

TRANSNATIONAL LISTS: A POLITICAL OPPORTUNITY FOR EUROPE WITH OBSTACLES TO OVERCOME

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Summary

The expected departure of the UK's MEPs next year following Brexit has given new momentum to the idea of creating transnational lists for the European elections. This project is currently being supported in particular by Emmanuel Macron. These lists meet the drive to give the campaign for the renewal of the European Parliament a stronger European tone, and to avoid, over the parliamentary term, national bias encroaching on a firmly European approach to challenges, expected of MEPs.

Yet the creation of such novel lists is subject to an arduous legal route, compounded by the political divisions among the current MEPs and within EU Member States, going beyond traditional partisan rifts. The sometimes-heated debate is only just beginning.

INTRODUCTION

The question of transnational lists made a comeback following the British referendum on EU membership and since Emmanuel Macron, commenting on an Italian proposal to use the vacant 73 British seats at the European Parliament after Brexit, stated he was in favour of such lists for the next European elections. Citizens would “vote for the same MEPs throughout Europe”, he stated in his address at the Sorbonne, wishing to “finish building this democratic area”. The French President even suggested that from the 2024 elections, “half of the European Parliament could be elected on these transnational lists.”¹

By the same token, at the summit of the Heads of State and Government of the Southern European Countries, held in Rome on 10 January 2018 (Cyprus, Spain, France, Greece, Italy, Malta, Portugal), representatives declared that “transnational lists of Members of the European Parliament to be elected at European level could strengthen the democratic dimension of the Union”. In an address given in Strasbourg on 17 January 2018, the Irish Taoiseach (Prime Minister), Leo Varadkar, expressed his agreement, hoping that “people in cafes in Naples and restaurants in Galway will talk about the same election choices”.

1 . WHEN DID THE IDEA BEGIN?

The idea of transnational lists is not new. Back in the 1990s, some European Parliament reports mentioned the possibility (in particular the Anastassopoulos report, 1998). European federalists supported it, as well as political parties such as the Greens and the Liberals, and some members of the socialist and Christian Democrat groups.

In France, Laurent Fabius championed the idea in a piece published by *Libération* on 7 May 2004, just before the European elections and prior to the launch of debates on the draft European Constitution, without getting into specifics.

At the European Parliament, the Duff report (named after the MEP, British Liberal Democrat and federalist Andrew Duff) suggested in 2011 the election of a few MEPs (25) on transnational lists, “composed of candidates drawn from at least one third of the States” and that this could ensure fair gender representation. According to this report, “each elector would be enabled to cast one vote for the EU-wide list in addition to their vote for the national or regional list”. Yet the report, adopted by the competent commission was returned and was not voted in plenary session, as it failed to achieve its improbable majority. The right-leaning European People’s Party (EPP), the leading political group in Parliament, was broadly against this proposal.

A few academic papers were published on this concept in 2010 (upon the request of the European Parliament) and in 2014, by researchers of the Robert Schuman Centre of the European University Institute in Florence.

1. Address at the Sorbonne, 26 September 2017.

2. WHAT IS THE BASIS OF THE IDEA FOR THESE LISTS?

The project's underlying philosophy is simple: since the European Parliament has been elected by direct universal suffrage (1979), the election, which is held every five years in each country, has been organised by national political parties, which place emphasis on concerns and issues which are mainly national and partisan, without actually highlighting the European project and debate on its challenges.

As stated by the three ministers for European affairs in France, Italy and Spain in a piece published by *Le Monde* in November 2017, "all too frequently, European elections boil down to a vote of support or rejection of national policies, or in the best of cases, of a debate on foreign policy". This results in great misunderstanding between the European institutions and the reality at grassroots level, and an abstention rate which is constantly on the rise with each new election.

Yet since the Lisbon Treaty, which came into force in 2009, the powers of the European Parliament have increased significantly in terms of legislative co-decision, supervision of other institutions and political influence, although the Parliament only represents one aspect of European democracy.

It is against this backdrop that the idea of broadening debate to a European level by going beyond national borders emerged among many champions of stronger European integration, learning the lessons of a European Parliament, in practice organised by political affinity (EPP, S&D, LibDem, Greens, etc.) and not by nationality.

According to them, citizens would be called on to cast two votes: one for the national party's list, and another for a list composed of candidates which are not from national political parties, designated by European political groups, the same in each country and not necessarily of the nationality of the country in which citizens are voting. This would thereby create a European constituency.

Transnational lists would therefore be a breeding ground, aimed at developing a European political system and at promoting the formation of genuine European political players. The current European political groups are mostly confederations of national parties. A European "demos" could gradually emerge, on the basis of this initial experience.

3. WHY IS BREXIT AN OPPORTUNITY TO REVIVE THIS IDEA?

What should actually be done about the 73 seats of British MEPs which, following the UK's departure in March 2019, will fall vacant?

Let us first of all remove a stumbling block: the 27 other Member States, together with the United Kingdom, could, according to article 50 of the Treaty, decide to extend the negotiations beyond the current departure date of March 2019. Yet very few believe that this is an actual option, particularly as the feasibility of organising European elections in the UK in the space of a few weeks seems unlikely.



THE EMERGENCE OF A
EUROPEAN "DEMOS"

This unprecedented situation does, however, create a backdrop of legal and political uncertainty. Currently, the hypothesis of a “transition period” following the UK’s official departure is favoured.

If this is the case, several options could be brought to the table:

- To distribute the 73 British seats between the remaining 27 EU Member States, so that the number of seats per country is a better reflection of each State’s population size, according to the principle of “degressive proportionality”, defined in the treaty and only applicable to Member States. There is currently only partial compliance with this principle, in particular due to demographic changes in certain countries.
- To keep some of the vacant seats to the creation of a European constituency, as described above (for example 25 to 30 seats).
- To reduce the number of MEPs (currently 751) by 73 (678) or less, on the grounds of the resulting budget savings and the need to consider any future enlargement to some Balkan countries.
- A combination of the aforementioned options would also be possible.

FIGURE 1 ■ Current distribution of seats at the European Parliament

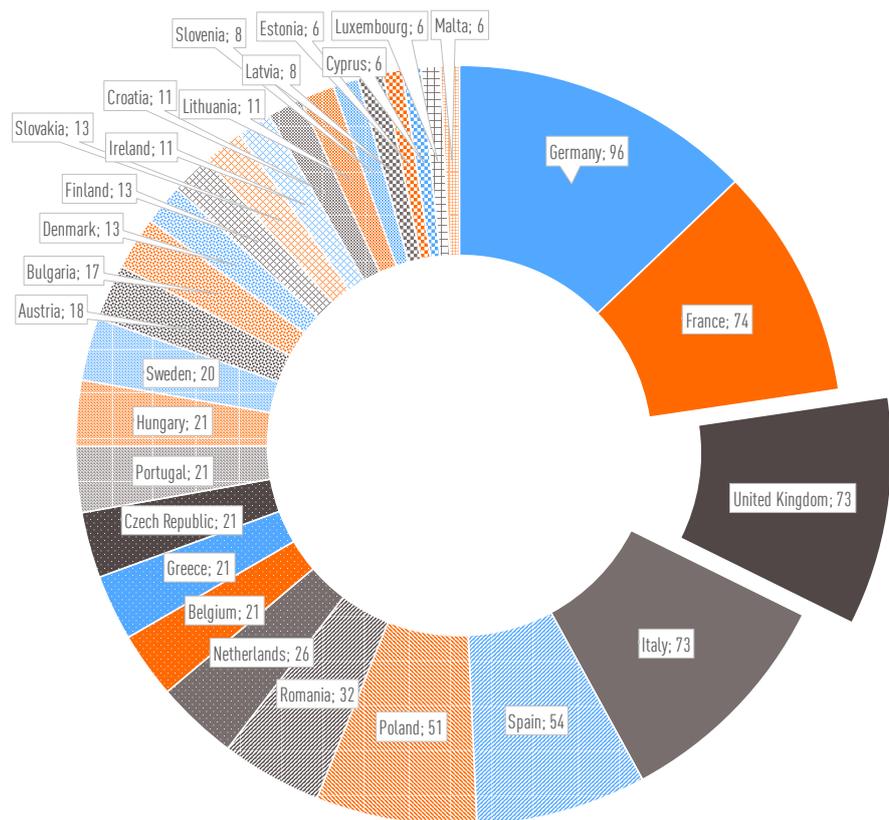
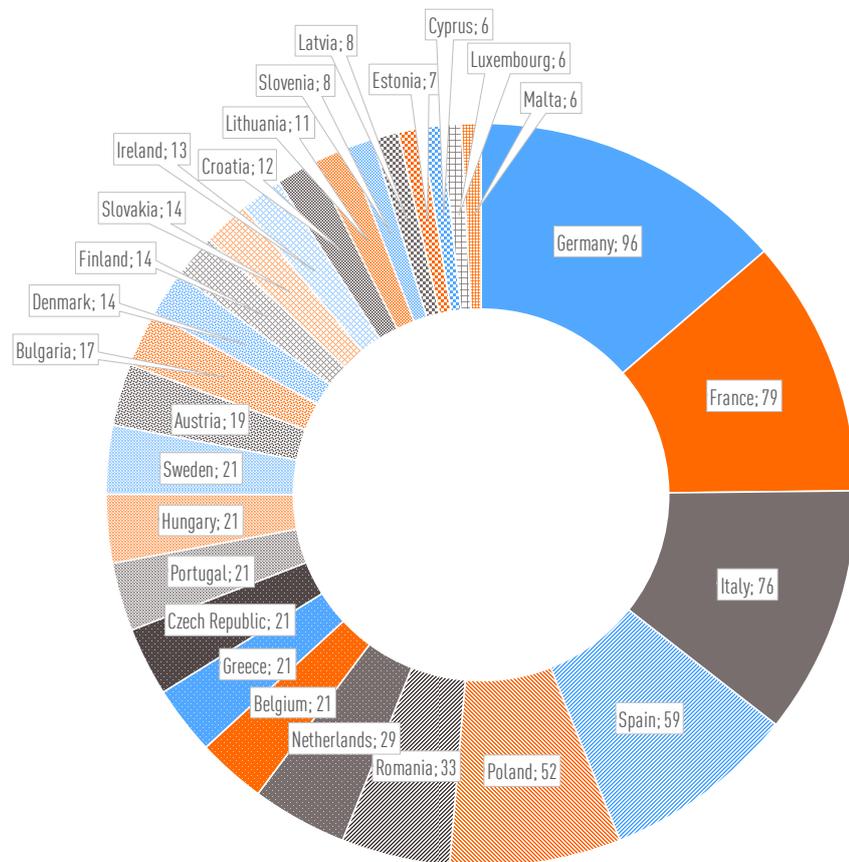


FIGURE 2 ■ Number of representatives in the European Parliament elected in each Member State is hereby set as follows for the 2019-2024 parliamentary term (vote of the 7th of February 2018)



4. WHAT WOULD BE THE INSTITUTIONAL AND LEGAL FRAMEWORK IN WHICH THESE OPTIONS COULD BE DEBATED?

On 11 November 2015, the European Parliament adopted a legislative initiative with a view to amending the current European electoral law, which was considered outdated in a number of aspects.

To be adopted, this text requires unanimity within the EU Council, the assent of the European Parliament and the ratification of national parliaments. In particular, it provides that the Council may create a transnational constituency on the basis of unanimity.

The amendment adopted on this last point specifies that the lists for this new constituency would be led by the candidate of each European political group for the Presidency of the Commission (in reference to the “Spitzenkandidaten” procedure applied in 2014, but in another format).

This part of the text concerning transnational lists was adopted by a large majority of the EPP, S&D, Liberal and Green groups, with opposition from the more “Eurosceptic” parliamentary groups (ECR, EFDD, ENF and GUE).

If this proposal was adopted by the Council, it would create a clear legal basis for the creation of transnational lists. Yet some legal experts believe that the European Treaty itself would have to be amended to achieve this. EU Member States in favour of transnational lists do not agree with this, believing that article 10§2 of the Treaty on European Union provides, since the Treaty of Lisbon, that citizens are directly represented on an EU-level at the European Parliament, and that article 14§32 specifies the terms of EU citizens' electoral representations per Member State. For them, these two provisions together form an argument that the Treaty does not preclude the existence, in addition to national constituencies, of another type of citizen representation, namely a European constituency. If this is the case, only the Court of Justice of the European Union could settle the debate.

The difficulty is that, today, discussions on reforms to electoral legislation seem to be stalling in the EU Council. There is also an additional problem: the ratification of this reform by the 27 national parliaments would result in very long timeframes, in particular in Member States which require several assemblies to take part.

In addition, MEPs are currently discussing a text on the composition of their assembly (the co-rapporteurs are MEPs D. Hübner and P. Silva Pereira) based on article 14§2 of the Treaty. This text requires a unanimous decision in the Council and the assent of the European Parliament, but no ratification from national parliaments. It is presented as a resolution together with a draft decision of the EU Council. This proposal cannot be used as a sufficient legal basis for transnational lists, however, as it is related to the approval of the Council of the provisions required by electoral law (see above). In any case, a decision is categorically necessary with regard to the composition of the EP as the current provisions date back to June 2013 and will no longer be valid from 2019.

It should be noted that the provisions of the Treaty requiring compliance with the degressive proportionality principle, and the minimum (6) and maximum (96) number of MEPs only apply to EU Member States. They do not concern the nationality of the MEPs to be elected because each European citizen may be a candidate in the European elections in their country of residence. For example, a citizen of German nationality living in Greece may be elected there, without this exceeding the maximum number of German MEPs (96). Some MEPs have been elected in the past pursuant to this possibility, such as Daniel Cohn-Bendit, elected in France without having French nationality, or Maurice Duverger elected in Italy although being French, or Monica Frassoni, elected in Belgium although Italian.

5 . WHAT ARE THE CURRENT POWER BALANCES, IN POLITICAL AND NATIONAL TERMS?

On such a sensitive issue, cohesiveness between the European Parliament's political groups is not guaranteed. National delegations and some personal positions play a major role, which may adversely impact group discipline.

The EPP seems to have adopted a hostile line to transnational lists by a majority. One of the main spokespersons of this line, Alain Lamassoure, EPP MEP and former minister in France, believes that representatives elected on transnational lists would be MEPs "without roots", which goes against the aim of reconciling citizens with Europe. According to him, a non-French MEP who does not live in France could not understand the issues affecting French regions on a daily basis. He considers it "an old federalist idea which dates back to when the EP had considerably fewer legislative powers" and cites the example of the USA, which does not have an American list covering the entire country, as in most federal states.



“ANTI-EUROPEAN AND ANTI-FEDERAL”

As was already the case in the past, Alain Lamassoure’s preference, expressed in a piece published in *Le Monde* on 27 November 2017, is for the presence of a few non-national MEPs on the national list (who reside in the country in question). Other EPP figures such as Portuguese politician Paulo Rangel or German MEP Elmar Brok put forward similar arguments during the meeting of the European Parliament’s Constitutional Affairs Commission on 23 January 2018, fearing that transnational lists heighten the divide between citizens and their representatives and play into the populists’ hands. They even go as far as stating that the concept is “anti-European and anti-federal” (Elmar Brok) and likely to reduce the European Parliament’s legitimacy.

The EPP group remains in favour of the appointment of “Spitzenkandidaten” for the Presidency of the European Commission, but according to the procedure established for the 2014 vote (appointment of the candidate by the European political groups, without the person topping a transnational list).

By contrast, a very large majority of the Liberal group, led by its President, Guy Verhofstadt, is in favour of transnational lists and would like the option discussed again in the report on the EP’s composition which is currently under debate. For them, the right number would be 30 MEPs elected on the list. In practice, each European political group would have to draw up candidate lists through internal elections, with the first candidate on each list being the candidate for the Presidency of the Commission.

For the Liberals, the lists should be balanced in terms of nationality and gender, and made up of candidates from at least one quarter of the 27 Member States, i.e. 7 nationalities, with the MEPs thus elected being accountable to their respective European political groups. Each citizen would therefore have two votes, one for a national list and the other for the transnational list, which would be closed (to ensure that the top candidate on the list remains the candidate for the Presidency of the Commission, and to avoid the election of a disproportionate number of candidates from the largest Member States). Candidates may be elected on both national and transnational lists, if this is the case, they must choose the latter. For such a system to be implemented, it would require changes to be made to the status of European political parties, as the current status does not allow for candidates to be named or for candidate campaigns in the run up to the European elections.



AT LEAST SEVEN NATIONALITIES

As for the S&D group (social-democrats and socialists), the majority position favours transnational lists, with some opposition, mainly from Britain and Scandinavia. Three influential members of this group, Jo Leinen, Mercedes Bresso and Ramon Jauregui Atondo, submitted an amendment to the draft report on the composition of the EP, which was adopted, stating that “following the creation of the legal basis for transnational lists through the adoption of the European electoral law, the number of representatives elected in a joint constituency comprising the entire territory of the Union should be defined according to the number of Member States of the European Union”, i.e. currently 27 MEPs for 27 Member States.

The social-democrat Jo Leinen, in particular, federalist like his fellow German of the EPP, Elmar Brok, supported a position running counter to Brok during the meeting of the Constitutional Affairs Commission on 23 January 2018. For Leinen, transnational lists would be an opportunity for real European debate during the European elections and to develop a European political area.

Both the Greens and the Liberals are broadly in favour of the idea of transnational lists. The French MEP Pascal Durand, Greens coordinator within the EP’s Constitutional Affairs Commission, is in favour of a number of 50 MEPs on transnational lists for 2019, a number which could be increased for subsequent elections.

Conversely, the smaller political groups, mostly Eurosceptic or nationalist, are, by definition, against transnational lists.

Intense talks were held between political groups ahead of the vote on the EP composition report, held in the Constitutional Affairs Commission on 23 January 2018. This vote was postponed several times, and the 13 compromise amendments were all adopted (in particular the reduction of the number of MEPs to 705 and the reference to the European constituency).

Significantly, the amendments referring to the joint constituency were adopted. It is interesting to note that the amendment of the Liberal group proposing 30 seats was rejected by a slim margin, while the amendment of the S&D group (see above) referring to the number of Member States (in practice, 27) was approved, by an equally slim margin.

The most important group, the EPP, was divided on the vote (the President of the competent commission and co-rapporteur, Danuta Hübner, voted in favour of transnational lists, for example, as well as the Spanish members). The possibility of opening transnational lists for the European constituency to movements which are not affiliated to European political parties was also voted. This could apply, for example, to La République En Marche! in France, or the Five Star Movement in Italy. Yet the amendments do not set out the terms of implementation for transnational lists. A nominal vote was only held for the report in its entirety, adopted by 20 votes in favour, 4 against, (ECR, ENF and a British non-attached member) and one abstention (Pieper, EPP, Germany). Out of a sense of responsibility, the EPP voted in favour of the report in its entirety.

In any event, this parliamentary report is above all a political recommendation (with draft decision) to the EU Council. The Council must decide by unanimity as part of the reform of European electoral law, which is the only plausible legal basis to establish transnational lists.

The vote in the European Parliament's plenary session of the 7 February 2018 did not follow the recommendations of the competent committee. All parts related to transnational lists have been deleted, following a negative vote of a vast majority of the groups EPP, ECR, GUE and EFDD. The subject remains on the agenda of the informal European Council of the 23rd of February and will be preceded by a communication of the Commission on institutional matters.

Lastly, even in national parliaments, the issue of transnational lists is gaining interest: the French National Assembly adopted on 24 January 2018 an observer report of the European Affairs Commission (rapporteur Pieyre-Alexandre Anglade, LREM MP).

As regards the position of EU Member States, the initiative came firstly from Italy, which submitted the proposal of transnational lists at the informal General Affairs Council meeting held in Bratislava (Slovakia) in April 2017, seizing the opportunity suddenly created by Brexit. Once President Macron made the French position official during his Sorbonne address, the two countries stated their agreement in the conclusions of the French-Italian summit held in Lyon on 27 September 2017. The Italian position is quite traditional, given that European democracy can only be possible if real political players emerge on a European level.

For France, which is attempting to convince those in countries which fear that the candidates on transnational lists would come predominantly from the major Member States, any voter registered on the national electoral roll would have the option of electing MEPs on the transnational lists drawn up by the different parties. Their candidates must be registered on the electoral roll in at least one third of EU Member States, with the percentage of candidates from a single country not exceeding 25%, the seven top candidates coming from different countries, and the lists being made up of candidates of different genders and nationalities alternately. The seats to be filled would be distributed between the transnational lists having obtained at least 3% of votes by proportional representation, without vote splitting or preferential voting, and where blank ballots would be deducted, but would not influence the determination of the votes cast.

Germany's position has not yet been made official, given the current circumstances of the coalition contract talks. The CDU is against transnational lists, however, while the SPD is in favour.



THE INITIATIVE CAME
FIRSTLY FROM ITALY

The twenty-seven Member States will have to come to a decision by mid-2018 at the latest and will discuss the issue during the informal European Council on 23 February. They remain divided on this matter: roughly one third (Southern European Member States and Ireland) are in favour, while most others are not for various reasons: ideological (Poland and Hungary in particular) or pragmatic (an attempt to make budgetary savings by cutting the number of MEPs, or reluctance with regard to the concept of a European dimension to democracy, deemed too idealistic – in particular by the Scandinavian Member States). Significantly, the four countries of the Visegrád Group have adopted a joint resolution expressing disapproval of transnational lists for the 2019 European elections, on the grounds that democratic legitimacy can only be strengthened by the control of national parliaments. In any case, the idea of connecting the matter of “Spitzenkandidaten” with that of transnational lists seems to have been shelved by the Council, as the former is a predominantly political issue that should not require legal coverage. Remains open the question whether this procedure, beyond the principle which seems to be accepted for 2019, will follow or not the same modalities as in 2014.

In addition, several major figures have also thrown their support behind the transnational list idea. In particular, Enrico Letta, President of the Jacques Delors Institute and former Italian Prime Minister, supports, in a recently published book of interviews², “the idea of MEPs elected not only for their country, but for the European Union as a whole, considered as a single constituency”. He also stated, “From my polling station in Pisa, I could vote for a Spanish, Polish or French candidate. Above all, I would not consider their nationality, but what they are saying ... they would be obliged to express what they think is good for the EU, not just for their country or region”. In his annual address on the state of the Union, given in Strasbourg on 13 September 2017, the President of the Commission, Jean-Claude Juncker (EPP), claimed frankly that he had “sympathy for the idea of having transnational lists” which “will bring Europe democracy and clarity”.

CONCLUSION

The proposal of transnational lists has brought about a clash of different understandings of the democratic dimension of the European project. Debate is not simply a matter of a confrontation between “pro-” and “anti-Europeans”, because differing approaches have emerged even in the “pro-European” camp. Some of the latter believe that transnational lists would only rouse nationalists, who oppose “foreign parties”. On the other hand, others would like to use this opportunity to launch greater citizen awareness on a European level, at the forefront of constituting a European “demos”. The balance to be maintained between small, medium and large EU Member States is also a key issue in the debate. In addition, the fundamental question raised by the idea of these lists concerns the respective definition of sovereignty of the people in relation to that of nations and the manner in which it should be expressed.

It is most likely that the question of transnational lists, deemed too sensitive or too underdeveloped, be postponed until a later date. If EU Member States fail to achieve unanimity on this idea, a roadmap, process or other form of political commitment could be decided, which would be a first step to keeping the option open for the future. The legal and political debate, which is a prime example of the complex reality of the European Union today, is at least properly open now. And for the future, despite the negative vote of the European Parliament which, according to Enrico Letta, constitutes “a lost opportunity for European democracy”. An initial repercussion of Brexit.

Other more forward-looking questions are yet to be clarified. While the expected benefit of trans-

². Enrico Letta, with Sébastien Maillard, *Faire l'Europe dans un monde de brutes*, Fayard, 2017 (in French).

national lists is enhanced European quality during the European election campaign, the terms of its implementation are yet to be defined, in particular their financing. Another point: would the twenty or so elected representatives on these lists be MEPs like the others or would they be considered in political circles and in the media, apart from their political differences, as a separate category in the Parliament, forming a sort of forefront of representatives of the European “demos”. Their voice in Parliament and their political leverage would inevitably take on a distinct importance, with the potential risk of a two-speed European Parliament, but with the benefit of elected representatives who are more independent in terms of strictly national interests and more likely to embrace a European vision when voting.

RECOMMENDATIONS

- The idea of creating transnational lists must not be justified solely by the opportunity presented by Brexit, but, on a deeper level, by the aim of **making debates more European-minded** during the European election period, and of setting milestones for a genuine European citizenship, in addition to national citizenship.
- The introduction of transnational lists as early as the 2019 European elections will be very difficult because of the **political and legal obstacles**, in particular the requirement of Council unanimity, and the need to ratify amendments to European electoral law in each of the 27 national parliaments.
- Even a small number of seats reserved for MEPs elected on transnational lists would be **an experiment** prior to a possible extension.
- **The fears of “small Member States”** feeling on the sidelines within such lists **must be taken seriously**. The political groups must make the necessary guarantees to these countries in the future in order to reassure them when the lists are drawn up.
- The question of transnational lists must remain completely **separate from that of the “Spitzenkandidaten” system**.

ON THE SAME TOPIC

- Valentin Kreiling, [“Towards a more democratic European Union”](#), Policy Paper No. 212, Jacques Delors Institut – Berlin, December 2017

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