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Mandatory voting as a remedy to increase electoral turnout: an appropriate solution to be applied in the European Parliament elections?

Abstract: The aim of this article is to analyse compulsory voting including sanctions for non voting. The article explores elections to the European Parliament, decreasing turnout and an idea of introducing compulsory voting in European elections. Nowadays twenty nine states recognise compulsory voting. In Europe seven countries, including Turkey, introduced it. High people's participation in elections is typical for the states with compulsory voting. This situation is observed especially in case of European elections, where turnout is systematically diminishing. One of successful solution for increasing turnout can be introducing of compulsory voting. This would also result in strengthening role of the European Parliament towards Commission and Council. It would also cause establishing more harmonized political landscape of the the EU.

Key words: mandatory voting, turnout, elections, compulsory vote, European Parliament

Introduction

The aim of this paper is to discuss the compulsory voting in a comparative perspective, analyse the sanctions and explore any possibilities for introducing the compulsory voting in elections to the European Parliament.

Many countries in the world have some form of compulsory voting (mandatory voting), political or legal one. The former is characteristic for undemocratic states. In democratic countries, legal constraint is the one forcing citizens to participate in the elections. In contemporary Europe, compulsory voting is a legal, not political, constraint. Only in seven European states (including Turkey) compulsory voting is a legal obligation (in Switzerland voting is mandatory in one canton), in five of them compul-

sory voting is included in the Constitution. Formally, it is only Greece where there are no sanctions for failing to vote, provided by legislature (Table 1).

Table 1

Compulsory voting in Western Europe

State	Date	Sanction	Type of sanction	Legislation
Belgium	1893	yes	Explanation by non-voter, thereafter fines or disenfranchisement.	Constitution, Art. 62 / Elect. Law Art. 207–210
Cyprus	1960	yes	Explanation by the non-voter, thereafter fines.	Elect. Law Art. 7 (2), Art. 37
Greece	1926	no	Explanation by the non-voter, thereafter imprisonment. Earlier other sanctions.	Constitution Art. 51 (5) / Elect. Law Art. 6 (2), 117 (1, 2)
Lichtenstein	1878	yes	Explanation by the non-voter, thereafter fines.	VRG (Volksrechtegesetz) Art. 3
Luxembourg	1919	yes	Explanation by the non-voter, thereafter warning and/or fines.	Elect. Law Art. 90
Switzerland (Schaffhausen canton)	1903	Yes	Explanation by the non-voter, thereafter fines.	Elect. Law Art. 9–10

Source: M. Gratschew, *Compulsory Voting in Western Europe*, in: *Voter Turnout since 1945*, 2004, http://www.idea.int/publications/voter_turnout_w europe/upload/Full_Reprot.pdf, p. 27, 30; A. Malkopolou, *Lost Voters: Participation in EU elections and the case for compulsory voting*, CEPS Working Document, no 317, July 2009, p. 9.

At present, voting is mandatory in six countries of Western Europe: Belgium, Cyprus, Greece, Liechtenstein, Luxembourg and Switzerland (in the Canton of Schaffhausen) (Żukowski, 2009, p. 112). Several countries that had introduced compulsory voting to their legal systems abolished this constraint: the Netherlands in 1967, Italy in 1993. Austrian lands of Styria, Tyrol and Vorarlberg in 1992, all cantons in Switzerland apart from Schaffhausen at the turn of the 19th and 20th century.

One of the reasons why several democratic countries introduced compulsory voting was to increase the turnover in the parliamentary elections. Compulsory voting is a legally binding principle provided by the Constitution (Kryszeń, 2004, p. 63). It is understood as an obligation to participate in an election process, not an obligation to vote. It does not literally

mean the duty to vote; it means the obligation to attend and register in the polling station (Lever, 2009, p. 3). What is more, compulsory voting does not mean the obligation to vote for one of the political parties. Voters may cast a vote (valid or invalid) in a polling station, they have a right to refuse to cast a ballot to a ballot box. According to Lijphart, compulsory voting is merely attending polling station with a ballot box (Lijphart, 1997, p. 10).

Nowadays in twenty nine countries are employing compulsory voting (Idea). The first states to introduce compulsory voting were: Liechtenstein (1862), Belgium (1893), Argentina (1914), Luxembourg (1919) and Australia (1924) (Gratschew, 2002, p. 25). The United States have also tried to introduce mandatory voting (Dakota 1898, Massachusetts 1918) (Jackman, 2001).

The states employing compulsory voting have formal, more or less severe, sanctions for failing to vote. Compulsory voting constraint (and the possible sanctions imposed for failing to vote) directly influence the turnout. In all the twenty nine states exercising compulsory voting, the turnout is significantly higher than in the states that do not impose voting constraint on the citizens (approximately by 10–15%).

Sanctions

The states that introduced compulsory voting exempted disabled and elderly persons from voting: in Schaffhausen canton people over 65, in Cyprus – over 70, in Luxembourg – citizens over 75 (Kryszeń, 2007, p. 243). Natural or personal obstacles are also the reasons to exempt citizens from participating in elections, such as serious sickness, journey or *vis major*. Other citizens failing to vote are fined. The fines imposed for failing to vote are rather symbolic: in Schaffhausen canton in Switzerland – it is 3 Swiss francs (Gratschew, 2002, p. 107), in Belgium – a fine for a first no-vote incident is 5–10 euros, for the next absence it increases to 10–35 euros (maximum fine can reach 60–150 euros) (*Elections*). In Luxembourg, the first absence results in the fine of 100 euros, next incidents of failing to vote result in the fine of even 1,000 euros (*ACE Project*). However, financial penalties are more and more rarely imposed, as the costs of executing them are higher than the income to budget. Failing to vote in Belgium can result in, apart from the fine, the loss of a right to vote. If the voter fails to vote more than 4 times during 15 years, they lose their right to

vote for the period of 10 years, they cannot be nominated for any public post, either (Młynarska-Sobaczewska, 2006, p. 84). In the states of South America, sanctions for failing to vote are much more severe: in Brazil, state banks can refuse loans to non-voters (Kryszeń, 2007, p. 244), in Peru, state offices can refuse to deal with citizen's matters, in Bolivia non-voters are refused to obtain a driving licence or passport, in Argentina they might have a problem to be promoted in state administration or even to enroll the child to a state nursery school (Żołądek, 2011, p. 19).

Is voting really compulsory?

Luxembourg, Belgium, Cyprus and Greece are the ones among many other countries in Europe where the participation in elections is not only a right but also an obligation, but are there any consequences for not voting? It seems there are not, as the last case of a non-voter being disciplined in the Grand Duchy, was reported more than 40 years ago (Luxemburger Wort, 2014). In accordance with state records, the last cases of registered non-voters being pursued and punished in Luxembourg took place in 1963 and 1964. Since then nobody who registered to vote but failed to visit the polling stations on election day, has been penalised. Yet, the statistics from the election that followed those cases show that not a single eligible citizen stayed at home on that election day. This came to light just over a year ago after a parliamentary question was posed to the Department of Justice as to whether or not residents registered to vote were to be penalised if they did not cast their ballot. Justice Minister at the time, François Biltgen, responded in a statement that the law should consider various ways of interpreting the failure to vote. He said: "If the Department of Justice was to officially announce that it is not pursuing election violations, it would be violating the law" (Luxemburger Wort, 2014).

Obligatory voting is a major obstacle for many foreigners residing in the country where mandatory voting is employed whereas in their country of origin it is voluntary. They often worry that once registered in Luxembourg and they leave the country or will not be in the country at the time of an election, or be unable to vote for whatever reason, they will be punished with a fine or even imprisonment. This does not apply to the Grand Duchy and if more citizens were provided with this information, possibly more foreign residents would register to vote in the European and communal elections.

In Belgium, legal sanctions for failing to vote, exist only in theory; only financial penalties are applied in practice. Since 2003 no Belgian citizen has been found guilty for failing to vote, as no proper motions were proposed due to huge number of cases in the court (Achour, 2010, p. 21–22). Each citizen eligible to vote is obliged to vote on the Election Day. Belgian citizens over 18 and the citizens being registered as commune residents are registered as voters automatically. Before the election, each voter receives *lettre de convocation*. Each person included in the voter rolls is obliged to participate in the elections (Code Electoral, 1894). In the parliamentary elections and the elections to councils the census of being the resident of Belgium is required. The voter should be the resident of the place of vote for at least 6 months. Certain categories of citizens are exempt from this duty, such as persons not being eligible to vote, being sentenced to more than 3 months prison, etc.

Belgian citizens residing abroad have been eligible to vote since 1999, although they are not automatically registered in voter rolls (Loi, 1998). They should register in the embassy beforehand. Then they receive a poll card and they are obliged to vote. The same system is for non-Belgians residing in Belgium. Not only do Belgian citizens have to participate in compulsory voting, the foreigners not being Belgian citizens who register in voter rolls are also obliged to vote (Żołądek, 2011, p. 17) (it is true only in case of EP and local elections).

Since 1999 the EU citizens residing in Belgium have had the right to vote in local elections (Loi, 1989). It depends on their decision if they wish to register in the voter rolls. If they decide to be enrolled, they are obliged to participate in mandatory voting, including the sanctions imposed for failing to do so. Since 2004 the right to vote in local elections has been extended to all non-Belgian citizens residing in Belgium for at least 5 years (Loi, 2004).

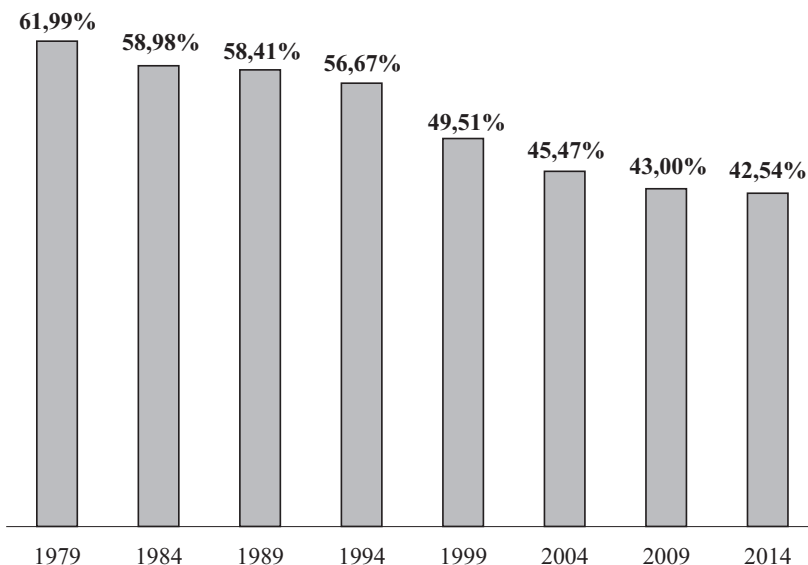
Should voting be compulsory in the European Parliament election?

Introducing direct elections to the European Parliament (EP) in 1979 was to strengthen the democratic dimension of the European project (Franklin, Hobolt, 2010, p. 2). There were numerous analyses considering the influence of EP elections on a democracy level in Europe. According to the EU Treaty, every citizen shall have the right to participate in the democratic life of the European Union” (*Treaty on EU*, 2010).

As people across the European Union vote in the European Parliament election, is it perhaps time to consider making voting in each country compulsory by law?

Yet, the first direct elections to the European Parliament in 1979 did not prove to be a success: A “mere” 64% eligible European electors decided to vote. This number was not impressive when one compares it to the turnout in the national elections. The fact that appeared to be more worrying was that electoral campaigns were national in content: The issues debated and the results reflected domestic politics within each of the Member States, typically being the expression of approval or disapproval of the Member State government. They were European Elections in name only; their reality was all about domestic governance. The standard justification was that in a situation when the Parliament was a weak institution, concerning the European legislation, a wise electorate was not willing to waste its time and mental effort on the elections that would have no impact on European politics. Why bother to vote? And for those who did, the important factor was passing judgment on national governments rather than European matters (Weiler, 2013, p. 4).

Graph 1. Turnout in the European elections 1979–2014



Source: http://www.europarl.europa.eu/parliament/archive/elections2014/en/turnout_en.html.

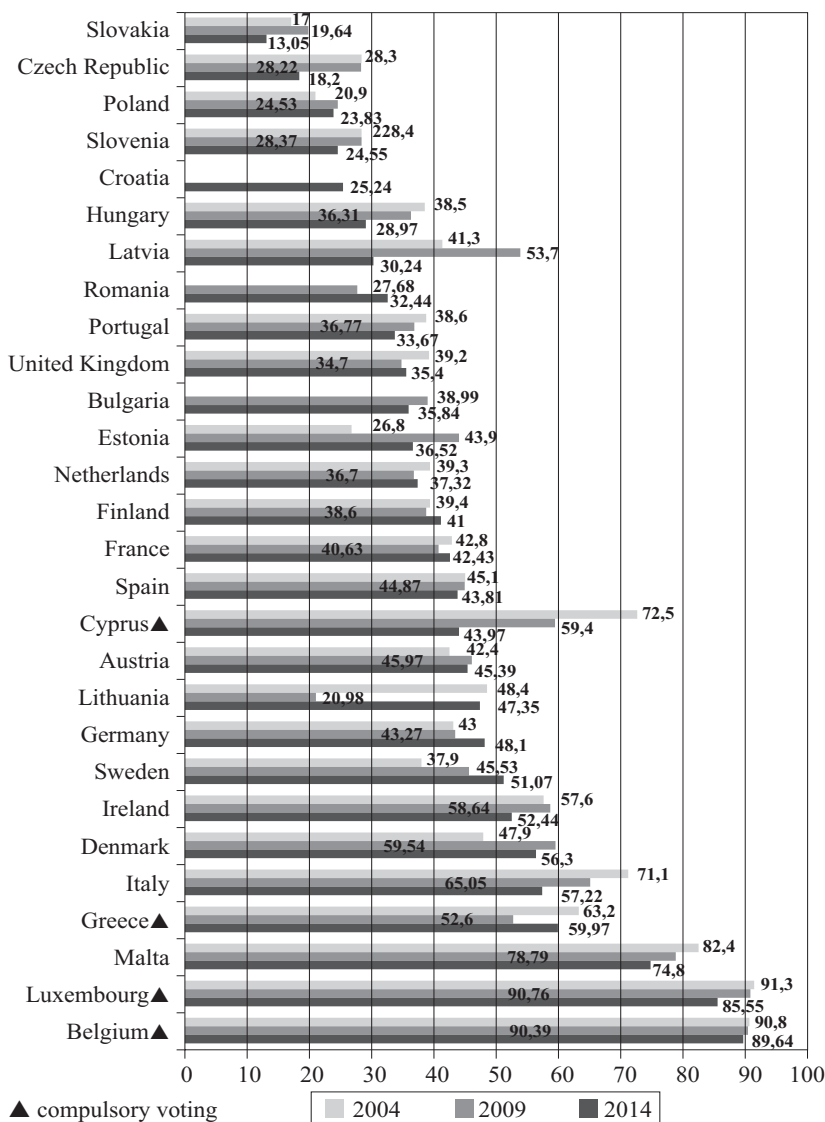
Universal EP elections are the greatest democratic event in the history of European integration. Yet, the turnout in the election is falling steadily to achieve slightly 43% in 2014. Regularly declining turnout (decline by 2/3 comparing to 1979) means democratic apathy (malaise) in Europe (Franklin, Hobolt, 2010, p. 2). The fact of the voters not being aware of the real impact of their votes, is seen as one of the ways of argumentation of low participation in EU elections (Willermain, 2014, p. 2).

As far as the EU elections are concerned, there are two main reasons why turnout is an essential matter. Firstly, abstention from the polls noticeably diminishes the validity of the electoral process, of the European Parliament itself and of the European Union as a whole. In this perspective, the vision of consolidating the Union as a democratic project that culminated in direct suffrage to the EP in 1979 is threatened. Secondly, the EU needs credibility for its democracy promotion projects (Malkopolou, 2009, p. 1–2). The EU is certainly the largest humanitarian assistance provider. With respect to other donors, it maintains a distinct aid strategy that rigorously executes the principles of democracy and human rights. These principles, deriving from the historical wisdom gained from the experience of war and military regimes in Europe during the last century, provide an irrefutable common ground of conceptual understanding between Europeans (Malkopolou, 2009, p. 1–2).

In the countries with compulsory voting, the turnout is very high. In the post-communist countries the turnout is very low. In the case of post-communist countries none of the parties was in existence for more than 20 years before the 2009 EP elections. For new voters it takes decades for loyalties to build and, in post-communist countries in 1990, in a certain sense it could be said that all voters were new (Franklin, 2014, p. 8).

Following the opinion of EP elections not being the elections of the same kind as national elections, it can be very informative considering the nature of such ‘first order’ elections in nation states. According to Reif and Schmitt (Reif, Schmitt, 1980, p. 8), there is only one ‘first order’ elections in each democracy. They are defined as the elections filling the most important political life and, as such, they generate a high incentive for both: voters and parties. The ‘first order’ elections in parliamentary systems are the national parliamentary elections, and in presidential systems, the national presidential elections. Thus, every other elections (including European Parliament) in the same democracy are by definition ‘second order’ elections (Giebler, 2014, p. 117). The view Franklin take of ‘second order’ elections helps to understand why ‘first order’ elections work the way they

Graph 2. Comparison of turnout in elections to the European Parliament 2004–2014 in Member States (in %)



Source: Post-election survey 2014. European elections 2014. Analytical overview, http://www.europarl.europa.eu/pdf/eurobarometre/2014/post/post_2014_survey_analitical_overview_en.pdf, p. 20; http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140739/LDM_BRI%282014%29140739_REV1_EN.pdf, p. 3.

do (Franklin, 2014, p. 2–3). According to Franklin, low turnout at EP elections can be regarded as a symptom of disaffection from the European regime within elections are held. However, low turnout is rather an indication that the EP elections themselves were less than compelling. If mandatory voting influences ‘first order’ elections, the pattern should be the same for ‘second order’ elections, that tend to be low-turnout elections (Lijphart, 1998, p. 8).

There have been certain efforts undertaken in order to increase electoral participation. A common tactic intending to increase the turnout is hold other type of elections on the same day as EP elections. The most efficient and cost-effective mechanism to raise the turnout is compulsory voting, as indicated in the countries with the highest turnout scores in the EU, Four EU countries are, in one way or another, applying to such laws: Belgium, Luxembourg, Greece and Cyprus; the turnout in all of them ranges from 53% to 91%. The Netherlands, Austria and Italy also used to have the same system in the past. Italy’s high voter participation (65% in EU 2009) shows that the country still benefits from its long-standing participatory tradition (Malkopolou, 2009, p. 7).

In the aftermath of the 2009 EP elections, the idea of raising participation by punishing non-voters seems to be more and more tempting. German MP Jörn Thießen (SDP) suggested there should be a fine of €50 imposed on non-voters, arguing that “democracy does not work without democrats” (Malkopolou, 2009, p. 10). He adds that politicians are included in the group of these obliged to vote in the EP. Thus, the same obligation should be extended to citizens. Earlier, elected French MEP Pervenche Beres (PS) appealed for obligatory taxation providing a model for obligatory voting. It seems worth considering the details of a mandatory voting system, especially as it seems to be critical to search for new instruments to contradict voter abstention.

If the low turnout in the elections to the EP is perceived to be a major problem, short-term solutions could be employed by altering the electoral systems of the member states. The most powerful way to increase turnout would be to introduce mandatory voting, but this solution seems to be improbable to be employed in modern democracies (Matilla, 2003, p. 466).

It appears to be necessary to consider the possibility to employ compulsory voting to EP, even in these countries where voting in other elections is optional. The EU law is superior to national law of Member States (Grosse, 2014, p. 40; Kuzelewska, Kuzelewski, 2015, p. 129–130). The European Parliament is responsible for making law that all EU citizens

and residents use and benefit from it. Then, it might be worth considering voting to EP, enforced with the sanctions being rather motivating than financially restrictive. For instance, those who do not vote in EU elections have no right to benefit from European funds or to participate in free trainings financed by the EU, etc. The European Union was not established as a grass roots project; it was the project for politicians. At present, due to the allegations of the democracy deficit within EU, there is an urgent need of new solutions, activating and mobilizing the citizens to participate in the European integration process. In comparison to other means of boosting voter turnout, compulsory voting is the most effective measure.

Yet, it is not simple. First, elections to the European Parliament are not about 'European' issues. Instead, parties compete on mainly national issues and voters base their choices on domestic concerns and preferences (Hobolt et al., 2009). Second, the EP elections do not determine the shape of the EU executive, since the Commission is neither elected nor directly controlled by the EP (Hix et al., 2007).

Closing remarks

However, according to Malkopoulou (Malkopoulou, 2009, p. 12–13) there are three main reasons why compulsory voting is an especially appropriate solution to be applied in the European Parliament elections. First, as the Parliament makes a constant effort to acquire a stronger role facing the Commission and the Council, it should protect its *raison d'être* as an institution that represents the EU citizens. Making voting compulsory would raise the turnout and allow the Parliament to lay claim to an 'input legitimacy' that is missing from the two other EU institutions. In response to the increase of its powers through the Lisbon Treaty, it must become very clear that the Parliament is the most representative of the three EU governing bodies. Its character must be broader, reflecting a considerable share of the EU population.

Second, this solution would recreate the EU electorate as a unified political body and add new dimensions to EU citizenship. Full participation in the EU elections would raise political debates from a national to a European level. In this way, it would eliminate a narrow national context and raise the voters into a European public sphere (Bärenreuter et al., 2009, p. 9–10). Electoral obligation could result in an increased awareness and enthusiasm related to European issues and, subsequently, create a distinct

EU-mindedness. In other words, a voting constraint could work as a cost-less instrument raising civic education. And, as a side-effect, it would eliminate the expense of election campaign and raise voter awareness.

A third positive effect would be a harmonization of the political landscape. First of all, with the existing system of voluntary voting, political parties that maintain electoral clienteles, through family or community ties, have a competitive advantage in the electoral competition. In this way the present situation rewards personal ties and supports the 'old parties'. Secondly, since the broad scope of the political panorama, it is by no means surprising that far-right euro-sceptic parties are on the rise in the EP (Loenard, Torreblanca, 2014, p. 6–7; Piedrafita, Renman, 2014, p. 25). Low turnouts are to blame for deconstructing the concept of majority and offer an advantage to these parties that would otherwise constitute an insignificant minority. The new system would eventually reduce the influence of extreme right parties and legitimate the shares between the various political groups. In fact, the EP deserves a higher degree of procedural representation in order to avoid becoming hostage to idiosyncratic political views.

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**Głosowanie obowiązkowe jako środek zwiększenia frekwencji wyborczej:
właściwe rozwiązanie do zastosowania w wyborach
do Parlamentu Europejskiego?**

Streszczenie

Celem artykułu jest analiza obowiązkowego głosowania z uwzględnieniem sankcji za uchylenie się od obowiązku wyborczego. Przedmiotem rozważań są także wybory do Parlamentu Europejskiego (PE), malejąca frekwencja i rozważania na temat ewentualnego wprowadzenia przymusu wyborczego w eurowyborach. Obecnie głosowanie obowiązkowe występuje w dwudziestu dziewięciu państwach na świecie. W Europie przymus wyborczy stosowany jest w siedmiu państwach, wliczając Turcję. Państwa, w których głosowanie ma charakter obowiązku wyborczego, wyróżniają się wysoką frekwencją wyborczą. Jest to szczególnie widoczne w wyborach do Parlamentu Europejskiego, w których partycypacja systematycznie maleje. Jednym ze skutecznych rozwiązań zwiększających udział obywateli w wyborach do PE mogłoby być wprowadzenie obowiązkowego głosowania. Poza wzrostem frekwencji, obowiązek wyborczy przyczyniłby się do wzmocnienia roli PE (zwłaszcza wobec Komisji i Rady), powstania świadomego i zaangażowanego politycznie społeczeństwa europejskiego oraz harmonizacji politycznego krajobrazu Unii Europejskiej.

Słowa kluczowe: głosowanie obowiązkowe, frekwencja, wybory, przymus wyborczy, Parlament Europejski