

## 'A uniform law for elections to the European Parliament' from letteraeuropa (1979)

**Caption:** Article summarising the conclusions of the international seminar, organised in Berlin in November 1979 by the Friedrich Naumann Foundation, on the need for a uniform electoral procedure for elections to the European Parliament. Under the Act of 20 September 1976 concerning the election of the representatives to the Assembly by direct universal suffrage, the European Parliament is tasked with drawing up a proposal for a uniform electoral procedure in accordance with the Treaties. The Act also stipulates that, pending the entry into force of a uniform procedure, the electoral procedure is to be governed in each Member State by its national provisions.

**Source:** letteraeuropa. dir. de publ. Jozzelli, Pietro. Novembre-Dicembre 1979, n° 9-10; Anno II. Roma: Circolo Europeo. "Una legge comune per l'elezione del Parlamento Europeo", p. 26-27.

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## A uniform law for elections to the European Parliament

*In the June/July edition of our 'Lettera Europa', we stressed the need for the European Parliament to set about drafting a proposal for a uniform electoral procedure straight away.*

*At the end of November 1979, the 'Friedrich Naumann Foundation' held an international seminar on the topic in Berlin, bringing together highly qualified experts from the various countries. The seminar produced the following conclusions.*

1 — At the outset of the debate, it was pointed out, by way of preliminary, that the uniform electoral procedure provided for by the Act concerning the election of the representatives of the European Parliament of 20 September 1976 (which amended and replaced only the first two paragraphs of Article 21 ECSC, Article 138 EEC and Article 108 Euratom) involved a procedure similar to that already adopted for the first elections to the European Parliament. It would therefore essentially be necessary on this occasion also to adopt an agreement drawn up by the European Parliament, but adopted by the Council and, consequently, ratified by the Member States in accordance with their own constitutional rules.

Three stages had therefore to be successfully completed:

- the European Parliament must draw up a satisfactory proposal;
- the Council must accept that proposal without substantial changes;
- all the Member States must ratify it.

Consequently, there were likely to be many difficulties in obtaining, above all, the unanimous consent of the Council to a satisfactory proposal and subsequent ratification by all — or at least the majority of — the Member States.

To achieve that, the dogma of absolute uniformity would have to be abandoned, and partial harmonisation and, if appropriate, gradual approximation of the national laws accepted. In that context, it was desirable for the proposal to envisage an entirely Community procedure for the adoption of uniform electoral rules for the future (the adoption of a directive, for example). But, for obvious reasons, that could take effect only when the European Parliament was elected for the third time.

If some States failed to ratify, those States which had ratified should, in any event, consider themselves obliged to apply the text unanimously adopted by the Council (implementation of the Council's recommended text ought not therefore to be conditional on the deposit of all instruments of ratification). But if the Council failed to achieve unanimity, Member States disposed to do so could simply implement the European Parliament's proposal unilaterally.

2 — The most important issue discussed was which electoral system should be adopted, and, in particular, whether it was vital that the system of proportional representation be adopted in all the Member States.

It was noted that all the Member States, except the United Kingdom, had adopted systems of proportional representation, or at least systems of that type. Some question marks could, in theory at least, be raised in relation to the Irish system (list system with the possibility of vote transfer — 'single transferable vote'). But it emerged from the discussions that this system allowed for proper representation of minorities and could therefore be equated with a system of proportional representation, at least in terms of the outcome. The meeting also noted that this should be accepted for political reasons, both to aid harmonisation and because the United Kingdom itself had adopted that system for Northern Ireland. Furthermore, the adoption — by eight out of nine Member States — of electoral laws all based, albeit with differing formats, on the proportional system, reflected an objective necessity, given the variety and diversity of parties and political

ideologies within Europe. The reasons generally advanced in support of first-past-the-post systems could not, however, be invoked (stability of governments, making it easier to form governments and so on).

It was noted that the first-past-the-post system, used by the United Kingdom for both national and European elections, had unquestionably distorted the representation of British citizens in the European Parliament because the number of members elected was clearly disproportionate to the number of votes obtained by the various parties. For instance, the British Liberal party, which had three times or more the vote of many Italian parties, had no representatives at the European Parliament. It was further pointed out that the reasons for harmonising at least the basic principles of the procedure for elections to the European Parliament could not be invoked to prevail upon the States to adopt similar procedures for their national parliaments.

In conclusion, therefore, it was not essential that the system adopted for national elections be adopted for the European elections also (France was cited as an example). In addition, at the current stage in European integration, it was possible only to seek to harmonise the basic principles, but vital still to allow a variety of solutions to take account of the requirements, customs and mindset of both electors and the Member States, and thus achieve a composition of the European Parliament that better reflected the individual electorates.

3 — The second sensitive issue that could be covered by uniform rules was the so-called ‘barre’ (threshold), that is to say the minimum percentage of votes each list had to obtain as a condition for the award of seats, as provided for in the legislation of various Member States (France, Germany and Belgium).

It was clear from the statements of André Damseaux — Belgian Liberal MEP and vice-chairman of the working group on drafting a proposal for a uniform electoral procedure — that there was strong support for requiring a minimum percentage of the vote (of the order of 5 %) in all the Member States. Patently, the major parties had an interest in getting rid of inconvenient competitors, even if they were minority groups. The imposition of these percentage thresholds would be seen as compensation for the uniform adoption of the proportional system and, therefore, the agreement of the British.

Most speakers opposed a percentage requirement, pointing out that:

- there was no obvious connection or causal relationship between the adoption of the proportional system and the imposition of a minimum percentage of votes. In any event, it would be unfortunate to risk exchanging the five potential British Liberal MEPs for the five Italian Liberal and Republican MEPs;
- the minimum percentage threshold of votes might be justified by the need to ensure greater stability at national level, but reflected neither a practical nor a theoretical need at Community level;
- it would be inconceivable for major currents of political thought (present throughout the Community) to risk not being fully represented in the European Parliament, simply because they were very much a minority in some Member States;
- the mere threat of failing to achieve the minimum percentage could deter electors, fearful that their vote might be wasted;
- a uniform system, in terms of a minimum percentage of votes, did not, in any event, seem required — though it might be deemed necessary in some Member States, for European elections too, because of specific national circumstances or traditions. The national legislatures could be left free to choose.

This last comment of a secondary and compromise nature elicited the objection that most of the working groups would be directed to consider the issue of the minimum percentage of votes as a vital element of harmonisation. The possibility of lists based on electoral alliances between similar parties in various Member States (for instance, parties affiliated to the same group in the European Parliament) would also be under consideration. The minimum percentage could then be calculated across the board. That could act as a useful corrective, always provided (given the differences in the numbers of electors in the various Member States) that this calculation was weighted in terms of the number of votes cast in the different Member

States.

4 — A third, widely debated issue concerned the difference between fixed lists and more or less flexible lists. The majority of speakers preferred a system (like the Italian one) that allowed electors to vote just for the list or to express a number of preferences; they therefore favoured an intermediate system between fixed lists and complete flexibility. The system of ‘panachage’ (voting for candidates from different parties rather than the fixed list of one party) would also allow direct or indirect preferences to be accorded to several lists. However, many German Liberals argued that fixed lists were necessary, for Germany at least, for European elections as well.

5 — The final and keenly debated point concerned voting by residents who were not nationals. In that context, the possibility was aired of allowing Community citizens resident in other Member States to vote for one of the national lists but also, and alternatively, for a list in their host State, provided they could demonstrate that they were resident for employment purposes. That would actually be an intermediate solution compared with the hypothetical and future-oriented concept of adopting Community-wide lists that would allow all the citizens of all the Member States to vote or stand for election.

Many objections — some of a formal and others of a substantive nature — were raised in relation to the option of allowing non-national residents to vote. Even that partial Community-oriented solution had, for the present, to be considered premature. But the need for Italian workers, in particular, to be able to vote *in situ* and enjoy in their place of residence facilities similar to those available to their fellow citizens resident in Italy was reiterated. Attention was drawn here to the fact that the Italian electoral law had guaranteed its nationals resident in the Member States the possibility of voting in their place of residence. But the new system had failed to operate properly in practice, either because of administrative obstacles at the place of vote or, and more particularly, because there had been a delay in sending electoral certificates from the municipal authorities in the voter’s home town.

It was therefore recommended that the uniform rules should ensure every facility for exercising the right to vote in a person’s place of residence. This required setting the administrative arrangements in place in good time, making electoral material available and simply providing a polling booth and ballot box in every polling station, to make it as easy as possible to vote. The simplest solution would, of course, be for postal votes to be valid in all the Member States as part of the harmonisation process.