

**ASSEMBLY OF THE REPUBLIC
[PORTUGUESE PARLIAMENT]**

COMMITTEE FOR EUROPEAN AFFAIRS

ADVISORY REPORT

COM (2013)126 / C (2013)1303

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct
- COMMISSION RECOMMENDATION of 12.3.2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament

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PART I – INTRODUCTORY NOTE

Under the terms of article 7 of Law No. 43/2006 of 25 August, as amended by Law No. 21/2012 of 17 May, regulating the monitoring, assessment and judgment of the Assembly of the Republic within the process for the construction of the European Union, and the methods in force for scrutinising European initiatives, the following initiatives have been scrutinised:

- **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct [COM(2013)126];**
- **COMMISSION RECOMMENDATION of 12.3.2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament [C(2013)1303].**

The aforementioned initiatives were sent to the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards for the specified purpose, where the Reports appended to and forming an integral part of this Advisory Report were analysed and approved.

In neither case does the initiative involve legislation and so it does not give rise to monitoring of the implementation of the principle of subsidiarity. This advisory report therefore comes within the sphere of political dialogue.

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PART II – PREAMBLE

1. Whereas, before the European Parliament on 12 September 2012, the President of the European Commission gave a commitment to present a series of proposals “*to make the European Union more open and democratic*” in time for these to be debated constructively before the 2014 elections to the European Parliament;
2. Whereas, on 12 March 2013, the European Commission approved Communication COM(2013)126 entitled “Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct” and Recommendation C(2013)1303 on the same subject, with the aim of fulfilling the commitment made by its President and the objective of “reinforcing the European dimension of the European elections” and promoting the “democratic and efficient conduct” of those elections;
3. Whereas the recommendations made are organised around a “democratic electoral process” based on (i) voters being informed of the affiliation between national political parties and [word omitted? European??] political parties, including permitting and encouraging the indication of such affiliations on ballot papers; (ii) support for a candidate for the post of President of the European Commission; (iii) polling stations and dates closing at the same time; and (iv) technical elements relating to the participation of EU citizens resident in Member States of which they are not nationals (contact authority, additional data, data transmission, more efficient identification);
4. Whereas, within the scope of the process for scrutinising European initiatives, on 17 April 2013, with reference to the said initiatives, the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards approved the advisory report a reproduction of which is appended hereto;
5. Whereas, on 4 July 2013 the European Parliament passed a resolution whose contents are similar to those of the initiatives scrutinised, calling on European political parties to nominate their candidates for the Commission Presidency in advance and to encourage them to participate in the campaign for the elections to the European Parliament, and on national parties to publicise their affiliations to European parties and, as regards voting, exhorting Member States to confirm whether the names and, if applicable, the emblems of European political parties will appear on ballot papers.

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6. Whereas, during the debate preceding the European Parliament vote, with regard to European parties and initials, which are supposedly unfamiliar to citizens, the argument was made that *“if we do not put them on ballot papers, they are never going to know them, so for them to be known, they have to be put on there”* and *“this is the first measure that we should adopt”* (Paulo Rangel, EPP), as well as that *“the electoral campaign and voting must give material form to a European political space ensuring that electors make a conscious, informed choice”* (Roberto Gualtieri, S&D);
7. Whereas the Committee for European Affairs deemed it necessary to hear the Government, more specifically the ministers for European Affairs and for Internal Administration, as provided for under the scrutiny methods applicable;
8. Whereas, on 28 May 2013, the Secretary of State for European Affairs was heard on this subject and he presented the position of the Government, which was favourable to the European Commission proposals;
9. Whereas, on 5 September 2013, on the subject of the European elections, the Cabinet approved Bill No. 306/2013 instituting the fifth amendment to Law No. 14/87 of 29 April and transposing Directive No. 2013/1/EU of 20 December 2012 into Portuguese law, and the Government presented it to the Assembly of the Republic . This Directive referred to certain aspects of the system enabling EU citizens resident in a Member State whose nationality they do not possess to be eligible for elections to the European Parliament. These also number among the proposals included in the European initiatives under evaluation here;
10. Whereas, acting on the express assumption that the innovations proposed would require cooperation between European institutions, political parties and Member States and citing consultations with electoral experts about the implementation of the recommendations, on 13 September 2013 the Commission, through its Vice-President and Commissioner with responsibility for Justice, Fundamental Rights and Citizenship, asked the governments to do the work outstanding and to assess the state of implementation of the preferred recommendations by 30 November 2013.

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11. Whereas, on 19 October 2013 at a hearing of the Committee for European Affairs and of Portuguese MPs from the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards, the Secretary of State for Internal Administration, with responsibility in the field of Electoral Affairs, announced that although the Government was receptive to other recommendations, it was not considering - beyond the draft legislation then pending, with its stated contents - the presentation of any other legislation that might specifically lead to the inclusion in ballot papers of the name, initials or symbol of the European parties to which national parties were affiliated. To justify this stance, he cited both reasons of “*prudence*” and concern for “*equal treatment*” among national parties that were or were not affiliated to European parties.

12. Whereas, again at the plenary debate on the aforementioned Bill, the Government opted not to agree to extend the discussion of the issues raised by the Commission’s recommendation and by the European Parliament resolution, particularly with regard to ballot papers (c.f. DAR, I Series, No. 4 Xii/3, 03-10-2013, p. 32 ff.). Subsequently, this was confirmed through the rejection, in a specific vote, of the proposed amendment presented in pursuance of the recommendation in this area (c.f. Special Voting Report, final text and proposed amendments);

13. Whereas, on the terms requested, a number of governments have informed the Commission of their initiatives in this field, including legislative amendments, where necessary, regarding ballot papers; but in other cases this has apparently not yet occurred;

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14. Whereas it is now unlikely or impractical, a few months before the forthcoming European elections, for the relevant legislative framework to be amended as recommended in Portugal and in some other Member States where legislation does not yet allow references to European political parties on the ballot paper;

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COMPILING THE ADVISORY REPORT**

15. Without a formal amendment to the rules applicable under the Lisbon Treaty, both the recommendations of the Commission and the European Parliament resolution seek to engender a change so that the choice of the European Commission President represents, as directly as possible, the choice of the electorate. Among other things, this implies the prior nomination of candidates by European political parties and the electorate voting explicitly for them. It also involves the introduction into the electoral campaign of pre-nominated “candidates for European Commission President”;
16. These proposals are designed to achieve a “transformational effect” (Andrew Duff, EP Rapporteur) capable of making the European elections more attractive to citizens, reversing the long-evident growth in abstentionism, with the consequential threat of a loss of democratic legitimacy for the European institutions (turnout in European elections has fallen from 62 % in 1979 to 43 % in 2009);
17. The solution recommended seeks to limit the powers that the European Council currently enjoys to choose the name of the President of the Commission to be proposed to the European Parliament (to that end, hinting at a prior political compromise on the part of the Council). Because, at least under the simplest hypothesis, it will now have to select the candidate previously recommended by the European political party that has received the greatest electoral support through its affiliated national parties. To this end, it also constitutes a response to the decline, in recent years, in the standing of the President of the Commission, set against the emergence of the European Council (now with a permanent President, who is a “competitor” to the President of the Commission in some ways);

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18. Overall, this solution is designed to give the standing of the President of the Commission a “more direct” element of legitimacy, accruing from a selection process involving European political parties putting forward the names of candidates; however, it should be noted that if there is no majority and there are then problems in reaching the necessary accommodations, filling the post becomes more difficult, less clear and less predictable than this “more direct” procedure might lead one to believe;

19. As the rules on the recommendation of Commissioners by the Member States still apply and as this enhanced and “more direct” legitimation focuses on the role of the European Commission President, another result of the proposed change is a differentiation between the President and Commissioners recommended by the Member States quite different from that currently provided for. This is not without significance given how in the recent past the debate about the Commission has concerned the principle of equality between the States.

20. As what is at stake is the construction of a “more direct connection” between candidates for President of the Commission and European political parties and between the latter and the electorate, it is crucial to the credibility of the proposal that voting (whose essential elements, at least, are provided to all EU citizens in an identical form) should be able to express conscious and informed choices;

21. Furthermore, at this point, the various national electoral rights are still uneven in aspect. They offer different solutions when it comes to presenting references to European political parties to the electorate. Certain legal systems already provide for this, others allow it, but some prevent or obstruct the implementation of these recommendations, at the same time as others plans to introduce this measure soon;

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22. In Portugal's case, contrary to what one might expect based on the hearing of the Secretary of State for European Affairs and the personal stance of the MEP Paulo Rangel ("*this is the first measure that we should adopt*"), the Government has neither proposed nor accepted the changes required. Thus, the approval in good time of legislative solutions allowing for the timely implementation of the Commission's recommendation has been rendered unviable. In our view, the equal treatment argument is invalid because it is the political parties themselves that opt to affiliate or not to affiliate to European political parties, depending on the objectives that they are pursuing.
23. In the current situation, it seems inevitable that at the forthcoming elections, in certain Member States, citizens will cast their votes on ballot papers that bear no reference to European political parties (as those nominating a candidate for President of the Commission), while in others this reference will be present, representing an undesirable asymmetry that has negative consequences.
24. As a whole, the array of innovations proposed by the Commission and subsequently approved by the European Parliament constitutes an important contribution to the institutional development of the European area, one that is necessary in seeking to ensure that decisions are rooted more directly in the choices made by EU citizens.
25. Neither do we under-estimate the potential scale of your contribution to reversing the trends, with regard to turnout, which have been recorded in European elections. The realistic view, however, is that, in the current circumstances, an approach to change like the one proposed – focussing, above all, on bestowing stakeholder status through more direct electoral legitimacy – is insufficient to achieve the objective sought.
26. The general aim of democratisation depends, to a great degree, on change not being restricted to the level of European political parties (the advance nomination of candidates for Commission President and their participation in the electoral campaign) but also taking place at the level of the electorate and of the voting that they are called upon to take part in (informed and enlightened representation of the European policy option, reference to the European political party nominating the candidate and not merely the national party).

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27. If we only progress with the first element (European parties plan), without changing what is expected of the electorate (with their votes cast for national parties in some Member States, even including Portugal, without reference to the European parties to which they are affiliated), there is a risk that the democratic effect may not be achieved or may be compromised.
28. If this were to be the outcome, we would merely institutionalise the transfer of the appointment of the President of the Commission to the sphere of the European political parties, with votes being counted in favour of a candidate when these would have been cast without the slightest reference to the nominating party.
29. That outcome would be unsatisfactory and a source of further frustration, particularly as people might conclude that a change made due to the need for a stronger, more direct “connection between the European Union and its citizens” would ultimately have a more direct impact among European political parties than it had on the electorate.
30. To pursue the plan for the pre-electoral nomination of presidential candidates by political parties and, more specifically, not to pursue options for voters to at least form attachments to European parties making nominations, would represent a change liable to aggravate the problems of legitimacy already identified.
31. Starting from the statement made by the MEP Paulo Rangel (“*if we do not put the parties and acronyms on ballot papers, the citizens are never going to know them, so for them to be known, they have to be put on there*”), it becomes clear that the correct option cannot be to again leave the role of the electorate as it stands but to immediately bestow new powers upon the European parties.

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32. When it comes to the electoral rules currently applicable in the various Member States, the overall picture is one of fragmentation and asymmetry: in some countries, at elections voters use a ballot paper bearing only the name of the national parties (with the proposed innovation thereby being the “selection” of a candidate for President of the Commission proposed by a European party); in others, they are faced with European parties to which the national parties are affiliated or at least there are no legal obstacles to this.
33. In the current context, a candidate for President of the Commission could win based on votes some or all of which had had no effect either on the European political party making the nomination or even on any national political parties that had revealed their party affiliation on the ballot paper.
34. This renders it necessary for the package proposed not to be distorted so as to forget about “voting” – that essential dimension of the “conscious and informed choice of voters” without which a democratic European political area will not take shape.
35. The innovations proposed by the Commission, and now also by the European Parliament, with their supposed “transformational effect” raise another problem that is “constitutional” in nature. Insofar as we are seeking institutional solutions at significant variance from those currently existing, can that result in practice from abiding, to a more or less consistent extent, by recommendations emanating from European institutions? Their prior and binding approval via a democratic decision preceded by a European debate that is “constitutional” in nature will always be the most appropriate way of achieving the objective of encouraging participation and a more direct connection with EU citizens.
36. An institutional change of the kind indicated has everything to gain from public analysis and debate and from being placed at the heart of the forthcoming European election campaign; this is different from it being taken as given before the elections and being seen, to a large extent, as a foregone conclusion. Just as important as the quality of the changes affecting voters in so many Member States is that they should be perceived as collective decisions that the voters themselves have taken by democratic means.

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37. As approval has been given to the item indicated, as regards the change sought the forthcoming elections will be staged with unequal access to information about European political parties: in some Member States, voters will find references to their names, initials and symbols on their ballot papers, while in others they will not.
38. If the plan is to create a “more direct” connection with citizens, then the European parties, to whom a more prominent role is supposedly to be given, will have to take the trouble to state their case “more directly” to voters, under equal conditions, whichever Member State they are in, and this concept will have to be presented to EU citizens clearly in advance.

PART IV – CONCLUSIONS

- I. As a whole, the innovations proposed and recommended in preparation for the forthcoming European elections point to changes in the institutional system of the EU being oriented towards decisions rooted more directly in the expression of the will of EU citizens – which we see as a positive development.
- II. If we are seeking to promote a more solid, direct connection with the electorate and to encourage participation, we feel that it is important that innovations involving new roles for European political parties should not be dissociated from those involving citizens directly, namely those relating to voting.
- III. So as to ensure that differences in national legislation, as regards references to European parties on ballot papers, do not affect voter consultation and the greater legitimacy arising from that, we feel that there is a need for this option to become available universally.

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- IV. Significant changes to the political/institutional system of the EU, which alter the model outlined in the Treaty, will by necessity have to be instituted through the procedure laid down in the Treaty to that end, which includes the convening of a Convention.

Palácio S. Bento [Assembly of the Republic], 4 June 2013

**The Member of Parliament compiling
the Advisory Report**

[Signature]

(Alberto Costa)

The Committee Chair

[Signature]

(Paulo Mota Pinto)

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PART V – APPENDIX

Reports of the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards

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Committee for Constitutional Affairs, Rights, Freedoms and Safeguards

Report of the Committee for Constitutional Affairs,
Rights, Freedoms and Safeguards

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND
SOCIAL COMMITTEE AND THE COMMITTEE
OF THE REGIONS:**

Preparing for the 2014 European elections: further
enhancing their democratic and efficient conduct

COM(2013)126

Rapporteur:

Luís Pita Ameixa,
Member of Parliament

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PART I – INTRODUCTORY NOTE

Under the terms of article 7 (1), (2) and (3) of Law No. 43/2006 of 25 August, as amended by Law No. 21/2012 of 17 May, regulating monitoring, assessment and pronouncements by the Assembly of the Republic within the scope of the process for the construction of the European Union, the **Communication of the European Commission [COM (2013) 126]** was sent to the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards, mindful of its object, for the purposes of analysis and the production of this report; it addresses:

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct

PART II – PREAMBLE

1. General observations

▪ **Objective of the Initiative**

The year 2013 is the **European Year of Citizens** (in accordance with Decision 1093/2012/EU of the European Parliament and of the Council), precisely because it marks the twentieth anniversary of the introduction of **EU Citizenship** promoted by the Maastricht Treaty.

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Given that the staging of elections to the European Parliament constitutes one of the principal events bestowing a material form on that citizenship and that 2014 will be an election year at European level, as early as 12 March 2013 the European Commission launched a debate about this issue, based on two documents:

- A Recommendation addressed to the Member States and the Political Parties – **RECOMMENDATION C (2013) 1303**;
- This Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled “Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct” – **COMMUNICATION COM (2013) 126**.

Their conclusive objectives are that:

- a) Voters must be informed of the **affiliation between national parties and European parties** before and during elections to the European Parliament;
- b) The Member States must choose a **common date for elections** to the European Parliament, and must all close their polling stations at the same time;
- c) Each European political party must designate its **candidate for the post of President of the European Commission**;
- d) The national parties must ensure that during **political broadcasts** for European Parliament elections they inform citizens about the candidate whom they support for President of the European Commission and about the candidate’s programme.

In relation to Recommendation C (2013) 1303, we note a **difference** in that it argues that **ballot papers** must state affiliations with European political parties, which is not specified in this Communication COM (2013) 126.

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▪ **Principal Features**

This Communication stresses that it is rooted in European citizenship.

It cites the Lisbon Treaty insofar as it seeks to reinforce the democratic foundation of the EU and to enhance the role of the EU citizen as a political actor.

It emphasises that citizens are directly represented at EU level in the European Parliament and that the citizens' perspective is further affirmed in the new definition of members of the European Parliament as "representatives of the Union's citizens" and not simply as "representatives of the peoples of the States brought together in the Community".

It cites the 2010 Report on EU citizenship "Dismantling the obstacles to EU citizens' rights", which stressed the need to raise EU citizens' awareness of the European elections, about their rights and the impact of EU policies on their daily lives.

It also cites Economic and Monetary Union, which raises the issue of the European democracy that should underpin this, as democratic legitimacy and accountability are essential preconditions to the progress of the European Union in various fields.

The Commission highlights to objective of **reinforcing the European dimension of the European elections**.

Support is therefore given to greater integration, to a clearer connection between political proposals and voting and to facilitating the participation of citizens in the European elections of 2014.

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2. Important Aspects

▪ Analysis and judgment of the substantive issues of the initiative

a) An initial issue raised is a Eurobarometer survey about the electoral rights of EU citizens, conducted in November 2012, according to which more than 7 out of 10 EU citizens believe that if the campaign literature of political parties were to state **which European political party they are affiliated to**, electoral turnout would be higher.

According to the Commission, it seems that the predominance of national issues in European elections means that questions of relevance to the EU are relegated to the background and this has a negative impact on turnout for the European elections.

The political debate at European elections is often presented as if it were only taking place among national parties.

Thus, the proposal is that Member States should use the electoral system to encourage and facilitate the provision of information to the electorate regarding relationships between national political parties and European political parties.

At the same time, national political parties that take part in European elections must publicise their affiliations to European political parties prior to elections.

b) A second point relates to the **date of elections**

It is stated that the existence of a European election day with polling stations closing at the same time would better reflect the common participation of citizens throughout the EU, as part of representative democracy based on the EU.

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Consequently, the Member States should choose a **common date** for elections to the European Parliament, so that they all close their polling stations at the **same time**.

c) Thirdly, while remembering that the President of the Commission is now elected by the European Parliament, it is proposed that **each political party should specify its candidate for the post of Commission President during the electoral process**.

We must recall that the European Parliament Resolution of 22 November on the 2014 elections prompts European political parties to designate their candidates for the Presidency of the Commission, noting that it hopes that the said candidates will adopt a leadership role during the parliamentary election campaign, particularly so as to personally present their programme throughout the Member States of the EU.

Thus, it adds, the legitimacy of the Commission President will be bolstered, as will the democratic legitimacy of the EU decision-making process more generally, while it may also help to boost turnout at the European elections.

d) A fourth point raised is that the national political parties should use the media in order to provide information about their European programmes and candidates, particularly during their **political broadcasts**.

e) Fifthly, reference is made to the real need to protect the **right** of EU citizens who live in a Member State other than their own **to vote and be eligible to stand** in the European elections on the same terms as nationals of that State.

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The Commission's report on the European elections of 2009 highlighted the existence of problems relating to the functioning of these procedures, which are based upon Directive 93/109/EC.

Thus, it proposes the creation of a single contact authority in each Member State for greater ease in exchanging data with other Member States; that account be taken of the different electoral schedules of the Member States with regard to the exchange of data; and that extra personal data should be provided as required in order to better identify EU voters registered on the electoral rolls of the Member States in which they reside.

The Commission also draws attention to the need to ensure that respect is shown for the electoral rights of EU citizens resident in a Member State other than their country of origin and, in return, that respect is shown for the essential principles of democratic elections.

f) Sixthly, a special case is highlighted whereby the Treaties allow for **derogations from the rules of equal treatment** between European citizens from different Member States.

This concerns situations in which EU citizens and voters resident in a particular Member State of which they are not nationals exceed **20 %** of the total electorate, as provided for under article 22(2) of the TFEU and article 14(1) of Directive 93/109/EC.

Luxembourg, where the proportion of non-nationals is **39.41 %**, finds itself in just this situation.

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Thus, Luxembourg's restriction in requiring at least two years residency in order to be able to vote and five years residency in order to be an eligible candidate is deemed admissible.

g) Seventhly, the Commission highlights the **low levels of candidacy** in elections to the European Parliament among non-national European citizens in their host country.

In 2009, just **81** European citizens stood as candidates under these circumstances.

The Commission states that one of the causes may reside in the administrative difficulties that they sometimes face in these circumstances.

Now, in order to alleviate this problem, **Directive 2013/1/EU**, which amended Directive 93/109/EC, is making changes to the electoral process, particularly so as to allow the provision of proof of candidates' status to be replaced by a declaration, which will then be verified by the authorities.

▪ **Implications for Portugal**

Insofar as Portugal is concerned, the elections to the European Parliament are staged under **Law No. 14/87 of 29 April**, including subsequent amendments.

Under the terms of **article 1** of that law, "The election of Members of the European Parliament in Portugal shall be governed by this law, by the Community rules applicable and, where those rules make no provision or refer to national legislation, by the rules governing the election of Members of the Assembly of the Republic, with the necessary adaptations".

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This law also establishes particular ineligibilities and incompatibilities specific to the national situation, the requirements for the presentation of candidates and the jurisdiction of the Constitutional Court to receive and accept candidacies, election campaign rules as well as electoral disputes and irregularities, and the powers of the National Elections Committee to divulge information, to conduct monitoring and to safeguard the electoral process.

Regarding the scheduling of elections, it states that “Having consulted the Government and taken account of the legal provisions applicable, the President of the [Portuguese] Republic shall set the date for elections 60 days in advance” (**article 7**).

In Portugal, specific rules on gender parity included in **Law No. 3/2006 of 21 August** also apply to the compilation of candidate lists for the European Parliament.

As the next elections for the European Parliament are scheduled for 2014, there is sufficient time for Portugal, if it deems it appropriate, to amend its legislation so as to accommodate the Commission’s recommendations.

Nevertheless, account must be taken of the constitutional constraints that might apply in certain circumstances.

By order of the Constitution of the Portuguese Republic, legislation on election issues constitutes a **legislative power reserved absolutely** for the Assembly of the Republic, notably under the terms of **article 164(I)** on “Elections of representatives of local or other authorities elected through direct and universal suffrage and of other constitutional bodies” and, above all, under the terms of **subsection (p)**, concerning the “System for the appointment of members of European Union institutions, with the exception of the Commission”.

The setting of the date for the election of the European Parliament is constitutionally **attributed to and reserved for the President of the Republic** by **article 133(b)** of the Constitution, even though it refers to the legal framework to be drawn up by the Assembly of the Republic under the corresponding electoral law.

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Article 15(5) of the Portuguese Constitution already made provision for citizens of Member States of the European Union resident in Portugal to have **the right to vote and to stand as candidates** in elections to the European Parliament; this has since been transposed into the corresponding electoral law (**article 3(1)(c) and article 4 of Law No. 14/79 of 29 April**).

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a) The proposals from the Commission seem to examine the advisability of deepening European citizenship to which the Lisbon Treaty, signed on 13 December 2007, also sought to give greater and better expression.

Portugal is committed to enhance European identity through the treaties that it has ratified, as stated in **article 7(5)** of the Constitution of the Portuguese Republic.

In general, the recommendations of the Commission deserve our agreement and support, without prejudice to deeper consideration of certain points.

b) While presenting and supporting a **candidate for President of the Commission** is an interesting idea, it still merits in-depth examination.

Of course, it will personalise the political debate more and will lead to the voting decisions of citizens being influenced more by factors relating to personality than by fundamental political options.

It is true that it is stated that the candidates should also present their programmes.

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However, in practical terms, as we know, voters tend to be influenced more by the personality traits of candidates than by knowledge of the contents of electoral manifestos.

On the other hand, in reality, candidates will not truly attain that status; rather, they will potentially be no more than shortlisted candidates.

This is because only the Council can propose candidates for election by the Parliament under the terms of **article 17(7) of the TEU**.

In reality, firstly a choice is made by the Council and it is only after this – and dependent upon that choice – that a vote will take place at the European Parliament.

Now, the Council follows the logic of Governments and their balances and not so much the logic of Political Parties, expressed more in the Parliament, which are asked to recommend and support a pre-electoral candidate for President of the Commission.

Under certain circumstances, this could mean that the President elected might even be someone who was not a candidate before the election.

It is also stated that in future there will be a compulsory **rotation** of the members of the Commission, according to their Member States of origin, and that the nationality of the President will also count towards this (**article 17(5) of the TEU and article 244 of the TFEU**).

Now, in certain circumstances that rotation rule could also conflict with or not correlate with the nationality of the pre-electoral candidates.

c) Among the recommendations, one that seems quite problematic is that proposing that the election should take place on the **same day** and finish at the same time.

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This is a good idea and constitutes one of the theoretical parameters of an absolutely clean election, as only simultaneous voting confined to the same times truly ensures that voting is completely free of the influence or conditionality potentially generated by knowledge of some of the election results prior to voting.

If this involved candidates for President of the Commission, the harmful and undesirable impact of this could be even greater.

It is true that there are already rules for the **setting of election dates** within a fairly approximate number of days and for the **simultaneous declaration of results**, namely article 10 of **Decision 76/787** (ECSC, EEC, EURATOM of the Council, 20 September 1976), as subsequently updated, which states:

Article 10

1. Elections to the European Parliament shall be held on the date and at the times fixed by each Member State; for all Member States this date shall fall within the same period starting on a Thursday morning and ending on the following Sunday.

2. Member States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the period referred to in paragraph 1.

We already know that the Member States maintain different traditions in this regard, traditions that may be difficult to reconcile, the main one perhaps being whether voting takes place on a **working day or not**.

In Portugal, the various elections have always taken place on a Sunday or a public holiday, in accordance with our electoral legislation, and it would not seem easy to change this, given the impact that it would or could have on electoral turnout, on conflict over people being absent from work vis-à-vis employers' interests, particularly as in Portugal it is compulsory for registration and polling stations to coincide with the place of residence, which does not always coincide with the workplace for many citizens who commute to work on a daily basis.

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Maybe changes in the opposite direction in other States where elections are routinely staged on working days might address difficulties of alignment.

This notwithstanding, we see it as a good proposal, in principle.

d) To operate effectively, maybe the recommendations need to be based on a pan-European legal instrument establishing a **minimum** number of rules applicable to the election, identical to all Member States, allowing national legislators to introduce other, more specific rules.

Support for this comes from the provision under **article 223** of the TFEU.

It might potentially justify the existence of a **European Electoral Code**.

If this existed, it would mainly have to encompass the election of the European Parliament and the election of local authorities, which are the ones where voter turnout and the presentation of candidates from among European citizens are most important (**article 20(2) (b) and article 22 of the TFEU**).

To this end, the format used might perhaps be a **Regulation**, so that it applied directly to all Member States.

On a secondary basis, the electoral legislation of each Member State would regulate other electoral issues that did not have to be addressed at EU level.

Among such a high number of Member States, with their different electoral traditions and legal regulations, it is bound to be problematic to align common features merely by calling for amendments to national electoral legislation, as seems to be the objective of the Commission.

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On the contrary, maybe it might be preferable to move forward through an EU legislative act, abiding by the principles of subsidiarity and proportionality, which seems to us to be more effective in embodying the Commission's objectives.

PART IV – CONCLUSIONS

In view of the above, the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards has reached the following conclusions:

- 1.** The Communication of the Commission – COM (2013) 126 – is designed to prepare for the 2014 elections to the European Parliament.
- 2.** In particular, it supports a more explicit connection between national and European political parties, the establishment of a single common date for elections and the pre-electoral announcement of candidates for President of the European Commission.
- 3.** As far as Portugal is concerned, it includes subjects that fall within the reserved jurisdiction of the Assembly of the Republic .
- 4.** The Communication of the Commission – COM (2013) 126 – does not take the form of an item of EU legislation.

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5. Under the terms of Law No. 43/2006 of 25 August 2006, as amended by Law No. 21/2012 of 17 May, this report is submitted to the **Committee for European Affairs** for all due purposes.

Palácio S. Bento [Assembly of the Republic], Lisbon, 17 April 2013

**The Member of Parliament compiling
the Advisory Report**

[Signature]

(Luís Pita Ameixa)

The Committee Chair

[Signature]

(Fernando Negrão)

Committee for Constitutional Affairs, Rights, Freedoms and Safeguards

Report of the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards [EC Recommendation] C (2013) 1303	Rapporteur: Luís Pita Ameixa, Member of Parliament
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PART I – INTRODUCTORY NOTE

Under the terms of article 7 (1), (2) and (3) of Law No. 43/2006 of 25 August, as amended by Law No. 21/2012 of 17 May, regulating monitoring, assessment and pronouncements by the Assembly of the Republic within the scope of the process for the construction of the European Union, the **EC Recommendation [C (2013) 1303]** was sent to the Commission for Constitutional Affairs, Rights, Freedoms and Safeguards, mindful of its object, for the purposes of analysis and the production of this report.

PART II – PREAMBLE

1. General observations

- **Objective of the Initiative**

Under the terms of **article 292**, final section, of the Treaty on the Functioning of the European Union (TFEU), the Commission can approve Recommendations.

This Recommendation is addressed to the Member States and to the Political Parties.

Its objective consists in recommending a set of procedures designed to procure greater transparency in electoral contests and a greater degree of integration and alignment of electoral procedures, with regard to the election of the European Parliament.

The aim is to establish new procedures to be applied by the election of **2014**.

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Simultaneously, the European Commission sent a COMMUNICATION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, entitled “Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct” – **COM (2013) 126** – which contains proposals identical to those of this Recommendation.

▪ **Principal Features**

Citing the Lisbon Treaty insofar as this “...enhances the role of the EU citizen as a political actor in the EU by establishing a solid link between citizens, the exercise of their political rights and the democratic life of the Union”, the Recommendation seeks the following:

a) Member States

- They should promote knowledge of the affiliations of national and European political parties, including through explicit reference to them on ballot papers.
- They should establish a single common date for the election, with polling stations closing at the same time throughout the EU
- They should specify a single Contact Authority at the national level that will be responsible for exchanging electoral data, including relating to citizens, voters and candidates residing outside their state of origin and to the use of a common and secure electronic data transmission platform.

b) Political Parties

- They should openly specify their affiliations to European political parties in advance, including in election campaign materials and events.

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- They should divulge which candidate they support for President of the European Commission and the programme by which the latter is bound.

2. Important Aspects

- **Analysis and judgment of substantive issues under the initiative**

Citizens of the EU are entitled to elect or stand as candidates in elections to the European Parliament in the Member State in which they decide to live, under the terms of **article 22(2)** of the TFEU.

This right is specifically established in **Directive 93/109/EC** of the Council of 6 December 1993, with recent amendments introduced by Directive 2013/1/EU of the Council of 20 December 2012, which makes reference to voting and to eligibility.

Directive 93/109/EC was transposed into Portuguese law by Law No. 4/2004 of 9 March, which comprised amendments to Law No. 14/87 of 29 April (European Parliament Electoral Law).

On the other hand, since the Lisbon Treaty, the **President of the Commission** has been elected by the European Parliament in accordance with **article 17(7)** of the Treaty on European Union (**TEU**).

Article 10(4) of the Treaty on European Union and **article 12(2)** of the Charter of Fundamental Rights of the European Union endows the **European Political Parties** with a crucial role, stressing their contribution to the creation of a European political awareness and to the expression of the will of EU citizens.

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Legislative preparations are ongoing for a proposal for a Regulation on the status and funding of European Political Parties and European Political Foundations, which itself proposes a better understanding and transparency about the connection between national and European political parties.

That proposal for a Regulation – COM (2012) 499 – has already been subject to analysis by this Committee for Constitutional Affairs, Rights, Freedoms and Safeguards (CCARFG) and by the Committee for European Affairs (CEA) resulting from the legislative process.

Directive 93/109/EC has already made provision for a mechanism for exchanging information so as to ensure that citizens cannot vote or stand as candidates in more than one Member State in the same set of elections.

However, reports on the implementation of this Directive have revealed some deficiencies in the operation of this mechanism for avoiding multiple voting and multiple candidacies.

In substance, this Recommendation favours deepening European citizenship, addressing its electoral aspect, as regards the election of the European Parliament, seeking joint initiatives by the Member States and Political Parties so as to increase the transparency of its European political/ideological content, in order to reinforce the legitimacy of the new method of electing the President of the Commission, as well as to increase their political accountability towards citizens, to give the election greater cohesion and consistency and to better guarantee the reliability of the electoral process.

▪ **Implications for Portugal**

Insofar as Portugal is concerned, the election of the European Parliament takes place under **Law No. 14/87 of 29 April**, including subsequent amendments.

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Under the terms of **article 1** of that law, “The election of Members of the European Parliament in Portugal shall be governed by this law, by the Community rules applicable and, where those rules make no provision or refer to national legislation, by the rules that govern the election of Members of the Assembly of the Republic, with the necessary adaptations”.

This law also establishes particular ineligibilities and incompatibilities specific to the national situation, the requirements for the presentation of candidates and the jurisdiction of the Constitutional Court to receive and accept candidacies, election campaign rules as well as electoral disputes and irregularities, and the powers of the National Elections Committee to divulge information, to conduct monitoring and to safeguard the electoral process.

Regarding the scheduling of elections, it states that “Having consulted the Government and taken account of the legal provisions applicable, the President of the [Portuguese] Republic shall set the date for elections 60 days in advance” (**article 7**).

In Portugal, specific rules on gender parity included in **Law No. 3/2006 of 21 August** also apply to the compilation of candidate lists for the European Parliament.

As the next elections for the European Parliament are scheduled for 2014, there is sufficient time for Portugal, if it deems it appropriate, to amend its legislation so as to accommodate the Commission’s recommendations.

Nevertheless, account must be taken of the constitutional constraints that might apply in certain circumstances.

By order of the Constitution of the Portuguese Republic, legislation on election issues constitutes a **legislative power reserved absolutely** for the Assembly of the Republic, notably under the terms of **article 164(I)** on “Elections of representatives of local or other authorities elected through direct and universal suffrage and of other constitutional bodies” and, above all, under the terms of **subsection (p)**, concerning the “System for the appointment of members of European Union institutions, with the exception of the Commission”.

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The setting of the date for the election of the European Parliament is constitutionally **attributed to and reserved for the President of the Republic** by **article 133(b)** of the Constitution, even though it refers to the legal framework to be drawn up by the Assembly of the Republic under the corresponding electoral law.

Article 15(5) of the Portuguese Constitution already made provision for citizens of Member States of the European Union resident in Portugal to have **the right to vote and to stand as candidates** in elections to the European Parliament; this has since been transposed into the corresponding electoral law (**article 3(1) (c) and article 4 of Law No. 14/79 of 29 April**).

PART III – OPINION OF THE MEMBER OF PARLIAMENT COMPILING THE ADVISORY REPORT

a) The recommendations from the Commission seem to examine the advisability of deepening European citizenship to which the Lisbon Treaty, signed on 13 December 2007, also sought to give greater and better expression.

Portugal is committed to enhance European identity through the treaties that it has ratified, as stated in **article 7(5)** of the Constitution of the Portuguese Republic.

In general, the recommendations of the Commission deserve our agreement and support, without prejudice to deeper consideration of certain points.

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b) While presenting and supporting a **candidate for President of the Commission** is an interesting idea, it still merits in-depth examination.

Of course, it will personalise the political debate more and will lead to the voting decisions of citizens being influenced more by factors relating to personality than by fundamental political options.

It is true that it is stated that the candidates should also present their programmes.

However, in practical terms, as we know, voters tend to be influenced more by the personality traits of candidates than by knowledge of the contents of electoral programmes.

On the other hand, in reality, candidates will not truly attain that status; rather, they will potentially be no more than shortlisted candidates.

This is because only the Council can propose candidates for election by the Parliament under the terms of **article 17(7) of the TEU**.

In reality, firstly a choice is made by the Council and it is only after this – and dependent upon that choice – that a vote will take place at the European Parliament.

Now, the Council follows the logic of Governments and their balances and not so much the logic of Political Parties, expressed more in the Parliament, which are asked to recommend and support a pre-electoral candidate for President of the Commission.

Under certain circumstances, this could mean that the President elected might even be someone who was not a candidate before the election.

It is also stated that in future there will be a compulsory **rotation** of the members of the Commission, according to their Member States of origin, and that the nationality of the President will also count towards this (**article 17(5) of the TEU and article 244 of the TFEU**).

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Now, in certain circumstances that rotation rule could also conflict with or not correlate with the nationality of the pre-electoral candidates.

c) Among the recommendations, one that seems quite problematic is that proposing that the election should take place on the **same day** and finish at the same time.

This is a good idea and constitutes one of the theoretical parameters of an absolutely clean election, as only simultaneous voting confined to the same times truly ensures that voting is completely free of the influence or conditionality potentially generated by knowledge of some of the election results prior to voting.

If this involved candidates for President of the Commission, the harmful and undesirable impact of this could be even greater.

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We already know that the Member States maintain different traditions in this regard, traditions that may be difficult to reconcile, the main one perhaps being whether voting takes place on a **working day or not**.

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This notwithstanding, we see it as a good proposal, in principle.

d) To operate effectively, maybe the recommendations need to be based on a pan-European legal instrument establishing a **minimum** number of rules applicable to the election, identical to all Member States, allowing national legislators to introduce other, more specific rules.

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It might potentially justify the existence of a **European Electoral Code**.

If this existed, it would mainly have to encompass the election of the European Parliament and the election of local authorities, which are the ones where voter turnout and the presentation of candidates from among European citizens are most important (**article 20(2) (b) and article 22 of the TFEU**).

To this end, the format used might perhaps be a **Regulation**, so that it applied directly to all Member States.

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On a secondary basis, the electoral legislation of each Member State would regulate other electoral issues that did not have to be addressed at EU level.

Among such a high number of Member States, with their different electoral traditions and legal regulations, it is bound to be problematic to align common features merely by calling for amendments to national electoral legislation, as seems to be the objective of the Commission.

On the contrary, maybe it might be preferable to move forward through an EU legislative act, abiding by the principles of subsidiarity and proportionality, which seems to us to be more effective in embodying the Commission's objectives.

PART IV – CONCLUSIONS

In view of the above, the Committee for Constitutional Affairs, Rights, Freedoms and Safeguards has reached the following conclusions:

- 1.** The European Commission initiative seeks to raise the awareness of the Member States and Political Parties so that they freely adopt certain practices of integration, alignment and transparency in elections to the European Parliament.
- 2.** The aim is that its effects should have been introduced by the time of the elections in the year 2014.
- 3.** The Recommendation is consistent with the Treaty on European Union and with the principle, also adopted by Portugal, of reinforcing European identity and European citizenship.

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4. With regard to Portugal, as a Member State of the European Union, it is legally viable for the Recommendation to be adopted, if this is the political approach that we seek to follow, as it complies with the constitutional framework applicable.
5. Because it is a document that does not comprise legislation by the Commission, this Recommendation from the Commission does not require assessment as regards compliance with the principle of subsidiarity.
6. Under the terms of Law No. 43/2006 of 25 August 2006, as amended by Law No. 21/2012 of 17 May, this report is submitted to the **Committee for European Affairs** for all due purposes.

Palácio S. Bento [Assembly of the Republic], Lisbon, 17 April 2013

**The Member of Parliament compiling
the Advisory Report**

[Signature]

(Luís Pita Ameixa)

The Committee Chair

[Signature]

(Fernando Negrão)

**ASSEMBLY OF THE REPUBLIC
[PORTUGUESE PARLIAMENT]**