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**„Amending the Electoral law has always been about democracy, legitimacy
and Europeanization”**

**Towards a Union-wide constituency: Strengthening the European political
system**

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My feeling is that over the last years we moved toward stronger appreciation of European public good. I don't know any Eurostat survey but I bet there is an increased awareness among European citizens of the role the EU plays in their life. Europeans see the benefit of affinity with the European community.

We had the unprecedented dialogue with citizens on the future of Europe within COFE framework. It clearly showed that Europe matters for citizens. But what is important is that we could see public appreciation of the role of Europe during COVID experience, in energy shock, around the fight for climate, inflation related policies, the challenge of Russian aggression. Key to addressing these challenges and related trade offs has been the stepping up of supply of European public goods. Citizens have been able to see what Europe is about, how Europe is run, how it can be threatened by geopolitical situation. We could see the relevance of Europe in the context of economic as well as political risks. Looking forward we can see strategic challenges that will require joint action and financing at European level. The new Green Deal Industrial Plan brings the potential tension between possible common European response and allowing member states to act individually under temporary framework of state aid. The latter will bring risks of distortions to level playing field leading to internal market fragmentation. Maybe it is a long shot but making elections to European Parliament truly European will be conducive to maintaining the European brand. Therefore, it is frustrating to see that the electoral law, the European legal basis for election of Members of the EP, is still stuck in the past, lacking European dimension.

What I am going to share with you are pieces of my memories of the previous effort to amend the European electoral law. It might be boring. Very quickly after the 2014 elections, on February 5th, 2015 the EP Conference of Presidents authorized the legislative initiative report on reforming the European electoral law. And exactly nine months later, on November 11th the same year, the Plenary session adopted the proposed amendment of the Act of September, 1976. Jo Leinen and I were rapporteurs. Amending the Electoral law was about democracy, legitimacy and Europeanization. Let me share with you a few issues that mattered in this process.

First, let me say a few words on what everybody knows but is worth reminding. Under Article 223 TFEU the European Parliament enjoys a special right of initiative regarding the European electoral law. Its proposal adopted with simple majority is submitted to the Council. The Council may keep it unchanged or amend it, which requires unanimity and sends its decision on amending the Act back to the Parliament. Then the EP, by absolute majority, gives its consent to it, final adoption is by the Council. It is worth adding as well that the Council decision requires ratifications in line with the domestic constitutional order in each member state. All that means that in reality the final decision on the electoral Act stays with the Council. I am reminding the well known procedure because first, it invites difficulties due to this institutional interplay and second, this procedure is quite unprecedented among the world democracies. The Parliament cannot decide itself on how its members are elected. It is not therefore a surprise that European elections continue to take place on the basis of diversified national legal frameworks.

My second flashback is about an important choice we had to make between going toward European unified electoral system or leaving in place national approaches with stronger common principles bringing some harmonization to the system. We chose the second option seeing it as a better chance for positive outcome of the process.

Third issue I would like to raise relates to the question why at all we embarked back in 2015 on this process of amending the Act. One reason was the fact that since 1976 the EP has evolved in a meaningful way regarding its competences and its political role. Treaty of Lisbon strongly contributed to it. With this came also an

increased, but slow, awareness among citizens of the relevance of this institution directly elected by them. We clearly saw the need to make the elections to the European Parliament more, if not yet truly, European. Another reason was the one of threshold in the context of the rulings of the German Constitutional Court which consistently opposed a percentage thresholds in European elections in Germany. The argument was that such an instrument did not exist in the European law. As an outcome of the German national system there were seven individual MEPs not really representing any constituency of voters at home. Threshold was seen as an instrument that could save the House from this type of politically damaging fragmentation. It developed into a divisive issue in the Parliament, being seen by some as a risk to democracy. That was apparently also the reason why the Green Party blocked the ratification process in Germany.

And the third reason for launching amendments to the Electoral Act was that some of us believed that the time had come to bring into our electoral system the transnational list already for a while present in EP's debates. Practically very soon after the 2014 elections, the AFCO Committee, which I was chairing, started to test what kind of majority we could have in the EP for the change of the law. We could see quickly that threshold expected by German coalition was a too difficult issue for Spanish EPP government in the then political situation. On that issue, we managed to reach a compromise. Still, as you know, at the end Spain did not even bother to start ratification process. On the transnational list the opposition was coming mostly from MEPs from likeminded mid-size member states. It required a lot of political efforts to build majority. Political groups found a compromise linking lists with lead candidate.

Finally, we proposed changes regarding: visibility of European political parties on ballots, deadline for establishment of national lists, mandatory threshold which in practice covered only Germany and Spain, right to vote for EU citizens who reside in third countries, advance, postal, electronic, internet voting, common deadline for the nomination of lead candidates by European political parties and creation of a cross border joint constituency where lists would be headed by lead candidates.

My fourth issue to raise is on the cooperation with the Council. We worked with five presidencies, starting with Luxembourg in the second half of 2015 which organized my first discussion with the Council during COREPER lunch. Then the Dutch PR, Slovakian, Maltese, Estonian & Bulgarian. From the day one it was clear that many member states did not see the need of bringing stronger European dimension to the elections to European Parliament. Finally, in the last month of the Bulgarian presidency, we got the council on board but the amended act agreed by unanimity, only UK and Belgium abstained, was meaningfully trimmed down compared to our proposal. Still the Council managed to come to agreement on many of provisions proposed by us.

That takes me to point five, about the challenge we as EP faced when the Council sent the Act back to us. Should we accept the trimmed version of our proposal, assuming it might be easier to start next time to further advance electoral act from a different level or should we reject the Council choice and maintain status quo. After stormy discussions the first option prevailed. On July 4, 2018 the EP gave its consent. On July 13, Council adopted the Act. In spite of the unanimously approved Council proposal, Germany, Spain and Cyprus did not ratify the Act.

And the last, sixth point is about my experience with national parliaments in the course of legislating. That was actually a difficult experience. I was meeting national parliamentarians regularly in the framework of COSAC where I was representing the EP. Some of them only discovered that a European Act on European elections existed because I discussed it with them with a view to prepare them to ratification. Many were strongly convinced the rules should be national. Six chambers even used the early warning procedure on subsidiarity presenting reasoned opinions to stop this legislation. They were not successful. And still, most of them, except for the three I mentioned before, finalized the ratification on time. As those three national parliaments decided not to ratify the Act, the 2019 European elections took place on the basis of the rules that are still in force. So much on the process.

Regarding the substance, the Council decision amending the Act to which the EP gave its consent, included most of the EPs proposals I mentioned, modifying slightly the threshold. But, as you know member states did not find agreement regarding the

establishment of joint constituency and lead candidates. So Domenec continues our effort. He has what we did not have back in 2018 which is the recommendation 16 of panel 2 of the Conference on the Future of Europe, on transnational lists and outcome of the work of WG on European democracy. I went back to the issue of transnational list in the Report on the composition of the European Parliament in 2018 with Pedro Silva Pereira as co-rapporteur. It was endorsed by the EP in the recitals and the European Council made a commitment to come back to the issue before 2024 European elections.

I shared with you a piece of history of the European electoral law. I started my talk with an observation that last years prove that citizens need more Europe, need more European public goods. Stepping up the supply of European public goods is key for our future. I would finish with saying that maintaining successfully the brand of Europe requires Europeanization of elections to the European Parliament.