

WORKING DOCUMENT

The Election of the European Parliament

I. FROM PARIS TO AMSTERDAM

A European Parliament directly elected by universal suffrage is a key feature of the constitutional order of the European Union. As long ago as 1951, Article 20 of the Treaty of Paris on the European Coal and Steel Community provided for an Assembly consisting of ‘representatives of the peoples of the States brought together in the Community’.

Article 21(3) said:

The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.

The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their constitutional requirements.

This same provision was adopted by Article 138(3) of the Treaty of Rome (1957) which established the European Economic Community.¹

The Common Assembly of the ECSC urged implementation of the provision as early as 1954.² In 1960 the European Parliamentary Assembly drafted a Convention on the introduction of direct elections which it submitted to the Council for consideration.³ No progress was made on the matter, however, until the summit meeting at The Hague in December 1969 re-established the item on the Council’s agenda. The Vedel Report (1972), mandated by the European Commission, recommended early implementation of the Treaty provision with respect to direct elections.⁴ Vedel suggested that the term ‘uniform electoral procedure’ should not necessarily be taken to mean that complete uniformity of electoral system had to be achieved at one step: the Parliament could move

¹ Also Article 108 (3) of the Euratom Treaty.

² Teitgen Report, OJ of 11-12-1954.

³ Dehousse Report, OJ 37, 02-06-1960.

⁴ *Report of the Working Party examining the problem of the Enlargement of the Powers of the European Parliament*, Bulletin of the European Communities, Supplement 4/72.

towards a single electoral law once it had won extra legitimacy on the strength of its first direct election.

In December 1974, meeting in Paris under the chairmanship of Valéry Giscard d'Estaing, the heads of government took the decision in principle to proceed with direct elections 'as soon as possible ... at any time in or after 1978'.⁵ This complemented their decision to transform their own ad hoc summit meetings into the formal European Council.

The European Parliament had already set to work to revisit its draft Convention of 1960. The Patijn Report proposed a directly elected Parliament with a five year mandate.⁶ National electoral systems would apply in the first instance but for a transitional period only, pending the introduction of a more uniform electoral system, presumed to be ready in time for the second elections. Polling would take place across the Community within the same three days. Dual parliamentary mandates would be permitted but not encouraged. A list was agreed of the offices at EC level deemed incompatible with a European Parliamentary mandate. 355 seats (for the then nine Member States) would be distributed on a proportional basis, as follows: Germany 71, UK 67, Italy 66, France 65, Netherlands 27, Belgium 23, Denmark 17, Ireland 13, Luxembourg 6. The privileges and immunities of directly-elected MEPs would be those of their national equivalents. National discretion would also apply with respect to the eligible age of electors and candidates, the filling of vacancies, the rules for political parties, and MEPs' terms and conditions. Pending the entry into force of the uniform electoral procedure, Parliament would rule on the verification of the credentials of Members.

The Patijn Report proved to be sufficiently pragmatic for Member States to take it as the basis for negotiation in the Council. The big stumbling block to an agreement continued to be the British government's refusal to adopt an electoral system of a proportional type whereby seats won in the European Parliament would broadly match the votes cast in the ballot box. Although the lack of a uniform electoral procedure was the cause of great frustration at the time, in retrospect Parliament was surely right to concentrate on getting

⁵ Paragraph 12 of the Communiqué of the heads of government, Paris, 9-10 December 1974. The UK and Denmark reserved their positions. The decision was confirmed by the European Council in Rome the following December.

⁶ Patijn Report, adopted on 14 January 1975; OJ C 32, 11-02-1975.

direct elections introduced in the first place and to postpone the perfection of the system until later.

Direct elections at last

On 20 September 1976 the Council reached agreement on an Act concerning the election of the representatives of the European Parliament by direct universal suffrage. The Act, which has the status of primary law and which required ratification by each Member State, was annexed to a Decision.⁷

The Council established a chamber of 410 deputies (for the then nine Member States), with the four largest States enjoying an equal number of seats. While the objective of a future uniform electoral procedure was repeated, no timetable was set for its accomplishment. Voting was to take place between Thursday and Sunday. Pending the emergence of a uniform electoral procedure, the verification by Parliament of the credentials of those elected would take note of the official results declared in and by each Member State. A conciliation procedure was established with the Parliament to iron out the details.⁸ After a certain delay, the first elections to the European Parliament took place in June 1979.

The newly elected Parliament soon addressed the matter of turning the 1976 Act into a uniform electoral procedure. The drafting of the Seitlinger Report focussed on the issue of extending proportional representation.⁹ It proposed multi-member constituencies of between three and fifteen MEPs, with seats allocated by the D'Hondt system, and allowed for the possibility of preferential voting for individual candidates within lists. It noted that there could be deviation from the norm on the grounds of 'special geographical or ethnic factors'. Seitlinger also sought to insist that nationals of one Member State resident in another for more than five years should be given the right to vote in their country of residence. It was proposed that polling be reduced to two days (Sunday and Monday). However, in view of the general political situation in the Community, coupled

⁷ Council Decision 76/787/ECSC, EEC, EURATOM; OJ L 278, 08-10-1976.

⁸ The UK and Denmark annexed declarations concerning their overseas territories; and Germany another with respect to Berlin.

⁹ Seitlinger Report, adopted on 10 March 1982 by 158 votes to 77 with 27 abstentions; OJ C 87, 05-04-1982. Yet see the critical Opinion of the Legal Affairs Committee (rapporteur D'Angelosante).

with continuing British refusal to abandon its simple majority system in single member constituencies, no progress was possible in the Council.

A similar fate awaited Reinhold Böckel, appointed rapporteur on the matter in the next mandate, 1984-89. His efforts foundered on the obstacle of the British. Ingenuity was not able to marry proportional and non-proportional electoral systems within a framework which could credibly be called ‘uniform’ and which, at the same time, would induce a consensus within either Parliament or Council.

The fall of the Berlin Wall and the integration of East Germany into the Community necessitated a review of the number of German deputies in the European Parliament. After the 1989 elections, Karel De Gucht was appointed rapporteur on the dossier. He successfully produced two ‘interim reports’ which pushed things along. In the first, De Gucht repeated Parliament’s earlier proposal for the use of D’Hondt.¹⁰ Concerned about declining turnout in 1984 and 1989, he introduced to the debate the question of how the campaign for the European Parliamentary elections should be run and financed. In his second report, De Gucht proposed that the unified Germany’s number of seats should rise to 99, leaving France, Italy and the UK with 87 each.¹¹ Finally, De Gucht proposed a top-up system whereby two-thirds of the British seats could be elected by simple majority in single member constituencies, but the remaining third would be distributed proportionately to the total vote of each party.

Nevertheless, despite the efforts of Parliament, it was the election of a Labour government in the UK in May 1997, assisted on this matter by the Liberal Democrats, which finally broke the logjam over the electoral system. For the 1999 elections a closed list system of regional proportional representation was introduced to Great Britain.¹² Similar reforms were made in France in time for the 2004 elections.

Helpful Treaty change

¹⁰ De Gucht Report, adopted 10 October 1991 by 150 to 26 with 30 abstentions; OJ C 280, 28-10-1991.

¹¹ De Gucht Report, adopted 10 March 1993 by 207 to 79 with 19 abstentions; OJ C 115, 26-04-1993.

¹² Northern Ireland had enjoyed STV since 1979 because of the overwhelming need to reflect minority opinion in the province. In 1999 10 Liberal Democrats, 2 Greens, 2 Plaid Cymru and 3 UKIP MEPs were elected to the Parliament, witness to the importance of proportional representation to the legitimisation of the European Parliament.

Meanwhile, the Treaty of Maastricht (1992) made some bold advances in the area of European Union citizenship. Article 8b(2) laid down that:

*... [E]very citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.*¹³

Helpfully, this provided a legal base for measures to stimulate transnational electoral politics and increase civic participation.

At the same time, The Treaty of Maastricht amended Article 138 to give to the Parliament the right of assent to the Council's proposal for a uniform electoral procedure. It also introduced a new Article 138a which establishes that:

Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

Tony Blair's victory in May 1997 had a beneficial effect on the closing stages of the Intergovernmental Conference which led up to the signing of the Treaty of Amsterdam. First, the new Treaty capped the size of the Parliament at 700 – with 99 for Germany and 87 each for France, Italy and Germany.¹⁴ It then added a new, cryptic clause, as follows:

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

¹³ Later Article 19(2) of the Treaty establishing the European Community (TEC). The Treaty of Maastricht necessitated a revision of the 1976 Act, in Council Decision 93/81; OJ L 33, 09-02-1993.

¹⁴ Article 138(2), subsequently Article 190(2).

Third, the Amsterdam Treaty inserted a new sub-paragraph establishing that the term of office of the Parliament is five years.¹⁵ Fourth, the new Treaty amended Article 190(4) (formerly Article 138(3)), as follows:

*The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform electoral procedure in all Member States **or in accordance with principles common to all Member States.***¹⁶

This revision reflected the more pragmatic approach of the Parliament as articulated in the De Gucht Report. In particular, the change would allow the Irish to continue to use the Single Transferable Vote (STV) instead of a largest average list system.

Lastly, a new Article 190(5) was usefully added by the Treaty of Amsterdam:

The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.

¹⁵ This, which became Article 190(3), simply codified the 1976 Act.

¹⁶ My emphasis.

WORKING DOCUMENT

The Election of the European Parliament

II. FROM NICE TO LISBON

Immediately after the signing of the Treaty of Amsterdam in 1997, the Committee on Institutional Affairs appointed Parliamentary Vice-President Georgios Anastassopoulos as its rapporteur on the electoral procedure. His task was to see whether a new proposal could be agreed on the basis of the revised Article 190(4), that is, whether '*principles common to all Member States*' offered a better basis for uniformity than '*a uniform electoral procedure in all Member States*'.

Anastassopoulos found a 'very broad consensus' among Member States on a number of common principles, including, not least, proportional representation. He dropped the idea of trying to craft territorial constituencies in a uniform manner, but insisted on their creation in States with more than 20 million inhabitants. Notably, he raised the question of whether a portion of seats – he proposed ten per cent - could be distributed proportionately from transnational (gender balanced) lists as from the 2009 elections. National thresholds should remain optional. Preferential voting should be encouraged as a stimulus to turnout. Dual parliamentary mandates would be banned. He proposed bringing the elections forward from June to May (in order to avoid summer holidays in Northern states), and to truncate the time for polling itself to two days maximum. The far-reaching Anastassopoulos Report was adopted by Parliament on 15 July 1998 by 355 votes to 146 with 39 abstentions.¹⁷

In 2002 the Council modified the 1976 Act in order to codify the introduction everywhere of proportional representation, to allow explicitly STV and preferential voting, to cater for territorial constituencies, to fix a maximum threshold of 5 per cent, to phase out the dual mandate, and to let national law apply to the withdrawal of mandates and the filling

¹⁷ OJ C 292, 21-09-1998; Parliament's resolution is reproduced in Annex I.

of vacancies.¹⁸ The bolder proposals of the Parliament's Anastassopoulos Report were not adopted.

Nice, Laeken and the Convention

Parliament was unsuccessful in raising the matter of its electoral procedure at the Nice Intergovernmental Conference. Instead, the closing stages of the IGC in December 2000 were marked by the bruising row over the redistribution of seats in the Parliament. In the end, the size of the House for 2004-09 (for the then twenty-five Member States) was to grow to 732 seats: Germany retained 99, France, Italy and the UK maintained parity on 78, and Spain and Poland had 54 each. (Later, upon the accession of Bulgaria and Romania, it was agreed that from 2009 there would be 736 seats: again Germany was to retain 99, France, Italy and the UK were to fall to 72 each, Spain and Poland to 50.)¹⁹

The Treaty of Nice modified Article 190(5), as follows:

*The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting **by a qualified majority**, lay down the regulations and general conditions governing the performance of the duties of its Members. **All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.***²⁰

An amendment was made to Article 191 to create a legal base for the creation of a statute for European political parties. The Council was empowered to lay down regulations concerning the recognition and financing of European parties, in co-decision with the Parliament.

On the road to recovery from the disappointment of the Nice Treaty, the Laeken Declaration, in December 2001, posed various pertinent questions about the future role of the European Parliament. 'Should the role of the European Parliament be strengthened? Should we extend the right of codecision or not? Should the way in which we elect the

¹⁸ 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; OJ L 283, 21-10-2002.

¹⁹ See Annex II.

²⁰ My emphasis.

members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined?’ When the constitutional Convention discussed these questions, however, it must be admitted that the electoral system was of a lower order of priority to those of the powers of the Parliament and its place in the inter-institutional balance.²¹

The Convention proposed, sensibly enough, that the electoral system should be subject to a law or framework law of the Council, acting unanimously on a proposal from and with the consent of the Parliament.²² As far as the shape of the Parliament was concerned, the Convention proposed that the European Council should take a decision, by unanimity, on a proposal from and with the consent of Parliament. The size was capped at 736.

‘Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.’²³ Furthermore, the Charter of Fundamental Rights was to become mandatory, Article 39 of which set out the right of every citizen to vote or stand in the European Parliamentary elections in the Member State in which he or she resided, under the same conditions as nationals of that State.

The IGC of 2003-04 which followed up the work of the Convention made no change in the procedures but adapted the relevant clause (now Article I-20(2)) to read as follows:

The European Parliament shall be composed of representatives of the Union’s citizens. They shall not exceed 750 in number. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.

This was rather similar to a proposal made by Germany at the time of Maastricht, but at that stage rejected. It has been suggested that the significance of the change of the historic wording – from ‘representatives ... of the peoples of the States brought together in the Community’ to ‘representatives of the Union’s citizens’ - was lost on some observers. But

²¹ The rapporteur was a member of the Convention on the Future of Europe (2002-03) and was one of Parliament’s three representatives to the 2007 IGC.

²² Article III-232 of the Draft Treaty establishing a Constitution for Europe (2003).

²³ Article I-19(2) of the Draft Treaty establishing a Constitution for Europe (2003).

the change was not accidental: indeed, the elevation of the EU citizen was accentuated elsewhere in the constitutional treaty.²⁴ And representatives of the Parliament in the Convention and at the subsequent IGCs were hopeful that the change would encourage the further development of transnational politics, leading to a more popular recognition of the post-national political space.

The Treaty of Lisbon

The recent story of the ‘period of reflection’ and the negotiation of the Treaty of Lisbon is more familiar. While the matter of the electoral procedure caused no controversy during the renegotiation of the constitutional treaty, the proposal to redistribute seats for the Parliament to be elected in 2009 did. Parliament fulfilled the request of the European Council of June 2007 to make a proposal for the redistribution of seats. Parliament succeeded, in the Lamassoure-Severin Report (2007), in convincingly defining how the principle of degressive proportionality should be applied in practice, thus: ‘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’.²⁵

However, one State, Italy, objected to the proposal, consequent on the above, to give it 72 seats compared with the UK (73) and France (74). In the last minutes of the IGC a compromise was reached which raised the size of the Parliament to 751 - that is, 750 plus its President – and the extra seat was given to Italy. Unfortunately, however, this arrangement breaches the strict application of the principle of degressive proportionality (as defined by Parliament), because an Italian MEP will, from 2009, represent fewer people than a Spanish colleague, despite the fact that Spain is less populous than Italy.²⁶

²⁴ Notably, Article I-45(2) which said that ‘Citizens are directly represented at Union level in the European Parliament’, (later replicated by the Treaty of Lisbon in Article 8a(2) of the Treaty on European Union).

²⁵ From paragraph 6 of the Lamassoure-Severin Report, adopted 11 October 2007 by 378 votes in favour to 154 against, with 109 abstentions; A6-0351/2007.

²⁶ The political agreement on the redistribution of seats was confirmed by the European Council on 14 December 2007. The decision referred to in Article 9a(2) TEU will only be formally adopted once the

Despite this lapse from purity, the Lamassoure-Severin definition of degressive proportionality has been accepted, at least in theory, by both Parliament and Council, and is unlikely to be altered in the foreseeable future. Nevertheless it is questionable whether the formula '750 plus 1 for Italy' will - or should - survive into the 2014 Parliament. There will in any case have to be a fresh distribution of seats before 2014 not only to take demographic change into account but also to cater for the accession of any new Member State.²⁷

In any case, after the little drama over parliamentary seats, the Treaty of Lisbon was finally signed on 13 December 2007. Article 9a of the revised Treaty on European Union reads as follows:

1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.

2. The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed 750 in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than 96 seats.

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

3. 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.

Treaty of Lisbon comes into force – albeit, as Article 2 of the Protocol No 10 on Transitional Provisions says, ‘in good time before the 2009 European Parliament elections’.

²⁷ In the event that Croatia joins the EU during the term of the 2009-14 Parliament, its seats will be added temporarily to the 751, as per the precedent of Bulgaria and Romania.

4. The European Parliament shall elect its President and its officers from among its members.

Article 190 of the Treaty on the Functioning of the European Union reads as follows:

1. The European Parliament shall draw 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.

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.

2. The European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Despite the fact that Parliament did not choose to press the case for a uniform electoral procedure or, as had been mooted, for a reform of the privileges and immunities regime, during the constitutional renegotiation, there was significant progress elsewhere. The first statute for European political parties was delivered in 2003.²⁸ Likewise, the statute for Members of the European Parliament was at last agreed in 2005.²⁹

²⁸ 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; OJ L 297, 15-11-2003.

²⁹ Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom), OJ L 262, 07-10-2005.

Meanwhile, the Commission returned to the matter of the franchise and candidacy for citizens living in a Member State other than their own – a growing number of people now comprising over 1.5 per cent of the EU’s total population. Rightly concerned about the continued fall in voter turnout at the European elections, the Commission is now seeking to revise Directive 93/109 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.³⁰ Parliament backs the Commission’s proposals to simplify the bureaucratic procedures involved in registering to vote or stand, and in verification by Member States of the eligibility of such registrations. However, Parliament takes issue with the blanket ban in the 1993 legislation against candidates standing in more than one State at the same election, and asks the Council to relax the current restrictions. Parliament bases its position on the fact that, while Article 8 of the 1976 Act forbids dual voting, no such express prohibition applies to the matter of candidature and, furthermore, that an extension of the transnational character of the EU polity depends to some extent on the potential possibility to vote for candidates of a different nationality to one’s own. Parliament also seeks to ensure that the State of residence is not automatically obliged to prevent a citizen from voting if he or she has been deprived of his or her electoral rights in another State. MEPs feel that, in both cases, it should be up to the States concerned to decide on a case by case basis, in order to prevent discrimination. They refer to the stipulation introduced by the Treaty of Maastricht whereby any citizen has the right to vote or stand in the European Parliamentary elections in the State where he or she resides, under the same conditions as nationals of that State.³¹

³⁰ OJ L 329, 30-12-1993.

³¹ Duff Report (A6-0267/2007) on the Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain 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. Adopted 26 September 2007. The matter remains unresolved.

WORKING DOCUMENT

The Election of the European Parliament

III. PROBLEMS AND PROSPECTS

The Italian protest, launched in the Lisbon IGC, about the number of its seats in the Parliament after 2009 was based, in part, on the claim that the new Treaty would shift the basis on which Parliament should be composed from that of population to that of citizens. The two are different, of course, especially in those countries, such as Italy, which have been more reluctant to naturalise their immigrants than others.

One recalls that the definition of EU citizen depends entirely on the acquisition of nationality of a Member State. There is no way of becoming an EU citizen without being a national of a Member State. The Treaty on European Union as amended by the Treaty of Lisbon is explicit on this point, as follows:

Article 8

In all its activities, the Union shall observe the principle of equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

Article 8a

- 1. The functioning of the Union shall be founded on representative democracy.*
- 2. Citizens are directly represented at Union level in the European Parliament.*

The EU has no single definition of its citizenship, therefore, but twenty-seven national varieties. The array of nationality laws among the twenty-seven Member States of the EU

is bewildering.³² Some States grant special privileges to third country nationals of ancestral affinity; others most emphatically do not. Some have residual rights for ex-colonial subjects; others do not. Member States treat the civic rights of their overseas territories or dependencies in many different ways. There has been no attempt by the EU to harmonise these laws, although there are many instances of imitation among Member States. The European Court of Justice has asserted that the right of Member States to set their own rules about the acquisition or loss of nationality is constrained by the necessity to respect EU law.³³ In this context, the recent decision by Spain to naturalise many immigrants without consulting its partners received a lot of attention.

It is clear that, because nationality laws are highly variable, there is unequal access to the rights of EU citizenship between one Member State and another. Moreover, the position of nationals of one Member State who live for prolonged period in another is also far from uniform. This is particularly relevant when it comes to the loss of franchise at home and the ability to acquire it, or not as the case may be, in the receiving State.³⁴ Add the layer of twenty-seven complex electoral laws on top of twenty-seven nationality laws and one can quickly see that it would be highly impractical as well as impolitic for the Union to launch a programme of wholesale harmonisation.³⁵

There would seem, for example, to be no realistic possibility of extending more widely the scope of EU law on the right to participate in European and municipal elections so that it could also embrace participation in national and regional parliamentary elections. Such an initiative at the EU level would be sure to run into accusations by national parliaments of being in clear breach of the twin principles of subsidiarity and proportionality. The most that can be hoped for is that States will agree to practice the open method of coordination in these areas.

³² See Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (eds), *Acquisition and Loss of Nationality: policies and trends in 15 European states*, Institute for European Integration Research, Austrian Academy of Sciences, Vienna, January 2006.

³³ See, for example, case C-369/90 Micheletti [1992] ECR I-4239.

³⁴ UK citizens, for example, lose the right to vote in UK elections after 15 years abroad.

³⁵ The EU's approach to date has been rightly tentative: see Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; OJ L 158, 30-04-2004.

In addition, a federally minded core group of States may even attempt enhanced cooperation in electoral law. An extension of bilateral reciprocal franchise rights, such as exist between the UK, Ireland, Cyprus and Malta, would be another way to develop the political rights of EU citizens without formal EU intervention.³⁶ One might also anticipate a petition on the matter of electoral rights under the new provision of the Treaty of Lisbon for citizens' initiatives.³⁷ In any event, should the political climate ever become more amenable to boosting the political content of EU citizenship, the Council can always act to extend the scope of citizenship rights without having to resort to the full paraphernalia of an IGC.³⁸

Whatever approximation may be achieved in electoral law, there will still be the outstanding problem of how to distribute seats in the European Parliament. Do the changes made by the Treaty of Lisbon to Article 9a of the Treaty on European Union on the status of EU citizenship really matter in this context? Should we be counting EU citizens rather than national inhabitants? If so, who precisely is the European Union citizen? Or do we follow James Madison's belief that, in the republic, parliamentary representation is more of a birthright than a civic privilege? The Madisonian approach suggests that the European Parliament represents not only *de jure* EU citizens (as formally established by the EU Treaty), but that it also represents, and has a duty of care towards, anyone else who abides in the territory of the Union, including minors and denizens. That being the case, the traditional method of distributing seats in the Parliament on the basis of total population – to say nothing of counting votes in the Council – is the right one and should not be amended.

Finally, it is worth recalling that if the Treaty of Lisbon does not come into force in good time before June 2009, the distribution of seats for the period 2009-14 will remain that as ordained by the Treaty of Nice (and subsequent accession treaties). A comparative table appears in Annex II, with reference to how the two proposals meet the requirements of degressive proportionality.

³⁶ For a full discussion of these issues, see Jo Shaw, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, Cambridge, 2007.

³⁷ Article 8b TEU.

³⁸ Article 22 TEC.

The case for reform

It is clear that the EU has already made substantial progress in establishing the basic conditions for the uniform election of the European Parliament in spite of the absence of a single electoral law. Of the problems encountered by previous rapporteurs on this dossier, several have already been dispensed with satisfactorily, notably:

- a form of proportional representation has been established in all Member States;
- the dual mandate is abolished;
- European political parties have been established and financed;
- terms and conditions of MEPs are soon to be harmonised.

There is another category of issues that might have seemed problematical at the outset of the exercise to introduce direct elections but, with the benefit of experience, no longer do so - such as the eligibility of independent candidates and control of election expenses. Here no problems seem to have arisen by the mere application of national discretion and electoral practice.

Notwithstanding the progress made so far, the forthcoming Report is asked to address the revision of the 1976 Act on direct elections to the European Parliament. And ten years after Parliament last visited the dossier with the Anastassopoulos Report, and a good six years before any practicable reform of the electoral procedure would be brought into force (in 2014), this indeed seems a good time to initiate further reforms.

If and when the Treaty of Lisbon enters into force, MEPs will become very much more powerful than they are today. Parliament needs an electoral system and an internal organisation which is commensurate with its new duties. Above all, it needs an enhanced standing in the eye of the public so that it becomes the focus of the new European political space, the accepted forum of the single political market: making European laws and budgets, and holding the executive to account. To date, the search for political legitimacy is being undermined by the continuing decline in turnout at elections, by

scanty media reportage, by apathetic political parties and, even, by the latent jealousy of some national parliaments about its growing powers.³⁹

Can a formal reform of the electoral procedure rectify these problems? Our criteria for initiating a new bout of reform should be carefully defined. We are not seeking uniformity for uniformity's sake. In catering for perceived problems at the national level, our approach should be realistic. Gradualism, perforce, has worked over the years to bring forth many of the objectives first articulated by the founding fathers of the Union in the 1950s. This reform is unlikely to be the last: strong parliaments adapt readily to changing societal and political circumstances. In the case of the EU, the pace and scale of future enlargement is a big unknown. Without knowing the future size and shape of the Union, it would be foolhardy to try to settle today the final destiny of post-national parliamentary democracy in Europe.

But we know at least enough about the alternative scenarios for Europe's future for us to be certain that a strong, vital, directly elected Parliament should be - and will be - at the heart of its system of governance.

There remains, therefore, a significant number of important questions which, if addressed effectively, would make the elections to the Parliament more uniform in the future than they have been in the past and should bring benefits in terms of cohesion, legitimacy, efficiency and pluralism. In the Rapporteur's opinion, these issues include:

- 1) making mandatory the establishment of territorial constituencies in the more populous Member States;
- 2) creating a transnational list system for a portion of the seats;
- 3) permitting the creation of constituencies of specific linguistic communities;
- 4) allowing candidates to stand in more than one constituency or State at the same election;
- 5) facilitating voting by EU citizens living in a Member State other than their own;

³⁹ See Annex III. Overall turnout fell from 63.0 per cent in 1979 to 45.6 per cent in 2004.

- 6) reviewing the different electoral systems in use,
- 7) encouraging the introduction of preferential voting;
- 8) reducing the polling timetable;
- 9) shifting the elections from June to May;
- 10) establishing a regime for the privileges and immunities of Members;
- 11) establishing a regime for the verification of credentials of Members and the filling of vacancies;
- 12) harmonising the age of electors and candidates.

Whatever the outcome of our deliberations on the choice between inhabitant and citizen as the statistical basis for the distribution of seats in the Parliament, it may be prudent to add a clause to the Act providing for a regular review of the actual distribution during each Parliamentary mandate.

Depending on the extent of the changes made to the Act - and to the greater uniformity thereby made possible - we should also consider how the Parliament should best be advised to manage subsequent changes to its composition or electoral procedure in an efficient and non-partisan manner.
