

Visions for Europe

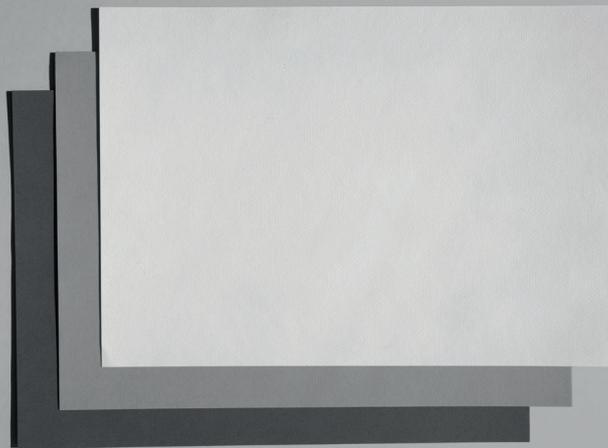
The holy trinity of EU elections:

Transnational lists, *Spitzenkandidaten* procedure and a stronger European Parliament

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#EuropeanParliament
#TransnationalLists
#Spitzenkandidaten



The next European Parliament elections in May 2024 are approaching faster than it might seem. In this Visions for Europe Policy Paper, Thu Nguyen takes a critical look at two ideas to reform the elections ahead of 2024 and assesses their potential to enhance EU democracy in light of the EU’s institutional set-up: Transnational lists and the *Spitzenkandidaten* procedure. It is argued both could enhance the European dimension of the elections, but they are no silver bullets. Any such reforms should therefore be accompanied by a third component: a stronger role for the European Parliament.

This paper is part of the “Visions for Europe” series, funded by the German Federal Ministry of Finance. Papers within this series develop longer-term visions and recommendations for different EU policy areas and are based on extensive consultation with experts and stakeholders. For this paper, an expert group composed of distinguished European experts was convened in July and September 2021. The paper also draws on insights from interviews with decision-makers from EU institutions and the member states. The views and opinions expressed in this policy paper are those of the author and do not necessarily reflect the position of every member of the expert group. The list of experts can be found in the annex.

Executive summary

The next European Parliament (EP) elections will take place in May 2024. And, while the EP has progressively gained more powers over the decades, the way its members are elected remains a thorn in the side for many observers: Instead of being truly European, with European-wide constituencies and a European-wide election campaign, EP elections are still conducted on a national basis, with national parties competing against each other for a national contingent of seats. European Parliament elections are thus often viewed as second-order national elections since the battle for EP seats is mostly fought out on a slew of nationally salient issues.

In this policy paper, the two main ideas for reforming EU electoral law and making European elections ‘more European’ are revisited ahead of the 2024 EP elections: Transnational lists and the *Spitzenkandidaten* procedure. Both ideas have their flaws but, more importantly, both ideas also have the potential to render the EU more democratic and bring it closer to its citizens.

Firstly, introducing transnational lists would be a symbolic but crucial step to enhance the European dimension of EU elections. To make this ambitious idea work, it would have to go hand in hand with steps towards a European public space including truly transnational electoral campaigns by European political parties as well as transnational debates, media reports and talk shows.

Secondly, committing to a proper *Spitzenkandidaten* procedure and sticking to it will be utterly essential in the 2024 elections. Abandoning the procedure would raise renewed criticism of its lack of democratic legitimacy, especially when citizens, not least through the EU’s pandemic responses, are acutely aware of the EU’s impact on their lives. EU citizens should have a political choice, through their vote for Parliament, on who will head the European Commission, and who will, as a consequence, determine many of the policies that will affect them for the following five years.

At the same time, neither transnational lists nor the *Spitzenkandidaten* procedure are silver bullets, ensuring that the EU all at once becomes a fully-fledged parliamentary democracy. Any such reforms should therefore be accompanied by a third component: a stronger role for the European Parliament in the EU’s institutional set-up, and in particular a right of initiative for the EP.

The timeframe to introduce EU electoral law reforms ahead of the 2024 elections is tight and the political opposition is not to be underestimated. But we might nevertheless currently find ourselves under the best possible conditions to discuss ambitious reforms to strengthen EU democracy: The new coalition government in Germany has explicitly stated its support for transnational lists and a binding *Spitzenkandidaten* system, and also expressly opened up to the possibility of Treaty amendments. The upcoming elections in France and the incoming French Council presidency thus provide an unprecedented opportunity for a Franco-German push for EU democracy, which could be given further impetus in Conference on the Future of Europe.

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Introduction

The next **European Parliament (EP) elections will take place in May 2024**. And, while the EP has progressively gained more powers over the decades, the way its members are elected remains a thorn in the side for many observers: Instead of being truly European, with European-wide constituencies and a European-wide election campaign, EP elections are still conducted on a national basis, with national parties competing against each other for a national contingent of seats. European Parliament elections are thus often viewed as second-order national elections since the battle for EP seats is mostly fought out on a slew of nationally salient issues.¹

“European Parliament elections are often viewed as second-order national elections.”

Deliberations on how to reform EU electoral law are well under way in the European Parliament. In particular, how to harmonise EU electoral rules across member states and bring in transnational lists are high on the EP’s legislative agenda. In addition, there is the question of what fate the *Spitzenkandidaten* procedure will suffer in 2024 after it was so unceremoniously discarded in 2019. These ideas have been part and parcel of the debate ever since the EP was directly elected for the first time in the 1970s, but there is a strong case for revisiting the issue now. The deviation from the *Spitzenkandidaten* process after the 2019 elections and the disappointing set-up of the Conference on the Future of Europe² have brought **questions of EU democracy back to the forefront and to voters’ attention**. At the same time, the EU has, notably during the Covid-19 pandemic, taken on important political tasks with profound impacts upon people’s lives – think vaccine procurement – which render questions of political accountability all the more salient.³

While end-2021 seems maybe premature to think of elections happening in 2024, **starting a discussion on the electoral law for the 2024 elections on time** is the right thing to do. Not only does the European Parliament’s proposal need to be agreed to by the Council with unanimity. The modifications to the EU electoral act must then in turn be ratified by the member states and transposed into national systems. All these steps take time. The last time an electoral reform was initiated it took the EU institutions about three years and right up till summer 2018 to adopt the amending act – too late for all 27 member states to ratify the act in time for the May 2019 elections.

It is also propitious to put the issue on national agendas in light of the **new coalition government in Germany and upcoming presidential and parliamentary elections in France**. In fact, the new German coalition treaty explicitly references the question of EU electoral reforms. In this regard it states that the new German government will “support a uniform European electoral law with partly transnational

¹ See on the concept of second-order election for example: K. Reif and H. Schmitt, *Nine second-order national elections: A conceptual framework for the analysis of European election results*, (1980) 8 *European Journal of Political Research*; S. Hix and M. Marsh, *Second-order effects plus pan-European political swings: An analysis of European Parliament elections across time* (2011) 30 *Electoral Studies*; P. Ehin and L. Talving, *Still second-order? European elections in the era of populism, extremism and Euroscepticism*, (2021) 41 *Politics*.

² T. Nguyen, *Time to be honest: The future will not be decided by the Conference on the Future of Europe*, April 2021, Jacques Delors Centre.

³ See on the gap between political ambitions and institutional realities in the EU: T. Nguyen and N. Redeker, *Check yourself before you wreck yourself – On the gap between political ambitions and institutional realities in EU economic policymaking*, June 2021, Jacques Delors Centre.

lists and a binding *Spitzenkandidaten* system.”⁴ Moreover, a **Franco-German move** on this issue could emerge within the **Conference on the Future of Europe**, due to be concluded in summer 2022 under the French Council presidency.

In this policy paper, the two main ideas for reforming EU electoral law and making European elections ‘more European’ will be revisited: Transnational lists and the *Spitzenkandidaten* procedure. Both could render the EU more democratic and bring it closer to its citizens, but they are no silver bullets, ensuring the EU all at once becomes a fully-fledged parliamentary democracy. Any such reforms should therefore be accompanied by a third component: a stronger role for the European Parliament in the EU’s institutional set-up.

1 Main goals of an ‘ideal’ EU electoral system

The choice of electoral system is one of the most important, if not the most important choice in creating democracies. The decision always rests on a **trade-off between different goals and principles**. Different electoral systems serve different purposes; no system simply reflects voter preferences. Instead, all systems entail choices as to which goals to favor and which not. Electoral tradeoffs can be, for example, an emphasis on proportional representation by eschewing any direct link between representatives and constituents; the embrace of smaller parties in exchange for a higher likelihood of a coalition government, which by definition is less stable than a one-party government; or imposing an electoral threshold to ensure stability in government but to the detriment of smaller and newer parties. The choice of electoral system is therefore not just a theoretical, constitutional consideration but determines the course of democratic societies at large on the basis of a set of goals and principles underlying that system.⁵

This also applies to the EU electoral system. Any ideas for reforming the current system and transforming it into an ‘ideal’ electoral law must rest on an understanding of which goals and principles underpin that ideal. In the Visions Expert Group Workshops, which brought together experts and policymakers working on this topic, **two main goals** were identified for the European electoral system: (1) **reinforcing parliamentary democracy in the EU** and (2) **enhancing the European dimension of EU elections**. Both goals ultimately serve the greater purpose of **bringing the EU closer to its citizens**. In addition, any reform of the EU electoral system should also retain the principles of (3) fair representation of member states by protecting the interests of smaller member states in its design and be (4) sufficiently simple as to allow the average EU voter to understand the system under which their MEPs are chosen.

In a **parliamentary democracy**, the government derives its mandate and legitimacy from parliament. This relationship is there to ensure that government policies are based on the parliamentary majority’s will that matches voter’s wishes. In the EU, this concept is normally applied to the relationship between the European Commission and the European Parliament: The Commission derives

⁴ Coalition Treaty 2021-2025 between SPD, Greens and FDP, *Mehr Fortschritt wagen: Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit*, November 2021.

⁵ A. Reynolds, B. Reilly and A. Ellis, *Electoral System Design: The New International IDEA Handbook*, 2008, International Institute for Democracy and Electoral Assistance.

its legitimacy from the European Parliament's vote of investiture and can be dismissed by Parliament through a motion of censure (art. 17(8) TEU and art. 234 TFEU). In an ideal European parliamentary democracy, and under the condition that we accept the Commission to be the EU's executive, its policies would be based on the electoral programs of the European political parties that have won the European Parliament elections.

Closely linked to the first goal, European elections should also bring EU policies closer to voters through a **truly European design of the electoral system**. This means moving away from the second-order nature of the elections, decided on national policies and contests, and moving towards a uniform European electoral law. It could also entail the creation of pan-European electoral districts, through which either all or some MEPs would be elected via transnational lists. The idea behind transnational lists is that by giving voters the possibility to vote for 'European' candidates in EU-wide constituencies, the explicitly European dimension of EU elections would be enhanced. Candidates would have to run on a pan-European platform, allegedly leading to both stronger European political parties, which would no longer be dependent on their national counterparts, and a common European public sphere as electoral campaigns would have to be the same across Europe and deal with European rather than national issues.⁶

One question always underlying any institutional reform of the EU is the question of how to ensure the **fair representation of member states**. Fair representation here does not necessarily mean equal representation in that each member state would receive the same number of EP seats or of votes in the Council. Article 14(2) TEU prescribes an allocation of EP seats to member states based on the principle of **degressive proportionality**. This inherently favors smaller member states by giving them proportionally more seats population-wise than it does to bigger member states. Any electoral reforms should not put small member states on a worse footing than the status quo.

And lastly, any electoral system should be **sufficiently simple** as to allow voters to understand how their representatives in Parliament are chosen. This is arguably all the more important in the European context given that the EU's institutional set-up is complex enough already. If the goal is to bring EU elections and EU policies closer to the citizens, embracing a reform which they do not understand or which raises false expectations would be unhelpful.

2 Key issues in the current EU electoral systems and proposals to rectify them

Designing the EU electoral system should be driven by the overarching purpose of **bringing the elections closer to the citizens** through two objectives: 1) By ensuring a truly European election with pan-national electoral campaigns and debates on transnational issues, and 2) providing a clearer link between the European Parliament and the Commission. At the same time, one should be careful not to undermine the principles fair representation of member states

⁶ *Transnational Lists: Can they deliver on their promises?*, February 2017, European Political Strategy Centre.

and simplicity. The current EU electoral system is **incapable of meeting these objectives**. In the following, the two main gaps in the current system will be explained and past and current attempts to rectify them will be presented, including brief assessments.

2.1 A lack of a European dimension in the elections

European Parliament elections are conducted at national level. **EU law provides a common framework**⁷ but the concrete details of the electoral rules and how they are implemented are left for each member state to decide. This means that even though they are European elections, they are organised nationally, on the basis of national electoral systems, with national political parties to the fore, and no truly European political arena. The problem this creates is that **political parties have little incentive to run their campaigns on cross-border or pan-European issues**. Instead, the focus remains more often than not on national concerns. This gives EU elections the reputation for being **second-order national elections**, thereby helping to generate even greater lack of knowledge among voters on EU affairs.⁸

The primary idea for how to rectify the second-order problem of European Parliament elections is the creation of **pan-European electoral districts** whereby (some) members of the European Parliament are elected through **transnational lists**. Proposals on transnational lists have existed in a variety of forms and colors. Practically they seem to imply the existence of two votes in the European Parliament elections: One for the national party list and one for the transnational list.

The main arguments in favor of transnational lists is that they would **enhance the European dimension of elections** and “help to overcome the mismatch between the European Parliament’s institutional role as the EU institution that represents EU citizens and the fact that EU citizens are asked to vote for national parties and leaders that have no visible role in European politics”.⁹ They would make voters see their votes count in terms of impact and also give the European Parliament a clearer guidance on voters’ policy preferences. Moreover, transnational lists arguably **strengthen the role of European political parties** by creating an incentive for them to run pan-European electoral campaigns and thereby **generate a transnational debate on core European issues**. They would also give voters a **wider range of choice**, including the possibility to vote for parties unrepresented at home.

“Transnational lists would enhance the European dimension of elections.”

2.1.1. Transnational lists: Past reform proposals and why they failed

The idea of transnational lists has repeatedly come up, in one form or another, since the 1990s **without ever being implemented** in practice. Several initiatives originated in the European Parliament itself. The report by Georgios Anastassopoulos was

⁷ Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, as amended by *Council Decision 2002/772/EC*, Euratom of 25 June and 23 September 2002. The latest amendment, *Council Decision (EU, Euratom) 2018/994* of 13 July 2018, is not yet in force as it has not yet been ratified by Cyprus, Germany and Spain.

⁸ M. Diaz Crego, *Transnational electoral lists: Way to Europeanise elections to the European Parliament*, February 2021, European Parliamentary Research Service.

⁹ *Ibid.*, p. 4.

the first formal proposal to introduce transnational electoral lists.¹⁰ Ten per cent of the overall number of seats in the European Parliament would be elected through this list. In the end, the idea failed to make its way into the Council decision modifying the 1976 European Electoral Act. Andrew Duff (then a MEP) in turn proposed in 2011¹¹ and 2012¹² electing 25 MEPs in a European-wide constituency, on top of the 751 existing seats. Under his proposal, the candidates on the transnational lists would have to come from at least one third of the member states. Neither report was submitted to a vote in the EP plenary through **lack of support in Parliament**. The Hübner-Leinen Report 2015¹³ initially avoided transnational lists to focus on the *Spitzenkandidaten* process. It was later modified in Parliament to include a link between the *Spitzenkandidaten* process and transnational lists, which would be headed by the political parties' respective lead candidates for the Commission presidency. Both ideas were, however, rejected in plenary vote in 2018.¹⁴

The idea of creating a pan-European constituency, in which MEPs would be elected through transnational lists, was thus **repeatedly killed by the European Parliament** itself. There appear to have been two main reasons for this.

The first was grounded in the fear that transnational lists would **favour bigger countries** and was prevalent among small and medium-sized member states. The underlying assumption in this argument is that such lists favor candidates from larger member states, which have a bigger electorate and thereby spur political parties into listing candidates from those countries at the top. So, while German, French, Italian and Spanish MEPs were, in principle, in favour of transnational lists, MEPs from countries like Ireland, Malta or the Baltics firmly opposed their introduction.¹⁵

The second reason was the argument that transnational lists would not bring EU elections closer to the citizens but rather create a cast of **'rootless' MEPs**, thereby **reinforcing the distance between EU citizens and MEPs**. This would arguably decrease the EP's legitimacy and play into populists' hands. In particular the European People's Party (EPP) group has often expressed this view, stating in 2018 that transnational lists were "neither European nor democratic but rather a centralist and elitist artificial construct".¹⁶ In essence, transnational lists were too federalist a concept for some MEPs.

¹⁰ Ibid., p. 7.

¹¹ *First Report of 28 April 2011* 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, Procedure file (2009/2134(INI)), Rapporteur: Andrew Duff.

¹² *Second Report of 2 February 2012* 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, Procedure file (2009/2134(INI)), Rapporteur: Andrew Duff.

¹³ *Report of 2 October 2015* on the reform of the electoral of the European Union, Procedure file (2015/2035(INL)), Co-Rapporteurs: Danuta Hübner and Jo Leinen.

¹⁴ In the end, the 2018 proposal was voted down by the EPP, ECR, GUE/NGL and EFDD, while the Social Democrats, Greens and Liberals were largely in favour of the idea. See: C. Verger, *Transnational lists: A political opportunity for Europe with obstacles to overcome*, February 2018, Jacques Delors Institute.

¹⁵ L. Donatelli, *A Pan-European District for the European Elections? The Rise and Fall of the Duff Proposal for the Electoral Reform of the European Parliament*, October 2015, Bruges Political Research Paper.

¹⁶ EPP Group, *EPP Group votes down transnational lists*, 7.2.2018.

2.1.2. Transnational lists: What is currently proposed?

In July 2021, a new draft proposal for transnational lists was introduced by Domènec Ruiz Devesa, rapporteur of the EP's Committee on Constitutional Affairs, with a view to amending the European electoral act by the time of the 2024 European Parliament elections. Amendments were tabled in the committee in mid-November, with a decision by the committee still awaited in mid-December at the time of writing of this paper.¹⁷ Specifically, Devesa proposes a system whereby **46 seats would be allocated through transnational lists**. These seats are those left unoccupied post-Brexit (with the remaining 27 of the in total 73 British seats having already been redistributed to other countries). So, the current allocations of member state seats would be unchanged under the Devesa proposal.

To mitigate the danger of these proposed 43 list seats being filled with candidates from larger countries alone and to ensure **fair representation between small and big member states**, the proposal assigns member states to one of five groups by population size. The rule for drawing up the lists by the political parties would be: First, each of the first 14 list places would have to include candidates resident in different member states. Second, every block of five list spots would have to include one candidate from each of the five member state groupings. This would ensure that candidates from small- and medium-sized member states would be guaranteed a spot on the list. It would not guarantee the presence, however, of candidates from all member states.¹⁸

The proposal makes a **good attempt at reconciling different interests** and standpoints when it comes to transnational lists. In particular, it tries to ensure a balance between small, medium-sized and big member states. It also leaves the current seat contingents intact. But one disadvantage with this proposal is that it is **too complicated**. The proposed system for structuring the pan-European lists is very difficult to understand. In this spirit, there have been some **amendments** in the responsible committee to simplify the structure – or at least to do so a bit. Damian Boeselager, for the Greens/EFA Group, for example, suggests a simpler rule, whereby each section on the list of seven candidates is composed by residents of seven different member states. Sandro Gozi, from the Renew Europe Group, also suggests simplifying the system, whereby member states are not grouped into five groups of five/six member states but rather into three groups of nine member states. Every section of three spots in the list would have to include a member state from each of the three groups. In addition, all member states would have to be included in the pan-European lists at least once.

¹⁷ *Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that decision, Procedure file 2020/2220 (INL), Rapporteur: Domènec Ruiz Devesa.*

¹⁸ See also: M. Müller, *European lists with national quotas? The political groups' proposals for EU electoral reform*, November 2021, Der (europäische) Föderalist Blog.

2.1.3. Transnational lists: A brief assessment

Transnational lists are a **good starting point** for enhancing the European dimension of the EU elections and maybe facilitating greater transnational debate on European issues ahead of the ballot. At the same time, there are still some **open questions**. First, it remains to be to what extent starting a transnational debate will, in fact, become reality. Transnational debates, or even European-wide debates, on policies are after all not just a question of transnational candidates running for a seat in Parliament on a European political party campaign. But rather, they also require things such as **transnational media reports** in national news outlets; transnational talkshows that are **translated into all official languages** of the EU; and, not least, genuine voter **interest in** truly engaging in transnational discussions on EU policies and a willingness to look beyond one's own borders.

On a more abstract level, what would be the **status of the MEPs** elected through the transnational lists?¹⁹ Would they be considered a special category by voters, media, and political actors, ones who are 'more European' than other MEPs?²⁰ Would they have more legitimacy than those elected via national lists, as is often feared? Moreover, the question is whether electing 46 seats out of 751 seats via transnational lists will indeed succeed in giving the European Parliament a clear sense of the voters' wishes. Will the results of votes for the transnational list **determine the future political direction** of the European Parliament, as seems to be implied, even if they contain just 46 seats? What happens if voters' choices diverge hugely between the transnational and the national lists? These are valid questions and concerns regarding the introduction of transnational lists.

Yet overall, the proposal to elect 46 seats in the EP via transnational lists is a good idea. The advantages outweigh the disadvantages. A contingency of European-wide elected seats would be a **symbolic but crucial step forward in the EU's institutional reforms** with the potential to enhance the European dimension of EU elections, thereby boosting European democracy. To make this ambitious idea work, it would have to go hand in hand with steps towards a European public space including truly transnational electoral campaigns by European political parties as well as transnational debates, media reports and talk shows.

Once these steps are underway, the next question is whether the pan-European constituency should, **in the longer term, be expanded to encompass all seats** in the European Parliament. Institutional changes are an incremental process. The 46 seats can function as a first experimental step towards the full Europeanisation of the EP elections. If they are successful in enhancing the European dimension of the elections, they should gradually be expanded within a transitional period until all seats in the EP are elected in a European-wide constituency. This

¹⁹ C. Verger, *Transnational lists: A political opportunity for Europe with obstacles to overcome*, February 2018, Jacques Delors Institute.

²⁰ M. Diaz Crego, *Transnational electoral lists: Way to Europeanise elections to the European Parliament*, February 2021, European Parliamentary Research Service.

idea was also part of the recommendations of the citizens' panel on European democracy in the Conference of the Future of Europe.²¹

2.2 A lack of clear link between legislature and executive

The second, related problem of European democracy is the fact that the composition of the European Commission is detached from the EU elections. There is no guarantee that voters, by casting their ballots for the European Parliament, will have a **say in who will become the head of the European executive** and what policies the Commission will initiate. This, at the end of the day, is a decision in the hands of national governments. The Commission is accountable to the European Parliament and the EP under the EU Treaties must vote both its president and the College of Commissioners into office, but only upon the nomination of candidates by the national capitals.

One attempt to rectify this gap and create a more direct link between the European Parliament elections and the Commission presidency is the *Spitzenkandidaten* procedure, whereby nominations for the post of European Commission president are chosen from the ranks of the **political parties' own lead candidates**. In a 2012 resolution, ahead of the 2014 elections, the European Parliament urged the European political parties to “nominate candidates for the Presidency of the Commission”, which would “play a leading role in the parliamentary electoral campaign, in particular by personally presenting their program in all Member States of the Union”.²² The idea was that by **linking their elections more directly to the choice of the voters**, the political legitimacy of both Parliament and Commission would be reinforced.²³

The arguments in favor of the *Spitzenkandidaten* procedure are straightforward. Campaigning transnationally ahead of the elections would strengthen the role of European political parties and lead to **improved visibility** of the European Commission presidential candidates. It would make the elections **more personal**, thereby bringing them closer to the citizens. It would also help to create a European public space with more EU-wide discussions and improve the democratic quality of EP elections. The European Parliament would not merely rubber stamp a decision of the European Council when it comes to the post of Commission presidency, but

²¹ The *Conference on the Future of Europe* is a new and unprecedented EU-wide democratic experiment running from May 2020 to May 2021. A representative group of randomly selected Union citizens is given the opportunity to discuss a number different EU policies in four so-called European Citizens' Panels and to make recommendations to the EU institutions for the future of Europe, including the future of European democracy. The recommendations of the European Citizens' Panels will be presented and discussed at the Conference Plenary, composed of representatives from the EP, Council, Commission, all national Parliaments, and citizens, in January. Recommendation 16 of the European Citizens' Panel 2 on 'European democracy / Values and rights, rule of law, security' of December 2021 reads as follows: “We recommend adopting an election law for the European Parliament that harmonizes electoral conditions (voting age, election date, requirements for electoral districts, candidates, political parties and their financing). European citizens should have the right to vote for different European Union level parties that each consist of candidates from multiple Member States. During a sufficient transition period, citizens could still vote for both national and transnational parties”.

²² European Parliament, *Resolution of 22 November 2012 on the elections to the European Parliament in 2014* (2012/2829(RSP)).

²³ Ibid.

instead **citizens would have an indirect choice** in the matter by casting the ballot for the political party and lead candidate of their choice. It is important to note here that the *Spitzenkandidaten* procedure is not intended to guarantee the candidate of the winning party the position of Commission president but rather opens it up to the candidate best able to gather sufficient parliamentary support.²⁴

The procedure would thereby also add **greater transparency** to the appointment of the Commission president. Ideally, the *Spitzenkandidaten* procedure would put an end to Commission presidency nominations through back-door deals between member states and be openly/publicly discussed by MEPs.

2.2.1. *Spitzenkandidaten* procedure: Past attempts and why they (partially) failed

The first, and so far only, successful employment of the *Spitzenkandidaten* procedure came during the 2014 European Parliament elections. Article 17(7) TEU states that the European Council, in nominating the candidate for Commission president, must “**take into account the elections to the European Parliament**”. The Parliament interpreted the phrase widely to link the choice of Commission presidency with the outcome of its own elections. Five European political parties put forward their lead candidates for the post: Jean-Claude Juncker (European People’s Party), Martin Schulz (Party of European Socialists), Guy Verhofstadt (Alliance of Liberals and Democrats), Ska Keller and José Bové (European Green Party) and Alexis Tsipras (European Left). All five candidates took part in several television debates, interviews and rallies across member states. The message to the voters was clear: In voting for their MEP, they did not only vote for a political party but also for who should head the European executive. In the aftermath of the EP elections, in which the EPP emerged as the biggest party, the European Council nominated their lead candidate, Jean-Claude Juncker, as the candidate for Commission president by qualified majority. He was subsequently elected by Parliament.

The 2014 process was considered by many national governments to be a **coup** by Martin Schulz and Jean-Claude Juncker, the lead candidates of the two biggest political parties in Parliament. By making it clear before the elections that they would support each other in the event of the other’s victory, they left the European Council with little choice but to nominate Juncker. This lack of alternative was reinforced by Juncker’s background: Having been the **long-term head of the government at home** before his *Spitzenkandidaten* bid, he came with a range of experience from the ranks of government leaders/colleagues. There were few credible arguments for the European Council to reject his bid. By presenting the European Council with a *fait accompli*, Schulz and Juncker all but **trapped** the leaders into nominating the EP’s candidate of choice.

This process could **not, however, be replicated in the 2019 elections**. As in 2014, the European political parties again put forward their lead candidates for the Commission presidency post: Manfred Weber (EPP), Frans Timmermans (PES), Jan Zahradil (AECR), Ska Keller and Bas Eickhout (European Green Party), and Violeta Tomić and Nico Cui (European Left Party). ALDE, in turn, refused to nominate a single lead candidate but rather put forward a whole team of leaders. However, in direct contrast to 2014, none of the *Spitzenkandidaten* managed to secure the nomina-

²⁴ L. Tilindyte, *Election of the President of the European Commission: Understanding the Spitzenkandidaten process*, April 2019, European Parliamentary Research Service.

tion for the presidential post. Instead, the European Council decided, via a series of talks behind closed doors, on Ursula von der Leyen, who never ran for office in the first place.

There are two important aspects to understanding the success of the 2014 *Spitzenkandidaten* process and the failure of the 2019 one. First, it is important to reiterate that the *Spitzenkandidaten* procedure is not formally written down in EU legislation. Rather, the hope seemed to have been that a successful introduction of the system in 2014 would set a mandatory pattern for all subsequent elections. It was, in essence, an attempt at **reform through legal interpretation and political pressure** rather than through a formal change of electoral laws and procedures. The heads of State and government were clearly unhappy in the post-electoral period about the *Spitzenkandidaten* procedure and did, in the absence of formal institutionalisation, everything in their power to prevent the same thing from happening again in 2019. After all, the *Spitzenkandidaten* system took away an important prerogative, namely that of nominating the Commission presidency, out of their hands.

Second, the European Parliament made some **serious tactical mistakes** in the 2019 *Spitzenkandidaten* process. Again, one of the reasons why it worked in 2014 was because the biggest parties in EP rallied behind a single candidate after the elections, leaving the European Council with little alternative but to comply. In 2019, the grand coalition of EPP and Social Democrats lost its majority in Parliament. The Social Democrats and the Liberals made it clear that the EPP's candidate Manfred Weber was unacceptable to them. As Lucas Guttenberg wrote at the time: "This is a perfectly valid opinion to hold – but this kind of apodictic statement made it much easier for the European Council to get its way".²⁵ This was not helped by the fact that the EPP in turn excluded the nomination of any non-EPP candidate for the top post, by virtue of their being the largest political party in Parliament and the argument that the Commission presidency should therefore automatically fall on them. This is an essentially flawed argument, as will be explained further below. The net effect was, as we have seen, the nomination of Ursula von der Leyen – a name entirely unheard-of during the election campaigns but now Commission president for the last two years.

“The European Parliament made some serious tactical mistakes in the 2019 *Spitzenkandidaten* process.”

2.2.2. *Spitzenkandidaten* procedure: Where do we stand now?

What will happen to the *Spitzenkandidaten* procedure in the 2024 elections remains open. Even though there have been attempts at formally enshrining the *Spitzenkandidaten* procedure in secondary law, they have failed.²⁶ In general, and as we have seen in 2014, there is **no need for any formal changes** to reinvigorate the *Spitzenkandidaten* procedure in time for the 2024 European Parliament elections. At the same time, formalising the procedure makes sense to avoid a disaster à la 2019. A first step in this direction was done through mentioning the *Spitzenkandidaten* procedure in the Framework Agreement on relations between the European Parliament and the European Commission, as amended in

²⁵ L. Guttenberg, *European Parliament: Time to move on*, July 2019, Jacques Delors Centre, p. 1.

²⁶ *Report of 12 June 2013* on Improving the practical arrangements for the holding of the European elections in 2014, Procedure file (2103/2102(INI)), Rapporteur: Andrew Duff; *Report of 2 October 2015* on the reform of the electoral of the European Union, Procedure file (2015/2035(INL)), Co-Rapporteurs: Danuta Hübner and Jo Leinen.

February 2018.²⁷ It remained a mere reference, however, without any clear commitment to abide by the procedure in the future.

The Devesa proposal for EU electoral reform references the *Spitzenkandidaten* procedure in the preamble, stating that lead candidates nominated by a European political party need to be able to stand behind a common electoral program in all member states and calling for transnational lists to be headed by each political family's candidate for the Commission presidency.²⁸ It did not, however, find its way into the legal provisions. This was merely suggested in an amendment by Damian Boeselager, on behalf of the Greens/EFA Group, which proposes the insertion of a sentence **linking the top position on each transnational list to the candidacy for the position of Commission president**. The merits of this idea will be discussed further below.

Ursula von der Leyen had also addressed the issue of the *Spitzenkandidaten* procedure in her political guidelines immediately after her nomination,²⁹ stating that the procedure had to be improved and voicing her hope that this could be done through the **Conference on the Future of Europe**. Arguably, it would have been a lot more difficult for EU leaders to elude the procedure in 2024 if there were clear recommendations formulated by the citizens to abide by the principle. Alas, the Conference became a **missed opportunity** for the *Spitzenkandidaten* procedure as no mention it made its way into the final recommendations of the panel in the end.³⁰ The *Spitzenkandidaten* procedure was, however, been explicitly mentioned in the new German coalition treaty, which even goes so far as to say that the new German government will “support a uniform European electoral law with partly transnational lists and a *binding Spitzenkandidaten* system” (emphasis added). This gives some hope for its revival in 2024.

2.2.3. *Spitzenkandidaten* procedure: A brief assessment

There are two main questions to be answered about the *Spitzenkandidaten* procedure. The first is whether we should stick to it at all. The answer seems straightforward: Yes, of course, in the name of democracy. But in reality, and in the context of the EU's institutional system, the answer is, in fact, not that simple. The *Spitzenkandidaten* procedure embodies a **tension** inherent in the European Commission itself: It is a political body as much as it is supposed to be a neutral, technocratic body. The fear is that a politicisation of the Commission and its presidency via the *Spitzenkandidaten* procedure could **undermine its role as a neutral guardian of the Treaties**. Critics often argue that a partisan Commission president would no longer be able to enforce EU law in a neutral and equitable manner because it would lack (political) objectivity.³¹

²⁷ Agreement between the European Parliament and the European Commission of 17 February 2018 amending point 4 of the Framework Agreement on relations between the European Parliament and the European Commission.

²⁸ Draft report of 1 July 2021 on the reform of the electoral law of the European Union, Procedure file (2020/2220(INL), Rapporteur: Domènec Ruiz Devesa.

²⁹ Ursula von der Leyen, *A Union that strives for more: My agenda for Europe*, July 2019, Political Guidelines for the next European Commission 2019-2024.

³⁰ Conference on the Future of Europe, European Citizens' Panel 2 *European democracy / Values and rights, rule of law, security*, Recommendations, December 2021, available at: <https://futureu.europa.eu/assemblies/citizens-panels/f/299/>.

³¹ See also: T. Nguyen, *The Commission is political: Time to act upon this truth in the run-up to 2024*, July 2021, Jacques Delors Centre; N. von Ondarza, *A Redefinition of 'Spitzenkandidaten'*, June 2019, Stiftung Wissenschaft und Politik.

At the same time, there is no guarantee that a less politicised Commission, decoupled from the *Spitzenkandidaten* procedure, would be more effective in handling politically sensitive issues such as enforcing the rule of law or balanced budgets within the member states. These decisions will continue to entail political choices and trade-offs, even without a *Spitzenkandidaten* procedure. And this is what makes **committing** to a proper *Spitzenkandidaten* procedure and sticking to it utterly essential. Rather than de-politicising the Commission, abandoning the procedure would raise renewed criticism of its lack of democratic legitimacy, especially when citizens, not least through the EU's pandemic responses, are acutely aware of the EU's impact on their lives.³² **EU citizens should have a political choice, through their vote for Parliament**, on who will head the European Commission, and who will, as a consequence, determine many of the policies that will affect them for the following five years. The role of the current Commission president in tackling the Covid pandemic has served to underline this point.

“EU citizens should have a political choice on who will head the European Commission.”

The second question is whether the *Spitzenkandidaten* procedure should be linked to transnational lists by putting the European political parties' **lead candidates on pole positions** for the EU-wide constituency. The advantage would be that a package of transnational lists and *Spitzenkandidaten* would bring some clarity to the electoral process: Each European political party would have a single lead candidate who would also be top candidate on the transnational lists. Both the transnational list and the lead candidate would hence run on the same consolidated, political platform with the same pan-European electoral campaign, thereby helping to buttress pan-European political debate. The codification of the *Spitzenkandidaten* procedure in the EU electoral act would furthermore guarantee its continuation.

The problem with such a link, however, would be that it would give a **false impression** as to the nature of the *Spitzenkandidaten* process. There is a certain ambiguity surrounding the system: it is not always entirely clear whether the process is supposed to be similar to a presidential system, in which the Commission head is elected by popular vote. Or whether it is supposed to be a parliamentary system that is not designed to guarantee the winning party's candidate the Commission presidency but rather opens up the post to the candidate **best able to gather sufficient parliamentary support**. The *Spitzenkandidaten* procedure is often presented as a way for EU citizens to directly choose their Commission president. But de facto, and from a legal standpoint under the current Treaties, it is the second option that is correct: Parliamentary support is the deciding factor for the Commission presidency, not the popular vote.³³ This also means that there is no automatism that the Commission presidency should fall onto the largest party in the EP elections, as the EPP had argued in 2019 – and certainly no automatism that it should fall onto the party winning the most seats in the proposed EU-wide constituency. Given this, the linking of transnational lists with the *Spitzenkandidaten* procedure should, for now, be avoided.

³² European Parliament, *Eurobarometer Spring 2021*.

³³ N. Lupo, *The 2019 European Parliament elections: politically crucial, but without clear institutional effects*, (2019) 11 Perspectives on Federalism.

3 A tight timeframe until the 2024 elections

While end-2021 might appear to be premature for thinking of elections 30 months away, it is of **crucial importance to start a discussion on the electoral law for the 2024 elections on time.**

3.1 A tight timeframe for transnational lists

As the Treaties only stipulate the minimum and maximum number of seats for each member state in the EP but does not tie it to the nationality of the candidates, it can be argued that no Treaty amendments are necessary to introduce transnational lists as they would not count towards national seat contingents.³⁴ Amendments to the European electoral act are adopted through a **special legislative procedure**. Under article 223 TFEU, it is for the European Parliament to draw up such a proposal “for the election of its members by direct universal suffrage in accordance with a uniform procedure in all member states or in accordance with the principles common to all member states”. The Council adopts the provisions by unanimity. The Parliament has a right to consent, acting by a majority vote. The provisions must then be approved by the member states in accordance with their respective constitutional requirements and then enacted within national systems.

All these steps **take time**. The last time that an electoral reform was initiated it took the EU institutions about three years from the EP proposal in November 2015 to its final adoption in Council, with the consent of Parliament, in July 2018 – **too late** for all 27 member states to ratify the act in time for the May 2019 elections. On this timeline, the EP and the Council must act decidedly faster this time if the current reform proposal is to be adopted on time for the 2024 elections. The German coalition treaty **indicates summer 2022** as a possible deadline for the presentation of a new EU electoral act by Brussels: Failing that, the German government seeks agreement on the 2018 reform proposal, which Germany had – along with Spain, Cyprus and Romania – failed to approve in time for 2019’s voting.³⁵ This proposal, adopted as Council Decision 994/2018, contains a number of measures aimed at harmonising EU elections.³⁶

The timeframe is thus very tight to introduce transnational lists ahead of the 2024 EP elections. At the same time, the **political opposition** is not to be underestimated. The 2015 proposal to introduce such lists was voted down in February 2018 by a majority of the European People’s Party (EPP), European Conservatives and Reformists (ECR), The Left (GUE/NGL) and the Eurosceptic group Europe of Freedom

³⁴ N. von Ondarza and F. Schenuit, *Reforming the European Parliament: Brexit Creates Opportunity for More than Just Seat Redistribution – But Plans are Modest (for Now)*, February 2018, Stiftung Wissenschaft und Politik.

³⁵ S. Kotanidis, *European Union electoral law: Current situation and historical background*, October 2019, European Parliamentary Research Service.

³⁶ Including both voluntary and obligatory regulations including but not limited to measures relating to e.g. the implementation of electoral thresholds, the printing names and logos of European political parties on the ballot paper, or the sanctioning of double voting. See for more details: L. Cicchi, *Europeanising the elections of the European Parliament: Outlook on the implementation of Council Decision 2018/994 and harmonisation of national rules on European elections*, June 2021, Study requested by the European Parliament’s Committee on Citizens’ Rights and Constitutional Affairs.

and Direct Democracy (EFDD),³⁷ while the Social Democrats, Greens and Liberals were largely in favour. But there were also serious splits among the member states. Both Italy and France clearly backed transnational lists along with other Southern EU member states and Ireland. The Scandinavian countries together with the Visegrád countries opposed the idea, though for different reasons. While the former had concerns on more practical grounds such as the costs of adding more MEPs to Parliament (as well as doubts about the EU dimension of democracy), the latter disapproved on grounds that democratic legitimacy should be strengthened through national parliamentary control.³⁸

3.2 Gearing up for the *Spitzenkandidaten* procedure

The same tight timeframe as for transnational lists **does not necessarily apply to the *Spitzenkandidaten* procedure** as its implementation is not a matter of electoral law reform. Rather, it can be done – and has been done – under the current legal framework. While formalising the procedure in the EU electoral act would certainly make sense to avoid another disaster à la 2019 – in which case, the same timeframe as above *would* apply – the main factors that play a role for its implementation are still: 1) the **political will** on the part of government leaders, which is not a given (see above), and 2) the **political finesse** on the part of the European Parliament to make it happen. Nevertheless, even without a formalisation of the process, the Parliament should start gearing up sufficiently early. Not only does the process of appointing the lead candidates potentially take time; they also need to prepare properly internally to avoid another malfunction of the procedure as happened in 2019.

4 A need for more visionary reforms beyond elections in the long term

Electoral systems cannot be separated from the institutional system in which they operate. Making the European Parliament elections more meaningful and bringing them closer to citizens also means that the parliamentary majority must be able to **decisively influence EU policies**.³⁹ The EU's institutional system is based on a **delicate institutional balance** between the European Commission, the European Parliament, the Council and the European Council. And while it is true that the EP's powers have gradually expanded, it still lacks decision-making powers on crucial aspects of EU policy and, critically, has **no (direct) right of initiative** when it comes to policy-making. Under the Treaties, that right belongs exclusively to the European Commission (article 17 TEU).⁴⁰

³⁷ C. Verger, *Transnational lists: A political opportunity for Europe with obstacles to overcome*, February 2018, Jacques Delors Institute, p. 8.

³⁸ *Ibid.*, p. 9.

³⁹ See for further ideas on how to enhance the EU's democratic legitimacy: J. Plottka and M. Müller, *Enhancing the EU's Democratic Legitimacy: Short and Long-term Avenues to Reinforce Parliamentary and Participative Democracy at the EU Level*, November 2020, Friedrich-Ebert-Stiftung.

⁴⁰ The EP does, however, have an indirect right of initiative under article 225 TFEU, under which it may request the Commission to submit a legislative proposal. If the Commission does not do so, it must justify its reasons. See for more on the EP's right of initiative: A. Maurer and M. Wolf, *The European Parliament's right of initiative*, June 2020, Study requested by the European Parliament's Committee on Constitutional Affairs.

This means that the parliamentary majority not only depends on the Commission to table any policy initiative but has to fight it out with both the Commission and the Council in the inter-institutional negotiations after it is tabled. Just because the majority in the Parliament takes a certain position on any given policy issue is by **no means any guarantee** that this position will see the light of day once it has gone through the EU's institutional wheels. This in turn means that voting for the majority party in the European Parliament, at the end of the day, does not necessarily have the policy impact which voters might expect, unless the European Parliament significantly manages to **raise its own game in enforcing its interests** vis-à-vis the other institutions. The 2014 and 2019 examples of the *Spitzenkandidaten* procedure have demonstrated what it can achieve if its members manage to band together to achieve a certain goal – and what not if they fail to do so. This is different at national level. The new German government, led by chancellor Olaf Scholz, for example, will have a majority in the Bundestag to implement its program without the opposition being able to interfere much. The majority parties in the European Parliament do not enjoy this option.

Any reform of the EU electoral law must therefore, in the long-term, come with **more visionary reforms concerning the European Parliament's role** in the EU's institutional set-up. This first and foremost means giving the EP a direct right of initiative⁴¹ but also replacing those special legislative procedures, in which the EP only has a consultative or consenting role, with ordinary ones so as to put the EP on equal footing with the Council in more policy areas. Both would require a **Treaty amendment**, which is a notoriously difficult endeavor in the EU.

At the same time, we might also find ourselves under the **best possible conditions** to start such an endeavor: In its coalition treaty, the new German government has expressly opened up to the possibility of Treaty amendments and, in this context, explicitly mentioned the strengthening of the EP and its right to initiative.⁴² Simultaneously, the French Council presidency will begin on 1 January 2022 with French national elections following soon in spring, while the Conference on the Future of Europe is due to conclude in May 2022. This provides an **unprecedented opportunity for a Franco-German push for EU democracy**, depending on the outcome of the French elections. The other member states will of course have to be brought on board. A Franco-German alignment might not be a sufficient condition for future institutional reforms to boost EU democracy. But it is a necessary one.

“Best possible conditions to start discussing Treaty amendments.”

⁴¹ A draft report on a motion for a EP resolution on the future of Parliament's right of initiative is awaiting committee decision at the time of writing, and due to be voted in March 2022: *Report of 13 August 2021 on Parliament's right of initiative*, Procedure file (2020/2132(INI)), Rapporteur: Paulo Rangel.

⁴² It should be noted here that Ursula von der Leyen also stated her explicit support of a right of for the EP initiative in her political guidelines. But her speech to the EP on 16 July 2019 seemed to have implied that this support mostly relates to a commitment by the Commission to respond to the EP's request for legislative proposals under article 225 TFEU, i.e. its indirect right. In her speech, she said: “I support a right of initiative for the European Parliament. When this House, acting by majority of its Members, adopts Resolutions requesting the Commission to submit legislative proposals, I commit to responding with a legislative act in full respect of the proportionality, subsidiarity, and better law-making principles. I am convinced that our stronger partnership will further help to make people's voices heard.”

Conclusion

Reforming the EU electoral system to enhance its European dimension and bring it closer to the citizens by linking it with the Commission presidency is an inevitable and quintessential step for European democracy. Both transnational lists and the *Spitzenkandidaten* procedure are vital in this regard, albeit they should be treated separately. Especially as regards lists, a quick search for compromise and swift adoption of the new electoral act will be of the essence if they are to be introduced in time for 2024.

At the same time, we also need reforms that go beyond how the European Parliament is elected. Elections are only as meaningful as the institution that is being elected; no EU citizen can be convinced that their vote matters if a change in parliamentary majority does not lead to a change in the EU's political direction because that is how EU policymaking works. If the EU does want to pledge to its citizens that they will be able to decide on concrete policies at European level through their vote, the starting point should be European electoral law. But in the long-term the focus should be on the role of the European Parliament vis-à-vis the other institutions and the question of how it organises itself within the EU's institutional structure.

ANNEX:

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