PART I

General framework

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THE GENESIS OF THE EUROPEAN PARLIAMENT
From appointed Consultative Assembly to directly elected legislative body

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Introduction

The project of European integration has been pivotal in establishing an area of peace, stability, and prosperity on the historically war-ravaged Old Continent, by enabling previous enemies to overcome their hostility, transcend their national barriers, and cooperate together.

To begin with, the first chapter of this book intends to trace the long and winding path towards direct elections to the European Parliament (EP) by also drawing attention to the attempts, which were repeatedly disdained, to establish a uniform electoral procedure, a ‘vexed question’ which is still far from being solved.

Indeed, one of the dilemmas connected to the European Parliament was whether granting more rights to an unelected assembly should precede the convening of direct elections to a frail parliamentary institution. In the words of the Dutch Socialist politician Schelto Patijn:

for too long . . . opponents of direct elections have claimed that the European Parliament [should] be given wider powers before such an election could take place, while ironically denying Parliament these powers on the grounds that it [was] not directly elected.

(Patijn, 1974)

Eventually, Members of the European Parliament (MEPs) broke out of this absurd vicious circle by stressing that once they drew genuine democratic authority from a direct link with European electors, their claim for greater involvement in the decision-making process would become automatically more justifiable and legitimate.

As such, this chapter tells the story of the EP’s struggle to make an impact on the major political and institutional decisions of the European Community/Union through its successful transformation from an unelected consultative assembly to a directly elected, fully-fledged parliamentary forum.
Towards direct election of the European Parliament

The idea of a European forum elected by direct universal suffrage first saw the light of day at The Hague Conference in 1948, paving the way to the foundation of a parliamentary archetype, the Council of Europe Consultative Assembly in 1949 (Smith, 1999). From the very beginning, the European federalists Altiero Spinelli and Henrik Brugmans were wholeheartedly committed to achieving this goal, which would confer full democratic legitimacy to the European integration process. As the former President of the European Parliament, Emilio Colombo argued, ‘although frequently disparaged and held up to derision, [this enduring aspiration for a truly popular institution] could never be completely stifled and never lost its attraction’ (Colombo, 1977, 5). In fact, as long ago as 1951, the European Coal and Steel Community (ECSC) Treaty contemplated the creation of an ‘Assembly consisting of representatives of the peoples of the States’ that ‘would draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States’ (Articles 20 and 21.3 ECSC). In the meantime, but only as a provisional measure, this Assembly would consist of delegates designated once a year by their respective national parliaments (Article 21.1 ECSC).

Already in 1954, the Common Assembly of the ECSC urged implementation of direct election and this need was later reiterated in Article 138(3) of the European Economic Community (EEC) Treaty in 1957. However, it was not until May 1960 that a convention on the introduction of direct elections was adopted at last. The Dehousse Report, after the name of its author, argued that ‘what [was] largely wanting in the European Communities [was] popular support, recognition by the European peoples of their solidarity’. On the other hand, aware of the great challenge to attain at once a uniform electoral procedure, the report realistically clarified that ‘uniform’ was not synonymous with ‘identical’, suggesting, by way of a compromise, that Member States could follow, in the first instance, their own respective electoral rules (Smith, 1999). Despite its amenable character, the proposal, forwarded to the Council in June 1960, did not meet with unanimous consensus and consequently, for almost a decade, the question fell into oblivion. At last, in December 1969, the heads of state and of government meeting in The Hague put the item back on the agenda by devoting a short but significant line in their final communiqué, whereby they promised that ‘[t]he problem of the method of direct elections [would have been] studied by the Council of Ministers’ (The Hague Summit Final Communiqué, 1969). As a matter of fact, such a statement proved to be true and durable as it took another decade, several proposals, and lengthy negotiations before the first direct election to the European Parliament could be run. Yet, The Hague Conference had the merit of breaking the impasse, leading to the establishment of a working group chaired by the French MEP George Vedel with the task to lay down a report on this issue. The final text, which saw the light of day in 1972, stressed that the European Parliament, as by then the Assembly had named itself, could slowly move towards a single electoral law once it had won true legitimacy on the grounds of its first direct election. Once again, Member States were reassured that the term ‘uniform electoral procedure’ did not mean immediate and homogeneous standardization of electoral systems. Moreover, Vedel subtly acknowledged the close link between direct European elections and enhanced parliamentary powers but rejected the idea that the former should precede the latter, since

in this way, two equally desirable objectives [would make] each other’s implementa-
tion impossible. The only way to break the vicious circle [would be] to refuse to let one of the two objectives depend on the achievement of the other one first.

(Vedel, 1972, 59; Smith, 1999)
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In September 1973, Schelto Patijn was appointed as rapporteur for a new Convention project which turned out to be less ambitious than that previously initiated by his colleague, the Belgian MEP Fernand Dehousse, requiring a higher level of electoral uniformity. On this basis, at the Paris Summit held in December 1974 under the chairmanship of the French President Valéry Giscard d’Estaing, the heads of state and of government took the solemn decision to convene direct elections as early as possible. Almost two years later, in September 1976, the Council issued the Act concerning the direct election of representatives of the European Parliament, whilst reaffirming the need for a future uniform electoral procedure but without fixing a clear schedule for its accomplishment. Due to the delay in the ratification process by Westminster, the first election to the European Parliament could not be conducted until June 1979 (Smith, 1999). The failure to agree on a uniform electoral procedure was, at the time, a cause of great frustration amongst the federalists, although they also had to recognize that it was right to concentrate initially on getting direct universal elections off the ground and to postpone the perfection of the system until later.

In February 1982, the first elected Parliament adopted the Seitlinger Report, which addressed the sensitive question concerning the introduction of a uniform electoral procedure. Its key proposals aimed at extending proportional representation in multi-member constituencies of between 3 and 15 MEPs, with seats allocated by the d’Hondt system, and the possibility of preferential voting. Nevertheless, a deviation from the norm on the grounds of ‘special geographical or ethnic factors’ could be allowed. Interestingly, the report envisaged that nationals of one Member State living in another one for more than five years be given the right to vote in their country of residence. Finally, elections were planned to be held on two days – more precisely on Sunday and Monday. However, due to the impossibility of reaching an agreement amongst the Member States, the Council decided to postpone the discussion and vote over this complex matter. Alas, the Seitlinger proposal was never re-examined and a similar fate awaited the Bocklet Report, drafted in 1985, which sank under the UK’s adamant refusal to introduce proportional representation. Only after the 1989 elections, were some new attempts made by the Flemish MEP Karel De Gucht, who produced two interim reports. The first reiterated the application of the d’Hondt method and highlighted how campaigns for EP elections should be run and financed. The second recommended that the number of seats allocated to a united Germany would rise to 99, leaving France, Italy, and the UK with 87 each. It also expected that two-thirds of the British seats would be elected by simple majority in single-member constituencies, with the remaining third distributed proportionately. Like the previous reports, despite their looser requirements and more flexible approach, the De Gucht drafts failed to obtain the necessary support (Duff, 2011).

Eventually, the 1992 Maastricht Treaty on European Union (TEU) endorsed one of the key points raised ten years before by the Seitlinger Report by conferring upon all European citizens residing in another EU Member State of which they were not nationals the right to vote and the possibility to stand as candidates in EP elections (Article 8b, 2, TEU). The TEU also gave Parliament the right of assent to the Council’s proposal for a uniform electoral procedure (Article 138, TEU). Unable to overcome the insurmountable hurdles to turn national election rules into a single formula, as these are deep-rooted in conventional practices and long-established traditions, it was agreed to take a step back. As Fulvio Attinà stressed, governments and parties, especially those belonging to the majority, are unlikely to support such a principle if this would mean introducing major differences between the electoral systems for national parliaments and the EP Parliament on the grounds that these disparities may cause strain to domestic politics and to some, or all, political parties (Attinà, 1995).

The 1997 Treaty of Amsterdam (ToA) sanctioned this change of route by introducing the easier alternative of applying common principles. To this avail, it entrusted Parliament with
the task of identifying or defining these terms in order to reduce the discrepancies existing among the various national electoral procedures.

In particular, Article 190, 4 of the Treaty establishing the European Community (EC) in its consolidated version, contemplated that ‘The European Parliament w[ould] draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.’

At last, the UK Labour government, under the leadership of Tony Blair, broke the impasse caused by the House of Lords’ stark opposition to any amendments to the procedure for EP elections by invoking the Parliament Act. This exceptional move paved the way for the adoption of a closed list system of regional proportional representation as from the 1999 election (Smith, 1999). Subsequently, electoral changes were also yielded in France in time for the 2004 European vote. These two events helped to revive the political atmosphere so that the prospect of achieving a uniform electoral procedure, by way of a gradual harmonization of national electoral systems, seemed to be within reach.

On 15 July 1998, the European Parliament adopted, by 355 votes to 146 with 39 abstentions, the Anastassopoulos Report which put forward a number of common principles for Euro-elections. More strikingly, the text advanced, for the first time, the rather bold proposal of electing 10 per cent of MEPs from transnational and gender balanced lists. This was intended to awaken a genuine European political awareness, galvanize European political parties, and confer upon the electoral campaign a more European dimension, less focussed on national political issues (Anastassopoulos, 1998).

Whilst such an audacious idea was promptly discarded by the Council, some of the other less daring novelties contained in the report were instead endorsed in June 2002. This extensive and influential report laid down the basis for amending the original 1976 Act, eventually undertaken by the Council in 2002. The text codified the introduction of proportional representation, explicitly allowed single transferable voting and preferential voting, catered for territorial constituencies, fixed a 5 per cent threshold, phased out the dual mandate, and let national laws be applied for filling vacancies in case of withdrawal of mandates. This electoral reform, far from setting a really uniform procedure, nevertheless embedded a series of common principles by which all representatives would be elected to the EP chamber (Farrell and Scully, 2010). Finally, elections would take place over a maximum of two days and would be convened in May rather than June, so that they would not coincide with summer holidays in northern states (Anastassopoulos, 1998).

Since then, the European Parliament, which enjoys the sole right to initiate a revision of its electoral procedure, has tried to make progress on this matter by taking into account EU geographic and demographic changes and, above all, by trying to find useful ways to mobilize reluctant voters.

On 21 July 2009, the Constitutional Affairs Committee assigned the British Liberal MEP Andrew Duff the task of preparing a proposal for a modification of the Act of 20 September 1976 concerning the election of MEPs by direct universal suffrage.

Almost one year later, on 12 July 2010, following a brief debate within the Constitutional Affairs Committee, it was decided that Duff’s draft required further work. Nine months later, on 19 April 2011, the committee finally adopted the text by 20 votes to 4. By contrast, after a lengthy and heated debate, no consensus was reached at the plenary of 7 July 2011, so that the report was referred back to the committee. A new version, known as the Duff Report II, was published two months later and endorsed by the Committee on 26 January 2012 by 16 votes in favour and 7 against. However, on 8 March 2012 – when it became clear that the largest EP political group, the centre-right European People’s Party (EPP) would not support the proposal – in order to avoid the humiliation of seeing it officially rejected by the House, the
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The report was inexorably, yet disappointingly, withdrawn. This rather cautious and wise move was also motivated by widespread concern that a rejection of the overall package would jeopardize a future debate and approval of some of its less contentious points. It was agreed to elaborate a new proposal which would set aside the crucial question, and which definitively embodied the subject of utmost controversy amongst the political groups, relating to the possibility of electing 25 MEPs from an EU-wide list, in addition to those traditionally selected within national lists, thus granting voters two ballots to cast. The advocates for this radical reform believed that the creation of this additional single EU-wide constituency would upgrade the electoral procedure of the EP by breaking the monopoly of national political parties, conferring a more direct influence to European political parties and allowing candidates from small states to reach positions of prominence in the transnational lists (Brand, 2012).

And yet, as agreed, such a controversial point no longer appeared in the far less ambitious text of the third Duff Report, adopted by the plenary on 4 July 2013 with 507 votes for, 120 against, and 18 abstentions. Indeed, the resolution merely aimed at improving the practical organization of the European elections to be held between 22 and 25 May 2014.

To this end, it called on the national political parties to ensure that the names of their candidates would be made public at least six weeks prior to polling day, by also stressing that the candidates should commit themselves, if elected, to taking up their European mandate. Furthermore, the need to press for a higher proportion of women on the candidate lists was reiterated.

The most groundbreaking point in the report focuses on the early nomination of the candidate for the presidency of the Commission by European political parties. This should have contributed to stimulate a truly Europe-wide electoral campaign by drawing attention to the direct and indirect implications of the EP contest, and by ultimately galvanizing voters at this critical stage of European integration.

2 The historical development of the European Parliament

2.1 The original treaties

On 9 May 1950, the French Foreign Minister Robert Schuman launched an initiative to place coal and steel production in France and Germany under a common High Authority, within an organization also open to other European countries. The so-called Schuman Plan, fundamentally conceived in order to make war between the two historical foes ‘not merely unthinkable but materially impossible’, did not foresee the creation of an ad hoc parliamentary assembly, as it originally envisaged the involvement of the Assembly of the Council of Europe (Schuman Declaration, 9 May 1950). However, since this idea was discarded due to the UK government’s fierce opposition during the negotiations for the European Coal and Steel Community (ECSC), the French political economist and diplomat Jean Monnet advanced a proposal to set up a sort of parliamentary forum, tasked with monitoring the activities of the collegial executive body. The ECSC Treaty – signed in Paris on 18 April 1951 by France, Germany, Italy, the Netherlands, Belgium, as well as Luxembourg and entered into effect on 24 July 1952 with a validity of 50 years – sanctioned the official birth of the ECSC Common Assembly, gathering 78:

> delegates whom the Parliaments of each of the Member States [should] be called upon to appoint once a year from among their own membership, or who [should] be elected by direct universal suffrage, according to the procedure determined by each respective High Contracting Party.

(Articles 20 and 21, ECSC)
Meeting for the first time in September 1952, these delegates – along with nine additional representatives, notably three from Germany, France, and Italy respectively – were entrusted with the delicate task of laying the bases of the Draft Treaty to establish a European Political Community (Dinan, 2004). This text was adopted by the ECSC Assembly in March 1953, but was rejected by the six Member States in November 1953. Likewise, the plan for a European Defence Community failed on a procedural motion in the French Parliament on 28 August 1954 (Pinder, 1998).

It became clear, therefore, that the Assembly’s approval was by far insufficient to affect any decision of the nascent ECSC, since its power was strictly confined to controlling the High Authority without any effective involvement in law-making. Subsequently, within the European Economic Community (EEC) and the Atomic Energy Community (Euratom) Treaties, signed in Rome on 25 March 1957 and entered into force on 1 January 1958, the ECSC Assembly became a common institution under the label of ‘European Parliamentary Assembly’. Yet its role, eclipsed by the Council of Ministers and the Commission, remained somewhat negligible. In fact, its intervention was limited to mere consultation in the legislative process and in the formulation of international agreements (Dupagny, 1992). The only important prerogative of the Assembly was, under especially serious circumstances, to dismiss the Commission following a vote of censure by two-thirds of its members.

It was not until the mid-1970s that the EP’s right of consultation was extended to almost all legislation and, occasionally, even to Commission memoranda or Council resolutions. Most importantly, in accordance with the Council Decision of 21 April 1970, the European Parliament’s budgetary competence gradually increased, shifting from national contributions, through which the Member States could control the policies undertaken by the Communities, to an independent system of financing by traditional own resources, such as agricultural levies, customs duties, as well as value added tax (VAT) (see http://europa.eu/legislation_summaries/budget/l34011_en.htm, accessed 21 December 2014).

Pursuant to the 1970 Treaty amending Certain Budgetary Provisions of the Treaties establishing the European Communities and the 1975 Treaty amending Certain Financial Provisions of the Treaties, the European Parliament could propose changes to compulsory expenditure, mainly referring to agriculture, and to non-compulsory expenditure subject to the ceilings set by the financial perspective, and it could reject the draft budget by a majority of its members and two-thirds of the votes cast. The budgetary authority was therefore shared by the Council and the European Parliament, with the former ultimately taking decisions on compulsory spending and the latter gaining the final word on non-compulsory ones. Nevertheless, Parliament’s effective space for intervention remained rather constrained due to inter-institutional and even intra-institutional conflicts.

Under the aforementioned 1975 Treaty, the EP also acquired the so-called power of ‘discharge’ over the implementation of previous budgets, on the basis of the annual report presented by the European Court of Auditors. Yet, it is noteworthy that the European Parliament has hitherto refused to approve the budget only twice, in November 1984 and in December 1998. The first case did not hit the headlines since the Commission, already at the end of its term of office, fortuitously quit a few weeks later. By contrast, the second case, which highlighted serious allegations of financial mismanagement and nepotism amongst members of the Commission, triggered a major crisis that was widely reported by the media and inevitably led, in March 1999, to the resignation of the whole collegial body chaired by President Jacques Santer (Jones, 2001; Corbett et al., 2007).
The desire to foster European integration inspired the Italian federalist MEP Altiero Spinelli’s Draft Treaty establishing the European Union. This text, which was widely endorsed by the plenary on 14 February 1984, offered the basis for an intergovernmental debate over the reform of the original treaties. It eventually led to the signing of the Single European Act (SEA) on 17 and 28 February 1986 by all 12 Member States, which by then also incorporated Greece, Spain, and Portugal. After the EP’s approval, ratification by national parliaments, and popular referenda in Denmark and Ireland held respectively on 26 February 1986 and 26 May 1987, the SEA came into force on 1 July 1987. Its main objectives were the completion of the single market by 31 December 1992 and the institutionalization of the European Political Cooperation’s (EPC) forum, which remained outside the EC framework as it retained its purely intergovernmental character.

A two-reading cooperation procedure was introduced, requiring the Council’s position to be referred back to the EP which, within a three-month period, would have to decide whether to approve or reject it. The legislative process would be deemed concluded unless the Council unanimously overruled Parliament or pressed for amendments that, upon the Commission’s endorsement, could be discarded only following the Council’s unanimous decision (Corbett et al., 2007). The new procedure was generally applied to matters relating to social and environmental policy, regional and structural funds, research and technological development programmes and, above all, the implementation of the single market. As a consequence, the EP’s ability to influence EC legislation was enhanced but without solving the problem of policy-making effectiveness, primarily due to the risk that the Council could forever delay the adoption of a decision in the first reading.

As George Tsebelis highlighted, the cooperation procedure conferred on Parliament a ‘conditional agenda-setting power’, since it could put forward proposals that were easier for the Council to adopt than to amend (Tsebelis, 1994, 128). And yet, the EP amendments were subject to the Commission’s approval so that, therefore, it remained the sole institution entitled to initiate legislation. Whilst generally referring to the consultation procedure as the basic parliamentary instrument to intervene in the area of external economic relations, the SEA also established the EP’s right of assent, by an absolute majority of its members, over both association and accession treaties. As far as trade agreements were concerned, the EP’s opinion continued, instead, not to be required, giving the Commission, upon the Council’s authorization, exclusive power over their negotiation and implementation. In addition, an important issue was left unresolved concerning the EP’s right to request the European Court of Justice (ECJ) to deliver its opinion on the compatibility of concluded international agreements under EC Law (Article 228, 6 EC). Within the EPC context, Parliament was entitled to be associated with its proceedings, to observe the actions of national foreign ministers and officials, to be informed, and to have its views duly taken into account. Against this background, the creation of an EPC Secretariat in Brussels contributed to improved communication between the EP and foreign ministries.

Even if the SEA represented a step forward in the path towards a united Europe, it did not satisfy Parliament’s federal aspiration (EP Resolution, 11/12/1986).

By comparing the 1984 Draft Treaty with the texts of all successive EC/EU constitutional reforms up until now, it is striking to realize the extent of Spinelli’s far-sighted and innovative vision that has left an indelible imprint on the evolution of European integration. Over the years, some of his ideas have been gradually incorporated into the EC/EU structure, whilst his brainchild continues to feed the discussion on the future revision of the treaties (Trechsel, 2010).
Already in November 1989, in order to redress some of its most serious institutional and political shortcomings, the EP started a campaign to promote reforms and, a long time before any national government’s proposal, it launched a Conference on Political Union. To this aim, the European Parliament undertook an intense dialogue with the Commission and the Council, by also exchanging information with Member State parliaments and fostering contacts between its transnational political groups and their national counterparts. In particular, it adopted historic resolutions on the Intergovernmental Conference on European Monetary Union and Political Union, on the Constitutional Basis of Political Union, and on the principle of subsidiarity, as outlined in David Martin’s, Emilio Colombo’s, and Valéry Giscard d’Estaing’s reports, respectively.

In June 1988, the Inter-institutional Agreement on Budgetary Discipline and Improvement of the budgetary procedure conferred a greater parliamentary influence over compulsory expenditure by requiring its approval for any upward movement of the ceiling. Besides, as the EP had been pressing for years, the Agreement provided for an increase in non-compulsory expenditures and a decrease in compulsory ones.

2.3 The Treaty on European Union

On 7 February 1992, the Twelve meeting in the Dutch town of Maastricht decided to sign the Treaty on European Union (TEU), where ‘the old-fashioned “Community” was upgraded to First with a term redolent with gravitas: “Union”‘ (Weiler, 2012, 825).

The Treaty represented a significant step in the integration process by laying the ground for a fully-fledged economic and monetary union, for a Common Foreign and Security Policy (CFSP), for Cooperation in Justice and Home Affairs (JHA), and by expanding the EP powers.

However, as Joseph H.H. Weiler has aptly observed, ‘Maastricht was greeted by the typical indifference with which the elite-driven European construct was habitually met’ (Weiler, 2012, 826). The Danes, who were consulted by way of a popular referendum held on 2 June 1992, rejected the treaty by a slim majority of 50.7 to 49.3 per cent. Only after reaching an agreement at the Edinburgh European Council – entailing four Danish exceptions over Economic and Monetary Union, Common Defence Policy, Justice and Home Affairs, and European Citizenship – on 18 May 1993, did a second popular consultation in Denmark endorse the TEU. In France, the ratification process required a constitutional revision, which was undertaken by the national parliament on 25 June 1992, as well as a referendum which was convened on 20 September 1992, upon the initiative of President François Mitterrand who, certain about its positive outcome, hoped in this way to turn the tide against the increasing Eurosceptic wave (Dinan, 2004, 259). Yet his high expectations were not fully met, since French citizens did not show great enthusiasm towards the treaty – narrowly endorsing it by just 51 per cent (Criddle, 1993). In Britain, a lengthy and thorny debate in the House of Commons risked reversing all the efforts made by the Conservative Prime Minister John Major who, after replacing Margaret Thatcher in October 1990, had unwearingly sought and obtained for his own country special concessions regarding monetary union and social policy provisions (Jones, 2001: 25). More specifically, the government was challenged by the Labour and Liberal Democrat opposition parties – especially critical about the British opt-out on the social chapter – and even by some of his own party members, the so-called Tory rebels, who vigorously rejected the whole text.

Finally, in Germany, despite the early parliamentary endorsement of the TEU in December 1992, the federal President, under the pressure of several political groups, postponed the signature of the statute until October 1993 when the Bundesverfassungsgericht, the Federal Constitutional Court, finally declared the compatibility of the new treaty with the Grundgesetz, which embodies the Constitution of the German Federal Republic (Pinder, 2001).
Under the new provisions, the EP acquired the prerogative to request the Commission to enact appropriate proposals on matters which it considered to be of great relevance. Certainly, one of the main novelties of the TEU was the setting up of a new legislative procedure, known as ‘codecision’, which included a third reading and the possibility of a formal conciliation committee tasked with reaching a compromise between the Council and Parliament. Codecision initially applied to 15 areas of Community action, relating to most internal market legislation, free movement of workers, consumer protection, public health, education, the equivalence of qualifications, research, and trans-European networks (Corbett et al., 2007). As a result, the EP secured additional powers in law-making although arguably, as stressed by George Tsebelis, due to the complexity of the new decision-making process, its role appeared weakened (Tsebelis, 1997).

Parliamentary powers were enhanced in the first or Community ‘pillar’, whilst they remained rather marginal over CFSP and JHA issues, as no supervision or political initiative was foreseen. Finally, the EP secured the right to approve the appointment of the President of the European Commission and the European Commission as a whole, whilst maintaining the power to censure it. In addition, the EP was entitled to be consulted on the membership of the European Court of Auditors as well as on the President and other members of the board of the European Central Bank. The EP itself could choose the European Ombudsman and had a more direct, albeit non-binding, role in the selection of both the management board and the executive director of the European Food Safety Authority (EFSA).

2.4 The Treaty of Amsterdam

On 2 October 1997 in Amsterdam, all 15 Member States, including the newcomers Austria, Finland, and Sweden, signed the amended Treaty on European Union, which came into effect on 1 May 1999, after national parliamentary ratifications and two referenda held in Ireland and Denmark on 22 and 28 May 1998, respectively. The new text increased the EP’s legislative weight, since codecision was extended to most issues previously under the cooperation procedure, such as transport and the environment, thus covering 32 policy areas in total. Moreover, in order to prevent paralysis arising from the vetoing of an individual state or a small group of states unwilling to be part of a political initiative, the ToA introduced the possibility for Member States to work more closely together on aspects falling within the EC and JHA pillars. This option could be pursued under the ‘closer cooperation procedure’, better known as the ‘enhanced cooperation procedure’ (Jones, 2001). Over international matters, Parliament was just granted a mere advisory function over the Council’s annual document relating to the main aspects and basic choices of the CFSP. Lastly, the EP’s right to approve the candidate for Commission President was made legally binding.

2.5 The Treaty of Nice

Another attempt to pursue the path of institutional reforms in the European Union was made by the Fifteen in Nice in February 2001, but it was necessary to wait almost two years before the new treaty entered into force following a slow and cumbersome ratification process, which also entailed two referenda in Ireland on 7 June 2001 and 19 October 2002 (see http://europa.eu/eu-law/decision-making/treaties/index_en.htm; http://electionsireland.org/results/referendum, accessed on 20 February 2015).

Codecision was adopted for most legislation which required the Council to act by qualified majority (QM), such as transport, social policy, the internal market, and its four freedoms of circulation of goods, services, capital, and persons. Nevertheless, unanimity was required for
questions relating to social security for migrant workers. By virtue of the new treaty, ‘enhanced cooperation’ could be broadened to CFSP, except for defence matters.

Furthermore, like the other major EU institutions, Parliament was entitled to seek the European Court of Justice’s opinion on the compatibility of an international agreement with the legal order of the European Union (Article 300, 6).

Under the Treaty of Nice, regulations and general conditions governing the status of MEPs, excluding aspects relating to taxation, were finally to be adopted upon the EP’s approval.

Aware of the limits and imperfections of the Treaty of Nice, its signatories annexed a declaration on the future of the Union, paving the way for further reforms, originally scheduled for 2004, to be discussed with all interested parties, representatives of national parliaments, and civil society (Declaration No. 23, OJ C80/2001, 85–6).

2.6 The European Constitution

In December 2001, at the Laeken European Council, it was agreed to entrust a convention with the task of drawing up a preliminary draft constitution. With Valéry Giscard d’Estaing as chairman and Giuliano Amato and Jean-Luc Dehaene as Vice-Chairmen, the convention was also composed of 2 representatives from every national parliament from all Member States and candidate countries including Turkey, 16 MEPs, 2 representatives of the European Commission, and a representative of each national government. Completed in June 2003, the draft was adopted with some minor changes as the final text of the Treaty Establishing a Constitution for Europe (TECE) and signed by the representatives of all Member States gathered in Rome on 29 October 2004 (Corbett et al., 2007). Notwithstanding the approval of a very large majority of MEPs, the endorsement of 18 national parliaments, and 2 non-binding popular consultations in Spain on 20 February 2005 and in Luxembourg on 10 July 2005, the ratification process was inexorably halted by the negative outcome of the French and Dutch referenda held respectively on 29 May and 1 June 2005. Once it became clear that overall consent could never be attained, the ambitious constitutional project was abandoned in favour of the conventional and more pragmatic option of amending the pre-existing treaties.

2.7 The Treaty of Lisbon

From the outset, the European Parliament was involved in the preliminary talks on EU institutional reforms and, at the opening of the Intergovernmental Conference in July 2007, amongst the representatives of the 27 EU countries, there were also three Members of the European Parliament (MEPs), the Dutch Christian Democrat Elmar Brok, the Spanish Socialist Enrique Barón Crespo, and the British Liberal Andrew Duff.

Two core issues were under the spotlight: the definition of qualified majority voting (QMV) in the Council and the EP’s composition. With regard to the second question, the Italian government overtly criticized the initial proposal of shifting the basis of parliamentary representation from that of population size to that of citizenship, given that these elements did not always coincide, as in the Italian case, due to strict legislation over the naturalization of migrants.

On 19 October 2007, a compromise was reached on the above matters whilst the British and Irish opt-outs/opt-ins, related to subjects originally falling within the third pillar, had been previously sorted out and the EP’s right to appoint the Vice-President/High Representative for Foreign Affairs and Security Policy was maintained. Indeed, the boldest features previously advocated in the Constitution were dismissed, whilst various measures addressed to specific countries were added (Corbett and Méndez de Vigo, 2008).
On 13 December 2007, the heads of state and government of all the 27 Member States of the European Union, including the ten countries from Central and Eastern Europe, signed the Treaty of Lisbon (ToL) which entered into force almost two years later, on 1 December 2009, after the ratification of national parliaments and two popular referenda in Ireland held in June 2008 and October 2009 (http://europa.eu/lisbon_treaty/countries/, accessed on 21 December 2014).

Under the new provisions, the EP – along with all national legislative bodies across the European Union – has gained a wider and better involvement in EU decision-making, so that the ToL can be rightly defined as the ‘Treaty of Parliaments’ (Lenaerts and Cambien, 2009, 207). Indeed, by broadening the application of ‘codecision’, elevated to the rank of ‘ordinary legislative procedure’, the European Parliament has finally reached equal status with the Council of the European Union as a law-making body (Corbett et al., 2011).

The EP’s role as a co-legislator is fully recognized in virtually all fields of EU action, and more specifically in 85 policy areas including agriculture, energy, security, asylum and immigration, justice and home affairs, public health as well as structural funds (see www.europarl.europa.eu/external/appendix/legislativeprocedure.europarl_ordinarylegislativeprocedure_glossary_en.pdf, accessed on 21 December 2014).

The European Parliament shares with the Council the prerogative to adopt European laws, thus accepting, amending, or rejecting the content of directives and regulations. Besides, the EP may examine the Commission’s annual programme of work by pointing out which laws it would like to see adopted. Moreover, in accordance with Article 48 of the TEU, Parliament can exert the new power to propose treaty amendments and has the final say over the decision of setting up a convention with the task of laying the basis for further institutional reforms (Article 48, 2–3 TEU).

The Treaty envisages the possibility for the legislative body to delegate part of its own power to the Commission, although this delegated power can only consist in supplementing or amending parts of a legislative act which are not considered essential (Article 290, TFEU). Democratic control is reinforced through a new system of supervision in which the European Parliament or the Council may either call back the Commission’s decisions or revoke the delegation of such powers (EP Resolution 5/5/2010).

In the area of EU finance, the artificial distinction between ‘compulsory’ and ‘non-compulsory’ expenditure is abolished and replaced by a new, simpler and more transparent budgetary procedure with a single reading. This ensures full parity between Parliament and the Council as regards the approval of the whole EU annual budget (see www.europarl.europa.eu/ftu/pdf/en/FTU_1.4.3.pdf, accessed on 21 December 2014).

In Lisbon, it was agreed to give Parliament greater access to meetings and documentation through a process of question time with commissioners and even with the Vice-President for External Relations/High-Representative for Foreign Affairs. The EP may ask the President of the Commission to withdraw confidence in one of the members of his or her team. By virtue of the new treaty, the EP does not simply endorse but elects, by a majority of its component members, the President of the Commission on the proposal of the European Council, taking into account the results of the Euro-elections (Article 17.7, TEU). The designation of the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, together with the other members of the Commission, as a body, are also subject to a vote of consent by Parliament, as well as to a vote of censure. As to its relations with the European Council, which has acquired the status of an EU institution, the EP has the right to be informed about the preparations and the results of its meetings. Lastly, parliamentary consent is required for the conclusion of a wide range of international agreements, including those falling within the framework of ordinary legislative procedures. The inclusion of the European
Development Fund in the EU budget enhances the democratic legitimacy of the European Union’s international relations with developing countries.

In brief, each of the above-mentioned treaties marked a gradual step towards the construction of a European political union. Some revolutionary elements were successfully put forward in Lisbon, but without incorporating all the institutional reforms necessary for the effective and democratic functioning of an enlarged European Union.

Conclusion

During its half-century history, the European Parliament has succeeded in becoming a directly elected institution which has carved out a greater role for itself by also evoking solutions for the development of the European Community and later of the European Union, ever more necessary in the aftermath of its numerous enlargements. The EP has gradually mutated its status from a merely consultative assembly, under the original treaties, to a fully-fledged co-legislative body, under the Treaty of Lisbon. This implies that EU legislation is now subject to a level of parliamentary approval that exists in no other supranational or international environment and that, finally, Altiero Spinelli’s vision of Europe, long ago outlined in the Draft Treaty, is slowly taking shape.

Under the new provisions agreed upon in the Portuguese capital, the democratic deficit appears to have lost its intensity but does not seem to have been utterly overcome. In fact, despite being directly elected and having acquired remarkable powers, the European Parliament suffers from remoteness and obscurity, ironically remaining distant and unknown to most European citizens.

The reasons behind this paradox can be found in the failure of connecting Parliament to the people, due to the several inconsistencies inherent to the modalities for electing its members highlighted in this chapter. Electoral systems stand as core factors of democracy since they affect the nature of the trilateral relationship between representatives, voters, and political parties. In this perspective, the quest for a common electoral law is aimed at reinforcing links, bolstering the political legitimacy of the European Parliament, and fostering a greater sense of European identity.

Yet, other features contribute to perpetuate the infamous democratic deficit which more commonly arises from the current location, organization, and composition of the European Parliament, which will be unveiled in the next chapter.

The EP’s claim to be representative of the European people rests on its ability to fill this gap, to mend this generalized absence of trust between the people and political elites, and to improve its public image. By way of its old and new powers, the Assembly may play a key role in enhancing the rather blurred picture of the European Union, generally and often erroneously seen exclusively through national lenses. In fact, MEPs can choose and support the election of charismatic figures as Head of Parliament and Head of Commission, able to speak on behalf of Europe with authority to Member State national governments (cf. Franklin, 2010). Only by achieving these objectives will the European Parliament raise its popular legitimacy, by preventing the revival of extreme nationalism, so tempting at times of economic turmoil and social uncertainty, in the belief that European integration is the only sensible response to globalization.

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