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PRENUMERATA

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From the editors

The present issue of our journal results from the international conference organized by the European School of Law and Administration (ESLA) in co-operation with the University of Fribourg in Warsaw on April 29, 2014. The conference focused on **Elections, referendums and human rights in the European Union**. The language of the conference was English, with the exception of the paper presented by Professor Gilbert Casasus in French. Two papers (by Professor Anton Bebler and Dr Anna Zalcewicz) were contributed after the conference and were not part of its agenda.

The theme of the conference reflects our long-term interest in the European integration. Studying the integration from the perspective of law and social sciences, as well as from the comparative, cross-national perspective is important for the better understanding of this process. We are grateful to Professor Gilbert Casasus and Doctor Artur Kasza for their initiative and contribution to the long-term co-operation between ESLA and the University of Fribourg in the study of the European integration and in the organization of the Warsaw conference.

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Dix thèses sur l'élection au Parlement Européen

La première élection au suffrage universel direct du Parlement européen date de 1979. Par conséquent, cela fait trente-cinq ans que les citoyens communautaires sont appelés tous les cinq ans à élire leurs députés européens. Mais ce qui au début fut perçu comme une grande avancée démocratique ne l'est plus aujourd'hui. Non seulement les élections européennes se sont-elles normalisées, elles ont aussi perdu une certaine légitimité politique, compte tenu du nombre toujours décroissant des votants. Ainsi la participation n'a cessé de baisser, passant d'environ 62% en 1979 à 43% en 2009. Il ne faut pas que s'en plaigne, il faut en faire une analyse plus détaillée et plus profonde. Les dix thèses suivantes sont là pour le faire.

1. Les élections européennes reposent sur une dialectique : «plus de pouvoirs, moins d'électeurs»

Depuis 1979, le parlement européen a connu une augmentation significative

de ses prérogatives et compétences. En parallèle, les citoyens européens lui ont manifesté un intérêt toujours moindre. Les responsabilités sont partagées. D'une part, les gouvernements ne tiennent pas à avouer leur perte de souveraineté au profit des instances européennes; d'autre part les députés européens s'éloignent trop facilement de leurs propres électeurs. Par conséquent, le parlement européen s'est éloigné des citoyens parce que les gouvernements nationaux y ont également largement contribué. Ce n'est donc pas la légitimité du parlement européen qui est en cause, mais la friilosité politique de l'ensemble de toute l'Europe, que ce soit celle des gouvernements nationaux ou de la Commission européenne.

2. Instauration d'un quorum national pour les scrutins nationaux lors des élections européennes

Pour contrecarrer les faibles taux de participation aux élections européennes, il convient d'instaurer un quorum national de participation. Ne pourraient alors être pris en compte que les résultats dans

les pays qui auraient enregistré une participation égale ou supérieure à 40% des suffrages exprimés. A titre d'information, dix pays de l'Union européenne n'auraient pas vu leurs résultats validés en 2009, dont les Pays-Bas (36,75%), pourtant un État fondateur de la CECA, la Grande-Bretagne (34,70%) et huit PECO (Pays d'Europe centrale et orientale), dont la Pologne (24,53%). La lanterne rouge revenant ici à la Slovaquie avec un taux de participation de 19,64% des voix.

3. Les députés européens sont élus par tous les Européens: obligation de listes interétatiques

En lieu et place d'un système électoral européen, ce sont les modes de scrutin nationaux qui régissent les élections européennes. Les votes se déroulent au niveau national avec des règles différentes d'un État à l'autre. D'ailleurs, ces élections n'ont pas toujours lieu et ne sont pas dépouillées le même jour! Ainsi les députés sont élus dans un pays membre, alors qu'ils siègent dans des groupes politiques multinationaux. Pour pallier cette contradiction, défaut instauré dès 1979, toutes les listes devraient obligatoirement être interétatiques. Ainsi les partis politiques devraient proposer leur propre liste à l'ensemble des citoyens européens. Prévaudra alors une idée simple: se présentent des candidats européens aux élections européennes sur des listes européennes qui siègeront dans des groupes européens. Cela suppose par conséquent, la création de véritables et grands partis politiques européens.

4. Représentation minimale des listes admises à se présenter aux élections européennes

Parce que les élections européennes se sont toujours plus transformées en «élection sanction», voire en «élection défouloir» pour lancer un avertissement de politique intérieure, il faudrait leur ôter au plus vite leur caractère national. Ainsi ne seraient autorisées à déposer des listes européennes (voir point 3) que les partis et organisations qui sont présentes dans au moins $\frac{1}{3}$ des pays membres, avec comme autre condition logique d'avoir des candidat-e-s issu-e-s d'au moins $\frac{1}{3}$ de ces mêmes États. Cela éviterait par exemple l'émergence de listes purement régionalistes. Quitte à faire une liste regroupant, sur le plan européen, des mouvements indépendantistes et régionalistes.

5. Ni cumul des mandats, ni nouveaux mandats pour les députés démissionnaires

Trop souvent, les élections européennes ont servi soit de «lot de consolation», soit de «placard doré», voire de «solution de remplacement» pour des personnalités politiques que les partis politiques nationaux voulaient tenir à l'écart de leur propre territoire. Par ailleurs, d'autres hommes ou femmes politiques ont choisi le parlement européen comme «étape de transition» pour rebondir dans leur pays respectif. Ils se font élire au parlement européen, pour mieux en disparaître peu de temps après. Pour qu'il soit mis fin à cette pratique, in-

délicate et critiquable au plus haut point, il convient d'interdire à tout député européen démissionnaire le droit d'occuper, dans un délai de vingt-quatre mois suivant son départ volontaire du parlement européen, tout autre fonction élective dans son pays d'origine. Si tel devait être le cas, son siège ne serait pas repourvu, ce qui signifierait la perte automatique d'un mandat pour son groupe politique. Toutefois, cela ne concerne pas les députés européens qui seraient promus au rang de ministre dans leur pays. En effet, ce serait là une preuve de reconnaissance de leur travail et aussi du parlement européen. L'Europe pourra alors se prévaloir de constituer un échelon politique qui permet désormais à quelques-uns de ces anciens députés d'aspirer désormais à de hautes fonctions exécutives. Enfin, tout député-e européen-ne est un-e député-e à plein temps et n'a pas le droit de cumuler son poste avec un autre emploi ou mandat; qu'il soit privé ou public.

6. Des députés avec obligation de siéger

L'absentéisme des députés constitue l'un des écueils majeurs du parlement européen. En ce sens, en lieu et place de sanctions financières, il faut infliger des sanctions politiques. Si l'absence d'un-e parlementaire dans les séances plénières ou dans les commissions devait excéder 60% de son temps normal de présence, il/elle serait immédiatement démis-e de ses fonctions. Son groupe politique aurait néanmoins la possibilité de le remplacer car il s'agit là d'une sanction personnelle et non politique.

7. Un Président-e- élu-e pour toute la durée de la législature

Contrairement à la pratique en vigueur depuis la première élection au suffrage universel direct du Parlement européen, il convient de mettre fin à cette règle non écrite qui consiste à se partager, à parts et à durée égales, le poste du/de la Président-e- du Parlement pendant une durée de deux ans et demi entre les deux principaux groupes politiques, à savoir le PPE (conservateurs et chrétiens-démocrates) et le SD (socialistes et sociaux-démocrates). Le ou la Président-e du parlement européen devrait alors être élu-e- pour toute la durée de la législature, par la majorité absolue des parlementaires lors de la première séance plénière suivant les élections européennes. Si aucun des candidat-e-s n'est élu-e-s après trois tours de scrutin, seul-e-s les deux personnes arrivées en tête lors du troisième tour, seraient en droit de se présenter pour un quatrième tout décisif.

8. Un nombre limité de langues au Parlement européen

Débat récurrent au sein de l'Union européenne, celui des langues officielles mérite enfin d'être pris à bras le corps. Pour éviter d'une part des frais de fonctionnement et de traduction exorbitants pour une institution publique et empêcher, d'autre part, qu'une seule langue, à savoir l'anglais, prenne seule l'ascendant sur toutes les autres, il faut, une fois pour toutes, trouver une solution à la question du nombre de langues officielles de l'Union européenne; donc aussi celles considérées comme telles

au sein du parlement européen. Ne seraient alors reconnues comme langues officielles de l'UE et du parlement européen que celles parlées et écrites par au moins 5% des citoyens communautaires, soit par un minimum de 25 millions d'Européens. Cela concerne aujourd'hui l'allemand, l'anglais, le français, l'italien, l'espagnol et le polonais. Ces six langues sont amplement suffisantes.

9. Accorder le droit d'initiative législative

Contrairement à la majorité des parlements, le parlement européen n'est pas doté du droit d'initiative législative. Bref, il n'a pas le pouvoir de proposer et de faire passer les lois qu'il a lui-même souhaité de mettre en œuvre et en application. C'est là le principal défaut du parlement européen qui, en comparaison, avec la majorité des parlements nationaux, n'est toujours pas en mesure d'assumer pleinement son rôle législatif et politique. L'octroi par les pays membres de ce droit d'initiative législative représenterait un tournant majeur de la politique européenne. Néanmoins, il paraît peu probable qu'il soit négocié à l'heure actuelle, compte tenu de l'état actuel de l'UE. Trop attachés à leur souveraineté et leurs prérogatives nationales, les 28 pays membres ne sont certainement pas prêts à céder sur ce point. Au-delà du déni démocratique, on est, en l'espèce, parfaitement en droit de s'interroger sur leur attitude. Car, au-delà des différences politiques et partisans, le parlement européen a souvent adopté des positions plus audacieuses dont l'Europe politique aurait aujourd'hui un grand besoin. En ce sens, l'accord du

droit d'initiative législative constituerait une grande avancée non seulement pour le parlement européen, seul organe directement élu par les citoyens communautaires, mais aussi pour l'ensemble de l'Union européenne.

10. La question du siège du parlement européen

Si Bruxelles est capitale européenne, elle doit héberger toutes les institutions européennes. Par conséquent, cela concerne la Commission européenne, le Parlement européen et son secrétariat général, la Cour européenne de justice européenne, la Cour des comptes européenne, la Banque européenne d'investissement et le Fonds européen d'investissement (BEI) et la Banque centrale européenne. Quatre villes, au moins, sont ici concernées par cette énumération: Bruxelles, Francfort, Luxembourg et Strasbourg. Deux solutions s'offrent alors à l'Union européenne. La première consiste à tout rapatrier à Bruxelles, en trouvant des «solutions de remplacement» pour Francfort, Luxembourg et Strasbourg. La seconde est celle du statu quo avec le transfert intégral du parlement européen à Strasbourg. En revanche, et le gouvernement français ne l'accepterait qu'au prix de considérables concessions politiques de l'ensemble de ses 27 autres partenaires, on ne peut pas ôter à Strasbourg ce qu'on laisserait aux autres.

The consequences of Parliamentarisation of the European Union

I. Introduction

The elections to the European Parliament (EP) that took place in the last days of May 2014 were significant, for a number of reasons. First, they happened in the context of a major financial and economic crisis that has rolled across the European Union (EU) – and not only – since 2008. In 2014 some signs of a way out of the crisis could be seen but its impact, in terms of unemployment, public debt, austerity measures, a drop in living standards and growing insecurity are painfully felt in many EU member states. The influence of the crisis climate upon the elections to the European Parliament could only be expected. Social frustration is all time high. The anger is directed towards the political elites in office and the protest movements find a high wave to surf on. It comes as no surprise that they did score a success.

Beneath these circumstantial elements there are some deeper ones. The European Parliament, being the only EU institution directly representing the EU citizens, has only seen dropping interest on the part of the electorate, as evidenced by the decreasing participation rates in the EP elections. Apart from that, over the last two decades the EU has significantly grown both in scope and scale. When it was brought to life by the Maastricht Treaty in 1993, it had 12 members, that number reached 28 in 2014. Consecutive treaties, since Maastricht, have extended the fields of activity as well as the competencies of the EU institutions.

Simultaneously, the EU appears to have ceased to be an elitist process, matter of elites, away from the citizen's involvement. There is extensive literature on the politicisation of the European integration process and the end of what has been termed permissive consensus (Hooghe and Marks 2008, De Wilde and Zurn 2012). The political elites and the citizens can no longer be expected to allow and agree, almost blindly, to whatever comes from Brussels or Strasburg.

The weak legitimacy of the European Union, with its incomplete democratic character, is a recurrent problem in academic research and political debate on European integration (Kohler-Koch and Rittberger 2007). This article focuses on the recent attempt to address the problem. This attempt has taken the form of the nomination of top candidates for the position of the President of the European Commission – the EU executive – in the wake of the EP elections. It will be argued that such a nomination, while supposed to add clarity to the political game in the EU and increase the voter interest, takes the EU parliamentarism to a higher level, and may eventually bring it closer to a federal parliamentary model. However, the conditions for that are far from being met, as there no authentic EU political party system that would generate clear majorities to support – and minorities to oppose – the alternative candidates and, subsequently, alternative policy options.

II. The problem

Considering the problem which is dealt with in this article, it seems worthwhile to return to the very nature of the European Union. The European Union is different from any other international organisation. It is a group of states which, through their political will, have established a common regime in a group of activity fields, as well as a legal, procedural and institutional system. At the foundation that regime is international. It has been established by

a series of international treaties, formulated through a negotiation process and then ratified by all member states according to their specific constitutional requirements. But upon that foundation, a complex construction has been built that functions differently from any other international organisation. The international treaties form the primary law of the European Union. With the framework of the primary law, secondary law is statuted, binding identically for all the EU member states, and their citizens. In that manner the EU functions in a manner similar to a state. The EU has also developed an institutional regime that carries some similarities to a state institutional system. Above all, there is a division of powers between the executive (the European Commission), the legislative (the Council of the EU together with the European Parliament) and the judiciary (the Courts).

As soon as directly and effectively binding law is statuted, without requiring any ratification at the state level, the issue of rightfulness, legitimacy and democracy appears. This is assured in the context of the European Union in several manners. First, all secondary law is adopted according to and within the legal framework of the treaties. Secondly, the indirect representation is brought in by the governments of the EU member states, who work as the masters of the treaties, at the primary law level, and as legislators, at the secondary law level. Thirdly, the representation of the European people is assured by the European Parliament, elected directly since 1979.

The European Parliament has existed since the early days of the European Coal and Steel Community, though under a different name then. It is the institution of the European Union that has experienced the largest growth of its power. This has happened both by its own effort and through the extension of competencies authored by the EU member states. The general objective was to counter the accusations of a weak democratic character of the EU and to strengthen its legitimacy. Admittedly, while the formal legitimacy may be seen as correct, the EU lacks social support and it seems to continue losing it.

Thus, the many changes applied to the European Parliament have apparently failed to strengthen its political base and its link to the citizens who it is supposed to represent. This is most visible in the turnouts in the EP elections. Since the first direct election in 1979 the turnout has only dropped, from 62% to 43% in 2014. The European Parliament appears as a very distant and intransparent gathering, with hardly any political role or influence, and it attracts far less political interest than any national elections. Another and perhaps even more worrisome phenomenon is the appearance of Eurosceptic and outright anti-EU political parties on the EU political stage and in the European Parliament. During the seventh term, between 2009 and 2014, the anti-European parties were brought together in the European Freedom and Democracy political fraction, formed by the United Kingdom Independence Party and the Italian Northern League. The elections in 2014 seriously extended the Eurosceptic and anti-European representations in the European parliament. The most notable success was scored by the French National Front. The other radical anti-European parties, such as the Dutch Party

for Freedom led by Geert Wilders carried less remarkable results. Nevertheless, the radical camp in the European Parliament has seen a remarkable growth.

In this context, the most recent modification to the political functioning of the European Parliament is worth considering. The Treaty of Lisbon formally recognised the relationship of the composition of the European Parliament and the nomination of the President of the European Commission. Article 17.7 of the Treaty on the European Union, as amended by the Treaty of Lisbon, stipulates that the European Council, by qualified majority, proposes to the European Parliament a candidate for the President of the European Commission, taking into account the result of the elections to the European Parliament. This produces a link between the European Union's legislative branch and the executive branch, which brings it another step closer to a political organisation of a democratic state. Given such a prerogative, the major political groups in the European Parliament displayed initiative and selected their candidates for the position of the President of the European Commission.

The legal and political consequences of this novelty offer an excellent research topic. First and foremost, the objective of the move was to further strengthen the clarity of the electoral game. Along this argument, the European voters, having some specific candidates, would at least know who may be given the power in result of their electoral choices.

But is this solution authentically useful for the purpose of bringing the European Parliament closer to the voters? The electorate turnout in the 2014 was maintained if compared with 2009, and even just a tiny bit higher. But it is hard to argue that this was the result of the new institutional arrangement. What is more important is that the European Parliament remains as far as ever from a truly common EU political party system. There is neither still no single electoral regime nor common electoral lists. The political fractions in the European Parliament are conglomerates of national political parties. The European elections are, unchangeably, national elections, played around national issues, frequently as arenas for the expression of protest against the parties in government. With the very low turnouts at the national level, this produces some distorted results, by strengthening the radical, populist protest parties.

But is a truly European party system possible at all? Would it be like? What requirements, legal and otherwise, would it pose? What would be the consequences of the birth of a European party system for the European polity? These issues are considered below.

III. The evolution of the European Parliament

The European Parliament was born as a Common Assembly of the European Coal and Steel Community in 1951. It held its first meeting on 10 of September 1952. It counted 78 members, arriving from the national legislatures of the six member states of the ECSC. Initially, the Assembly had no legislative but only consultative role. Worthwhile noting, a reading of the Robert Schuman Declaration of the 10 of

May 1950 will point to no mention of creation of such a body within the proposed Community. However, other international organisations, such as the Council of Europe that had been born just before, or the United Nations Organisation that followed the League of Nations, had received parliamentary assemblies. Thus, the establishment of an assembly was introduced during the treaty negotiation among the six, with the objective to bring some equilibrium among the executive powers of both the High Authority and of the controlling competencies of the Special Council of Ministers. Early democratic rooting of the new community was also sought in that way.

While the role of the Common Assembly was limited within the ECSC, some important tasks appeared before it soon. It was given the task of elaborating the possibility of the establishment of a similar assembly but dedicated to the European Defence Community. This was stipulated in the article 38 of the Treaty establishing the European Defence Community. Resulting from this, and as the events went on, the Common Assembly was next called on to draft a complete treaty, instituting the European Political Community. The two communities never came into being, as the French National Assembly refused to enter the parliamentary debate on them in August 1954¹.

The European integration process continued on the economic path with two new treaties signed on 25 March 1957 in Rome.

¹ http://www.cvce.eu/obj/european_parliament-en-ad6a0d57-08ef-427d-a715-f6e3bfaf775a.html

With their entry into force (on 1 January 1958) the Assembly became common to all three European Communities, extending its number to 142 and changing its name to European Parliamentary Assembly. The name was changed again in 1962 by the Assembly's own decision, to the European Parliament. It is worthwhile noting that this name had no treaty basis for several decades, until the entry into force of the Single European Act in 1987. Following that, and a first crisis that the Communities went through in mid-1960 – known as the empty chair crisis – the European Parliament expanded its prerogatives only in 1970s, in the financial sphere. The two treaties signed in 1970 and 1975, gave the EP a degree of influence upon the budget of the European Communities.

In 1970s as well the most significant change concerning the European Parliament was designed. At their meeting in Paris on 9 and 10 December 1974 the heads of state and government decided that a first direct election to the European Parliament should take place by the end of the 1978s. This, after the adoption of a renewed Convention by the Parliament, led to the Decision and the Act on the European elections by direct universal suffrage, signed in Brussels on 20 September 1976. The Act had the character of an international treaty, thus requiring ratification by all Member States. Following that, the Act entered into force in July 1978, and the first elections to the European Parliament took place between the 7 and 10 June 1979.

In the early 1980s the European Parliament played a role setting a stage for another major step to come. Altiero Spinelli, who played a very significant part at the start of the European integration process in the late 1940s, led a group of the EP Members,

known as a Crocodile Club². That group formulated a political proposal for a Treaty on the European Union, which was to take the existing institutional arrangements of the three communities to a new level, with a rather federalist slant. The proposal, that took a final form of a draft treaty establishing a European Union, was adopted by the Parliament in early 1984, by a vast majority of its members. The Parliament's proposal was not taken over by the member states of the Communities, but it started a political process that led to the negotiation and signature of the Single European Act in 1986 (entered into force in 1987). The SEA changed for a first time the formal, treaty-based role of the European Parliament. It introduced the cooperation procedure applicable to certain legislative areas, as well as the assent procedure for accession and association agreements.

The Treaty on the European Union, signed on 7 February 1992 in Maastricht (entered into force on 1 November 1993) added a significant legislative procedure, named co-decision, which positioned the EP as legislator working together with the Council of the European Union (previously the Council of Ministers). However, the co-decision was not initially applicable to all of the of the activity fields of the newly established European Union. First and foremost, it did not concern the Common Foreign and Security Policy nor Justice and Home Affairs. These two 'pillars' were brought into life in the Treaty but placed outside the European

² The 'Crocodile Club' took its name after the name of the restaurant in Strasbourg where they met.

(Economic) Community framework, both in institutional and substantive terms. Secondly, it did not cover all of the European Community legislation. The cooperation procedure remained in many places, notably concerning the Economic and Monetary Union and some other legislative matters.

The treaties that followed the original Treaty on the European Union signed in Maastricht gradually contributed to the strengthening of the European Parliament's role as a co-legislator, placing it more and more firmly on an equal footing with the Council of the European Union. The Amsterdam Treaty changed the status of some matters in the Justice and Home Affairs field, submitting them to the procedural logic of the European Community. This meant the extension of the decision procedure. The Amsterdam Treaty also made the nomination of the President of the European Commission subject of approval by the European Parliament. The Nice Treaty submitted further matters to the co-decision procedure. The Lisbon Treaty, carrying over a lion's share of the stipulations of the Treaty establishing the Constitution for Europe (rejected in French and Dutch referendums), introduced further modifications, of great importance for the EU institutional system. It renamed the co-decision procedure into the ordinary legislative procedure, suggesting that it is the default way to make laws in the EU and all others are applied by exception. All other procedures are called special procedures, and the Treaty specifically indicates which procedure is applicable. To be sure the special legislative procedures remain in many places of the Treaty. The division of the into three

different fields of activity was abolished by the Treaty, but the Common Foreign and Security Policy remained as a distinct field, where no legislation is produced, thus the ordinary legislative is not applicable and the role of the European Parliament is reduced to supervision and debate (Kasza 2013).

This brief presentation of the growth of role of the European Parliament is brought in here to demonstrate the scope of change that this EU institution has experienced. It started as consultative body but it has come to the position of co-legislation and control, in an institutional and political system that displays many important state-like features (more on the development of the European Parliament in historical context: Urwin 1994).

Among the four basic functions of a parliament, that is, the constitutional, legislative, control and elite selection, the European Parliament has experienced a growth of role in all four, although that growth has been rather differentiated. The legislative role seems to be most prominent, to the point of an equal footing with the Council, with some notable exceptions. The control role has also been extended since the birth of the European Parliament. The motion of censure has been in the treaties since the establishment of the EEC and the EURATOM. Submitted several times so far, it has never succeeded, however³. The European Parliament is also entitled to submit questions both to the European Commission and the

³ Jacques Santer Commission resigned in 1999, on the direct threat of motion of censure.

Council, to which these are obliged to reply. The Parliament can also launch special inquiry committees to investigate particular matters. The control by the EP is assured in the financial matters through the budgetary supervision and annual discharge.

The constitutional function seems to be the weakest of all. The Member States unchangeably remain the authors of the treaties, assuring the constitutional framework for the European Union. The Convention on the Future of Europe, established in 2003 to formulate the Treaty establishing a Constitution for Europe, a similar body having drafted the Charter of the Fundamental Rights, offered a chance for the European Parliament to be involved as part of a *constituante*. While the Charter found eventually its place in the primary law of the European Union, the Constitution for Europe failed, and the model which entailed the European Parliament as a co-author of the treaties was discarded with that failure.

Of the central interest to this analysis is the elite making function of the European Parliament. Observably, this function has been extended too, with the growing influence of the EP on the nomination process and the composition of the EU executive: the European Commission.

IV. The European Parliament and Parliamentarism

Just as the European Union has acquired several, but not all, characteristic of a state, the European Parliament resembles national parliaments in many aspects, but not all.

Parliament has become the cornerstone of the modern western (and not only west-

ern) democracies. While the deep roots of those democracies can be found in the Ancient Greece, contemporary parliamentary systems were born in late Middle Ages, with the attempts to resist, limit and bring under control the monarch. Very early forms of assemblies are to found in medieval Britain, where the *Magnum Concilium* – the Great Council – brought together the nobles, the clergy and the representatives of the counties and boroughs, with the purpose of advising the king. It was that gathering that would lead to the adoption of the Magna Carta in 1215. For many centuries to come the British political system in formation was marked by the tensions between the Parliament and the monarchy, as well as between the various groups in the Parliament. In the XIV century the English Parliament saw a division between the upper house, bringing together the nobles and the clergy – the Lords – the lower house seating the representatives of the counties, shires and boroughs – the Commons.

In the same period the early elements of the French parliamentarism developed, with the Estates-General – *les États généraux* – that were brought together for a first time in the beginning of the XIV century. There too, the Estates included the three social strata: the nobles, the clergy and the representatives of the cities (*la bourgeoisie*, that is, the third estate). Different from the English parliamentarism, the Estates-General had no true legislative function and played a limited, consultative role for the monarchs. What is worthwhile noticing, these two early forms of parliamentarism combined the element of social position and the element of territoriality.

These forms have evolved into the modern times with a great variety

of specific institutional solutions. One of central aspect of the modern parliamentarism is bicamerality. While not all democratic states have their parliaments composed of two chambers, there is a great number of states where there is an upper chamber and a lower chamber, under different names. Historically, the upper chamber was composed of the representatives of the nobles and the lower chamber was composed of the representatives of the people. Politically, also, the upper chamber enjoyed an advantage towards the lower chamber. The development of democracies has reversed these positions.

A distinct arrangement has marked the federal states. There, the parliament brings the representatives of the whole state in the lower chamber and the representatives of the federated units in the upper chamber. This is most visible in the case of the bicameral system of the German Federal Republic, where the lower chamber – the Bundestag – is composed of the representatives of the electorate, and the upper chamber – Bundesrat – is composed of the representatives of the *Länder* governments with voting rights. A different solution has been adopted for the Unites States Senate, where the Senators who represent their states, are elected in a popular ballot.

How can the European Union be positioned in this landscape of parliamentarism, with its rich historical heritage and a wealth of solutions in modern states? First and foremost, one must not forget that the EU is as an international organisation, established by the political will of states. Therefore, the states are the constitu-

ent parts of the Union, and their interests must be guaranteed. This is done through the two Councils, where the Council of the European Union plays the role of legislator and the European Council plays the role of collective leadership of the Union. But, as demonstrated, the step into secondary legislation, directly binding and effective, has generated the need for more direct legitimization and accountability of the UE political system. This is the fundamental justification for the existence of the European Parliament. The European Commission, from early on, was given the position of the supranational initiating and managing body and this is the essence of its executive role.

Simon Hix defines this system is terms of double executive, where the Council – bringing together the representatives national executives (governments) – and the Commission share the executive powers, and also compete for them (Hix 2011). There is however, an alternative perception of the system, where the European Parliament and the Council of the European Union might be seen as the two chambers of the EU parliamentary system, the lower and the upper chamber, respectively. The European Commission would then be positioned as the EU executive, approximating the government, and the European Council would take the place of a collective Head of the Union.

Admittedly, this is a federal view of the European Union. Has the EU become a federation yet? Far from this, as there are some important elements missing.

As has been demonstrated, the European Parliament has significantly expanded its prerogatives since its birthday. But it still falls short on

several crucial aspects. First, it has not been given so far the right of legal initiative of its own. This makes it different from any other existing parliament. The European Parliament is entitled by the Treaty to demand the European Commission to formulate and submit a legislative proposal (Art. 225 TFEU). But, the European Commission retains the full and exclusive right of the legal initiative, so it may consider the Parliament's demand and follow up on it or not.

Second, the European Parliament does not fulfil its elite forming function in a manner similar to any other parliament, in particular, with regard to the relationship between the legislative and the executive, and with regard to the interplay between the parliamentary majority and minority.

In the context of a parliamentary democracy, the general elections are decisive for who takes power. Following the election a majority is formed, either absolute (if a single party wins more than a half of the seats) or within a coalition of parties. The majority proceeds to nominate the executive – the government – consisting of the prime minister and other ministers. The government so formed is backed by the parliamentary majority; if that majority is lost, no legislation may go through, as it will be blocked by the parliamentary opposition, which has become majoritarian. The opposition is crucial for any democratic political system. It scrutinises the majority and its government, criticising it, and putting forward alternative policy choices and legislative solutions.

Originally, there was no such mechanism of involvement of the European

Parliament in the nomination of the European Commission. The composition of the Commission was the matter of a *commun accord* – common agreement – between the member states of the EU (the Communities previously). Only with the Treaty of the European Union, in its Maastricht version, the Parliament received the right to approve or reject the College of Commissioners as a whole. The Amsterdam Treaty specified that approval was first needed for the person of the Commission President before the other Commissioners could be considered and nominated. Then, under the Amsterdam Treaty the Commission needed to be accepted by the Parliament as a College. But it was Lisbon Treaty that explicitly obliged the European Council to take into account the result of the European Parliament election, and thus the composition of the incoming EP, when putting forward the candidate for the president and the other members of the Commission.

V. The EU Political Party System

The main political fractions in the European Parliament did not fail to make a move, based on the new treaty stipulation. The European Peoples Party (EPP), the Alliance of the Liberals Democrats for Europe (ALDE), the Progressive Alliance of Socialists and Democrats (ES), and some other fractions, put forward their candidates for the position of the President of the European Commission. The purpose of that step was to increase the visibility and transparency of the European Parliament Elections. It meant an approximation of the EP election to the domestic elections, in the

sense that voting for a given political party the voters should have a leader's name and face in mind. That was at least the assumption. But was it a correct one?

There are a number of obstacles for that. First of all, some rather simple and basic characteristics make the EU politics quite different from national politics. In the national context the political elites are well known, voter allegiances are clear. Most importantly, the political leaders speak the language that the voters understand, in purely linguistic terms. So, the top candidates (or as it was often put: *Spitzenkandidaten*) can take a lot of travel across Europe, but wherever they go – outside their own countries – they will be foreigners, in need of a translator or speaking the language with a foreign accent. This is an inseparable element of a transnational democracy.

These are two more matters to consider. The EP fractions putting forward their candidates for the Commission presidency might have had some good intentions, but their move may very well be seen as far-fetched in light of the provisions of the Treaty. According to the article 17.7 of the Treaty on the European Union (following the Lisbon Treaty), the European Council, acting by a qualified majority, proposes to the European Parliament a candidate for President of the Commission, taking into account the result of the elections (...). The candidate is then elected by the European Parliament by a majority of its component members. This wording does not preclude the European Parliament from putting forward candidates at the stage of the election campaign but neither does it give the EP an explicit title to do so. Nor does it create any obligation for the European Council

to nominate any of the top candidates for the Commission President. An exact reading of the Treaty stipulation would rather convince that it is the primary right of the European Council to formally put forward the candidates to the European Parliament and not the reverse.

The reaction to the appearance of the *Spitzenkandidaten* from several members of the European Council, including President Herman Van Rompuy, has not been exactly positive. The European Council apparently felt that their Treaty based competencies were being encroached upon. The European Council emphasized that there should be no automatic nomination of the Commission President candidate. The political battle for the candidates has been launched nevertheless. The candidate proposed by the European Peoples Party, Mr Jean-Claude Juncker, has generated opposite positions of both support and rejection. His candidature has pitted the main players, such as the UK Prime Minister David Cameron and German Chancellor Angela Merkel, strongly against each other. This sets the stage for a political conflict if not a crisis that may mar the start of the eighth term of the European Parliament.

On the more systemic level, even with the top candidates proposed by the major EP fractions, the opaqueness of the European Parliament remains well in place. It is primarily because the political fractions in the EP are composed of the national political parties. The voters therefore do not vote for any European politicians but for national politicians. The national election campaigns are played around mixtures of national issues and European themes.

The European Parliament is one of the largest bodies of this kind

globally. It has reached maximally 785 members (following the accession of Bulgaria and Romania in 2007), it counted 766 at the point of closing the seventh term and it has 751 members in the 2014-2018 term. With such num-

bers, it is marked by a strong dispersion of its party composition. In the seventh term, between 2010 and 2014, there were seven political fractions and 30 non-affiliated members of the European Parliament (Table 1).

Table 1. The composition of the European Parliament in the seventh and the eighth terms.

The VII term of the European Parliament		The VIII term of the European Parliament	
The political fraction	No of EMPs	The political fraction	No of EMPs
1. European People's Party	274	1. European People's Party	221
2. Progressive Alliance of Socialists and Democrats	196	2. Progressive Alliance of Socialists and Democrats	191
3. Alliance of Liberals and Democrats for Europe Group	83	3. European Conservatives and Reformists	63
4. The Greens–European Free Alliance	57	4. Alliance of Liberals and Democrats for Europe Group	59
5. European Conservatives and Reformists	57	5. The Greens–European Free Alliance	54
6. European United Left–Nordic Green Left	35	6. European United Left–Nordic Green Left	52
7. Europe of Freedom and Democracy	31	7. Non-Inscrits	43
8. Non-Inscrits	33	8. Europe of Freedom and Democracy	32
		9. Other	36

Source: <http://www.elections2014.eu/fr/new-parliament>

At first sight, the table demonstrates the support tendencies for the political parties in the European elections and their translation into the electoral results of the frac-

tions in the European Parliament. While the centrist fractions in the EP remain in the four first positions, they have suffered serious losses between 2009 and 2014. The

European Peoples Party has lost most of the seats, together with ALDE. The loss on the part of the Socialists has been smaller, and the Conservatives have gained several seats. Beyond these numerical observations, it is worthwhile noticing two facts. First, the two biggest fractions in the EP represent two opposite political worldviews: the Christian Democrats and the Socialists. Following the elections in May 2014, the Christian-Democratic European People's Party does not even reach a third of the seats in the EP. It would still be far from reaching a majority in the House even in coalition with the likely candidates, the ALDE and the ECR. Therefore, a coalition is necessary with the Socialist. This situation is not new but it unchangeably keeps the European Parliament away from any majoritarian setup. What is even more important to notice is the significant growth of Eurosceptic and anti-European groups in the European Parliament, from the Nigel Farage's United Kingdom Independence Party (previously forming the Europe of Freedom and Democracy fraction), through Marine Le Pen's National Front (previously non-inscrit but now with a prospect of forming a fraction), to a number of newcomers, including the Italian Five Star Movement, led by Beppe Grillo (likely to join EFD), and the Polish Confederation of New Right, led by Janusz Korwin-Mikke (in search of affiliation).

In consequence, certainly the European Parliament is still far from the usual parliamentary situation where there is a clear majority and opposition, formed along the worldview lines. A grand coalition is likely and necessary for both the passing of laws and, notably, for the support of a president of the European Commission with the entire College of Commissioners.

What there is, however, is an anti-systemic opposition, coming with the Eurosceptic and anti-European groups, that has grown rather significantly in the EP. Anti-systemic opposition is different from in-system opposition in a crucial manner. The in-system opposition operates within the system. It does not question it, with a view to abolishing it, but scrutinizes the majority and offers alternative policies. The anti-systemic opposition in turn is set against the system as such and aims at either reforming profoundly or to remove it altogether. In case of the anti-European opposition, the postulate of withdrawing a given member state from the EU is clear, and indeed if several major EU member states withdrew, that would amount to the dismantling of the European Union.

If the European Union is to be a sound democracy, it should welcome an opposition. However, the anti-systemic opposition may constitute a threat to its very existence. It would therefore be desirable to head towards a more classical setup of majority versus (in-system) opposition. But can this be achieved and how?

Simon Hix (2008) is a proponent of the partisan development of the European Union, and the European Parliament in particular. He does observe, through extensive research data, the voting trends in the EP, which point to a significant amount of left versus right voting cleavage, rather than left together with right, that is within a grand coalition. But he also acknowledges that, as seen before, the EP elections are played on the national stages, with the national actors (political parties) and themes (effectiveness of a given government in office). In his proposal of a solution, Hix focuses on the allocation of power within the European Parliament, starting from

the position of the EP President. The current practice is that the two major political fractions, the European Peoples Party and the European Socialists share that position over any term, during two and a half year each (Jerzy Buzek and Martin Schulz in the seventh EP term). Hix rightly argues that this is indeed the best example of the consensual power sharing within the EP, which hardly contributes to the development of alternative policy proposals. Much the same applies to the allocation of committee chairs.

But the political reality has developed in a different direction. The Lisbon Treaty made it mandatory for the European Council to take into account the results of the EP election at the time of nominating the president of the European Commission and the rest of the College. This was in turn interpreted by the European Parliament as the right to put forward top candidates for the Commission President. It is argued here that this turns out to be an important step forward towards the majoritarian parliamentary setup, without, however, a political party system that would constitute the foundation of it. Question arises, however, whether Hix is not too optimistic about the rather minor institutional changes within the EP would generate the sufficient outcome, including clearer policy options and greater voter interest in the elections to the EP. What would still remain in place is the national rooting of the European elections, and specifically, the dependence of results of the EP political fractions upon the popularity levels of the national parties.

What could such an alternative European party system look like? An avenue to consider is the growing autonomy of the European politi-

cal fractions. The development in that direction is taking place with the formation of the Europarties. But these still are mostly conglomerates of the national parties, though individual membership is possible. However, full autonomy of the European political is not advisable as it would mean duplicating the party systems, with all the problems of registration regimes, legal frameworks, financing, etc. The least could be to extend the names of the national political parties, in order to clearly indicate to the voters the EP political fraction to which a given national party belongs. Furthermore, the construction of a fully autonomous European political party system would significantly bring the EU to a full parliamentary, federal character. The key question is whether such an idea would find the support of a majority of political elites and of the citizens across the European Union. The current climate and the results of the EP election of May 2014 point to a negative response to that question.

VI. Conclusion

The European Parliament, and the pro-European elites face some major challenges, by no means new but seemingly greater after the 2014 EP elections. One challenge is to increase the interest in the EP elections, so that not only the radical, Euro-sceptic and anti-European parties mobilise effectively their electorates. The nomination of top candidates by the major political fractions was supposed to bring about this

effect. It does not seem to have delivered. But the orientation taken seems correct. The European Union has left behind the times of permissive consensus. The support for the process of European integration can no longer be taken for granted and it has to be won by the political elites of the pro-

European stance. The EU political system has been politicised, in terms of policy options but even more importantly in terms of support and opposition to European integration as such. A key challenge is therefore to accommodate the anti-systemic forces and turn them into in-system opposition.

BIBLIOGRAPHY

1. De Wilde, P., Zurn, M., (2012) *Can the Politicization of European Integration be Reversed?* Journal of Common Market Studies CMS Volume 50. Number S1. P. 137–153
2. Hix, S., Høyland, B. (2011) *The Political System of the European Union*, 3rd edition (The European Union Series), Palgrave MacMillan
3. Hooghe, L., Marks, G. (2009) *A Postfunctional Theory of European Integration: From Permissive Consensus to Constraining Dissensus*, British Journal of Political Science, Volume 39, Issue 01, p. 1–23
4. Kasza, A. (2013) *The Common Foreign and Security Policy*, in: Kolendowska, M. – ed. (2013), *Substantive Law of the European Union*, EWSPA (ESLA) Publications, Warsaw
5. Kohler-Koch, B., Rittberger, B. (Eds.) (2007) *Debating the Democratic Legitimacy of the European Union (Governance in Europe)*, Rowman & Littlefield
6. Urwin, D. (1994) *The Community of Europe: A History of European Integration Since 1945*, Routledge.

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