

FLEXIBLE TRANSNATIONAL ELECTORAL CONSTITUENCIES: A PROPOSAL TO EUROPEANISE EU ELECTIONS

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Abstract

Recent calls for a more efficient European Union (EU) vis-à-vis ever more frequent crises should create an opportunity for closing what scholars call its “democratic deficit”. This should also create a political space for reforming the way the European Parliament (EP) is elected. Yet, all attempts at such a reform have failed, including the last one recently rejected by the European Council. The article faces this puzzle: what makes the electoral law to elect the EP so resistant to change, while other EU institutions have been redesigned? It offers an interpretation of the reasons for such rigidity and proposes a procedure which may overcome the gridlock. It argues that the key for its success is the flexibility for Member States to decide to join a new scheme of transnational constituencies, as well as the neutrality vis-à-vis different views on integration held by European political parties.

Keywords: EP, electoral law, EU, democratic deficit, problem-solving, innovation, technologies

1. Introduction: context and why the election proposal

The article is moved by the idea that a geo-political context which is defined by accelerating crises (the Covid19 pandemic, the war in Ukraine and its macroeconomic consequences, the urgency to respond to climate change) provides the opportunity to reform the European Union (EU) so that it can achieve a higher level of efficiency in decision making. In turn, this requires a mechanism that makes EU decision making less dependable on bargaining amongst Member States and more reliant on legitimacy directly coming from European citizens. The belief is that there is no trade off (as some appear to assume) between efficiency of policy making and its representativeness. Rather, shared political choices may be better implemented if a sufficiently large number of citizens feel to have been taken on board by the decision-making process.

A significant step in re-orientating and energizing the process of European integration is purported to be the reform of the modality for the election of the European Parliament (EP) so that it can gradually reflect and promote an EU-wide political arena involving citizens in policies with an EU wide scope. The article formulates, comparatively discusses, and supports a proposal which at its core has the aim to provide individual voters with the option to join an EU-wide constituency.

Proposals for an electoral reform of the EP have been periodically put forward by MEPs as well as by a few scholars. They have all been unsuccessful, including the latest rejected by the Council in December 2022. The article addresses a genuine puzzle which needs to be solved: why have all attempts to modify the mechanism through which MEPs are elected failed, while all other EU institutions have witnessed significant transformations?

Translating from game theory, the article assesses that the failed proposals at reform were not neutral vis-à-vis different political points of view or national interests. Factually, all previous attempts stem from a federalist view of the European integration process, and they were promoted by larger Member States. The proposal offered here embraces a different approach which, in the spirit of a positive-sum game, lays the foundation for an idea of the Union which does not need to resemble either a federal construction or a loosely knit number of countries. Rather, the proposal becomes a platform capable to incrementally host different kinds of partnership amongst States around problems to be solved and forms of citizenships.

The article also reflects on what is “the democratic deficit” affecting the EU, arguing that what EU decision making lacks is not legitimacy, but a direct engagement of citizens so that they share in the ownership of decisions. Furthermore, in tune with the events of our historical times, the argument is that the EU’s democratic deficit is part of a wider crisis of western liberal democracies so that the approach at reform hereby proposed, envisages the EU as a laboratory of innovative participatory processes that may be adopted and adapted at the level of the Member States as well as of other States.

The article is structured as follows. First the reasons why the debate on the EP’s electoral law is relevant are defined. Then the attempts to modify the EP’s electoral law and why they have failed are discussed. Fourth our proposal is presented, with the reasons which make it different and capable to succeed. Drawing lessons, the conclusions dwell on how democratic representation can adapt to technology driven rapid evolutions.

2. The problem: a European Parliament with only national identities

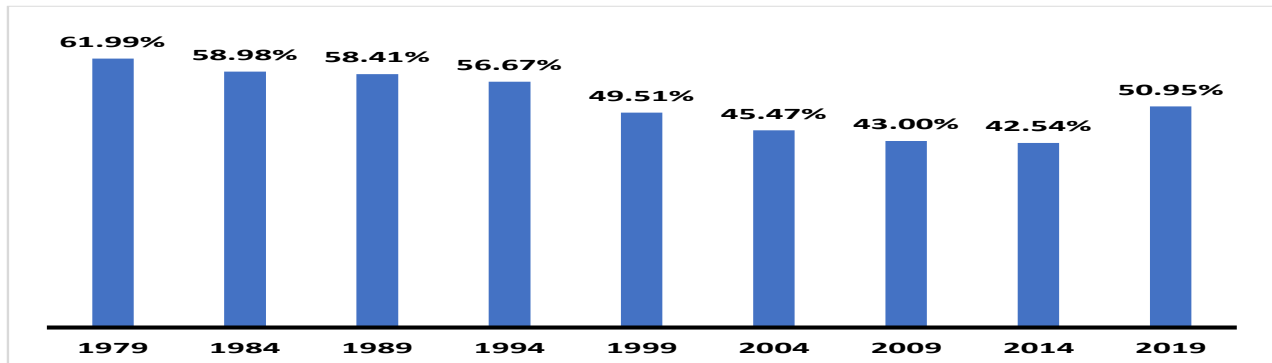
The debate on the European democratic deficit is one of the oldest among the longstanding discussions that have addressed the question of how to institutionally reform the EU¹. Within the architecture of the EU, the EP was meant to be the institution that should guarantee direct accountability to European citizens.² It is also the only supranational assembly elected with universal

¹ See, for example, Huber, P.M. (2009), ‘Demokratische Legitimation in der Europäischen Union’, *Zeitschrift für Staats- und Europawissenschaften (ZSE)/Journal for Comparative Government and European Policy*, 7(3–4), 364–380.

² Priestley, J. (2010), ‘European Political Parties: the Missing Link’, *Notre Europe*, 22 October, <https://institutdelors.eu/en/publications/european-political-parties-the-missing-link>; S. Hix (2008), *What’s Wrong with the European Union and How to Fix it* (Cambridge and Malden, MA: Polity Press).

suffrage (direct election), and its power has progressively increased since the first election in 1979³. However, the paradox is that this evolution contradicts the fact that citizens' interest in the EP, as measured by the turnout at the polls to elect its members, has decreased, as Figure 1 reveals.

Figure 1: European Parliament election turnout (percentage of electorate, 1979–2019)



<SOURCE> Source: European Parliamentary Research Service

Turnout has progressively gone down, with the only exception being the last 2019 election. Yet, that was the election in which the vote for Eurosceptical parties reached its highest (31% of the total votes), while the combined vote of the two mass European political parties (European People's Party and the Progressive Alliance of Socialists and Democrats) which have been the cornerstone of European politics for decades, fell for the first time to less than half (44%) (European Parliamentary Research Services, 2019).

Seventy-five years after the signing of the Treaties of Rome, we argue that what restrains the EU decision making is the continuous absence of a European public debate paralleling those happening at the national and local levels⁴. The EP which was supposed to create a direct platform of representation for the European citizens, appears remote from public opinions⁵.

³ The EP was originally created as a consultative body, supervising the legislative proposals advanced by the European Commission before the approval of the Council of Ministers. Since 1979 the EP has acquired wider powers, both legislative and budgetary. On the evolution of the EP powers, see: Hix, S., Høyland, B. (2013), 'Empowerment of the European Parliament', *The Annual Review of Political Science*, 171-189, [10.1146/annurev-polisci-032311-110735](https://doi.org/10.1146/annurev-polisci-032311-110735); Gungor, G. (2009), 'The Institutionalization of the European Parliament', *EUI Working Paper MWP*, 2009/26; Rittberger, B. (2003), 'The Creation and Empowerment of the European Parliament', *Journal of Common Market Studies*, 41(2), 203-225, <https://doi.org/10.1111/1468-5965.00419>; Wessels, W., Diedrichs, U., (2002), 'A new kind of legitimacy for a new kind of Parliament? The Evolution of the European Parliament', *European Integration Online Papers*, 1(6), <https://dx.doi.org/10.2139/ssrn.302666>

⁴ Otto, K; Köhler, A. (2016) : The lack of a European public sphere in the debate on the European sovereign debt crisis, *W.E.P. - Würzburg Economic Papers*, No. 96, University of Würzburg, Department of Economics, Würzburg; Kaitatzi-Whitlock, S. (2007). The Missing European Public Sphere and the Absence of Imagined European Citizenship, *European Societies*, 9:5, 685-704, DOI: 10.1080/14616690701412814; Brüggemann, M. and H. Schulz-Forberg (2009). Becoming Pan-European? Transnational Media and the European Public Sphere. *The International Communication Gazette* 71(8): 693-712.

⁵ An analysis of a 2008 Eurobarometer survey proved the limited knowledge that many European citizens had of the EP – as well as of other European institutions. For instance, in Italy, UK, Ireland and France only a third of respondents claimed to have recently heard/seen information about the EP. . Source: TNS Opinion, *Citizens Views on the European*

The pace and direction of history have changed since the fall of the Berlin wall⁶ and the EU has tried to adapt by proceeding in steps: some bolder, as in 1999 with the decision to adopt the Euro, in 2004 with the largest “enlargement”, or in 2020 with the decision to finance a common debt in response to the Covid19 pandemic; while some have been more cautious, as with the 2007 Lisbon Treaty.

Conversely, the way to elect the EP has remained the same⁷ since 1979⁸ when what was the European Economic Community had only nine Member States (and the “world wide web” had yet to be invented). Today the EP shows signs of obsolescence for lack of adaptation to the radical changes witnessed in the last four decades. A recent event to make it evident is the so called Qatargate⁹, the corruption scandal which wounded the EP at the end of 2022: whereas the response of the EP has been focused on increasing transparency on relationships between MEPs and lobbyists as a remedy to corruption¹⁰, this case signals a deeper problem of accountability¹¹.

The Lisbon Treaty itself clarifies that the EP is “composed of representatives of the Union's citizens” (article 14.2 TEU) (instead of “representatives of the peoples of the States brought together in the Community” as for article 189 ECT in the former Nice Treaty)¹². Yet there is no such constituency of “Union’s citizens” to which MEPs will respond, but only the sum of national ones. Transnationality is even explicitly excluded. Under Article 22(2) of the Lisbon Treaty, ‘every citizen of the Union

Parliament: perceptions, knowledge and expectations. A synthesis of results from a recent Eurobarometer survey, January 2008.

⁶ Hirst, P., *Endism*, London Review of Books, Vol.11, No.22, November 23rd 1989; Huhtanen, T. (2009), *The Meaning of 1989*, *European View* (8), 163-165.

⁷ With the exception of some minor adjustments which we will analyse in section 4 and which were necessary to make the elections technically possible.

⁸ Regulated by the Act of 20 September 1976 instituting the election of the representatives of what was then the Assembly by direct universal suffrage

⁹ In December 2022, one of the most serious scandals to hit the EU institutions in years was unveiled (Wheaton, S., *Qatar Scandal: What Just Happened at the European Parliament?* Politico.eu, 11 December 2022). The EU institutions condemned the scandal, together with several NGOs and watchdogs (“EU institutions must take urgent steps to undertake root and branch reform of the EU institutions ethics and integrity systems”, Aiossa, N., *Transparency International EU’s Position on the EP Corruption Scandal*, 12 December 2022). The scandal caused a significant damage to the reputation of the EP (O’Reilly, E., *How to Restore the European Parliament’s Reputation*, EuObserver, 16 December 2022; Wesel, B., *Opinion: Ignominy and disgrace in the European Parliament*, DW, 13 December 2022).

¹⁰ This was the main proposal of the 14 reform plan presented on the 12th Jan 2023 by EP’s president Roberta Metsola.

¹¹ The Qatar scandal also pointed out a longstanding issue: the distance between European voters and MEPs, which has undermined the credibility and representativeness of the EP so far. Hix & Høyland, 2013; , Russack, S., *EU Parliamentary Democracy: how representative?*, CEPS Policy Insights, No 2019/07, May 2019: “We find a lack of an electoral connection to the European Parliament. This prevents a genuine accountability of the EP to the EU electorate”.

¹² Consolidated version of the Treaty on European Union (TEU), Article 14(2): “The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.”

residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides'¹³. Thus, the Treaty excludes that an EP candidate can be voted for by citizens outside the candidate's country of residence or citizenship, nor be in contest in more than one country¹⁴.

As a result, the EP elections are, de facto, the sum of 27 national (often even regional¹⁵) contests, taking place according to different time schedules (in 2019, they ran from 23 to 26 May)¹⁶

3. The ongoing debate (1): mapping the attempts to modify the electoral law

The debate¹⁷ about EP electoral reform¹⁸ can be mapped according to different objectives that such calls for reform incorporate. We classify the pertinent literature according to the following taxonomy of objectives:

1. *Create an EU-wide electoral procedure*: this is to avoid the EP elections being the sum of 27 national elections. EP elections should at least be based on the 'common principles' recommended by the Maastricht and Amsterdam treaties but never fully adopted by the Member States.¹⁹

¹³ Article 22 of the above mentioned "Treaty on the Functioning of the European Union" (at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

¹⁴ A further paradox is that Belgium – home to Brussels, the 'capital' of the EU – even requires candidates to be able to speak French, Dutch, or German (La candidature pour les différentes élections - Elections européennes et régionales 2009. lbz.rrn.fgov.be. 18 December 2008).

¹⁵ This produces a paradox (Grillo and Nanetti, 2018): an individual living, working and travelling across different European cities and Member States, as it is common today, has fewer chances of being elected than one who has spent the entire life in the same region.

¹⁶ The fact that election polls happen in some Member States when the results from others are made public, may also contradict the rule introduced by some Member States according to which exit polls and other information on electoral trends are banned in the days leading up to the elections and on election day.

¹⁷ Inside the EP itself, the Committee for Constitutional Affairs led a continuous debate on the institutional and electoral reform through the years (e.g. the 1984 Draft Treaty inspired by Altiero Spinelli). On this matter, see: Corbett, R. (1998), 'The European Parliament's Role in Closer EU Integration', Macmillan Press).

¹⁸ On the waves of electoral reform in the EP, see Charvát, J. (2019), 'Pan-European Constituency and Transnational Lists: the Third Wave of the EU Politics of Electoral Reform?', *Revue des Sciences Politiques*, 61, 24-33.

¹⁹ Pukelsheim, F. and Oelbermann, K.F (2011), 'Future European Parliament Elections: Ten Steps Towards Uniform Procedures', *Zeitschrift für Staats-und Europawissenschaften (ZSE)/Journal for Comparative Government and European Policy*, 9(1), 9–28; F. Pukelsheim and K.F. Oelbermann (2014) 'Reform of the European Electoral Law'. *Zeitschrift für Staats-und Europawissenschaften (ZSE)/Journal for Comparative Government and European Policy*, 12(4), 549–559; D.M. Farrell and R. Scully (2005), 'Electing the European Parliament: How Uniform are "Uniform" Electoral Systems?', *Journal of Common Market Studies*, 43(5), 969–984, <https://doi.org/10.1111/j.1468-5965.2005.00604.x>.

2. *Ensure that all votes are counted similarly*: this objective was formally achieved by the 2002 amendment to the electoral law, whereby proportionality became one of the few principles accepted by all Member States.²⁰
3. *Achieve a fair and politically acceptable distribution of the number of MEPs among Member States*: the distribution should be approximately proportional to each Member State's share of the EU population. This allocation is to be done at the next elections through an 'apportionment' process²¹ which, according to the Lisbon Treaty, establishes a distribution of seats "degressively proportional" to the population of the various Member States²².
4. *Facilitate innovative voting procedures*: the range of innovations includes postal and electronic voting.²³ And finally,
5. *Leverage electoral mechanisms to create a Europe-wide debate*: European political parties would propose cross-national policies, and European citizens would vote based on such proposals.²⁴ Examples of this are MEP Andrew Duff's 2011 proposals²⁵, probably the most ambitious attempt to reform EP electoral law thus far;²⁶ the proposals by Sandro Gozi,²⁷ and

²⁰ Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 modified the 1976 Electoral Act introducing the 'common principle' of proportional representation (together with a number of incompatibilities between national and European mandates).

²¹ With the approval of the Gualtieri-Trzaskowski report of 2013 the EP committed to submit, by the end of 2015, new proposals to the European Council in the view of setting up a new mechanism for the seat reapportionment, to be activated before each European election (European Parliament, Resolution of 13 March 2013 on the composition of the European Parliament with a view to the 2014 elections, Strasbourg, P7_TA(2013)0082, 13 March 2013).

²² The method is comparable to the composition of the electoral college to elect the US President, in that, pro-rata, the smaller states receive relatively more places in the electoral college than the more populous one.

²³ The last amendments to the 1976 Electoral Act were adopted by Council Decision (EU, Euratom) 2018/994 of 13 July 2018, which includes provisions regarding the possibility of different voting methods (advance voting, and electronic, internet and postal voting); the possibilities of different electoral thresholds - the minimum share of the primary vote which a candidate or political party requires to achieve before they become entitled to any representation – in different Member States; the protection of personal data; penalties for 'double voting' by national legislation; voting in third countries; and the possibility of the visibility of European political parties on ballot papers.

²⁴ Wouters, J. (2020), 'The Long and Winding Road Towards a European Electoral Law', in S. Kritzinger and others (eds.), *Assessing the 2019 European Parliament Elections* (London and New York: Routledge), pp. 9–18; R. Hrbek (2019), 'The Arduous Way Towards a Uniform Electoral System for the European Parliament', in O. Costa (ed.), *The European Parliament in Times of EU Crisis* (Cham: Palgrave Macmillan), pp. 255–274.

²⁵ Andrew Duff, a British Member of the EP from 1999 to 2014, presided over the Union of European Federalists. See also: Duff, A., (2022), 'Constitutional Change in the European Union. Towards a Federal Europe', Springer Nature; Duff, A. (2015), 'Pandora, Penelope, Polity: How to Change the European Union', John Harper; Duff, A. (2005), 'The Struggle for Europe's Constitution', Federal Trust.

²⁶ For an analysis of the reasons why Duff's attempt was not successful, see Donatelli, L. (2015), '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, http://aei.pitt.edu/73647/1/bprpaper_44.pdf.

²⁷ Gozi, S. (2021), *Promoting Europe as a Sovereign and Democratic Power: Contribution to the Conference on the Future of Europe* (Geneva: University of Geneva Global Studies Institute), pp. 109–115.

those of the European Parliamentary Service,²⁸ to correct the bias that the transnational list may produce in favour of larger Member States.²⁹ Also significant is the *Spitzenkandidat* process³⁰, involving the nomination by European political parties of candidates for the role of Commission President: the idea is that such a standing of a quasi EU Prime Minister for each European Political Party, would encourage electors to split along partisan rather than national lines, thus providing a common ground for grouping citizens across countries.³¹

Our research scope lines up with the fifth objective, engaging with a body of literature covering attempts at political proposals that have not been approved. Nevertheless, changes to the EP's electoral law to create an EU political debate have consequences for the first four objectives as well. As it will be shown, our proposal connects to the other objectives.

4. The ongoing debate (2): explaining the puzzle

Notwithstanding the many attempts to change the electoral law, results have been very limited.

The European Council conceded some adjustments of the electoral law (Council Decision 2018/994 of 13 July 2018³²); but only the incremental ones necessary to remove technical

²⁸ Crego, M.D. (2021), 'Transnational electoral lists: Ways to Europeanize elections to the European Parliament', European Parliamentary Research Service Study, PE 679.084, February, <https://doi.org/10.2861/520461>.

²⁹ Bol, D. (2021), 'Reforming European elections: Could a pan-European ballot paper engage EU voters?', LSE Blogs, 8 March, <https://blogs.lse.ac.uk/euoppblog/2016/03/08/reforming-european-elections-could-a-pan-european-ballot-paper-engage-eu-voters>.

³⁰ The *Spitzenkandidat* process was encouraged by the EP itself through a resolution in 2012 (ahead of the 2014 elections) where it urged European Parties to "nominate candidates for the Presidency of the Commission", expecting those candidates to play a leading role in the electoral campaign. This process did not imply that the candidate put forward by the winning party would be automatically chosen as President of the Commission; it would only be "best positioned" to gain sufficient support by the EP. Source: European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014, 22 November 2012, www.europarl.europa.eu

³¹ Under the *Spitzenkandidat* process, the party winning the most seats in the EP receives the first opportunity to attempt to form a majority to back their candidate (akin to how heads of government are elected in national parliamentary democracies). On 23 January 2018, the Constitutional Affairs Committee adopted a text stating that the *Spitzenkandidat* process could not be overturned, and that the EP 'will be ready to reject any candidate in the investiture procedure of the Commission President who was not appointed as a *Spitzenkandidat* in the run-up to the European elections "'Spitzenkandidaten" process cannot be overturned, say MEPs.', European Parliament, Press Room, (2nd February 2018).

However, the final outcome of the 2019 election was the choice of a president (Ursula Von Der Leyen) who was not the *Spitzenkandidat* of any of the European parties. This is unfortunate, given that the May 2018 Eurobarometer poll showed that 60% of the EU voters think that the *Spitzenkandidat* process would make the European Commission more legitimate and 70% think that the process would promote a real debate on European issues Democracy on the MOVE, May 2018, Barometer, https://www.europarl.europa.eu/pdf/eurobarometre/2018/oneyearbefore2019/eb89_one_year_before_2019_eurobarometer_en_opt.pdf).

³² The law finds its legitimacy in the 1976 Electoral Act ("Act concerning the election of the members of the E P by direct universal suffrage" accessible at [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008(01)-20020923)"); Article 14 of the 2012 Treaty on European Union; Articles 20, 22, and 223 of the Treaty on the Functioning of the European Union (accessible at https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF); and Article 39 of the Charter of Fundamental Rights.

problems, whereas not even the Treaties' commitment to embrace basic common principles³³ was fulfilled.

The absence of concrete results of the attempts to modify the EP's electoral law raises a puzzle: why has the electoral law for the EP stayed the same while other European institutions have experienced substantial reforms to make them more capable to deal with radical policy challenges? This state of affairs is even stranger if one considers that all major European political parties agree that the EU should be "closer to the citizens"³⁴ and "better equipped to quickly react to crises"³⁵, while no step has been taken to insure greater accountability of the EP to a European public opinion³⁶.

Moving to explain the puzzle through a analysis of the literature, one finds that the obstacles to the electoral reform of the EP can be presented as follows:

- a) **Political fragmentation**³⁷: not all European parties share the same view on how the electoral law should change. It has been pointed out that all attempted proposals have come from

³³ In 1992, the Maastricht Treaty (1.1.3) declared that elections should be held in accordance with a uniform procedure and that the EP was to draw up a proposal to this effect for unanimous adoption by the Council. Since the Council never agreed on any of the proposals, the Treaty of Amsterdam introduced the possibility – but not the provision – of adopting common principles.

³⁴European People's Party (EPP) (2017), Congress document: 'Europe secures our Future' ("The widespread demands for more democracy in the EU show that many citizens strongly desire to be more involved in EU decision-making", "In order to bring our Union closer to the citizens, we have to [...] make European elections less national and more European"). Socialists & Democrats (S&D) (2022), As democratic values defeat nationalism across Europe, S&Ds to debate on how to strengthen democracy in the EU, Press Release ("We must do more to close the gap between citizens and the EU and enhance ownership in the European project").

³⁵ Most of the EP political groups have also been complaining about the lack of efficiency in the decision making of the EU. For example, the EPP group claimed that "The intergovernmental approach [...] has to remain an exception. Effective governance at the European-level is also a precondition for securing prompt decisions without undue delay" (Making Europe fit for 21st Century, EPP group Position Paper, April 3rd 2017); according to Renew Europe, "Our (the EU) sovereignty is handicapped by our own outdated rules. We need to start a Convention and update the rulebook" (Richard, J.E., The Abuse of National Vetoes in the EU Must End, www.reneweuropiegroupp.eu/Newsroom, December 14th 2022); the Socialists and Democrats also believe that "Our European constitutional framework requires an update on its contents (policies), resources, decision-making (procedures) and democratic legitimacy, thus resulting in a stronger, more perfect political union" (S&D Paper on the EU's constitutional future: towards a stronger political union, June 9th 2020).

³⁶ Such distance has been underlined by several authors: Karlsson, M. (2012), Connecting Citizens to the European Parliament. E-Consultations as a Tool for Political Representation; Shephard, M. (1997), The European Parliament: Laying the Foundations for Awareness and Support, Parliamentary Affairs, 50 (3), pp. 438+; Gabel, M. (2003), Public Support for the European Parliament, Journal of Common Market Studies, 41(2), pp. 289-308; Schultz, K., The EU has much to learn about how to engage its citizens, Euractiv.com, 28 October 2021.

³⁷ De Sio, L., & Emanuele, V. (2014). Explaining the failure of electoral reform in the European Parliament. European Union Politics, 15(2), 219-240; Grabbe, H. (2015). Political fragmentation as an obstacle to democratic accountability in the EU. Journal of European Integration, 37(5), 541-555.

one very specific segment of the EU political landscape: the “federalists”³⁸. The federalists may well be a majority amongst the “liberals”, the “greens” and the “socialists”; but they may not be so within the European People’s Party³⁹ and clearly not among the “conservatives”⁴⁰.

- b) **Institutional constraints**⁴¹: so far the attempts to reform the EP’s electoral law would require an effort initiated by the EP but supported by the consensus of the Council (and the Commission) and the approval of all Member States⁴². It is a double challenge because the other two institutions may not desire a stronger EP⁴³, while the position of Member States’ may differ because of a number of factors⁴⁴,

³⁸ Resolution of the UEF Federal Committee on Transnational Lists for the 2024 European Elections, Adopted by the UEF Federal Committee, 23-24th November 2019; Bruton, J., Proposal to adopt the System of the Proportional Representation with a Single Transferrable Vote (PR-STV) as the Uniform Electoral System for Elections to the European Parliament, CONTRIB 261, CONV 585/03, 27 February 2003; Wijnsma, S., Transnational Lists for the European Parliament Elections, Reflection Paper, January 2018, Union of European Federalists. Andrew Duff (see pp. 10-11 of this paper for his proposal on the EP electoral law reform), a liberal-democrat, was President of the Union of European Federalists (2008-2013) and, in 2010, was among the founders of the Spinelli Group (a network of federalist-minded MEPs). The Spinelli Group is currently presided by Sandro Gozi (see p. 10) member of the Renew Europe Group.

³⁹ The European People’s Party has deep pro-European roots, considering the longstanding ties between the democratic Christians and European integration (some of the key figures of the European integration – as Robert Schuman and Alcide de Gasperi – were indeed democratic Christians).

⁴⁰ On the right of the European political spectrum one finds more skeptical positions towards euro-federalism: both the ECR (European Conservatives and Reformists) and the ID (Identity and Democracy) groups are firmly contrary to the federalist evolution. The ECR Manifesto claims “We reject the centralizing federalist agenda that says the only choice is between more Europe or no Europe”; the Identity and Democracy group has always claimed to be in favor of national sovereignty and against the centralization of power in the EU (see the Antwerp Declaration, Identity and Democracy Party, June 2022).

⁴¹ Hooghe, L., & Marks, G. (2008). A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus. *British Journal of Political Science*, 39(1), 1-23; Piattoni, S. (2013). *The theory of multi-level governance: conceptual, empirical, and normative challenges*. Oxford University Press.

⁴² Magnette, P. (2011). *From the parliament of states to the parliament of citizens: 50 years of the European Parliament*. Palgrave Macmillan; Schmitter, P. C. (2000). *How to democratize the European Union...and why bother?*. Rowman & Littlefield Publishers; Donatelli, L. (2015), ‘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, http://aei.pitt.edu/73647/1/bprpaper_44.pdf. Janssen, J., & Katsanidou, A. (2018). Why changing electoral systems is difficult: The European Parliament and its electoral reform. *European Union Politics*, 19(4), 566-583.

⁴³ Cross, W., & Katz, R. S. (2013). *The challenges of electoral engineering*. Oxford University Press; Hix, S. (2011). *The political system of the European Union* (3rd ed.). Palgrave Macmillan; Majone, G. (2005). *Dilemmas of European integration: The ambiguities and pitfalls of integration by stealth*. Oxford University Press; Steunenberg, B. (2005). *European Union governance: An overview*. In B. Steunenberg & B. De Witte (Eds.), *The European Union and the member states: Cooperation, coordination, and compromise* (pp. 3-22). Blackwell Publishing.

⁴⁴ Boräng, F. (2011). *Institutional engineering in the European Union: The changing role of the European Parliament*. Routledge; Eichenberg, R. C., & Dalton, R. J. (2007). *Post-Maastricht blues: The transformation of citizen support for European integration, 1973-2004*. *Acta Politica*, 42(2-3), 128-152; De Sio, L., & Maggini, N. (2014). *The European*

c) **Lack of citizens' awareness of the issue**⁴⁵: this point is strongly linked to the absence of a true European public debate, leading to a general lack of interest by European citizens towards the issue of the EP electoral law. As argued, the fact that the EP is far from being seen as the truly democratic and representative institution by EU citizens causes a general disaffection and scarce electoral participation.

5. Our proposal in five steps

Our proposal embraces an approach to overcome the obstacles underlining the puzzle.

Conceptually, our proposal considers the electoral law an incentive/ "positive action" to promote the emergence of an EU-wide political arena paralleling the existing national ones⁴⁶. It does not create a fixed number of transnational MEPs to be elected as a top up to the current system. Rather, it accommodates for the EP to gradually reflect an evolution in the way European citizens see their own citizenship, and it is different from the one recently rejected by the European Council⁴⁷:

Our proposal envisages a process articulated in five steps:

Step 1: The establishment of the EU transnational constituency⁴⁸ - The Member States' choice

The first step is to determine which Member States want to offer to their citizens the option to join a trans-national constituency. This implies that the Member States voluntarily decide – within a certain time frame before the election (9 months?) - whether to join a system by which they pool

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⁴⁵ De Vries, C. E. (2017). *Euroscepticism and the Future of European Integration*. Oxford University Press; Franklin, M. N., & Marsh, M. (1996). The 1994 European parliament elections: a tale of two electorates. *West European Politics*, 19(3), 447-466; Hobolt, S. B., & Wittrock, J. (2011). The second-order election model revisited: An experimental test of vote choices in European Parliament elections. *Electoral Studies*, 30(1), 29-40; Bardi, L. (2016). EU elections and the Italian press: The crisis of a democratic event. *Javnost-The Public*, 23(3), 234-251; Costa, O. P., & Moury, C. (2014). European parliament elections in France: the role of political parties in the mobilization of voters. *West European Politics*, 37(5), 937-958;

⁴⁶ There is a wide literature that explores the legitimacy of using electoral law as an instrument to reach certain political objectives (Heurtaux, J. and Harwood, A. 2013), 'The Making and Use of an Electoral Law', *Revue française de science politique*, 3-4(63), 519-544, <https://doi.org/10.3917/rfsp.633.0519>; Russell, M. and O'Connell, C. (2003), 'Positive Action to Promote Women in Politics: Some European Comparisons', *International & Comparative Law Quarterly*, 52(3), 587-614.

⁴⁷ It is not granted that vetoes may come from smaller Member States or from the ones beyond the founding core of six. The last attempt to adopt a common electoral mechanism (in that case, a minimum threshold below which a party would not be represented in the EP) was rejected by the German Constitutional Court

⁴⁸ As previously mentioned, the idea of a pan-European constituency already appeared in some of the past proposals of reform, starting from the so-called "Anastassopoulos report" of 1998 presented transnational lists as a way to make the EP more "European", and proposed to distribute 10% of the seats through pan-European lists (Article 5, Anastassopoulos report, 1998).

together a fraction of their EP's seats into a trans-national constituency. This fraction will be determined according to steps 2 and 3 detailed below and the transnational seats will be allocated according to the algorithms in steps 4 and 5.

Member States exercise this possibility after the "apportionment"⁴⁹ of the EP's seats amongst them, so that all participants to the electoral game know how many seats may be potentially interested by the trans-national list.

Step 2: The establishment of the EU transnational constituency - The voters' choice

Within a certain time limit before the day of the EP elections (6 months?), voters choose whether they want to continue to vote within a local/national constituency (default option) or to join the EU-wide constituency. Both the choice to join the trans-national list and the proper election should be expressed through electronic voting: this is to guarantee that the introduction of the trans-national list is roughly neutral also from a financial point of view.⁵⁰

The procedure would have been expensive in the pre-Internet era, while today Internet voting has reached a degree of maturity and makes this approach doable.⁵¹ For example, it has been successfully tried and regularly adopted in Estonia.⁵²

Transnational lists would be drafted by European parties in a period starting some time (perhaps one month) before and ending (perhaps one month) after the day when voters have to express their choice of constituency⁵³.

Step 3: Distribution of the EP seats between local/national and EU-wide electoral constituencies

Seats would then be allocated to national and European constituencies on the basis of the number of voters who choose to vote within each mode. For example, if 15% of all potential voters⁵⁴ of the

⁴⁹ We recommend that such "apportionment" be calculated automatically with no need for further negotiations which may delay the procedure. Once the Member States agree at least to the formula to allocate the seats so that smaller Member States may be slightly more represented (as per today's mechanism), the allocation will be automatically calculated on the basis of most recent counts of population before the dates of the election.

⁵⁰ Electoral law (as amended in 2018) already provides for a transnational constituency (citizens residing abroad) and the 2018 amendment to the electoral law also requires States to allow electronic voting.

⁵¹ A.H. Trechsel, V.V. Kucherenko, and F. Silva (2016), 'Potential and challenges of e-voting in the European Union', Study for the AFCE Committee, PE 556.948, https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556948/IPOL_STU%282016%29556948_EN.pdf.

⁵² Evidence from Estonia shows that the percentage of voters using the electronic option has stabilised to around one third and that, more importantly, the uptake is not significantly different across age, income, or gender groups. As in K. Vassil and others (2016), 'The Diffusion of Internet Voting: Usage Patterns of Internet Voting in Estonia Between 2005 and 2015', *Government Information Quarterly*, 33(3), 453–459;

⁵³ This is also an innovation, as citizens choose amongst two possible methods of participation on the basis of a partial release of the "political products" that they find at the transnational level; whereas political parties have the possibility to better finalize their offer (and distribute their efforts between the two constituencies) on the basis of how many voters are joining the transnational list.

⁵⁴ There are two possibilities: one is to consider potential voters (this creates a strong bias towards the national lists, because that is the default choice); the other is to only count those who actually voted (for instance, in the previous election). The first is simpler, but the second is fairer

Member States who joined the new method (as for step 1), chose to vote in the trans-national constituency, 15% of the seats of those Member States would be allocated to the trans-national lists (while the rest would be allocated to the national lists)⁵⁵.

This step creates a degree of fair competition among the two modalities, allowing information to be gathered regarding whether European voters perceive themselves as belonging to a national community or to a trans-national community.⁵⁶

Step 4: Allocation of EU trans-national constituency seats among different political parties

The votes resulting from Step 2 would be distributed among European parties in proportion to the votes received by each party. However, they would be weighed by their 'transnationality'.

The principle is that the more the distribution of the votes obtained by a party in different Member States resembles the distribution of the EU population across the Member States (or at least across the ones joining the system), the more that party is rewarded with a vote multiplier factor. This provides an incentive to the parties to campaign in all countries (in the last election, none of them had MEPs from all Member States), and to advance proposals that are not captured by national interests. It would also be a corrective factor for a system that otherwise tends to favour the larger Member States.⁵⁷

The proposed algorithm is such that parties gaining votes from all Member States and in proportion to their population – thus proving to be truly transnational – would have their votes multiplied by two, while those obtaining all their votes in one Member State would not gain such reward.⁵⁸ The formula also allows for most situations that would fall in between these two extreme cases.

Step 5: Allocation of seats to individual candidates

⁵⁵ An alternative is the allocation of seats to the transnational constituency to be determined per Member State: if 20% of the potential voters of country xyz and 10% of the ones of the country abc chose the transnational list, country xyz would contribute a percentage of its own seats which is twice as high as country's abc. However, this contradicts the very nature of the transnational constituency.

⁵⁶ One possibility would also be to allow citizens to vote in both constituencies: this would promote a new understanding of identity and citizenship as not being exclusive (as it is already recognised by the EU treaties).

⁵⁷ Bol, S. 'Reforming European elections'; Pukelsheim, F. and Oelbermann, K.F. (2014), 'Reform of the European Electoral Law', *Zeitschrift für Staats-und Europawissenschaften (ZSE)/Journal for Comparative Government and European Policy*, 12(4), 549–559.

⁵⁸ The proposal is to calculate the multiplier using a formula based on absolute deviations: Multiplier = $2 - \frac{\sum |x_{pc} - y_c|}{\max(\sum |x_{pc} - y_c|)}$ where x_{pc} is the percentage of the total votes in Member State C for a party P, and y_c is the number of voters in C as a percentage of the total number of voters within the EU transnational constituency. In the case of a party (or a candidate) whose votes are distributed among the Member States in the same proportion as EU voters are, $\sum |x_{pc} - y_c|$ would be zero, and thus the multiplier would be two (its votes would be doubled). When the party or candidate gets votes in only one Member State, $\frac{\sum |x_{pc} - y_c|}{\max(\sum |x_{pc} - y_c|)}$ would be 1, so the multiplier would also be 1 (which means that there is no reward).

The seats gained by each party should be allocated to the candidates according to their share of the vote, weighted by their transnationality (using the same mechanism as in Step 3).

A purely transnational candidate (very unlikely case) would double his/her vote tally, while a purely national one would have no extra rewards from the weighting mechanism. It is fair to expect that the vast majority of candidates would get almost all their votes from no more than one or two Member States. This would result, as with the allocation of seats among parties, in a relatively small deviation from proportionality that will increase in time as the system starts to generate a proper EU-wide political arena.

6. Analysis of the proposal

Our proposed system has several strengths. .

- a) It does not entail the abolition of current electoral laws. It would only provide an option for the electorate, the candidates, and willing European parties to try competing in a different context, which is rather cogent for a European election.
- b) It provides an instrument not only to measure the consensus for different European parties and candidates, but also to track how strongly European the EU citizenry feels. We expect younger generations to adapt to the innovation more quickly.
- c) It opens up, again on a voluntary basis, the opportunity for citizens and candidates to experiment and come to trust new, electronic means of expressing themselves politically and institutionally.
- d) It would be an example of how technologies can enable solution to new needs promoting different forms of citizenship. As such, the EU would become a laboratory in which to experiment with innovations needed to address the crisis facing the traditional instruments of representative democracy.
- e) It encourages representation of all Member States and carries a probability that even the transnational constituency would produce candidates whose nationalities are a good representation of the Member States joining the scheme.
- f) It represents a relatively small deviation from pure proportional representation (for the reasons outlined above) and it may also present a bias towards national constituencies. This would result in a small innovation that may flexibly increase over time, as the political debate becomes more European and the share of the vote of millennials grows.
- g) It provides a weighting mechanism that is simple enough to be explained to ordinary voters but also flexible enough to mirror a progressive Europeanisation of European democracy.
- h) It requires a counting procedure that is complicated and time-consuming if implemented manually, but which would be instantaneous when done electronically and relatively quick even via postal ballots that are fed into a few central nodes using scanners.

- i) It does not require unanimity among Member States and – as for other EU integration modes (eg. the Euro and the Schengen area) – it envisages the possibility to begin as a scheme of quasi “reinforced cooperation” about which Member States can opt in (and out) voluntarily.

Overall, the proposal has the advantage of flexibility, which may be the real key to approaching the ‘reform’ of the EU.⁵⁹ It is also different from the EP proposal in the following ways:

- a) It is democratic: the number of seats allocated to the transnational list is not fixed (the EP proposal sets the number at 46 seats) and it leaves the choice to every single citizen who freely chooses how to be represented and the electoral forum that suits best.
- b) It is flexible: it allows the system to be informed by the evolution in time of the preferences of the electorate. Younger citizens, especially, may gradually shift to a more European political arena to which European political parties will need to adapt.
- c) It is clear: it indicates a clear action that will make it the MEPs’ function to represent all European citizens, and it rewards parties and candidates who are capable (irrespective of nationality or residence) of better representing the distribution of the voters among different countries.
- d) It is open: it avoids the allocation in slots of five candidates coming from Member States of different sizes and would not adopt the closed list system (at least it would not do so in the form we have proposed). Fair representation would be guaranteed by shifting the attention from the nationality of the MEP elected to the capability of the system to better represent individual preferences (in line with the constitutional ‘one person, one vote’ principle).
- e) It is neutral: it does not create any bias in favour of any specific party, (see below in section 7 where it is elaborated how it does not disadvantage even those most critical of the Union) or any country, regardless of size.

The proposal, therefore, has the merit of more clearly indicating a pattern towards the creation of a modern, transnational democracy, which is something needed to tackle complex global problems that cannot wait for unanimity among the Member States. Its political strength is that it puts forward strong arguments that can appeal to a broad audience and make it harder for any Member State or political party to resist.

The EP can and should be the place where such experimentation takes place, if the EU aspires to overcome the current emergency by reviving its original purpose of being a socially inclusive community, a thriving innovation-driven economy, and a strong liberal democracy.

7. Conclusions: preliminary empirical evidence of the feasibility of positive results

While the longstanding debate on the EU democratic deficit has to date not yielded significant results, this article argues that ever more frequent crises have exposed with unprecedented clarity the urgent need for greater efficiency in EU decision making. This, in turn, requires an EP more

⁵⁹ Stubb, A. (2002), ‘Negotiating Flexibility in the European Union: Amsterdam, Nice and Beyond’ (Basingstoke: Palgrave).

capable to promote and represent EU-wide debates, rendered possible by the enabling of an EU-wide political arena.

The article underscores the belief that the time has come to reframe the entire debate on the European democratic deficit in at least two ways. First, the need for a transnational political arena must be separated from the strictly “federalist” point of view. The idea that a supranational organization co-exist with national governments and national identities may well be a potential strength of the European construction that also allows for different constituencies at different levels of governments to participate. Second, as it has been discussed, it is true that democracy at the EU level needs to be significantly strengthened, but this is also true for the Member States that are experiencing a deterioration of the effectiveness of their institutions, as they were built for a different time.⁶⁰

Thus, the article also underscores the belief that the time has come to understand why all previous attempts to change the EP’s election law have failed in the last three decades. We identify three reasons explaining the failure and three remedies which define our approach.

First, the proposal does not foresee a fixed number of seats allocated to an EU electoral constituency. Rather, it will be the voters who decide if they want to choose their representatives within the transnational or the national lists. This change implies a wider possibility for voters to participate in the democratic process. Whereas the current system paradoxically does not provide political representation for the part of the population more used to live and work across Europe.

Second, the proposal provides for a positive action so that transnational lists would find it convenient to conceive and execute transnational electoral campaigns. Indeed, parties whose votes are distributed amongst Member States in a way which mirrors more closely the distribution of the EU population will be rewarded.

Third, Member States can freely decide to join the new system or decide to keep their existing system. Although the proposal is constructed so that it guarantees a fair distribution of seats amongst Member States without a pre-determined allotment as it happens today, it is reasonable that the proposal starts based on a voluntary agreement amongst the Member States that want to experiment a new form of participation at the EU level.

These characteristics of the proposal show a neutral stance vis-à-vis different political parties. The parties that are less equipped or willing to adapt to a transnational constituency would dedicate most of their campaign efforts to the national constituencies. In this manner they would have the opportunity to increase their share of winnable seats with constituencies holding opinions less ready to surrender national sovereignty to EU decision making. Not less importantly, the proposal would guarantee flexibility in how the EP may eventually evolve towards acquiring a greater or less significant transnational nature.

In closing, the article reaffirms that an increasingly stronger supranational organization co-existing with national governments and national identities is a strength of the European construction; but it is so if it also acknowledges the legitimacy of different constituencies at different levels of governments. It would be a question of democracy and flexibility to allow citizens the possibility to

⁶⁰ See the forthcoming article, Grillo, F. and Nanetti, R. (2023), ‘Democracy at Work as Collective Problem Solving: The Paradoxical Case of China and Lessons from History’, *Journal of Information Technology*.

joint constituencies which are no longer bound to a certain place. This is an important and modernizing innovation which parliamentary democracies may also need to consider at the national level.

Ultimately, the article argues that Europe can be the case for a wider reorganization of political representation for a society rapidly transformed by technology-enabled mutations. The Internet is impacting the dimension of the spatial organisation of the lives of the EU citizens. In turn, this changes the shape and definition of more than one territorial community to which they feel to belong. Up to the end of last century, the pyramidal structure of nation-states and of their territorial levels was the dominant modality of representative and policy-making power. While the Internet revolution has accelerated both the globalisation of markets and the immigration/mobility trends transforming the make-up of the EU territorial communities, the EU electoral constituencies electing the EP have remained the same. The time is now to bridge the disconnect between the evolution of the very notion of the citizenships to be represented and the capacity of the institutions to respond to such a change.

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