

Making the Election of the European Parliament Distinctive: Towards E-Uniform Election Procedure

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A. Abstract

This article proposes changing the way in which the European Parliament (EP) is elected by harnessing e-politics in the service of an EU (European Union) closer to the people. It advocates a distinctive uniform electoral procedure to enhance turnout that necessarily sacrifices some flexibility. Following a brief survey of the rhetoric of mobilising the electorate, it examines the impact of direct elections on the democratic legitimacy and credentials of the EU, and their place in encouraging participatory democracy in the EU. Key aspects of a uniform electoral procedure are then discussed with reference to a series of reform proposals designed to enhance the impact of the elections by underscoring their difference from national elections and their unique and distinctive features and by advocating a system using personal direct electronic voting.

One of the enduring features of the Euro-elections has been commentators and others berating the low turnout.¹ Turnout has been seen as especially important because the elections to the EP itself marked a significant step in the history of the EU. Moreover, they were seen as symptomatic of the transition of the then European Community from an economic, functional and then neo-functional organization to a political entity. Integration theorists and politicians had for years argued that the direct election of the EP presaged the establishment of a federal political union, (preferably complete with a separation of powers, among the executive, legislature and judiciary). It was argued that direct democratic legitimacy would be conferred on the EP by the act of voting; that the EP would accordingly use its direct legitimacy to justify an accretion in its then very limited powers; and that it would eventually but inevitably usurp national parliaments for the allegiance

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of the voters and for the right to exercise effective political controls over national governments. They had hitherto escaped effective parliamentary supervision at either the national level (where member parliaments' powers over the content and passage of EU legislation were negligible; and at the supra-national level where the EP had either no real authority or only nascent authority vis-à-vis the Council of Ministers). In short, direct elections to the EP were seen as a threat to national governments' supremacy; to national parliaments' position in a hierarchically conceived EU; and to national sovereignty. For some Member States, by conferring direct legitimacy on the EP, voters were relocating their loyalty from the national to the supra-national arena on a zero-sum basis, thereby eroding national sovereignty. The fact that this ignored the possibility of multiple loyalties and of people in effect having dual citizenship, both of their Member State of which they were nationals, and of the EU, was conveniently forgotten in the flurry of political rhetoric that accompanied the arguments over the role and direct election of the EP over the years.

This article attempts to draw a distinction between the rhetoric of direct elections' purpose and the procedure designed to secure the election of Members to the EP. It proposes changes to the method of electing the EP designed to enhance turnout by stressing the distinctiveness of those elections. Accordingly, it is argued that some flexibility in the implementation of a uniform electoral procedure should be sacrificed in the name of distinctiveness. The article begins by briefly surveying the rhetoric surrounding the issue of mobilising the electorate. It then examines the arguments over the impact of direct elections on the democratic legitimacy and credentials of the EU, and their place in encouraging participatory democracy in the EU. Key aspects of a uniform electoral procedure are then discussed with reference to a series of reform proposals designed to enhance the impact of the elections by underscoring their difference from national elections and their unique and distinctive features and by advocating a system using personal direct electronic voting. The potential impact on other aspects of the Euro-elections are sketched in. In conclusion, it is suggested that e-politics be harnessed to the service of creating a participatory democracy close to the people in the EU.

B. Direct Elections and Mobilizing the Electorate

While the EP's powers have changed dramatically, notably since the time of the Single European Act, the matter of whether and by how much direct elections augment the democratic legitimacy of the EP (and indirectly of the EU by demonstrating a willingness to exercise a political function in the polity of the EU) remains contested. Moreover, it has been argued that only if people are informed about the election of the EP (an event in which they may or may not be entitled to participate) and only if they understand the process and the point of European integration as developed by the EU institutions, and especially as shaped by the

political forces in the EP, will they have an interest in voting. If they do not vote, they do not confer legitimacy on the EU. Therefore, member governments are better placed to insist on restricting the scope, pace and depth of European integration. Accordingly, low turnout can be interpreted as a signal to slow the pace of integration generally, and specifically as a signal to governments that the EP lacks the confidence of the electorate and should therefore not be given greater legislative power.

While we cannot explore all these issues here, it is apparent that three things are inextricably linked: the 'event' of Euro-elections; the process, that is the actual process by which voters are encouraged to turnout and vote and the procedures by which the Members of the European Parliament (MEPs) are elected by the voters; and the impact on the democratic credentials of the EU. For a number of reasons, it followed that particular efforts would have to be made to get the voters mobilized to turnout and vote. The notion of electing representatives to a parliament lacking any legislative power and the power to turf out those purporting to carry out tasks normally associated with governments meant that at the first Euro-elections, a general information campaign had to be run to inform the voters about the event, the process, the purpose and the objectives of the Euro-elections. This campaign emanated from the Commission and the EP. Though highly sensitive and to a degree provocative to Europhobes, it was somewhat grey: anodyne and often rather dull information that lacked party political bite had to be presented in a non-partisan manner.² Even so, in 1979, turnout at the Euro-elections was higher than it proved to be 20 years later.

In 1999, the precise purpose and nature of both the EP and the Euro-elections remained obscure. Moreover, the way in which the EU had been used as a convenient scapegoat for domestic politics over the years meant that it was difficult to discern the reason for electing a supra-national parliament. While the EU's purpose was often misportrayed by the media as being to constrain national governments from protecting, insisting on and acting in the best interest of their people, it proved particularly difficult, on the occasion of the elections, to convince them either that the EP served a useful purpose, had done a good job since the last elections, or was likely to do something genuinely useful in the foreseeable future. In short, the stakes were unclear. Once again, voters had to be persuaded and encouraged to turnout and vote. Their general lack of awareness of the elections, the EP and the EP's and EU's achievement over the years also meant that few knew why precisely they were voting or whether they were voting for or against anything in particular.³ It is hardly surprising then that voters used to voting in domestic elections against those in office should think that voting was of any consequence. If, on the other hand, the act of voting were to be seen as resulting in a visible and

² J. Lodge and V. Herman, *Direct Elections to the European Parliament: A Community Perspective* (London 1982) at pp. 25-45.

³ See Eurobarometers.

tangible change in office-holders then people might believe there was a point to voting. While this is not discussed below, the basic premise and spirit that underlies Euro-election voting is derived from the principle of democratic parliamentary government being created for and by the people who have the power to usurp it if it fails to uphold democratic practice. The spirit of European integration embodied by the EU is informed by and wedded to this. Indeed, acceptance of this is deeply embedded in the psyche of contemporary democratic politics in Western Europe and can be readily traced back to the Dutch experience in the 17th century.⁴

The spirit of democracy and understanding of the democratic idea are largely taken for granted and rarely questioned in the Member States. Only at EU level has there been a continuing scrutiny of what democracy means in practice at the supra-national level. It has been equated largely with giving the people the opportunity to engage in a common political act by virtue of universal suffrage to the EP. Democracy was believed, therefore, to be satisfied – at least in reasonable measure – by holding elections to the EP. While the democratic deficit is far more complex and apparent throughout the EU Member States' polities, the idea that the EU could be democratized by holding elections to the EP persisted until well after the first Euro-elections. A more nuanced understanding is required but that would not erase the idea that a key democratic right is confirmed by universal suffrage and a key democratic requirement is satisfied by getting the public *voluntarily* to turn out and vote in EP elections: this remains desirable in its own right.

C. Turnout and Legitimacy

In the past, turnout had a particular and dual function. On the one hand, it was seen instrumentally by MEPs as a means of justifying their quest for greater legislative power. The old concern that the public would not turnout and vote for an assembly devoid of real power was finally set aside, if only temporarily until 1999, when the first Euro-elections were succeeded by gradual but relentless increases in the EP's powers. On the other hand, turnout was seen as important to counter the argument that the EP (and by inference the EU) lacked democratic legitimacy and that therefore the decisions and policies made by and in their name need not be upheld. While the latter argument has not held sway yet, it is an easy one for Europhobes to employ on the occasion of referendums on EU treaty reform (for example, such as Maastricht). It is certainly one that can be deployed to inhibit further integration. The idea that an EP elected by a minority of the people lacks legitimacy and

⁴ E.H. Kossmann, 'Republican Freedom against Monarchical Absolutism: The Dutch Experience in the Seventeenth Century', in *Foundations of Democracy in the European Union* (J. Pinder (ed.)) (1999).

credibility is therefore potentially damaging to the nascent democratic (sometimes termed pre-democratic)⁵ EU.

The issue of getting voters to participate in the election of the EP is conflated, however, with another matter: that of providing and ensuring that EU citizens have access to and are informed about the decisions taken in their name and on their behalf by the EU. This is not the place to investigate the process of augmenting transparency in the EU, vital though transparency is to democratic practice. Here we acknowledge it without exploring it further. Instead, we suggest why voting in Euro-elections has assumed such importance. It must be recognized that the right to vote in EP elections is a political right universally bestowed on Member States' nationals, subject to certain qualification. This political right complemented the economic and social rights entrenched in the founding treaties. The exercise of this right moreover confirmed the transition of the Community from a largely elite-led, neo-functional organization geared towards maximising economic benefits for selected economic actors to a neo-federal and political community. The confluence of changes in the scope of the EC's competence is quite marked. The attendant equation of the exercise of universal suffrage with the transfer of popular sovereignty from the national to supra-national domain was also apparent but hotly contested and refuted by member governments. What survives however is the idea that direct participation in supra-national political life via the vehicle of direct elections is an element of EU citizenship which confirms the direct link between the EU citizen and the EU 'sovereign' without an intermediary. In short, the EP elections are a potent source of direct legitimacy and turnout is interpreted for a variety of purposes but above all seen as symbolising public participation and acceptance of the EU more generally.

It is this that gives concern over turnout at EP elections particular significance. Turnout above around 45 per cent is seen as desirable and necessary for the above reasons. Getting a relatively high *voluntary* turnout is important because it is seen to confer legitimacy on them. If it was simply a matter of boosting turnout at EU elections to ensure that as many people as possible vote for candidates seeking election, then – arguably – that goal could be served by persuading all the member governments to make voting in EP elections compulsory. Once again, however, two distinct processes have been conflated:

- (1) the idea of boosting participation in the EP elections by ensuring that citizens are informed about them; and
- (2) enhancing ongoing citizen awareness of EU affairs and how they are affected by them in order that they can judge performance and vote on it (somewhat imperfectly) at the next Euro-election.

It is relatively easy to see why people might need basic information and education as to the role and purpose of the EP to encourage them to vote in its election. It is less

⁵ J. Pinder (ed.), *Foundations of Democracy in the European Union* (1999).

easy to persuade them to take an ongoing interest in EU affairs and to ensure that they inform themselves regularly about them: there is no obvious connection with how the EU performs over a given period, or whatever dimension – socio-economic, political etc – is measured and the outcome of the EP election.

D. Euro-Elections: a Failure of Participation and a Source of De-Legitimization?

Elections to the EP do not serve the same purpose as elections to national parliaments: they do not result in the selection of a ‘government’ of one particular persuasion over that of another. The EP is not the arena in which an EU ‘government’ has to show that it has acquired and retains the support of the people’s representatives. The fact that the Commission is not the EU’s pre-government, though it has to retain EP confidence, and the fact that member governments in effect question its legitimacy when they use it as a scapegoat, does not help. This is exacerbated by the dissonance between its growing influence and relative public invisibility as the seat of democratic accountability. MEPs therefore have sought to mobilize voters to support the EP’s quest for more power and to endorse its efforts to exercise it in their interest.⁶ However, MEPs and the EP do not always communicate effectively with either the voters or with national MPs and parliaments, some of which persist in seeing the EP as a rival for public loyalty and attention. Public awareness and knowledge of national parliaments’ as opposed to national governments’ activities is generally imperfect and low but media attention is constant. By contrast, media attention to both EU affairs and those of the EP ebbs and flows. While there is an increase in public awareness of the EU in Euro-election periods, this subsides thereafter.⁷

It is generally believed to be important to educate, inform and communicate with voters. For many years, some correlation has been presumed to exist between the level of public awareness of the EP and the intention to vote.⁸ While additional variables have refined this somewhat and favourability towards the EU is also believed to correlate with propensity to vote, the basic premise of supposing that if armed with more information, voters would go to the polls remains largely intact.

Europhobes continue to use low turnout to justify their opposition to both an

⁶ D. Morgan, *The European Parliament, Mass Media and the Search for Power and Influence* (Aldershot 1999) p. 92.

⁷ *Ibid.* at p. 97; Centre for Finnish Business and Policy Studies (EVA) *Finnish EU Opinion* (Autumn 1998).

⁸ See the surveys in Eurobarometer since the 1970s.

accretion in the EP's powers and functions⁹ and an expansion in the EU's competence. This position is paradoxically more difficult to sustain after the all-time low turnout in 1999. This is partly because low turnout is no longer seen as the only indicator of democratic deficiency in the EU. Turnout is no longer portrayed as the only indicator of democratic legitimization of the EP. This does not make low turnout unimportant but it does suggest that the EU has come of age; that it is sufficiently embedded to withstand relatively low public engagement; and that it is durable in its own right – at least in the foreseeable future. But nor should this excuse complacency. The democratic deficit in the EU, and in its Member States, is real.¹⁰

Disillusionment with the act of voting as a means of political participation cannot be dismissed lightly as of little consequence for the maintenance and practice of democratic government. Moreover, disenchantment is not uniformly experienced across the EU; nor is it evident that those disinclined to vote in Euro-elections are necessarily the very same people disinclined to participate in political affairs at national and sub-national levels.¹¹ The degree of activity among social movements differs both within the Member States and across them: whatever leverage they have is diffuse and they have had to resort to different tactics to gain a voice whether at national or EU level.¹² This mirrors the experience of lobbyists. However, such groups are among the politically aware and are often astute tacticians. Both, however, suggest by their activities that while they recognize that our systems of democracy in the Member States and EU are based on representation, arguably representation via the ballot box is not always sufficient and benefits from supplementary and complementary activities. This suggests that a general malaise over the notion of elections needs to be addressed. The public in some Member States perhaps needs re-education as to the desirability and purpose of elections in upholding 'good government' and democracy.

Public disenchantment with the traditional means of expressing opinion via the ballot box has grown as voters have become ever more doubtful that casting a vote did much more than put into office a particular government. This government may have been publicly committed to a set of political priorities, a few of which would have been known broadly speaking to the electorate. Their details would have remained as vague and unmemorable as ever. The sense that by voting one could genuinely influence legislative as opposed to electoral outcomes has diminished at

⁹ European Parliament, *The European Community in the Historical Context of its Parliament 40th Anniversary Proceedings of the Symposium* (Strasbourg 1992); European Parliament, *The Powers of the European Parliament in the European Union*, Working Papers, Political Series E-1 (1993).

¹⁰ S. Andersen and K. Eliassen (eds.), *The European Union: How Democratic is it?* (London 1996).

¹¹ J. Lodge (ed.), *The 1999 Elections to the European Parliament* (London 1999) (forthcoming)

¹² G. Marks and D. McAdam, 'Social Movements and the Changing Structure of Political Opportunity in the European Union' in *Governance in the European Union* (G. Marks et al (eds.)) (London 1996) at p. 119.

the same time as governments' ability to influence those factors which shape and condition real financial and policy choices too have been eroded. The impact of globalization has not, however, translated itself into realistic electoral manifestos. Nor have governments dared to suggest that they have few choices; and that the big choices are often made outside their territories.

This leaves the electorate in an invidious position, and especially so when called upon to elect MEPs. Euro-manifestos and campaigns have always been conducted with reference primarily to domestic political preoccupations. This could be justified in terms of the novelty of the elections; the mechanics of mobilising the national political parties, the activists, the media and the voters; the differences among the Member States; the absence of a record of achievement for the EP; the relative weakness of the EP's legislative powers; the invisibility, intangibility, complexity, and distance of the EU's institutions, and the seeming irrelevance to the people of EU decisions. Making Euro-elections as much like nationally based municipal, regional or general elections was therefore the short-cut to getting across the idea that elections were taking place to put people into the EP. These elections were based around a series (of often dull, poorly differentiated, weakly communicated or incomprehensible) political choices. Member governments have failed to respond even to the joint call of the national parliaments and EP to contribute to reducing the democratic deficit either by systematically giving publicity to their citizens about EU legislative proposals, or by making themselves and national parliaments fully accountable for their policy and actions within the EC, later EU.¹³

It is perhaps not altogether surprising then that national parties contesting the elections simply used the Euro-elections as yet another occasion on which to lambast the opposition, armed with the topical domestic preoccupations and personalities regardless of what real European issues transcending national boundaries required attention. Moreover, they were arguably encouraged to interpret repeated signals of relatively low turnout as merely a reflection of electoral fatigue: the confluence of several national and or local or regional elections having dissipated both energy and interest and depleted party funds. All this was, if not encouraging, then sufficiently reassuring to lull national parties into the false belief that they need not significantly amend their Euro-election preparations or efforts to mobilize the electorate. In some states, too, this helped the Europhobes' cause and reassured national MPs that they were not (yet) redundant and remained superior to the upstart 'parliament' – the EP. Not only is this attitude destructive in terms of ensuring an improved quality in legislative outputs, since the quality of EU and national level legislation is, to a degree, interdependent,¹⁴ but it inhibits the

¹³ *Final Declaration of the Conference of European Parliament and National Parliaments*, adopted 30 November 1990 (known as the Rome Assizes). Text reprinted in European Parliament, *Documents on Political Union* (Dublin 1992).

¹⁴ A.E. Kellermann, 'Proposals for Improving the Quality of European and National Legislation' in (1999) 1 *The European Journal of Law Reform*, pp. 7–30, at p. 30

promotion of understanding of the nature and role of parliaments in the daily conduct of political life.

If such pettiness and lack of vision is set to one side, for the moment, then attention must be turned to what the impact of these pseudo-Euro-election campaigns have been on the electorate. If Euro-elections are merely seen as yet one more occasion on which to vote on tedious and repetitive national issues and personalities, then the question must be asked – why bother to turn out? After all, another electoral occasion is likely to present itself within a relatively short period of time. Missing the opportunity to vote on one occasion may not therefore seem very important or of much personal consequence, let alone of local, regional or national political consequence.

While overall turnout may still be commendable and honourable compared to that for US Presidential elections, it is not regarded as sufficiently high by European standards in many EU Member States. It must be recognized, however, that as yet a political class that transcends the national psyche and national boundaries and is able to conceive of itself and work as such is in its infancy. Here lie the clues to electoral mobilization in the future. National, regional and local politicians work together on the occasion of elections within their national boundaries to mobilize the vote and draw knowledge and ideas on how to mobilize the electorate at large from their own party followers. In these level elections – unlike in Euro-elections – there are understood ground rules; parties have star performers, multi-media campaigns and often clear strategic, political management of a campaign based on effective political communication¹⁵ and on the parties acting, to some extent still – while harnessing the media – as the interlocutor between the citizen and the state.

The parties are less successful in Euro-election campaigns partly owing to continuing ignorance among their own activists as well as the public about the role, purpose and consequences for EU decision making of the Euro-elections themselves; and partly owing to ignorance about, and even lack of interest in, what the EU does. However, the failure of many national political leaders to campaign in the Euro-elections for their own parties reduces the impact of those elections in the mind of the electorate and creates the impression that they are not really that important. They may not be. And it may be convenient therefore simply to interpret them as a barometer of the relative popularity of the parties and/or government at that particular point in the summer. But this misses the point of holding Euro-elections in the first place. It misses the point of demonstrating the democratic practice that the EU, as a democratic entity, seeks to sustain. It misses the opportunity of engaging public participation in discussing socio-economic and political values, making choices over the future political agenda, becoming part of a nascent European

¹⁵ For a comparison with Germany, for example, see P. Radunski, 'The Election Campaign as a Form of Political Communication' in *Political Parties in Democracy* (J. Thesing and W. Hofmeister (eds.)) (Bonn 1995) at pp. 398–435.

demos, shaping and taking responsibility for decisions and enabling citizens to play a role in civic society.¹⁶ It inhibits the development of an EU closer to its citizens.

At the national level this means re-attaching and re-inserting parties and the state into modern society. National governments need to harness political parties to involve civil society in the process of European integration – a process that is undertaken freely, democratically and consensually.¹⁷ At the EU level, it means facilitating communication and mobilization. The rules and values of the society need to be transmitted and reinforced. At EU level, this is missing. Voters are neither shown nor understand the link between solidarity, the common good and liberty and giving effect to sustaining collective goals and collective responsibility for their attainment. Just as democracy as a way of life needs to be learnt at the national level, so it needs to be experienced at EU level. That is why in the EU, participating in one aspect of democratic practice – the Euro-elections – is so important. The Euro-elections were not designed to be the vehicle by which publics switched loyalties from one setting to another. Nor were they the means for transferring citizen allegiance to the supra-national level.¹⁸ The problem of creating a common European identity cannot be resolved simply by affording EU citizens common political rights, obligations or symbols of identity; and cannot therefore be overcome simply by holding Euro-elections.¹⁹ However, the Euro-elections are an excellent occasion for maximising awareness of participating in a common venture. They are, moreover, important in themselves as demonstrating adherence to traditional democratic principles of representative parliamentary government in which decision makers are held periodically accountable for what they do to the people who elect them. The level of turnout at such elections then assumes importance for another reason: if a sizeable proportion of the electorate voluntarily turn out and vote, they demonstrate not only a capacity for participation but acceptance of the democratic principles upon which the system is founded. Any system losing such support loses its ultimate source of legitimacy and power.

¹⁶ See the 1990 Colombo Report on the Constitutional Basis of European Union. Para 21 states: 'The citizens of the Union shall participate in the political life of the Union in particular in local and European Parliament elections'. *EP Resolution A3-0301/90*. The Amsterdam Treaty Art. 8d states: 'Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 4 in one of the languages mentioned in Article 248 and have an answer in the same language'.

¹⁷ R. Toulemon, 'For a Democratic Europe' in *The European Union beyond Amsterdam* (M. Westlake (ed.)) (London 1998) at p. 117.

¹⁸ J. Lodge, 'Loyalty and the EEC: The Limitations of the Functionalist Approach' in *Political Studies* (1978).

¹⁹ V. Herman and J. Lodge, *The European Parliament and the European Community* (London and New York 1978).

E. Low Turnout as a Symptom of the Lack of Euro-Election Distinctiveness

EU citizens appear disinclined to vote in European elections and to identify with European goals and players. The first five sets of direct elections to the EP have been largely contested by national parties on national issues.²⁰ There are many explanations for this that have much to do with the nature of the relatively ill-informed European electorate: identification with familiar parties and candidates enables voters to minimize expenditure of time and energy on informing themselves about various issues and candidates.²¹ While voters' knowledge of the EU remains low, there might be a greater tendency to adhere to existing pre-conceptions and myths, to screen out contrary views and depending perhaps on what importance individuals attach to the impact their vote will have *nationally* on the outcome, to vote either as they might in a national election, or to experiment in voting for a minority, unconventional or high salience single policy issue party.

At the same time, it is illogical to expect citizens to bother to vote in European elections on national issues when they have many opportunities to vote on national issues in national elections (including local, municipal and regional elections within Member States). In such elections, moreover, they can have far greater impact and one that appears meaningful to them because such elections result in the confirmation or change in the governing party/parties and normally in some directly relevant and perceptible change in political priorities informed by a more or less meaningful ideology. This suggests that the EP political parties need to reappraise the way in which they communicate with national politicians as well as with voters. There is a chicken and egg dilemma here: attracting sustained media attention is difficult partly because of the way the EP organizes its business and partly because of the nature of much EU business. Making the EP visible and *relevant* to the public is difficult, moreover, for MEPs who, if they are not well-known domestic political figures, have to earn their status in the public eye.

Citizens need to have a political voice and European parties need to ask and get answers to questions concerning the agenda, priorities and expenditure on a range of public issues; to make political choices visible and understandable; and to check that the decision makers are accountable, are effectively scrutinized and held in check,

²⁰ K.-H. Reif and H. Schmitt, 'Nine Second Order National Elections. A Conceptual Framework for the Analysis of European Election Results' in (1980) 8 *European Journal of Political Research*, at pp. 3–44. K.-H. Reif, *Ten European Elections 1979–81 and 1984: Campaigns and Results* (Aldershot 1985). J. Lodge and V. Herman *Direct Elections to the European Parliament: A Supranational Perspective* (London 1982). J. Lodge (ed.), *Direct Elections to the European Parliament* (London 1985); J. Lodge (ed.), *The 1989 Election of the European Parliament* (London 1990); J. Lodge (ed.), *The 1994 Elections to the European Parliament* (London 1996).

²¹ A. Downs, *An Economic Theory of Democracy* (New York 1957).

and are open and answerable for decisions they take in the name of the public. Citizens need to be able to see that the people (MEPs) they elect do these tasks effectively in their own right on their behalf. They need to be able to vote them out of office if necessary and on the occasion of meaningful and genuine European elections.

It has been repeatedly claimed that because the Euro-elections are not about electing a European government, the electorate finds it difficult to discern the stake in the outcome of, or reason for, voting.²² The politicization of the Commission has been seen as a step towards making clear their ideological affinities, proclivities and likely political choices. Closer links with the EP and its party groups have been seen as instrumental to achieving this. Even so, it has only been possible gradually for the EP, largely through the medium of cross-examining nominated Commissioners prior to the EP's endorsement of their formal appointment, to make an institutional interdependence between them apparent to the public at large. MEPs have also had to assert that this extends beyond the one-off appearance to generally retaining their trust and confidence. It is a moot point whether MEPs are sufficiently well-organized and disciplined in order to achieve this. Their own political party groups themselves need to reform how they manage their business²³ and present their activities to the public.²⁴ Much remains to be done. Much remains in the hands of the politicians at all levels themselves.

Given that the Euro-elections will remain for the foreseeable future the only transnational occasion on which EU citizens participate in a common political event, it is worth examining how this event may be made both more visible and relevant as a uniform event geared towards a common, shared purpose. This is not the place to rehearse either the deficiencies inherent in the existing national Euro-election procedures which distort the representation of voters' choices in the EP's final composition, or to suggest how politicians may make progress before the EU enlarges, vital to the success of enlargement such progress is. Rather, the aim here is to outline a few ideas on how the Euro-election process might be reformed to make the elections distinctive. In making them distinctive, the procedure suggested may also make them more user-friendly, Euro-focused and geared towards underpinning a European demos. How then might the Euro-elections be conducted in future?

²² G. Pridham and P. Pridham, *Transnational Party Co-operation and European Integration* (London 1981).

²³ L. Bardi, 'Transnational Party Federations, European Parliamentary Party Groups, and the Building of Europarties' in *How Parties Organise: Adaptation and Change in Party Organisations in Western Democracies* (R.S. Katz and P. Mair (eds.)) (London 1994). S. Bowler and D. Farrell, 'Legislator Shirking and Voter Monitoring: Impacts of European Parliament Electoral Systems upon Legislator-Voter Relationships' in (1993) 31 *Journal of Common Market Studies*, at pp. 45–61. S. Hix and C Lord, *Political Parties in the European Union* (London 1997).

²⁴ F. Attina, 'The Voting Behaviour of European Parliament Members and the Problem of Europarties' in (1990) 18 *European Journal of Political Research*, at pp. 557–79.

F. Euro-Elections: a Process of Ongoing Reform

The purpose of Euro-elections is to determine the composition of the EP. This has changed over the years and delay in implementing treaty provisions was certainly disingenuously justified by Europhobes in terms of its early official nomenclature – European Assembly. Arguments continued among the member governments over the desirability and implications of renaming the European Assembly (as it was widely known) EP, as MEPs insisted, into the 1980s.²⁵ Under the terms of Article 21 of the Treaty of Paris and Article 138 of the Rome Treaty, the election of the EP by a uniform procedure is prescribed.

Article 137 EEC states:

The Assembly, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty.

Article 138(i) EEC goes on:

The Assembly shall consist of delegates who shall be designated by the respective Parliaments from among their members in accordance with the procedure laid down by each Member State.

Although the Rome Treaty prescribed the election of MEPs by direct universal suffrage (Article 138:1) (new Articles 190–195) in accordance with a uniform procedure (Article 138(3)) governments' fears that this herald a federal Europe, deprive them of power, and ultimately challenge their supremacy as policymakers led them to delay holding direct elections for 20 years.²⁶ In line with treaty provisions pending approval and implementation of a uniform electoral procedure drafted by the EP itself (and unanimously approved by the Council) (Article 7 of the 1976 Act),²⁷ MEPs were appointed from among the membership of national parliaments. As such, they held a dual mandate in two parliamentary bodies. The Council failed repeatedly (and still fails) to agree on MEPs' proposals for a uniform electoral procedure. The first such proposals date from the Dehousse Report of 17 May 1961. Others followed in 1963 and 1969. More adventurous states considered holding their own national direct Euro-election but did not proceed as this would have contravened the treaty. In 1973, new proposals were prepared under the rapporteurship of Dutch Socialist Schelto Patijn. The institutionalization of EC

²⁵ J. Lodge, 'The European Parliament – From 'assembly' to Co-Legislature: Changing the Institutional Dynamics' in *The European Community and the Challenge of the Future* (J. Lodge (ed.)) (London 1989) at pp. 58–81.

²⁶ C. Sasse *et al*, *The European Parliament: Towards a Uniform Electoral Procedure* (Florence 1981). V. Herman and J. Lodge, *The European Parliament and the European Community* (London 1978).

²⁷ EP Resolution of 8 October 1976, OJ 1976 L 278, p. 1

summits as European Councils in 1974 led to the argument that this intergovernmental element be balanced, following the EP's widened budgetary competences in 1973, by direct elections. In 1975, the EP presented a Draft Convention which broke the requirement on uniformity by permitting each Member State to use its own procedures for the first Euro-elections, and awaiting EP proposals thereafter. The EP adopted a further four resolutions on this in 1976.²⁸ In summer 1976, the Council decided to advance that goal by the Act of 20 September, subsequently incorporated into the EC Treaty (Article 190). The Act on MEPs' election entered into force on 1 July 1978, several weeks after the initial election date of June 1978.²⁹ While prescribing the first such elections to be held in 1978, delay in implementing the necessary enabling legislation in the Member States resulted in the first Euro-elections' postponement until 1979, since when they occur every five years.

The task of drafting a uniform electoral procedure falls to the EP. After the 1979, it accordingly adopted on 10 March 1982 the Seitlinger Report, rejected by the Council of Ministers on 24 May 1983. Subsequent attempts to get a uniform electoral procedure accepted have failed and the EP's coupling of minimalist and maximalist reform strategies in the 1980s and 1990s led it to focus on the acquisition of real power in the meantime.

Continuing failure primarily by the member governments to agree on a uniform electoral procedure (drafted on several occasions by the EP)³⁰ resulted in major and minor distortions in the representative character of the EP. (We ignore here the distortions produced by the ratio of voters to seats which discriminates against and among the big states.) The UK's insistence on adhering to first-past-the-post simple majority voting (in Great Britain but not Northern Ireland which had PR ab initio) until the 1994 Euro-election, in particular seriously distorted the relative power of the social democratic and conservative/christian democratic party groups. Extreme proportional representation in Italy coupled with the lack of a minimum electoral threshold around 5 per cent, as was common in many other states, by contrast, permitted the representation of tiny and sometimes extremist minorities. While the EP has systematically reformed its Rules of Procedure and those relating to the number and composition of groups of MEPs seeking recognition, the status and attendant privileges of forming a party group, member governments have eschewed the adoption of a uniform electoral procedure. They have maximized their right to elect MEPs (and to fill any vacancies occurring within the legislative period) in line with their own preferred electoral methods. This, coupled with differences over vote and candidate eligibility, party funding, advertising, polling days and electoral procedures, detracted from the notion of a common, single European election for a

²⁸ F. Jacobs, R. Corbett and M. Shackleton, *The European Parliament* (London 1995).

²⁹ See Council Decision 76/787/EEC of 8 October 1978, OJ 1978 L 278.

³⁰ See reports from the Seitlinger Report of 1982 and the subsequent Bocklet Report onwards. In particular EP Working documents Resolution A3-0152/91 and Resolution A3-0186/92.

common, single purpose of electing representatives to serve in a common, single (ill-understood and misunderstood) institution – the EP.

The Amsterdam Treaty represents a modest attempt to cut through the interminable arguing over the precise details of a uniform electoral procedure by advocating agreement on common principles (Articles 190–195, formerly Article 138 EEC). This allows Member States to combine maximum flexibility over the way in which they wish to interpret and implement those common principles with minimum concessions to the principle of uniformity. What is important is not agreement on a *single* procedure implemented in a uniform and identical way in each Member State but acceptance of a common goal. This is to be attained by allowing a degree of flexibility and acknowledging the wide variety in and difference among Member States' political cultures and traditions.

Flexibility must however be bounded. Flexibility is not supposed to permit Member States to evade their responsibilities. It is to facilitate a pragmatic approach as a first step towards the development of a system that accommodates, adapts to and draws strength from diversity without compromising the goal and without abandoning adherence to a common set of rules and principles. In principle, these would have to limit flexibility. Agreement on common principles, moreover, would enable the EU to enlarge without additional obstacles being inferred from a requirement to adhere to a uniform system: if its construction proved tortuous in the past – even among states whose recent political past conformed more or less to liberal, democratic ideals, how much more difficult could it prove with the applicants?

G. Reforming the Election of the EP: Towards a Uniform Electoral Procedure

The advantages of promoting adherence and subscribing to a common set of principles goes beyond flexibility. It enables the member governments, including nascent democratic regimes, to re-examine the questions of accountability and democracy within their national settings. This is more important than might be thought at first sight. Democratic legitimacy implies that government is seen by the people as lawful: if it acts in a just and lawful way, its authority is seen to be acceptable and accepted. This is neither something that can be taken for granted in some applicant states, nor is it something that can be deduced merely from the convening of Euro-elections.

The importance that direct elections to the EP might lend to the whole European edifice, however, was hinted at by Leo Tindemans in 1975 when he noted that direct elections would give 'the Assembly a new political authority and reinforce the democratic legitimacy of the whole European institutional apparatus'. Euro-elections, therefore, are believed to confirm the democratic nature of the EU

because they provide for public participation (albeit indirect) in decision making. The EP's acquisition of direct legitimacy thereby was seen as important in justifying how political power was exercised and in empowering citizens' representatives to play a genuine legislative role. But the expected increases in EU legitimacy have not flowed. Socialization, familiarization and education processes did not instil in voters a belief that the EU was lawful and legitimate. Widespread ignorance, alienation and disinterest also meant that voters did not necessarily passively acquiesce to or actively consent either to EU reform or to what constitutional reform of the EU their governments endorsed. It may be that broader based political disenchantment, scepticism and ignorance has had an adverse impact on levels of participation in Euro-elections. Why is this relevant to the Euro-election reform proposal suggested below?

If people do not understand in broad terms how their own government is elected, why and on whose behalf it takes decisions; why, how, when and to what end the parliament is elected; and what the role of MPs is then it is very difficult to explain to voters what the purpose is of holding elections to the less visible, and less comprehensible and seemingly irrelevant EP. This proposal does not make recommendations as to the need for wider civic education and the roles and opportunities for the expression of a public voice in the emerging European 'public space'. But it does attempt to break from past assumptions. It does advocate changes which capitalize on the rapid development of and access to the digital age.

There is little to be gained from suggesting that voting for MEPs is a process which is either familiar to voters, or akin to voting in local, regional or national elections. It is not, (or not yet) about electing a government. However, it starts from the premise that in the EU it is accepted that democratic politics rests on basic principles of party governance.³¹ It argues that, apart from the fact that the actual stakes need to be explained to voters by genuine European parties, and by politicians whose job it is to communicate with, inform and educate voters in a relevant and intelligible way, the distinctiveness of the Euro-election could be usefully celebrated and exploited. Accordingly, the following reform suggestions seek to marry distinctiveness to the flexibility advocated by the Amsterdam Treaty.

H. Towards Common Principles: Reforming the Euro-Election Procedure

Any reform must address the problems of confusion over:

- (1) the Euro-elections' purpose;

³¹ J.-E. Lane and S.O. Ersson, *European Politics: An Introduction* (London 1996) at p. 119.

- (2) their lack of distinctiveness; and
- (3) the nature and role of the EP in EU decision making.

While the following suggestion is by no means comprehensive, it attempts to address some of the issues. Its recommendations aim:

- (1) to make the Euro-elections distinctive;
- (2) to facilitate maximum, *voluntary* participation by eligible voters;
- (3) to enhance democratic legitimacy by giving voters the sense of their vote being valued and a sense of ownership of distinctive elections in a distinctive organization of which they are a vital part;
- (4) to enhance and awaken public interest in shaping the EU polity and political process on a continuing basis;
- (5) to enable citizens to see that they have a genuine role in determining outcomes;
- (6) to encourage European political parties and movements to act as genuinely transnational and supra-national political forces that aggregate, express, represent and follow-through common interests via coherent strategies and mature political processes that facilitate democratic follow-up action.

The following suggestion is designed to help combat voter ennui and boredom and to make a contribution to the debate about how the EP electoral system might be reformed to facilitate and encourage participation and to make the EP elections genuinely European.

I. Distinctiveness

In order to make the Euro-election distinctive the process should be distinctive. To this end polling day, polling outlets and voter eligibility should be changed. The reforms suggested require all Member States to change their procedures but allow them to conduct the election campaigns in line with their respective political traditions and cultures. By excising flexibility over the precise day on which the vote is cast, how and when it is cast, the uniform electoral procedure would have unique and uniform elements which would be instantly recognisable by voters regardless of nationality.

Towards some common principles:

I. Polling Day

The abolition of flexibility in respect of the choice of polling day is proposed. So far, Member States have had the right to decide to hold the elections on a traditional voting day. So far, elections have been held within a four-day period in the second week of June. Not only do states vote on different days – for example, Denmark,

Ireland, the Netherlands and the UK traditionally vote on Thursday; Germany, Belgium, France, Italy, Luxembourg, Greece, Spain and Portugal on Sunday – but the results are not announced until after the polls close in the state voting last. Time zone differences produce further delay and disjunction between the act of casting a vote and hearing the outcome. The returning officer for each constituency is responsible for the count and announcing the result but the results are verified in line with different Member States' practices.

By abolishing this flexibility in the choice of polling day, all the actors and voters would focus on one day whose European significance would be made apparent by the act of all being involved in participating in the major political democratic act of electing the EP on the same day. In order to underline the distinctiveness of this election, it is proposed that voting take place on a single, non-traditional voting day throughout the EU – Tuesday – once every five years.

II. Casting the Vote

Uniformity would also enhance the distinctiveness of the Euro-election by abolishing flexibility in terms of voter eligibility. Accordingly, it is proposed that the minimum voting age be set at 17 years old in all Member States for Euro-elections only. All other aspects of eligibility may be flexibly interpreted and fixed in accordance with local practice providing that the principle of permitting EU citizens resident in a Member State of which they are not nationals to vote and to stand as a candidate in EP elections is honoured (Council Directive 93/0109/EC).

The ballot should be made *voluntary* in all Member States but only for Euro-elections. This may pose particular problems in states where voting is compulsory (such as Belgium and Greece). However, since the majority of Member States have voluntary voting, others should be encouraged to conform. The political sensitivity of this, however, may mean that it is not feasible and refusal by such a state to adopt voluntary voting for Euro-elections should not excuse the introduction of the uniform electoral procedure: it must not be allowed, in short, to postpone it.

Distinctiveness could be injected into the Euro-election procedure by ensuring that voting is easy and access to voting opportunities is equally easy: voting outlets should be readily accessible as to facilitate the highest possible *voluntary* voting. Accordingly, it is proposed to adopt a procedure that permits:

- (1) voting by electronic means;
- (2) voting during normal working hours, for example 7 a.m. to 8 p.m.;
- (3) speedy announcement of the result of the ballot (electronic voting facilitates this) so that a result is available the same day.

In order to assert the distinctiveness of the Euro-election, a further uniform distinguishing feature for EP elections is proposed: voting by electronic means in non-traditional outlets. While it is possible to allow for some flexibility in electronic voting, for instance, by permitting electronic voting in the usual ballot stations, it is proposed to allow voting also via net and digital interfaces and electronic outlets

located in supermarkets. Voting would not only be relatively easy and easily accomplished while undertaking a necessary task (shopping for food) but it should help to boost voting among those groups disinclined or too busy to make a special trip to a polling station. It should, for example, help to increase women's vote and that of pensioners, and the unemployed. It does not follow that by enabling people to vote as they shop, the election would be trivialized (voting in church or school halls, for example, does not confer gravity on the process). The EP election would become more newsworthy by dint of the distinctive, novel procedure and so attract more media and voter interest. Its novelty might also motivate people voluntarily to take an interest in and to participate simply to experience the event.

It is conceivable, too, that other appropriate electronic outlets could be licensed to record votes. These might include a range of services, such as banks, post offices, and public libraries. Electronic voting might also boost social inclusion by encouraging participation by certain disadvantaged social groups if technology and security requirements were sufficiently advanced to permit participation via television and the internet. In some countries, such as the UK, this would complement the nascent development of 'electronic governance' whereby citizens already are encouraged to use the net and email to contribute to the discussion of policy options. However, it must be recognized that there are disadvantages to electronic voting directly from the home since the secrecy of the ballot could not be as readily protected as it is in ballot stations.

Ideally, all votes should be cast electronically for the Euro-elections. In practice, the availability of the requisite technology might be patchy at first. Consequently, while electronic voting would be a distinctive feature, voting by traditional means might have to complement it. Moreover, in order to reduce the possibility of electoral fraud, Member States would have to have the flexibility to determine how they validate each voter's identity. Depending on the electronic methods used, verification could proceed automatically through the correct double entry of the personal identification number – PIN (which might, for example, be the existing PIN number used by those with bank cards). Alternatively, if votes were cast at supermarkets, tellers could verify details of individual voters in the same way as they do when checking out identity in ballot stations, or when checking identities before permitting telephone financial transactions.

Mechanisms need to be in place that make the casting of the vote simple but unique to each voter and which guard against fraud.³² For example, a ballot card having a unique number might be distributed to all registered eligible voters. If the card also had voter identification (such as a photo, eye iris imprint (or later still voice recognition) or using other individual personal identification numbers, such as those

³² Commission of the European Communities (1997) *Ensuring security and trust in electronic commerce*, COM (97) 503; B. Loader, *The Governance of Cyberspace* (London 1997); and D. Bainbridge and G. Pearce, 'EC Data Protection Law' in (1996) 12 *Computer Law and Security Report*, at pp. 160–8.

on ID cards, machine-readable passports or driving licences) further verification of voters' identity would not be necessary. If not, additional safeguards against fraud would be needed. A Euro-election voting card might be a swipe-card which is automatically invalidated once 'swiped through the machine' and the individual voter has cast his/her vote; and/or it might be a card which requires the entry of the PIN before voting can proceed. A PIN based system might have the additional advantage of permitting direct voting from home thereby allowing physically disabled, and or elderly voters to use touch screen televisions. It might also allow ultimately all voters perhaps to phone in their vote entering their PIN as required at the start and end of the process. While the Commission has examined fraud and the impact of electronic commerce, it has yet to extend this survey to electronic political processes.

Electronic voting has several additional benefits in terms of time to be saved. Voters would cast their votes. Votes would be automatically counted. Provisional results could be available to the media after a specified time (for example, two hours after the end of voting to allow sufficient time given time-zone differences).

The above suggestions have several advantages in terms of speed, visibility and distinctiveness. Moreover, the location of voting outlets would be sufficiently accessible to maximize voting and turnout. Making voting simple and easy would help to convey to voters the idea that their vote mattered to those in power in that the latter had made it simple and easy to vote in terms of both access to, and the location of, voting outlets (polling opportunities/voting booths/screens etc). This would show voters in a tangible way that the powers that be value their participation and want to make participation easy. By the next Euro-elections, the next generation of new voters (one of those seen to be among the least politically interested and motivated) is likely to be computer literate. It is likely to find on-line/screen/ and virtual voting easy. Therefore it should readily accept and see it as an extension of other activities carried on by electronic and digitized means. This also applies increasingly to older cohorts of voters, including informed pensioners. Electronic/ touch screen voting would also be more socially inclusive.

J. Impact

The impact of having speedy results should not be over-estimated but that would certainly be a bonus to candidates and politicians. Equally importantly, the 'novelty' of the method of voting and the location of the voting outlets would augment the impact of the Euro election; would generate awareness and might be an inducement in itself to 'try it out'. The novelty of the Euro-election method would underline its distinctiveness and might indirectly assist in encouraging greater media, elite and public interest in the political issues behind the election itself.

Greater visibility for the elections would result directly from the employment of

digital and electronic means of casting a vote. A good deal of public debate and political discussion, not least among the candidates and parties contesting the Euro-elections is bound to result from the suggestion that all Member States lower the voting age to 17 for this election. All parties would have an interest in both ensuring that eligible 17 year olds were equipped with the appropriate voting cards, and that they were informed as to what the parties' purported goals and policies were. Though in the past many political leaders have been absent from the Euro-campaigns and have left them to other politicians, it would be inconceivable that national political leaders would wish to absent themselves from the public debate about Euro-elections conducted by electronic means. The digital age's ramifications are so wide, electronic commerce is growing apace, and the public is increasingly aware on a daily basis of the benefits as well as the pitfalls of new technology. Political leaders would, moreover, be likely to want to be seen as favouring participation by young people entitled to vote.

There are obvious disadvantages to the system. Setting aside electricity strikes and the usual valid concern over hackers and computer fraud, and focusing on the issue of mobilising participation, it is possible that information technology (IT) phobics would need help in voting. Member governments would have to judge whether to make electronic voting the single and only means of voting in the Euro-elections. To avoid abstention among IT phobics they may prefer to permit voting by traditional methods at polling stations. This is not an insuperable problem. Any attendant marginal delay in casting the vote by a novel means would be offset by the instant electronic 'counting by computer' of the vote cast. An information campaign and set of instructions would be needed to guide voters on the mechanics of voting. This need not be more difficult than the touch screen operations of automatic banking. There would be some short-term cost in making voter cards (at present, for example in the UK, these are relatively cheap though they are individually numbered) if separate cards to banking or identity cards were to be universally required. This might be offset, however, by the additional advantage of gaining immediate and direct publicity as to the distinctiveness and personal direct relevance of the Euro-election to each voter.

It would be feasible, in theory, simply to change the mechanical aspects of the voting procedure without changing the electoral procedure for the next Euro-elections. Moreover, Member States who felt unable to countenance personal direct electronic voting (PDEV), for example, because they had yet to introduce machine readable identity cards for all residents (a political problem in the UK), might either opt for a system that allowed individuals to choose whether to vote in the traditional manner or to use PDEV. This is a feasible alternative since individuals could make such a choice when they join the electoral register. It must also be recognized that some individuals may object to PDEV if they felt that domestic circumstances would endanger the secrecy of the ballot. For example, partners who tell each other that they vote for the same party might in practice want to vote differently but to conceal this from their partner (as, for example, in homes where domestic violence or intimidation occurs). Having to go to the polling station to cast their vote facilitates

secrecy in a way that voting from home via digital television touch screen operation may not.

Satisfying the requirement of producing a uniform electoral procedure that has as many uniform features in it as possible is arguably a distinct issue from that of making the Euro-elections distinctive and using distinctiveness to mobilize greater political awareness as a means of promoting greater participation. It would be a missed opportunity, however, to focus purely on the traditional elements of the uniform electoral procedure. While flexibility has been essential in the past to overcoming domestic political opposition to the principle of electing the EP directly, care now needs to be exercised to inhibit the proliferation and maintenance of avoidable distortions resulting from certain national practices. Minimizing distortions and discrepancies would also help to make EP elections more genuinely European.

In the past any variant of PR has been acceptable. Reconciling the ideal of genuine European elections in the long-term with the short- to medium-term requirements of introducing practicable but flexible provisions that could be revised later could be facilitated by adopted a system of Proportional Representation (PR) in constituencies (national constituencies or, where a Member State so wishes, subdivided into smaller regional constituencies)³³ where voters have two votes. One vote would be cast explicitly for an official EP party group already represented in the EP and headed in each Member State by:

- (1) the leader-designate of the group and backed or seconded by;
- (2) the leader-designate of that state's delegation to that group.

The second vote could be cast within the Member State for a national (or where appropriate regional) party list of candidates. Flexibility would be served by Member States deciding whether to have uninational party lists or party lists subdivided according to regional constituencies. Uniformity would be served by making a 5 per cent minimum electoral threshold the norm in all Member States.

This electoral system would have several advantages. It would not only require PR in all Member States but would eliminate the distortions arising out of 'extreme PR' and so reduce party splintering and excessive factionalization in the EP. The onus would be on the national parties to get out the vote; to present themselves effectively within the Member States; and to co-operate with their colleagues from

³³ Constituency boundaries; 11 Member States (Austria, Denmark, Germany, Finland, France, Greece, Luxembourg, the Netherlands, Portugal, Spain and Sweden) define their constituency boundaries by the territory of the state: each state therefore represents one constituency electing a variable number of MEPs according to a formula which advantages small states with small populations over the larger ones in terms of the ratio of population to seats. Four Member States (Belgium, Ireland, Italy and the UK) divide their territory into a number of constituencies. German parties may also present lists at either Land or national level, and Finns may do so at electoral district or national level.

the EP party groups. The EP party groups, moreover, would have a direct stake in the campaign, mobilising the vote and in the outcome of the election by virtue of having to present themselves for election in each Member State. The distinctive European feature of these elections accordingly would be highlighted. Vote splitting between the EP party group and a national list would be possible.³⁴ It might be possibly unusual or open to tactical voters as in national elections. In addition, at subsequent elections, by virtue of a direct link having been established between the voter and the strength of the EP party group, the EP party groups would be able to present their record of achievement to the electorate in a perhaps more convincing, credible and – to the voter – relevant way than in the past. This would encourage the EP, the EP party groups, election candidates and national parties to become closer to the electorate. The consequences for non-engagement by any of them would be invisibility at the EU level.

Arguably, the system would discriminate against the entry into the EP of newer parties and minorities. This is deliberate and designed to encourage smaller groups to pool their endeavours to the good of the wider electorate. While it would be possible for independent candidates to stand, independent candidates would only be elected if they secured a minimum of 5 per cent of the total vote cast in one Member State. They would not be entitled to any special treatment or prerogatives in the EP. The current EP system favouring official party groups should be retained. Accordingly, uninational parties may not qualify for recognition as an official EP party group. Over the longer term, the electoral procedure could be modified to permit the development of transnational regional constituencies and genuine transnational party lists.

It would be desirable but not necessarily essential to eliminate flexibility in respect of candidate eligibility criteria. It is proposed that EU *citizens* over the age of 18 may contest the elections in any Member State. This proposal would also increase media attention because several Member States restrict candidate eligibility to a minimum age of 21. By allowing young eligible adults to stand in any Member State, the development of multinational party lists might also be facilitated.³⁵ It would be up to the parties to try and Europeanize their campaigns by involving nationals other than their own in their local campaigns. In addition, current practice over the nomination of candidates is highly divergent. This is an area where flexibility could be permitted

³⁴ Electronic voting would facilitate the participation of eligible voters temporarily away from their place of work or residence. Eligible voters voting from outside the EU's territory could have two votes: one to be cast for an official EP party group and one for a party list (or independent candidate) standing in their normal state of residence. Eligible voters resident in another EU Member State for more than one year prior to the Euro-election could opt to vote in either their normal state of residence *or* in their host state of actual residence. This would facilitate maximum inclusion and participation

³⁵ Italy alone let other EC national contest the Euro-elections on the same basis as its own in Italy in the 1989 EP elections.

providing a common principle of not disadvantaging candidates by having potentially punitive ‘candidate deposits’ might be explored.

Being an MEP would be incompatible with holding political office in any other EU institution. In addition, MEPs may not simultaneously hold major political posts in the Member States. The existing non-eligibility and incompatibility criteria and unacceptability of dual mandates would remain and should be harmonized and uniformly applied. Candidates elected to the EP would be required to declare any vested interests (financial or otherwise) in socio-economic ventures and organizations to their EP party group. The EP party group would be responsible for logging these interests and, in line with agreed rules, making the register open to public scrutiny.

Another area where there is little uniformity concerns the public funding of elections. Under a uniform electoral procedure, it would be desirable to ensure that maximum expenditure is specified by a joint decision of the Council of Ministers and the EP. Expenditure should be declared and made public at the latest eight weeks before polling day. EU funds should be provided for:

- (1) information campaigns on the mechanics of voting; and
- (2) for EP party group manifestos and one short (i.e. 2 minute) TV advertising slot to be relayed throughout the EU.

All campaign finance – and its sources – should be publicly declared eight weeks before polling day. Currently, there is little comparability cross the EU’s Member States.³⁶ Similarly, the official campaign period would have to be officially determined since it varies currently across the EU. An official campaign period opening one month before polling day would seem reasonable and flexibly adapt to existing practice.

One area difficult to regulate uniformly concerns media coverage of elections and campaigns. This becomes increasingly difficult to monitor and restrict in the digital/IT age. Many states apportion TV time according to parties’ strength. Coverage is also complicated by whether or not political advertising is permitted. This could well be the area best left for the various agencies to determine in order to engage them in the process in a constructive way and to permit a degree of subsidiarity.

It has traditionally been argued that the publication of opinion polls, and more recently exit polls, influences electoral turnout and voting behaviour. Accordingly, different restrictions exist in different Member States. Opinion polls and forecasts are prohibited, often by law, in some Member States and sometimes by custom, for stipulated periods before the ballot. This period ranges from less than a week (Spain and Germany) to a total ban for the campaign’s duration (Portugal). Some states (e.g. Denmark, Ireland and the Netherlands) have no restrictions. A uniform rule would be necessary. It might, for example, make publishing opinion poll data

³⁶ D. Th. Tsatsos (ed.), *Parteienfinanzierung im europäischen Vergleich* (Baden Baden 1992).

permissible up to 48 hours before the polls open and prohibit the publication of interim or final exit polls until after 6 p.m. on polling day. That way, the polls would be likely to have minimal effect on the election result for different parties. Given the ready accessibility to TV broadcasts from other Member States across the EU, it would be necessary to implement this common rule inflexibly – something that would generate a great deal of public and media debate, and so enhance coverage of the Euro-election.

K. Conclusion

At the very least, the introduction of a uniform electoral procedure would immediately enhance political engagement and communication. The Euro-elections would be a matter for debate within the national political parties as well as between them and their European counterparts and the public. This, in turn, should lead to a more wide-ranging debate about the EU and its goals and at least complement, if not eclipse, the parochial preoccupations chosen in the past by national politicians pretending that voting – at any level in any election – is simply an expression of economic self-interest or a protest against those in power.³⁷ A change in the electoral procedure would place a premium on the ability of parties to communicate with, inform, educate and discuss with voters the purpose of the elections and what their role might be in shaping the nature and sustainability of good democratic representative government in the enlarging EU. The right to participate in Euro-elections is, after all, one of the first and arguably intrinsically most important rights linked to the acquisition of the status of EU citizen. It must not be allowed to atrophy through neglect. It is time to harness the potential of e-politics to its service and to the common good of an EU close to the people.

³⁷ See K. Renwick Monroe (ed.), *The Economic Approaches to Politics: A Critical Reassessment of the theory of Rational Action*. (New York 1991).