

Working Paper Series

**OPEN OR SECRET? PARLIAMENTARY RULES OF
PROCEDURE ON SECRET BALLOTS**

SOG-WP31/2015

ISSN: 2282-4189

Francesca Biondi & Irene Pellizzone

This text may be reproduced only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s).

If cited or quoted, references should be made to the full name of the author(s), editor(s), the title, the working paper, or the other series, the year and the publisher.

© 2015 Francesca Biondi & Irene Pellizzone

Printed in Italy, December 2015

LUISS School of Government

Via di Villa Emiliani, 14

00197 Rome ITALY

email: sog@luiss.it

web: www.sog.luiss.it



ABSTRACT

The Italian debate on the parliamentary rules of procedure regarding open and secret ballots has recently highlighted the difficulties involved in finding a point of equilibrium and in safeguarding both the freedom of the Members of Parliament and the good functioning of the parliamentary form of government.

The paper compares the rules of procedure in four big European countries with a parliamentary form of government (Italy, Germany, Spain, United Kingdom), where the prohibition of an imperative mandate for Members of Parliament remains unquestioned yet the Government needs the support of a “loyal” parliamentary majority at the same time.

The comparison takes into account the rank of the sources of law providing for the secret ballot (Constitution, laws, parliamentary rules of procedure or conventions), the effective use of the secret ballot and its consequences on the confidence between Parliament and Government.

Lastly, the paper discusses the rules of procedure of the European Parliament, bearing in mind the European Union’s particular form of government.

Keywords: *national Parliaments, free mandate of representatives, vote of confidence, secret ballot, party system, form of government*

This is a revised version of the paper presented at the twelfth Workshop of parliamentary scholars and parliamentarians held on 25th July 2015 and organized by the Centre for Legislative Studies at Hull University.

AUTHOR INFORMATION

Francesca Biondi is a professor of Constitutional and parliamentary law at the Department of Italian and supranational public law of the University of Milan. Since 2008 she has been teaching parliamentary law at the University of Milan. Her research interests cover accountability of judges, parliamentary law, constitutional rights and constitutional justice. She is the assistant to Prof. Nicolò Zanon, member of the Italian Constitutional Court.

Irene Pellizzone was researcher in Constitutional law at the Department of Italian and supranational public law at the University of Milan between 2012 to 2015; since 2014 she has been teaching Gender Justice at the University of Milan. Her fields of interest are: forms of government, constitutional role of the President of the Italian Republic, constitutional principles of criminal law, constitutional justice and gender equality.

Contact Information:

Dipartimento di diritto pubblico italiano e sovranazionale, Università degli Studi di Milano
Via Festa del Perdono 5, 20122 Milano

Tel.: +39-02-50312577 / Email: francesca.biondi@unimi.it; irene.pellizzone@unimi.it

TABLE OF CONTENTS

1. INTRODUCTION	1
2. OPEN OR SECRET BALLOT IN THE ITALIAN LEGAL ORDER: THE HISTORY OF THE RULES OF PROCEDURE	3
3. THE PARLIAMENTARY EXECUTION OF THE RULE THAT ENHANCES THE “OPEN” BALLOT	5
4. SECRET VOTE OR QUESTION OF CONFIDENCE?	7
5. CONCLUSIONS ON THE ITALIAN CASE.....	7
6. GERMANY: THE ELECTION OF THE CHANCELLOR	8
7. THE UNITED KINGDOM: USING THE SECRET BALLOT TO ELECT A <i>NEW</i> SPEAKER.....	11
8. SPAIN: THE SECRET BALLOT FOR THE VOTE ON THE ABORTION LAW	12
9. THE SECRET BALLOT IN THE EUROPEAN PARLIAMENT	14
10. CONCLUSIONS.....	18
BIBLIOGRAPHIC REFERENCES.....	21

1. INTRODUCTION

Parliamentary rules of procedure on open or secret ballots have recently shown in Italy how they have considerably been affecting the political dynamics in Parliament and the Executive, during the votes for the approval of the electoral law for the Chamber of Deputies and the constitutional reform bill, as the hard political debate put the rules of procedure “under pressure”.

However this is not a new dilemma: rules concerning the ballots held by the members of Parliament have marked some of the crucial steps in the history of the functioning of the Italian parliamentary form of government. The very chance to request to hold a secret vote on so-called conscience matters – originally aimed at protecting each Member of Parliament from group discipline – is sometimes an obstacle for the Government and its majority for the enforcement of the electoral programme with regard to important issues of the electoral campaign or of the speech regarding the government programme.

For some decades, the theories regarding the possibility for parliamentarians to request a secret vote as an enforcement of the free mandate of representatives (Crisafulli 1967; Zanon 1991) are no longer at the centre of the Italian debate. Yet many scholars continue to focus on the role of the secret ballot with the aim of analysing and better understanding the relationship between Parliament and Government (Curreri 2015; Biondi 2014; Giannetti 2015).

Aim of this paper is to compare the Italian rules of procedure with those in force in the main European constitutional legal orders comparable to Italy. Studies on this subject are copious in Italian literature, owing to the relevance of the phenomenon, but abroad it is quite the contrary, and also there is not a great amount of data. According to the rules of procedure concerning the secret ballot, all the European countries with a parliamentary form of government permit the secret ballot at least in some cases, but the secret ballot is always permitted in exceptional circumstances¹, while the “rule” is the open ballot. Only Denmark always requires the open ballot, even if the ballot itself takes place during a secret session². The rest of the European countries can be grouped into the two following main categories:

* Though all the essay derives from a joint reflections, Francesca Biondi is the author of paragraphs 1, 2, 3, 4 and 5, while Irene Pellizzone is the Author of paragraphs 6, 7, 8, 9 and 10.

¹ See the Working Document on voting by secret ballot in the Members States Parliament, Committee on Constitutional Affairs, European Union, 5.4.2005.

² See the Standing orders of the Danish Parliament, Chapter XIV, § 37, which enable the Speaker, seventeen Members or a Minister to require a secret session. Section 49 of the Danish constitutional Act allows debate on a matter in a secret session, but the last time it happened was in 1924.

a) The first category includes countries where the secret ballot is only permitted in some cases, for example in the German *Bundestag*³ and in the *House of Commons* in the UK⁴.

b) The second category includes countries, such as Spain, Austria or Latvia, where the secret ballot can be requested by following certain procedures. In this case, the ballot is secret also when it concerns “persons”⁵.

As we will see in the first part of the paper, the Italian system is different from these categories, because the parliamentary rules of procedure of the Chamber of Deputy and Senate distinguish the cases whereby a secret ballot is required, cases for which it is forbidden, and cases for which the secret ballot can be “requested”, that are sometimes difficult to interpret.

The analysis necessarily focuses on the countries with a parliamentary form of Government and the Executive needs the support of a “loyal” parliamentary majority where the prohibition of the binding mandate remains unquestioned, regardless of the electoral system in force. For this aim, we have selected the United Kingdom, Germany and Spain. The analysis is limited to the chambers that are entitled to provide or remove confidence and does not deal with chambers that do not have this power (i.e. the *Bundesrat* in Germany, the *Senado* in Spain and the *House of Lords* in UK are excluded).

The previously mentioned first category includes Germany and the United Kingdom and it may be interesting to determine whether they had the same problems as Italy when holding elections for the assignment of certain positions. After the analysis of the Italian Chambers, we will start by examining these two systems, since they foresee the secret ballot for the same category as established by the Italian Constitution that was expanded by parliamentary rules of procedure. Spain belongs to the second group of countries; therefore it may be interesting to verify whether the possibility of requesting a secret ballot with a certain majority in Spain has been exploited to the same extent as in Italy after the examination of Germany and the United Kingdom.

It is a well-known fact that these three electoral systems differ from one another and also from the Italian system. Moreover, the party system differs greatly, particularly in the United Kingdom, while in Germany and Spain there has been an increase in the number of parties in recent years, which may enter into the National Assembly in the future (see the following paragraphs). Given the differences and similarities, we intend to verify if and how the use or abuse of the secret ballot has affected the relationships between government and parliament. At the end of the paper, we

³ Article 49, Rules of Procedure of the German *Bundestag*.

⁴ Standing Order No. 1 B, Election of Speaker by secret ballot.

⁵ Spain, see Rules 85, 87, 169, 204, 205, 206, Standing Orders of the Congress of Deputies. The official translation of the Spanish “Reglamento del Congreso de los Diputados” is “Standing orders of the Congress of Deputies” (see the website of the Congreso del los Diputados, www.congreso.es). Therefore we will mention the Spanish Reglamento as “Standing Order”, although its structure is typical of a Rule of procedures.

will also focus on the rules of procedure of the European Parliament, which allow the secret ballot in many cases quite widely, just as in Italy.

2. OPEN OR SECRET BALLOT IN THE ITALIAN LEGAL ORDER: THE HISTORY OF THE RULES OF PROCEDURE

The Italian Constitution foresees few yet essential rules on the secret ballot. The Italian Constituent Assembly rejected the proposal for a general rule permitting a secret ballot for every final vote on a bill - as provided by Article 63 of the Albertine Statute, the previous constitutional Act -, because the majority thought that it was better to remit the matter to the rules of procedure. The rules of procedure state that roll call is required – therefore an open vote - only for the vote of confidence or of no confidence⁶, so that the members of parliament who support the Executive are recognisable and politically fully accountable. This kind of constitutional rule complies with few others for the rationalization of the Italian parliamentary form of government (Elia 1970). Constitutional rules require secret ballots for the election of “impartial constitutional appointments”:

- a) The President of the Republic⁷. It is important to note that the Italian President of the Republic has no legislative or executive powers but is responsible for upholding the Italian Constitution.
- b) Five constitutional judges⁸.

Apart from the above-mentioned constitutional rules, parliamentary assemblies have total freedom in choosing how to regulate the voting procedure. The secret vote has been the “rule” in the first phase of the history of the Italian constitution: a secret vote was required by the parliamentary rules of procedure in most cases (e.g.. the final vote on a bill is always carried out by secret ballot); the parliamentary rules of procedure also foresaw that a secret ballot may be requested at any time (Pezzini 1985). A rule of this kind aimed at protecting the constitutional prohibition of the imperative parliamentary mandate from the discipline of the party⁹.

According to a highly reputed doctrine (Curreri – Fusaro 2007), such broad permission for the secret ballot led to the evolution of the Italian parliamentary form of government towards an unbalanced system in favour of the two parliamentary assemblies with a weak executive. This assumption is demonstrated by putting these rules into practice: the secret vote was uncommon

⁶ Article 94.2 Const.

⁷ Article 83.3 Const.

⁸ See the Italian constitutional act on the functioning of the constitutional Court, Rule 3, Constitutional Law 22.11.1967, No. 2.

⁹ Article 67 Const.

until the fifth legislature (i.e. 1976)¹⁰ yet the situation started to change with the sixth legislature, as the majority party (the Christian Democrats) needed the support of the largest opposition party (the Communist Party) without allowing it to enter the Government for national and international reasons. The secret vote became essential for political projects of this kind since it enabled the opposition to endorse measures of the government and conceal such an alliance at the same time. However it was a doubled-edged sword: by secret vote it is easy for the opposition and/or part of the majority party to undermine the endurance of governments, which have never been as weak as it was during that period. This was the period of the Italian constitutional history known as the period of “parliamentary centrality” or “consociationalism” from another perspective (Gianniti - Lupo, 2013; Manzella, 1977). Only with the political growth of the Italian Socialist Party, led by Craxi since 1976, and its entry into the majority parties, did the need arise to enact institutional reforms that were capable of enhancing the role of the Government “in” Parliament (Traversa 2012; Giannetti 2015); such reforms were inspired by the majority principle, intended as a principle linked to the functioning of the form of government rather than merely a principle linked to political representation (Amato 2004).

Yet, none of the constitutional reform bills was approved. The only change was proposed by De Mita, the President of the Council of Ministers at that time and Craxi, who amended the parliamentary rules of procedure dated 1971, with the aim of changing the secret ballot into open voting in 1988. The amendment of this part of the parliamentary rules of procedure was so important that the Government’s programmatic speech before the Chambers referred to it and the Government even threatened to resign due to the obstacles that arose within Parliament (Moschella 2002). In the end a compromise was found and open voting became the rule.

However there are:

- a) cases in which the secret ballot is compulsory (votes on persons);
- b) cases in which a minority can “request” the secret ballot (which occurs in both chambers if the vote involves measures concerning fundamental rights that are protected in the first part of the Constitution or amendments to the parliamentary rules of procedure);
- c) cases in which open voting is compulsory (for financial matters and budgets).

In order to understand the parliamentary rules of procedure and their impact on the functioning of the Italian form of government it is essential to consider that there is “symmetric” bicameralism in Italy and that each parliamentary assembly enacts its own rules of procedures autonomously for this reason. This explains why the Rules of Procedure of the Chamber of Deputies¹¹ and the Rules

¹⁰ See the data mentioned by Curreri – Fusaro, 252 f.

¹¹ Article 49.

of the Senate¹² contain different provisions: e.g. the Deputies can request a secret ballot for electoral acts and acts concerning the constitutional organs of the State and the Regions while Senators are not permitted to do so. This is due to the different “traditions” of the Chamber and the Senate in their relationship with the Government. In the enforcement of various legal institutes the Chamber has always tried to be more autonomous than the Executive and therefore the Senate is much less likely to hold a secret ballot than the Chamber is.

3. THE PARLIAMENTARY EXECUTION OF THE RULE THAT ENHANCES THE “OPEN” BALLOT

The open voting system has certainly contributed to the transition to a majoritarian system, which was formally established during the 1993 referendum and the subsequent electoral acts inspired by the principle of majority rule. Nevertheless especially recently, the possibility of “requesting” a secret ballot on important issues regarding Government programs or resolutions concerning key politicians has enabled the opposition (and sometimes part of the majority) to threaten the stability of the Government. Moreover, political tension has been intensified by the wide margin of interpretation of the parliamentary rules of procedure in force. Some recent cases demonstrate this assertion. On the one hand, there have been moments of strong opposition between the judiciary and politicians in the history of the Italian constitution that are often caused by the involvement of some illustrious politicians in judicial investigations. In some cases the choice of vote – secret or open - is crucial for the outcome of the vote and for the consequences on the politicians and parties involved.

Legally, the question is: what is the meaning of votes “on persons”? In general, one can observe a progressive reduction in the use of secret ballots in resolutions “concerning people” or, as stated in the Rules of the Senate, “however concerning persons”.

Two cases are particularly interesting. Firstly in 1993, while Parliament was approving the constitutional reform of the rules of parliamentary immunity¹³, the two Chambers - with two opinions of Committees for the Regulation dated 6 May 1993 - overturned their earlier orientation and decided that the resolutions of the Chambers concerning the “authorizations” foreseen by Article 68 Const. should be expressed with an open ballot: they could not be classified as voting “on people” as they were resolutions concerning the prerogatives of the Assemblies to ensure their

¹² Article 113.

¹³ Article 68 Const.

independence from the other institutions. Since that episode, all decisions on immunity have been voted with an open ballot.

Secondly, there are various issues concerning the resolutions related to the so-called verification of credentials, i.e. the resolutions concerning the ineligibility and incompatibility of members of parliament¹⁴. In the Senate the usual practice was to vote for the verification of credentials “however concerning persons” and it was therefore carried out by secret ballot. While in the Chamber it is expressly stated that ballots regarding the verification of elections, and ineligibility and incompatibility issues are not votes on persons in compliance with Article 49 of the Regulation. Recently, issues of how to vote on a motion of removal have arisen following the case of Senator Berlusconi’s conviction in a criminal court that – according to the law - is assimilated to an occurred cause of “ineligibility”, which occurred during his/her office: is this still a hypothesis of resolution “on the person” or on the Chamber? After heated debate, on the 30th October 2014, the *Committee on the Rules of procedure* decided that this should be done with an open ballot, which led to a further reduction of secret ballots (Gigliotti 2014). The decision for the open ballot also sanctioned the opposition leader Berlusconi’s expulsion from the Parliament.

On the other hand, the Government chaired by Renzi has recently set out constitutional reforms and a new electoral act as its priorities. The projects implemented have sparked severe criticism even in areas of the parliamentary majority that have already requested a secret ballot, with the aim of hindering approval. In the Senate, the Government does not enjoy a large majority and it is there that the game of reform has been played. When the constitutional reform bill arrived in the Senate, there were many attempts to obtain the secret ballot at least on some of its items. The hope of the applicants was that representatives of the parties who had contributed to the drafting of the text would decide to amend the previous decisions made by the Constitutional Affairs committee protected by the secrecy of the vote. As already mentioned, unlike the Chamber of Deputy, according to the rules of the Senate, it is not possible to request a secret ballot on the electoral act and the laws relating to the constitutional organs of the State or bodies of the Region. However, a few MPs found that some provisions of the bill concern “fundamental rights” thus requiring a secret ballot even if they affect the functioning of the form of government. In particular, they feel that the decision allowing one or the other branch of Parliament to adopt laws on certain rights is a decision “relating to fundamental rights”. The President of the Senate expressed an opinion which was not coherent with the previous one and approved the secret vote with the government

¹⁴ Article 66 Const.

being defeated on one occasion¹⁵. Similarly, applicants obtained a secret ballot by underlining that certain provisions were “related to linguistic minorities” (Biondi 2014). A few months later in the Chamber, contrasting decisions were made, thus refusing the secret ballot for the same resolutions¹⁶.

4. SECRET VOTE OR QUESTION OF CONFIDENCE?

A different problem arose concerning the relationship between the voting system and the question of confidence (Curreri 2015). With the question of confidence, the Government is obliged to resign if the Chambers do not enact what is proposed. Therefore, since the Constitution requires the roll call on the motion of confidence or no confidence¹⁷, the rules of procedure foresee that, if the Government raises the question of confidence on a measure, it must be voted by roll call. This leads to the following question: if the MPs’ call for “the secret ballot”, can the government request a “question of confidence” with the aim of imposing open voting? This is a complex issue because it creates a real conflict between the Executive and Parliament.

The rules on the matter are only the following. The rules of procedure prohibit the question of confidence: a) in the cases in which the secret ballot is compulsory, at the Chamber¹⁸; b) in cases of votes on the rules of procedure and the internal organization of the Assembly, at the Senate¹⁹. Apart from these cases, the Presidents of Assembly have established that the open vote determined by the position of the question of confidence “prevails”, however if a secret ballot is “required”; the secret ballot “prevails” if it is “imposed” by the rules of procedure²⁰.

5. CONCLUSIONS ON THE ITALIAN CASE

In the first phase of the constitutional history of Italy, the secret ballot enabled MPs to escape from party discipline, as well as the channels of political accountability towards the electors. The 1988 reforms of the rules of procedure, which extended transparency and the possibility of knowing

¹⁵ See the session of Senate of July 31st 2014 under the Grasso presidency. More recently, during the session of Senate of October 6th 2015 - still under the Grasso presidency - , the Government risked being outvoted again.

¹⁶ Rules of Procedure Committee, meeting on 15th January 2015.

¹⁷ Article 94 Const.

¹⁸ Article 116.4.

¹⁹ Article 161.4.

²⁰ See the sessions of the Chamber of Deputies of August 1st 1990 under the Iotti presidency, on June 29th and November 24th 2004 under the Casini presidency, and on April 28th, 2015 under the Boldrini presidency.

voting, have certainly contributed to a greater accountability on the part of the representatives and to the strengthening of the Government “in” Parliament.

However there are still wide margins of secret ballot on “decisive” matters for pursuing the government program. It is important to note, in reference to the rules of the Chamber, that it is possible to request a secret ballot on the electoral law. Moreover, the possibility of requesting a secret ballot on resolutions concerning fundamental rights according to the rules of procedure of both the Chambers, which was once a hypothesis designed to protect the freedom of conscience of the individual can greatly hinder the approval of basic laws regarding civil rights (civil unions, living will, assisted reproduction, etc.).

Therefore it is necessary to review the rules of procedure. Firstly, it would be advisable to reduce the number of cases in which it is possible to request a secret ballot²¹. Secondly, it is essential to carry out a review aimed at dissolving some of the ambiguities concerning the rules of procedure in order to clarify when a secret ballot can be requested, and to define the prevalence of the protection of the individual decision of a member of Parliament with respect to the survival of the Government.

6. GERMANY: THE ELECTION OF THE CHANCELLOR

We will start by analysing the German model as the German party system is slightly more similar to the Italian party system than the others. In Germany, the Constitution does not foresee any specific rules of procedure for the secret ballot. The *Grundgesetz* only requires that the “*sittings of the Bundestag shall be public. On the motion of one tenth of its Members, or on the motion of the Federal Government, the public may be excluded by a two-third majority*”²². At the same time, the free parliamentary mandate in the *Bundestag* is a key point of the German Constitution²³.

In order to better understand the German model, it is important to note that the Weimar Constitution seemed to safeguard the freedom of the parliamentary mandate²⁴, although the execution was similar to an imperative mandate (Zanon 1991: 81 and 103; it is a well-known fact that in that period Hans Kelsen 1925, stated that he was in favour of the imperative mandate). This

²¹ Of course, the issue of transparency and accountability in Parliamentary Assemblies is very different from the issue of transparency in Legislative Committees. For an interesting analysis of the latter issue in Italy, USA and European Parliament, please see Fasone, Lupo 2015.

²² Article 42.

²³ Article 38, second period.

²⁴ Article 21, par. 2.

is an important element, which enables us to evaluate the rules of procedure concerning the secret ballot in force in the German *Bundestag*, which are as follows:

According to Article 49 of the *Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee* “Where a federal law or these Rules of Procedure provide for elections by the *Bundestag* using official ballot papers, the ballot shall be secret”. This occurs in few cases, which are foreseen by the *Rules of Procedure of the German Bundestag* and as we have just seen only for elections (while the secret ballot in the legislative activity is not allowed). The most important case of secret ballot is probably the election of the Chancellor and the successor of the Chancellor²⁵.

It is important to note that the nominations of Chancellor and of his/her successor are public and undersigned by one quarter of the Members of the *Bundestag* or by a parliamentary group representing at least one quarter of the Members of the *Bundestag*²⁶. This rule was probably made following the period of the Weimar Republic and seems to pose a limit to the risk of abuse typical of that period with the secret ballot. The origin of the German rule justifies why it differs from the rules of other European countries with a parliamentary form of government. As already mentioned, the Italian Constitution requires that the vote of confidence and the vote of no confidence are by roll call²⁷.

The Spanish Standing order²⁸ of the Congress²⁹ also requires that votes on the investiture of the Prime Minister, motions of censure and questions of confidence must in all cases be made public by roll call (see below). The Italian rules are aimed at the rationalisation of the parliamentary form of government, because they assure that the Government knows exactly which members of Parliament belong to the majority and which censure the Government (on the contrary because of the secret ballot the election of the President is a very destabilizing moment of Elia 1970, 660), and we can argue that the Spanish rules are aimed at the same goal.

Apart from this, all the other cases the rules permitting the secret ballot concern votes on persons³⁰. It is also important to note that there is a rule in Germany that allows one to request a voting which occurs through voting cards bearing the members’ names. It may be requested either by a parliamentary group or by five per cent of the Members of the *Bundestag*, who must be present before the vote is declared open (Article 52). Of course this rule cannot prevail over the

²⁵ Article 97.

²⁶ Article 4; rule 97.

²⁷ Article 94 It. Const.

²⁸ See footnote n. 5.

²⁹ Rule 85.

³⁰ President and Vice-presidents of the assembly, Article 2 of Procedure of the German *Bundestag*; Parliamentary Commissioner for the Armed Forces, Article 113 of Procedure of the German *Bundestag*.

other rules requiring a secret ballot.

In short, the German rules allow the secret ballot in few election cases, among which the election of the Chancellor. Therefore, it is interesting to determine whether the rules of procedure of the *Bundestag* have ever been questioned. There have seldom been proposals to extend the secret vote (up to the 70s; Grewe 1949; Klein 1976), and the secret ballot is adopted when electing not only organs aimed at safeguarding the Constitution but also political bodies, even if some cases show critical aspects. In fact, it was considered that an expansion of the secret ballots could have a negative impact on the accountability of parliamentarians before the electors and have overall negative effects (Buschmann - Ostendorf, 1977), which has been proved by some specific cases such as the election of the Saxon “President of the Ministers” in 1969/70 and the vote of confidence for the Chancellor Willy Brandt in 1972.

In the first case (known as the Niedesachsens case), the Free State of Saxony became ungovernable due to the misuse of the secret ballot for the vote of no confidence of the “President of the Ministers” (Zanon 1991: 152). It is worth mentioning that this occurred due to the weakness of the coalition between the SPD and CDU, the two parties united in a coalition in office since 1965. Originally, the SPD had three more deputies in the CDU. However in 1969, following an increase in CDU Parliamentarians and the defection of an SPD member of the assembly, the balance of power reversed and the CDU tried to negotiate new conditions of government. The solution to the “ungovernable” situation was only found with the dissolution of the electoral assembly (1970).

In the second case, it is said that the Stasi secret service bought votes in order to make the no confidence votes prevail against the Chancellor who was promoting a reconciliation process with East Germany. The occurrence of these sporadic, particularly problematic issues (only one of which occurred in the national representative chamber), led the German politicians to not intervene with changes to the *Bundestag Rules of procedure* that would extend the secret ballot, while the secret ballot for the election of the Chancellor remains.

Recently there was another episode that highlighted how the secret ballot may conceal defections from the political line of the majority party or coalition. This refers to the taking of office of the government, which is essential for the genesis of the relationship of confidence and more specifically to the election of the Chancellor. As we know, five parties have been represented in the *Bundestag* in Germany for many years: the CDU/CSU, SPD, Die Grünen, Die Linke, FDP. Since 2005, Chancellor Merkel has been the head of the German government and is supported by a coalition of the most important German parties (CDU/CSU and SPD). In 2009, following the elections, it happened that, at the time of election of Chancellor Merkel, 9 votes were missing,

compared with the forecasts based on the political parties that were part of the coalition supporting the same Merkel (Decker 2009).

It is important to underline that in 2013 the FDP failed to overcome the electoral threshold and Alternative for Germany and the Pirate party entered the electoral competition obtaining less than the minimum threshold of 5%, but reaching a significant number of votes. If the number of parties represented in the *Bundestag* increases and the distance between their policies widens, since the need for a coalition remains, one can foresee some problems in the secret ballot for the Chancellor as there may well be defections within the parties. In short, even if in Germany the secret ballot is only allowed in few cases, the secret vote can be misused. It is true that it seldom occurs, but nevertheless the secret ballot may interfere with the formation of the German government, which is similar to the Italian situation and directly linked with the vote of confidence.

7. THE UNITED KINGDOM: USING THE SECRET BALLOT TO ELECT A NEW SPEAKER

The United Kingdom is also an interesting model. In fact, due to the differences between the English and Italian electoral and party systems, this study could help us to understand whether the abuse of the secret ballot in Italy is inherent with the typical issues of Italian political fragmentation or if the risk of abuse is a characteristic of the form of parliamentary government as such. As is well known, in the United Kingdom some Standing orders now impose the secret ballot for the election of a new Speaker in the House of Commons, the election of the Deputy Speakers and the select committee chairs³¹. But in case the former speaker is willing to resume the office after the general election, the members of the House of Commons decide by recorded vote.

It is interesting to note a very recent case in which these rules were questioned. On 25th March 2015, the leader of the House of Commons, William Hague, proposed a motion to vote on whether the speaker of the House of Commons should be re-elected by secret ballot following the elections in May 2015. The proposal was presented only 24 hours before the deferral of the House of Commons. This proposal referred to a 2011 report from the Procedure Committee³². According to the report, the House of Commons should be consulted on whether the election of the Speaker should be carried out by secret or open ballot at the start of a new parliament. The main reasons

³¹ Standing Order No. 1B, Election of the Speaker by secret ballot; Standing order 2A, Election of the Deputy Speakers, Standing order 122A, election of select committees chairs.

³² 2010, elections for positions in the House, Fifth Report of Session 2010–12, HC 1573.

behind this report are probably that the members of Parliament may be subject to pressure from the former speaker and that it is a *super partes* position rather than a public office. Therefore, after some years from the study on the topic, a decision of this kind decision should have been made in a few hours. Many argue that the real intent of the motion was not to safeguard the freedom of conscience of the MPs, but to enhance the possibility of unseating the former Speaker, Bercow, and that the rules on the secret ballot were changed in order to influence the election of the Speaker in that particular case under the pressure of the Government (Russell 2015). After a very lively debate, which showed the misuse of the 2011 report, the motion was defeated by 228 votes to 202. The proposal was therefore rejected and Bercow was confirmed. However the secret ballot may not necessarily have led to the rejection of Bercow's candidacy. Nevertheless, it is an interesting case for the topic of the secret ballot.

Let us compare this case with the Italian situation since the leader of the majority party proposes the new secret ballot and therefore the case mirrors the Italian example (on the new Standing order that foresees the secret ballot in the House of Commons, please see May 2004; Leyland 2012). In this case, the ballot is addressed to a personal election and moreover to the election of an impartial charge. In Italy, this is the typical case of secret ballot. At the same time, in Italy the minority parties request the secret ballot, even if the “minority inside the majority” use it to defeat the “majority inside the majority”. In spite of these dissimilarities, it is possible to highlight the exploitation of the rules on the secret ballot through their reform in order to pilot a precise vote and to obtain a particular result in the English case as well.

8. SPAIN: THE SECRET BALLOT FOR THE VOTE ON THE ABORTION LAW

Now let us discuss the second group of countries, which allow a secret ballot at the request of certain minorities and therefore the Spanish model is in a sense more similar to the Italian one, because both permit the secret ballot during the legislative activity. In Spain, the Constitution does not foresee the publicity or secrecy of the votes in Congress (it acknowledges the general rule of publicity of the sessions, Rule 80). Yet according to Rule 85, V section of the Standing Orders of the Congress of Deputy, “*Voting shall be public by roll call or secret when so required by these Standing Orders, or when requested by two parliamentary groups or one-fifth of Members of the House or the committee’s members*”. Rule 87 also requires secrecy when the vote is held by ballot papers such as the vote on persons which occurs when the speaker is elected or other members of

the bureau of the Congress (Rule 37), indictment of members of the Government for treasonable offences or crimes against the security of the State (Rule 169), in the case of nomination of the four members of the General Council of the Judicial Power and the four members of the Constitutional Court (Rule 204), for other proposals for appointments requiring qualified majority (Rule 205). Rule 13 does not require the secret vote for the incrimination of the members of the Congress.

Although the Spanish Standing Order allows the secret ballot whenever a fraction of members of Congress requests it, it is only seldom used and recourse to the secret ballot is not linked to threat to confidence. In general, the secret ballot is rarely adopted by the Spanish Congress yet it was recently used to amend the abortion law, which is clearly linked with freedom of conscience (February 12th, 2014)³³. The Socialist Workers Party proposed a motion to block the bill criminalizing abortion (with few exceptions). This is an interesting case since it emphasizes the link between bills concerning political as well as ethical issues: in fact, the criminalization of abortion was considered an important part of the political campaign held by the Popular Party 2011. But the Popular Party remained coherent and the motion was rejected by 183 votes, with 151 in favour and 6 abstentions. However, in September 2014 the Prime Minister Rajoy announced the withdrawal of the bill under both internal and external pressure to the Popular Party; for this reason the Minister of Justice, Gallardon, resigned from his post, his seat in Parliament and as member of the Popular Party.

It is possible to argue that in his case the secret ballot was not decisive but worthless for this crucial decision.

The Spanish practice could be more similar to Italy, concerning the wide permission of the secret ballot, but it is not, and the secret ballot is not the subject of specific studies and it is interesting to note that some textbooks of parliamentary law refer to Italian legal scholars, who have had to deal with the application issues of the secret ballot (Santaolla Lopez 1990).

It is of course extremely important to take the structure of the Spanish parties into account. In Spain, there are two main parties, the Socialist Workers Party and the Popular Party, and their internal cohesion has always been very strong. Moreover, there is also a strong cohesion between the parties supporting the government (Cordero – Xavier 2015). Therefore, recourse to the secret ballot is not essential in the event of defection of party members during the vote for a particular bill. Nevertheless, due to the appearance of two new parties (Podemos and Ciudadanos) on the Spanish political scene, it will be very interesting to monitor the Spanish procedure following the

³³ There is no other evidence concerning the secret ballots in the Spanish Chamber, except the case mentioned here.

next Congress elections which are to be held in December 2015.

On examining this episode we reached the following conclusions. Despite the fact that the Italian case is emblematic and presents peculiar traits, even in other legal orders like the one in Spain, the possibility of holding a secret ballot, whenever foreseen, is a way for the opposition to embarrass the government. The secret ballot is sometimes requested to protect the freedom of the Parliamentary Assembly with respect to cases where its freedom of conscience is challenged. Even if the topic is a matter of conscience, by studying the Spanish system it was possible to verify whether the secret ballot is used mainly to relieve tensions between the government and its majority. This gives rise to a reflection on the need to maintain these disciplines as part of the parliamentary forms of government, in view of the role assigned to the Government in the economic and international context.

9. THE SECRET BALLOT IN THE EUROPEAN PARLIAMENT

In the light of the experience of the above-mentioned Member States, the paper aims at verifying whether broadening the functions of the European Parliament towards the Commission challenges effectiveness and leads to a reform of the European rules of procedure. We have seen how the possibility of using the secret ballot, in moments of tension and fragmentation within the parties, can be the subject of abuse. Minorities within the party or in the coalition majority use it in order to undermine government action.

Is this also the case in the European Parliament? Could using the secret ballot challenge the implementation of the policies of the European Commission? Before answering these questions, we must briefly consider the European Union's form of government, which is not strictly parliamentary and as known to be quite complex cannot be discussed in this paper (please see the recent contribution by R. Ibrido 2015 about the possibility to compare national and EU forms of government; on the progressive and anomalous empowerment of the European Parliament, see Fasone, Lupo 2012, 344 ff.).

Therefore the paper will only summarize the rules of procedure that have had the greatest impact on the acquisition of additional powers by the European Parliament regarding the supreme bodies of the Union and the elements that hinder rather than fully consolidate its position. It is a well-known fact that following the Lisbon Treaty, the President of the European Commission is elected and no longer only "approved" by Parliament; but although the above mentioned reform is undoubtedly an important step in the direction of a parliamentary form of government, the formula

that the European Council shall nominate the President of the Commission «taking into account the elections to the European Parliament»³⁴ is intentionally ambiguous” (Fabbrini 2015, 168 ff.; see also Fabbrini 2013, 1 ff.). At the same time, it is expected that the European Parliament may pass a motion of censure against the Commission, whose members are then required to step down, but the motion requires a two-thirds majority of the votes cast, representing a majority of Parliament’s component members³⁵. These are the rules that appear to prove the existence of something tending to a relationship of confidence between Parliament and Commission, but not equal to it (Fabbrini 2015, 168 ff.).

Please also note that the ordinary legislative procedure, regulated by art. 294 TFEU and renamed by the Lisbon Treaty (initially it was called the co-decision procedure), is the procedure which is used today in the majority of subjects (on the empowerment of the European Parliament, see Fasone, Lupo 2012). However the procedure is far from being suitable for the organizational model of the parliamentary form of government. The states have played a significant role to the detriment of the European Parliament, which gave signs of being pressurized by the national dictates, even on the occasion of the first election of the President of the Commission after the Treaty of Lisbon had come into force (Guastaferrò 2014; Conti 2014). This happened regardless of the fact that the European Parliament had decided with a specific resolution that each "family" of parties would have to indicate the name of the man who, in the case of victory, they would elect as the President of the Commission.

It is naturally essential to bear in mind other factors, which we will just mention as they are inherent to this study but are at the very centre of many legal researches. In the European Union’s form of government it is common knowledge that the bodies with power of political direction are not only the European Parliament and Commission as there is a third body with great power: the Council, which is composed of representatives from national governments who are involved from time to time³⁶ in making decisions that are highly influenced by national policies; the European Council, which is composed of the Heads of state or government of EU countries, the European Commission President, the High Representative for Foreign Affairs and Security Policy and has the task of defining the general political orientation and priorities of the European Union. Moreover, the European Union still lacks European parties comparable to those operating at national level, in fact there is a great number of fragmented parties within the EU (Gallagher, Laver, Maier 2011; Conti 2014; Allegri 2014). Finally, the European Commission has roles that

³⁴ Article 17, TEU.

³⁵ Article 234 TFEU.

³⁶ Article 16 TEU.

do not fully coincide with those typical of a government operating in a parliamentary form of government³⁷.

Therefore, the secret ballot in the European government has significant peculiarities with respect to what occurs at national level that must not be overlooked. In particular, in this situation it is essential to take account of the possible repercussions on the relationships between the members of parliament and party affiliation, between the members of parliament and the European Commission, and also between the European Parliament and the national party of reference. It may be for this reason that the European Parliament procedure permits the widespread use of the secret ballot. Nevertheless, the secret ballot is rarely used and always controversial, “*with some members accusing others of not having courage of their convictions*” (Corbett, Jacobs, Shackleton, 2011, which refer to three cases from 2002 to 2011).

It is interesting to now give a brief analysis of the rules of procedure of the European Parliament. In a sense, the rules of procedure of the European Parliament are similar to the Italian ones. Article 182 of the Rules of Procedure of the European Parliament (Voting by secret ballot) foresees:

- 1) that “*voting may also be by secret ballot if this is requested by at least one-fifth of the Members of Parliament. Such requests must be made before voting begins*”;
- 2) the secret ballot in case of appointments in general;

Furthermore, the secret ballot is specifically required to elect the President of the European Commission (Article 117) and for other internal and external appointments to Parliament, such as the President and Vice-presidents of Parliament or the European Ombudsman or a single Commissioner (Articles 15, 17, 121, 199, 204, 209, 221, ANNEX XI).

At the same time, the European Parliament procedure safeguards transparency, although this only occurs in important cases. The rules of the European Parliament procedure require a roll call for the election of the Commission (Article 118), for the censuring of the Commission (the open ballot may not be coherent with the two thirds majority; Article 119) and with the vote on final reports both in the assembly and the Committees (Article 180; Article 108). In addition, the roll call is mandatory “*if this is requested in writing by a political group or at least 40 Members the evening before the vote unless the President sets a different deadline*”.

The discrepancy between the secrecy of the election of the President of the Commission and the roll call for electing the Commission is quite interesting and is not unlike the German model. The difference may arise from the fact that the European Parliament has to be protected by the

³⁷ See Article 17, TEU.

European Council, which proposes the candidate (on the grounds of the election)³⁸ and in general by the pressure of the Member States. With the aim of justifying or not the secret ballot on this occasion, it is essential to understand whether the election of the EC President is equal to the vote of confidence and whether the European form of government became parliamentary following the Lisbon treaty.

An interesting case occurred in March 2013, when the proposal of the European multiannual financial framework (2014-2020) drafted by the European Council was discussed. In particular, a parliamentary resolution was voted that denounced the European Council, because it did not consider the priorities expressed by Parliament, degraded the role of the Parliament itself, enhanced by the new rules of the Treaty of Lisbon, and did not take the decisions underlying the resolution transparently. During the discussion, a proposal to vote on the resolution by secret ballot was sent to the President of the Parliament Schulz. The supporter is a member of the People's Party, Joseph Daul³⁹. The deputy states that initially the request for a secret ballot is made so that parliamentarians have the right to vote in secret, but then he withdrew it because "*Je veux savoir qui sont les anti-européens, je veux connaître leur nom, dans la perspective des élections prochaines, c'est tout*". The reasons for transparency clearly prevail during the debate. The leader of the group of conservatives (Callanan) said: "*that provision was never designed to allow Members to hide from the democratic scrutiny of their decisions on legislation or on the budget. If we are not accountable for our actions in one of the most important votes we will take, how can we claim any kind of democratic legitimacy in the future?*". The proposal for a secret ballot was rejected and in fact it is stated in the resolution "*in order to enable MEPs to be held accountable by their electors in the European Parliament elections in 2014, that any vote on the MFF should be held in an open and transparent manner*" which was approved by a large majority (506 votes to 161, with 23 abstentions), and it is stated that the Parliament believes "*given the crucial importance of any vote on the MFF*".

Once again, the peculiarities of the situation of the European Parliament emerge, where the pressure on MPs, directed to support decisions in a manner contrary to the party line, comes from both current-groups and from the outside and in particular from the party of the country of origin. Interestingly, in this case the European Parliament reacted by blocking the rules that allow a secret ballot, arguing that no act of Parliament, except for the vote of confidence to the executive, is more political than the budget and that transparency and accountability are considered to be essential to safeguard the role and power of the Parliament itself before an external power.

³⁸ Article 17, TEU.

³⁹ See the transcription of the meeting of 13 March 2013.

A reform of the parliamentary rules of procedure that eliminates the possibility of requesting a secret ballot on any act, except for the votes on persons, appears to be coherent with this interpretation and with the practice and function of the position covered by the European Parliament today in the form of the government of the European Union⁴⁰.

10. CONCLUSIONS

From this study some conclusions can be drawn on two fronts. On the one hand, one must think about the “lessons” that the Italian system could learn from the other systems under analysis. On the other hand we should evaluate whether the negative experience observed in the Italian system should be taken into consideration by other systems in view of the recent trend to increase the number of parties that are potentially able to be represented at national level (Spain and Germany). The Italian parliamentary rules of procedure are apparently unique in the systems under analysis. This is true both for the variety, the latitude and the complexity of the cases for which the secret ballot is foreseen or permitted in Italy and the fact that there is no equivalent in any of the other systems examined. But the most important feature of the Italian experience is the way in which these rules have been exploited and the political relevance of the secret ballot, which is determined by Italian parties’ fragmentation⁴¹. In this context, it was observed that in all the national legal systems under analysis, with a parliamentary form of government, the secret ballot has been manipulated; in Germany and Spain, these manipulations have undermined the confidence itself. However, this situation cannot be compared to the Italian state of affairs as for its political consistency. In Spain, where the rules of procedure could allow for a greater use of the secret ballot, internal party cohesion limits this phenomenon and the issues that characterize the Italian situation. In the United Kingdom there is the same situation in the sense that the government intended to take advantage of the secret ballot in order to undermine the autonomy of the House of Commons when electing the Speaker. Paradoxically, the secret ballot could, in the intentions of the members of the majority who are won over by the idea of supporting the government, favour the election of a Speaker who gives less importance to the rights of the opposition. More precisely, the government hoped that the secret ballot could have hidden the betrayals of the members of parliament towards the old Speaker, who was unloved by the majority for his impartiality.

⁴⁰ This proposal regards the Plenary Assembly and does not entail that “forced transparency” should prevail also in Legislative Committees of the European Parliament. See on the subject Fasone, Lupo 2015.

⁴¹ Therefore, Italian scholars devoted much more attention to this topic than the other countries analysed.

However in this case the secret ballot demonstrated its ability to impair the equilibrium that was evidently not entirely consolidated within the elective assembly.

Yet only in Italy, due to the fragmentation of parties and majority coalitions within them, the use of the secret ballot was and still is linked hand in glove with the trust between government and Parliament and the procedure is more problematic. There have already been some improvements following the reduction of cases of secret ballot with the 1988 reform. Considering the positive outcome of the 1988 reform, it would be highly desirable to reform other parliamentary rules of procedure that simplify and clarify the rules thus reducing the possibility of a secret ballot in a similar way to the German model. The results of this study may not be able to re-unite the parties, but may be able to shed light on individual responsibility.

However the appearance of new parties on the national political scene or the increasing phenomenon of the fragmentation within each party may cause applicative issues similar to those observed in Italy. The lack of attention that other political systems have demonstrated towards the secret ballot should therefore undergo a turnaround. The Italian model of parliamentary rules of procedure could be dangerous in other parliamentary systems as well. The lesson to be learned from the Italian experience is the clear focus of the potential link between the possibility of using secret voting and maintaining a relationship of confidence. The possibility of manipulating the secret ballot is particularly evident in Spain and it is therefore essential to monitor the situation in that system which has more lenient rules.

On the other hand it appears that the European Parliament Regulation contains rules on secret ballots similar to those in Italy, because the secret ballot is foreseen for elections and may be requested by a minority in other cases. However, it was observed that this rule may have been made due to the need to protect the free parliamentary mandate specifications of the European Union. In fact in the European Parliament, the individual MPs of the majority party at national level could be particularly influenced and vulnerable in the face of pressure from national governments. This may also be true, to a lesser extent, for the members of the European parliament who refer to minority parties in the Member State of origin, which may request them to vote in a certain way in order to safeguard their country. Using the secret ballot could therefore paradoxically reinforce the autonomy of European parties. In this case, the secret ballot should indeed safeguard the MP from external pressure. However, is it unthinkable that European parties can acquire greater autonomy thanks to the secret ballot? Is this not in actual fact a double-edged sword that impedes MPS from being accountable towards their electorate and their party?

From this point of view, the problems that occurred in the Italian experience demonstrate that secret voting should be viewed with caution, because of the negative impact that it may have on

the relationship of confidence with the government and consequently with the European Union, concerning the relationship between the European Commission and Parliament, whose cooperation is essential for an efficient functioning of the form of government and the growth of the democracy level within the institutions of the European Union.

On the other hand the possibility of secret ballot has already placed the European Parliament in the position to use the secret ballot vote for "the most political aspect" of all, that is the budget, in which political accountability and transparency should be paramount (please bear in mind that in Italy the hypothesis of a secret ballot is expressly excluded, since votes on the budget are essential for the implementation of the government program).

Before this episode, it is important to note that the protection of transparency in the European Parliament could favour the identity of European parties in the long run. It is no coincidence that as they were clear the hidden goals behind the secret ballot did not make use of it.

Moreover, today the need to protect the freedom of parliamentary mandate may be considered outdated or recessionary, considering that the European Parliament is linked to the Commission by something similar to a relationship of confidence, which should no longer tolerate the avoidance of political responsibility accountability when approving the EU budget (but on the matter see Goldoni 2015, 15 f.). More generally, the tendency of the Lisbon Treaty to strengthen the European Parliament and involve it more and more in the exercise of legislative power provides a push in this direction. In view of the process in which the European Parliament holds ever increasing power, and considering that the European Parliament is linked to the Commission in a relationship very similar to a relationship of confidence and that European parties are not very cohesive due to the pressures coming from the national parties of origin and the great number of parties (Conti 2014; Allegri 2014), we should review the very permissive rules of the European Parliament with the aim of determining the abuse of the secret ballot at its roots. It is therefore essential to reconsider the Regulations of the European Parliament. Due to the need for accountability and transparency, at least concerning certain decisions such as those relating to budget, the regulations should be enhanced for the voters and parties of origin by limiting or better defining the voting procedures.

BIBLIOGRAPHIC REFERENCES

- ALLEGRI M. R. (2013), *I partiti politici a livello europeo fra autonomia politica e dipendenza dai partiti nazionali*”, in federalismi.it, n. 22/2013
- AMATO, G. (1994), *Il dilemma del principio maggioritario*, in *Quaderni costituzionali*, p. 171 ff.
- BIONDI, F. (2014), *Il voto segreto sulle riforme costituzionali al Senato: una questione “antica”*, in *Quaderni costituzionali*, p. 909 - 911.
- BUSCHMANN, H. R. - OSTENDORF, H. (1977), *Mehr geheime Abstimmung im Parlament – Postulat oder Relikt*, in *Zeitschrift für Rechtspolitik*, vol. 10, n. 7, pp. 153 – 156.
- COMMITTEE ON CONSTITUTIONAL AFFAIRS OF THE EUROPEAN PARLIAMENT, *Working Document on voting by secret ballot in the Members States Parliament*, 5.4.2005, PE 355.714v01-00.
- CONTI, G. (2014), *L’elezione del Parlamento Europeo del 2014 e il processo di consolidamento dei partiti politici europei*, in *Osservatorio costituzionale 2014*.
- CORBETT, R., JACOBS, F., SHACKLETON, M. (2011), *The European Parliament*, John Harper Publishing: London.
- CORDERO, G., COLLER, X. (2015), *Cohesion and Candidate Selection in Parliamentary Groups*, in *Parliamentary Affaires*, vol. 68, n. 3, pp. 592-615.
- CURRERI, S. & FUSARO, C. (2007), *Voto palese, voto segreto e forma di governo in trasformazione*, in *Il Filangeri – Quaderno 2007*, pp. 243-285.
- CURRERI, S. (2015), *Questione di fiducia e legge elettorale*, in *Quaderni costituzionali*, pp. 752 – 754.
- CRISAFULLI, V. (1967), *Partiti, Parlamento, Governo*, in *La funzionalità dei partiti nello stato democratico*, Milano, in *La nuova Europa*, pp. 93-119.
- DECKER, F. (2009), *Schafft die Geheimwahl ab!*, in *Berliner Republik*, vol. 11, n. 6.
- ELIA, L. (1970), *Governo (forme di)*, in *Enciclopedia del Diritto*, Milano: Giuffrè.
- FABBRINI, S. (2013), *The Parliamentary election of the Commission President: constraints on the Parliamentarization of the European Union*, SOG-Working Paper 9, October 2013.
- FABBRINI, S. (2015), *Which European Union? Europe after the Euro Crisis*, Cambridge University Press: Cambridge, pp. 170 ff.
- FASONE C. (2014), *Il Parlamento europeo nell’Unione asimmetrica*, in A. Manzella – N. Lupo (edited by), *Il sistema parlamentare euro-nazionale. Lezioni*, Giappichelli: Torino, pp. 51 ff.
- FASONE, C., LUPO, N. (2012), *Il Parlamento europeo alla luce delle novità introdotte nel Trattato di Lisbona e nel suo regolamento interno*, in *Studi sull’integrazione europea*, 7, 2012, pp. 329 ff.
- FASONE, C., LUPO, N. (2015), *Transparency vs. Informality in Legislative Committees: Comparing the US House of Representatives, the Italian Chamber of Deputies and the European Parliament*, in *The Journal of Legislative Studies*, vol. 21, No. 3, pp. 342–359.
- FUSARO, C. (1986), *Parlamenti a confronto*, in *Il Parlamento* vol. 11/12, p. 12.
- GALLAGHER M., LAVER M., MAIR P. (2011), *Representative Government in Modern Europe*, London: McGraw-Hill.
- GIANNITI L., LUPO N. (2013), *Corso di diritto parlamentare*, Bologna: Il Mulino.
- GIANNETTI, D. (2015), *Secret voting in the Italian Parliament*, in Elster, J. (edited by), *Secrecy and publicity in votes and debates*, Cambridge: Cambridge University Press, pp. 108 -130.
- GIGLIOTTI, A. (2014), *Voto palese e voto segreto nella “verifica dei poteri”*, in *Quaderni costituzionali*, pp. 871 ff.
- GOLDONI, M. (2015), *The Representativeness of EU Law-Making: Lessons from the Spitzenkandidaten Experiment*, in *EUI Working Paper MWP 2015/18*, pp. 10 ff.
- Guastaferrò, B. (2014), *La prima volta del Presidente della Commissione “eletto” dal Parlamento europeo. Riflessioni sui limiti del mimetismo istituzionale*, in www.forumcostituzionale.it
- HELLER, W. B., MERSHON, C. (2008), *Dealing in Discipline: Party Switching and Legislative Voting in the Italian Chamber of Deputies, 1988-2000*, in *American Journal of Political Science*, Oct. 2008, vol. 52, n. 4., pp. 910-925.
- HINE, D. (1993), *Governing Italy: the politics of bargained pluralism*, Oxford: Oxford University Press.
- HOUSE OF COMMONS, SELECT COMMITTEE ON PROCEDURE, *Second Report, Election of a Speaker: Report, Proceedings of the Committee, Minutes of Evidence and Appendices*, HC 40, 15 February 2001.
- KELSEN, H. (1925), *Das Problem des parlamentarismus*, Wien/Leipzig: W. Braumüller, 1925.

- IBRIDO, R. (2015), *Oltre le “forme di governo”. appunti in tema di “assetti di organizzazione costituzionale” dell’unione europea*, in *Rivista AIC*, 1/2015.
- LEYLAND, P. (2012), *The Constitution of United Kingdom, A Contextual Analysis (Constitutional Systems of the World)*, Oxford; Portland, Or.: Hart Publishing.
- May, E., (2004), *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, Trowbridge: LexisNexis, pp. 280 – 284.
- MOSCHELLA, G. (1992), *La riforma del voto segreto*, Torino: Giappichelli.
- MANZELLA A. (1977), *L’esperienza parlamentare repubblicana*, in “*Scritti in onore di Costantino Mortati. Aspetti e tendenze del diritto costituzionale*”, Giuffrè: Milano, 1977.
- PEZZINI, B. (1985), *La questione del voto segreto in Parlamento*, in *Diritto e società*, pp. 1 ff.
- RUSSELL, M., PAUN, A. (2007), *International lessons for enhancing the autonomy of the House of Commons*, London: The Constitution Unit, Department of Political Science, University College London, pp. 26-28.
- RUSSELL, M., (2011) ‘*Never Allow a Crisis Go To Waste*’: *The Wright Committee Reforms to Strengthen the House of Commons*, in *Parliamentary Affairs* vol. 64, n. 4, pp. 612-633.
- RUSSELL, M., (2015), *The Speaker election row tells us two important things about parliament*, <http://blogs.lse.ac.uk>.
- SANTAOLALLA LOPEZ, F. (1990), *Derecho parlamentario español*, Madrid: Espasa Calpe.
- THIELE, C. (2008), *Regeln und Verfahren der Entscheidungsfindung innerhalb Staaten und Staatsverbindung*, Berlin, pp. 481 – 520.
- TRAVERSA, S. (2012), *La “governabilità craxiana”: riforma dei regolamenti parlamentari e abolizione del voto segreto*, in D’Atena A. (edited by), *Studi in onore di P. Grossi*, Milano: Giuffrè, pp. 759 ff.
- ZANON, N., (1991), *Il libero mandato parlamentare: saggio critico sull’articolo 67 della Costituzione*, Milano: Giuffrè.

The LUISS School of Government (SoG) is a graduate school training high-level public and private officials to handle political and government decision-making processes. It is committed to provide theoretical and hands-on skills of good government to the future heads of the legislative, governmental and administrative institutions, industry, special-interest associations, non-governmental groups, political parties, consultancy firms, public policy research institutions, foundations and public affairs institutions.

The SoG provides its students with the skills needed to respond to current and future public policy challenges. While public policy was enclosed within the state throughout most of the last century, the same thing cannot be said for the new century. Public policy is now actively conducted outside and beyond the state. Not only in Europe but also around the world, states do not have total control over those public political processes that influence their decisions. While markets are Europeanised and globalised, the same cannot be said for the state.

The educational contents of the SoG reflect the need to grasp this evolving scenario since it combines the theoretical aspects of political studies (such as political science, international relations, economics, law, history, sociology, organisation and management) with the practical components of government (such as those connected with the analysis and evaluation of public policies, public opinion, interests' representation, advocacy and organizational leadership).

For more information about the LUISS School of Government and its academic and research activities visit. www.sog.luiss.it

SUBMISSION GUIDELINES

LUISS School of Government welcomes unsolicited working papers in English and Italian from interested scholars and practitioners. Papers are submitted to anonymous peer review. Manuscripts can be submitted by sending them at sog@luiss.it. Authors should prepare complete text and a separate second document with information identifying the author. Papers should be between 8,000 and 12,000 words (excluding notes and references). All working papers are expected to begin with an indented and italicised abstract of 150 words or less, which should summarise the main arguments and conclusions of the article. Manuscripts should be single spaced, 11 point font, and in Times New Roman.

Details of the author's institutional affiliation, full postal and email addresses and other contact information must be included on a separate cover sheet. Any acknowledgements should be included on the cover sheet as should a note of the exact length of the article. A short biography of up to 75 words should also be submitted.

All diagrams, charts and graphs should be referred to as figures and consecutively numbered. Tables should be kept to a minimum and contain only essential data. Each figure and table must be given an Arabic numeral, followed by a heading, and be referred to in the text. Tables should be placed at the end of the file and prepared using tabs. Any diagrams or maps should be supplied separately in uncompressed .TIF or .JPEG formats in individual files. These should be prepared in black and white. Tints should be avoided, use open patterns instead. If maps and diagrams cannot be prepared electronically, they should be presented on good quality white paper. If mathematics are included, 1/2 is preferred.

It is the author's responsibility to obtain permission for any copyrighted material included in the article. Confirmation of Workinthis should be included on a separate sheet included with the file.

SOG WORKING PAPER SERIES

The LUISS School of Government aims to produce cutting-edge work in a wide range of fields and disciplines through publications, seminars, workshops, conferences that enhance intellectual discourse and debate. Research is carried out using comparative approaches to explore different areas, many of them with a specifically European perspective. The aim of this research activities is to find solutions to complex, real-world problems using an interdisciplinary approach. LUISS School of Government encourages its academic and student community to reach their full potential in research and professional development, enhancing career development with clear performance standards and high-quality. Through this strong focus on high research quality, LUISS School of Government aims to understanding and influencing the external research and policy agenda.

This working paper series is one of the main avenues for the communication of these research findings and opens with these contributions.

WP #1 – Sergio FABBRINI, *Intergovernmentalism and Its Outcomes: the Implications of the Euro Crisis on the European Union* SOG-Working Paper 1, January 2013.

WP #2 - Barbara GUASTAFERRO, *Reframing Subsidiarity Inquiry from an “EU value-added” to an “EU non encroachment” test? Some Insights from National Parliaments’ Reasoned Opinions.* SOG-Working Paper 2, February 2013.

WP #3 - Karolina BOROŃSKA-HRYNIEWIECKA, *Regions and subsidiarity after Lisbon: overcoming the ‘regional blindness’?*, SOG-Working Paper 3, March 2013.

WP #4 - Cristina FASONE, *Competing concepts in the early warning mechanism*, SOG-Working Paper 4, March 2013.

WP #5 - Katarzyna GRANAT, *Institutional Design of the Member States for the Ex Post Subsidiarity Scrutiny*, SOG-Working Paper 5, March 2013.

WP #6 – Cecilia Emma SOTTILOTTA, *Political Risk: Concepts, Definitions, Challenges*, SOG-Working Paper 6, April 2013.

WP #7 – Gabriele MAESTRI, *Il voto libero: la necessità di regole chiare e trasparenti sul procedimento preparatorio e di un contenzioso che decida rapidamente*, SOG-Working Paper 7, July 2013.

WP #8 – Arlo POLETTI & Dirl DE BIÈVRE, *Rule enforcement and cooperation in the WTO: legal vulnerability, issue characteristics, and negotiation strategies in the DOHA round.*, SOG-

Working Paper 8, September 2013.

WP #9 - Sergio FABBRINI, *The Parliamentary election of the Commission President: constraints on the Parlamentarization of the European Union*, SOG-Working Paper 9, October 2013.

WP #10 - Lorenzo DONATELLI, *La disciplina delle procedure negoziali informali nel "triangolo decisionale" unionale: dagli accordi interistituzionali alla riforma dell'articolo 70 del regolamento del Parlamento Europeo*, SOG Working Paper 10, October 2013.

WP #11 - Mattia GUIDI & Yannis KARAGIANNIS, *The Eurozone crisis, decentralized bargaining and the theory of EU institutions*, SOG Working Paper 11, November 2013.

WP #12 - Carlo CERUTTI, *Political Representation in the European Parliament: a Reform Proposal*, SOG Working Papers 12, January 2014.

WP #13 – Dessislava CHERNEVA-MOLLOVA, *The EP's rules of procedure and their implications for the Eu institutional balance*, SOG Working Papers 13, February 2014.

WP #14 - Luca BARTOLUCCI, *The European Parliament and the 'opinions' of national parliaments*, SOG Working Papers 14, February 2014.

WP #15 - Leonardo MORLINO, *Transitions to Democracy. What We Know and What We Should Know*, SOG Working Papers 15, April 2014.

WP #16 - Romano FERRARI ZUMBINI, *Overcoming overlappings (in altre parole...oltre 'questa' Europa)*, SOG Working Papers 16, April 2014.

WP #17 - Leonardo MORLINO, *How to assess democracy in Latin America?*, SOG Working Papers 17, April 2014.

WP #18 - Nicola LUPO & Giovanni PICCIRILLI, *Some effects of European Courts on national sources of law: the evolutions of legality in the Italian legal order*, SOG Working Papers 18, May 2014.

WP #19 – Cristina FASONE, *National Parliaments under "external" fiscal constraints. The case of Italy, Portugal, and Spain facing the Eurozone crisis*, SOG Working Papers 19, June 2014.

WP #20 - Elena GRIGLIO & Nicola LUPO, *Towards an asymmetric European Union, without an asymmetric European Parliament*, SOG Working Papers 20, June 2014.

WP #21 - Ian COOPER, *Parliamentary oversight of the EU after the crisis: on the creation of the "Article 13" interparliamentary conference*, SOG Working Papers 21, August 2014.

WP #22 – Anne PINTZ, *National Parliaments overcoming collective action problems inherent in the early warning mechanism: the cases of Monti II and EPPO*, SOG Working Papers 22, October 2014.

WP #23 – Valentina Rita SCOTTI, *Religious freedom in Turkey: foreign models and national identity*, SOG Working Papers 23, January 2015.

WP #24 – Davide A. CAPUANO, *Overcoming overlappings in the European Union (entia non sunt multiplicanda praeter necessitatem ...)*, SOG Working Papers 24, February 2015.

WP #25 – Francesco ALICINO, *The road to equality. Same-sex relationships within the european context: the case of Italy*, SOG Working Papers, July 2015.

WP #26 – Maria ROMANIELLO, *Assessing upper chambers' role in the EU decision-making process*, SOG Working Papers 26, August 2015.

WP #27 – Ugljesa ZVEKIC, Giorgio SIRTORI, Alessandro SABBINI and Alessandro DOWLING, *United Nations against corruption in post-conflict societies*, SOG Working Papers 27, September 2015.

WP #28 – Matteo BONELLI, *Safeguarding values in the European Union: the European Parliament, article 7 and Hungary*, SOG Working Papers 28, October 2015.

WP #29 - Ludovica BENEDEZIONE & Valentina Rita SCOTTI, *Equally victims? Post-revolutionary Tunisia and transitional justice*, SOG Working Papers 29, November 2015.

WP #30 - Marie-Cécile Cadilhac, *The TTIP negotiation process: a turning point in the understanding of the European Parliament's role in the procedure for concluding EU External Agreements?*, SOG Workin Papers 30, December 2015.

