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## **Post-electoral shifting in members' political affiliation and its repercussions on the composition of national delegations**

### **Report<sup>1</sup>**

Committee on Rules of Procedure, Immunities and Institutional Affairs  
Rapporteur: Mr Jordi Xuclà, Spain, Alliance of Liberals and Democrats for Europe

### *Summary*

Changes in political affiliation by a parliamentarian – or a group of parliamentarians – in the course of their national electoral mandates – also known as “political nomadism” – are a common phenomenon in many national parliaments in Europe. However, its breadth remains underestimated and its impact on the operation of the parliamentary institutions has been little studied.

In the case of members of the Parliamentary Assembly, changes in party affiliation during a parliament may influence the balance of political representation within the national delegations to the Assembly and constitute a ground for challenging credentials.

Having regard to the great differences in positions regarding floor-crossing and in the regulatory approach thereon, the present report does not seek to determine whether or not switching political affiliation is a right of parliamentarians – which is inherent in the nature of their mandates – or needs to be authorised or, on the contrary, prohibited. However, in order to promote the principles of transparency, integrity, accountability and trust on which the contract between elected members and voters is based, greater account shall be taken of the phenomenon of switches in political affiliation and their consequences in national parliaments. The same approach shall be followed as regards the Parliamentary Assembly's political groups.

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<sup>1</sup> Reference to Committee: Doc. 13125, Reference 3944 of 22 April 2014

## **A. Draft resolution<sup>2</sup>**

1. Changes in political affiliation by a parliamentarian – or a group of parliamentarians – in the course of their national electoral mandates are a common phenomenon in many Council of Europe member States.

2. In Council of Europe member States, imperative mandates are prohibited and parliamentarians are free to exercise their mandates as they see fit. Nevertheless, the mandates are moral contracts between voters and the parliamentarians, based on the principles, values and opinions defended in their election manifestos. Switches in political affiliation after elections therefore raise questions and criticisms – in particular in ethical and moral terms – relating to political opportunism, potential threats to public confidence in the political class and the internal discipline of political parties.

3. Apart from these general criticisms, parliamentarians switching from one group to another after elections or withdrawing from a group to sit as independents has an impact on the operation of the parliamentary institutions concerned. In the case of members of the Parliamentary Assembly, switching of this kind may influence the balance of political representation within the national delegations to the Assembly.

4. The Parliamentary Assembly notes that there are great differences at national level in positions regarding floor-crossing and in the regulations that apply in national parliaments; it notes that in the vast majority of states – and in the Assembly itself – there are no legal regulations which specifically cover switches in political allegiance in the course of mandates. It therefore considers that it is not necessary to determine whether or not switching political affiliation should be formally authorised or, on the contrary, prohibited.

5. The Assembly points out that, under Rule 6.2 of its Rules of Procedure, the fair representation of the political forces in national parliaments is a requirement for the validity of the national delegations to the Assembly. In accordance with their internal regulations or established practice, however, many national parliaments appoint delegations to inter-parliamentary assemblies for the full length of the parliament. Changes which occur in the composition of political groups during a parliament, including changes in party affiliation, may affect the representativeness of national delegations and constitute a ground for challenging credentials.

6. With a view to increasing the transparency and effectiveness of its procedures, the Assembly therefore calls on national parliaments to take due account of switches in political affiliation by their members which may alter the representativeness of their delegations:

6.1. before the opening of each annual session of the Assembly, by submitting credentials which take account of any changes in the composition of political groups and the balance of forces between the majority and the opposition; by indicating the regulations and the procedure which apply to the appointment of delegations and the distribution of seats within delegations, and the references and dates of the appointment decisions; and by supplying up-to-date statistics on the breakdown of the political groups represented in parliament;

6.2. in the course of a session, by notifying the Assembly presidency of any switches in political affiliation by their members.

7. The Assembly notes that there is a general rule in all member States that parliamentarians who switch political allegiance during the life of a parliament retain their seats. The Assembly nevertheless believes that account must be taken of the principles of transparency, integrity, accountability and trust on which the contract between elected members and voters is based.

8. The Assembly therefore invites national parliaments to:

8.1. look in depth at switching of political affiliation by members so as to determine whether measures should, or should not, be taken to restrict switching between political groups, by prohibiting switches to another parliamentary group – for the remainder of a parliament or for a certain period – and requiring the members concerned to sit as non-registered/independents or depriving them of certain participation and representation rights;

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<sup>2</sup> Draft resolution adopted unanimously by the committee on 12 December 2014

8.2. revise their internal regulations if they do not already include provisions providing for or prohibiting switching of political affiliation, as well as the requirements for, and consequences of, switches in political affiliation and the suspension, expulsion or resignation of members from their political groups;

8.3. take switches in political affiliation during the life of a parliament into account in the composition of parliamentary bodies and in their chairs; determine or clarify the rules and procedures governing the consequences for political groups and their members, in particular in terms of participation and representation in parliamentary bodies, of changes in their composition in the course of a year; and resolve any dispute between groups by means of dialogue.

8.4. promote specific rules of conduct concerning members' integrity, if appropriate by supplementing existing laws or codes of conduct or ethics, so as to prevent and punish certain forms of corruption such as vote buying or selling or bribing members to change groups;

8.5. draw up a record of switches in affiliation by their members, in particular indicating the reasons.

9. In terms of taking account in the Parliamentary Assembly's political groups of the consequences of switches in political affiliation within national delegations, and also with a view to fostering greater transparency in affiliation, the Assembly invites the political groups in the Assembly to:

9.1. supplement their statutes or rules of procedure, as appropriate:

9.1.1. so that they set out more clearly the values and principles on which the group is based and the objectives it pursues;

9.1.2. and include provisions specifying the procedure and requirements for, and consequences of, switches in political affiliation and the suspension, expulsion or resignation of members;

9.2. draw up a record of switches in affiliation by their members at national level and in the Assembly;

9.3. invite affiliated national political parties to promote in their internal regulations specific rules laying down the requirements for and consequences of switches in political affiliation and the suspension, expulsion or resignation of members.

10. In order to promote its recommendations, the Assembly considers that it shall conduct an active and constructive dialogue with the national parliaments of the Council of Europe member States, as well as parliaments enjoying observer and partner for democracy status with the Assembly, whose regulations do not adequately address issues raised by post-electoral changes in political affiliation of their members.

## B. Explanatory memorandum by Mr Xuclà, rapporteur

### 1. Introduction

1. The phenomenon of post-electoral “floor-crossing” consists of a change at national level of political affiliation by a parliamentarian or a group of parliamentarians in the course of their electoral mandates. It is also known as “political nomadism” and is common in many parliaments in Council of Europe member States.

2. Party switching is not a recent phenomenon; it has been a traditional feature of politics in many countries across Europe and beyond for several decades. Even where switching is infrequent, the phenomenon is not entirely absent and its occurrence varies over time. However, despite its scale across the continents,<sup>3</sup> the issue has received limited attention, especially from political and parliamentary players, so that the breadth and depth of its significance remain underestimated.<sup>4</sup>

3. When it occurs, party switching raises criticisms and questions – in particular in ethical and moral terms – relating to political opportunism, threats to public confidence in the political class and the internal discipline of political parties. In a 2009 report, the Council of Europe European Commission for Democracy through Law (Venice Commission) nevertheless underlined the importance of the independence of parliamentarians’ mandates, freedom of opinion and the freedom not to be subject to an “imperative mandate”.<sup>5</sup> These same principles are included in the standards promoted by the OSCE,<sup>6</sup> pursuant to the Copenhagen criteria.

4. Apart from these general criticisms, the post-electoral switching of members of the Parliamentary Assembly from one political group to another, or their decision to leave a party to sit as independent members, may have implications for the balance of political forces’ representation within national delegations to the Assembly.

5. The Assembly’s Rules of Procedure stipulate that national parliaments shall appoint their representatives and substitutes from among their members so as to ensure a fair representation of the political parties or groups represented therein. In this connection, post-electoral switching in political affiliation may also affect the composition of national delegations to the Parliamentary Assembly and may lead to grounds for challenging a delegation’s credentials. The motion for a resolution referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs for a report therefore suggests analysing the reasons that lead to “floor-crossing” and its implications for the functioning of parliaments in order to “complete the criteria on a fair representation of political parties and groups within a national delegation laid down by the Rules of Procedure”.<sup>7</sup>

6. In order to obtain first-hand information on existing provisions and statistics on this phenomenon, a questionnaire was sent in November 2013 to national parliaments’ correspondents through the European Centre for Parliamentary Research and Documentation (ECPRD).<sup>8</sup> Key questions focused on constitutional, legal and regulatory provisions regulating post-electoral party switching, internal control mechanisms, safeguards in place at parliamentary level and recent examples of members who had changed political affiliation during their mandates and the reaction of public opinion.

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<sup>3</sup> In Australia, from 1950 to 2004, 245 members of parliament crossed the floor, representing 24% of all members of parliament who served in this period. Senator Reg Wright, who served from 1950 to 1978, crossed the floor 150 times!

<sup>4</sup> Reference may be made here to the report, “*Nomadisme ou transhumance politique post-électorale et discipline de parti dans l’espace francophone*” by the Parliamentary Assembly of la Francophonie (APF) (2012), which includes information on parliamentary nomadism in 23 French-speaking parliaments which are members of the APF.

<sup>5</sup> Report of the European Commission for Democracy through Law (Venice Commission) on the imperative mandate and similar practices, Study No. 488 / 2008, CDL-AD(2009)027.

<sup>6</sup> See the OSCE/ODIHR document “Existing commitments for democratic elections in OSCE participating States”, 2003, pursuant to the commitment set out in paragraph 7.9 of the Document of the Conference on the Human Dimension of the CSCE (Copenhagen Document, 1990), which requires states to ensure that “candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”. It follows that any grounds other than incompatibility of the mandate with another duty are inadmissible, in particular when they undermine political freedom or freedom of opinion: this applies if a party seeks to withdraw the mandate of one of its members who has left the party after being elected or if a state grants parties the right to control the mandates won in their name.

<sup>7</sup> See Doc. 13125, motion for a resolution on the post-electoral shifting in members’ political affiliation and its repercussion on the composition of a national delegation, tabled by Mr Gross and others, 31 January 2013.

<sup>8</sup> Request No. 2417 of 8 November 2013

7. Forty replies from thirty-six national parliaments were received to the questionnaire.<sup>9</sup> The comprehensive and detailed information obtained gives a precise overview of how the issue is handled internally, new trends and the main challenges to be addressed. It will also enable the committee to discuss whether the rules for the fair representation of political parties and groups within national delegations are still relevant.

## **2. The floor-crossing phenomenon in Council of Europe member States**

8. Examples of floor-crossing are frequent in Council of Europe member States. High percentages of switches are often registered in politically unstable countries, such as Greece and Italy, where between 1996 and spring 2000 one in four deputies switched parties at least once;<sup>10</sup> similarly, in younger democracies like Hungary, Romania and the Czech Republic. Among recent examples, in Romania during the current term, 35 MPs have crossed the floor (i.e. 8%), while in the Czech Republic 12% of the total number, namely 24 MPs, switched political affiliation during the 2010-2013 parliament.<sup>11</sup> In Ukraine, the phenomenon took on such proportions – 60% of MPs apparently switched parties at least once between the third and fourth parliaments (1998-2002 and 2002-2006),<sup>12</sup> with some even changing group around ten times – that the parliament took action to end the practice.

9. On the contrary, in more established democracies, like Norway and Sweden, these episodes are very rare. In Norway, the last two terms saw no switches, while in Sweden during the current term only one case has been reported.

10. It could be argued that the degree of political stability or instability and strength or weakness of the institutions make a state more or less prone to floor-crossing. These elements may also explain why a country that was immune to the phenomenon registers higher rates of floor-crossing following a period of internal disorder and political volatility. This is particularly true of Greece, where switching parties did not used to be very common, but as a result of current tensions related to the economic crisis, there have been an unusually large number of cases: since the beginning of the current term (started in 2012), 15 MPs have already crossed the floor. However, the phenomenon is unlikely to be confined only to new or weakly institutionalised democracies, as many other aspects influence the choice.

## **3. Reasons for switching**

11. On the basis of the information collected, ideological and electoral considerations, political ambition and vote buying are all factors that explain legislators' decisions to switch parties. In other terms, the choice is generally the result of strategic interactions between the MPs, party leaders, the various political parties, legislative and party systems and also the electorate.<sup>13</sup>

12. When members leave or are expelled from their political party, they have three choices: registering as independent/non-registered members, joining another political group or setting up a new one. Naturally, regardless of what parliamentary rules do or do not allow in this respect (see Chapter 4), the reasons behind the switch in affiliation will influence the choice.

### *3.1. Ideological reasons*

13. In the majority of cases, party switching occurs because of disagreement with the party's line, principles, values or political programme, or with the party leader. When parliamentary rules of procedure so allow, floor-crossing members are then more likely to set up their own political groups or join another group to which they are ideologically closer.

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<sup>9</sup> Andorra, Austria, Belgium (Chamber of Representatives and Senate), Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic (Chamber of Deputies), Denmark, Estonia, Finland, France (National Assembly), Georgia, Germany (Bundestag and Bundesrat), Greece, Hungary, Ireland, Israel, Italy (Senate), Lithuania, Luxembourg, Montenegro, Netherlands (Tweede Kamer), Norway, Poland (Sejm and Senate), Portugal, Romania (Chamber of Deputies), Serbia, Slovak Republic, Slovenia (National Assembly), Spain (Congress of Deputies), Sweden, Switzerland, Ukraine, United Kingdom (House of Commons and House of Lords).

<sup>10</sup> Dealing in Discipline: Party Switching and Legislative Voting in the Italian Chamber of Deputies, 1988-2000, William B. Heller, Carol Mershon, American Journal of Political Science, 2008.

<sup>11</sup> Information dating from January 2014.

<sup>12</sup> A law was passed in 2004 to amend the constitution and introduce a provision on withdrawing the mandates of MPs who defected from the political party or group for which they were elected; the Constitutional Court declared the law unconstitutional in 2010.

<sup>13</sup> Political Parties and Legislative Party Switching, William B. Heller and Carol Mershon, Palgrave MacMillan, 2009.

14. The following examples illustrate the point:

– In 2008, José Paulo de Carvalho, member of the Portuguese CDS-PP parliamentary group (Social Democratic Centre-Popular Party), left his group, claiming that this was due to profound differences in terms of the party's overall political strategy and its ability to react to the pressing demands of society. In accordance with the rules of procedure of the Assembly of the Republic, he then sat as a non-registered member.

– In 2013, three members of the Andorran parliament left the Social Democrat group and joined the "mixed parliamentary group" (i.e. the non-registered), in accordance with the rules of procedure, while forming a new political party.

– In the Czech Republic, in 2012, following a corruption scandal involving the leader of the Public Affairs Party and its withdrawal from the ruling coalition, 14 members left the parliamentary group and some set up a new party supporting the ruling majority (while keeping their seats in the chamber as independents, in accordance with the rules of procedure).

– In Canada, the seven cases of floor-crossing during the current parliament have been the result of ideological differences or a reaction to a party leader involved in a scandal.

– In France, the November 2012 split in the UMP group in the National Assembly following the battle for the chairmanship of the group – 70 members set up a new group, "Rassemblement-UMP", (but joined the UMP group again in January 2013) – is a special case which probably was more a matter of differences between individuals than ideological issues.

### 3.2. *Expulsion*

15. Apart from legislators' explicit decisions to change parties, floor-crossing may also result from a party's decision to expel one or more members. This particular aspect concerns internal party regulations and disciplinary mechanisms, which are triggered in the case of disorderly behaviour, violation of party discipline, disagreement with the party line/the party leader or votes against the party line.

16. On 2 June 2011, the Cypriot parliamentary group of the Democratic Party (DIKO), which was then part of the government coalition, decided to expel a member, Mr Zacharias Koulias. This was a result of Mr Koulias' refusal to vote in favour of the re-election of DIKO's party leader to the Presidency of the House. This decision outraged the party, not least because Koulias' decision not to support his party's candidature was pivotal in terms of the election of the President of the House and ultimately in transforming the balance of power within it.

17. In Finland, during the current term, the Left Alliance, which is part of the government coalition, expelled two representatives, Mr Markus Mustajärvi and Mr Jyrki Yrttiaho, who then formed their own Left Faction Parliamentary Group. The two members were expelled after they voted against the election of the Prime Minister and sided with the opposition when a vote of confidence in the government was held in connection with the debate on the government programme.

18. The United Kingdom offers several examples of members of the House of Commons being expelled from their parliamentary parties; during the current parliament, this has been the case in connection with the parliamentary expenses scandal (for instance, a member suspended by Labour in 2010 became an independent, then joined the parliamentary party again in 2012 before being expelled again a few months later in the face of new charges) and members facing criminal prosecutions.

19. These cases pose a series of questions on the balance between MPs' free electoral mandates and subordination to the party line. How do political parties control the exercise of political mandates? To what extent should this control be considered legitimate?

20. Regulations depend on the party and vary from one country to another. Almost no Council of Europe member States penalise the departure of MPs from political parties or voting against party lines with the loss of parliamentary seats. Party discipline must not undermine the principle of the free exercise of mandates... and, conversely, few parliamentarians are willing to commit political suicide. Nonetheless, many parties have rules on suspension and expulsion. It may, however, be desirable to keep these means aimed at protecting the party system within certain limits (see also Chapter 5).

### 3.3. *Political strategy, personal gain, bribery*

21. Opportunism is the last explanation for party switching and involves personal ambitions and goals. In this case, the switch in political affiliation is simply the outcome of a strategy, which may either be the calculation of a personal benefit related to ambition and greater political influence or the result of corruption, i.e. financial or other benefits received in exchange for switching.

22. Decisions to leave a party and join another may be part of an overall strategy for political “survival”, especially when elections are approaching. For instance, ahead of the 2014 parliamentary elections in Moldova, in successive waves members of the Party of Communists of the Republic of Moldova joined the Party of Socialists of the Republic of Moldova, or the newly created party “Patria”. In younger democracies where the parliamentary system is still weak and the party system volatile, party loyalty may give way to personal interest. Members of weakened political parties will be tempted to join the ruling majority. Following the parliamentary elections in Georgia in 2012, for instance, nine members of the United National Movement defected and joined the rival Georgian Dream bloc (while one Georgian Dream member became an independent).

23. Party corruption is likely to be a major problem in developing and transitional countries where political institutions tend to be weak. However, in a broader context, political corruption also has the effect of undermining political trust and threatening the viability of democracy.

24. One example was the accusation against the former Italian Prime Minister, Silvio Berlusconi, that he had bribed ex-Senator Sergio de Gregorio. Mr Berlusconi was charged with paying 3 million euros in 2007 to Sergio de Gregorio, who was then a member of Antonio di Pietro’s centre-left party, “Italia dei Valori”, to persuade him to switch parties. Mr De Gregorio’s switch to the centre right helped to topple the government of Romani Prodi, prompting fresh elections that Mr Berlusconi won. Sergio de Gregorio helped investigators and was given a 20-month prison sentence, while the proceedings against Mr Berlusconi are still in progress.

## 4. **Effects of floor-crossing**

### 4.1. *On the situation and status of the parliamentarians concerned*

25. Unlike what happens in other countries outside Europe,<sup>14</sup> there is no possibility to revoke an MP’s mandate in the course of a legislature if they cross the floor in any Council of Europe member State.<sup>15</sup> Nonetheless, many countries have introduced measures aimed at discouraging the practice and reducing party fragmentation. For instance, there is a requirement in several states for MPs to sit in the political group or party for which they stood for election (Austria, Belgium, Czech Republic, Estonia, *inter alia*).

26. An exception to this rule is **Portugal**, where, according to Article 8 of the Statute governing members of the Assembly of the Republic, members who register as members of a political party other than the one for which they stood for election lose their seats. Although the constitutional rules are not explicit here, Portuguese expert opinion holds that members who join a different parliamentary group also lose their seats, even if they do not register as members of a party other than that for which they stood for election. Nonetheless, and in order to guarantee members and the parliament itself essential freedom, members who voluntarily or by the choice of their party stop belonging to a political group and do not join any others do not lose their seat, but become “unaffiliated”.

27. In **Estonia**, regulations on the subject are quite similar: when MPs leave their faction, they are not officially able to join another political faction, as the rules of procedure provide that members of the Riigikogu who are elected from the list of candidates of a single political party may form only one faction. This means that, in the case of floor-crossing, the members concerned become independents.

28. When members leave their political party, they could theoretically have the choice either to register as independent members, join another political group which best reflects their beliefs, or set up a new one. However, the rules vary significantly from country to country; some, for example, do not allow changes in political groups during electoral terms and floor-crossers are therefore forced to exercise their mandates as

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<sup>14</sup> The constitution provides that members lose their seats in the event of resignation, floor-crossing or expulsion from a political party or group in Kyrgyzstan, Nepal, Namibia, Nigeria, Zimbabwe, Sierra Leone, Belize, the Seychelles and Singapore. Anti-defection legislation exists in a larger number of countries, for instance, India, Pakistan and Bangladesh, as well as in several African countries such as the Republic of South Africa, Uganda, Ghana, Malawi and Cameroon.

<sup>15</sup> In Serbia, until 2003, the electoral law provided that MPs’ mandates would be revoked if they resigned or were expelled from their parties. See also footnote 10.

non-registered/independent members (for instance, in Belgium, Bosnia and Herzegovina, Bulgaria and Estonia). Cases of members joining the independent faction are thus very common.

29. Parliamentary procedure may also allow the establishment of new parliamentary groups in the course of a legislature. One example is the group, “Together for Serbia”, set up in 2012 by a breakaway faction of seven members of the Serbian Democratic Party. The only limitation which the Serbian rules of procedure stipulate is that parliamentary groups should consist of at least five members.

30. However, the establishment of new groups may be subject to restrictions, with a minimum number of members normally being required (sometimes higher than the number required for groups established at the start of a legislature, for instance in the Czech Republic; however, this requirement does not apply in Finland, where groups may consist of single members). In Austria, groups may only be set up within 30 days of the start of a parliamentary term.

31. New groups may also result from the merger or splitting of existing parties. In the former case, two or more groups merge into a new entity; in the latter, the breakup of one group results in the establishment of two or more separate groups.

32. Anti-defection legislation in Europe has introduced measures penalising the decision to change political affiliation during electoral terms. As a rule, these measures are as follows:

- the obligation on the members concerned to register as independent or non-registered members (for example, in Belgium, Bosnia and Herzegovina, Bulgaria and Estonia),
- the loss of certain participation and representation rights and privileges (allowances and representation on committees) and reduced powers.

33. As a general rule, strict anti-defection laws are rare in established democracies, but common in most recent ones, where they are often defended as temporary measures to consolidate a chaotic party system.<sup>16</sup>

34. In **Ireland**, a member who leaves a parliamentary party and becomes independent usually has reduced speaking time in the Dáil during both government and private members’ business. They also no longer have access to the resources of the parliamentary party like party research and the press office.

35. In **Sweden**, members leaving a group during the electoral term can neither form a new group nor join another one during the same electoral term. Nothing prevents them, however, from forming an informal party group, which neither has formal status nor receives any financial contributions or other benefits.

36. In most parliaments, members who switch groups lose all their positions in parliamentary bodies (committees, delegations to international organisations, etc.) which they held in respect of their former political groups (Austria, Bulgaria), either automatically or by decision of the assembly/chamber or committees (Croatia). In some cases, they automatically lose their membership of committees (Andorra, France). In some other cases, however, they may keep their committee membership but lose their posts as committee chairs or vice-chairs (Canada).

37. Although these measures are usually automatic, they sometimes require a formal decision by the parliament concerned. To give an example, MP Josip Salapic (Croatia), who in 2012 left the Croatian Democratic Union and on the same day joined the Croatian Democratic Alliance of Slavonia and Baranja, lost all his representative functions, whereas another MP, Mirela Holy, who left the Social Democratic Party in 2013, was able to retain her functions, initially as an independent and then as a member of the Sustainable Development group.

38. Some other parliaments have more flexible regulations: in Denmark, MPs keep their committee seats but lose all posts as chairs or vice-chairs.

39. Floor-crossers are not only confronted with internal restrictions, but also have to face the electorate. The public usually regards floor-crossing unfavourably, and public frustration with switching is most evident when MPs switch for personal gain. In contrast, cases of floor-crossing motivated by ideological differences are more acceptable. In any case, floor-crossers face problems of loss of credibility and have a higher risk of not being re-elected.

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<sup>16</sup> Laws against Party Switching, Defecting, or Floor-Crossing in National Parliaments, Northwestern University, Kenneth Janda, 2009

#### 4.2. *On the situation of political groups*

40. Political groups affected by defections may be confronted with several difficulties depending on the scale of the phenomenon. The main effects include a risk of under-representation or disappearance, a reduction in financial contributions and allowances and the loss of political influence in parliamentary bodies.

41. Under-representation affects those groups which, under rules of procedure, are required to have a minimum number of members to exist. In **Belgium**, political groups in the Chamber must include at least five members. If political groups can no longer remain in existence, their members may either join another group or continue sitting as independents. In the latter case, they face further restrictions, such as withdrawal of voting rights in the parliamentary committees.

42. In **Andorra**, too, political groups whose membership falls below the limit are automatically dissolved and their members join the “mixed parliamentary group” (i.e. the non-registered).

43. The **Czech Republic** has also introduced a limitation on the formation of new political groups in the course of a legislature: groups must comprise at least ten members, as against the three needed at the beginning of a term. Further restrictions provide that newly established political groups are not entitled to be proportionally represented in the organs of the Chamber (unless the plenary decides otherwise in a vote) and that public contributions will continue to be paid to the political party on whose electoral list the MPs had been elected.

#### 4.3. *On the composition of parliamentary bodies*

44. Party-switching also affects parliamentary bodies such as committees, the membership of which is usually proportionate to the size of groups, while positions at the head of these bodies are also allocated on the basis of group membership.

45. With regard to seats in parliamentary bodies (committees, delegations to international organisations, etc.) allocated on the basis of proportional representation of groups:

- either the political group which has lost one or more members following a switch retains its seats, as the distribution cannot be changed in the course of a legislature (Belgium, except if a group ceases to exist or splits into two);
- or the membership of the bodies is altered to take account of the change in affiliation of one or more of the members, either automatically (Bulgaria) or by decision of the assembly/chamber or committees (Croatia, Cyprus, Czech Republic, Estonia and Finland);
- or the membership of the bodies is not altered, except for committee chairs and vice-chairs.

46. In **Cyprus**, when a political shift occurs, the Committee of Selection of the House of Representatives decides what changes in the membership of committees will be carried through. Members’ participation in committees does not usually change in the event of a political shift; however, should the member have been designated for an official function by the party, e.g. chairmanship of a committee, parliamentary spokesman, participation in international organisations as part of a parliamentary delegation, then appointments are made by the party and a new member is appointed.

47. The Rules of Procedure of the Chamber of Deputies of **Luxembourg** state that the Chamber, on a proposal by the Conference of Presidents, decides upon the number of seats to allocate to each political group and independent members in each committee considered individually, on a proportional basis. Changes in political affiliation are relatively rare in the country and there are no written provisions regulating the reorganisation of parliamentary committees. These issues are accordingly examined on a case-by-case basis by the Conference of Presidents. Recently, it was decided that MPs would retain the seats in the committees in which they previously sat.

48. In the **Slovak Republic**, MPs changing political affiliation usually retain their seats. Nonetheless, four committees – the Mandate and Immunity Committee, the Committee on the Incompatibility of Functions, the Committee on European Affairs and the Constitutional and Legal Affairs Committee – must necessarily be constituted on the basis of the principle of proportionality and members must give up their membership in the event of party switching.

#### 4.4. *On overall institutional functioning*

49. Party-switching by a large number of MPs may produce consequences on an entirely different scale, possibly even plunging a state into political instability. For example, in February 2014, the Romanian National Liberal Party decided to leave the coalition government and join the opposition. This decision marked the official breakup of the coalition Social Liberal Union, consisting of the PNL and the Social Democratic Party, PSD. Romania's Social Democrat Prime Minister, Victor Ponta, managed nonetheless to secure the continuation of the left-wing government thanks to the participation of the UDMR, the ethnic-Hungarian party.

50. In Albania, in 2013, the defection of a single member of the opposition to the ruling parliamentary and government coalition gave the latter the 84 seats needed to pass laws requiring a qualified majority of three-fifths of MPs.

### 5. **Addressing the problem: different national approaches**

51. It follows from the above that major differences in terms of party-switching regulations exist across Europe. It should be stressed that in some countries, generally stable democracies, floor-crossing is not perceived as a problem, due to the limited extent of the phenomenon; while, in others, the practice is taken more seriously, as the number of defections is so high that it threatens institutional stability and political representation. It is possible to classify European countries according to the level of regulation that exists in this area. Three systems have been identified here: strictly regulated, moderately regulated and under-regulated.

#### 5.1. *Strictly regulated systems*

52. This category comprises countries whose legislation comprehensively regulates floor-crossing, whose provisions are usually the strictest, and where party-switching normally occurs very frequently. The best examples are Austria, Hungary and Spain.

53. Historically, in **Austria**, floor-crossing of single members happened occasionally, but the situation changed drastically in 2012 with the foundation of a new party and the resignation of members of the National Council from their parliamentary group in order to join it and form a new political group. Following this episode, in June 2013 the National Council changed the rules of procedure so that it is now only possible to form a parliamentary group within 30 days following the constituent sitting of the newly elected chamber. Furthermore, MPs who ran on the same list are allowed to form only one single parliamentary group. Possibilities for post-electoral switching by MPs are now more limited, as they may now only either become MPs without party or group affiliation or join existing groups. The rules of procedure also stipulate that parliamentary groups decide upon the appointments for committees and committee functions; accordingly, when members leave their parliamentary groups, they are immediately recalled from all their memberships and functions by their former groups.

54. Existing provisions in **Hungary** require members who leave or are expelled by their groups to be regarded as independents; they may join other factions only after a period of six months after leaving or being expelled. As regards participation in parliamentary bodies, the National Assembly has the right during its constituent sitting to decide which committees should operate and how many vice-chairs and members they should have, on the basis of consensus among the different factions. The number of members delegated to standing committees by each group must be proportionate to the number of members of the factions themselves. In the case of political shifts, it is up to the faction concerned to decide whether or not the MPs can stay in the committees.

55. In **Spain**, switching from one parliamentary group to another is accepted, but, except for the mixed group, it must take place within the first five days of each session. If the membership of a parliamentary group is reduced during the life of the parliament to less than one-half of the minimum required for formation, the group is dissolved and its members automatically become members of the mixed group. As regards members' participation in committees, political switching also entails the loss of certain privileges, such as the position of chair, vice-chair or spokesperson in committees and other parliamentary bodies.

#### 5.2. *Moderately regulated systems*

56. The moderately regulated category includes all systems that have some regulations on the issue, but mostly rely on non-binding mechanisms or case-by-case discussion.

57. In **Denmark**, switching does not have any consequences for a member's participation in committees during the sessional year in question, as committees are set up at the opening of each year. However, members who change political affiliation often lose their functions as chairs or vice-chairs. Ordinary members of committee who change their party affiliation will only take part in the committees again if the party they now represent is big enough to secure representation in the committees.

58. Apart from the four committees which are necessarily established on the basis of the principle of proportionality and where members must give up their seats in the case of switches, in the **Slovak Republic** floor-crossers retain their membership in parliamentary organs. Nonetheless, a different situation applies if the members concerned are committee chairs or vice-chairs. In such cases, MPs do not lose their seats *ex lege*, but under a political practice whereby the parliament calls a vote to recall them from their functions and elect new chairs.

59. In **Croatia**, when an MP switches party, the Committee on Elections, Appointments and Administration, after in-depth discussion, prepares and submits to the assembly a draft decision on the recall of the member from the working body of the parliament and the appointment of a new member. The draft decision is then discussed in plenary session, which ultimately decides whether the MP can remain a member of the same working bodies.

### 5.3. *Under-regulated systems*

60. Finally, under-regulated systems could be defined as those where disputes are largely solved through conciliation and dialogue, instead of norms and regulations. This situation is usually found in countries almost immune to the phenomenon.

61. Appointments in the parliament in **Sweden** are valid for the whole electoral term. Therefore, members who leave their party group are entitled to keep seats they already hold in committees. However, independent members usually leave their committee seats of their own free will in order not to upset the political balance in committee work.

62. In **Norway**, an MP is entitled to change political party during an electoral term, but this is not specifically regulated in any provision, as it is regarded as a consequence of the fact that the mandate belongs to the MP personally. Nor is the situation specifically regulated in terms of retention of seats in parliamentary committees, which is often addressed by means of negotiation with the political party.

63. Almost the same practice exists in **Finland**, where the Constitution does not include provisions on the rearrangement of organs during electoral terms. Decisions are entirely up to the plenary session and the Speaker's Council, which may make proposals in this regard. In practice, however, such matters are generally resolved through negotiations, thus avoiding the need to reappoint the body.

## 6. **Implications for the Parliamentary Assembly of floor-crossing by its members**

### 6.1. *Existing regulatory provisions*

64. The Rules of Procedure of the Parliamentary Assembly do not explicitly regulate changes in political affiliation by its members during their electoral mandates. They do, however, refer to fair political representation as a requirement for the validity of the credentials presented by national delegations, which can ultimately lead to a ground for challenging credentials.

65. Rule 6.2.a states that "*national delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments*". At the same time, under Rule 7, national delegations' credentials can be challenged in the Assembly on the specific ground that the composition of the delegations concerned fails to meet the requirement of fair representation. In this connection, in 2011, the Assembly adopted principles for assessing the concept of fair representation of political parties and groups in national delegations to the Parliamentary Assembly (Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly).<sup>17</sup>

66. Nevertheless, these provisions do not cover the issue of political switching within national delegations.

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<sup>17</sup> In this respect, parliaments are asked to take decisions on appointments which are "fair, that is, honest, impartial, just, equitable, non-discriminatory".

## 6.2. *Impact of switching national political affiliation on the operation of the Parliamentary Assembly*

67. National delegations' credentials are ratified at the opening of the annual session for the duration of that session. When a delegation member changes political group in his or her national parliament in the course of a year, it is not unusual for the delegation to seek to alter its composition, generally at the request of the relevant member's former parliamentary group, which wishes to fill the seat with another of its members. Yet both the Statute of the Council of Europe (Article 25) and the Assembly's Rules of Procedure (Rule 11.4) make provision for new appointments in the course of a year solely to fill seats left vacant through death or resignation.

68. The above applied to Mr Michel Hunault (France, EDG) in 2010, when he left his national political party but remained in the delegation although the party wished to replace him. There is also the example of Mr Yusuf Ziya Irbeç, member of the Turkish delegation, who resigned from his political group in March 2011 but remained a member of the delegation until the Assembly ratified a new delegation in October 2011, notwithstanding the provisions in the rules of procedure of the Turkish Grand National Assembly which provide that resignation from a group ipso facto entails resignation from the delegations to which the member belongs.

69. In January 2012, the still unratified credentials of the parliamentary delegation of Ukraine were challenged, in accordance with Rule 7, on the ground that the composition of the delegation did not satisfy the criterion of fair representation of the political parties or groups. Indeed, the Committee on Rules of Procedure noted that the list of members of the Ukrainian delegation contained misleading information as regards the political affiliation of three members, listed as members of the Yuliya Tymoshenko Bloc, but who actually sat in the parliament under other political labels.<sup>18</sup> The Committee on Rules of Procedure noted that the legal uncertainty hanging over the functioning of the Ukrainian parliamentary institutions – groups of parliamentarians leaving one bloc for another; the creation in 2010 and 2011 of two groups of deputies; parliamentarians having become independents more or less unofficially joining forces with the majority – and the difficulty in obtaining reliable data as to the exact number of parliamentarians affiliated to political opposition formations, did not enable the committee to assess to what extent the requirements laid down in the Assembly's Rules of Procedure as regards fair political representation had been met.

## 6.3. *Impact of switching Parliamentary Assembly political groups on the operation of the Assembly*

70. It is not unusual for members of the Parliamentary Assembly to switch groups. For instance, all the French members from the UMP left the EDG group en masse in January 2004 and joined the EPP group. More recently, in June/July 2014, the EDG group (now EC) decided to expel its Russian members and two Italian members belonging to the Lega Nord – all of whom joined the non-registered.

71. Of course, while the voluntary departure or the expulsion of an individual member does not in itself hinder the smooth operation of the Assembly (for instance, Mr Remigijus Ačas, member of the Lithuanian delegation was a member of the EDG from 2008 to 2011 and then of the ALDE in 2013-2014), the mass switching of members from one Assembly group to another raises very specific questions, in particular because the number of members in a group determines the budgetary allocation it receives and the distribution of posts in the committee bureaux, the number of seats to be filled in three committees (Monitoring Committee, Committee on Rules of Procedure, Immunities and Institutional Affairs and Committee on the Election of Judges to the European Court of Human Rights) and members' places on the list of speakers for debates in plenary.

72. In July 2014, the rapporteur sent a questionnaire to the Assembly's political groups in order to assess more accurately the scale of political switching within national delegations and its impact on political groups and ascertain the internal rules which groups may apply in the relevant cases.

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<sup>18</sup> See the Committee Opinion to the President of the Parliamentary Assembly (AS/Pro (2012) 03 def). The three members concerned had been excluded in 2010 from the BYUT-Batkivshchynyna faction on the grounds of their collaboration with the pro-presidential majority; two of them were not members of any group or faction and one had joined the Party of Regions, belonging to the parliamentary majority. On the basis of the criteria laid down in Assembly Resolution 1798 (2011) on fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly, the Rules Committee concluded that the credentials of the Ukrainian parliamentary delegation should nevertheless be ratified.

73. The replies provided by the group secretariats show that there are no specific formal rules on floor-crossing. In general terms, the rules of procedure and statutes of the Assembly's political groups focus more on the requirements for membership than on suspension or expulsion from the groups.<sup>19</sup> In addition, the groups do not keep records or statistics on the matter. Decisions by members to switch political affiliation, for ideological or other reasons – whether this involves resignation from a member national party or joining a different Assembly political group – or changes in a national party's membership of a political group are considered by the groups on a case-by-case basis.

## **7. Conclusions and proposals**

74. The Committee on Rules of Procedure has carefully analysed the phenomenon of floor-crossing in national parliaments across Europe, the scale of political switching within the national delegations in the Assembly, its possible impact on the composition of the national delegations and the provisions governing the operation of the Assembly in this respect.

75. The committee notes that there are great differences at national level in positions regarding floor-crossing – and still more in the existing regulations, which are complex and vary greatly from country to country. This report does not therefore seek to determine whether or not switching political affiliation is a right of parliamentarians – which is inherent in the nature of their mandates – or needs to be authorised or, on the contrary, prohibited. However, it does seek to ensure that greater account is taken of the phenomenon in national parliaments and also in the Parliamentary Assembly's political groups.

76. National parliaments are therefore invited to:

- look in depth at switching of political affiliation by members so as to determine whether measures should be taken to restrict switching between political groups;
- revise their internal regulations if they do not already include provisions providing for or prohibiting switching of political affiliation, as well as the requirements for and consequences thereof;
- take switches in political affiliation during the life of a parliament into account in the composition of parliamentary bodies and in their chairs; determine or clarify the rules and procedures governing the consequences for political groups and their members, in particular in terms of participation and representation in parliamentary bodies, of changes in their composition in the course of a year;
- promote specific rules of conduct concerning members' integrity so as to prevent and punish certain forms of corruption such as vote buying or selling or bribing members to change groups;
- draw up a record of switches in affiliation by their members.

77. In terms of taking account in the Parliamentary Assembly's political groups of the consequences of switches in political affiliation, the committee believes it would be desirable for the political groups to implement the following proposals:

- supplement their statutes or rules of procedure, as appropriate, so that they set out more clearly the values and principles on which the group is based and the objectives it pursues, and include provisions specifying the procedure and requirements for, and consequences of, switches in political affiliation and the suspension, expulsion or resignation of members;
- draw up a record of switches in affiliation by their members at national level and in the Assembly;
- invite affiliated national political parties to promote in their internal regulations specific rules laying down the requirements for and consequences of switches in political affiliation and the suspension, expulsion or resignation of members.

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<sup>19</sup> Only the statute of the Socialist Group in the Assembly provides that members of the group may be temporarily suspended if their conduct "repeatedly violates the standards decided by the Socialist Group" and that they may be excluded if they "[continue] to behave in a manner contrary to the standards of conduct decided by the Group". The rules of procedure of the EPP/CD, ALDE and EDG (now EC) groups (the latter is under revision) do not include any provisions governing suspension, expulsion or resignation from the groups, either in terms of procedure, conditions or consequences. Lastly, it should be noted that the UEL group does not have formal rules of procedure.

78. The committee further believes that it is not necessary to amend the Assembly's Rules of Procedure or draw up a specific complementary text to address the issue in the Assembly. However, national parliaments are asked to take due account of switches in political affiliation by their members which may alter the representativeness of their delegations:

- before the opening of each annual session of the Assembly, by submitting credentials which take account of any changes in the composition of political groups and the balance of forces between the majority and the opposition;
- in the course of a session, by notifying the Assembly presidency of any switches in political affiliation by their members.