to prepare and reflect ahead of the vote; likewise, the introduction of a common deadline of eight weeks before the first election day for finalizing the electoral rolls (Art.3b); the introduction of an obligatory threshold ranging between 3% and 5% for the allocation of seats (Art.2): this measure, in particular, is important to avoid further fragmentation and therefore to safeguard the functioning of the Parliament. Furthermore, the Parliament suggests Member States to allow postal (Art.4b), electronic and internet voting, in order to increase participation in the election of even more citizens as well as making it easier, especially for people with reduced mobility and for those living or working in a Member State of which they are not citizens or in a third country, provided that also appropriate measures are introduced both to prevent any fraud in using these new means of voting and to ensure reliability of the results, secrecy of the vote and data protection (Art. 4a). Indeed, the Parliament proposes that all Union citizens, including those living or working in a third country, be granted the right to cast their vote in elections for the European Parliament by encouraging Member States to take adequate measures to ensure the exercise of this right (Art. 9a); however urging Member States to coordinate their administrative systems in order to prevent voters from voting twice in two different Member States (Art. 9b).

Moreover the Parliament highlights the importance of an increased presence of women in political decision-making, and consequently encourages Member States to take measures to promote gender equality throughout the whole electoral process³⁰, underlining the need of gender-balanced electoral lists (Art.3d). As a future step, it also recommends that Member States consider the possibility to harmonize the legal age for voters at 16, in order to further enhance electoral equality among Union citizens and moreover to increase the interest in European issues among youngest voters.

Other provisions concern the requirement to harmonize the time for closing the polling in all Member States (at 21.00 hours CET of Sunday, Art. 24) and, correspondingly, the time of communicating the first official projections of results (Art. 25) to avoid influencing the final results of elections. New incompatibilities for the MEPs are also introduced (Art. 14). Furthermore, the

³⁰ On this issue, A. CIANCIO, *Parità di genere e partecipazione politica nell'Unione europea. Profili generali*, forthcoming.

necessity to ensure democratic and transparent procedures for the selection of candidates by all the political parties is also required (Art. 3c).

5. “Much ado about nothing” or a fundamental step towards truly “pan-European” elections?

At first sight, the proposed changes to the 1976 Electoral Act finally approved by the Parliament - among the vast array of potential reform measures scrutinized by the Co-Rapporteurs Hübner and Leinen, delegated for the Final Report - could appear not so revolutionary as the solemn statements at the end of the preliminary examination in the Committee on Constitutional Affairs led to imagine. Thus, we may wonder: “much ado about nothing”?

Actually, considering the *fil rouge* of this presentation, the approved Resolution seems quite important.

Indeed, it shows the will to enhance the connection that ought to exist between the electoral procedure for the European Parliament and the role of European Political Parties in the management of elections, with the aim to strengthen democratic development and political integration in Europe, without forgetting the new rules for the choice of the President of the European Commission, now strictly dependent on the results of elections as enshrined in the Treaty of Lisbon³¹.

From this perspective, the drafters have highlighted the need to show the voters, during all the campaigns for Parliament elections, the true “political” meaning of their vote beyond the choice for a particular national party, due to the connection between the vote itself and its impact on the size of a European political group inside the Parliament as well as implicitly on the election for the Presidency of the European Commission. For these reasons, it has been argued that the procedure for the selection of the leading candidates for this position should be an integral part of the election campaigns, constituting an important aspect of it, because the nomination both provides a link between votes cast at national level and the European dimension and enables European citizens to be informed about alternative political programs. Furthermore, the designation of leading candidates for the office of President of the Commission by open and transparent procedures reinforces democratic legitimacy and strengthens accountability. Consequently it has been urged

³¹ See C. CURTI GIALDINO, *Elezioni europee del 2014 e scelta del candidato alla presidenza della Commissione europea: i primi passi della procedura*, in *federalismi.it*, 2014, n.11.

that a common “deadline for the nomination of candidates by European political parties should be codified in the Electoral Act”³². This term has been set in 12 weeks in advance of elections (Article 3f), so as to enable the presentation of electoral programs to the voters and the organization of political debates among the candidates.

Moreover, since European political parties are best placed to “*contribute to forming European political awareness*”³³, they should therefore play a stronger role in the whole management of European elections and their visibility should be increased. With this aim, it has been established to place their names and logos on the ballot papers and wherever possible on posters and other materials used in election campaigns, in conjunction with those of national parties affiliated with them. This kind of arrangements is mainly addressed to highlight the link between national parties and the big European political families, since those measures would make European elections more transparent and improve the democratic way in which they are conducted, as citizens will be able to clearly connect their vote to the impact it has on the political influence of European political parties and their ability to form political groups inside the Parliament³⁴. For the same reasons, the Member States are now encouraged to facilitate the provision of those affiliations on television and in other media and electoral campaign materials shall include a reference to the manifesto of the European political party, if any, to which the national party is affiliated (Art. 3e).

Last, but not least, a notable amendment to the 1976 Electoral Act is laid down in Article 2a of the approved Resolution establishing that “*the Council decides by unanimity on a joint constituency in which lists are headed by each political family’s candidates for the office of President of the Commission*”. Actually from my perspective, as I argued before, this is precisely the rule that would both greatly strengthen European democracy boosting the role of the European political parties in the elections and also mostly contribute to “create a pan-European moment”, enhancing the common European character of the European elections. Indeed, this purpose would be further served by lists of candidates evenly led by the leaders of the big European political families competing for the President post within a joint constituency.

³² Lett. O of the Draft Report approved last 30 of June 2015 by the Constitutional Affairs Committee of the EU Parliament [2015/2035 (INL)] in www.europarl.europa.eu.

³³ Article 10.4 TEU.

³⁴ For more details, see A. CIANCIO, *Partiti politici e gruppi parlamentari nell’ordinamento europeo*, in *Pol. Dir.*, 2007, II, p. 157 ss.



Probably the Proposal represents only an initial step to provide new meaning for the European elections, but nevertheless it seems to me that, if finally approved by the Council, it could be a good starting point to “blaze the trail of a new narrative for a new Europe”.