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Legitimacy spill-over or path-dependency?

Contributions to a historical interpretation of narratives of electoral reform in the European Union*

Wilhelm Lehmann

European University Institute and European Parliament

Abstract

In an era of anticipated disintegration and EU contestation the importance of input legitimacy at the European level seems to be recognised more than during times of citizens' permissive consensus with European integration. However, besides modest efforts to improve the democratic credentials of the EU a new emphasis on policy output can be observed: European citizens are purportedly expecting the EU to solve problems such as the public debt crisis or the growing influx of refugees effectively, as a condition for renewed confidence in EU institutions and norms. This paper provides a historical-institutionalist account of electoral reform before and after the entry into force of the 1976 Electoral Act, focusing on prevailing models of political representation and their use in conceiving European democratic governance. The analysis draws on debates in the Common Assembly/European Parliament and negotiations between their members and national governmental representatives. The objective is to develop the theory and expose the narratives provided for the introduction of direct elections and to demonstrate their enduring influence on European democratic ideation. Contemporary reform proposals concerning the electoral procedure and the role of political parties are discussed as the latest expression of these narratives. Some preliminary conclusions are drawn on the future role of the European Parliament as a representative institution in an increasingly diverse and contested EU.

* This article represents the views of the author and not necessarily those of the European Parliament. Address for correspondence: wilhelm.lehmann@eui.eu

1. Introduction

Electoral reform is perhaps the most daunting task that can be undertaken by political leaders in democratic systems. To provide sound analysis and competent advice or is equally challenging for law scholars or political theorists in view of the constitutional hurdles and the political prices at stake. Electoral reform is perhaps the standard case of rule making on rule making, or institutional creation and design as opposed to institutional implementation and practice. Ideas, acts and decisions on electoral reform are thus an obvious candidate for testing some important tenets of historical institutionalism. The European Union case¹, against a backdrop of “inflated constitutionalism” (Grimm 2015, 464), is of particular relevance because thresholds for constitutional reform are higher than in any international organisation or federal state. The main purpose of this essay is to examine the narratives for European Union electoral reform and to contribute to an institutionalist theory explaining the common thread of the ideas and interests behind almost 75 years of proposed and real electoral rules changes.

The literature on the European elections has become a vast field in political science, with important contributions coming also from constitutional legal scholarship, sociology and discourse analysis. Important work has been done on the special meaning of political representation in an EU context. However, much of this academic effort deals with elections and their outcomes as extraneous independent variables impacting on electors’ behaviour, parliamentarians’ allegiances or citizens’ general perception of the EU as a political entity. Their unsatisfactory “second order” status has been described and explained many times. Constitutionalists typically stress the lack of “European-ness” of these elections, but at the same time express their scepticism as to the feasibility of transforming them into a real arena for European-level contestation as long as the “the socio-political substructure of [European] parliamentarism” is lacking (Grimm 2015, 472). However, there is much less scholarly work examining the EU elections as a dependent variable, including the important question how and why certain reform steps were achieved, and others not. From a normative viewpoint, the significance of this different perspective is evident: many if not most deficiencies of European democracy are at one point or another tied to the lack of European-ness of elections to the European Parliament. At the same time, the reasons why they were designed as they are have not received strong academic interest.

This is surprising because many scholars have been intrigued by the extraordinary development of the European Parliament (EP) from a consultative assembly to an institution that, in its powers and procedures, is commonly considered to be closer to national parliaments than to other transnational parliamentary institutions. The EP’s acquisition of increasing budgetary, control and legislative powers has been the principle objective of an ever growing body of historical research and analytical commentary (Rittberger 2005 being a prime example). In particular, the question why the member states of the European Communities and the European Union decided again and again to equip the Parliament with more powers has been asked and answered from various angles, the main dichotomy remaining that between (neo-)functionalists, convinced of the

¹ To make the presentation less onerous, the acronym EU will signify not only the European Union but also its predecessors, from the European Coal and Steel Community to the European Community, in the remainder of the paper.

autonomous impact of actors at the European level, and inter-governmentalists deriving the empowerment of the EP and other EU institutions primarily from member state governments' preferences and interests. However, in studying the influence and output of the European Parliament, the European Commission, the European Council, or the European Central Bank both perspectives share a preference for focusing on policy production and its role in legitimizing EU governance, neglecting important aspects of procedural legitimacy.

The paper proceeds as follows: the subsequent section 2 briefly recapitulates the often sceptical positions taken by many scholars on modern representative democracy in general and the impact of European elections on the legitimacy of European democracy in particular. This sets the stage for a critical assessment of the main theoretical tools applied so far to explain the creation and practice of European elections and why they do not seem to grasp fully the motivating factors for electoral reform (section 3). The fourth part presents the methodological approach chosen for the historical analysis of the two following parts (section 5 concerning the period up to the Electoral Act and part 6 examining the subsequent reform stages). The conclusion summarises the main points found in the previous sections and suggests some topics for further research on this important aspect of the history of the EU.

2. Political representation, contemporary democracy and the justification of direct EP elections

The choice for European elections was not a sudden rupture from previous ideas and narratives of European integration. The main justifications for direct elections evolved over a period of several decades and were built on particular theories of political representation beyond the nation state. Despite a wide-spread awareness of the difficulties involved in the transfer of constitutional and institutional models from national to trans-national contexts national democratic experiences and institutions were unavoidably the source of institutional mimesis and isomorphism. That novel institutions are often combined with "actualisations of old *topoi*" (Ihalainen et al. 2016, 2) can certainly be demonstrated at several crucial junctures of European electoral reform. In the framework of the nation-state more than two centuries of European parliamentarism saw the gradual introduction of free elections for all citizens, independent of economic status, gender or educational achievement. This development towards popular democracy in a national framework was of course a source of inspiration for those arguing, since the 1948 conference of The Hague, in favour of a directly elected assembly for the European Union (EU) and its predecessors.

However, two important strands of criticism trouble mainstream ideas of political representation, notably its ideal of equal responsiveness to the preferences and interests of all. The first group concerns both national (e.g., US or French) and European-level democracy. Theoretical and empirical studies of the functioning of extant democratic systems have demonstrated that they tend to offer more incentives for political activism, access and influence to privileged socio-economic categories of the electorate (Schlozman et al. 2012, Braconnier and Mayer 2015). Although the literature on the inequality of access and voice has long remained an inconspicuous branch of political science, recent developments such as the rise of populist movements, have contributed to a resurgence of social criticism of modern democratic systems (e.g., Bartels 2016). Many of these observations can be – and are – seen as applying *a fortiori* to European governance (notably the so-called democratic deficit and the strong influence of trans-national economic actors). But they are not clearly distinguishing between the national and the European level of

representation. For instance, dwindling powers of parliamentary institutions are observable at the European and the national level, with strong differences between national systems. In both the national and the European context direct and participatory democracy instruments are suggested as a remedy. Often this is framed as a general crisis of political representation.

Another discipline critically examining current democratic systems looks more specifically on the constraints of political representation in a trans- or multi-national context. Academic analysis has accompanied policy makers at least since the question of direct European Parliament (EP) elections had entered the political debate (e.g., Heidelberg 1959). It's salience increased when the first experiences with European elections could be made (Wallace 1979, Reif and Schmitt 1980) and, from then on, scholarship on the European elections continued to be a vigorous discipline of political science (e.g., Reif 1984, Noiret 1990), perhaps even gaining traction since the political effects of the public debt crisis have become apparent (van der Brug 2016). The arguments made by scholars analysing the impact of European elections will be discussed in greater detail below. Although this paper does not intend to review the burgeoning literature on unintended consequences of European elections it is probably fair to say that an important part of it, particularly contributions published more recently, stresses the problematic effects of European elections. This concerns not only voters' attitudes toward – both national and European – representative democracy (Franklin and Hobolt 2011, Schulte-Cloos 2017) but also the legitimacy of the EP or the EU as a whole (Rittberger 2014, Majone 2015). Other scholars doubt whether the parliamentarisation of the EU is a useful strategy at all (Fabbrini 2015). Even authors defending the democratisation of European governance often assert that the European Parliament's role in “securing representation, despite its increased decision-making powers, is still utterly underdeveloped” (Piattoni 2013, 239). Hence, from early articles examining the first direct elections to more recent work on European democracy we can identify a majority view of pragmatism and scepticism concerning the long-term effect of direct elections on reducing the EU's democratic and political deficit. In view of this, the main question of this paper can be restated: why did political leaders decide to introduce direct elections despite such lack of enthusiasm, which was of course not limited to scholars?

3. Functionalism, inter-governmentalism and their lack of explanatory power for electoral reform

This puzzling phenomenon in much of the functionalist as well as the inter-governmentalist literature cannot be easily explained. The direct elections to the European Parliament introduced in 1979 are certainly recognised and duly mentioned by most authors as a tide change of the EU's constitutional set-up. However, many scholars studying the EP's empowerment, even those arguing for the appropriateness and effectiveness of deeper integration, don't establish a convincing link between electoral reform steps and the principal moments of empowerment. As mentioned above, electoral reform is rarely analysed as a dependent variable of political leaders' decision-making. To cite but one example, despite its institutionalist inclinations Rittberger's (2005) seminal work on the EP's empowerment focuses on the outcome of Intergovernmental Conferences and arguments advanced by member state representatives concerning the status and role of the European Parliament but does not address issues and narratives of electoral reform. Still, Rittberger provides some important indications how to explain the difficulty of realising electoral reform, notably the role of national political parties (25, quoting Jachtenfuchs).

Another explanation for functionalists and inter-governmentalists preferring not to examine electoral reform as the target and outcome of arguing and decision-making may be that its history is a history of many failed attempts, compared to the long series of constitutional moments of success which widened the EP's influence, extended the application of majority voting in the Council of Ministers or introduced new policies strengthening the supranational character of the Union, such as Economic and Monetary Union. Thus the lower number of historically important junctions worth to be analysed and compared in depth makes an institutionalist analysis more challenging from a methodological point of view. The resultant lack of formal and demonstrable decisions that can be traced back to particular negotiation stages presents a major challenge.

Still another reason may be that many debates and negotiations around electoral reform remained at a procedural and often technical level. There seems to be an almost magnetic draw to comparisons with national habits or rules, possible effects on the national political landscape, or the relative weight of political groups in the EP or elsewhere. Similarly, a good part of the scholarly literature accompanying electoral reform efforts concentrates on procedural issues, certainly important for the legitimising power of European elections, but nevertheless leaving aside essential but sensitive questions such as MEP candidate selection, the development of trans-national party structures or the design of trans-national constituencies. As the remainder of the paper will present in more detail, not only the negotiating political leaders and officials but also scholars advising them or developing new strategies devoted much effort to justify particular options for politically important but still rather technical issues such as the number of regional constituencies or the timeframe of the elections (Bardi 1990, Grunert 1990).

In conclusion, the volume and depth of analysis of member state representatives' preferences or MEPs' positions on electoral reform is less developed than those of the literature on the negotiation dynamics of Inter-Governmental Conferences and subsequent treaty changes. The purpose of this paper is to contribute to answering the following question: if, according to an important proponent of functional institutional theory, states opt for creating, maintaining, and reforming European institutions when they face collective action problems that may impede cooperation, why did they not tackle more directly problems of procedural (input) legitimacy of the continuously empowered EP? In other words, why was it nearly impossible to transform the input face of the "second order" medal of European elections, despite continuing political, media and academic commentary deploring it?

4. A historical institutionalist perspective of electoral competition and reform

In view of the ambivalent research output on direct European elections outlined in the previous section it seems timely "to go back and look" (Pierson 2000, 264) on the historical context of their origins. The quest for creating a new instrument of political representation for the EU and its predecessors never really disappeared from scholarly and political debate although there were times in the 1960s and 1970s where it was limited to expert circles. Some questions arise as to why European elections were thought to be an appropriate tool to tackle the EU's legitimacy deficit and to what extent political leaders were aware of some pitfalls of parliamentary representation at the EU level which, as shown, were discussed quite extensively in contemporaneous scholarship.

As described in previous section, theories of European integration have mostly been separated between inter-governmentalist, or liberal-realist, and functionalist approaches. Following this logic, the decision to institutionalise European elections could be explained in two different ways: Either the member state governments arrived at the conclusion that it was in their material self-interest to transfer a certain degree of political responsibility and legitimacy to the European level, or the integration of ever more EU policies created political pressure from trans-national actors to regulate EU policies with the help of a directly legitimised Parliament. As historical institutionalists have underlined, both explanatory models share the conviction that the material factors determining rational-choice decisions are the ultimate cause for either inter-governmentalist or functionalist narratives. This paper proposes a slightly different approach: it argues that the logic of consequentiality inherent in both inter-governmentalism and functionalism is insufficient to explain the long struggle for a directly elected Parliament. Ideas of what constitutes the “principles of democratic rule” were applied to the European system of governance and are likely to be another important factor to explain the advent of direct elections, in what scholars applying historical institutionalist approaches call the logic of appropriateness (Rittberger 2012). Furthermore, an increasing body of literature shows that they may also be accountable for the parliamentarisation of the EU, in other words the empowerment of the EP (Héritier et al. 2017).

Historians and historically inclined political scientists studying the European Parliament and its election have often had recourse to the influence of legitimizing ideas. This paper builds on their seminal work and aims to make a contribution to a more dynamic analysis of the ideational factors, taking into account the fact that over more than fifty years of debate, decisions concerning the European elections were embedded in a complex system of networks of interacting agents – EU level actors, national and trans-national party coalitions, governmental bureaucracies, civil society – that influenced each other at many critical junctures of European integration. The behaviour of one agent affected the behaviour of others and the resulting dynamics produced novel self-organizing behavioural and ideational patterns, in a spiral of feedback loops and linked responses. The paper aims at providing evidence that not only the EP’s norm entrepreneurship but also socialization effects, normative consensus, and joint constitutional paradigms such as the principle of representative democracy were influential for developing a European electoral procedure.

Hence, the theoretical foundation of the research question posed above can be formulated more precisely. In most accounts of the nascence of direct EP elections the modification of the decision procedure in the Council of Ministers is given paramount importance (cf. Grimm 2015 for a recent standard account of this argument). From the moment individual member states lost their capability to block Council decisions, thus depriving national parliaments of any direct influence on EU policies under qualified majority decision-making, a democratic void opens which requires compensation. In a classic functionalist logic many observers hence asserted that an equivalent parliamentary control would be needed at the European level (as a spill-over of more integrated decision-making). Under the prevalence of the model of representative democracy and strengthened through the policy entrepreneurship of Members of the European Parliament (MEPs) the step towards direct elections and more legislative powers for the EP seemed almost unavoidable. However, these two aspects of EP empowerment were far from automatically linked. Indeed, as the paper will show in more detail below, the temporal and logical order of electoral legitimacy and the extension of legislative, budgetary and control powers was contested (Costa 2016).

Is there institutional path dependency in electoral reform?

The adoption of the Electoral Act in 1976 was a critical moment of the EU's constitutional development and was demanded by all European-level parliamentary assemblies since 1951 and many scholars of democratic legitimacy. But a functionalist defence of legitimacy spill-over would be hard-pressed to explain the slowness of the procedure as well as the incomplete character of European electoral law. Electoral procedures are usually seen as a classical example of "sticky" institutional arrangements that are very hard to change. As Pierson and others have shown, political and even more constitutional rules of the game are *meant* to be hard to change because they guarantee political leaders a level playing field in political contests and protection from radical restructuring of basic constitutional features of the political system through political opponents after a change of the party composition of the government or other important constitutional actors. Moreover, the desire to shut out political opponents from influential political positions may lead to the creation of non-elected and non-majoritarian institutions such as central banks. Some authors claim that political leaders may even tend to build such independent agencies in a desire to bind themselves in view of achieving long-term policy objectives beyond the electoral cycle, thus providing the material foundation for what some scholars have called path-dependency (Pierson 2000, 262).

The concept of path dependency has been criticised as a fashionable term to express simple truths such as "history matters" or as being fraught with methodological weaknesses such as the "small n" problem of arriving at conclusions on the basis of single case studies or narratives. Opponents of an idiographic approach to social science adhering to the nomothetic objective of identifying reliable cause-effect relationships across multiple situations have sometimes castigated path-dependency as an example of concept stretching and a simplistic explanatory model failing to examine the underlying forces of social change. However, in its narrower definition the model seems to capture an essential feature of political institutions: political change is bounded change, constrained by the existence of legal and other change-resistant rules that by definition exist to make institutional change subject to high thresholds of implementation (Pierson 2000, for similar arguments from a legal perspective Grimm 2015).

Among these "sticky" institutions electoral rules and procedures certainly stand out as particular difficult to change since they change the rules of the political game as such. Rules of electoral competition have been singled out by some historical institutionalists as a particularly opportune topic to be investigated by applying historical institutionalist approaches (see Thelen and Steinmo 1992, 2). Similar observations have been made for other polity-defining structures, such as political parties. As Lipset and Rokkan's still influential studies on political cleavages have shown, parties in Europe exemplify this dynamic. Crucial historical junctures produce major political cleavages, which are then concentrated in political parties (Lipset and Rokkan 1967). In view of high initial costs of institutionalisation and party members' and voters' adaptive expectations, parties are reproduced through time, generating stable party systems, with very few exceptions such as green parties stressing environmental policies. Since the advent of the European public debt crisis the surge of populist movements has contributed to create a seemingly more fluid party landscape and may make government formation less predictable. However, the constitutional set-up of electoral competition and party organisation has barely been affected so far.

When examining the evolution of European electoral rules, some particular aspects of bounded change must be taken into account. First, the creation of a new institution in the EU context

requires modification of the primary law of the Union. Such modification is only possible with the unanimous consent of all member states. Treaty change is hence a particularly severe case of the general observations on stickiness made in last section: member states cannot be forced to accept constitutional changes, or even legal acts, which they do not accept politically, as the history of various compromises on the application of majority voting in the Council and a growing number of implementation failures has shown (Dehousse 2016). One consequence of this is that in many instances the law of the lowest common denominator reigns: only provisions acceptable for all may be decided on and formalised.

5. From federalism to common principles: the institutional evolution of the European Parliament's electoral system until 1976

From 1952 the issue of direct elections to the European Parliament was debated at many occasions. Although the Common Assembly (CA) of the European Coal and Steel Community was strongly captured by federalist ideas and models (Rittberger 2006) discussions were less characterised by profound reflections on political representation or on the question whether a parliamentary system was the appropriate one for the European level of governance. Members of the Parliament and its precursors quite naturally took the experience as national MPs as their main guideline when arguing for direct elections. For example, the German delegation to the ECSC assembly negotiations was strongly influenced by federalist ideas borrowed from the federal constitutions of West Germany and the United States (Rittberger 2009, 55). On the other hand, proponents and opponents of such elections were of course aware of the unique character of transnational parliamentary elections.

The following review of the history of electoral reform is dominated by three themes that have structured most preparatory debates and proposals:

- The question of whether Parliament should first endeavour to obtain stronger powers in order to increase electors' interest in European elections, or whether direct elections should first be introduced in order to provide the Parliament with the legitimacy to demand more influence.
- The struggle between those who saw the pragmatic proposals leading to the Electoral Act of 1976 as insufficient for creating a true democratic system at the European level, and those who objected to the creation of a second layer of electoral legitimation as dangerous and unnecessary.
- The techno-constitutional question of "regime change": would it be possible to surmount the strongly entrenched national democratic traditions without applying a quasi-revolutionary strategy?

In the Treaty on the European Coal and Steel Community, member states were given a choice to designate or elect, by universal suffrage, the representatives to the Common Assembly. The Treaty of Rome revoked this option, mandating member states with the designation of representatives. However, Article 138(3) provided for future 'elections by direct universal suffrage in accordance with a uniform procedure'.

One important impact of the CA of the European Coal and Steel Community is often ignored in historical accounts of the EU's parliamentary history: avoiding a multiplication of European parliamentary assemblies and arguing for direct elections. Supported by the Presidents of the

Parliamentary Assembly of the Council of Europe, Fernand Dehousse, and the President of the Assembly of the WEU, Ernest Pezet, the President of the CA, Hans Furler, presented an idea for the establishment of one parliament for all three communities at the conference of the six foreign ministers taking place at Val Duchesse, Brussels, on 4 February 1957. The idea was to develop a formula to abolish the CA at the very moment when the new assembly was constituted, with the latter fully incorporating the competences exercised by the ECSC CA, along with the additional competences included in the new treaties. A memorandum, compiled jointly by the three presidents and addressed to the Intergovernmental Conference, also called for direct elections to this new assembly. Furthermore, the CA's resolution of 13 February 1957 reiterated the demand to create one assembly only and to equip it with budgetary powers, as considered appropriate for the parliamentary representation of the people united in the newly emerging community. When the bodies established by the Rome Treaties were formed following the signing of the treaties, a single assembly was constituted at the first plenary session of the new CA in March 1958 (Salm 2017).

In 1958, Fernand Dehousse, a Belgian socialist, was appointed by the Political Affairs Committee of the Common Assembly (CA) as chairman of the Working Party developing a proposal to implement this article. In his report, Dehousse argued that several reasons made the Working Party postpone the uniform procedure until the end of a so-called “transitional period”. Some MEPs pointed out that every electoral system has strong influence on the composition of a parliament and, in particular, on the relative weight of the political parties. Others who were consulted by the Dehousse Working Party said they supported the idea of a uniform electoral system but would only agree to one very similar to their own national system. This can be considered as evidence for the re-actualisation or isomorphism often observed in electoral design and reform (Rittberger 2012, Ihakainen 2016). There were also indirectly implied questions such as the admission of radical political parties to which very different answers were given among MEPs from different member states. French communists and Gaullists as well as German socialists were particularly sceptical of any harmonisation efforts and mostly voted against such proposals. On 17 May 1960 the CA submitted a draft Convention on direct elections. Art. 9 of this draft hinted to the problems ahead, as it referred to a procedure “as uniform as possible”. Furthermore, it stated that details of such a procedure should initially be settled at the national level, thus allowing for a non-uniform system during a transitional period.

The Council didn't act on the draft for many years. During that time, Ireland, the United Kingdom and Denmark joined the Community and the Paris Summit of 1972 launched the project for European Union. It was hence decided that the 1960 draft Convention needed a profound revision. The Assembly never explicitly justified the principle of direct elections from a political theory perspective. There were no discussions on the meaning of representation at the supranational level or the relevance of the notion of a “European people”. The CA decided to consider direct elections primarily as an instrument of attaining stronger parliamentary powers in the longer term and did not demand an immediate extension of its powers (Costa 2016).

After Dehousse left as rapporteur for the Political Affairs Committee, Hans Lautenschlager was appointed his successor. He proclaimed that there was a need to adapt the 1960 draft to new circumstances. A new report was produced and, after Lautenschlager's departure, Schelto Patijn, a Dutch social-democrat, followed the dossier. In November 1974, after one year of preparatory work Schelto Patijn submitted a new initial draft Convention on direct elections. It included amendments agreed upon by the Members of Parliament. Part I outlined the practical details of

implementing direct elections, including the justification, technical issues, responsibilities for implementation, and a possible election date. Part II covered a summary of events since 1960, and the main problems raised by the new draft Convention. On 13 January 1975, the draft Convention concerning elections to the European Parliament by direct universal suffrage was submitted. The resolution outlined the practical details for implementation, covering number of seats, length of term, electoral system and transitional provisions. The explanatory statement justified the need to update the 1960 draft, detailing the main differences between the two texts, and included a summary of the report adopted in May 1960. The statement also rehearsed relevant events since that time, illustrating the failure to move on after the initial draft Convention. In its conclusion, the report mentioned possible problems, including the electoral procedure, links with national parliaments, incompatibility rules, the total number of seats, and transitional arrangements. Two major differences with respect to the previous draft are worth to be recalled: the uniform procedure was mentioned, without providing further details, and no transitional period was indicated in the text.

In the following debate in Parliament the rapporteur provided his opinion on issues such as uniform procedure and electoral systems, the need for greater parliamentary power, and announced that any delay by the Council in signing the draft could not be tolerated. The Patijn report was less ambitious and more realistic than the Dehousse report, and required a lower level of electoral uniformity (Costa 2016, 15). Generally, MEPs' positions were not too divergent, with wide agreement on topics such as the need to abolish the dual mandate, to hold elections simultaneously across Europe, the importance of keeping to the agreed deadline, the total number of seats, and how a uniform procedure could be established at a later stage. However, the European Conservative Group felt that the dual mandate should not be abolished. The Group of European Progressive Democrats questioned the timing of direct elections, without having obtained greater parliamentary powers.

On 11 March 1976, Parliament debated and adopted a motion for a resolution put forward by several political groups (Socialist Group, Christian-Democratic Group, Liberal and Allies Group, European Conservative Group), urging the Council to make its final decision on the draft at its meeting in April. Again, rapporteur Patijn declared that the main outstanding issue was a decision on the number of seats and urging the Council to pass the draft in the interest of creating a more democratic Europe. On 7 April, following the Council meeting, the same cross-group alliance proposed another motion for a resolution that was again debated and adopted, deploring the failure of the Council to come to a final decision. The President-in-Office of the European Council, Gaston Thorn, addressed Parliament and assured MEPs that the draft was supported but that there were still disputes over the number of seats.

In the debate, the EP's Christian-Democratic Group felt that citizens had been let down, while the Group of European Progressive Democrats claimed that the European Community was slipping backwards and that the Council was yet to find its role. The European Conservative Group expressed its disappointment but also its hope that the next Council meeting would be more successful. The Communist and Allies Group claimed the failure was no surprise but reflected the deep crisis of European policies supporting big business. In June, the same cross-group alliance issued yet another motion for a resolution, debated and adopted, requesting the Council to establish the number of seats between 350 and 400.

In the meantime, member state governments had decided, at the Paris Summit of 1974, to reconsider the dossier and asked the EP to submit a new proposal. By that time, the EP had practically finished its work on the new draft Convention. The political movement asking for direct elections gathered momentum and this led to the Electoral Act of 1976. This Act concerned only direct elections, the uniform electoral procedure proved impossible to obtain the agreement of all member states. Art. 7 of the draft stipulated that the elections should be organised by national arrangements until a uniform procedure would be put in place, and there was no mention made of any timetable for that to happen. On the remaining issues the Act followed Patijn's draft Convention quite closely.

In September 1976 the final motion for a resolution on behalf of the Political Affairs Committee was adopted, deploring once more the Council's failure to sign the draft during its July meeting. There was a decision to pass the draft on 20 September and MEP Patijn warned that delays beyond this point would jeopardise the deadline for direct elections. President-in-Office of the Council Laurens Jan Brinkhorst assured Parliament that the draft would be signed in five days. Members from the Socialist Group and the Communist and Allies Group opposed any plan for direct elections, the latter regarding them 'as pseudo-democracy'. The Council formalised the draft Convention as the Act of 20 September 1976.

The Act did not, however, include a uniform electoral system. It allowed Member States to design their electoral system until a uniform procedure would come into force. Furthermore, it allowed dual parliamentary mandates and a voting period stretching from Thursday to Sunday. The right to vote for citizens abroad was not yet included. The draft Convention had proposed that by 1980 the EP and Council should agree on a uniform procedure (Art. 7) and that voting would take place on the same day, with only the possibility to hold the election one day later or earlier than the fixed date (Art. 9). Some member states were slow to ratify the Act, and the date for direct elections was eventually set for 7 to 10 June 1979. As Costa notes, most European politicians, commentators and citizens only became aware of the imminence of European elections after the formal adoption of the Act.

A systematic analysis of the press of the nine member states during the year before the elections showed that around 60% of articles were dealing with the positions of the various (national) parties and candidates regarding the election on mostly national issues. Other articles (around 30%) were explaining the poll or discussing its consequences. Only relatively few articles (around 10%) were devoted to European issues and policies. (Costa 2016). However, numerous Journalists and political scientists underlined the existence of a domestic drift, and the incapacity of politicians and the media to address European elections at the European scale. To explain this situation, they emphasized the absence of a common electoral system, the impossibility for nationals of one member state to stand for election or to vote in another, the absence of cross-border constituencies, and the necessity to empower European parties (examples of such statements are referenced in Costa 2016, 20 ff.).

To assess this long process realistically, it has to be recalled that in the early 1960s the political climate in many member states, and thus in the Council, was not very amenable for ambitious efforts to establish a European representative democracy. President Charles de Gaulle's party was firmly opposed to any move that would increase the powers of the EC institutions. In this context, direct elections were believed to be detrimental to French national sovereignty, as a directly elected parliament, through its newly obtained legitimacy, would soon obtain increased budgetary

and legislative powers. Because of the unwavering opposition of de Gaulle and Georges Pompidou the Dehousse proposal was blocked in Council for 15 years. For many years, resistance to direct EP elections and a uniform procedure came from Gaullists and communists. Both were opposed to any supranational characteristics of the European Community or the prospect of a proportional system of representation at the European level. Germany could only play a minor role in the run up to the 1976 Act, despite the federal leanings of many of its representatives.

After the election of President Giscard d'Estaing and Chancellor Helmut Schmidt, in 1974, French and German policy developed a close mutual understanding. However, Denmark and the UK had in the meantime joined the EC. The UK would systematically resist a uniform electoral procedure, possibly obliging it to accept a system of proportional representation. Both major parties defended the simple majority or "first-past-the-post" system. Most other member state governments and most national political parties were inclined towards further modest reform steps although some small parties, notably the recent formed Greens, opposed proposals they deemed threatening for them, such as electoral thresholds or transnational lists. Even the superficially technical issue of regional constituencies caused recurring resistance from some member states fearing an indirect encouragement for separatist movements.

6. Constituencies, proportionality and thresholds: the long way to electoral reform

6.1 Preparing the 2002 reform of the Electoral Act

After the elections, a sub-committee of the Political Affairs Committee was established and continued work on electoral issues. Jean Seitlinger, an MEP elected in France, was appointed rapporteur. His report containing a draft proposal for a new electoral procedure was adopted in committee on 28 January 1982. The plenary adopted a resolution submitting the draft to Council on 10 March 1982. Contrary to previous proposals the resolution was the first attempt to establish a uniform procedure:

- Proportional representation as prescribed as the only accepted electoral system.
- Member States were required to structure their territory in several constituencies (Art. 2).
- A fixed two day period for the elections was set (art. 7).

Seitlinger conceded in the debate that harmonization could only be partially achieved and that a general uniform electoral procedure would encompass many more aspects. The draft proposed to adopt a multi-member constituency system within which members are elected by proportional representation on the basis of regional or national lists. Furthermore, Member States were allowed to install an electoral threshold and Member States must allow their nationals living in another Member State the right to vote. It also stipulated the permission of preferential voting. Again, no unanimous agreement was achieved in the Council because important member states opposed the reform. Moreover, there was the special problem of British representation, which had become a major source of disagreement among MEP's. The underlying cause was the British first-past-the-post electoral system. The effect of this system was that a very small part of the UK electorate was able to cause a major disruption of the political composition of the parliament, a fact that was resented by many MEPs from other member states. On the other hand, British representatives asked why Britain should give up on its traditional "first-past-the-post" system if the other member states would only agree on a very limited array of features of a uniform

electoral system. Finally, the active and passive franchise irrespective of place of residence also proved to be a major obstacle.

It its second term as a directly elected chamber (1984 – 1989). The PAC decided, on 17 September 1984, to prepare a further report on reform of the Electoral Act. Reinhold Bocklet, a German Christian-democrat, was appointed rapporteur. Art. 4 of his proposed Electoral Act eliminated the requirement of more than one constituency per member state. For the rest, the proposal was very similar to Seitlinger's although observers at the time felt that it was less rigid and that it allowed for more flexibility for national legislators. The report was adopted with a relatively small margin (16 in favour, 8 against and 13 abstentions), indicating that difficult negotiations loomed in the plenary. Hence the proposal was referred to a working party, where disagreements persisted and blocked tabling the report for a vote in plenary. Hence, due to internal conflicts the EP didn't adopt a resolution in this case and the Council was not obliged to take a formal position on the proposal. During debates on Bocklet's work MEPs displayed disagreements on almost all elements of a possible uniform procedure.

During the EP's third term (1989 – 1994), the issue of drawing up a uniform procedure was in the hands of the newly established Committee on Institutional Affairs, under the guidance of Karel de Gucht, a Belgian liberal. He developed what was called an "interim" resolution, adopted on 10 October 1990. The definitive text was voted and adopted only on 10 March 1993. This proposal was more concerned with facilitating adoption by the Council than keeping to the core principles of previous proposals, notably the idea of a uniform procedure. All arrangements of the Bocklet proposal allowing for flexibility were maintained. The application of common principles rather than a uniform procedure was justified by the principle of subsidiarity which had received much attention in the negotiation of the Maastricht treaty. However, no agreement on the organisation of constituencies or the right to vote for residents of other member states could be obtained.

The final De Gucht text was among the loosest interpretations of the term "uniform procedure" of all previous draft Acts proposed between 1976 and 1993. On the other hand, with the entry into force of the Maastricht Treaty on European Union on 1 November 1993, Art. 8 TEU stipulated that all EU citizens residing permanently in a Member State have the right to vote and to stand for election under the same conditions as nationals of that Member State residing there. This was a major breakthrough in the political context of the electoral procedure. The proposal allowed some countries to apply their existing electoral rules to the European elections. For instance, the UK would have been allowed to elect up to two-thirds of its seats pursuant to the first-past-the-post simple majority system, while other member states would have been obliged to adapt their national electoral system. Again, the Council did not achieve unanimous agreement after receiving Parliament's formal proposal.

In 1997, a new Labour government was elected in the UK. Thanks to a pre-election agreement between Labour and the Liberal Democrats, the door was now open to install a proportional electoral system in the UK for the European elections. One of the biggest obstacles blocking progress towards a uniform electoral procedure was eliminated as in the upcoming 1999 EP elections all EU Member States were about to use a system of proportional representation. Furthermore, the Treaty of Amsterdam introduced the possibility of drawing up a proposal for elections in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. This treaty change as well as the change in government in Britain made a solution along the lines of the above proposals realistically possible.

In 1997, Georgios Anastassopoulos, a Greek Christian-democrat, had been appointed as rapporteur of the Institutional Affairs Committee. His report took into account the new possibilities offered by treaty change and the arrival of the British Labour government:

- Proportional representation was to be used in all Member States.
- The incompatibility between an MEP mandate and being a member of a national parliament was introduced.
- Regional constituencies for countries with more than twenty million inhabitants.

However, all other aspects of a truly uniform electoral procedure, such as introducing a minimum proportion of votes for obtaining a seat or preferential voting (allowing the voter to change the order of candidates on a list) were either left as an option for Member States to implement or not included. There was no mention of a uniform procedure but of incorporating the common principles introduced by the Amsterdam Treaty. The motion for a resolution took into account many divergent views in the Parliament and left many aspects of the electoral procedure to the discretion of Member States: there was no agreement on an electoral threshold, a shorter voting period, or preferential voting. It was adopted in committee by 26 votes in favour, 3 against, and 3 abstentions, indicating a wide consensus in Parliament. This is worth remembering because Art. 7 of the draft Act provided for 10% of the total number of seats to be filled, by 2009, on the basis of single constituency covering the whole territory of the EU.

Again, Parliament's draft Act was subject to long negotiations in the Council, during which some provisions such as the obligation for Member States to create several constituencies if the population exceeded 20 million citizens were eliminated. But, in 2002, for the first time since the adoption of the 1976 Act, Council responded with a common position. The main reason for this was the change of attitude of the British government concerning the acceptance of proportional representation for the European elections, thus removing one of the most problematic obstacles to electoral reform. Furthermore, the provision on a single European constituency by 2009 had been taken out. In Parliament, the Committee on Constitutional Affairs (replacing the former Committee on Institutional Affairs) subsequently appointed José Maria Gil-Robles Gil-Delgado (EPP) as new rapporteur on electoral reform. On 12 June 2002, the proposed draft resolution was adopted in plenary and gave Parliament's consent to the Council's proposed amendment of the Act, thus clearing the way for the Council decision amending the Act of 1976. A modified electoral procedure, based on common principles, albeit far from a uniform procedure, had finally been adopted.

It thus took the EU more than forty years to implement the provisions of Art. 190 TEC. From 1958 to the first EP elections in 1979 most reform efforts were calling for the introduction of direct elections. During this period the uniform procedure was set aside as a topic for later proposals. However, academics quite rapidly started to analyse the legal and political requirements for such an achievement (Sasse et al. 1981). Most political leaders and practitioners thought that there was still plenty of time to bring about the uniform procedure after the direct elections were safely established. From 1979, therefore, the EP developed several drafts for electoral reform with a more uniform procedure as the main objective. However, even among parliamentarians and over the various stages of reform attempts between 1960 and 2002 the terminology changed considerably. While Fernand Dehousse had wryly stated that uniform procedure referred to an electoral law which is "fundamentally the same in all Member States", later legal definitions proved more flexible. For instance, in the report leading to the 1976 Act, Schelto Patijn maintained

that “the concept of uniformity will acquire a different value when further parallels have developed between the electoral procedures of the individual Member States”. Later on, the opinion of the Legal Committee to the Bocklet report held that an electoral procedure could be “said to be uniform when, apart from the organisational flexibility needed for peripheral or highly specific matters, it ensures a substantial degree of similarity between the principal elements which make up the system”. With this new flexibility and strengthened by its newly acquired legitimacy as the only directly elected EU institution, Parliament was expecting the Council’s openness to accept further reform steps. But, as this short overview has shown, events in the member states were at least as important as Parliament’s political pressure and norm entrepreneurship for finally realising the 2002 reform.

6.2 The constitutional framework after Lisbon: normative prescription or legal window dressing?

The history of the varying interpretation of the term “uniform procedure” of Art. 138 TEC (later Art. 190 TEC) by MEPs in different roles (group leaders, rapporteurs, and others) as well as by representatives of national governments provides a salutary reminder that contested treaty provisions may be insufficient to determine the outcome of intra- or inter-institutional negotiations, even if they appear quite unequivocal at first sight. Uniformity meant different things at different moments to different actors until its formally binding sense was finally abandoned by including the more flexible formula of “common principles” in the new wording of Art. 190 TEC, which was introduced by the Amsterdam Treaty. On the one hand this can be seen as a positive responsiveness of the drafters of the treaty to long-standing tensions in the interpretation of a particular legal term (having important political ramifications). On the other hand the specificity of the article, usually a criterion for good legal drafting, gave way to what some actors welcomed as flexibility, others may have seen as (unavoidable?) lack of precision concerning the objective of the provision.

In the current post-Lisbon treaty, Art. 22 and 223 TFEU state unequivocally that when it comes to the electoral procedure, the EP is dependent on a unanimous vote in Council and the requirement of ratification in all member states. However, Art. 223 still upholds the imperative to adopt an electoral procedure, which ideally should be “uniform”. The Electoral Act having been adopted in 1976 and revised once, in 2002, the Intergovernmental Conference (IGC) drawing up the Lisbon Treaty nevertheless formally recognises that the electoral procedure in force is not fully satisfactory and needs to be improved in order to strengthen the democratic representation at the European level. Hence, the European Parliament only meets a treaty requirement if it continues to submit proposals for further revisions of the electoral procedure. Likewise, the numerous past resolutions aiming at such a revision were an implementation of earlier treaty articles pointing in the same direction.

The two articles concerning the European elections must of course be seen in a systemic link with the new provisions on democratic principles of the TEU, and especially its Articles 10 and 14. Whereas former Art. 189 TEC specified that the Parliament was composed of the “representatives of the peoples of the member states”, an expression that mirrors the indirect representation of EU citizens, Art. 10 TEU now states that “the functioning of the Union shall be founded on representative democracy” (a new provision) and that “citizens are directly represented at Union level in the European Parliament”. Furthermore, Art. 14(2) TEU provides that “the European Parliament shall be composed of representatives of the Union’s citizens”. The direct link between

the EU and its citizens, legally established half a century ago in case law of the European Court of Justice (now Court of Justice of the European Union, CJEU), has now acquired the character of a constitutionally formalised and essential provision of European primary law.

This interpretation is strengthened by the fact that the above articles are parts of a new title II in the TEU, comprising “provisions on democratic principles” of the EU. Although the requirements for adoption of electoral reform have not changed in practice, a subtle change in legal terminology may be seen as further confirmation of the desire to make electoral reform a less exceptional process than in previous treaties. While Art. 190(4) TEC stipulated: “The Council shall, acting unanimously after obtaining the assent of the European Parliament, ... lay down the appropriate provisions, ...” Art. 223(1) TFEU provides for a Council decision, “acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament”, laying down the “necessary” provisions. Unanimity and national ratification remain part of the procedure but, clearly, the drafters of the Treaty wanted to align electoral reform, at least terminologically, with ordinary EU legislation and to stress the obligatory character of continuing electoral reform. We can conclude that the treaties express in clear language the requirement to establish a system of European representative democracy and even concede the need for further development of its practical implementation, first of all the need to arrive at an electoral system fully reflecting the principles enshrined in the general provisions of EU primary law.

The normative pull for further electoral reform appears strengthened by the entry into force of the Lisbon Treaty. This does of course not change the political context and the tension between normative ideas of appropriateness and empirical obstacles to reform. It also has to be seen in context with other treaty provisions pointing to the respect for member states’ identity and sovereignty (especially Art. 4 TEU). The above interpretation of the treaty is certainly evidence for the existence of common ideational principles, among which the principle of representative democracy, newly added in a separate title of the Treaty. However, recent electoral reform proposals made by the European Parliament, although advancing a bit further than those of the last parliamentary term, still encounter strong face wind from the Council. In addition, for the plenary to adopt the Committee on Constitutional Affairs’ report, the content of its proposals had to exclude controversial ideas such as the EU-wide constituency for electing a certain number of MEPs through European party lists. These latest reform steps are not the principal subject of this paper. They will however be reviewed succinctly to illustrate the durable nature of some essential institutional impediments in the history of European electoral reform.

6.3. A lack of parliamentary courage? Electoral reform today

The Constitutional Affairs Committee made several attempts to have Parliament adopt a proposal for further revision of the Act (Duff 2010, 2014) but its draft resolutions were never adopted. One of the main points of contention was the idea to elect a small number of MEPs in a Europe-wide constituency composed of candidates proposed by the Europarties. On 28 September 2015, a report on a proposal to amend the Act on direct elections to the European Parliament was tabled by Danuta Hübner and Jo Leinen and adopted by the Committee on Constitutional Affairs. The report calls for reform of the electoral process before the 2019 elections, notably enhanced visibility of the European Parties, common minimum deadlines for the publication of candidate lists and voting rules for citizens living outside the EU, including postal and electronic voting.

Furthermore, a common electoral threshold is proposed. In its explanatory statement, the report recalls previous decisions affecting the electoral system. In 1992, the Maastricht Treaty gave the European Parliament the right to assent to Council decisions on uniform procedure, and citizens the right to vote anywhere in the EU. In the 1997 Amsterdam Treaty, the European Parliament's mandate for a reform of electoral law was widened, including common principles to be followed by member states. The Lisbon Treaty of 2007 gave Members of the European Parliament enhanced status as direct representatives of European Citizens (Art. 10 and 14 TEU) instead of the 'peoples of the States brought together' in the European Union (former Art. 189 TEC).

Based on the Hübner/Leinen report the Parliament adopted its resolution on 11 November 2015, by 315 votes to 234 with 55 abstentions. Article 223 of the TFEU gives the European Parliament the right to initiate a reform of European electoral law by formulating proposals, which the Council decides upon by unanimity. In view of the steadily decreasing turnout in European elections, in particular among the youngest voters, and voters' lack of interest in European issues, Members felt there was a need for ideas that would help to revive European democracy.

Accordingly, Parliament proposes to reform its electoral procedure in good time before the 2019 elections, with the aim of:

- enhancing the democratic and transnational dimension of the European elections and the democratic legitimacy of the EU 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.

Some of the practical changes desired by Parliament are:

- obligation of political parties participating in elections to the European Parliament to observe democratic procedures and transparency in selecting their candidates for those elections; national parties should hold a democratic vote to select their candidates for European elections;
- enhancement of the visibility of European political parties by placing their names and logos on the ballot papers, and where possible on posters used in European elections campaigns;
- introduction of a common deadline of twelve weeks before election day for the establishment of lists at national level and for the nomination of candidates for the post of President of the commission by European political parties so as to enable their electoral programmes to be presented, political debates between the candidates to be organised and EU-wide electoral campaigns to be mounted;
- close of polling in all member states by 21:00 hours CET on the Sunday of elections;
- a common deadline of eight weeks for finalisation of the electoral roll and six weeks for information concerning Union citizens with dual nationality and Union citizens living in another member state to be exchanged with the national single authority in charge of the electoral roll;

- introduction of the right to vote in the European elections for all Union citizens living outside the EU.

There is also a push from one member state to introduce an obligatory threshold for the allocation of seats in single constituency member states using the list system and in constituencies which comprise more than 26 seats, ranging from 3% to 5%; in addition, Parliament suggests that the Council decide by unanimity on a joint constituency in which lists are headed by each political family's candidate for the post of President of the Commission. Finally, Parliament demands to have the right to fix the electoral period for elections to the European Parliament, after consulting the Council.

Perhaps the most radical change of the electoral procedure would be to ask the European Political Parties to select the candidates for the "joint" EU-wide constituency and to stage an effective campaign for them. Such a list would in all likelihood transform the posture of Europarties over the years and enable them to acquire a more independent role with respect to national party structures. It would introduce a host of new tasks and possibilities for inter-party communication and cooperation, Europe-wide head-hunting for suitable candidates and new energies for the implementation of interesting proposals to Europeanise the European elections, such as making regular public appearances of non-national politicians the rule rather than the exception.

Euro-federalists in the Parliament are developing ideas on how to use the British contingent of EP seats for the single EU-wide constituency (about 10% of EP seats). On the other hand, in the Parliament itself objections have been raised against the introduction of such a list (Duff 2010). Some MEPs argue, for instance, that the European constituency would create a two-tier system of MEPs, that it would intensify the personalization and mediatisation of electoral campaigns, and that the presentation of foreign-sounding candidates would alienate voters even more than is the case now. The rapporteur's rejoinder was that "the addition of a transnational list elected from a pan-EU constituency would enhance the popular legitimacy of the European Parliament by widening voter choice. The voter would be able to articulate politically his or her plural citizenship, one national, the other European: two votes are better than one." One could add that personalization and mediatisation are not at all limited to European elections and that in view of the lack of interest at present this might be an acceptable price to pay. Another problem with a two-votes-per-person system is that voters in many countries are not used to it. Electors in federal systems such as Germany, where the Bundestag is elected more or less the same way, would face fewer difficulties.

The Council has not yet reacted officially to the latest Parliament resolution. However, in view of previous positions taken on electoral and related matters it is fair to expect considerable resistance against several of the EP's proposals. To start, it could turn out to be quite contentious whether the proposal and its legal base, Art. 223(1) TFEU, should be considered an exclusive or shared EU competence. In the latter case, the extensive rules on the respect of the principles of subsidiarity and proportionality would have to be followed. Any Council proposal would need the required statement on due consideration of pertinent rules. Especially, national Parliaments would be entitled to provide a reasoned opinion as to the non-compliance with the principle of subsidiarity, possibly initiating a yellow or orange card procedure pursuant to Protocol 2 on subsidiarity annexed to the treaty.

It is probably wise to expect also some resistance against provisions that could be seen as changing the inter-institutional balance, notably between Council and Parliament. This type of

reasoning could certainly be advanced by the Council with respect to the proposed joint constituency as well as the with respect to the proposal to oblige European political parties to nominate their candidate for the position of President of the Commission. The Council will certainly stick to the principle that it is up to member states to define the conditions for the exercise of electoral rights, including in European elections, until common principles or a uniform procedure for the election of the European Parliament are adopted at the EU level.

Another problem could be the compatibility of the provisions on the length of the electoral period and on necessary implementing measures with Art. 291 TFEU. The Council may insist on respecting the provisions of that article as to the right to propose and decide new implementing measures. This could particularly concern any extension of the right to vote. The CJEU has confirmed in several decisions that the definition of the persons entitled to vote and to stand for election falls within the competence of each member state.²

A final, more general problem in future negotiations may be the need to clarify some legal definitions and to distinguish between proposals that correspond to the legal base (Art. 223(1) TFEU) and other draft provisions that do not. Some proposals concerning the internal procedures of parties may be seen as infringing the right to assembly or political rights enshrined in the Charter of Fundamental Rights. Other proposals included in the draft Act could be seen as better placed in parties' internal rules (e.g., making the admission of national political parties subject to the respect of certain rules concerning the visibility to be given to the European party during the election campaign).

7. Conclusion

Scholars commenting on the creation of direct elections immediately after the Act was adopted saw that an increasing impact of European policies on the political system of member states was at the origin of a decision which, as many observers expected, implied possibly unintended consequences. Some anticipated that the directly elected EP “may well increase the awareness of members of the Council of Ministers of the relevance of their party affiliations at European level”, recalling that up to then the only overtly political feature of the Council was “submerged by mutual and tacit consent” (Wallace 1979, 294). While this did not fully materialise up to now, inter-institutional dynamics did play a role: our analysis of Parliament’s mostly unsuccessful attempts to carry through significant electoral reform should not let forget that the EP itself has also been markedly determined by the logic of substantive legitimacy since the 1980s, as is proven by the main thrust of most reforms of its Rules of Procedure (Lehmann 2009, Brack and Costa 2017). The guiding principle of these changes has been to increase Parliament’s efficiency in implementing its ever increasing budgetary, legislative and control powers. This was a necessary corollary of frequently proclaimed worries by the other EU institutions (especially the Council) that Parliament was not institutionally fit for purpose (Maurer 2014). On the other hand, just as the budgetary crises of the 1980s, this confirmed apprehensive expectations among member state governments that a directly elected Parliament would soon become a more powerful opponent in legislative and budgetary conflicts (already foretold by Wallace 1979).

² Most recently in 2015, Case C-650/13 (Delvigne v Commune de Lesparre-Médoc)

The historical institutionalist account submitted in this paper leads to some conclusions that would allow future scholars establish criteria for assessing the probability of further reform. The evidence presented here³ does not confirm a purely functionalist (legitimacy spill-over), nor a merely institutionalist (path dependency) explanation. It has become clear that all major modifications of the European electoral system were realised in historical circumstances which combined at least three supporting factors:

- An extraneous event changing the political and ideological equilibrium of the member states.
- Readiness to accept pragmatic and modest progress on the part of MEPs leading Parliament's push for further reform.
- Subsequent changes of the treaty base for electoral reform that were often prepared by the pragmatic positions developed in the EP and in some member states.

It has also been shown that major parts of the debates and negotiations leading to successful reform were centred on procedural rather than essential questions of representative democracy. However, many of these seemingly unattractive issues implied major risks and uncertainties for the careers and perspectives of the actors involved. Still, the general principle of respecting the rules of parliamentary democracy, also at the European level, was mostly automatically taken as the general normative guidance. This explains, for instance, why heads of government in the mid-70s thought that the creation of the European Council would need to be complemented by a parliamentary reinforcement. But national models and traditions also played an important role in defining MEPs' and member state officials' positions and pronouncements. In fact, they often constituted major barriers to arrive at a common ground for further reform.

As the EU's policy production has become less credible in the general population since the onset of the public debt crisis and its accompanying austerity policies, on the one hand, and the difficulty to establish a common strategy to deal with the influx of refugees, on the other, many citizens are losing faith in the democratic process and system, both at the supranational and the national level. In recent Eurobarometer polls, around 60% of EU citizens do not trust their national parliaments and around 65% do not trust their national government. However, national governments and parliaments take precedence over the EU in citizens' identities and allegiances; for many the EU is the first polity to be relinquished if things go wrong. If the EU is to survive as a political body based on the rule of law and on democratic credentials, and in order to gain stronger support from its citizens, major steps forward are needed. Claiming more participation in EU decision-making processes is of course easier said than done but without more effective representation anti-EU sentiment will continue to rise through its claims of restoration of power from the EU bureaucrats to the people.

With a view to further research on the nascence of the existing European electoral system the role of national political parties should be scrutinised in more depth (see Thiemeyer and Raflik 2015 as a recent example of such a research strategy). One of the unspoken barriers impeding more radical reform, at least for the foreseeable future, is their double role as the main carriers of the ideological preferences of the member state governments and the main competitors of the nascent Europarties in terms of institutional influence and the selection of political leadership at various levels. It is uncertain when and how this antagonism could be resolved in order to create a truly

³ A list of archival documents consulted for this research can be provided upon request.

multi-level democratic system. As Caramani concluded in a recent monograph, despite similar electoral cleavages and ideological profiles across the EU member states, “political centralization cannot be imposed – precisely because of the expectation of democratic participation created by nation-states. [...] Democracy makes it impossible for an elite to ‘responsibly’ impose political integration while ‘irresponsively’ disregarding electorates” (2015, 292). Isomorphic analogies should not be drawn too easily but if we look downwards rather than upwards for a moment, recent experience with devolution and regional political parties in some member states shows that there are many difficult questions to be answered: these concern the stability of electors’ identities, innovative institutional design, and appropriate political representation in a composite polity.

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