European Union electoral law
Current situation and historical background

SUMMARY

The European Parliament did not always enjoy the powers and democratic legitimacy it does now. This is clear from a quick glance at how Parliament has evolved. Starting life as an Assembly – a name reminiscent of institutions linked to international diplomacy – with members simply appointed by national parliaments of Member States, it grew into an institution, the European Parliament, directly elected by citizens and now the only one representing EU citizens directly. This transformation has taken several decades.

Despite Parliament’s increased role, the current electoral rules remain only partly harmonised, to the extent that there is no uniform electoral process for all Member States. The current situation is that certain fundamental principles are enshrined in the 1976 Electoral Act, but many aspects are regulated by national law. This lack of a uniform electoral process also leads to differences in treatment between EU citizens depending on their country of origin and potentially deprives European elections of a truly European dimension.

Several reforms of the EU electoral system have been attempted over the years, but not all have resulted in legislation. The introduction of a transnational constituency in particular is a perennially controversial issue. Some consider it a step towards the genuine ‘Europeanisation’ of elections, others believe that it could increase the distance between the public and elected representatives.

While the co-existence of differing electoral rules under the aegis of common European principles is probably destined to last, the latest reform – adopted in 2018 – will bring in mechanisms designed to increase public participation in the EU political debate and make the appointment of one of the top EU leadership roles, president of the European Commission, more ‘political’, by means of the Spitzenkandidaten process.

In this Briefing

- Current EU electoral rules
- Legislative procedure
- European Parliament and direct elections
- Adopted and attempted reforms
- Composition of Parliament
- ‘Europeanisation’ of the electoral
Current EU electoral rules

The currently applicable rules on the election of Members of the European Parliament are contained in the Electoral Act of 1976 as amended in 2002. Council Decision (EU, Euratom) 2018/994 is a further modification of the 1976 Electoral Act, which will enter into force once all Member States have approved its provisions in accordance with their own constitutional requirements (Article 223 of the Treaty on the Functioning of the European Union – TFEU). This process is still ongoing; as of the May 2019 elections, Germany, Spain, Cyprus and Romania had still to approve it. The evolution in the rules is shown in Table 1 below.

Far from providing a harmonised or a uniform electoral procedure applicable in all Member States, EU electoral rules set out common principles or a common set of boundaries, giving the legislation of Member States a certain latitude. In this respect, the EU's electoral system has been defined as polymorphic, deriving from a combination of national and EU rules. As a result, there is no harmonisation across Member States of the rules on, for instance, the minimum age for active or passive voting or practical methods for casting a vote (post, embassy, e-voting); even the optional or obligatory nature of the right to vote remains a matter for national legislation. In addition, a further aspect that has repercussions on the vote for the European Parliament but that depends on national law is disenfranchisement, i.e. the act of depriving a citizen of the right to vote after a protracted period of residence outside their home State. Although the European Parliament has encouraged Member States to do away with this practice, and despite disenfranchisement having been the object of judicial scrutiny by the European Court of Human Rights (Schindler v UK) the conditions for awarding and withdrawing citizenship, and the rights and obligations pertaining to it, remain a matter of national law. The lack of a uniform electoral procedure creates discrepancies or even differential treatment of EU citizens, depending on their country of origin. Although Article 223 TFEU offers a clear legal basis for going beyond 'common rules' to establish a truly uniform electoral procedure, this has not been achieved yet, to the detriment both of a genuinely 'European' electoral process and of equal treatment of EU citizens.

The current rules set out in the 1976 Electoral Act consist of 16 detailed provisions (including additions to be made by Council Decision 2018/994 once the approval process is completed in all Member States) providing for the following:

- General provisions (Articles 1 and 2): the obligation to elect members as representatives of Union citizens; the obligation to use a proportional voting system – either a list system or a single transferable vote can be used, leaving Member States free to determine the procedure applicable in cases where a preferential list is used; the free and secret nature of elections by direct universal suffrage; Council Decision 2018/994 qualifies Members of the European Parliament as representatives of the Union citizens;
- Constituencies and minimum threshold (Articles 2 and 3): freedom for Member States to establish constituencies or to decide on the subdivision of the electoral area, provided the proportional nature of the voting system is preserved; freedom to set thresholds for the allocation of seats of no higher than 5 %; Council Decision 2018/994 provides that as from the first elections following the entry into force of the Decision (i.e. most likely the 2029 European elections), where the list system is used, Member States are obliged to set a minimum threshold of between 3 % and 5 % of valid votes for the allocation of seats in constituencies comprising more than 35 seats (at present this change would concern only six Member States);
- Creation of lists and visibility of European political parties (new Articles 3a and 3b): Council Decision 2018/994 adds two new articles providing that where national law sets a deadline for the submission of candidacies, this should be at least three weeks before the date fixed for the election period; Member States may allow the logo and name of the European political parties to which national parties or candidates are affiliated to appear on the ballot;
• Methods of voting (Article 4a): Council Decision 2018/994 adds a new article giving Member States the freedom to offer advance voting, postal voting, electronic or internet voting; in doing so they must be sure to uphold the relevant EU rules on the protection of personal data, voting secrecy and reliability of results;

• Term of office and mandate (Articles 5 and 6): Members' five-year term starts from the opening of the first session after each election, the mandate for all members ends at the same time; members vote on an individual basis, their mandate is independent, and they are subject to the Protocol on Privileges and Immunities of 8 April 1965;

• Incompatibilities (Article 7): the office of Member of the European Parliament is incompatible with that of member of government, Commissioner, judge, advocate-general or registrar of the Court of Justice of the EU or the Court of First Instance, Ombudsman, or a member of the following institutions, bodies or entities: Board of Directors of the European Central Bank (ECB), Court of Auditors, Economic and Social Committee, Committee of the Regions, member of bodies set up by the EU Treaties for the management of EU funds or carrying out out of permanent direct administrative tasks, board of directors, management or staff of the European Investment Bank, or an active official or servant of the EU institutions, other specialised bodies or the ECB. Since 2004, being a member of a national parliament has also been incompatible with being an MEP. If a cause of incompatibility occurs during a Member's mandate, he or she should be replaced. National legislation may provide for further causes of incompatibility;

• Electoral procedure (Article 8): parts not covered in the Electoral Act itself should be governed by national law, without affecting the proportional nature of the voting system;

• Exercise of the right to vote (Articles 9 and 9a): double voting is prohibited and Member States should guarantee the respect of this principle with dissuasive, proportionate and effective penalties; Council Decision 2018/994 inserts a provision giving Member States the option of allowing their citizens to vote from a third country, in accordance with national rules;

• Monitoring of electoral rolls (Article 9b): Council Decision 2018/994 inserts a new article imposing on each Member State the obligation to designate a contact authority responsible for exchanging data on voters and candidates with its counterparts in other Member States, this authority should also, in accordance with EU data protection rules, transmit information on Union citizens who have been entered on the electoral roll or are standing as candidates in a host state, no later than six weeks before the first day of the electoral period;

• Electoral period (Articles 10 and 11): the exact time and date of election is fixed by each Member State, however elections are held within an 'electoral period' which is the same for all Member States, starting on a Thursday and ending on a Sunday; the results of the vote count may not be made officially public until polling has closed in the last Member State to vote;

• Determination of the 'electoral period' (Article 11): the power to determine the first 'electoral period' lays with Council acting unanimously, after consultation of Parliament; subsequent elections must take place at the end of the final year of the five-year period of Parliament's mandate. However, should it prove to be impossible to hold elections in that period, the Council, after consultation of Parliament, may determine another 'electoral period' that must not be more than two months before or one month after the one that would have fallen at the end of the five-year period; Parliament meets, without needing to be convened, on the first Tuesday one month after the end of the electoral period; until that first sitting the outgoing Parliament retains its powers;

• Seating of new members of Parliament (Article 12): credentials must be verified by the European Parliament. For that purpose it must rely on the results declared by Member States and must rule on any dispute arising from the application of the Electoral Act other than those arising out of the national provisions to which the Electoral Act refers;
• Filling vacant seats (Article 13): the cause of vacancy of a seat can result from the death, resignation or withdrawal of the mandate of a Member. In such situations, Member States must lay down the procedures to fill any seat that falls vacant during the five-year term of office. Where the law of a Member State provides for the withdrawal of the mandate of a member, the mandate shall end accordingly, however national authorities must duly inform Parliament; if the cause of the end of the mandate is death or resignation, the European Parliament should inform the national authorities immediately;

• Power to adopt measures implementing the Electoral Act (Article 14): this power lies with the Council, acting unanimously, on a proposal of the Parliament after consultation of the Commission. Council should endeavour to reach an agreement with Parliament in a conciliation committee composed of the Council and representatives of Parliament.

**Legislative procedure**

The procedure for determining or amending the EU’s electoral rules is enshrined in Article 223 TFEU. This is one of the few cases where Parliament enjoys the power of legislative initiative. Parliament can make a proposal either to establish a uniform procedure or, following the changes introduced by the Treaty of Amsterdam (1999), to introduce rules in accordance with principles common to all Member States.

The Lisbon Treaty (2007) enhanced the European Parliament’s role as representative of the EU’s citizens; it also modified the procedure with which the electoral system could be amended, leaving the monopoly of legislative initiative with Parliament. Before the Lisbon Treaty, Article 190 of the Treaty establishing the European Community – TEC (as modified by the Amsterdam Treaty) provided that the Council, acting unanimously, could lay down the appropriate provisions after obtaining the assent of the European Parliament. Once this procedure at EU level was accomplished, the Council would recommend Member States adopt those rules in accordance with their constitutional requirements. Therefore, before Lisbon, the adoption of amendments to the Electoral Act involved a recommendation from Council to Member States, without any apparent binding effect.

With the entry into force of the Lisbon Treaty (2007), Article 223 TFEU clearly defined the procedure within the Council as a special legislative procedure whereby the Council acts unanimously. Adoption in Council requires prior consent of Parliament, with the latter acting by majority of its component members. A change in the legislative procedure also brought a change to the legal nature of the electoral law, from an international agreement between Member States beyond the scope of review by the Court of Justice prior to Lisbon, to an act of secondary legislation, albeit of a peculiar nature. The Lisbon Treaty did not change, however, the need for the legislative act to be approved by the Member States according to their constitutional requirements (‘ratification’). In addition to the aforementioned procedure, according to Article 4 of Protocol 2 on the application of the principles of subsidiarity and proportionality, Parliament is obliged to forward its draft legislative acts to national Parliaments.

The most recent amendments to the 1976 Electoral Act were proposed by Parliament in a resolution of 11 November 2015, based on a legislative report of the Committee on Constitutional Affairs (AFCO) (Rapporteurs: Danuta Maria Hübner (EPP, Poland) and Jo Leinen (S&D, Germany)). The process of discussion and finally adoption within Council was rather long, with an agreement reached in Coreper on 7 June 2018. Parliament gave its consent to the draft Council decision on 4 July 2018. Finally, on 13 July 2018, the Council adopted Council Decision 2018/994 with the abstention of two Member States (Belgium and the United Kingdom). Pending Council’s adoption, seven parliamentary chambers submitted reasoned opinions on the draft legislative act, based on Protocol No 2 on subsidiarity and proportionality, contesting compliance with the principle of subsidiarity. Although at EU level the procedure is complete, for the provisions of Decision 2018/994 to enter into force, Member States must ratify it in accordance with their constitutional
requirements. As the ratification process was incomplete, Council Decision 2018/994 could not be applied at the May 2019 European elections.

**European Parliament and direct elections**

The path leading to the European Parliament becoming a directly elected assembly lasted almost two decades. The idea of a directly elected assembly dated back to the Hague Congress in 1948, and was supported by supporters of the federalist movement, such as Spinelli and Brugmans. The need for an assembly with direct representation, already contained in the founding Treaty of the European Coal and Steel Community (1952), became more palpable with the establishment of the European Economic Community (EEC) (1957). The Dehousse report (1960) addressed the need to elect the Assembly by direct universal suffrage (instead of delegations from national parliaments), but it also highlighted the problems of such an endeavour (incompatibilities, number of MEPS, etc.). The Dehousse report included a ‘draft Convention’ proposing an Assembly with 426 members, elected by universal suffrage for a five-year mandate, without dealing with the issue of the extension of the Assembly’s powers, although this aspect had acquired some relevance in the debate surrounding the democratic legitimacy of the Assembly. The draft Convention explored the potential ‘political’ benefits of introducing direct universal suffrage. The Dehousse report was not approved by Council, owing not least to the political leadership in some Member States being more inclined to an intergovernmental approach to European integration (e.g. President de Gaulle of France).

In the aftermath of de Gaulle’s resignation, the political landscape changed and with the perspective of a further enlargement to the United Kingdom, Denmark and Norway, direct European elections became a topical political issue. Members of the Assembly had decided in 1962 to refer to their institution as the European Parliament, although it was not until the 1986 Single European Act that this change was incorporated in the Treaties. The Vedel report (1972) remained quite cautious as regards expanding the Assembly’s powers, as well as on establishing a uniform electoral law. Until the mid-1970s the process leading to democratic legitimacy of the Assembly remained blocked owing, once again, to national approaches, such as French President Pompidou continuing to follow de Gaulle’s political line, and a certain scepticism regarding a more powerful Parliament from the United Kingdom. Changes in the political leadership in Germany and France, with Chancellor Schmidt and President Giscard d’Estaing, provided positive impetus for the Patijn report (1974). On the basis of this report, the Assembly adopted a draft Convention (1975), 2 containing practical details on seats, length of term, the electoral system and transitional provisions. However, it took some time and some political pressure from Parliament before the Council approved the **Electoral Act on 20 September 1976**.

The first elections of representatives of the European Parliament by direct universal suffrage finally took place between 7 and 10 June 1979. The elections were surrounded by much expectation as regarded their impact for the future of European integration. However, to the disappointment of federalists and despite the media coverage, which failed to depart from purely national issues, the turnout was 62 %, lower than expected. Although the 1984 European elections did not generate the expected turnout either, it has been acknowledged 3 that direct elections to the Parliament produced positive effects. First, they gave institutional autonomy to the Parliament, which could now claim power of representation on its own in the same way as national parliaments. Second, they gave Parliament some institutional independence vis-à-vis the mediation role of the Commission, allowing Parliament to enter dialogue directly with the Council. Third, they gave clearer democratic legitimacy to the institution, which could now claim to be the only one to represent European citizens, as opposed to nations or Member States.

**Adopted and attempted reforms**

The Electoral Act of 1976 was just the start of a journey meant to achieve the creation of a uniform electoral procedure in all Member States. At least, this was the original intention of Article 138(3) of
the Treaty establishing the European Economic Community. Instead, what was achieved was a set of common denominators, which were far from the uniform rules originally envisaged.

**Basic act: the 1976 Electoral Act**

The 1976 Electoral Act established direct universal suffrage, fixed the duration of the term of office of the Parliament’s representatives at five years and prohibited certain dual mandates, e.g. that of Member of the European Parliament and member of a national government, the European Commission, the Court of Auditors, or other bodies. It established a common electoral period and prohibited double voting. It affirmed that Members’ votes are individual and personal, established the electoral period and the date of the first elections, and introduced rules on the verification of credentials and on the procedure for filling vacant seats during the five-year term of office. Several provisions of the 1976 Electoral Act (e.g. Articles 11 and 12), mention, however, a specific course of action ‘pending the entry into force of the uniform electoral procedure’. More specifically, Article 7 of the 1976 Electoral Act renders national electoral provisions applicable where the act itself does not regulate a matter.

A glimpse at the 1976 Electoral Act, with its 16 short articles, gives an indication of how little harmonised or uniform the electoral procedure was at the outset. Nevertheless, it was a point of departure from which further reforms were attempted. Parliament saw four successive reports fail within a decade, owing either to the opposition of a Member State which precluded Council’s adoption (the Seitlinger report in 1982), to divisions among MEPs in which prevented adoption in Committee (the Bocklet report in 1984), or to the opposition of Council (the two De Gucht reports in 1991 and 1993). The 1991 de Gucht report, recognising the difficulties inherent in full harmonisation of the rules, fostered a step-by-step approach where ‘uniformity’ did not necessarily imply uniformity in every respect but merely a harmonisation of the basic features of electoral procedure.

Proportional representation of political aggregations was of particular importance at the time, and was deemed necessary to strengthen Parliament’s political authority. The underlying idea was that the seats obtained in the House should match the votes cast by the electorate, hence providing the institution with a certain degree of stability. Proportional representation was therefore considered necessary in part to guarantee fair and balanced representation of all political dimensions, and to fulfil a political function in the absence of a real European government operating on the basis of a majority system. The United Kingdom, however, accustomed to a first-past-the-post electoral tradition and fearful of setting a precedent that could possibly be imported into national elections, did not agree on the need to introduce a proportional element to the EU’s electoral system.

In the meantime, European integration advanced with important milestones, with the Treaty of Maastricht introducing the concept of European citizenship (Article 20 TFEU) and thus the right to vote and stand for elections in another Member State (Article 22 TFEU). In addition, the Treaty of Amsterdam (1999) offered a more nuanced legal basis compared with Article 138(3) TEC, by enabling the European Parliament to propose provisions for the election of its Members in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

**First reform: Council Decision 2002/772/EC**

All the above developments created favourable conditions for the Anastassopoulos report (1998) which led to a first set of amendments to the 1976 Electoral Act with Council Decision 2002/772/EC, after some modifications by the Council which rejected, inter alia, the idea of transnational lists. With this first reform, specific common principles were introduced, for example the proportional nature of the voting system, using either the list system or single transferrable vote, the abolition of the ‘dual mandate’, the preservation of the proportional character of the voting system despite references to national law for specific aspects of the electoral procedure, the freedom and secrecy of elections, freedom for Member States to establish constituencies for European Parliamentary
elections provided the proportional nature of the election was preserved, the possibility to set a national minimum threshold not exceeding 5% of the votes cast, the possibility for Member States to set a ceiling for candidates’ campaign expenses, a prohibition on making the results of the vote count public until the polls in the last voting Member State have closed, and introduction of clearer provisions for filling seats falling vacant during the five-year term of office.

The pace at which the competences of the European Parliament and EU integration developed was not matched by the development of the EU’s electoral rules. Not only were the powers of Parliament strengthened, inter alia, by the Lisbon Treaty (2007), but the Treaty also deepened the link between Parliament and EU citizens. The Lisbon Treaty delivered a European Parliament that no longer represented the ‘peoples of the States brought together in the Community’ (Article 189 TEC) but represented European citizens directly (Article 10 of the Treaty on European Union – TEU). This fundamental change gave impetus, if not to revise the composition of Parliament on a lasting basis, to attempt further reform that would bring uniformity to the method by which its representatives were elected.

Hence, after Lisbon, a number of initiatives were attempted. An initial report was presented to the plenary in February 2011 by Andrew Duff (ALDE, United Kingdom) but then referred back to the AFCO committee to seek a broader consensus. In February 2012, a second, modified, Duff Report was presented to Parliament’s plenary, but was withdrawn owing to uncertainties as to whether it would obtain enough support. Both Duff reports attempted structural reforms to the EU’s electoral system, either with the introduction of the contentious concept of a pan-European constituency from which to elect 25 Members from transnational lists, with seats allocated following the Sainte-Laguë or D’Hondt method. Also, they sought to establish a durable and transparent method of seat allocation to reflect changing populations. The far-reaching nature of the proposals was also however the reason why they struggled and ultimately failed to find political support in Parliament, as Members were quite divided on these issues. Their aspiration to make a leap in such a highly political and nationally driven domain as electoral rules, has often been seen as a sign of a ‘federalist’ trend in European politics. Eventually, a third Duff report was discussed within the AFCO committee and presented to plenary where it was endorsed by a large majority of members in July 2013. The third Duff report, however, was less ambitious than its predecessors as it addressed practical arrangements in view of the 2014 elections, such as the publication of candidates’ lists, gender balance among candidates, and appearance of the names of European political parties on the ballot. This third Duff report nevertheless paved the way for the Spitzenkandidaten process as a method for selecting the candidate for the position of president of the Commission.


There was renewed appetite for electoral reform in the aftermath of the 2014 elections. The AFCO committee took the opportunity to examine a set of modifications to the Electoral Act of 1976 with the Hübner-Leinen report, which was submitted to and adopted by plenary in November 2015. This time, the two co-rapporteurs’ original proposal was rather limited in scope, dealing with the establishment of a threshold of between 3% and 5% for constituencies and single-constituency Member States with more than 26 seats, the determination of a deadline to establish electoral lists (12 weeks before the start of the elections), visibility of affiliation of national parties with European political parties, the right of EU citizens to vote from a third country, the obligation to ensure a gender balance, the fixing of a uniform end time for the elections (21.00 central European time (CET) on ‘election Sunday’). As a result, the Hübner-Leinen report did not come up against major difficulties and was adopted by Parliament.

Some important changes were made however when the draft decision contained in the adopted report passed through Council. Here some of Parliament’s proposals intended to achieve uniformity of rules were not retained by Council, e.g. a uniform deadline for the establishment and finalisation of the electoral roll eight weeks before the first election day, the obligation on political parties to select candidates in a transparent and democratic way, the obligation to ensure gender balance, or
the fixing of a uniform end time for the election. Also, a more sensitive proposal according to which Parliament would have determined the electoral period, after consultation of the Council, was rejected. The Council also modified some of Parliament’s proposals, such as the possibility to set thresholds. The Council set these at between 2 % and 5 % in Member States where the list system is used for constituencies with more than 35 seats, while Parliament had originally proposed a higher threshold of between 3 % and 5 % for constituencies with more than 26 seats; Council meanwhile shortened the deadline for establishing candidate lists, which Parliament wanted set to at least 12 weeks, to at least three weeks before the electoral period where national law establishes a deadline for submission. While Parliament had also proposed a binding obligation to give equal visibility on ballot papers to names and logos of national and European parties, and to make that affiliation visible during the electoral campaign on television and radio or in electoral material, Council made it optional for Member States to allow the display of the name and logo of European political parties of affiliation. Furthermore, Parliament had proposed that Member States be obliged to enable EU citizens residing in a third country to be given the right to vote, whereas Council made it optional for Member States to organise this.

There were two more important changes in the (modified) text adopted by Council on 7 June 2018 compared with the text adopted by Parliament on 11 November 2015 on the reform of the 1976 Electoral Act.

The first change relates to the lack of any reference in the text adopted by Council to the Spitzenkandidaten process, which had been part of Parliament’s proposal (Article 3f) for a Council decision, and would have made it compulsory for European political parties to nominate their candidates for the position of president of the Commission at least 12 weeks before the start of the electoral period. The contentious, yet new, Spitzenkandidaten process experiment can be seen as an issue that divided the two institutions: Parliament seeing it as a successful and democratic method worthy of official validation in the Electoral Act, and Council seeing it as a non-essential or non-binding process.

A second clear change relates to transnational lists. The introduction of a joint constituency was proposed in the text adopted by Parliament in November 2015 (Article 2a of the proposed Council decision and paragraph Q of the accompanying resolution), but was not retained in the text adopted by Council in June 2018. This outcome is probably linked to another reform closely linked to electoral rules, i.e. that concerning the composition of Parliament. Indeed, a few months before adoption by Council of the decision on electoral rules, Parliament adopted a resolution and draft decision during its plenary session of 7 February 2018 on the composition of Parliament, that did not retain the introduction of a joint constituency as contained in the original AFCO committee report (Article 4 of the report and paragraphs G, H, I and J). It is likely that this outcome in Parliament in February 2018 on the composition of Parliament influenced a parallel outcome in Council on the reform of the Electoral Act of 1976.

Council reached an agreement on the draft Council decision modifying the Electoral Act of 1976 two and a half years after the end of Parliament’s procedure, on 7 June 2018. Despite Council modifications to Parliament’s original proposal reducing its broader original scope, Council Decision (EU) 2018/994 is a step towards making the EU’s electoral process more transparent, facilitating a higher degree of engagement by raising the electorate’s awareness in good time ahead of ‘election day’, and taking advantage of technological developments while upholding voting secrecy and personal data protection standards.
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<td>- Members of the Assembly are representatives of the States brought together in the Community.</td>
<td>- Members of the Assembly become ‘Members of the European Parliament’</td>
<td>- Members of the European Parliament become representatives of the citizens of the Union.</td>
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<td>- establishment of direct and universal suffrage</td>
<td>- establishment of a proportional voting system using the list system or single transferrable vote. Preferential lists are allowed based on procedures established by national legislation.</td>
<td>- In addition to the existing 5 % threshold, Member States in which the list system is used are obliged to set a minimum threshold for the allocation of seats for constituencies of more than 35 seats. This threshold should be no lower than 3 % and no higher than 5 % of the valid cast votes in the constituency concerned, including single-constituency Member States.</td>
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<td>- definition of start and end of the five-year term of office</td>
<td>- freedom and secrecy of elections</td>
<td>- Where there is a national deadline for the submission of candidacies, this deadline shall be at least three weeks before the date of the European elections in that Member State.</td>
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<td>- individual and personal nature of a Member’s vote, independence of Members from instructions, enjoyment of privileges and immunities</td>
<td>- Member States may establish constituencies for elections, or subdivide the electoral area, provided the proportional nature of voting is maintained.</td>
<td>- Member States may allow the name and logo of the European political parties to which candidates or national parties are affiliated to be displayed on ballot papers</td>
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<td>- indication of number of seats attributed to each Member State</td>
<td>- possibility for Member States to set a threshold of 5 % for allocation of seats, and a ceiling for campaign expenses</td>
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| Power to amend electoral procedure/adopt implementing measures | Establishment of incompatible dual mandates for MEPs; membership of a national government, the Commission, the Court of Justice (including registrar and advocate general), the Consultative Committee of the European Coal and Steel Committee, the Economic and Social Committee, other committees and bodies set up by the Treaties, the board of directors, management committees or staff of the European Investment Bank, active servant or official of the institutions or one of their specialised bodies. | Additional incompatible dual mandates for MEPs were added:  
- member of the Board of Directors of the ECB  
- judge of the Court of First Instance  
- EU Ombudsman  
- active official or servant of the ECB  
- as from 2004, member of a national parliament (there were transitional provisions concerning certain members of the Irish or UK Parliaments) | Member States are to designate a contact authority responsible for exchanging data on voters. This authority should also, in accordance with EU data protection rules, transmit no later than six weeks before the first day of the electoral period, information on Union citizens who, in a host state, have been added to the electoral roll or are standing as candidates. |

| Monitoring measures | Based on Article 138 EEC, Parliament to draw up a proposal for a uniform electoral procedure. Pending that, where not provided by the Electoral Act, national law should apply  
- implementing measures of the Electoral Act to be adopted by Council on a proposal of Parliament after consultation of the Commission, with the aid of a conciliation committee composed of the Council and representatives of Parliament | Clearer phrasing stating that, subject to the provisions of the Electoral Act, the electoral procedure is governed by national provisions that may, if appropriate, take into account the specific situation in a Member State, subject to respect for the proportional nature of the voting system |                                                                                  |

| Exercise of vote | - prohibition of double voting  
- first ever election dates fixed by Member States within an ‘electoral period’ (Thursday morning to Sunday) to be fixed by Council after consultation of Parliament; subsequent election dates to fall at the end of the five-year mandate. If that is not possible the Council, after consultation of the Assembly, is to determine another period falling no more than two months | - replacement of the provision forbidding the counting of votes starting before the close of polling in the last Member State to vote with a provision that instead forbids countries from making the results of the vote officially public before the last-voting Member State has closed the polls | - Member States to take deterrent measures against double voting  
- Member States may take measures, in accordance with their national procedures, to allow their citizens to vote from a third country.  
- Member States may offer the possibility to vote in advance, using postal voting, or electronic or internet voting, provided they ensure |
The issue of the democratic election of Parliament is closely connected with the composition of the institution itself. In this respect, Parliament's composition has reflected the various enlargements that have occurred over the years but is also the fruit of political bargaining among Member States. Few Treaty provisions deal with the composition of Parliament. Article 14(2) TEU qualifies its members as representatives of Union citizens and determines the maximum number as 750 plus the President (751). Within that range, each Member State should not be allocated fewer than 6 or more than 96 seats, in accordance with the principle of degressive proportionality. This principle was not defined by the Treaties, and it was not until the Lamassoure-Severin report (2007) that an explicit definition was set out. Accordingly, degressive proportionality is the (somewhat circular) concept according to which 'the ratio between the population and the number of seats of each Member State must vary in relation to their respective populations in such a way that each Member from a more populous Member State represents more citizens than each Member from a less populous Member State and conversely, but also that no less populous Member State has more seats than a more populous Member State'. Translating digressive proportionality into a concrete allocation of seats involves complex mathematical formulae.

In 2011, the AFCO committee examined a formula recommended by a group of experts and referred to as the 'Cambridge Compromise', including one of its mathematical variants, but without reaching a definitive position. As a result, the composition of Parliament for the 2014 elections was set in a Council Decision of 28 June 2013, and was based on a practical solution rather than on a stable, durable and transparent method, as Parliament had wished. More recently, triggered by the prospect of vacant seats following the United Kingdom's withdrawal from the EU, and also taking into account the current imperfect translation of the digressive proportionality principle into seat allocation, the AFCO committee examined further proposals put forward by experts (the Cambridge proposal and the Power proposal). Far from being a sterile mathematical discussion, the issue of finding an appropriate allocation formula is of crucial political importance as it might also imply, as experts have highlighted, the need to revise qualified majority rules in Council in order to achieve a better interinstitutional balance and avoid the risk of penalising middle-sized Member States.

The AFCO committee report on the composition of Parliament (Rapporteurs: Danuta Maria Hübner (EPP, Poland) and Pedro Silva Pereira (S&D, Portugal)) adopted by Parliament on 7 February 2018 and submitted to Council, contained a proposal for a Council decision that acknowledged the lack of political maturity for a permanent system of allocation, took stock of the future withdrawal of the
United Kingdom from the EU and proposed to redistribute 27 of the 73 seats that will become vacant following Brexit, among some Member States to re-balance the current imperfect application of digressive proportionality. The remaining 46 seats would be available for possible future enlargements. This partial re-distribution would cause no loss of seats for any Member State and would take into account recent demographic shifts. As a result, the report proposed to reduce the number of seats from 751 to 705. The resolution adopted by Parliament was smaller in scope than the AFCO report on which it was based, as the latter had included the possibility to re-allocate the remaining 46 seats to a possible joint constituency based on transnational lists in future elections. References to joint constituencies were removed from the resolution adopted by Parliament with the consequences highlighted previously. Since, according to Article 14(2) TEU, the decision determining the composition of Parliament must be adopted, on a proposal of Parliament, by the European Council unanimously, subject to Parliament’s consent, the European Council adopted the decision at its meeting on 28 June 2018, following Parliament giving its consent on 13 June 2018.

'Europeanisation' of the electoral process

The lack of a uniform EU electoral law, and the corresponding desire, notwithstanding that, to enhance the European dimension of the elections has spurred the proposal or establishment of mechanisms or practices intended to 'Europeanise' the electoral process.

One such mechanism has been the idea of transnational lists for pan-European constituencies, set up by European parties. This idea emerged for the first time with the Anastassopoulos report (1998) and was proposed again with the Duff report in 2011 to 2012. The Duff report intended to reserve 25 seats for a pan-European constituency, to be elected with a second vote through transnational lists (either closed or semi-open), on which candidates originated from at least one third of Member States. The idea that this could strengthen the link between Parliament’s members and the citizens was advocated by several parties. In February 2018, the European Commission considered transnational lists an opportunity to create a political space for public debate, and some Member States supported it (France (President Macron’s speech at the Sorbonne university in September 2017), and the southern European countries). On the other hand, opponents consider transnational lists a potentially ‘elitist’ exercise (EPP, Visegrad States). Transnational lists through which to elect members in joint constituencies have often been a controversial issue where differing positions depend not only on political affiliation, but may also differ within the same political family.

As a further 'Europeanising' practice, the Spitzenkandidaten process was first established ahead of the 2014 elections and recently repeated before the 2019 elections with the intention to enhance the political meaning of the process leading to the appointment of the president of the Commission. The Spitzenkandidaten idea builds on the enhanced role of the European Parliament established by the Lisbon Treaty (2007), whereby Article 17(7) TEU tasks the European Council, acting by qualified majority and after holding the appropriate consultations, with proposing to the European Parliament a candidate for President of the Commission. The crucial novelty is that in making such a proposal, account should be taken of the elections to the European Parliament. This intentional link with the political composition of the European Parliament was meant to establish a political and institutional connection between the European Parliament and the Commission, enhancing the latter's democratic legitimacy.

The European Parliament hoped therefore to design a method whereby European political parties would contribute to the process by appointing lead candidates for the position of Commission president. The Spitzenkandidaten process has attracted support from some, praising the increased visibility and democratisation of the appointment of the highest EU executive position. This is supposed to create a broader platform for debate among candidates bringing not only increased transparency and political legitimacy to the role of Commission president, but also greater involvement and awareness of EU citizens in the process. Notwithstanding these benefits, the Spitzenkandidaten process also attracted criticism focused on its 'elitist' nature, making the process difficult for EU citizens to understand, the risk of excessive ‘politicisation’ of the Commission
president role, and, most importantly, the shift of the institutional balance away from the prerogatives of the European Council which, according to the Treaties, remains the institution empowered to propose the candidate for Commission president. The Spitzenkandidaten process took place ahead of the 2014 and 2019 elections with mixed results. Commentators noted that positive effects could have been noticed in the 2014 elections, where turnout was seen to have stabilised and the downward spiral was mitigated. With respect to 2019, there was a percentage increase in the turnout from 42.61 % to 50.99 %, although this might be also due to the historic importance of the 2019 elections and the polarisation of the recent electoral context.

MAIN REFERENCES

The history of European electoral reform and the Electoral Act 1976, study written at the request of the Historical Archives Unit, EPRS, European Parliament, October 2016.

ENDNOTES

2 Draft Convention with explanatory statement (January 1975), Doc. AHPE (PE0 AP RP/POLI.1961 A0-0368/74 0230).

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