



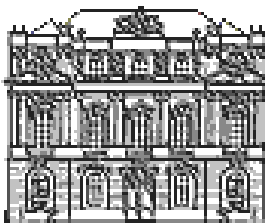
# IWE – WORKING PAPER SERIES

Electoral Law in the European Union

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# **Electoral Law in the European Union**

**Critique of current developments as well as prospects  
based on an analysis of the characteristics of the EU with regard to electoral matters**

## **1. Introduction**

Elections and voting rights are among the core elements of democracy. Every political system requires the participation and inclusion of its citizens in order to democratically establish its legitimacy. Certainly not all organs and institutions of a political system must or can be directly legitimised through elections, however, the development of Western democratic tradition is constructed around the direct election of the parliament. The election of the parliament, as the central organ of modern representative democracies, serves as the primary form of participation for citizens. While the direct participation of the people is indispensable at the national level, indirect representation is the dominant form of democratic legitimation at the international level. At this level, the interests of participating states and their citizens are, as a rule, exclusively realised by the representatives of the respective governments.

At the outset the international character of the European Community dominated, however, the founding treaties themselves foresaw a parliamentary “Assembly” and the goal to establish direct elections of the representatives of the peoples of the Member States.<sup>1</sup> Therefore, the direct participation of the people had been programmatically foreseen from the beginning, although the direct election did not take place until 1979. The Charter of Fundamental Rights of the EU now specifically provides for this civil right (see Art 39).

The European Union exhibits a variety of characteristics that are very decisive to the design of the electoral system. Its status between confederation and federal state, its institutional peculiarities, its size and heterogeneity, its dynamic development, etc. must all be taken into account in the concrete design of the European electoral system. This fact is often overlooked in the discussion of the electoral system at the European level in favour of an impermissibly

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<sup>1</sup> Art 138 TEEC (to which Art 190 EC corresponds since the Treaty of Amsterdam).

thoughtless transfer of electoral system experiences from nation-states. This can easily lead to unfounded conclusions and also to inexpedient or even counterproductive regulations.

This working paper, a part of the research project “Constitutionalism and Democratic Representation in the European Union”, includes a reflection on electoral law in the European Union. Chapter 2 addresses the structural elements of electoral systems. In Chapter 3, the specific characteristics of the EU with regard to electoral systems are explored. Chapter 4 continues with a critical assessment of the development and the current status of electoral law at the European level, followed in Chapter 5 by a visionary look at a future “ideal” electoral system for Europe. The Council Decision of 25 June and 23 September 2002 amending the Direct Election Act is included as an annex. These provisions, however, must first be adopted by the Member States in accordance with their respective constitutional requirements.

## **2. Principles and Structures of Electoral Systems**

### ***2.1. THE MEANING, IMPORTANCE AND FUNCTIONS OF ELECTIONS AND VOTING RIGHTS***

In western parliamentary democracies, elections and voting rights are the (primary) link between representative and identitarian forms of government (Mantl 1975). In the election, citizens realise their right – and simultaneously their civic duty – to participate in the democratic decision-making process. By voting, they confer the democratic decision-making process to their representative parties or individuals.<sup>2</sup> Despite the repeated and justified criticisms of the weaknesses of representative democracy, as well as attempts to promote additional avenues of participation and institutional measures (Pollak and Slominski 2003b), elections remain at the heart of democracy in all plural, democratic states.

The central role of elections and voting rights in a democracy has long been recognised. This is also shown by the political struggle for the right to universal, equal, direct, secret, personal, and

free suffrage, which was one of the most important conflicts in the political development of many European countries in the second half of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> century. Among others Hans Kelsen pointed out the indispensability of voting rights for democracy and indicated the electoral system as a measure of democracy: “In a so-called representative democracy where the democratic principle is reduced to the election of the law-creating organs, the electoral system is decisive for the degree to which the idea of democracy is realised.” (Kelsen 1946, p. 292)

While the importance of voting rights has been less controversial, there continue to be divergent viewpoints on the nature of voting. For some voting is an individual right (individualist theory), whereas for others voting is performed by the individual as a service to the state (functionalist theory). These different viewpoints had already appeared in the days of the French Revolution when, in the beginning, the right of universal suffrage was taken to be a natural right. However, with the establishment of the Directorial Constitution, conditions were placed on suffrage which reflected the functional approach (Meyer 1901, p. 411). In the meantime, dualistic theories, which attempt to link the two positions, have come into prominence (Nowak 1988, p. 157). The fact that fewer and fewer systems foresee compulsory voting can be taken as a signal that the individualistic component of voting rights prevails.<sup>3</sup> On the other hand, increasing concern about low voter turnout in many countries (Lijphart 1998) has commonly led to renewed references to the functionalist aspect of voting rights, with its focus on the democratic duty of the voter.

Almost every country now has elections, whether the country is a real democracy or not. When speaking of elections, we actually only mean elections that include real freedom of choice, competition, and a variety of choices. Dieter Nohlen describes such elections as “competitive elections” (Nohlen 1978, p. 18 et seqq). Non-competitive or semi-competitive elections fail to meet or only partially fulfil the above requirements, and they serve completely different functions than competitive elections. Since in those countries power is primarily won and maintained

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<sup>2</sup> In addition, other groups or institutions (such as social partners for example) can also fulfil representative functions in the democratic decision-making process.

<sup>3</sup> Voting is still compulsory for the European elections in Belgium, Greece, and Luxembourg (Hölscheidt 2000, No 24).

through violence and oppression (Nohlen 1978, p. 22), non-competitive or semi-competitive elections play a much smaller role than competitive elections in plural, democratic systems.<sup>4</sup>

The functions of competitive elections in democratic, constitutional states are various. Table 1 presents a broad overview. Admittedly, every state does not fulfil every possible function of elections to the same degree, and some functions are not fulfilled at all. The fulfilment of these functions depends on the one hand on the specific institutional and sociopolitical circumstances of the state, especially on the specific functions of the parliament. In the European Union there are a variety of such characteristics which will be discussed below. On the other hand, the fulfilment of these functions also depends on the chosen electoral system.

Table 1: Functions of Competitive Elections

<b>Functions of Competitive Elections in Parliamentary Systems</b>
<ul style="list-style-type: none"><li>• Legitimation of the political system and of the government, composed of one party or a coalition</li><li>• Transfer of sovereignty to persons and political parties and expression of trust in them</li><li>• Recruitment of the political elite</li><li>• Representation of opinions and interests of the electorate</li><li>• Linking of political institutions with voters' preferences</li><li>• Mobilization of the electorate with respect to social values, political goals, and programmes, and parties' political interests</li><li>• Enhancement of the population's political consciousness by clarification of the political problems and alternatives</li><li>• Channelling of political conflicts through peaceful procedures</li><li>• Integration of social pluralism and formation of a common will for political action</li><li>• Giving rise to a competition for political power on the basis of alternative policy programmes</li><li>• Bringing about decisive government leadership by means of the formation of parliamentary</li></ul>

<sup>4</sup> Dieter Nohlen mentions as functions of semi-competitive elections: "attempting to legitimize the existing power structure, reaching for political detente within the country, attempting to gain an improved reputation vis-a-vis foreign countries, allowing the manifestation (and partial integration) of the political opposition, adjusting the power structure in order to stabilize the system"; as functions of non-competitive elections: "mobilization of all social forces, elucidation of the criteria of Communist policy, strengthening the political and moral unity of the people, documentation of the unity of the working class and the party by obtaining maximum percentages in voter turn-out and in the approval of candidates on unitary lists" (Nohlen 1996, p. 8 and 9).

majorities

- Establishment of an opposition capable of exerting control
- Opportunity for change of government

Source: Nohlen 1996, p. 7 et seq.

Electoral systems should therefore, in principle, be evaluated based on the degree to which each fulfils the functions of elections within the given sociopolitical circumstances (Nohlen 2000, p. 155 et seqq; Poier 2001, p. 214 et seqq). The first step toward such an evaluation of electoral systems must be to filter out the concrete functions and goals that the electoral system should fulfill and on which the performance of the electoral system is to be evaluated. These concrete goals and functions result from the specific constitutional and institutional structures as well as from the concrete sociopolitical circumstances of the country, which will be more closely analysed later.

## **2.2. ELECTORAL SYSTEMS**

As there are many concepts important in a discussion of elections, it is necessary to define these concepts and distinguish them from one another. Douglas Rae underlined the different purposes of election laws: “Since elections are very complex institutions, the laws which regulate the conduct of participants in them will necessarily be multiple and multi-purposive. Laws of suffrage and eligibility will, for example, specify the classes of persons who may or may not participate as voters and candidates. Other laws will apportion seats and districts among provinces, regions, or population groups. From these and other varieties of election laws, it is necessary to distinguish the set relevant here, namely, electoral law. Electoral laws are those which govern the processes by which electoral preferences are articulated as votes and by which these votes are translated into distributions of governmental authority (typically parliamentary seats) among the competing political parties” (Rae 1967, p. 14).

What Rae defined as “electoral laws”, Dieter Nohlen calls “electoral systems”. “Electoral systems determine the rules according to which voters may express their political preferences and

according to which it is possible to convert votes into parliamentary seats (in the case of legislative elections) or into government posts (in the case for the president, governors, mayors, etc.)” (Nohlen 1996, p. 20).

In this sense the term “electoral system” describes the dynamic interplay of the cornerstones of the technical aspects of electoral law beyond the concept of suffrage. These cornerstones are the main components of electoral systems (Nohlen 1978, p. 64 et seqq). Four such elements can be identified: (1) the distribution of constituencies, (2) the form of candidacy, (3) forms of voting, and (4) the rules for converting votes into seats or representatives. The combination of these elements is decisive for the effects and orientation of an electoral system within given sociopolitical circumstances. Therefore, these four main components and their possible variations should be quickly explained with special reference to the development of electoral law and the discussion surrounding electoral law at the European level.

### **(1) Distribution of Constituencies**

The first important point is the size of the constituency. Single-member constituencies are represented by only one representative. The representative is usually elected based on the majority principle. Constituencies represented by more than one representative are called multi-member constituencies. In this case it can be decisive whether small (up to five representatives), middle (6 to 10) or large (more than 10) size multi-member constituencies are formed. The smaller the constituency, the more difficult it is for small parties (given an equal distribution of sympathisers<sup>5</sup>) to secure seats, even if the seats are allocated proportionally.<sup>6</sup> Finally, it is possible that all representatives can be elected in a single constituency.

It is not uncommon to come across practical examples in which an electoral system contains several levels of constituencies. Then, for a second or third seat-allocation process within an electoral system, smaller constituencies are combined into larger constituencies of the second or

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<sup>5</sup> When the sympathisers of a small party are regionally concentrated, then small constituencies could even favour small parties.

<sup>6</sup> For example, in the case that 20 seats are to be allocated, less than 5 % of the votes are sufficient for a party to gain at least one seat. If only ten seats are to be allocated, then up to 9 % can be necessary for a party to gain at least one seat, whereas a five-member constituency aggravates this necessity for a small party to a percentage of the votes up to 17 %.

third level. Constituencies have to be distinguished from voting or polling districts, in which votes are counted separately but no seats are allocated.

Moreover, the territorial distribution of constituencies can play an important role. Since voters of different parties are usually not homogeneously distributed throughout the country, but rather have areas of greater and lesser concentration, the geographic delineation of constituencies can be of decisive importance. The tactical delineation of constituencies (redistricting) according to the political goals of a specific party is called “Gerrymandering” (Sartori 1997, p. 21 et seqq).

The territorial distribution of constituencies can play an important role in connection with the representation of ethnic minorities. On the one hand gerrymandering can be used to intentionally disadvantage ethnic minorities. On the other hand “objective” boundaries between constituencies, such as historical borders or traditional administrative divisions, can have negative effects on the representation of ethnic minorities, for example when they cross and divide their settlement area. This begs the question whether the protection of minorities requires the delineation of constituencies to the advantage of minorities (such as creating a constituency in which the minority constitutes the majority). The Austrian Constitutional Court<sup>7</sup> and the German Federal Constitutional Court<sup>8</sup> have ruled against such a requirement (Marko 1995, p. 468 et seqq). Moreover, in the USA, where such minority constituencies in fact came into existence, the question of the constitutionality of such positive discrimination in the form of “racial gerrymandering” was raised before the Supreme Court. The US-Supreme Court<sup>9</sup> declared such procedures to be unconstitutional, reasoning that race must not be a criteria for districting, not even for the benefit of minorities (Barber 2000).

In the end the formation of constituencies still comes down to the relation between population and seats in each constituency. This question still has nothing to do with the conversion of votes into seats, rather it concerns the distribution of representatives to the individual constituencies before the election. The requirement of an equal relation between population and seats in all constituencies results from the principle of equal suffrage which requires that each vote has the

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<sup>7</sup> VfSlg 9.224/1981.

<sup>8</sup> BVerfGE 4, 31 et seqq.

<sup>9</sup> The first of many decisions in the 1990s rejecting districting plans as “racial gerrymanders” was *Shaw v. Reno* (1993).



same value “ex ante” (Poier 2001, p. 240 et seqq) as all other votes. If one considers an electoral system with single-member constituencies, then each constituency must encompass the same amount of voters or citizens in order to make each vote have the same value. This can, however, be very difficult, because constituency boundaries would not only have to be constantly changed to reflect deaths, births, and changes of residency, but would also result in arbitrarily conceived boundaries between constituencies which might eventually even divide households between two or more constituencies. The goal must therefore be, to make the number of voters per district as equal as possible while recognising the practical limitations involved. Also controversial is whether constituencies should include equal numbers of voters or equal numbers of citizens. The latter would result in a situation in which votes in areas with more children would have a greater value than in constituencies where the number of non-voting age citizens is lower. Of course, the same problems which arise in single-member districts also surface in multi-member districts.

In the European Union the question of the distribution of representatives to constituencies is again one of the main points of contention in the electoral law discussion (Lenz 1995). The problem arises in that the MEPs are divided amongst the Member States of which each makes up a constituency. From the beginning, the MEPs were not distributed according to the principle of equal suffrage, which would require that they be allocated in mathematical proportion according to population or number of voters. Instead the distribution of representatives was politically determined with regard to a certain balance between the Member States. For example, the four large states of Germany, France, Italy, and the UK received the same number of representatives. The reunification of Germany caused such a blatant disproportion of population to MEPs that a redistribution was inevitable.<sup>10</sup> In addition, this development led to the adoption of an objective providing for a future change to a true proportional distribution of representatives (Art. 190 p. 2 EC), which has not yet been achieved. This topic will be revisited below.

## **(2) Form of Candidacy**

The fundamental differentiation between forms of candidacy is between individual candidacy and party lists. In the first case an individual stands alone for election, while in the second case several people stand for election together. The differentiation depends only on whether the votes

are converted individually or collectively into seats. Whether several candidates join together in a party or an organisation or stand as independents plays no role in this differentiation.<sup>11</sup>

Given a system of party lists, linked lists or list alliances can be allowed. In this case the lists could run separately, but their votes could be counted together with respect to the conversion of votes into seats. In this way, parties can more easily surpass legal thresholds or minimise the number of remaining votes.

### **(3) Forms of Voting**

The voter's options when voting are closely related to the type of candidacy. With an individual candidacy, the voter usually has only one vote, which he or she gives to the candidate of his or her choice. In addition, there is also the possibility that the voter controls more than one vote, usually the case for individual candidacy in a multi-member constituency. Then, the limited multiple vote system (the voter has fewer votes than the number of seats in his or her constituency) or the cumulative vote (the voter can give two or more votes to the same candidate) can be designated as instruments for the protection of minorities in a majority system. If alternative votes are allowed<sup>12</sup>, then the alternative choice comes into play when the first preference of the voter has no chance or already has enough votes to be elected. Then the vote is counted for the voters' second or third choice candidate.

In a party list system the voter has at least one vote, which he or she allocates to the list of his or her choice. An alternative vote system is conceivable, especially in cases where the first choice list does not receive a seat in the parliament, but in practice plays no role in this combination. In a party list system, it is also important whether the election is "personalised" (in order to strengthen links between the representative and the represented), and, if there are such attempts, to what

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<sup>10</sup> OJ 1993, L 33/15.

<sup>11</sup> For example, the British electoral system uses individual candidacy in single-member constituencies whereas almost every candidate stands as a candidate of a party (especially as a candidate of the Conservative Party or of the Labour Party).

degree the voter can influence the order of candidates on the list. A differentiation is made between strict closed and blocked party lists, in which the voters cannot make changes to the list; preferential voting within one closed but not blocked list, in which voters can reorder, remove, or show preference for a specific candidate; and the open and non-blocked list, in which voters can additionally insert candidates who are either on other lists or do not appear on any lists (write-in). In the case of preferential voting too, the voter can have one or more votes at his or her disposal. The possibility for cumulative voting or voting for candidates on other lists (panachage) can also be combined with preferential voting. In the end, the most important factor is the degree of efficacy of voter influence on the lists. Voter influence is at its greatest when every preference indicated by the voter has an effect. In practice there must, however, be a certain critical – often very large – mass on voter preferences in order for them to have an effect.

In addition, individual candidacy and party list elections can also be combined, whereupon the voter either only has the right to give one vote for a candidate or has the right to give one vote for a candidate and one for a party list. In the latter case there usually exists the possibility of ticket-splitting (the simultaneous election of a candidate from one party and the list of a second party).<sup>13</sup> In this combination the party list element is dominant while the single-candidacy element serves primarily as a way to “personalise” the electoral system.

#### **(4) Rules for Converting Votes into Seats or Representatives**

The fourth cornerstone of an electoral system is the formula used for converting votes into seats within a constituency. The two basic models are the majority formula and the proportional formula. The question of which formula is to be used should not be confused with the question of which type the whole electoral system embodies (majority or proportional representation system), rather it focuses on the individual constituencies.

The more simple formula is the majority formula. The candidate or list that receives a majority of the votes is elected. With the plurality formula (also called “first-past-the-post”) it is enough to receive more votes than the second-best candidate or party. With the (absolute) majority formula

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<sup>12</sup> See the electoral system of Australia for example.

<sup>13</sup> The German electoral system is the best-known model.

it is necessary to get more votes than all other competitors combined. Should, in this case, no candidate or party list achieve an absolute majority, then a second election is necessary. Most often, the second election is a run-off between the strongest candidates, or the second election can be won by a mere plurality of the votes. A less common type of majority formulae is the allocation of a majority premium. In this case, a portion of the seats is awarded to the strongest party in order to contribute to the formation of a majority, while the rest of the seats are usually awarded based on a proportional formula (Poier 2001, p. 297 et seqq).

Proportional formulae are more complicated and require intricate mathematical processes to convert votes into seats in parliament. Since the end of the 18<sup>th</sup> century and especially in the 19<sup>th</sup> century a variety of proportional formulae have been developed. The best-known and most-common formulae are the Hare formula and the d'Hondt formula.<sup>14</sup> Even if proportional representation based on individual candidacy is the older model and still used in some countries (e.g. Ireland<sup>15</sup>), proportional representation formulae are now usually combined with party lists.

Proportional formulae are commonly paired with a legal threshold, which is intended to prevent the fragmentation of the party system. In this case, it is necessary “to obtain a certain, legally fixed number of votes or seats in order to be able to participate in the allocation of seats”<sup>16</sup> (Nohlen 1996, p. 67).

Very few electoral systems use only one formula for converting votes into seats. Different proportional formulae as well as proportional formulae and majority formulae are often combined in a single electoral system. In the latter, the majority formula (combined with individual candidacy) is usually used in order to “personalise” the electoral system, while the proportional formula ensures the proportional representation of the parties.<sup>17</sup>

### **2.3. TYPES OF ELECTORAL SYSTEMS**

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<sup>14</sup> See a closer description of these formulae and other variants in chapter 4.2.2.

<sup>15</sup> The Irish electoral system is called “Single Transferable Vote”.

<sup>16</sup> The most common legal threshold around the world is the 5 %-threshold (Nohlen 2000, 103).

<sup>17</sup> See again the German electoral system.

Depending on how the components of electoral systems are combined, the resulting electoral system will have different effects and consequences, especially with regard to the vote-seat relationship. In these effects the fundamental goals and the principle of representation (“ratio”, Meyer 1973, p. 159), on which the concrete electoral system is based, are revealed. The individual electoral systems can be differentiated according to these principles of representation (Nohlen 1996, p. 30 et seqq). The two main types of electoral systems are the majority and the proportional representation systems. These types of systems are, as said before, to be strongly differentiated from the converting formulae (proportional formula, majority formula), which are only used to allocate seats in individual constituencies.

The goal (principle) of proportional representation systems is to reflect the different political interests and opinions in detail in parliament. The parties should receive a number of seats relative to the percentage of votes received in the election. In contrast, the goal (principle) of majority systems is to afford a party a majority of seats in parliament, allowing it to form a government. This should not only be the case when the party receives an absolute majority of votes, in which case it would also have an absolute majority of seats in a proportional representation system, but most importantly when the party only receives a relative majority of the votes.

In the real world pure forms of majority and proportional representation systems are found only rarely. Elements of both representation principles are present in most electoral systems<sup>18</sup>. Even highly proportional representation systems such as the Austrian system frequently include legal thresholds (4% in Austria) which have (slight) majoritarian effects. As a rule, however, one single principle of representation is dominant, which is why almost all electoral systems can be categorised as either a majority or a proportional representation system. Truly mixed systems, which cannot be placed in either category, are very rare (Poier 2001, p. 144 et seqq).

Within the major types of majority and proportional representation systems, it is possible to divide the electoral systems into subtypes. This has become ever more reasonable as the number of different variants of electoral systems has recently increased dramatically, especially in post-

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<sup>18</sup> Dieter Nohlen opposes the idea that both representation principles can be combined (Nohlen 1978, 57 et seqq).

Communist countries<sup>19</sup>. Among the subtypes of majority systems are: plurality in single-member constituencies<sup>20</sup> (for example in the UK and the United States), absolute majority in single-member constituencies (such as in France), parallel system or segmented system<sup>21</sup> (such as in Japan), or majority premium system<sup>22</sup> (Poier 2001, p. 297 et seqq). Subtypes of the proportional representation system include: pure proportional representation with a percent threshold (for example in Austria), “personalised” proportional representation with a percent threshold<sup>23</sup> (as in Germany), compensatory proportional representation with a percent threshold<sup>24</sup> (for example in Italy), or single transferable vote (as in Ireland).

Another important question is the different effects of the electoral system on the political landscape, especially the party system (Duverger 1959; Grofman and Liphart Ed 1986; Nohlen 2000). The common statement that majority systems lead to a two party system and that proportional representation systems lead to a fragmentation of the party system is certainly an impermissible generalisation. The consequences of electoral systems on political systems depend greatly upon the specific sociopolitical circumstances as well as on the concrete form of the electoral system. They must therefore be individually analysed. Admittedly, majority systems tend to lead to a concentration of the party system, which makes forming a government easier but usually excludes small parties from parliamentary representation. Whereas proportional representation systems tend to safeguard pluralistic representation, which can lead, however, to the recognised difficulties in forming majorities.<sup>25</sup>

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<sup>19</sup> Dieter Nohlen presents a broad overview of the electoral systems in European post-communist countries (Nohlen 2000, p. 218).

<sup>20</sup> This type is – as already mentioned – also called the “first-past-the-post”-system.

<sup>21</sup> One part of the seats is awarded based on a proportional formula. The other seats are allocated through a majority formula parallel and independent from the first part of the seats.

<sup>22</sup> See regional and local electoral systems in France and Italy for example.

<sup>23</sup> This system includes “ticket-splitting”.

<sup>24</sup> Most of the seats are allocated through majority vote. The remainder of the seats is awarded based on proportional representation in a way that the majority effects of the majority formula used for the major part of the seats is compensated. Therefore, such a system mostly leads to proportional representation, even if a big part of the seats (as in Italy: three quarters of the seats) is allocated through majority vote.

<sup>25</sup> However, sociopolitical circumstances (as in “consociational democracies”, Lijphart 1977, p. 21 et seqq) can safeguard stability despite proportional representation electoral systems. Austria until the 1980s and Sweden are examples.

## **3. Characteristics of the EU with regard to Electoral Matters**

The European Union features several characteristics that are of significant relevance to the design, analysis, and evaluation of the electoral system for the election of the European parliament. In addition, illustrating these characteristics makes possible a more complete understanding of the development of electoral law in the European Union and the political positions that were responsible for this development. In this chapter, the most important characteristics of the European Union with regard to electoral matters will be addressed thematically.

### ***3.1. NATION-STATES VS. EUROPEAN UNION***

Now as before in the European Union, the nation-states are dominant (as “Masters of the Treaties”), even though the division of power between the Member States and the Community/Union has shifted in the course of the Union’s development. The imminent institutional reform of the EU may even result in more drastic changes. Without doubt, those organs of the EU that are not dominated by nation-states have been gaining in importance, especially the European Parliament, which, in the meantime, is co-legislator in a range of topics, the Commission as “Guardian of the Treaties” and primary initiator of new Community laws, as well as the European Court of Justice, whose rulings have shown it to be a significant motor of European integration. Nevertheless, in comparison to federal states, the nation-states continue to play a dominating role in the EU.

This power of the nation-states is not only apparent in the division of political power, but is also apparent in the attitudes of the citizens. The European Union as a community is not the primary unit of identity for a preponderance of Europeans, instead many Europeans identify more strongly with the nation-states, others with the regions or local communities. Thirty-eight percent of Europeans consider themselves to be exclusively citizens of their own country, 48% percent consider themselves first as citizens of their own country and second as Europeans, while only 7% see themselves primarily as Europeans and secondly as citizens of their own country and only

4% identify with Europe alone.<sup>26</sup> The process of European integration was and continues to be in many ways an elite project, whose popular support regularly limps along behind. While a comparison to the political development of the United States at the end of the 18<sup>th</sup> Century can, without a doubt, yield useful results in many areas, in this area, however, there is a clear difference to the development of the EU. While the founding of the European Community established a new level of authority, to which the nation-states were to give over some of their sovereignty, in America the newly-established United States primarily took the position previously held by the British Empire, thereby just replacing one authority with another. Furthermore, despite the establishment of the United States this regime change led to a net-gain on rights for the states as well as the people. Therefore, it was much easier for the citizens in America to comprehend (although certainly not without some friction and resistance) that a superior level of authority was needed. For this reason, the identification with the United States, as well as the necessary creation of a collective identity among a majority of the population, happened much more quickly.

Table 2: Turnout in European Elections: 1979-1999 (as a percentage)

<b>Date</b> <sup>27</sup>	1979	1984	1989	1994	1999	EE 1979- 1999	NPE 1971- 1995	EE/NPE difference
<b>State</b>								
Belgium	91.4	92.1	90.7	90.7	91.0	91.2	93.2	- 2.0
France	60.7	56.7	48.7	52.7	46.8	52.1	74.6	-21.5
Germany	65.7	56.8	62.3	60.1	45.2	58.0	85.7	-27.7
Italy	84.9	83.4	81.0	74.8	70.8	79.0	90.1	-11.1
Luxembourg	88.9	88.8	87.4	86.6	87.3	87.8	88.3	- 0.5
Netherlands	58.1	50.6	47.2	35.6	30.0	44.3	83.4	-39.1
Denmark	47.8	52.4	46.8	52.5	50.4	50.0	86.1	-36.1
United Kingdom	32.2	32.6	36.2	36.4	24.0	32.3	75.6	-43.3
Ireland	63.6	47.6	68.3	44.0	50.2	54.7	72.9	-18.2
Greece	78.6	77.2	79.9	71.2	75.3	76.4	81.6	- 5.2
Portugal		72.6	51.2	35.7	40.0	49.9	77.2	-27.3
Spain		68.9	54.6	59.6	63.0	61.5	73.1	-11.6

<sup>26</sup> Eurobarometer 57 (2002), 59 et seqq.

<sup>27</sup> The first European elections were held in Greece in October 1981, in Portugal and Spain in July 1987, in Sweden in September 1995, and in Austria and Finland in October 1996.



Austria				67.7	49.4	58.6	87.9	-29.3
Finland				60.3	31.4	45.9	73.6	-27.7
Sweden				41.6	38.8	40.2	89.3	-49.1
Total <sup>28</sup>	67.2			58.0	52.9	60.5	82.5	-22.0
States without compulsory voting	54.7	54.8	51.9	49.7	42.7	49.9	80.5	-30.6

Source: Raunio 2002, 181

Abbreviations: EE = Euroelections, NPE = National parliamentary elections

The European identification problem undoubtedly also has an influence in the area of elections and voting rights. Considering that elections are the typical instrument for the direct participation of the citizens in their community, it is easy to see that the fact that many citizens do not identify with the EU (or did not until recently), cannot help but have an effect. The frequent dramatic number of protest voters or the low average voter turnout in elections for the European Parliament are results of these circumstances, even if additional causes can also be named. Table 2 shows that the turnout in European elections has on average been much lower than in national elections (there is a difference of more than 20 %, in Member States without compulsory voting even more than 30 % !). Therefore, not only recent acceptance problems (especially since the Treaty of Maastricht), which certainly aggravated the problem, but also other, more fundamental reasons have to be considered for these facts. In my opinion, the policy makers were conscious of these severe problems, which were, in addition, certainly one reason for the late introduction of the direct election of the European Parliament.

Such identification problems must certainly be taken into account in the design of the electoral system in order to guarantee the legitimacy and acceptance of the electoral system. As in many other areas in the development of the EU, incremental integration can certainly be used in the area of elections, so that wide acceptance is gained through the operation and empirical illustration of its goals and consequences (Mantl 1999, p. 43 et seqq). Electoral law, which is decisive for democracy, is a sensible area in which an overeager, all too rapid integration step could have especially negative consequences. Finally, the fact must not be neglected that the

<sup>28</sup> Average turnout figures of Member States. The total turnout, as measured by the share of all eligible voters casting their votes, is lower. In 1994 56.9 percent and in 1999 49.8 percent of eligible voters cast their votes.

political elites in the Member States have want to protect their dominance and influence, and to that end they may attempt to influence the design of the electoral system at the European level.

The continued dominance of the nation-states, as well as the described identification problems on the part of the population, suggests that the electoral system should also be built around the nation-states in order to fulfil the need for acceptance and legitimacy. This conclusion is particularly relevant in connection with the establishment of election constituencies. The territorial borders of the nation-states must play an important role. This form of districting is of course very common in federal states, in which the Member States constitute the electoral constituencies (in the United States as well as in Switzerland, Germany, and Austria). Just as typical for federal states is that there are no superior constituencies (Austria is an exception), because the allocation of remaining seats at the superior level can lead to a distortion of the equal representation among the Member States.

The following conclusions can be drawn for the electoral system in the European Union:

- A constituency distribution scheme which treats all Member States as constituencies seems to be absolutely essential. A Europe-wide constituency or a combination of several nation-states into a joint constituency, however, contradicts the requirement formulated above. Such constituency distribution, however, leads to the creation of constituencies of very different size (the size difference between Germany and Luxembourg for example), which can itself cause fundamental problems for an electoral system, especially with regard to proportional representation (see below).
- The seats which are to be awarded in the Member States must all be awarded in the constituencies formed by the Member States, because the allocation of remaining seats could distort the equal representation among the member states.
- A Europe-wide constituency appears to be unsuitable. It is worth considering whether such a European constituency (as brought into the discussion by the European Parliament<sup>29</sup>) could be arranged in a way that a certain, smaller, number of seats could be allocated in the Europe-wide constituency parallel and independent from the constituencies made up by the Member States. Such a model seems to be contradictory to

federal principles, however, it could have a positive effect, in that it would promote the development and stabilisation of a European party system. It has to be taken into account whether the advantages for integration of such a system would outweigh the disadvantages.

### ***3.2. INSTITUTIONS OF THE EUROPEAN UNION***

The institutional organisation of the European Union is truly unique in the world. It has developed a division of power system, which in different aspects tries to guarantee a balance and equilibrium of power. This balance is maintained by not only paying attention to the relationship between the Union and the Member States, but also that between the Member States themselves, most significantly between the large and small states. This institutional equilibrium within the European Union, primarily reflected by the power relationship between the different organs of the Union, has never been a static system, rather is constantly changing. These changes have recently accelerated and could expand in a new quantum leap with the forthcoming institutional reform.

Until now, the institutions of the European Union have not been comparable to institutions of nation-states (and there are not likely to be fundamental changes). No organ at the European level (the Parliament, Council, or Commission) can be equated with an organ at the nation-state level (typically a parliament or government). Legislative and executive powers are not only divided amongst different organs, rather the division of power between Member States and the European Union makes their content substantially different from that at the nation-state level.

Therefore, the first question to be faced in the design of the European electoral system is in what way, if at all, should the direct participation of the citizens be institutionally integrated. As long as the EU functioned more like an international organisation with limited competences, the political need for direct democratic legitimation was secondary. The organs of the community were already legitimised indirectly through the organs of the nation-states, which contributed significantly to decision-making within the community (much as in conventional international

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<sup>29</sup> Report Anastassopoulos, OJ 1998 C 292/66.

organisations). However, as mentioned above, the direct election of the MEP was desired and planned from the beginning.

That the direct participation of the citizens was linked to the election of the European Parliament (Assembly), although it only had rudimentary powers, does not seem to have been urgent from today's perspective. The direct participation of citizens in the realm of the Council or the Commission would have had a much higher participatory value. Such considerations were admittedly not made. The assemblies or parliaments elected through universal, equal suffrage were considered to be the epitome of democracy, especially against the background of the not so distant historical events: the upheaval of 1918 with the establishment of many parliamentary democracies, the inter-war period with its multiple theoretical (Schmitt 1926) and practical<sup>30</sup> challenges to democracy and parliamentarism, Nazi dictatorship, and Communist dictatorship. A European parliament armed with full powers was certainly unthinkable, however, a directly-elected Assembly had to be established at least for symbolic reasons. In the course of its development the powers of the European Parliament have been continually expanded, so that today the Parliament now fulfils much more than a symbolic function. Therefore, the direct election of the European Parliament is nowadays absolutely essential.

From the founding of the European Union, the representation of the peoples was the primary function of the European Parliament (Assembly) and of its (for a long time indirect) election. Other typical functions of parliamentary elections, including bringing about decisive government leadership, giving rise to a competition for political power, establishment of an opposition, and the opportunity for change of government<sup>31</sup>, played a very secondary role either due to the organisation of the community as a whole or to the limited competences of the parliament. Even though the authority of the European Parliament has been clearly expanded, this situation has changed only gradually. Elections to the European Parliament continue to focus on representation rather than on the distribution of political power (the primary focus of typical parliamentary elections). This fact has an effect not only on the internal workings of the Parliament but also on the perception of the Parliament by the people.

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<sup>30</sup> The history of Germany, Austria, Italy, Soviet Union, etc. for instant.

<sup>31</sup> See above table 1 in chapter 1.1.

The functional dominance of representation recommends proportional representation for the configuration of the electoral system (which will be more closely investigated later), because it provides broad and fair representation of all significant opinions and interests. As the other functions of parliamentary elections are less developed in the case of the European Parliament, the efficacy deficit usually associated with proportional representation does not play a decisive role. If the institutional structures of the EU were significantly changed, then this point might have to be reconsidered. However, up to now there are no significant reasons for that.

From today's perspective the question remains, however, whether the election of the European Parliament should continue to be the only avenue for the direct democratic participation of the people. As the sovereignty shift from the Member States to the Union continues to accelerate, it has to be considered whether the mere indirect and, for the citizens, hardly comprehensible legitimation of the powerful Council and Commission continues to meet the modern requirements of democratic participation.

### ***3.3. EUROPEAN PARTY SYSTEM***

Mass democracies need political parties to fulfil a multitude of functions, even if the alignment and influence of the parties vary from country to country. Elections in mass democracies are inseparable from the presence of political parties. Even when an electoral system is highly "personalised" (for example through preferential voting, small constituencies, etc.), the party membership of the candidates continues to be very influential.

These facts must also be considered in the design of the electoral system in the European Union. However, in contrast to the early development of the United States, where a two-party system appeared very early<sup>32</sup> (even if this party system later further developed and transformed), up to now there is no functioning and established party system at the European level (Hix and Lord 1997; Tsatsos and Deinzer 1998; Papadopoulou 1999; Johansson and Zervakis 2002). The parties at the nation-state level continue to dominate. The elections and campaigns for the European

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<sup>32</sup> First, there were Federalists and Republicans.

Parliament are tailored for these parties, which is also one reason that domestic topics often influence voters' decisions. The Political Groups in the European Parliament have in the meantime successfully established themselves, and have certainly done worthwhile work within the parliament. In the eyes of the public and with regard to the internal structures, the Political Groups can hardly be compared with conventional political parties. New institutional measures should continue to strengthen their development (Art. 191 EC). In my opinion, the establishment of a stable party system will, however, take decades, given the high fragmentation of the European party landscape caused by the mentioned differences to nation-states and the proportional-representation based electoral system. It must also be taken into account that national party elite may oppose losses of sovereignty and power which would come with a centralisation of the European party system.

These considerations also suggest that the design of the European electoral system should have a bias toward the nation-states. In any case, the existing European party system necessitates elections in constituencies made up of the Member States.

An electoral system which includes allocating even a portion of the seats in a single Europe-wide constituency requires the existence of a condensed, stable European party system. As already pointed out, it seems to be worth consideration whether the establishment of such a Europe-wide election might have a positive accelerating effect on the formation of a European party system. If the number of seats to be allocated by this method were small and such a measure were only intended to be temporary, then it could be practical.

### ***3.4. THE SIZE OF THE EUROPEAN UNION***

In comparison to the largest countries of the world, the European Union with a population of around 380 million, is surpassed only by China and India. After the eminent expansion, the EU, with around 480 Million inhabitants, would have almost twice as many people as the third-largest country in the world, the United States. In terms of land area, the European Union, with more than 3 million square kilometres, would be eighth behind Russia, Canada, the USA, China,

Brazil, Australia, and India. Without a doubt, this size is sufficient to give rise to questions about the most effective democratic institutions and mechanisms under these conditions. These complex questions cannot be comprehensively addressed at this time, instead the focus will be placed on the resulting impact of size on voting rights and electoral systems.

One problem that must not be underestimated in such a large polity is the very high relation of population to representatives. In order to be able to function, every parliament has certain limitations with regard to number of members. Neither too few nor too many members is practical for effectively executing the work of the parliament. The numerical upper limit of MEPs has been in question for some time, now, the fundamental necessity of such a limit appears to be generally accepted.<sup>33</sup> However, this limitation in a large, rapidly-growing polity necessarily means that each member represents more and more citizens. While in Luxembourg one member represents about 7,000 people<sup>34</sup> and even in Austria one member of parliament represents just 44,000 people (only taking the lower chambers of the parliaments into account), the relation is much higher in large countries: the UK with around 91,000, France with around 102,000, Germany with around 136,000, and the United States with around 648,000 inhabitants per representative. At the moment, a MEP represents around 601,000 inhabitants, and after the expansion it will be 656,000 persons. Therefore, there would be a similar relation in the European Union as now exists in the United States.<sup>35</sup>

Table 3: Electoral Systems in the ten most populous countries

Country	Population in Millions	Electoral System	Form of Lists
China	1,261	–	–
India	1,016	Plurality in single-member constituencies	
USA	282	Plurality in single-member constituencies	

<sup>33</sup> The Treaty of Amsterdam foresaw 700 as maximum number of MEPs. Now, 732 is fixed as the maximum number in Art. 2 of the Protocol on the enlargement of the European Union, annexed to the Treaty of Nice.

<sup>34</sup> The calculations are based on the number of inhabitants although foreigners are included therein and citizens living abroad are excluded. However, these divergences are not decisive in this context.

<sup>35</sup> However, considering that the Congress consists of two chambers, one member of the US-Congress represents only around 527.000 Americans.

Indonesia	210	Proportional representation in multi-member constituencies	Closed and blocked list
Brazil	170	Proportional representation in multi-member constituencies	Closed but non-blocked list
Russia	146	Segmented electoral system: Half of the seats allocated by plurality in single-member constituencies, the other half by proportional representation in a county-wide constituency	Closed and blocked list
Pakistan	138	Plurality in single-member constituencies	
Bangladesh	130	Plurality in single-member constituencies	
Nigeria	127	Plurality in single-member constituencies	
Japan	127	Segmented electoral system: Three-fifths of the seats allocated by plurality in single-member constituencies, the rest by proportional representation in multi-member constituencies.	Closed and blocked list

Sources: Der Fischer Weltalmanach 2003, Nohlen 2000.

Without a doubt, such a large proportion of inhabitants to representatives makes it almost inconceivable that there is a deep link between the representative and the represented. However, it would be desirable that not only parties but also individual candidates play a major role in the relationship between politics and citizens and especially in elections. In addition, it is important that not only the top candidates, who are already the focus of our media democracy, but also the other candidates are exposed. In most large states (see Table 3) this “personalisation” of the electoral system is attempted through majority systems in single member constituencies. This form of territorial representation (one representative represents one constituency) can certainly have a positive effect on the bond between the representative and the represented. It is, however, questionable whether in the age of globalisation, high-speed communication, and the Internet this archetypal territorial representation still plays the same role as before. Many citizens feel themselves better represented by a person whose ideas and ideology are more consistent with his or her interests but who does not come from his or her region, than by a person from his or her region whose ideological standpoints and social background are less similar to his or her own (Poier 2001, p. 115 et seqq). Another possibility for the “personalisation” of electoral systems is



the use of non-blocked lists. Admittedly, this model can also have only limited success in very large countries. Even in preferential vote systems, the majority of cases show that only those candidates who are already top candidates and subject to intense media exposure receive enough preferential votes to have any substantial effect (Poier 2001, p. 222).

The representation of minorities presents an additional problem for countries of this size. In the magnitude of Europe, national ethnic or religious minorities are even more significantly outnumbered and therefore more marginalised. These minorities are usually excluded from parliamentary representation even under pure proportional representation (just for mathematical reasons). Plurality in single-member constituencies, used by most of the large countries in the world, at least benefits regional minorities who can get a seat in constituencies where they are concentrated and constitute the majority. The same group would likely suffer under proportional representation. It is possible to give individual minorities advantages which lead to their overrepresentation in the electoral system through exceptions<sup>36</sup> (even under proportional representation). In contrast to the national or regional level, this would, however, be very difficult at the European level because of the large number of different national minorities.

Finally, the problem is exacerbated by the pairing of size with marked heterogeneity. The larger and more heterogeneous a polity is, the more difficult it is to build a stable and functioning party system. As the experiences of several large countries show, the use of plurality in single-member constituencies can lead over time to a concentration of parties despite a heterogeneous population, whereas proportional representation (and especially proportional representation in multiple constituencies) very often fails in this respect. Of course, these are only tendencies and not “laws”. For these effects, the given sociopolitical circumstances are, as already mentioned, of decisive importance.

### ***3.5. NATIONAL TRADITIONS AND DIFFERENCES***

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<sup>36</sup> Either through an exception from a legal threshold or through guaranteed seats in parliament which do not depend on a certain number of votes.

The European Union is made up of established, functioning democracies. This fact represents an additional fundamental difference to the foundation of the United States. Surely, every Member State has national traditions regarding democratic institutions and mechanisms. The knowledge of these traditions is essential for understanding developments in Europe.

Almost all countries in the European Union have a decades-long tradition of proportional representation. Majority systems only dominate in France and especially in the UK (admittedly two important countries). The establishment of uniform electoral principles at the European level failed, as was shown, until the tradition of majority voting in the UK began to weaken in the 1990s. The recent “triumphant advance” of proportional representation, and its imminent incorporation in the Act, can therefore be grounded within national traditions.

National differences certainly exist regarding the concrete design of the electoral system, especially the degree and method of “personalisation”, the distribution of constituencies, and the existence as well as the strength of majoritarian elements. The differences are surely not so grave (perhaps with the exception of the Irish electoral tradition) that common ground cannot be found. Whether such an attempt is necessary or suitable is explored below.

Difficult differences certainly exist with regard to the party systems, which reflect the marked ethnic, linguistic, and religious heterogeneity of the European peoples and societies. This heterogeneity, paired with regional concentration, has in any case a negative effect on the development of a condensed European party system in the near future. In contrast to the United States, the language differences hinder the formation of a broad European public sphere or more Europeanised national spheres, especially in the form of wide-reaching European media. Even if the model of the Constitutional Convention is able to achieve astounding success, the European discourse will continue to be limited to an interested minority. English as *lingua franca* and the Internet have removed many barriers for this minority, but these effects still do not reach a broad enough group of people to satisfy the needs of democracy. For the foreseeable future, the reality will continue to be the existence of national media cultures and national political discourses. This has significant effects on the European elections and must also be considered when designing the electoral system.

### ***3.6. CRITERIA FOR THE EVALUATION OF THE ELECTORAL SYSTEM IN THE EUROPEAN UNION***

As shown, the European Union exemplifies several important characteristics. These characteristics are helpful to keep in mind when trying to understand the developments and political positions regarding the European electoral system. Clear conclusions for the concrete design of the electoral system are, however, very difficult to draw from these peculiarities, because the different aspects often give rise to contradictory consequences.

In any case, these characteristics of the European Union must be taken into consideration when evaluating electoral systems at the European level. As explained above, electoral systems must be measured by the degree to which they fulfil their functions under the given sociopolitical circumstances. No electoral system is capable of fulfilling all functions optimally, because there are trade-offs between different functions (Nohlen 2000, p. 156). For example, the function of providing fair representation comes into conflict with the function of favouring the formation of parliamentary majorities. Therefore, one must evaluate which electoral system has the best overall performance.

The basis for such an evaluation is to filter out the concrete functions and goals that the electoral system should fulfil and on which the performance of the electoral system is to be evaluated. The first clues for these goals and functions are the constitutional and legal requirements, which in any case have to be interpreted especially from a historical, systematic, and teleological perspective. In addition, current sociopolitical factors influence the weight given to particular functions of elections such as the party system, patterns of conflict resolution, media, voter behaviour, voter needs, etc.

Dieter Nohlen (Nohlen 2000, 155 et seqq; Nohlen 1996, p. 95 et seqq) lists five common criteria for evaluating electoral systems including: representation, concentration (efficacy), participation (“personalisation”), simplicity, and legitimacy (acceptance). These generalised criteria are only useful for an international comparison between systems. It is much more suitable for the concrete evaluation of an individual electoral system, in the sense of what has been discussed above, to create a set of criteria specific to the given sociopolitical conditions (Poier 2001, p. 214 et seqq).

These considerations are especially applicable to the evaluation of electoral systems on the European level. As already mentioned, the European Parliament fulfills different functions than conventional parliaments. Its primary function is the representation of the peoples of the Member States. Other typical functions, such as legislation or the election of the government as in a parliamentary system, still play a minor role, although the Parliament's competences have been greatly expanded over time. This as well as other characteristics of the European Union have far-reaching consequences for the demands on the electoral system and its design as well.

Considering the above, I propose, on the basis of the general criteria suggested by Dieter Nohlen, the following seven specific criteria for the evaluation of the electoral system on the European level:

- Representation: primarily in the sense of a fair representation of the peoples of the EU as well as in the sense of a fair, more or less proportional representation of the relevant political interests, opinions, and groups within the peoples of the Union
- Consideration of the special place and role of the Member States in the political structure of the EU as well as of their role as the primary unit with which most citizens most closely identify
- Consideration of national traditions
- Integration: especially in the sense of the strengthening of the legitimacy and democratic efficacy of the political system at the European level
- "Personalisation": in the sense of the advancement of the relationship and link between the representative and the represented as well as of the participatory influence of the voters on choosing candidates and changing party lists
- Efficacy: in the sense of promoting decisive majority leadership in the Parliament, not the least through concentration
- Acceptance of the electoral system on the part of the citizens.

Of course, not each evaluation criterion is of the same importance. For example, with regard to the functions and competences of the European Parliament, the criterion of efficacy continues to carry a much lesser emphasis than in conventional parliamentary systems. Such a weighting of the criteria is important and necessary, especially because a stronger performance of an electoral

system with regard to one criterion has to be brought in relation to a weaker performance with regard to another criterion. In practice, such weightings are based on different models of democracy, ideologies, or simple partisan interests. However, research has to show and emphasise that given sociopolitical circumstances can make some criteria more and some criteria less important (Poier 2001, p. 214 et seqq).

In the following chapter, the development of electoral law in the European Union and the current status will be analysed and criticised. The general and EU-specific considerations on the design of electoral systems and the defined evaluation criteria will serve as the basis for this analysis which will conclude with an exploration of an “ideal” European electoral system.

## **4. Analysis, Critique, and Prospects**

### *Critical Evaluation of Current Electoral Law Developments at the European Level.*

Electoral law is certainly one of the areas in which concrete political decisions are most strongly influenced by tactics and political calculation. Before an electoral law change, each party tries to calculate which (alleged) consequences this change will have on its chances. The parties then take a political position based on those calculations. In principal, there is no difference at the European level. Even the development of electoral law in the European Union is accompanied by tactical considerations and decisions. However, the political strategizing in electoral law decisions is effected at least as much by national considerations as by partisan considerations. Every Member State (and the parties therein) calculates exactly which consequences the various election regulations would have on its influence and power.

The decisive importance of electoral law for political power leads to the fact that probing fundamental reflections on the most suitable design of the electoral system are often absent. In addition, the great danger exists at the European level that stereotypical generalisations of the effects, results, advantages, and disadvantages of various designs (which may or may not be accurate evaluations of similar situations at the national level), will be frivolously applied to the

European situation without taking into consideration that different sociopolitical and institutional circumstances make such applications unreliable.

Therefore, a critical analysis of the development and current status of electoral law at the European level requires first a pointed sketch of several fundamental considerations which have not yet been sufficiently explored. The measure used for the following evaluation is the inner consistency of European electoral law as well as the evaluation criteria discussed in the previous chapter.

#### ***4.1. UNIFORM ELECTORAL PROCEDURE***

It seems very likely that the Act will be expanded by several electoral principles common to all Member States before the election of 2004. The goal of a uniform electoral procedure is thereby abandoned for the time being. In my opinion, the question should have been raised much earlier whether a uniform electoral procedure is even necessary. The United States, for example, has no uniform federal election regulations for congressional or presidential elections (Filzmaier and Plasser 1997, p. 43 et seqq and 101). Although decisions handed down by the Supreme Court in recent decades have been a unifying factor in some areas<sup>37</sup>, many aspects and especially detailed regulations are formulated differently from state to state. In Switzerland the specific provisions for the (direct) election of the members of the States Council (Ständerat)<sup>38</sup> are decided entirely by the cantons.<sup>39</sup> Even in the “centralised” federal state of Austria it is still the responsibility of the Länder to determine whether voting is compulsory for federal presidential elections.<sup>40</sup> In my opinion, a uniform electoral procedure would not bring about significant benefit for integration. Moreover, different national traditions or different requirements because of size, structure, etc., which vary greatly within the European Union, may be neglected in a uniform electoral procedure. Citizens seem not to care about a uniform European electoral procedure, whereas they would hardly accept electoral provisions mandatory under Community law but incompatible with their national traditions or needs. Elections according to common principles is therefore both

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<sup>37</sup> The above mentioned decisions concerning “racial gerrymandering” for example.

<sup>38</sup> Forty-four of the members of the Ständerat are elected by majority system, whereas the two members from the canton Jura are elected proportionally.

<sup>39</sup> Art 150 p. 3 of the Swiss Constitution.

sufficient and more suitable. Admittedly, the question of which common principles should be applied remains open.

#### ***4.2. PROPORTIONAL REPRESENTATION***

The imminent changes to the Act will codify proportional representation as a common electoral principle for the election of the European Parliament. In any case, an intensive reflection on the functions and goals of electoral systems, including considerations of the functions and competences of the European Parliament, is lacking in this point. Admittedly, these questions represent an extremely complex array of problems, especially with regard to the dynamic of integration and the continuing shifts of competences. The current discussion surrounding a European Constitution as well as the imminent institutional reform shows that the situation continues to be in flux. Should it in fact come to decisive institutional changes, then renewed consideration will also be necessary with regard to electoral law.

Neither in the Committee Reports nor in the parliamentary Reading on the Act amendment one can find significant consideration of the functions of the parliament and the elections as well as of the most suitable electoral system under the given sociopolitical circumstances. The Report by Gil-Robles from Mai 2002<sup>41</sup> used not one sentence to consider these very important issues, just as no MEP touched on these questions during the Reading in the European Parliament<sup>42</sup>. The basic Report by Anastassopoulos from June 1998<sup>43</sup> included two short paragraphs dealing with the functions of the parliament and the European electoral system: “A proportional voting scheme seems entirely suited to the current nature of the Community system since it represents a useful compromise between justice and efficiency, given the political composition of the Council and the Commission. The political majority which emerges within those two institutions generally reflects the one which emerges following elections to the European Parliament. Until there is a proper European Government in place, operating on the basis of a majority system, and also a

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<sup>40</sup> Art 60 p. 1 of the Austrian Constitution.

<sup>41</sup> PE 313.380.

<sup>42</sup> EP, June 11, 2002.

<sup>43</sup> PE 224.331.

European opposition, the proportional system will continue to perform a political function which seems broadly justified at the current stage of European integration.”<sup>44</sup>

During the Reading in the European Parliament<sup>45</sup>, the Rapporteur Anastassapoulos repeated the same argument already mentioned in the Report: “Proportionality is without doubt the fairest electoral system. It permits fair representation of all political tendencies of the peoples of Europe. And in the case of the European Union, which does not have – at least in the period under consideration – a central European government which needs to rely on majority voting in the European Parliament, the representation of all major political tendencies is necessary.”

Two other MEPs touched on considerations about the functions of the elections: “The European Parliament is a representative body, not a parliament from which a government is drawn. So the objections to proportional representation at a national level do not apply to the European elections.” (Spiers, PSE) and “It is quite vital for us to recognize that proportional representation will provide us with a more vigorous and dynamic parliamentary system. This will have particular benefits for the European Parliament and for the political union of Europe. Why? Because this political union is still unfinished and still has no fixed constitutional structures. It is therefore very, very important for this Parliament to keep an open mind when it comes to many of the political policies and, as far as I am concerned, to territorial interests and ideologies as well.” (Frischenschlager, ELDR).

Apart from that, there was no consideration on the goals, principles, and functions of electoral systems and the demands on a European electoral system under the present sociopolitical circumstances. Instead, other MEPs only stated that proportional representation is the “fairest” (Moreau, GUE/NGL) and leads to a “mature democracy” (Neyts-Uyttebroeck, ELDR), that a majority system is an “unfair system” (Watson, ELDR) and that proportional representation is “the most democratic system of suffrage” (Voggenhuber, V) without any, even rudimentary consideration on the grounds, goals and effects of this decision. Such statements seem to reflect primarily partisan interests or ideological positions.

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<sup>44</sup> PE 224.331, 17.

<sup>45</sup> EP, July 14, 1998.



In any case, it is necessary to keep the functions of the elections to the European Parliament and their relative importance in mind when considering the decision between proportional representation and a majority system. It is clear that the representation of the peoples of the Member States, in a way that appropriately reflects their heterogeneity and plurality, is the most highly-valued function. Additional significant functions include the legitimation of the political system of the European Union as well as the enhancement of Union citizens' regard for general and specific aspects of European integration. The European Parliament plays a much less significant role in bringing about a competition for political power and a decision on a parliamentary majority between parties than in national parliaments. The decision on the composition of the government, the formation of an opposition, and the opportunity for change play a marginal or nonexistent role as functions of the European parliament.

From this perspective one can see the adoption of proportional representation at present as justifiable. Proportional representation is doubtlessly the correct way to take heterogeneity and pluralism into account in order to bring about fair representation. Proportional representation at the European level leads to a corresponding heterogeneity within the European Parliament. While the electoral system greatly fulfils the function of "fair" representation, it does, as was also argued in the Report Anastassopoulos, not emphasize the functions of the formation of a majority, the distribution of power between parties, etc. (which are underdeveloped anyhow). Therefore, with regard to the evaluation criteria of representation, proportional representation is highly effective, whereas it is less successful with regard to efficacy. However, the latter is, as mentioned above, currently less emphasized.

In addition, proportional representation seems to be a disadvantage with regard to the formation of a stable and functioning European party system, which will be made more difficult (although not impossible) through fractionalisation and heterogeneity in the European Parliament.

Moreover, the issue must once again be considered whether a common provision for proportional representation at the European level is necessary. Art. 189 EGV states that the European Parliament consists of representatives of the peoples of the Member States. "People" here is meant in the sense of nation. The parliament consists therefore of the representatives of the

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fifteen nations. EU-law therefore neither takes minorities into account nor does it constitute a European people. In addition, the members of the European parliament are, strictly speaking, not representatives of the citizens of the Union, instead they are representatives of the fifteen peoples. Given this concept of representation, it does not seem to be all that important to define a common electoral system. Why should not a people decide for itself how its representatives in the European Parliament are elected? Why should not one people vote using a majority system while another uses proportional representation?

Admittedly, one argument for the common, mandatory use of proportional representation is that proportional representation, with its focus on fair representation of all important interests and opinions, seems to be presently the most suitable electoral system for the European Union, with regard to the given sociopolitical circumstances and the functions of the elections. Specifically, such a broad and fair representation could be suitable in the process of European institutional and constitutional reform. However, it is not clear whether the benefits of proportional-representation based elections in all Member States (and not only in 14 of 15 Member States, for example) are so great that they outweigh the loss of national sovereignty, which comes with the uniform codification of proportional representation, prohibiting a nation from changing the form of its representation according to its own needs and demands (in the case that they would be different from those of today).

In any case, the decision for the principle of proportional representation reflects the status quo of the European Parliament. Fair representation is at the forefront. The critical question can be posed of what effects this decision will have on European integration. On the one hand, proportional representation leads to a broad and fair representation guaranteeing that all important interests are represented in the ongoing development processes of the European Union. On the other hand, if the formation of a European party system and, as a further step, the development of the parliament into a “real” parliament, which exercises either a sole or dominant role in passing legislation and forming a government, are seen as dynamic targets of continuing integration, then one must be conscious of the fact that proportional representation do not favour these goals. However, it must be pointed out that proportional representation had already been in use for the election of the European parliament in all of the Member States except for the UK for a long time. The adoption of the principle of proportional representation therefore does not bring

about any change to the status quo. Therefore, it will not aggravate the mentioned problems. However, it will also not reverse these problems.

Should the parliament in fact become a “real” parliament with full competences in the future, then the question of the most suitable electoral system will have to be considered anew. The formation of stable majorities without majoritarian electoral measures are usually particularly difficult in large polities like the European Union. The electoral systems chosen by the world’s largest countries, of which most (admittedly also for historical reasons) have shown a preference for the majority system, also support this appraisal. Even if a majority system at the European level would almost certainly not lead to a two-party system in the foreseeable future, it would nevertheless bring a stabilizing and concentrating effect. Without a doubt, there are also large countries (Germany for example) which have a stable party landscape despite proportional representation.<sup>46</sup> This confirms once again that it comes down to the sociopolitical circumstances.

Therefore, from today’s perspective one cannot say which electoral system would be the most suitable under changed institutional structures and the then dominant sociopolitical circumstances in the EU. On the one hand, there are some indicators that proportional representation may bring about significant problems. On the other hand, the sociopolitical circumstances given in the future might also suggest that proportional representation be maintained, for example if there were structures and mechanisms as described in the consociational model of democracy (Lijphart 1977, 21 et seqq). In any case, if large-scale reforms have taken place, then there will be the need for a new evaluation and, if necessary, an adaptation of the electoral system. However, the coming codification of proportional representation at the European level will make a system change in the future extremely difficult and improbable. To that extent this decision is questionable, especially in view of the fact that it does not have any current relevance beyond symbolic reasons, as all countries are already using proportional representation. Therefore, this decision brings about structural constraints with no present benefit, while making future changes almost impossible.

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<sup>46</sup> Admittedly, Germany does have a 5% legal threshold, which brings about a majoritarian effect that should not be underestimated.

Three more critical aspects of this decision remain to be added. First, the expansion of the European Union and the accompanying reduction of the number of MEPs from the individual EU Member States (otherwise the Parliament would burst at the seams) could cause problems with regard to the principle of proportional representation (Poier 2001, 267). If small countries then only have a few MEPs, then the elections in the smaller, national constituencies in these countries would have a very high threshold of representation. In the case of Luxembourg, admittedly an exception because of its small size, a party now already has to receive up to 15% of the votes in order to gain one of Luxembourg's six seats in parliament. The expansion of the EU, including the addition of a few smaller countries, could mean that several small Member States could also end up with a relatively high threshold of representation in the European elections, especially, if there are traditional or other important reasons to subdivide the country into constituencies.<sup>47</sup> Should a portion of the seats be allocated in a Europe-wide constituency, as in the proposal of the European Parliament, this would lead to a further reduction in the number of MEPs available to individual states, thereby worsening the problem. These facts, therefore, jeopardise the principle of proportional representation in practice. In addition, there will be two classes of Member States, with fair representation of relevant forces in the larger countries, while in smaller countries only large parties will be represented in the European Parliament. This is, of course, a fact and a hardly solvable problem. Setting the principle of proportional representation in stone should be seen in a different light given this development. The circumstances cause the electoral system to produce results divergent from those alleged by the principle of representation.

It should also be mentioned that many national minorities would have only a slim chance of representation in the European Parliament despite proportional representation. Their percentage of the population is normally so small that they would have little chance of winning a seat even under pure proportional representation at the European level. The now fixed electoral principles do not address these problems of minorities. This is, of course, due in part to the fact that some Member States reject special rules for minorities as a matter of principle (France and Spain for example). However, several Member States as well as candidate states have special electoral provisions for minorities at the national or regional level (Italy, Slovenia, and Germany for example). If a Member State wanted to introduce such regulations governing the European

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<sup>47</sup> Such as in the case of Belgium.

election on the national level, then they could even be called into question by a rule strictly requiring proportional representation. In any case, national regulations favouring the representation of ethnic minorities should therefore be allowed. In the future, provisions on the European level to benefit minorities might also be considered. For example, there could be one or a few seats in the European Parliament reserved for MEPs elected by the members of ethnic minorities. However, it will no doubt be very difficult to reach a consensus on this issue at the European level.

It is also important to mention that the legal concept of “proportional representation” is very unclear. While it is possible to define extreme, “pure” proportional representation, there is no universally accepted opinion on what magnitude of distortion caused by the drawing of constituency boundaries (such a distortion is accepted by the Direct Election Act) is still compatible with the principle of proportional representation. On the one hand, the establishment of a threshold-maximum of 5 % through the amendment of the Act could be seen as a clue, on the other hand one has to take into account the 15% threshold of representation in Luxembourg. In addition, there are significant differences in the national jurisprudence of Member States on the legal definition of “proportional representation”.<sup>48</sup>

Given these stated facts, it seems that the codification of proportional representation as a principle in the Act was primarily based on partisan, ideological, and symbolic political reasons, whereas the real effects in practice are still unclear and were not sufficiently thought-through.

#### ***4.3. DISTRIBUTION OF CONSTITUENCIES***

The Member States themselves make up the primary constituencies in the election of the European Parliament. Thereby in many ways the peculiarities of the European Union and the resulting requirements are met. Such a distribution of constituencies is typical for federal states and also used in the United States, Germany, Switzerland, and Austria. Therefore, the distortions which accompany, as already mentioned, such a distribution in proportional representation

systems do not call into question this method of drawing constituencies but rather the codification of proportional representation which is put into perspective by these facts.

It is logically consistent that there is no superior (particularly Europe-wide) constituency for an overall proportional compensation of remaining seats. This would result in a distortion of the representation of the peoples of the Member States and is foreign to conventional federal states (USA, Germany, Switzerland). The fact that such a country-wide constituency exists in Austria shows the centralist tendencies of the Austrian state.

Additional constituencies within the Member States are allowed under national regulations. Thereby, the proportional nature of the electoral system must not be affected. Due to the electoral consequences of smaller constituencies described above, even disregarding the problem of defining proportional representation, additional constituencies would necessarily mean that only larger Member States would have sub-constituencies, because subdividing smaller Member States is hardly compatible with proportional representation. Although a few possibilities are conceivable<sup>49</sup>, the range of variants for small states to distribute sub-constituencies is quite limited. However, the subdivision is surely more urgent for large states because of their size and the associated aggravation of the relationship between representative and represented.

The proposal put forth by the European Parliament that a portion of the seats be distributed in a Europe-wide constituency was not adopted by the Council. The metered out implementation of such a variant could be a successful impulse for integration, especially with regard to the formation of a functioning European party system. However, it must be taken into account that such a Europe-wide constituency would have strong centralist traits. Therefore, such a Europe-wide constituency should only be seen as a short-term measure.

#### **4.4. “PERSONALISATION”**

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<sup>48</sup> There is even a dramatic divergence in the decisions of the German Federal Constitutional Court (Bundesverfassungsgericht) and the Austrian Constitutional Court (Verfassungsgerichtshof) on the concept of proportional representation.

<sup>49</sup> At the present, Belgium and Ireland as smaller countries are divided in sub-constituencies.

The degree to which the new regulation is a detailed codification of the status quo is clear in the provisions for the “personalisation” of the electoral system. The only possibility mentioned in the new provisions is the use of “preferential voting” (besides the possibilities of decentralised constituencies or a single-transferable-vote system which are not named specifically as methods of “personalisation”). It is not clearly discernible whether other models of “personalisation” (which are not expressly mentioned), such as allowing the voter to reorder, remove, or write in candidates in lists, are therefore impermissible or, more likely, can be seen as variants of the preferential vote in a wider sense.<sup>50</sup> Just as unclear is whether a two-vote model with ticket-splitting as used in Germany is allowed. A clarification will probably have to be made by a ruling of the European Court of Justice. In any case, there are no good reasons to be found why these forms of “personalisation” should not be allowed. The detailed codification of the possibilities for “personalisation” seems to be an additional structural constraint that brings no benefit for integration while drastically limiting wiggle-room for future changes.

In any case, it is positive that both approaches to “personalisation”, the territorial approach (distribution of constituencies) and the personal approach (preferential voting) can be chosen according to national preference or tradition. Each of these approaches emphasises a different aspect of “personalisation”. The political value judgement between the approaches is reserved for the Member States, even if the reasons mentioned above restrict the possibilities for small Member States.

#### ***4.5. RELATION BETWEEN POPULATION AND SEATS***

Even after the coming electoral and treaty reform, the election of the European Parliament will in all likelihood not be equal suffrage. The distribution of representatives to the individual Member States will continue to not be proportional in the future and to benefit the small countries. However, it is too simple to evaluate and criticise this fact from the perspective of equal suffrage alone. The chosen distribution reveals a hybrid compromise that reflects the institutional peculiarities of the European Union. While conventional federal states like the United States and

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<sup>50</sup> The concept of “preferential voting” in the English version seems to be broader than the concept of “Vorzugsstimme” in the German version.

Switzerland have a real bicameral parliament with a lower chamber in which the seats are distributed proportionally to the Member States, and an upper chamber, in which every Member State has the same number of seats, the European Parliament is unicameral. The slightly weighted distribution of representatives is a rudimentary replacement for the missing upper chamber. In the Council every Member State has one seat, although the weighting of votes in the case of qualified-majority decisions is a compromise in the other direction. In the end, these are all at best political compromises, in which institutional coherence and consistency are absent, and for which a significant institutional reform seems to be reasonable. This, in turn, would make a stringent adaptation of the electoral system necessary.

## **5. In Search of the “Ideal” Electoral System**

### *5.1. CURRENT ELECTORAL REQUIREMENTS*

There is no “ideal” electoral system, and certainly not an electoral system that functions optimally under any and all circumstances (Leibholz 1932, 159). Rather it is always necessary to search for an electoral system that seems to be the most suitable under the given sociopolitical circumstances. The analysis and critique from the previous chapter lead us to suggest, as a summary, the following cornerstones for a European electoral system that will function best under the present sociopolitical and institutional circumstances:

European integration does not need a uniform electoral procedure. The laying down of common principles is sufficient. However, it should not be a detailed codification of the shared characteristics of the current national electoral laws (on this point, even the text of Art 190 EC has to be criticised), instead it should only be a laying down of those principles essential to the process of European integration and the values upon which it is founded. The new regulations of the Act unfortunately go further than that.



Proportional representation seems to be the most suitable electoral system for the election of the European Parliament at present. Now, as before the primary function of the European Parliament is representation. In the same way, the aspect of representation is presently the most important evaluation criterion for the electoral system for the European Parliament. In this sense, proportional representation widely achieves fair representation of the relevant political interests and opinions within the peoples of the Union. Although proportional representation has deficits in other functions (efficacy and integration for example), it is on the whole still more suitable than a majority system would be.

The adoption of proportional representation as a common principle is not very practical in my opinion. Even though there are currently good reasons to elect the European Parliament through proportional representation, this situation could change in the future. Should the European Parliament become a “real” parliament with full competences, then some factors might suggest a system with majoritarian elements, thus favouring the formation of a stable parliamentary majority (and eventually bringing about decisive government leadership) despite enormous size and heterogeneity. However, the sociopolitical circumstances then present might also suggest that proportional representation be maintained, for example if there were structures and mechanism as described in the consociational model of democracy. In any case, a renewed discussion of the electoral system will be necessary if major institutional changes take place. The adoption of proportional representation creates a *fait accompli*, which will be very hard to change.

In my opinion, there is no need to change the provision for the distribution of constituencies. The Member States should continue to primarily make up the constituencies, just as there should be no permanent Europe-wide constituency. Any additional division of the Member States into sub-constituencies should be left up to national regulation.

In principle, the “personalisation” of the electoral system seems to be practical. It is questionable whether there is enough of a benefit for integration in order to justify a binding regulation on whether and how “personalisation” should come about. As the “personalisation” of the electoral system (especially in the sense of people influence on party lists) means a net-gain for citizen participation, it is conceivable to see a benefit to integration in making “personalisation” mandatory. The persistence of the different electoral traditions, however, opposes this

development. The decision about how to carry out a possible “personalisation” should be left entirely up to national legislation in my opinion. From this perspective the amendment to the Act seems to be already too detailed.

The fact that the electoral law for the election of the European Parliament does not address the representation of ethnic minorities could be problematic. As already pointed out, special rights for minorities (such as in the electoral systems of several Member States and candidate states) could be called into question by a strict precept for proportional representation. Therefore, the possibility of providing consideration for ethnic minorities through national regulations for the elections of the European Parliament should definitely be allowed. A Europe-wide consideration for the representation of national minorities in the European Parliament is worth discussing. However, it seems that the different positions on minority rights make it completely unrealistic for the foreseeable future.

Its benefit to integration would make any contribution of the electoral system to the creation of a European party system desirable. This could be accomplished through the short-term allocation of a part of the seats in a Europe-wide constituency. An additional possibility could be to allow the formation of Political Groups within the European Parliament only when it is made up of members who had run for office on lists with the same (translated) name in different countries. For this purpose a central list registration could be established.

The weighted distribution of representatives to the individual Member States cannot be maintained in the long run. Although this distribution can be explained by power politics and institutional structures, it is hardly accepted by the public. The problem lies in the hybrid nature of the concept. Proportional representation according to population as well as an equal representation for each Member State according to the senate principle could be explained to a wide public. A roughly, but not truly proportional system would most likely not be understood. Certainly, the balance between smaller and larger Member States, upset by strictly proportional representation, would have to be compensated for by other institutional provisions.

## ***5.2. VISIONS OF FUTURE POSSIBILITIES FOR PARTICIPATION***

My conclusion should be a vision of the future possibilities for participation, which would of course require a lengthy academic discussion and exploration that cannot be included here. Rather I attempt to sketch an extensive reform of the EU many elements of which are mentioned in the ongoing political discussion. The goals of this sketched reform are greater possibilities for participation as well as stringent consistency and harmony of European institutions. The specific roles of the electoral law will also be made clear.

A concise but extensive solution would be to expand the European Parliament into a bicameral parliament, in which the Council would become the upper house. The lower chamber of the parliament could then be elected as before by the citizens of the Union according to the principles pointed out above. The upper chamber, on the other hand, should be set up like a senate, in which each Member State has the same number of representatives. This could follow the German example, at least at the beginning, and consist of representatives of the national governments. Should the European Union develop in the direction of a federal state, then the members of the upper chamber could be elected by the people. Both chambers should have equal powers. In that way, an equilibrium could be reached between large Member States, who would dominate the first chamber, and smaller Member States, who would dominate the upper chamber.

The President of the European Commission (or the whole Commission) could be elected by the Parliament or, as already proposed in the discussion, be elected in a popular election (Hix 1998, 35). In the latter case, which is similar to a presidential system, I would suggest the election of the lower chamber through proportional representation, which would no doubt guarantee a better representation of the heterogeneous opinions and political interests, especially with regard to the size of the European Union.

Although the election of the parliament is the core of every democracy, one cannot have any illusions that a further developed European electoral system could remedy the deficits on legitimacy and democracy felt by many. The direct election of the parliament was a necessary and important step. However, it must definitely not be the only one, especially as long as the European Parliament does not have the full competences of a conventional parliament and the

composition of the parliament is not the decisive measure of power. The additional existing institutions of the right to address a petition (Art 194 EC) and the Ombudsman (Art 195 EC) seem to be too weak to meet the needs of the public. The direct election of the President of the Commission (or the whole Commission) or the introduction of instruments for direct democracy at the European level, already being discussed, could show significant progress in participation. The direct election of the President of the Commission could also make up for the deficit on charismatic legitimation in the European Union (Poier 2003). Strong, believable personalities were and are certainly the best champions of European integration, because they succeed in bringing the vision of a united Europe to the people, and thereby make integration come across as more legitimate even to the wider public.

## References

- Barber, K., (2000) *A Right to Representation* (Columbus: Ohio State University Press).
- Blackman, R., (1999), *European Parliament Elections 1999*, Guide to the Electoral Systems in the Member States (London: Federal Trust).
- Duverger, M., (1959), *Die politischen Parteien* (Tübingen: Mohr).
- Cheibub, J. A. and Przeworski, A. (1999) ‚Democracy, Elections and Accountability for Election Outcomes´. In Przeworski A., Stokes S. C. and Manin B. *Democracy*, pp. 222-249.
- Duff, A. (1996) *Electoral Reform of the European Parliament* (London: Federal Trust).
- Filzmaier, P. and Plasser, F. (1997) *Die amerikanische Demokratie* (Wien: Manz).
- Grofman, B./Lijphart, A. (eds.) *Electoral Laws and Their Political Consequences* (New York: Agathon Press).
- Hix, S. (1998) ‚Elections, Parties and Institutional Design: A Comparative Perspective on European Union Democracy´. In *West European Politics* (21:3), pp. 19-52.
- Hix, S. and Lord C. (1997) *Political Parties in the European Union* (Basingstoke: Macmillan).
- Hölscheidt, S. (2000). In Grabitz, E. and Hilf, M. *Das Recht der Europäischen Union*. Art. 190 EGV (München: C. H. Beck).
- Hovehne, M., (1999) *Ein demokratisches Verfahren für die Wahlen zum europäischen Parlament* (Frankfurt/Main: Peter Lang Verlag).
- Johansson, K. M. and Zervakis, P., (eds) (2002) *European Political Parties between Cooperation and Integration* (Baden-Baden: Nomos).
- Kelsen, H. (1946) *General Theory of Law and State* (Cambridge: Harvard University Press).
- Leibholz, G. (1932) *Die Wahlrechtsreform und ihre Grundlagen*, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer, 159 (Berlin, Leipzig: Walter de Gruyter & Co).
- Lenz, C. (1995) *Ein einheitliches Verfahren für die Wahl des Europäischen Parlaments* (Baden-Baden: Nomos).
- Lijphart, A (1977) *Democracy in Plural Societies* (New Haven: Yale University Press).
- Lijphart, A. (1998) *The problem of Low and Unequal Voter Turnout – and what we can do about it*, Political Science Series No. 54 (Wien: HIS).

- Mantl, W. (1975) *Repräsentation und Identität* (Wien, New York: Springer).
- Mantl, W. (1999) ‚Europäische Integration: Demokratische und funktionale Legitimation in realistischer Perspektive‘. In *Demokratiefragen in Europa. Die Europäische Union zwischen politischer Effizienz und demokratischer Legitimität*. Dr. Karl-Kummer-Institut-Schriften 4/1999, 43 (Graz: Dr. Karl-Kummer-Institut).
- Marko, J. (1995) *Autonomie und Integration* (Wien, Köln, Graz: Böhlau)
- Meyer, G. (1901) *Das parlamentarische Wahlrecht* (Berlin: Verlag von O. Haering).
- Meyer, M. (1973) *Wahlsystem und Verfassungsordnung* (Frankfurt: Metzner).
- Nohlen, D. (1978), *Wahlssysteme der Welt* (München, Zürich: R. Piper & Co. Verlag).
- Nohlen, D., (1996) *Elections and Electoral Systems*, 2<sup>nd</sup> ed. (New Delhi: Macmillan India Limited.)
- Nohlen, D., (2000) *Wahlrecht und Parteiensystem* (Opladen: Leske + Budrich).
- Nowak, M. (1988) *Politische Grundrechte* (Wien, New York: Springer).
- Papadopoulou, T. (1999) *Politische Parteien auf europäischer Ebene* (Baden-Baden: Nomos).
- Poier, K. (2001) *Minderheitenfreundliches Mehrheitswahlrecht* (Wien, Köln, Graz: Böhlau Verlag).
- Poier, K. (2003) ‚Die Wahl des Europäischen Parlaments – Auf dem Weg zu einem einheitlichen Wahlverfahren‘. In Hummer, W. (ed.), *Internationaler, transnationaler und supranationaler Parlamentarismus* (Wien, Köln, Weimar: Böhlau) (forthcoming).
- Pollak, J. and Slominski, P. (2003) ‚Europäische Demokratie im Schnittpunkt von parlamentarischem und regulativem Modell‘. In Bauböck, R., Mokre, M. and Weiss, G. (eds.) *Europas Identitäten. Mythen, Konstrukte, Konflikte*. (Frankfurt: Campus). Forthcoming.
- Przeworski, A., Stokes S.C. and Manin M. (eds.) (1999) *Democracy, Accountability, and Representation* (Cambridge University Press, Cambridge).
- Rae, D. (1967 and revised ed. 1971) *The Political Consequences of Electoral Laws* (New Haven, London: Yale University Press).
- Raunio, T. (2002) *Party-Electoral Linkage*. In Johansson, K. M. and Zervakis, P. (eds) (2002) *European Political Parties between Cooperation and Integration* (Baden-Baden: Nomos).
- Sartori, G., (1997), *Comparative Constitutional Engineering*, 2<sup>nd</sup> ed., (New York: New York University Press).
- Schmitt, C., (1926) *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, 2<sup>nd</sup> ed. (Berlin: Duncker & Humblot).

Tsatsos, D. Th./Deinzer G. (eds) (1998) *Europäische Politische Parteien* (Baden-Baden: Nomos).