CEPOB

College of Europe POlicy Brief

Conference on the Future of Europe

Towards a European Political Space: The Challenges of European Electoral Law

Olivier Costa and Pierre Jouvenat

Executive Summary

> The European integration process requires a transnationalisation of the political debate. To this end, political parties, which remain essential in representative democracies, must take on a transnational dimension.

> The pronounced ideological fragmentation that prevails within the European Union (EU) makes the creation of genuine transnational political parties unlikely in a foreseeable future. However, as a first step and given the *sui generis* nature of European integration, synergies between existing national and European parties should be reinforced.

> Legal incentives are needed. The European electoral law should not only favour a European-centred ballot but should also incentivise the transnationalisation of political parties. The proposal of a two-dimensional system for the distribution of seats in the European Parliament (so far called "double-proportionality") appears to be the most promising pathway in this respect.

> The two-dimensional system safeguards the prerogatives of Member States when it comes fo organising elections as well as the primary role of national parties in the electoral process. This entirely bottom-up approach appears politically acceptable.

The 2019 European parliamentary election campaign confirmed the weakness of the transnational policy space, with national political considerations remaining dominant. In dealing with European challenges, political parties did talk about European-wide alliances, but the discussion was mainly about post-election groupings within the European Parliament's (EP) political groups, without any mention of prior affiliation to a European political party (hereafter "Europarties"). This weakness of the links between national parties and Europarties is explained by the importance given by the former to their primacy in the national context and their independence, and by the historical predominance of the EP parliamentary groups over the latter.

Indeed, the EP, whose powers have increased over time, remains the only arena in the EU's institutional system for a true confrontation between political parties. Moreover, political groups have much larger human and financial resources than Europarties. Therefore, the expertise and the ideological thinking on European politics, as well as the ability to exert influence on other EU institutions, have developed within the groups' apparatuses, and not within parties. Consequently, for a national party, the most important issue is the membership of its MEPs in a group. However, parliamentary groups are not supposed to lead the public debate, let alone conduct election campaigns. That is the role of parties, national and European. The European debate therefore requires the transnationalisation of political families, beyond that of the existing Europarties, which remain embedded in an institutional rather than an activist logic.

Since the sole revision of the Electoral Act in 2002, the EP, which has the right of initiative in this matter, has made several proposals to strengthen the transnational character of European elections (Costa 2016; Hrbek 2019). For example, there is a consensus within the EP as well as between the EP and the Council to display the double logo (national party and Europarty it is affiliated to) on ballot papers (Schleicher 2011). However, the reform voted in 2018 is still awaiting several national ratifications. Moreover, it seems insufficient to change voters' perception of European elections. More generally, neither the electoral law nor the regulation on European political

parties is currently designed for a true transnationalisation of politics.

This policy brief considers ways to support the Europeanisation of national political spaces in the short and medium term. It emphasises the need to foster synergies between national and Europarties and to increase the visibility of the latter. Taking the opportunity of the revision of the Electoral Act currently underway in the EP, it puts forward a proposal for a change in the voting system and examines it in the light of other proposals currently under debate.

Which transnationalisation is possible?

In federal states such as the United States, Germany or Switzerland, a (still) limited number of parties interact with institutions at all levels of the federation, from the local to the federal level, with the same identification. In the EU, given the diversity of national political systems, such a level of homogeneity is inconceivable in the foreseeable future (Westlake 2017). this is because the creation of transnational parties is confronted with multiple oppositional logics. In addition to the traditional left-right divide, there are divisions over the degree of integration that is desirable, the EU's borders, differentiated integration, the understanding of globalisation, and issues such as the environment, the budget, social affairs and immigration. Moreover, there is little incentive for parties to act collectively at the European level, where their influence is still limited.

Scholars have investigated the feasibility of an EU-wide transnational party system. While it is possible to envisage the emergence of transnational parties, the establishment of a party "system" is more problematic (Bardi et al. 2010). This requires a general framework within which political competition can take place, especially for control of a political executive. At present, such a framework is still in its infancy. The *Spitzenkandidaten* process represents, however, a first step. The Commission, if it were to become more clearly politicised, could become the expression of a political majority. But the logic of political balance which prevails for the other key posts in the EU (apart from that of the EP President) remains intergovernmental in nature and is therefore not directly in the hands of parties.

In the particular context of European integration, the transnationalisation of political action can only happen through a dynamic process, resulting in constantly changing party affiliations. This process will depend in particular on the progressive transfer of political power from the national to the EU level; diverging and converging views on thematic priorities, programmatic choices and the appropriate level of action; the permanent reshaping of national political systems, and the volatility of the electorate.

Despite these evolving affiliations, at any given moment and in particular ahead of a European election, each political family must have a transnational structure that is visible, credible and operational to deliver messages on European issues. This is a question of democratic transparency vis-à-vis voters, who have a limited interest in opportunistic post-election alliances. Legal instruments can promote both this transparency and, in the longer term, the transnationalisation of parties. For the time being, the best strategy is to encourage synergies between existing national and European parties.

Europarties vs. transnational political parties

As the existing Europarties are largely absent from the political scene, there is now a consensus to "strengthen" them. However, there are two difficulties to be aware of.

First, since the Maastricht Treaty, there is an intention to give them a specific role. Article 10.4 of the EU Treaty states that "political parties at European level shall contribute to forming European political awareness and to expressing the will of the citizens of the Union". By extension, it is advocated that Europarties should provide direct links with European citizens, stimulate their mobilisation on European issues, and more generally create a European civil society (Van Hecke 2018). Yet, such a task cannot fall exclusively, and not even primarily, on the Europarties. National parties have a very strong territorial, social and media base, and are best placed to give the European Union a local foundation and ensure citizen participation. Thus, national parties should neither be demonised nor marginalised, but should be Europeanised.

Second, to "strengthen" Europarties, the overarching intention is to turn them into fully functioning organisations, thus becoming true laboratories of ideas and militant forces. Proponents of Europarties believe that they should exist on their own, and notably have direct membership, thus competing with national parties. However, from the perspective of the transnationalisation of politics, we argue that it is instead necessary to strengthen the links between the national parties and the Europarties.

Unfortunately, as long as there are no truly transnational parties, clarifying the issues at stake in European elections will require giving precedence to the visibility of existing European parties over national parties. Indeed, in mature federations, citizens are familiar with elections and referendums at different levels and a confusion of the stakes is typically not a problem; it is the local sections of the parties (organised along the federal model) that carry

Towards a European Political Space: The Challenges of European Electoral Law
© Olivier Costa and Pierre Jouvenat
CEPOB-CoFoE # 2.21 (June 2021)

College of Europe
Collège d'Europe
Brugge · Natolin

the debate on federal issues. In the EU context, the reluctance of national parties to move beyond strictly national debates and the tensions between national and European parties must be acknowledged. Clarifying the issues at stake can therefore only be achieved through increased visibility of Europarties.

A legal incentive: the method for allocating seats at European elections

Both the visibility of Europarties and the strengthening of synergies between all parties require legal incentives. The European electoral law and the regulation on Europarties should therefore be amended in favour of a "mutualisation" of the missions of European and national parties.

The proposal for a two-dimensional system

At a hearing of the Committee on Constitutional Affairs (AFCO) of the EP in December 2014, experts proposed the "double proportionality" method for distributing EP seats (Pukelsheim and Oelbermann 2015; Pukelsheim 2017). These would first be distributed between political families directly at European level, taking into account all votes cast according to the principle of "one citizen, one vote" ("super-apportionment") and then between states within the limits of pre-ordained quotas set by the "EP composition" procedure ("sub-apportionment"). It is therefore a two-dimensional system. The super-apportionment would reflect the strictly European dimension of the ballot; in practice, in the absence of transnational parties, seats would be allocated to existing Europarties. The sub-apportionment would reflect its territorial dimension: within each constituency, seats should then be allocated to European political families based on the results obtained locally by each one of them; in practice, this would currently consist in allocating seats to existing national parties, according to their European affiliation.

An update of the proposal is in the making, with a simulation based on the results of the 2019 elections. The forthcoming publication may notably adopt a new terminology (to date "Tandem Electoral System") and be co-authored by Jo Leinen, former MEP and former president of AFCO, who worked extensively on the reform of the 1976 Electoral Act.

The advantages of the two-dimensional election system

This apparently very technical approach would open considerable political perspectives. The potential impact would be manifold, whether it concerns the clarification of the issues at stake, the transparency of the ballot, the legitimacy of the EP, or even the emergence of transnational parties.

First of all, the system would make it possible to reflect the respective weight of political families at European level – as opposed to adding up the results of 27 national elections – while safeguarding the national quotas and the respective weight of competing political forces in each of the Member States.

Moreover, elections would become "European" for all seats, not just a few, like for the transnational list proposal, while maintaining national or regional constituencies.

Third, the aggregation of votes at European level (super-apportionment) according to the principle of "one citizen, one vote" would lead to electoral equality of all EU citizens, whatever their nationality and regardless of any "degressive representation" in the EP adopted otherwise. This should dispel some of the reservations expressed, notably by the *Bundesverfassungsgericht*, about the legitimacy of the EP.

This aggregation of votes at European level would have two other potential effects. On the one hand, for the electorate it would change the perception of the significance of these elections. As an example, if a German voter is aware that his vote for the Christian Democratic Union (CDU) is actually attributed to the European People's Party (EPP), he understands that his vote is given to a Europarty, from which will emanate a parliamentary group in the EP, within which the elected representatives of his country will take part in decisions on European issues. It becomes therefore clear that this is not about German political life. On the other hand, as Europarties would gain electoral visibility, national parties would take their European affiliation more seriously. True political affinities could emerge, beyond the current alliances of convenience. Electoral competition would become more transparent, as groupings would occur ahead of the elections. Eventually, political parties would take precedence over parliamentary groups like in all parliamentary democracies.

An additional advantage of the two-dimensional system is that a genuine partnership between parties of the same political family would be established for drawing up programmes and running electoral campaigns. This would be fully in line with the logic of synergies between national and Europarties. Electoral campaigns would be pan-European, designed and coordinated at European level, under the aegis of Europarties, with European manifestos finally brought to the fore. However, they would be conducted in a decentralised manner by national parties, taking due account of territorial specificities.

Furthermore, the preservation of national or regional constituencies would guarantee MEPs' proximity with citizens. Preferential voting would remain possible with lists comprising a reasonable number of candidates.

Towards a European Political Space: The Challenges of European Electoral Law
© Olivier Costa and Pierre Jouvenat
CEPOB-CoFoE # 2 .21 (June 2021)

College of Europe
Collège d'Europe
Brugge | Natolin

Finally, as MEPs would be identified with a limited number of Europarties with a European legal personality rather than a multitude of national parties, the legitimacy of the EP would be strengthened. Its homogeneity would be preserved, all MEPs being elected with the same procedure.

Essential supplementary measures

This seat allocation procedure is post-electoral only. For it to achieve its objectives, measures with a pre-electoral impact would be required so that all stakeholders in an election (candidates, journalists, citizens) understand its logic.

As already proposed in the EP, the double logo (national party and Europarty) should feature in campaign material and on ballot papers. However, this seems insufficient to clarify what is at stake. National parties and media would continue to downplay the affiliations so that they can instrumentalise the elections for national political purposes. Furthermore, making it compulsory could violate the freedom of association. Thus, the key challenge would be to design and introduce into legislation incentives for cooperation between national and European parties that are likely to be approved by the Council of the EU.

Among the subsidiary issues is the question of the conditions that a party must meet to take part in the elections. The authors of the "double-proportionality" proposal assert that their system can include votes attributed to parties without a European affiliation. This is a sensitive issue but there should be a limit to the opportunism of small parties or movements without a clearly discernible European project, which merely seek visibility by participating in the European elections.

Above all, it is necessary to ensure the participation of new political movements with a primarily European vocation, such as PACE, Volt and others. They have the merit of providing a stimulus for politics to take a transnational dimension. European legislation should introduce a distinction between the conditions for accessing EU funds, which can be quite restrictive, and the conditions for participating in European elections, which should, on the contrary, be less restrictive.

Transnational lists and *Spitzenkandidaten*

Two schemes currently dominate the debate on European electoral law: transnational lists for the election of a proportion of MEPs, involving the creation of a pan-European constituency, and the process of *Spitzenkandidaten* (or lead candidates) for the choice of the President of the European Commission.

The two-dimensional system would achieve, at lower cost, the main objective of transnational lists: the europeanisation of the debate. In addition, it would do so for all seats, while offering the prospect of evolving towards transnational parties, which the cohabitation of two types of lists would not achieve. Yet, the two-dimensional system and transnational lists are not mutually exclusive. The latter could be the "icing on the cake", which could broaden the voters' choice by including well-known European personalities, in particular as the head of the list running for the Presidency of the Commission. Another option would be to promote the "transnationalisation of national lists" with non-national candidates by abolishing the current residence requirement and generalising preferential voting.

As for the *Spitzenkandidaten* process, it will become fully effective once the Europarties have gained visibility. As they have become major political actors, Europarties will be led by strong personalities who will be the natural candidates for the presidency of the Commission. If, in the absence of transnational lists, these candidates cannot run as heads of list, they will nevertheless be able, as in 2014, to take on the role of campaign leaders.

The political acceptability of the two-dimensional system

The proposal for a two-dimensional system may seem more ambitious than transnational lists because it applies to all seats. It is nevertheless more acceptable and requires less complex reforms. States keep their constituencies and quotas and there is no supranational connotation. It is a bottom-up process: European manifestos are adopted by activists, MEPs stay close to the citizens, national parties remain the key players in the electoral process. It is just a matter of acknowledgement that, with the Lisbon Treaty, MEPs are no longer "representatives of the peoples of the States brought together in the Community" but are "representatives of the Union's citizens". The direct link that the system would establish between MEPs and Europarties would be consistent with this new recognition.

This being said, like transnational lists, the proposal is unlikely to be accepted by Member States in the context of an electoral reform undertaken in isolation. It should be on the agenda of a wider institutional debate, in particular in the context of the Conference on the Future of Europe.

Conclusion

The increased visibility and role of a limited number of Europarties is likely to favour, in the medium term, an enriched ideological offer on the European scale. A European political consciousness could emerge from such a process. This represents a prerequisite for deeper European integration.

Further reading

Bardi et al. 2010. "How to Create a Transnational Party System". In *European Union Democracy Observatory* (EUDO), edited by L. Bardi and P. Mair. Florence: European University Institute, June 2010.

Costa, O. 2016. "The History of European Electoral Reform and the Electoral Act 1976". Luxembourg: European Parliamentary Research Service.

Hrbek, R. 2019. "The Arduous Way Towards a Uniform Electoral System for the European Parliament". In *The European Parliament in Times of Crisis: Dynamics and Transformations*, edited by O. Costa, 255-274. Basingstoke: Palgrave.

Pukelsheim, F. 2017. *Proportional Representation. Apportionment Methods and Their Applications*. Cham: Springer International Publishing AG.

Pukelsheim, F. & K.-F. Oelbermann. 2015. "Reinforcing Uniformity in the European Election Act: Gentle Interim Arrangements in 2019; Towards Systematic Double-proportionality in 2024". In *The Electoral Reform of the European Parliament: Composition, Procedure and Legitimacy*, 18-25. European Parliament, 16 February 2015.

Schleicher, D. 2011. "What if Europe Held an Election and No One Cared?". *Harvard International Law Journal* 52(1): 109-161.

Van Hecke, S. 2018. "Reconnecting European Political Parties with European Union Citizens". *International IDEA Discussion Paper* 6/2018.

Westlake, M. 2017. "Possible Future European Union Party-Political Systems". *Bruges Political Research Papers* 60/2017. Bruges: College of Europe.

About the Authors

Olivier Costa holds a Ph.D. in political science from the University of Paris 8. He is Director of Studies at the European Political and Governance Studies Department of the College of Europe (Bruges). He is also Research Professor at the CNRS (Centre national de la recherche scientifique), within the CEVIPOF, research center of Sciences Po Paris. He teaches European issues and has written numerous books and articles on EU institutions and policies. His research focuses on the institutional system of the Union (in particular the European Parliament), on the democratic question in the Union, and on parliamentary representation and interest representation in Europe.

Pierre Jouvenat is a former senior official of the International Trade Centre UNCTAD/WTO and a European federalist activist, notably within the Union of European Federalists. His research and activism focus on the issue of transnational parties and the reform of European electoral law.

College of Europe
Collège d'Europe
Brugge / Natolin

Towards a European Political Space: The Challenges of European Electoral Law
© Olivier Costa and Pierre Jouvenat
CEPOB-CoFoE # 2.21 (June 2021)