EMI Background briefing

European Electoral Reform

Second updated version

Go straight to: AFCO discussion 5 May 2015

European Movement

At its 2014 Federal Assembly, the European Movement International adopted a resolution on the reform of electoral law and the rules governing European political parties. The resolution proposes various measures to strengthen the link between the European parties and the European public. The EMI proposals are also outlined in an opinion piece from Bernd Hüttemann, Vice-President of EMI and co-chair of the Political Committee More Democracy, Citizens' Rights and Freedom, published on EurActiv: The case for common rules for EU democracy.

European Parliament

The rationale behind a reform of European electoral law is that the existing European Election Act dates from 1976, determines only a few common principles, and is outdated. Furthermore, the 1992 Maastricht Treaty provided that elections must be held in accordance with a uniform procedure and that Parliament should draw up a proposal to this effect, for unanimous adoption by the Council. As the Council was unable to agree on any of the proposals, the Treaty of Amsterdam introduced the possibility of adopting 'common principles', after which the 1976 Act was modified to include the principles of proportional representation and incompatibility between national and European mandates. Since then, the Parliament has come up with several proposals to adapt European Electoral law, the latest one a report by Andrew Duff during the last legislature, including a proposal for a transnational list elected by a single constituency.

The issue of electoral reform is now again on the table in the Parliamentary Committee on Constitutional Affairs (AFCO). On 4 December 2014, a hearing was held on the reform of electoral law with contributions from Andrew Duff, Professor Friedrich Pukelsheim, Professor Brendan O'Leary, Professor Roberto D'Alimonte, and Notre Europe Director Yves Bertoncini.

On 5 February 2015, the Conference of Presidents gave green light for the drafting of a report on the reform of European Electoral Law, upon request of the AFCO committee. Co-rapporteurs on the report are Mrs. Danuta Hübner (EPP), Chair of the AFCO Committee, and Mr. Jo Leinen (S&D), member of AFCO – and also President of the European Movement International.

AFCO discussion 17 March 2015

A first discussion on the reform of European electoral law was held in the AFCO Committee on 17 March 2015. AFCO members exchanged their views on the aspired ambition of the new proposal and various elements that could be included. In particular, the discussion focussed on:

- *Implementing measures versus law amendment*: there are two possible tracks to follow with the report on the reform of electoral law. The first option is the use of implementing measures to the existing electoral act, but this can only cope with what is already in the law and precludes

new ideas. The second option is the amendment of the electoral act. In both instances, unanimity in the Council is needed, but for the second option ratification by the Member States is required as well, complicating the process. The co-rapporteurs are awaiting a written opinion from the legal service on the possibilities for the reform of the electoral act. Regarding the two options for reform, suggestions were made to: follow a double track; to fall back on a third option – recommendations to the Member States - for the suggestions that not make it through the Council; or to prepare two texts: a legal text that might get a majority, and a separate text in which ideas for the future are developed.

- *The importance of unanimity in the Council*: unanimity in the Council is required for any change, also for implementing measures. The discussions centred on the level of ambition the report should express: should it limit itself to measures that can be expected to be agreed by the Council only, or should it be more ambitious and also include proposals that most likely will not be accepted by the Member States? Opinions on the subject differed, from those advocating a pragmatic approach and to focus on the areas where something can be achieved, to those saying that it is the duty of AFCO to come up with a proposal for a common European electoral law, not letting itself be restricted by what can be accepted. The co-rapporteurs hope that the Luxembourg presidency will give them an opening to discuss their reform ideas with the Council, to see what they are open for.

- *Top candidates and visibility of European Political Parties*: the selection of so-called Spitzenkandidaten is regarded as a good approach to make the European dimension of the elections more visible. It was suggested that there could be a link to national party lists, for example by putting European candidates on national ballot papers. Another suggestion was a formal presentation of European party candidates as part of the electoral timetable. A deadline was proposed – of for example 6 weeks before the elections – to announce candidates and start the election campaign. The democratic election of top candidates and internal party democracy was an issue raised in relation to this as well. Obliging (or allowing) national parties to put the logo of their European Political Parties on the ballot paper to increase visibility was suggested too. Reservations were made, however, regarding politicians that do not belong to a European political family, for example non-attached politicians and local and regional parties.

- *Minimum threshold*: a minimum threshold to acquire a mandate for the European Parliament, in order to ensure a good working environment for the Parliament, could count on agreement of many of the AFCO members. Indeed most of the Member States have electoral thresholds either directly or indirectly.

- *Voting age*: lowering the voting age to 16 was proposed by several members in order to get young people interested in Europe. However, the issue was raised that lowering the voting age would not necessarily increase interest of young Europeans in European politics, and that it cannot be assumed it would increase turnout. One member even advised firmly against, doubting that 16-year-olds will know enough to be capable to cast an informed vote. A remark

was also made that the voting age is often enshrined in the constitutions of Member States, and hence cannot easily be changed.

- *Electronic voting*: the use of electronic voting - Estonia mentioned as an example – was advocated by several members to increase electoral turnout. It was also mentioned that it ties in nicely with the digital agenda. However, it could also count on concerns regarding the security of electronic voting. Technological advances, however, could make electronic voting possible in a secure way in the future.

- *Simplified rules for cross-border voting*: it was argued that simplifying the rules, allowing citizens to vote and be a candidate in another country, could be beneficial for people that left their home country but are interested in participating in European elections. Electronic voting would help in this regard, and also enhance the European character of the elections. Regional cross-border lists were suggested as well for border regions.

Other proposals that were made were deciding on one fixed date for the European elections across Europe, and introducing European wide referenda. Ideas on the role of the parliament were expressed as well, advocating the principle that each member represents all citizens of Europe, regardless were he or she was elected, and thus stressing political allegiance instead of nationality. The issue of electoral participation was also related to the work of the parliament in between elections: not just the change of electoral law, but the daily work of the parliament and the parliamentarians should be related to citizen's daily life and increase their interest and turnout.

Further steps

The co-rapporteurs are expecting a written opinion about the feasibility amendments to the electoral act from the legal service. Furthermore, the co-rapporteurs will pursue discussions with the Luxembourg presidency and Member States, hoping that the presidency can create a platform for discussions with the Council. In May, the next discussion will be held in the AFCO committee on the basis of a working document, to be drafted by the co-rapporteurs. In July, if possible, a first exchange of views could take place with the Council, depending on the Luxembourg presidency.

AFCO discussion on 5 May 2015

A [second discussion](#) on the reform of European electoral law was held in the AFCO Committee on 5 May 2015. AFCO members exchanged their views on a working document, drafted on the basis of the first discussion in the committee.

The **working document** prepared by the co-rapporteurs consists of three parts: the case for electoral law reform; status quo; and the way forward. In the last part, 16 measures are suggested for a reform of the European Electoral Act in time for the 2019 elections, and four measures that should be tackled in the framework of a discussion on an eventual future treaty revision. In the annex, the different measures are explained in detail.

The **discussion** starts with remarks from the co-rapporteurs. They have tried to identify the potential position of the Council, and met with a positive attitude of the upcoming Luxembourg presidency.

However, it should be kept in mind that unanimity in the Council is required for changes to the European Electoral Act. The working document includes all issues initially discussed, but the co-rapporteurs aim to come up with a shorter final list, which includes only feasible options, leaving aside the ones that need treaty change or that are too controversial to be accepted by the Council. In response to the working document, the following points are raised in the discussion:

- *A European-level threshold*
  With reference to a ruling of the German constitutional court, questions were raised about the feasibility of a threshold and the possible percentage – with 3% and 5% most often mentioned. In favour of a threshold the argument was raised that it forces voters to think about their vote and possible coalitions in advance. Against a threshold the point was made that works against diversity, has a negative impact for minorities, and causes 'lost' votes. Discussing this point together with the *common rules for constituencies* could alleviate these problems. A lower threshold of 2 or 3% was proposed as a more acceptable threshold, which would still ensure the representation of different ideas and beliefs in the parliament. It was mentioned also that for some Member States, with for example only 6 MEPs, a threshold will not make a difference.

- *Top candidates*
  The nomination of top candidates was mentioned as crucially important for arousing the interest of citizens in the elections. However, the point was raised that a more formalized role of the top candidates will not automatically (if at all) ensure more visibility of the top candidates. One member raised the point that the selection of leading candidates for the post of Commission president contradicts the very principles of the parliament, by giving only candidates of the largest political groups (EPP and S&D) the chance to secure the job. A more nuanced approach is called for, in line with the idea of proportional representation.

- *Visibility of European Political Parties on the ballot paper*
  This was generally well received by the committee members. It was mentioned that it would be good to make parties to show their European party family (also for anti-European parties). One suggestion was to make the symbol on the ballot paper compulsory if a party is member of a recognized European Political Party and receives EU funding. However, one member countered that is not feasible to work only with European Political Parties, because everyone should have the right to participate and the freedom not to join a European Political family.

- *Transnational list*
  It was questioned by some members whether a treaty change is necessary to introduce a transnational list. If there is no change in the number of seats but only a different distribution, this could be part of the legislative proposal now.

- *Uniform voting day / end of voting*
  The same end of voting-day across Europe would be good, while still offering flexibility to those countries that have more than one voting day. As a practical objection the issue of time zones was raised, both within Europe and when taking into account the overseas territories.

- *Electronic voting*

  The issue of electronic voting was more controversial, with some committee members in favour, pointing to the Estonian system as an example, while others where fiercely against, stating that it is very difficult to ensure secrecy while at the same time ensuring the results have not been tampered with – also pointing to the Estonian system, but as a bad example.

- *Voting from abroad*

  The representation of the growing number of EU citizens living abroad was mentioned as a cause for concern, because the mandate is not based on population rather than citizenship. The right of European citizens living in another Member State should in any case be guaranteed. A problem with regard to this was also pointed out: during the last elections the fairness principle was violated by the possibility to vote twice in case of a double nationality.

Focus

In general, it was mentioned that the focus should be on bolstering electoral turnout and the representativeness of the parliament. The key issue is to make the European elections truly European, because the national electoral process now tends to take over the European one. It was also mentioned that the focus should be on representing the voters – and not political parties.

Ambition

Instead of following the ambition to have a single electoral law in place before 2019, it was proposed by two members to agree on a short list of minimum principles that are indispensable to organize the elections democratically. The law proposal could in that case include 5 to 6 key principles and a list of recommendations.

Further steps

The co-rapporteurs will continue their work, preparing a proposal based on the working document and the discussions in the committee.