

# Transnational Lists in European Parliamentary Elections – a Fresh Proposal for European Democracy

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## A. Introduction

A new buzzword is conquering the European debate. An idea frequently propagated by many European and national politicians. Be it the French President Emmanuel Macron,<sup>1</sup> former Commission President Jean Claude Juncker<sup>2</sup> or the current head of the Brussels executive Ursula von der Leyen.<sup>3</sup> Be it from northern European leaders such as Irish Taoiseach Leo Varadkar who in 2018 expressed his hopes that people in cafés in Naples and restaurants in Galway could talk about the same election choices.<sup>4</sup> Or from the governments of southern Member States such as Cyprus, Spain, France, Greece, Italy, Malta and Portugal which in January 2018 declared that this idea could strengthen the democratic dimension of the Union.<sup>5</sup> However, this idea of transnational lists is neither new, nor uncontroversial.

1 President Macron called during his Sorbonne speech on 26/09/2017 for half of the European Parliament to be elected on transnational lists.

2 Jean Claude Juncker told the European Parliament in September 2016 that transnational lists would bring “democracy and clarity”, *Duff*, European Policy Centre Discussion Paper, 13/02/2018, p. 4.

3 In her political guidelines for the next European Commission Ursula von der Leyen has affirmed that Commission “should also address the issue of transnational lists in the European elections, as a complementary tool of European democracy”, A Union that strives for more, p. 20.

4 *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 2.

5 *Ibid*.

In political terms, it means that European Political Parties nominate their Europe-wide candidates on their respective transnational lists, who then compete with each other during elections to the European Parliament. But what are “transnational lists” really? What would be their disadvantages and benefits? If envisaged, what could be a proper legal basis for them and how could they be introduced? In order to respond to these questions and to specify the vague concept, this paper tries to clarify and to give a comprehensive analysis of the discourse surrounding transnational lists.

It firstly outlines their historical background (B.), followed by an overview of the different political opinions about a possible introduction of transnational lists (C.) In a third step, it examines what aspects of transnational lists would have to be clarified in detail, making a fresh proposal (D.) and analyzing a possible legal basis thereof (E.). Finally, after presenting the conclusions (F.), the attached annex document gives concrete suggestions on the changes within legal texts that will have to be made for the proposal to be legally introduced into the European electoral system.

## **B. Three attempts, three defeats: a short historical overview**

The idea of “transnational lists” is not new. The European Parliament (EP) has evaluated the possibility of introducing transnational lists on three occasions: in the Anastassopoulos report<sup>6</sup> of 1998 (I.), in the Duff report<sup>7</sup> of 2011 (II.) and most recently, in the Hübner/Pereira report<sup>8</sup> of 2018 (III).

### **I. Anastassopoulos report, 1998**

In 1998, the European Parliament attempted to reform its electoral law. To this end, the Rapporteur of the Committee on Institutional Affairs (AFCO) Anastassopoulos (EPP) presented his “Report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament.” Besides tackling questions such as national thresholds, preferential voting systems or bringing elections dates forward from June to May (in order to avoid summer holidays in Northern Member States),<sup>9</sup> the Greek Christian Democrat also proposed the introduction of transnational lists. In its Article 7, the report stated that “ten per cent of the total number of seats within the European Parliament shall be filled by means of list-based proportional representation relating to a single constituency comprising the territory of the European Union Member States with effect from the European elec-

6 Report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament (PE 224.331/fin), 02/06/1998; henceforth: “*Anastassopoulos Report*”.

7 Report on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976 [2009/2134(INI)], 28/04/2011; henceforth: “*Duff report*”.

8 Report on the composition of the European Parliament (2017/2054(INL) – 2017/0900(NLE)), 01/01/2018, henceforth “*Hübner/Pereira report*”.

9 *Duff report*, Explanatory Statement, p. 36.

tions to be held in 2009". He continued promoting this idea by arguing that such a system would "certainly contribute to the emergence of a genuine European political awareness and to the establishment of proper European political parties".<sup>10</sup> Moreover, it would also "give European elections a more European dimension which would be less concerned with national political issues".<sup>11</sup>

It is worth noting that the original Article 6 of the draft act introducing transnational lists based on Mr. Anastassopoulos' working document dating 14/01/1998, actually envisaged that 20 % of the total number of seats should be filled by transnational lists, instead of only 10 % as laid down in the final proposal dating 02/06/1998.<sup>12</sup> This shows that the initial proposal was much more ambitious but was downgraded in the committee itself already at an early stage in order to appease the majority of political parties.

The Anastassopoulos Report including the proposal of transnational lists was adopted by Parliament on 15/07/1998 by 355 votes to 146 with 39 abstentions.<sup>13</sup> However the bolder proposals of the Parliament's report – including transnational lists – were not adopted by the Council in 2002.

## II. Duff report, 2011

Roughly a decade later, after the entry into force of the Lisbon Treaty, the idea was discussed again more broadly by the EP's Constitutional Committee. The so-called "Duff report" proposed that "an additional 25 MEPs be elected by a single constituency formed of the whole territory of the European Union. These transnational lists would be composed of candidates drawn from at least one third of the States and may ensure an adequate gender representation. Each elector would be enabled to cast one vote for the EU-wide list in addition to their vote for the national or regional list. The seats would be allocated without a minimum threshold in accordance with the D'Hondt method".<sup>14</sup> Voting for the transnational lists would have been optional "with a second ballot paper being offered to each voter in the polling stations".<sup>15</sup> The British liberal Andrew Duff (ALDE), the Committee's rapporteur, submitted further that an "electoral authority be established at EU level in order to regulate the conduct and to verify the result of the election taking place from the EU-wide list."<sup>16</sup> According to the explanatory, statement it would be the European Political Parties "which would be responsible for selecting the candidates, ordering their list, and competing with each other for votes".<sup>17</sup> The report argued that "such an innovation would transform

10 *Anastassopoulos Report*, Explanatory Statement, Point 2, p. 21.

11 *Ibid.*

12 *Anastassopoulos Report*, Opinion of the Legal Service of the European Parliament concerning the compatibility with the Treaties of transnational lists, p. 44.

13 *Duff report*, Explanatory Statement, p. 36.

14 *Duff report*, Motion for a Resolution by the European Parliament, numerus 1, p. 7.

15 *Duff report*, Explanatory Statement, p. 49.

16 *Duff report*, Motion for a European Parliament Resolution, p. 7.

17 *Duff report*, Explanatory Statement, p. 49.

the elections to the European Parliament and increase its representative capability – reflecting the Lisbon Treaty change that lays down that MEPs are now to be ‘representatives of the Union’s citizens’ rather than ‘representatives of the peoples of the States’ ”.<sup>18</sup>

This progressive report, however, was not put onto the agenda of the EP plenary session for a final vote. It was withdrawn because of uncertainties as to whether it would obtain enough support within the Parliament.<sup>19</sup> According to Donatelli,<sup>20</sup> vested interests of national delegations and the complexity in determining the net benefit deriving to the national delegations from the eventual introduction of a single constituency were all elements that contributed decisively to the failure of the proposal.<sup>21</sup> In the case of the Duff report, it was not the Council but the Parliament itself which buried its own far-reaching proposals.

Eventually, a final Duff report<sup>22</sup> was endorsed by a large majority by the European Parliament in July 2013.<sup>23</sup> This last proposal, however, was less ambitious and did not include transnational lists. They were off the table.

### III. Hübner/Pereira report, 2018

Finally, the introduction of transnational lists was most recently discussed and put forward for a vote in the EP in February 2018. The rather brief report of the 2018 Constitutional Committee referred indirectly to the strong support for transnational lists coming from France’s President Macron. In its considerations, the report from Danuta Hübner (EPP from Poland) and Pedro Pereira (S&D from Portugal) outlined that “several Member States have recently voiced support for the creation of a joint constituency as from the European elections in 2019” and stated that “the introduction of such a constituency would reinforce the notion of European citizenship and strengthen the European character of the elections for the European Parliament”.<sup>24</sup> In concrete terms, the final report that was put up for a vote in plenary defined the number of representatives elected in a joint constituency according to the number of Member States.<sup>25</sup> The transnational lists would be headed by each political family’s candidate for the post of President of the Commission.<sup>26</sup> However, in contrast to the

18 Ibid.

19 Kotanidis, European Parliament Briefing – European Union electoral law: Current situation and historical background, October 2019.

20 Donatelli, Bruges Political Research Papers 44/2015.

21 Donatelli, Bruges Political Research Papers 44/2015, p. 45.

22 Duff, Report on improving the practical arrangements for the holding of the European elections in 2014 [2013/2102(INI)], 12/06/2013.

23 Kotanidis, European Parliament Briefing – European Union electoral law: Current situation and historical background, October 2019.

24 Hübner/Pereira report, Motion for a European Parliament Resolution, p. 4, lit. H.

25 Hübner/Pereira report, Annex to the Motion for a European Parliament Resolution, p. 9.; It is also interesting to note that the initial report envisaged a number of 46 MEPs to be allocated through transnational lists, see *Barbiere*, Revers pour Macron sur les listes transnationales, *Euractiv*, 05/12/2018.

26 Hübner/Pereira report, Motion for a European Parliament Resolution, p. 4, lit. G.

two previous parliamentary proposals, this time not only lists submitted by established European political parties should be admissible as transnational lists for the European elections in the joint constituency, but also lists submitted by national political parties or movements not affiliated with a European political party that conformed to pre-established European criteria.<sup>27</sup> Maybe that opening took into account the most recent dynamics from pan-European movements such as Volt Europa and Diem25.

The 27 seats for a joint constituency would have been taken from the seats vacated by the United Kingdom upon its departure from the Union. This would also ensure “no loss of seats for any Member State”.<sup>28</sup>

The Constitutional Committees report was finally put up to a vote on 07/02/2018. The Committee itself recommended the adoption of the report. However, the plenary session did not follow the recommendation of the competent Committee and voted it down with 368 against, 274 in favor and 34 abstentions.<sup>29</sup> As a consequence, all parts related to transnational lists have been deleted, following this negative vote of a vast majority of the EPP,<sup>30</sup> ECR, GUE and EFDD.<sup>31</sup>

#### IV. Future Discussions

One might think that this particular topic has run out of life and has been buried forever. Indeed, it would seem rather unusual to seriously take up the idea once again after the three institutional failures of 1998, 2011 and 2018. However, I would argue differently. The idea gained much momentum in 2018 and is still being pushed for by multiple high-profile politicians, parties and civil organizations, as mentioned in the introduction. In addition, the French and German governments have jointly signed the so-called “Meseberg” declaration, in which they call for transnational lists for the 2024 European elections. But especially against the background of Commission President Von der Leyen’s questionable nomination process and the criticism<sup>32</sup> thereof, fundamental questions of democratic participation, legitimation and European democracy as a whole will be discussed ever more intensively. It is no coincidence that European Commission President Von der Leyen, President Macron and Chancellor Merkel have published a so-called “non-paper” outlining key questions and guidelines of the planned “Conference on the Future of Europe”. Especially in its first phase, the issue of transnational lists should, in particular, be discussed in particular along with the Spitzenkandidatenprozess. These are subtle, but at the same time clear indications that transnational lists will play a relevant role in the coming discussions. To this end,

27 *Hübner/Pereira report*, Motion for a European Parliament Resolution, p. 4, lit. J.

28 *Hübner/Pereira report*, Motion for a European Parliament Resolution, p. 5, Nr. 7.

29 See inter alia *Hardy*, EU parliament rejects transnational lists, *Euronews*, 07/02/2018.

30 Especially the German Conservative CDU/CSU voted against the proposal of the transnational list. According to the CDU/CSU group transnational lists would alienate MEPs and European citizens: *Sterle*, Doch keine transnationalen Listen, *Euractiv*, 08/02/2018.

31 *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 8.

32 *Delcker*, The scandal hanging over Ursula von der Leyen, *Politico*, 25/07/2019.

it is more than an academic exercise to examine various arguments for and against the concept of transnational lists.

### **C. A heated debate surrounding the controversial idea**

At the height of the discussions surrounding the possible introduction of transnational MEPs in 2017 and 2018, two main groups have emerged: Those fiercely opposing transnational lists (I.) and those vehemently calling for their introduction (II.).

#### **I. Fierce opposition**

##### **1. Rootless, less accountable MEPs**

One major argument repeatedly put forward by opponents is that transnational lists would weaken the connection between Members of the European Parliament (MEPs) and their respective constituents.<sup>33</sup> MEPs who are put on the Europe-wide list by their respective European political group (i.e.: EPP, S&D, RE etc.) and who are “only” elected through this Europe-wide list, would be less accountable to the local electorate. As a result, the Parliament would get MEPs without local support.<sup>34</sup> According to former French MEP Alain Lamassoure, non-French MEPs who do not live in France would not understand the issues affecting the French regions on a daily basis and would thus be rootless.<sup>35</sup> Consequently, MEPs “with accountability to no one would make the EU a project for the elites instead of a Union rooted in the realities of [its] citizens.”<sup>36</sup> Greater disconnection between MEPs and the electorate would further reduce the Parliament’s legitimacy, as the bond between the people and their representatives would be somehow weakened.<sup>37</sup>

##### **2. Strengthening nationalists and populists**

It is also argued that transnational lists would, in essence, strengthen populists and nationalists who would oppose foreign parties.<sup>38</sup> In particular, the EPP feared that EU level political parties would not be able to campaign effectively against nationalists and Eurosceptic movements.<sup>39</sup> Questions of how the campaign should be held in different parts of Europe, as well as organizational, linguistic, and financial hurdles

33 *von Oндarza/Schenuit*, Reforming the European Parliament, Stiftung Wissenschaft und Politik, Comment 10, February 2018, p. 4.

34 *Höckmark*, Why transnational lists are not a good idea, *Euractiv*, 06/02/2018.

35 *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 6.

36 *Höckmark*, Why transnational lists are not a good idea, *Euractiv*, 06/02/2018.

37 *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 7.

38 *Ibid.*, p. 9.

39 European Peoples Party as quoted by *Duff*, European Policy Centre Discussion Paper, 13/02/2018, p. 4.

would undermine an effective campaign and could end up being a gift for Eurosceptic parties.

### 3. “Two class MEPs”

Furthermore, by introducing such Europe-wide lists the Parliament would at the same time end up with two classes of MEPs: “national or regional MEPs” and “Europe-wide MEPs”.<sup>40</sup> Even though elected MEPs do not share the same democratic legitimacy and accountability (due to the degressive proportionality system)<sup>41</sup> the basic idea that MEPs as representatives of the Union citizens are treated equally could be questioned. One could imagine the transnational MEPs to be treated as a sort of “forefront MEPs” at the dawn of the creation of a “European demos”.<sup>42</sup> This would inevitably attract more media attention and different treatment. A “two-speed European Parliament” could arise and could foster tensions within the Parliament, undermining the institution as a whole.

### 4. Saving resources

From a practical point of view, one could also argue that the idea is too ideological. For the sake of budgetary savings and effective use of resources, it would make sense to abstain from the introduction of transnational lists.

### 5. Comparison to federations

Finally, it has been asserted that not even national federations such as Germany or the United States have one single national constituency. “Why should Europe, which is not a federation, have one?”<sup>43</sup>

## II. Determined support

Proponents of transnational lists disagree with the above-mentioned points of criticism and emphasize the benefits that transnational lists would bring to European democracy.

40 European Peoples Party as quoted by *Duff*, European Policy Centre Discussion Paper, 13/02/2018, p. 4; *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 10.

41 Art. 14 (2) TEU.

42 *Verger*, Institute Jacques Delors, Policy Paper No. 216, p. 9.

43 *Höckmark*, Why transnational lists are not a good idea, *Euractiv*, 06/02/2018.



## 1. Europeanize European elections

Firstly, they argue that it is widely acknowledged by academia, as well as by the European Court of Justice, that the European Union is an entity *sui generis*. It is not comparable to fully integrated federations as the United States, Germany or Switzerland, as in those states an integrated party system is in place which enables the same parties to run for elections in all parts of the country.<sup>44</sup> In the European Union, this is not the case. Transnational lists would, therefore, “finally free the electoral campaigns from their national limitations”.<sup>45</sup>

In fact, introducing transnational lists would europeanize the elections which have, until now, been 28 separate national elections. One could describe them as 28 different monologues<sup>46</sup> – fought by national parties, on national topics.<sup>47</sup> European elections are mostly seen secondary to national elections and are too often instrumentalized by national parties and politicians<sup>48</sup> for their forthcoming national elections without really delving into common European topics. Transnational candidates could crack these “monologue-bubbles” and bring a new, exciting and truly continental element into the election campaign. Transnational candidates could be campaigning all across the continent, appear in front of different national media and speak directly to citizens from all corners of the EU. This could lead to the crystallization of truly European public figures and personalities known to a broader European public.<sup>49</sup> It would give Europe a “face” – someone in the debate to whom citizens could relate.<sup>50</sup>

## 2. Strengthening the Legitimacy of the European Parliament and putting a premium on the Union’s citizenship

The introduction of a new, exciting federal element would potentially lead to greater citizen interest and awareness for the European elections, thus potentially increasing voter turnout.<sup>51</sup>

Higher turnout in European elections would also strengthen the legitimacy of the European Parliament as a whole. In addition, by allowing the Unions’ citizens to have two votes – one for their national or regional constituency and a second one for the

44 Papadimoulis/Verhofstadt et al., Why transnational lists are good for European democracy, *Euractiv*, 06/02/2018, available at: <https://www.euractiv.com/section/elections/opinion/why-transnational-lists-are-good-for-european-democracy/> (10/03/2020).

45 Papadimoulis/Verhofstadt et al., Why transnational lists are good for European democracy, *Euractiv*, 06/02/2018, available at: <https://www.euractiv.com/section/elections/opinion/why-transnational-lists-are-good-for-european-democracy/> (10/03/2020).

46 Scholz, *Europarede an der Humboldt-Universität Berlin*, 28/11/2018.

47 Duff, European Policy Centre Discussion Paper, 13/02/2018, p. 4; Verger, *Institute Jacques Delors*, Policy Paper No. 216, p. 3.

48 Maurer, p. 424.

49 Hoffmeister, *Creating a European Space of Debate: Europeanizing the European Elections*, *The New Federalist*, 29/04/2019.

50 Ibid.

51 Duff, European Policy Centre Discussion Paper, 13/02/2018, p. 3.

Europe-wide constituency – the citizens would be offered a “real prize for their European citizenship”.<sup>52</sup>

### 3. Developing genuine European Political Players

Even though European Political Groups publish common electoral programs,<sup>53</sup> these are neither known nor taken seriously. At the moment MEPs owe “next to no loyalty to the European political parties to which they are attached”.<sup>54</sup> Their careers depend on the performance of their national parties, which themselves focus strongly on national topics, national discourses and “have little vested interest in the success of their respective European Family”.<sup>55</sup> As former MEP Andrew Duff recently pointed out, European Political Parties “recognised under Art. 10 (4) TEU remain weak confederations of national political parties whose function is to minimise divergence between their national components. The European parties do not directly compete with each other at elections for votes and seats – indeed they are (absurdly) prohibited from doing so under EU law”.<sup>56</sup> By introducing transnational MEPs chosen transparently by European Political Families, the latter would build up capacities to organize a European electoral campaign thus gaining credibility on a European level. If European parties with transnational lists competed directly for seats, they would inevitably improve their electoral visibility which could also rescue the European elections from their current second-class status.<sup>57</sup> European Political Parties could therefore become genuine Europe-wide political players, shaping European politics. Further, transnational MEPs who are more independent from their national parties would be more likely to embrace a European vision when voting in the plenary.<sup>58</sup>

### 4. “No Two Speed Parliament”

Proponents also reject the argument that transnational lists would introduce a “two speed Parliament” with “two classes of MEPs”. They point to the fact that in several Member States Members of Parliament are either elected directly or through party lists. This is indeed the case for elections to the German *Bundestag* or the *Hellenic Parliament*, which both operate with both candidates in constituencies and party-list proportional electoral elements. The Italian *Senato della Repubblica* as well as the

52 Ibid.

53 See EPP manifesto: <https://www.epp.eu/files/uploads/2019/05/EPP-MANIFESTO-2019.pdf> (10/03/2020); S&D manifest: <https://www.pes.eu/en/manifesto2019/> (10/03/2020); ALDE political programs: <https://www.aldeparty.eu/political-programme-and-european-elections-manifestos> (10/03/2020); For the European Greens: <https://europeangreens.eu/manifesto> (10/03/2020).

54 Duff, European Policy Centre Discussion Paper, 13/02/2018, p. 3.

55 Ibid.

56 Duff, European Policy Center Discussion Paper, 28/11/2019, p. 4.

57 von Ondarza/Schenuit, Reforming the European Parliament, Stiftung Wissenschaft und Politik, Comment 10, February 2018, p. 4.

58 Verger, Institute Jacques Delors, Policy Paper No. 216, p. 10.

*House of Lords of the United Kingdom*, are further examples of very heterogeneously composed Chambers of Parliament. “Never has there been any problem in national parliaments between the differently elected MEPs”.<sup>59</sup> In any case, Members of the European Parliament are already elected in different ways and constituencies of different sizes and requiring different number of votes.<sup>60</sup> Their status and prestige depends on their popularity and performance in the EP and not how they were elected.

### 5. Contribution to electoral equality: Correction of the distortion created by degressive proportionality

Pursuant to Art. 14 (2) TEU, the representation of citizens shall be degressively proportional with a minimum of six and a maximum of 96 seats allocated to the Member States. The system of degressive proportionality, however, creates a distortion with regards to the basic principle of voter equality (“one man one vote”). In the current system, the greater the population of a Member State, the greater the number of MEPs the Member State becomes. However, each MEP in a larger Member State then represents proportionately more citizens than in a smaller Member State. The result is that a German MEP represents 854.838 citizens,<sup>61</sup> whereas a Maltese MEP only 72.401.<sup>62</sup> Also, since national seat contingents are set in advance according to their population (i.e., between 6 and 96 seats for the respective Member State), their allocation depends strongly on voter’s turnout in each respective Member State. Consequently, if, as in the 2019 election, Croatia’s voter turnout is very low (29.85 %), the chances of getting a seat in Croatia are much higher than in Belgium which had the highest turnout (88.47 %). These two factors create a discrepancy, which, in political terms, is significant.<sup>63</sup> In the 2014 European elections, for instance, the social democratic parties (26.74 %) came in fractionally ahead of the conservative EPP (26.67 %),<sup>64</sup> but the EPP was stronger in the smaller Member States and thus received more MEPs relative to vote share.<sup>65</sup> This enabled the EPP to get a majority in the hemicycle and put forward Jean-Claude Juncker as the Parliament’s candidate for European Commission President.

59 Papadimoulis/Verhofstadt et al., Why transnational lists are good for European democracy, *Euractiv*, 06/02/2018, available at: <https://www.euractiv.com/section/elections/opinion/why-transnational-lists-are-good-for-european-democracy/> (10/03/2020).

60 Papadimoulis/Verhofstadt et al., Why transnational lists are good for European democracy, *Euractiv*, 06/02/2018, available at: <https://www.euractiv.com/section/elections/opinion/why-transnational-lists-are-good-for-european-democracy/> (10/03/2020).

61 Hübner/Pereira Report, Annex, p. 14.

62 Ibid.

63 von Ondarza/Schenuit, Reforming the European Parliament, Stiftung Wissenschaft und Politik, Comment 10, February 2018, p. 5.

64 Müller, Warum die Sozialdemokraten bei der Europawahl die meisten Stimmen holten, aber nicht die stärkste Fraktion wurden, *der (europäische) Föderalist*, 24/10/2014.

65 von Ondarza/Schenuit, Reforming the European Parliament, Stiftung Wissenschaft und Politik, Comment 10, February 2018, p. 5.

European-wide transnational lists could correct the distortions created by degressive proportionality. Assuming that most citizens would give both their votes for the social democratic lists, but in their national constituency the social democratic candidate loses his or her seat to a conservative, the amount of social democratic seats won in the Parliament would still reflect better the absolute number of S&D votes, as one would also have to take into account the transnational votes. At the same time, giving citizens two votes would enable them to still vote for a (transnational) political platform, even if such a (national) political platform either doesn't exist in their national constituency or has no credible prospect of winning seats of the national contingent. Transnational lists would therefore also contribute to electoral equality.

## 6. European space of debate and European demos

The German philosopher *Jürgen Habermas* points out that nations are composed of citizens and form political communities that did not develop spontaneously, but were instead legally constructed.<sup>66</sup> “National consciousness, (...) is the result of an organized form of political integration, unlike the organic solidarity among neighbors in a village or the loyalty to a territorial lord, which rests on existing forms of social integration”.<sup>67</sup>

Given that transnational lists have the potential to foster the citizens' interest in European affairs, create common political personalities and “celebrities”, thus giving a feeling of belonging together through common elements, as well as strengthen European political families on a Europe-wide level, they would create tangible, common points of discussion and reflection. Wherever there are tangible points for attracting interest, there is also a common space of debate.<sup>68</sup> Integrating our democracies further through supra- and transnational elements such as transnational lists, would, in this respect, foster our common space of debate ultimately leading to a European consciousness that one might call the beginning of a European demos.

## III. Interim Conclusion

When analyzing the possible effects of transnational lists, it is suggested that their envisaged benefits outweigh their points of criticism. In order to enhance the quality of European democracy, there is every reason to support this idea. The principle of democracy is a founding value of the Union (Art. 2 TEU). It must be strengthened and not dismissed on the grounds of possible budgetary savings. Furthermore, transnational lists would also meet the objective laid out in Art. 10 (4) TEU whereby political parties at European level [shall] contribute to forming European political awareness and to expressing the will of citizens of the Union. By giving citizens more

<sup>66</sup> *Habermas*, European Law Journal, Vol. 21, No. 4, 2015, p. 552.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Hoffmeister*, Creating a European Space of Debate: Europeanizing the European Elections, *The New Federalist*, 29/04/2019.

electoral elements that they share, citizens will be brought closer through the emergence of common discourse. Their democratic participation on a European level, as envisaged in Art. 10 (2) TEU, could be strengthened, which in turn will strengthen European democracy as a whole.

In view of this, the introduction of transnational lists should be envisaged for the next European elections in 2024.

#### **D. A Fresh Proposal for Transnational Lists – Key Points**

In order to make a realistic fresh proposal for transnational lists, three key points need to be decided: The number of MEPs elected through transnational lists (1), the composition of transnational lists (2), their voting system and the threshold applicable (3).

##### **I. Number of transnational MEPs**

There is no consensus about how many seats in the European Parliament should be allocated to the transnational lists. On the one hand, the Anastassopoulos report originally envisaged 20 % (at that time 126 seats), then rolled back to 10 % (at that time 63 seats) of the total number of seats within the European Parliament (at that time 630 seats). The Duff report proposed an additional 25 MEPs to be elected on a transnational list. The Hübner/Pereira report, on the other hand, did not propose additional MEPs but rather to allocate as many MEPs as there are Member States from the seats left by the departure of the United Kingdom from the European Union, that is 27. That is to say that, initially, the Hübner/Pereira report envisaged 46 MEPs to be allocated through the European-wide list. Finally, the French President Emmanuel Macron went as far as to call for “half the European Parliament [to be] elected on these transnational lists” at his Sorbonne Speech in 2017. After the departure of the United Kingdom, this would amount to 353 transnational seats.

At the end of the day, the number of seats given to the transnational list is a political choice. The current electoral system favors, for instance, the EPP, which is why the conservative party would likely try to keep the number of transnational MEPs as low as possible. On the other hand, the major advantages, as laid out in C. II would be greater the more transnational MEPs there would be. Besides, the closer the number of transnational MEPs and national MEPs gets to each other, the more equal they will become in the eyes of the public and the less convincing the argument of a “two speed” Parliament becomes as it would be (more or less) equally composed of both “types” of MEPs.

Against this background, 20–30 seats for transnational lists seem rather little. Also, linking the number of MEPs to the number of Member States could give the wrong impression that the transnational system is still somewhat linked to the national elections, as in numbers, there would be exactly one transnational MEP for each national constituency. Furthermore, if there were only let’s say 20 transnational MEPs, each

transnational list would have to at least get 5 % of the total of transnational votes cast in order to get one of their transnational MEPs elected. 10 % of the transnational votes would amount to two transnational seats; 5 % would amount to one transnational seat. This would automatically result into a rather high 5 % bar, which would again weaken the electoral equality and prevent “new coming” electoral lists from being elected. Nevertheless, when deciding upon this question, one would also have to take into account the aspect of efficiency. An overblown European Parliament of more than one thousand representatives cannot be the goal.

Finally, one cannot say with certainty what number would be best suited for the European election. However, as a first step and as a trial in order to see the concrete results of such an innovative proposal, one could return to the initial draft proposal of 1998 whereby 20 % of the total number of seats within the European Parliament should be allocated for transnational MEPs. In concrete terms, this would amount to 150 of 751 seats for the 2024 European elections.<sup>69</sup>

## II. Respecting the ceiling

The aforementioned 150 transnational seats should be taken from already existing seats. In concrete terms, while Cyprus, Malta, and Luxemburg would keep their 6 seats, all the other, more populous, Member States, would concede a part of their national quota in line with their relative weight.

In order to give a broad idea over what the seat allocation for each Member State could look like after the introduction of 150 transnational seats, the following table has been set up. The seats are calculated by determining the total number of non-transnational lists after the introduction of 150 transnational MEPs:

$$751 - 150 = 601$$

Keeping in mind that the current 751 seats have already been distributed according to the degressive proportional system and the fact that the current 46 British seats would be directly converted to the transnational lists, the ratio of seats per Member State should roughly stay the same. We then obtain the following:

$$\frac{\text{current national quota}}{705} * 601 = \text{new national quota}$$

Finally, after some rounding, the sum of the combined national quotas amounts to 603. In order to respect the 150 seats for transnational lists, two more seats would have to be conceded. In this example, these two seats have been taken from Latvia and

<sup>69</sup> This paper assumes that in the 2024 election the total seat allocation will again amount to 751 seats, as foreseen by the Treaties (Art. 14 (2) TEU). In contrast, for the 2019 legislative period, Council Decision 2018/937, OJ L165/1 has set the total number of seats to 705, due to the departure of the United Kingdom from the Union.

Slovenia, as they have both the same number of seats. All of this results in the following table:

Member State	current allocation	new allocation	rounding	Final allocation
Belgium	21	17,90212766	18	18
Bulgaria	17	14,49219858	14	14
Czech Republic	21	17,90212766	18	18
Denmark	14	11,93475177	12	12
Germany	96	81,83829787	82	82
Estonia	7	5,967375887	6	6
Ireland	13	11,0822695	11	11
Greece	21	17,90212766	18	18
Spain	59	50,2964539	50	50
France	79	67,34609929	67	67
Croatia	12	10,22978723	10	10
Italy	76	64,78865248	65	65
Cyprus	6	5,114893617	6	6
Latvia	8	6,819858156	7	6
Lithuania	11	9,377304965	9	9
Luxemburg	6	5,114893617	6	6
Hungary	21	17,90212766	18	18
Malta	6	5,114893617	6	6
The Netherlands	29	24,72198582	25	25
Austria	19	16,19716312	16	16
Poland	52	44,32907801	44	44
Portugal	21	17,90212766	18	18
Romania	33	28,13191489	28	28
Slovenia	8	6,819858156	7	6
Slovakia	14	11,93475177	12	12
Finland	14	11,93475177	12	12
Sweden	21	17,90212766	18	18

Member State	current allocation	new allocation	rounding	Final allocation
Sum of national quotas:	705	601	603	601
Transnational lists				150
Total Sum				751

Alternatively, it would be also possible to allocate the national seats within the European Parliament according to the so-called “Cambridge Compromise”. This mathematical formula has been proposed to and discussed by the AFCO committee in 2011, after it has commissioned a group of mathematicians to come up with a new way of determining the seat allocation of national MEPs.<sup>70</sup>

### III. Composition of transnational lists

With regard to the composition of transnational lists, the diversity of the continent should be reflected. Especially, when it comes to nationality, it would be counter-productive to have a transnational list only filled by one nationality, even though the aspect of national citizenship should by no means be of interest during European elections.

If the number of transnational MEPs envisaged for the 2024 elections fell below 50, this aspect becomes even more important. Therefore, one might propose that the first candidates on the list could be drawn from at least one quarter of the 27 Member States,<sup>71</sup> and the percentage of candidates from a single Member State shall not exceed 25 %.<sup>72</sup> This would, in particular, dispel fears of too much influence by the bigger and more populous Member States.

When it comes to gender balance, the option of requesting a strictly alternatively gender-balanced list or not should remain in the hands of the European political parties to decide.

<sup>70</sup> For more detailed information on the Cambridge Compromise and its mathematical background see: *European Parliament Directorate General for Internal Policies*, PE 432 760, The allocation between the EU Member States of the seats in the European Parliament, 2011 or also: *European Parliament Directorate General for Internal Policies*, PE 583 117, The composition of the European Parliament, 30/01/2017.

<sup>71</sup> Verger, Institute Jacques Delors, Policy Paper No. 216, p. 7.

<sup>72</sup> Ibid., p. 8.



#### IV. Closed list and threshold

Finally, it has to be decided whether transnational lists should be an open-preferential or rather a closed list. Within an “open list”, voters have at least some influence on the ranking and order of candidates, whilst within the system of a “closed list” the order is being decided mostly by party members during party congresses and the broader electorate has no influence on its order of candidates. On the one hand, an open list could be “more appropriate” for European elections because it “favours the citizen”.<sup>73</sup> On the other hand, an open list system would be problematic, as the absolute number of votes cast by the European electorate might concentrate its votes only on some nationalities or candidates. This could be the case if most German voters only vote for German transnational candidates or most French voters only for French candidates. Furthermore, in most Member States there is a rather personalized voting system in place, so that the first of the two votes provided to the electorate will most probably already go to the preferred local candidate. Last but definitely not least, only a closed list can ensure that the transnational list is headed by a candidate for the European Commission Presidency. A closed transnational list would, therefore, also strengthen the *Spitzenkandidatensystem*, by giving them the possibility to present themselves as candidates for the entirety of the continent, running on a Europe-wide platform and list. Citizens could identify the person that they would like to see as head of Europe’s executive institution and vote accordingly. If the order of candidates is not set, it might also happen that the person running as *Spitzenkandidat* ends up in second or third place, which would spark a lot of confusion amongst voters and would weaken the *Spitzenkandidatensystem* as a whole.

With respect to a possible electoral threshold for transnational lists, one, unfortunately cannot refer to an already established common threshold for European elections, as it simply does not exist. In accordance with the revised Electoral Act, a mandatory threshold has been introduced, which must not go below 2 % and not exceed 5 % of the votes cast, for constituencies with more than 35 seats. Such a flexible threshold cannot be applied to a common Europe-wide constituency with a transnational list. A common threshold has to be set. This paper proposes a 3 % threshold, which seems adequate to guarantee real chances for new or little-known parties and movements to get a seat, while at the same time preventing over-fragmentation of the seats allocated to transnational lists.

#### E. Legal Dimension

The introduction of transnational lists seats also poses legal questions. In particular, they would have to comply with primary law principles (I), require a sufficient legal basis (II), and be in line with the European Party Statute (III) and the Directive on the right to vote and stand as a candidate for elections to the European Parliament in a Member State other than one’s own (IV).

73 Duff, European Policy Center Discussion Paper, 28/11/2019, p. 6.

## I. Compliance with primary law principles

### 1. Art. 14 (2) first sentence TEU

First it is to be noted that Members of the European Parliament are no longer “representatives of the peoples of the States brought together in the Community” as laid down in Art. 189 TEC. Since the entering into force of the Lisbon Treaty, Art. 14 (2), first sentence TEU provides that “the European Parliament shall be composed of representatives of the Union’s citizens”. The Lisbon Treaty thereby changed the mandate of the Members of the European Parliament. Members of Parliament are neither bound to their respective Member States nor by their nationality. Hence a non-French citizen can be elected as MEP in France (see Art. 22 (2) TFEU). The most prominent example could be former MEP Daniel Cohn Bendit, being elected in France without holding French citizenship at the time.<sup>74</sup> From a legal perspective, nationality does not play a role in being a representative on a European level. *Schima* on the other hand argues that Art. 22 (2) TFEU suggests that MEPs are bound to a specific Member State and cannot run as candidates of the whole Union’s territory.<sup>75</sup> However, this is – as he himself points out – a question of treaty interpretation. Nowhere is it expressly stated that MEPs are bound to their Member State. Especially when taking into account that Art. 22 (2) TFEU applies “without prejudice to Art. 223 (1)” TFEU, one can argue that the final clarification of whether there can be a Europe-wide constituency or not is decided by the legislator in the Electoral Act and not by Art. 22 (2) TFEU.

Therefore, the Treaties do not preclude the introduction of transnational lists composed by Union citizens, holding different national citizenships and being elected by the totality of the Union’s electorate.

### 2. Art. 14 (2) second sentence TEU

Secondly, the election of 20 % of transnational MEPs does not violate Art. 14 (2) first sentence TEU as the maximum number of 751 MEPs will be respected.

### 3. Art. 14 (2) third sentence TEU

Thirdly, the election of 20 % of transnational MEPs does not violate the principle of degressive proportionality as laid down in Art. 14 (2) third sentence TEU. That principle is designed to ensure minimum participation of six MEPs from the small Member States and to avoid a dominance of MEPs from larger Member States.

The European Council defines degressive proportionality as follows: “The ratio between the population and the number of seats of each Member State before rounding

<sup>74</sup> Daniel Cohn-Bendit served as MEP from 1994 to 2014 but was only granted French citizenship in 2015.

<sup>75</sup> *Schima*, Zeitschrift Europarecht (EuR), Beiheft 2, 2019, p. 121.

to whole numbers is to vary in relation to their respective populations in such a way that each Member of the European Parliament from a more populous Member State represents more citizens than each Member of the European Parliament from a less populous Member State and, conversely, that the larger the population of a Member State, the greater its entitlement to a large number of seats in the European Parliament.<sup>76</sup> In accordance with the degressive proportional system, Estonia has 7 MEPs at the moment, whereas Lithuania has 8 MEPs. If there were transnational lists, this could lead to a situation, in which, for example, in addition to the 7 Estonian MEPs elected in their national constituency, 2 more Estonian nationals but no Lithuanians would be elected through transnational lists. In this case, there would be more Estonian MEPs than Lithuanian MEPs, although Lithuania has a bigger population. This seems to be at odds with the Council's definition of degressive proportionality.

However, this definition does not flow from the treaties<sup>77</sup> and was obviously formulated in the context of the current system of national constituencies. Art. 14 (2) sentence 3 appears to allow an additional element as long as the principle of degressive proportionality is not undermined. By introducing 20 % of transnational MEPs degressive proportionality might be weakened but still applies to a majority of 80 % of MEPs in the European Parliament.

Furthermore, it is true that the 20 % transnational MEPs could hail from a limited number of Member States only. However, with the requirement that the top seven candidates must come from different Member States, the likelihood of dominance from one or two bigger Member States only is greatly reduced. Moreover, giving Union citizens the choice to elect candidates deriving from whatever Member State would underline the principle of equality of citizens. This principle is laid down in Art. 9 TEU. Transnational lists would, therefore, enhance the basic idea of “one man one vote”, as each elector's vote would count the same for the transnational lists. In contrast to the majority principle for directly elected MEPs in constituencies (where all votes for the non-elected MEP have no “success value”), such a system is a more accurate reflection of the electorate's political will as all votes above the proposed 3 % threshold will have a “success value”. While being implemented in conjunction with the degressive proportionality system, the new European electoral system would also respect the minimum quorum for less populous Member States.

#### **4. Art. 39 (2) European Charter of Fundamental Rights**

Finally, transnational lists are also in line with the principles of the European Charter of Fundamental Rights, especially Art. 39 (2). Candidates on Europe-wide lists would also be “elected by direct universal suffrage in a free and secret ballot.” In particular, there is no Union legal requirement to establish local or regional constituencies for direct elections to the European Parliament.

76 European Council decision establishing the composition of the European Parliament, Art. 1 second indent, EUCO 7/1/18 REV 1.

77 *Schima*, Zeitschrift Europarecht (EuR), Beiheft 2, 2019, p.121.

Therefore, neither the Treaties nor the Charter preclude the introduction of a second, Europe-wide constituency for transnational lists.

## II. The European Electoral Act

While complying with primary law principles, such a change to the electoral system would still have to be based on a sufficiently specific legal basis. The conduction of European elections is organized by the Electoral Act of 1976, as amended in 2002<sup>78</sup> and 2018.<sup>79</sup> In order to introduce a joint constituency comprising the entire territory of the Union and thus enabling different transnational lists to compete in elections, these provisions will have to be adapted in accordance with Art. 223 (1) TFEU.

When it comes to modifications of the electoral law, the Parliament exceptionally enjoys the right of initiative. Provisions concerning the above-raised questions (number of transnational MEPs, their composition, threshold etc...) will have to be added in accordance with the special legislative procedure.

This special legislative procedure has three steps:

According to Art. 223 (1) TFEU, the Parliament will first have to “draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States”.

Then, the Council, acting unanimously, can lay down or change the provisions proposed by the Parliament. However, the Council will have to obtain the consent of the European Parliament, which shall act by a majority of its component members, before deciding ultimately on the act and its changes.

Finally, “these provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.” Of course, the respective constitutional requirements differ from Member State to Member State.

Concrete proposals on textual changes to the Electoral Act are attached below in the Annex.

## III. Changes to Regulation No 1141/2014

In order for European Political Parties (and foundations) to become European legal entities, to receive funding from the European Union’s budget as well as to increase their visibility, recognition, effectiveness, transparency and accountability, the European Union has adopted Regulation No 1141/2014 replacing Regulation (EC) No

78 OJ L 283 of 29/09/2002, Act concerning the election of the members of the European Parliament by direct universal suffrage, pp. 1–4.

79 Council Decision (EU, Euratom) 2018/994 of 13/07/2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, OJ L 178 of 16/07/2018, pp. 1–3; The Council Decision 2018/994 however is not yet in force, as it yet has to be ratified by Member States in accordance to their respective constitutional requirements.

2004/2003.<sup>80</sup> The Regulation, which is based on Art. 224 TFEU, entered into force on 04/05/2018.

Surprisingly, however, this Regulation does not entitle European Political Parties to “nominate candidates in national elections or elections to the European Parliament (...)”.<sup>81</sup> Any such or similar entitlement remains under the competence of Member States”.<sup>82</sup> This poses a problem in the context of transnational lists. It is in the nature of transnational lists to have candidates nominated on a European level by their respective European Political Parties. It is positive that the Regulation outlines that “European political parties should be able to finance campaigns conducted in the context of elections to the European Parliament (...)”.<sup>83</sup> However, it is also stated that “European Political Parties should not fund, directly or indirectly (...) candidates.”<sup>84</sup> These two recitals hampering the nomination of European candidates and their funding will have to be changed in order for transnational lists and their candidates to be directly linked to European Political Parties. Moreover, a new operational provision should be created. According to Art. 224 TFEU, the Statute can be changed within the framework of an ordinary legislative procedure in accordance with Arts. 289 and 294 TFEU.

Concrete textual proposals can be found in the Annex below (see Annex.)

#### **IV. Changes to Directive 93/109/EC**

Finally, as Andrew Duff has pointed out,<sup>85</sup> changes to the Directive on the right to vote and stand as a candidate in elections to the European Parliament in a state other than one’s own (Council Directive 93/109/EC, as amended by Directive 2013/1/EU) will have to be made. Under the current Article 4 (2) of the Directive, “no person may stand as a candidate in more than one Member State at the same election”. In order to be registered by the national election authority, any candidate must also give an assurance that he/she is not standing as a candidate in another Member State (Article 10 (1) (b) of the Directive). However, in the future, candidates on a transnational list would be eligible in all Member States at the same election. Therefore, this restriction would have to be lifted (for a proposal, see Annex).

80 Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22/10/2014 on the statute and funding of European political parties and European political foundations, OJ L 317/1; see also European Parliament, JD- revision of regulation on statute and funding of European political parties and European political foundations / 2017-9, available at: <https://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-jd-statute-and-financing-of-european-political-parties-and-foundations> (10/03/2020).

81 Regulation 1141/2014, Recital (18).

82 Ibid.

83 Ibid., Recital (27).

84 Ibid., Recital (28).

85 Duff, *The European Union makes a new push for democracy*, 28/11/2019, p. 7.

## **F. Conclusion: Transnational lists as a quantum leap for European Democracy**

The time has come to turn the concept of transnational lists from a buzz word in the political debate into practice, so it will lead to a quantum leap for European democracy.

This paper proposes to introduce 150 transnational seats for the European elections in 2024 from closed lists with a threshold of 3 %. European Political Parties should ensure the variety of candidates in their democratic nomination process. The legal framework provides enough possibilities to introduce such transnational lists without the need to change the Treaties as such. As the aforementioned Conference on the Future of Europe will gather momentum over the coming months, the topic of transnational lists will certainly regain visibility. A broad public debate will have to emerge on the state of our European democracy, and citizens must play a vital role in it. It is ultimately up to us citizens now to convince our political leaders, to voice our ideas during the Conference of the Future of Europe, and to push for the introduction of common, transnational lists for our European elections in 2024.

## **ANNEX**

The following proposals are meant to outline and highlight the most important areas where changes seem necessary and to provide new wording.<sup>86</sup>

### **I. Proposal for changes to the European Electoral Act**

The following proposals are meant to outline and highlight the concrete areas where changes seem necessary and to provide new wording. The basis of this proposal is the European Electoral Act of 1976,<sup>87</sup> as amended in 2002.<sup>88</sup> Further, the proposal takes into account the Council's decision 2018/ 994 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage dating 13/06/2018,<sup>89</sup> which has not yet been ratified by all Member States in accordance with their respective constitutional requirements as laid down in Art. 223 (1) [2] TFEU. The left column states the electoral law as it is. The right column outlines the possible changes. The changes have, in part, been inspired by the Duff Report.

86 It may well be that other changes in different legal areas will have to be made. Such changes may concern, for example, questions on the contestation of the transnational-list results. However, examining all legal aspects would be beyond the scope of this paper.

87 Act concerning the election of the representatives of the Assembly by direct universal suffrage, available at: [https://eur-lex.europa.eu/eli/dec/1976/787\(2\)/oj/eng](https://eur-lex.europa.eu/eli/dec/1976/787(2)/oj/eng) (10/03/2020).

88 Amended version available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576954146458&uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576954146458&uri=CELEX:01976X1008(01)-20020923) (10/03/2020).

89 Council decision available at: <https://eur-lex.europa.eu/eli/dec/2018/994/oj> (10/03/2020).

## Current Version

### *Article 2*

In accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

### *Art. 3*

1. Member States may set a minimum threshold for the allocation of seats. At national level, this threshold may not exceed 5 per cent of valid votes cast.

2. Member States in which the list system is used shall set a minimum threshold for the allocation of seats for constituencies which comprise more than 35 seats. This threshold shall not be lower than 2 per cent, and shall not exceed 5 per cent, of the valid votes cast in the constituency concerned, including a single-constituency Member State.

3. Member States shall take the measures necessary to comply with the obligation set out in paragraph 2 no later than in time for the elections to the European Parliament which follow the first ones taking place after the entry into force of Council Decision (EU, Euratom) 2018/994.

## Articles to be inserted or modified

### *Article 2a*

1. In addition, a single constituency comprising the entire territory of the Union is established, from which shall be elected twenty per cent of the total number of Members of the European Parliament (transnational Members of Parliament).

2. Transnational lists of candidates for election in the European Union constituency submitted by the European political parties shall be admissible only:

(a) if composed of candidates resident in at least one third of the Member States, and the number of candidates from one Member State does not exceed twenty-five per cent of the candidates on the respective transnational list, and

(b) if headed by the European political party's candidate for European Commission President (Spitzenkandidat)

3. Each voter shall have one supplementary vote that may be cast for the European Union-wide list.

### *Art. 3*

1. Member States may set a minimum threshold for the allocation of seats. At national level, this threshold may not exceed 5 per cent of valid votes cast.

2. Member States in which the list system is used shall set a minimum threshold for the allocation of seats for constituencies which comprise more than 35 seats. This threshold shall not be lower than 2 per cent, and shall not exceed 5 per cent, of the valid votes cast in the constituency concerned, including a single-constituency Member State.

3. In the case of the Europe-wide constituency under Art. 2a, the threshold shall be three per cent.

4. Member States shall take the measures necessary to comply with the obligation set out in paragraph 2 no later than in time for the elections to the European Parliament which follow the first ones taking place after the entry into force of Council Decision (EU, Euratom) 2018/994.

*Article 3b*

1. Member States may allow for the display, on ballot papers, of the name or logo of the European political party to which the national political party or individual candidate is affiliated.<sup>2</sup>;

*Article 9*

1. No one may vote more than once in any election of members of the European Parliament.

2. Member States shall take measures necessary to ensure that double voting in elections to the European Parliament is subject to effective, proportionate and dissuasive penalties.<sup>2</sup>;

*Article 3b*

1. Member States may allow for the display, on ballot papers, of the name or logo of the European political party to which the national political party or individual candidate is affiliated.<sup>2</sup>;

2. Member States shall provide a second ballot paper, displaying all the admissible transnational lists as set out in Art. 2 litera b subparagraph 1. The ballot paper shall list the candidates in the order in which they have been submitted by the European political party, as well as display the logo of the respective European political party to which the candidate is affiliated.

*Article 9*

1. Without prejudice to Art. 2a, no one may vote more than once in any election of members of the European Parliament.

2. Member States shall take measures necessary to ensure that double voting in elections to the European Parliament is subject to effective, proportionate and dissuasive penalties.<sup>2</sup>;

## II. Proposals for changes to Regulation 1141/2014

When it comes to the Regulation on the statute and funding of European political parties and European political foundations, the above-mentioned (see E. 3.) recitals 18 and 28 would have to be amended accordingly and changes to the operational Articles made. This paper proposes the following:

Current version

Recitals

(18) The European legal status granted to European political parties and their affiliated foundations should provide them with legal capacity and recognition in all the Member States. Such legal capacity and recognition do not entitle them to nominate candidates in national elections or elections to the European Parliament or to participate in referendum campaigns. Any such or similar entitlement remains under the competence of Member States.

Amended version

Recitals

(18) The European legal status granted to European political parties and their affiliated foundations should provide them with legal capacity and recognition in all the Member States. ~~Such legal capacity and recognition do not entitle them to nominate candidates in national elections or elections to the European Parliament or to participate in referendum campaigns. Any such or similar entitlement remains under the competence of Member States.~~



(28) European political parties should not fund, directly or indirectly, other political parties and, in particular, national parties or candidates.

## Operational Articles

### *Article 21*

1. Subject to the second subparagraph, the funding of European political parties from the general budget of the European Union or from any other source may be used to finance campaigns conducted by the European political parties in the context of elections to the European Parliament in which they or their members participate as required by point (d) of Article 3(1).

In accordance with Article 8 of the Act concerning the election of the members of the European Parliament by direct universal suffrage (1), the funding and possible limitation of election expenses for all political parties, candidates and third parties in, in addition to their participation in, elections to the European Parliament is governed in each Member State by national provisions.

2. Expenditure linked to the campaigns referred to in paragraph 1 shall be clearly identified as such by the European political parties in their annual financial statements.

(28) European political parties should not fund, directly or indirectly, other political parties and, in particular, national parties or national candidates. They may fund directly or indirectly their respective transnational-list candidates.

(1) European Political Parties may nominate candidates running on the European Political Party's respective transnational list in elections to the European Parliament.

(2) The nomination process must be in accordance with the principle of democracy and be done in a transparent manner.

(3) Provisions laid out in Art. 2a of the Electoral Act shall apply accordingly.

## Operational Articles

### *Article 21*

1. Subject to the third subparagraph, the funding of European political parties from the general budget of the European Union or from any other source may be used to finance campaigns conducted by the European political parties in the context of elections to the European Parliament in which they or their members participate as required by point (d) of Article 3(1).

European political parties may fund directly or indirectly their respective transnational-list candidates in the context of European elections.

In accordance with Article 8 of the Act concerning the election of the members of the European Parliament by direct universal suffrage (1), the funding and possible limitation of election expenses for all political parties, candidates and third parties in, in addition to their participation in, elections to the European Parliament is governed in each Member State by national provisions.

2. Expenditure linked to the campaigns referred to in paragraph 1 shall be clearly identified as such by the European political parties in their annual financial statements.

(18) The European legal status granted to European political parties and their affiliated foundations should provide them with legal capacity and recognition in all the Member States. Such legal capacity and recognition do not entitle them to nominate candidates in national elections or elections to the European Parliament or to participate in referendum campaigns. Any such or similar entitlement remains under the competence of Member States.

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### III. Proposals for changes to Directive 93/109/EC

Changes to the Directive on the right to vote and stand as a candidate in elections to the European Parliament in a state other than one's own (Council Directive 93/109/EC as amended by Directive 2013/1/EU) may look like as follows:

#### Current version

##### *Article 4*

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. No person may vote more than once at the same election.

2. No person may stand as a candidate in more than one Member State at the same election.

#### Amended version

##### *Article 4*

1. Community voters shall exercise their right to vote either in the Member State of residence or in their home Member State. Without prejudice to Art. 2a of the Electoral act, no person may vote more than once at the same election.

2. Unless, a person figures on a transnational list of candidates for election in the European Union constituency in line with Article 2a of the Electoral Act, no person may stand as a candidate in more than one Member State at the same election.

*Article 5*

If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality.

*Article 10*

1. When he submits his application to stand as a candidate, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating:

(a) his nationality, date and place of birth, last address in the home Member State and his address in the electoral territory of the Member State of residence;

(b) that he is not standing as a candidate for election to the European Parliament in any other Member State;

(c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and

(d) that he has not been deprived of the right to stand as a candidate in the home Member State through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies.

*Article 5*

If, in order to vote or to stand as candidates, nationals of the Member State or residence must have spent a certain minimum period as a resident in the electoral territory of that State, Community voters and Community nationals entitled to stand as candidates shall be deemed to have fulfilled that condition where they have resided for an equivalent period in other Member States. This provision shall apply without prejudice to any specific conditions as to length of residence in a given constituency or locality and without prejudice to a candidate on transnational lists pursuing Art. 2a of the Electoral Act.

*Article 10*

1. When he submits his application to stand as a candidate, a Community national shall produce the same supporting documents as a candidate who is a national. He shall also produce a formal declaration stating:

(a) his nationality, date and place of birth, last address in the home Member State and his address in the electoral territory of the Member State of residence;

(b) that he is not standing as a candidate for election to the European Parliament in any other Member State, unless he figures on a transnational list of candidates for election in the European Union constituency in line with Article 2a of the Electoral Act;

(c) where applicable, the locality or constituency in his home Member State on the electoral roll of which his name was last entered, and

(d) that he has not been deprived of the right to stand as a candidate in the home Member State through an individual judicial decision or an administrative decision provided that the latter can be subject to judicial remedies

*Insert new Art. 16*

For the tenth direct elections to the European Parliament, the following special provision shall apply:

(a) citizens of the Union who stand in elections to the European Parliament as candidates on a transnational list in line with Art. 2a of the Electoral Act shall not be subject to the formalities laid down in Article 9 of this directive

(b) Member States shall adopt all necessary provisions to ensure a trouble-free procedure with regard to transnational lists as laid out in the Electoral Act.

## BIBLIOGRAPHY

- ANASTASSOPOULOS, GEORGIOS, Report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament, 1998
- BARBIERE, CÉCILE, Revers pour Macron sur les listes transnationales, Euractiv, 07/02/2018
- DELCKER, JANOSCH, The scandal hanging over Ursula von der Leyen, Politico, 25/07/2019
- DUFF, ANDREW, Report on improving the practical arrangements for the holding of the European elections in 2014, 2013
- DUFF, ANDREW, How to govern Europe better: Reflections on reform of the European Parliament, Commission and Council, European Policy Centre Discussion Paper, Brussels 2018
- DUFF, ANDREW, The European Union makes a new push for democracy, European Policy Center Discussion Paper, Brussels 2019
- DONATELLI, LORENZO, A Pan-European District for the European Elections? The Rise and Fall of the Duff Proposal for the Electoral Reform of the European Parliament, Bruges Political Research Papers 44/2015
- HABERMAS, JÜRGEN, Democracy in Europe: Why the Development of the EU into a Transnational Democracy Is Necessary and How It Is Possible, European Law Journal, Vol. 21, No. 4, 2015
- HARDY, CATHERINE, EU parliament rejects transnational lists, Euronews, 07/02/2018
- HÖKMARK, GUNNAR, Why transnational lists are not a good idea, Euractiv, 06/02/2018
- HOFFMEISTER, KALOJAN, Creating a European Space of Debate: Europeanizing the European Elections, The New Federalist, 29/04/2019

- HÜBNER, DANUTA MARIA; PEREIRA, PEDRO SILVA, Report on the composition of the European Parliament, 2017
- KOTANIDIS, SILVIA, European Parliament Briefing – European Union electoral law: Current situation and historical background, 2019
- MAURER, ANDREAS, Wahlen zum Europäischen Parlament, Europa von A bis Z, Baden-Baden 2015
- MÜLLER, MANUEL, Warum die Sozialdemokraten bei der Europawahl die meisten Stimmen holten, aber nicht die stärkste Fraktion wurden, Der (europäische) Föderalist, 28/10/2014
- SCHIMA, BERNHARD, Möglichkeiten und Grenzen institutioneller Reformen, Zeitschrift Europarecht (EuR), Beiheft 2, 2019
- SCHOLZ, OLAF, Europarede an der Humboldt-Universität Berlin, 28/11/2018.
- STIERLE, STEFFEN, Doch keine transnationalen Listen, Euractiv, 08/02/2018
- VERGER, CHRISTINE, Transnational lists: a political opportunity for Europe with obstacles to overcome, Institute Jacques Delors, Policy Paper No. 216, Paris 2018
- VON ONDARZA, NICOLAI; SCHENUIT, FELIX, Reforming the European Parliament, Stiftung Wissenschaft und Politik, SWP Comment 10, Berlin 2018

