

## The European Electoral System. The Weak Link of Supranational Democracy

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Even though a legal basis for a uniform European electoral law for the elections to the European Parliament has been in existence since the Treaties of Rome in 1957, European elections are still largely governed by national legislation. European citizens are asked to elect the European Parliament, but *de facto* they can only influence the distribution of seats within the contingent that was assigned to their Member State according to a political bargain in the European Council that broadly follows the principle of degressive proportionality. Despite the successful introduction of the “Spitzenkandidaten” for the office of Commission President by the political parties on the European level in 2014, political debates during the election campaign are stuck in the national context. Not the European parties are the main actors, but the national ones; not European topics and issues are discussed, but the contest between the governing parties and the opposition in the respective Member States is the centre of attention. No wonder that voters are reluctant to cast their vote for a European election that – at first sight – has nothing to do with Europe.

### Supranational Parliament. National Elections

The European Parliament is a truly supranational body. Members of European Parliament (MEPs) usually don't vote according to their nationality, but according to the line of their respective political group. Especially the centre groups like the European Peoples Party (EPP), the Socialists and Democrats (S&D), the Alliance of Liberals and Democrats for Europe (ALDE) and the Greens show a remarkable level of coherence in voting, that is comparable with most national parliaments. This competition between political visions and ideologies is, however, not presented to the electorate when European elections approach. European voters are left in the dark about the actual policy that might result from their vote. Elections are the main instrument of democratic participation by the citizens, but in European elections the European citizens are deprived of their right to participate in European politics. The question is how to bridge this gap between the supranational democracy that indeed is functioning, especially in the European Parliament, and the electorates that are kept in their national cocoons.

Political parties on the European level are the natural actors to Europeanize the political debates. However, as long as they cannot compete for mandates in elections and thus fulfil their main purpose, they won't be able to shape political debates to the degree needed, and remain umbrella organisations for the national parties. Attempts to strengthen European Parties by the establishment of a European legal statute for political parties, increased funding and more flexible rules for the use of the funds are insufficient as long as at least a part of the European Parliament's seats is allocated to the parties on the European level.

## **Bridging the Gap: Transnational Lists**

The basic idea of transnational lists is to establish an additional constituency that comprises the whole territory of the European Union. A part of the European Parliament's seats would not be assigned through the national contingents, but directly on the European level. The introduction of transnational lists would not alter the procedure for the elections, since a large share of MEPs would still be elected under the old system of national contingents. However, there would be an important addition. Voters would get a second vote, which they could cast for one of the European Parties, who had previously compiled their lists of candidates at their European congresses. Each top-candidate for the office of Commission President would lead the list of his respective European Party.

Transnational lists would empower European Parties in two ways. Firstly, transnational lists are the logical next step after the nomination of top-candidates. Since each top-candidate would lead one of the European parties' lists, they would be directly electable by all Union citizens. That was not the case in the 2014 European elections, when the top-candidates were either only electable in one Member State (e.g. Martin Schulz in Germany) or not at all (e.g. Jean-Claude Juncker, who didn't run for MEP in Luxembourg). Secondly, the European Parties would have the power to compete for mandates and thus become instantly more visible, leading to a debate that is more focused on European-wide issues. Transnational lists are the best way to gradually liberate the electorates from their national chains, without completely overhauling the electoral system in place.

### **Why transnational lists failed so far**

The idea of transnational lists has been around for quite a while. The first one to make a concrete proposal in this regard was the then Vice-President of the European Parliament Georgios Anastassopoulos, whose report was passed by the European Parliament. Even though according to the Anastassopoulos-proposal only 10% of MEPs were to be elected on transnational lists, the Member States in the Council, which have to agree unanimously to any change of the rules governing the European elections on EU-level, were not willing to take the step. During the 2009-2014 legislative period, a similar proposal by Andrew Duff, according to which 25 additional MEPs were to be elected on transnational lists, failed already within the Parliament.

Transnational lists were repeatedly criticised for creating a two-tier Parliament, with "European" MEPs and MEPs who are elected on the basis of national contingents. This – so say the critics – would endanger the unity of the European Parliament and the equality of parliamentarians. However, experiences from other federal systems with differentiated election systems, like Germany, show no such hierarchization. The obvious suspicion is that this argument is brought forward to disguise the real reasons for the stiff opposition to transnational lists: national thinking and the battle over the distribution of power between Member States.

Even though they formally cannot exert any direct influence on MEPs and it doesn't reflect the reality, Member States' governments still tend to characterise MEPs from their country as representatives of their Member State and not as "representatives of the Union's citizens", which they are according to Article 17 (2) of the Treaty on the European Union.

Member States are afraid to lose power, so the main question is: Where should the seats for the transnational constituency come from and who would profit the most from its establishment? The redistribution of European Parliament seats between the Member States has always been a highly sensitive issue, so any solution, be it the deduction of seats from the national contingents or a Treaty change that provides for additional seats to be used for the transnational constituency, must reflect a broad compromise. European and national political actors are not getting tired to underline the need to bridge the gap between the Union and its citizens – so the one true chance to do so must not be wasted on grounds of national thinking.

### **Diverse Rules - Same Rights?**

For the development of the European electoral system, the Europeanization of the European elections is the most pressing issue, if we are serious about a supranational democracy governing the EU, but it is not the only one. So far, Member States could only agree on very few common principles for the conduction of European elections within the Member States, like the principle of proportional representation, the possibility to create election thresholds of up to 5% and to allow preferential voting. Everything else is governed by national law.

In a federal system, not everything that can be harmonized should be harmonized, and there are numerous examples, like for example the USA and Switzerland, where federal elections are conducted according to the rules set by each sub-federal part. Nevertheless, it must be discussed how much heterogeneity in voting rules and rights are acceptable, following the notion that the Union citizenship grants equal rights to every citizen (at least in relation to EU acts and institutions). Is it, for instance, acceptable that a candidate in Greece can only stand for election at 25, while in most Member States the minimum age is 18? Why should a voter in Belgium be obliged to vote, even risking penalties if he abstains, while in most Member States obligatory voting doesn't exist? Does it satisfy democratic standards, if in some Member States the electoral lists have to be published only a few weeks before the election?

The 28 Member States of the Union have different voting habits, which are deeply rooted in the population. Federalism is characterised by unity and diversity alike. For example, constituencies often grew historically, or they serve the purpose of minority protection. National peculiarities should also be respected when it comes to the electoral law, but neither the rights of European citizens nor democratic standards must be sacrificed on the altar of national sovereignty.