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Parliamentary democracy facing Coronavirus by (also) technologies

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[La democrazia parlamentare di fronte al Coronavirus mediante (anche) le tecnologie]: L'emergenza sanitaria Covid-19 ha fra i tanti effetti anche quello di mettere sotto pressione le istituzioni democratiche nel loro funzionamento: in particolare i parlamenti sono costretti a cedere spazio agli esecutivi a causa della situazione eccezionale. Se non si prendono le giuste misure a questo proposito, ci sono certamente rischi per la democrazia nel prossimo futuro. L'articolo esamina i vari dettagli dell'operazione, sia dal punto di vista delle regole che dal punto di vista delle soluzioni tecnologiche. Si tratta di un'esperienza rilevante per gli sviluppi futuri.

Among its many effects, the Covid-19 health emergency has put the functioning of democratic institutions under an unusual pressure. Parliaments are forced to give the executive branch powers to deal with the exceptional situation the virus has created. If proper balancing measures are not taken, there are risks for democracy in the near future. The article examines how the EU Parliament has faced this challenge, both from a legal point of view, and the technological solutions that have been implemented. The aim is to provide a relevant example for future developments.

When the Coronavirus Covid-19 emergency broke out, the search for solutions for the proper functioning of the parliamentary institutions required reflection (*inter alia*) on the use of technologies in such situations. The Covid-19 emergency has even brought many analysts to the conclusion that the situation is a risk for democracy: for instance, the successful author Y. N. Harari says that “the storm will pass, humankind will survive, most of us will still be alive - but we will inhabit a different world^[1]”. What world? It depends on the choices we make: “The first” – says Harari – “is between totalitarian surveillance and citizen empowerment”^[2]. He is not alone in taking this view. Another example, among

many, is the appeal made to the institutions by a group of intellectuals in Italy^[3]: the appeal contends that “all at home” (confinement) is poisonous for the institutions because it puts democracy into quarantine. According to the authors of the appeal, Parliament assembles only intermittently, converts decrees into laws hastily and does not exercise its power of holding the executive to account; the government meets at night and communicates through social media; the Prime Minister limits constitutional rights by decree, and so on. Democracy cannot be suspended, the appeal says, because if “you resign yourself to something today, you will lose freedom tomorrow”. The question has also been raised in Belgium, to mention another example, on account of the exceptional powers (“*pouvoirs spéciaux*”) conferred on federal or regional executives: here too, the question is whether the guarantees of democratic control are ensured and remain sufficient if parliament (with the regional parliaments) continues to exercise its activities but with means and methods adapted to the situation^[4]. In short, also an emergency (in this case a health emergency, but we have also experienced a terrorist emergency) is a factor which puts parliamentary democracy at risk. So, what is the situation? A clear and dynamic picture is offered by the Inter-Parliamentary Union (IPU) based in Geneva. In an *ad hoc* permanently updated document^[5] we can read the following:

- *“A short survey circulated by the ECPRD suggests that most European Parliaments continue to operate but in a limited manner. Most restrictions are to limit unnecessary access to buildings, for staff and members to work remotely where they can. The majority of parliaments continue to sit albeit in more limited ways and, in a number of cases, with fewer members being present (issues of ensuring parliament is quorate arise in some cases). Some parliaments have taken an early recess or changed their operating procedures so that a special committee sits, rather than the whole house.*
- *Significant numbers of staff are now working remotely. This presents challenges in terms of maintaining operational systems. Though some of these can be supported remotely, this is designed for exceptions rather than the norm when a parliament is sitting. There will increasingly be issues with unavailability of staff and third-party support due to illness”.*

The European Parliament has also adopted solutions for the proper functioning of the institution and this in turn meant that we had to reflect on the use of technology in such situations. To a large extent, what we have been looking at is the possibility of effective remote working of MEPs and staff. In this sense, in the midst of the emergency created by the spread of Covid-19, DG ITEC^[6] sent an internal note to all staff, entitled “Teleworking facilities”, which listed the available possibilities: connecting from your personal laptop; token access for security; email access through webmail; extranet access; jabber access; VDI for remote access; email access on phone or tablet; hybrids. By recalling what the “normal” tools available are, the note implicitly underscores their usefulness in times of emergency. The services then got to work to strengthen these capabilities.

An important decision of the President of the European Parliament, David Sassoli, has paved the way for reflection on a more advanced experiment with digitisation in the exercise of democratic functions: what I mean is an experiment not limited only to supporting the functioning of the institution, but where we get to exercise the powers of the democratic system through digitisation. This would be a significant development. We read in the preamble to President Sassoli’s decision^[7], “while protecting health, Parliament as a critical infrastructure of democracy in the European Union should retain its capacity to exercise its core functions as attributed to the Institution by the Treaty on European Union; information technology tools should, to the extent possible, replace physical meetings and thus contribute to enabling Parliament to exercise its core functions” and, in the operative part, “the Secretary-General shall take the measures necessary to enable remote participation to meetings of Parliament’s governing bodies, committees and the plenary, without prejudice to decisions of the Bureau of the European Parliament on matters relating to the conduct of sittings.” The implementation of these instructions will involve the provision of advanced IT tools, which is certainly essential if the operation is to be a success. The implementation of the Presidents requests has been immediate and effective. In a Note of the Secretary General the following 18 March^[8] we can read that: “With the view to ensuring the continuity of the Members’ exercise of their duties related to parliamentary activity, the services of the European Parliament’s administration have been asked to implement measures to facilitate the remote

participation of Members in parliamentary activities in the current prolonged situation of Force Majeure where they cannot physically attend the meetings. Remote participation means being able to view and listen to proceedings, ask for the floor and intervene in the meeting. (...) Four meeting rooms have been equipped to be operational to host parliamentary meetings (...) With this solution, both the Members participating directly from the Parliament's meeting room and those participating remotely will be able to express themselves (...) The tool also offers the possibility of remote polling. Whether this feature is used or not is a political decision." That's what can be called a frank successful reaction from the administration point of view, in such an emergency conditions.

It is clear that its development towards something that we can call digital democracy will depend exclusively on the rules determining how we are to operate in the new way: these rules will be a fundamental and founding element of any digital democracy. They are the essential precursor and indeed a *sine qua non* for the launch of any form of digital democracy. In the specific circumstance of the Covid-19 emergency, the need for specific rules for a digital vote was very clear to top management, both administrative and political, and so urgent ad hoc measures were taken. An extraordinary meeting of the Bureau was convened to adopt rules derogating from the Rules of Procedure on the basis of a proposal submitted by the Secretary General. This action was manifestly necessary and urgent in order for Parliament to adopt Commission proposals (under the ordinary legislative procedure) which were of an urgent nature and designed to deploy common European actions to counter the problems arising from Covid-19: Parliament was convened to meet in plenary session on 26 March 2020 with the aim of adopting the European Commission's proposals. The preparatory file for the Bureau meeting^[9] describes precisely why, how and when it was intended to proceed so as to allow MEPs to vote remotely:

"In light of the current situation and the overriding public health restrictions on, inter alia, travel applicable to some Members, as well as the need for Parliament to be in a position to adopt the urgent measures proposed by the Commission as part of the EU-coordinated response to COVID-19, it is proposed that the Bureau supplement its 2004 Decision on rules governing voting.

The proposal in the annex to the note from the Secretary-General seeks to allow for a temporary derogation on public health grounds, upon decision by the President, to

enable the vote to take place by an alternative electronic voting procedure, with adequate safeguards to ensure that Members' votes are individual, personal and free, in line with the provisions of the Electoral act and the Members' Statute.

In particular, Members would receive electronically, via email to their official email address, a ballot form, which would be returned, completed, from their email address to the relevant Parliament's functional mailbox. The results of all votes conducted under this temporary derogation would be recorded in the minutes of the sitting concerned. This decision would remain in force until its repeal by the Bureau, once the public health emergency has abated".

The Bureau confirmed and adopted the proposal, by attributing to the President the full power to decide "if and when" to use the alternative method of voting^[10].

The technical solution adopted was as simple as effective, that's the following:

Where the President has decided under Article 1 that the alternative electronic voting system shall be used, the voting shall take place in accordance with the following arrangements:

- 1. The voting list as well as the opening time and closing time of the vote shall be published on Parliament's website. The voting list, the ballot form as well as the opening time and closing time of the vote shall be sent by electronic mail from the mailbox "plenaryvote@europarl.europa.eu" to the professional mailbox of each Member.*
- 2. The Member shall vote by filling in and signing the ballot form on paper.*
- 3. The Member shall send a copy of his or her ballot form, scanned or photographed in PDF, JPG or any similar standard electronic format allowing for a clear and readable image, by electronic mail from his or her professional mailbox to the mailbox "plenaryvote@europarl.europa.eu".*
- 4. The President shall establish the result of the vote on the basis of the ballot forms which comply with the requirements of points (b) and (c) and have been received before or at the closing time mentioned in point (a).*
- 5. The use of the alternative electronic voting system shall be recorded in the minutes of the sitting, together with the result of the vote^[11].*

The two intelligent ideas underlying this proposal are, firstly, maximum simplification of the voting mechanism (exchange of e-mails), which avoids the

technical and legal problems associated with online voting, and, secondly, the temporary and exceptional nature of the action, precisely because its simplicity can only be a one-off.

As I said earlier, in fact, if you want to insert online remote voting into a “normal” mechanism for the functioning of democratic powers, the rules must be deepened and detailed. The EP, in this case, needs to revise or to complete the following body of regulations. Rule 186 of the Rules of Procedure, on the right to vote, which provides that the right to vote is a personal right and Members shall cast their votes individually and in person. Rule 187 of the Rules of Procedure, on voting, which empowers the President to decide at any time that the voting operations be carried out by means of an electronic voting system. Rule 192 of the Rules of Procedure, on the use of the electronic voting system which provides, in paragraph 1, that the Bureau shall lay down instructions determining the technical arrangements for use of the electronic voting system. The Bureau Decision of 3 May 2004 on rules governing voting, as amended, which lays down the technical arrangements for electronic voting. Of course, it must be clear, you need the rules are underpinned by a much more complex technological support than a mere e-mail.

However, the experience gained as a result of Covid-19 is a very useful and important starting point, should ever the European Parliament wish to move towards a systematic solution. And possibly, it could be reference for other Parliaments.

About the Author

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1. Y.N. HARARI, *The world after coronavirus*, Financial Times, 20 March 2020.
2. *ibid.*
3. The first signatory was Prof. Marcello Pera, a former President of the Senate of the Italian Republic: see *Corriere della Sera*, 25 March 2020.
4. See in particular the extensive inquiry of Bernard Demonty in *Le Soir* of 26 March 2020.
5. IPU-Centre for Innovation in Parliament, *Parliamentary Responses to Coronavirus*, Live Document, March 2020.
6. That is the ICT Department of the European Parliament.

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7. Decision of the President of the European Parliament, CP D(2020)9886, Brussels, 9 March 2020.
8. Der Generalsekretär, *Remote participation for Members in Parliamentary activities*, D(2020)10901, 18 March 2020.
9. TECHNICAL NOTES for the extraordinary meeting of the BUREAU on Friday 20 March 2020, Brussels, PE 649.203/BUR.
10. DECISION OF THE BUREAU OF THE EUROPEAN PARLIAMENT of 20 March 2020 supplementing its Decision of 3 May 2004 on rules governing voting, PE 649.211/BUR.
11. *Ibid.* art. 2.