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A move towards transnational lists in 2024?

• Abstract

The departure of members of the European Parliament (MEPs) from the United Kingdom following Brexit gave new impetus to the idea of creating transnational lists for the European elections. This idea comes in response to the desire to set a more firmly European tone to the European election campaign, and to avoid that national bias impinges too greatly on a more staunchly European approach to challenges during the term of office. On 7 February 2018, most MEPs claimed to be against the idea.

However, on 3 May 2022, most MEPs adopted the report by Domènec Ruiz Devesa (S&D, Spain) which calls for transnational lists made up of 28 MEPs.

The ball is now in the Council's court, which must decide by unanimity by spring 2023.

• Introduction

The idea of transnational lists became topical once again after the British referendum on the UK's EU membership and since Emmanuel Macron, speaking about an Italian proposal to use the 73 British seats at the European Parliament vacant in 2019 due to Brexit, declared he was in favour of such lists as early as the 2019 European elections. People would vote "for the same MEPs throughout Europe", he said in his address at the Sorbonne, wanting to "finish building this democratic area". The French President even suggested, from the 2024 elections, "half of the European Parliament being elected on these transnational lists"¹. Every citizen would then have two votes, one for the national list and the other for the transnational list.

¹ Emmanuel Macron's address for a sovereign, united and democratic Europe, The Sorbonne, 26 September 2017.

Along the same lines, during the Summit of Heads of State or Government of Southern European Union Countries, held in Rome on 10 January 2018 (Cyprus, France, Greece, Italy, Malta, Portugal, Spain), the leaders claimed that “transnational lists of Members of the European Parliament to be elected at European level could strengthen the democratic dimension of the Union”². Similarly, the Irish Taoiseach, Leo Varadkar, expressed his agreement in an address made in Strasbourg on 17 January 2018, hoping to “get people in cafes in Naples and restaurants in Galway talking about the same election choices”.

However, during a plenary session vote on 7 February 2018, the recommendations of the European Parliament’s Committee on Constitutional Affairs were not followed. All the passages of the text on the composition of the European Parliament concerning transnational lists were deleted following a negative vote from an overwhelming majority of votes by groups of the European People’s Party (EPP, centre-right), the European Conservatives and Reformists (ECR, right Eurosceptic), the European United Left (EUL, radical left - now The Left group) and Europe of Freedom and Direct Democracy (EFDD, nationalist right - a group which no longer exists). The EPP’s vote in particular was decisive and the issue was shelved for the time being.

Following the 2019 European elections, the European Parliament took up the idea once again, and many obstacles were removed. On 3 May 2022, a majority in the European Parliament voted in favour of transnational lists (323 in favour, 262 against, 48 abstentions) during what was called a “historic” vote by rapporteur Domènec Ruiz Devesa. At the same time, the work of the Conference on the Future of Europe highlighted the question of transnational lists in its final report presented on 9 May 2022.

I • When did the idea begin?

The idea of transnational lists is not new. Back in the 1990s, certain European Parliament reports mentioned it (in particular the Anastassopoulos report, 1998). European federalists (through in particular, from 1991 and in preparation for the 1994 elections, the European Parliament federalist intergroup created by Altiero Spinelli) supported the idea, as did political parties such as the Greens and the Liberals, and some members of the Socialist and Christian-Democrat groups.

In France, Laurent Fabius, in an opinion piece published in *Libération* on 7 May 2004, prior to the European elections and before the debate on a draft European Constitution began, put forward the idea, without going into detail³.

At the European Parliament, the Duff report (MEP, British liberal, federalist) suggested in 2011, then again in 2012 and 2013, the election of some 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 committee, was returned and was not voted in plenary session, as it failed to achieve its improbable majority. The EPP, the leading political group in the Parliament, was broadly against this proposal. However, the Spitzenkandidaten procedure was mentioned ahead of the 2014 elections⁴.

A few academic papers were published on this matter 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.

² Summit of the Southern European Union Countries, “Declaration: Bringing the EU forward in 2018”.

³ Laurent Fabius, “L’Europe a besoin de la gauche”, Opinion piece published in *Libération*, 7 May 2004 (in French).

⁴ On this subject, see *Observatoire politique du Parlement européen*, Costa O. & Thinus P. 2022.

“Spitzenkandidaten : oui ou non ?”, Special Edition, Paris: Jacques Delors Institute, 1 June 2022 (in French).

II • 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 which are mainly cyclical, national and partisan, without actually highlighting the European project and debating on its challenges, even though, during the 2019 European elections, certain European issues, climate change in particular, were the subject of debate.

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”⁵. This resulted in a broad misunderstanding between the European institutions and realities on the ground, and decreasing turnout levels from one election to the next, with the notable exception of the 2019 European elections, during which a rise in turnout was recorded.

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&D⁶, Renew, 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 creation of genuine European political players. The current European political groups are mostly confederations of national parties. The idea is therefore to strengthen the European “demos”, on the basis of this first experiment.

III • Under which institutional and legal framework are these options debated?

On 11 November 2015, the European Parliament, which has the jurisdiction to do so, adopted a legislative initiative (the Hübner & Leinen report) with a view to amending the current European electoral law, which was considered outdated in a number of respects.

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

The amendment adopted on this last point specified 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, ENF⁷ and EUL).

If this proposal had been adopted by the Council, which was not the case, it would have created a clear legal basis for the creation of transnational lists. Some legal experts believed,

⁵ *Le Monde*, “Pour «la création de listes transnationales» aux élections européennes”, 17 November 2017 (in French).

⁶ Progressive Alliance of Socialists and Democrats at the European Parliament.

⁷ Europe of Nations and Freedom, Eurosceptic right – which has now become the Identity and Democracy group.

however, that the Treaty itself would have to be amended to achieve this. EU Member States in favour of transnational lists did 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§2 specifies the terms of EU citizens' electoral representations per Member State. For them, these two provisions together would 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 were the case, only the Court of Justice of the European Union could settle the debate.

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.

However, before the 2019 European elections, the European Parliament, in the previous term, had adopted on 7 February 2018 another report by Hübner & Leinen, on the composition of the European Parliament. All passages related to transnational lists were deleted in this text, however, following a negative vote of a vast majority of the groups EPP, ECR, EUL and EFDD. The EPP, in favour of transnational lists in 2015, had changed its position.

The European Parliament elected in 2019 then resumed the matter in a new report, by Mr Domènec Ruiz Devesa. Adopted on 3 May 2022, this report overturned the European Parliament's previous position and changed that of the EPP group, as this time the Parliament declared itself in favour of transnational lists made up of 28 MEPs. In an opinion issued at the end of January 2022, the European Parliament's Legal Service considered that the introduction of a European electoral constituency is compatible with the Treaty on European Union, provided that it is used to elect a maximum of 46 MEPs (this figure being the current number of seats kept in reserve, resulting from the difference between the maximum number of 751 seats enshrined in the Treaty and the reallocation of seats ahead of the 2019 European elections and due to Brexit, the current Parliament being made up of 705 seats).

I THE SYSTEM PROPOSED BY THE EUROPEAN PARLIAMENT IS AS FOLLOWS:

- The distribution of the first fourteen candidates on a transnational list would be governed by a specific rule in order to ensure a balanced representation of elected representatives in accordance with their geographical origin (the risk of an imbalance was strongly criticised in the previous proposal). Three groups of Member States would be created according to the size of their populations, but these groups would not include an identical number of countries. Registration on a transnational list would be on the basis of trios of candidates, each coming from the aforementioned three country groups⁸;
- In addition to European political parties, movements and coalitions organised on a European level may present their own joint transnational lists (which already exists in some countries).

The principle of the two votes is thereby respected, one to elect MEPs in a national constituency, and the other to elect MEPs in a pan-European constituency made up of 28 additional MEPs. The ambition of this proposal is limited in terms of the number of MEPs, this decision

⁸ See hereafter the appendix of the draft report by Domènec Ruiz Devesa (Committee on Constitutional Affairs [AFCO] of the European Parliament) on the reform of the electoral law of the European elections (2020/2220(INL)), 1 July 2021. See also: European Parliament legislative Resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, P9_TA(2022)0129.

being made in a spirit of compromise. In this system, the number of representatives at the European Parliament elected in each Member State would not be affected. The lists would be led by the candidate of each political group for the Presidency of the Commission. This technically sophisticated system would ensure that smaller Member States would not be at a disadvantage in relation to larger Member States.

According to the rapporteur, the objectives are:

- To contribute to strengthening the European political parties and associations of voters, and make them more visible, by allowing them to campaign in Europe;
- To contribute to fostering pan-European debate through a transnational campaign;
- To support the Spitzenkandidaten procedure, with a view to increasing the legitimacy of the lead candidate.

As the European Parliament has voted, the Council must now take up this legislative initiative which, according to article 223 of the TFEU, requires unanimity to be adopted, assent from the European Parliament and the ratification of Member States according to their specific constitutional requirements.

Time is of the essence, therefore, if the system is to be in place ahead of the 2024 European elections.

IV • What are the current power balances, in political and national terms?

On such a sensitive issue, cohesiveness between the European Parliament's political groups has never been guaranteed. National delegations or some personal positions play a key role.

In 2018, an overwhelming majority of the EPP adopted a hostile stance against transnational lists, which killed off the project. Soon after, the Council had endorsed the reform of the European Parliament by reducing the number of seats to 705 once Brexit was complete, thereby creating a reserve of 46 seats. Important figures within the EPP, considered to be pro-European, such as Alain Lamassoure, Paulo Rangel and Elmar Brok, actively campaigned against these transnational lists (which was not the case in 2015). For Alain Lamassoure, the representatives elected on these lists would be distanced from what is occurring at grass-roots level and disconnected from local realities. For the others, these lists would heighten the divide between citizens and their representatives and would be leveraged by populists. They even went as far as calling the notion "anti-European and anti-federalist". Some also claim that this line taken by the EPP aimed to show opposition to the French President.

A few eminent members of the EPP did, however, vote in favour of transnational lists, such as Danuta Hübner and Spanish members.

The EPP remained 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).

However, a very large majority of the liberal group, led by its President Guy Verhofstadt, has always championed such lists, as have the Greens.

The S&D group was broadly in favour, with some opposition, mainly from British and Scandinavian members.

However, the smaller political groups, most of which are Eurosceptic or nationalist, have always, by definition, been hostile to transnational lists.

In 2022, the situation changed following the adoption of the Ruiz Devesa report on 3 May. Yet the subject remains controversial within the EPP, although the leadership of the group supported the programme agreement adopted between the three main groups at the European Parliament upon the election of Roberta Metsola as President. This agreement approved the principle of transnational lists. During the group meeting preceding the plenary session vote, no voting instructions were given to MEPs (free vote).

During the vote, the EPP found itself divided, as did its national delegations. While a major-

rity of the group voted against these lists, a very strong minority, made up in particular of the German (including group President Manfred Weber), Italian and Spanish delegations, voted in favour. Several delegations were split in two (Austria, Belgium, Greece, Bulgaria), while others abstained (such as the Romanian delegation). The Polish, French, Dutch, Luxembourg, Central European and Scandinavian delegations voted against for the most part.

Conversely, support from the other groups was stronger, with the very large majority of the S&D, Liberal and Greens groups voting in favour.

For the first time, half of the EUL group voted in favour (in particular Podemos, Syriza, Die Linke and La France Insoumise), but with abstentions.

Among the non-attached, votes in favour were also recorded (Five-Star Movement, Jobbik, Catalan separatists).

While the arguments behind the favourable votes, including those by many MEPs who were hostile in 2018, are well known, how can the continued expression of votes against the concept be explained, particularly within the EPP?

Two main arguments still prevail:

- Even though the geographical balance proposed by the rapporteur is more effectively respected than in the previous proposal (between small and medium-sized countries and larger countries), it remains a concern. This is felt, for example, by Portuguese MEPs of all groups (with the exception of Margarida Marques), who fear that the key positions within the Parliament will be allocated to figures from the larger Member States.
- The ideological argument: for many MEPs (particularly from Scandinavia and Central and Eastern Europe), attempts to make the European election campaign more European should not take place, with campaigns remaining predominantly national.

Other arguments have been put forward:

- For some, small areas, and not the EU as a whole, should be represented at the European Parliament (“I prefer to elect my neighbour, who I know, to represent me”).
- For others, there would be a risk of electing two kinds of MEPs (with political “heavyweights” on the transnational lists).

As regards the vote in favour by group president Manfred Weber, who was also elected president of the party in 2022, this may be explained by his failure to become President of the Commission in 2019. He may have believed that it would have been more difficult for the European Council to reject his candidacy had he topped a transnational list.

It should be noted, however, that the position of some MEPs, such as Alain Lamassoure (who left the European Parliament in 2019) has changed. According to him, “a transnational list limited to 28 MEPs would have the advantage of being a pool from which the 27 Commissioners could be selected. While it is genuinely supported by the European political parties and applied in this spirit, the system may lead national governments to propose as candidates to become Commissioners the candidate of the transnational list who recorded the highest score in the election in their country. One example of this: it is possible that no representative from Slovenia is among the MEPs elected on the transnational list, but the Slovenian government would be politically incited or forced to propose a candidate for Commissioner from the political group with the highest transnational score in the country”⁹.

Within the Council, the issue of transnational lists will most likely be addressed during the European Council meeting on 23-24 June, at the time of discussions concerning the follow-up of the Conference on the Future of Europe. At this stage, even though the European Parliament has the right of initiative in this field, it is not invited to the work of the EU-27.

Back in 2018, France, Ireland, Italy and other Southern countries clearly positioned themselves in favour of transnational lists. The new development in 2022 concerns the German

9 Comments made in May 2022.

government's coalition agreement, which is in favour.

As regards the Commission, its former President, Jean-Claude Juncker, has also spoken in favour of the move. The current Commission, which has not clearly expressed its stance, has reframed the issue against the backdrop of following up on the Conference on the Future of Europe.

The question remains regarding the link between transnational lists and the Spitzenkandidaten procedure. The European Parliament report does clearly state that the candidate for the Presidency of the Commission must be selected from the candidates topping the transnational lists. Yet, if an agreement on transnational lists requires a unanimous Council decision (which will be difficult to achieve before the spring of 2023, ahead of the 2024 European elections), this is not the case for the second procedure which requires a political and/or institutional agreement.

It is interesting to note that President Macron, while very much in favour of transnational lists, ruled out the idea of proposing Manfred Weber, the EPP candidate, for the Presidency of the Commission in 2019. Beyond the reservations concerning Manfred Weber personally, this move was interpreted by some as a means of making the EPP pay for its opposition to transnational lists in 2018.

Lastly, several key figures have come out in favour of transnational lists in recent years. In particular, Enrico Letta, President of the Jacques Delors Institute and former Italian Prime Minister. He stated, "From my polling station in Pisa, I could vote for a Spanish, Polish or French candidate. Above all, I would consider what the candidate stands for, and not their nationality. The candidate would be obliged to express what they think is best for Europe, not just for their country or region".

Similarly, Josep Borrell Fontelles, currently High Representative of the Union for Foreign Affairs and Security Policy, expressed his public support for transnational lists in 2017.

• 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, thereby strengthening the feeling of a European "demos". The balance to be struck between small, medium and large EU Member States remains an important point in the debate, although the system proposed in the Ruiz Devesa report presents a very balanced approach to this, which broadly counters criticism. Beyond this, the central question raised by the notion of these lists concerns the respective definition of sovereignty of the people compared to that of nations and the way in which it must be expressed.

The idea is gaining traction, but the road ahead is long. 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 once again.

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

If a unanimous decision is not achieved ahead of the 2024 elections, this failure should not

impede the implementation of the Spitzenkandidaten procedure, which can be moved forward by a political and/or institutional agreement, or hinder the continuation of the debate. In any event, this debate will be revived during the work following on from the Conference on the Future of Europe.

• Recommendations

- The idea of creating transnational lists must be deeply justified 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 2024 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 national parliaments.
- However, even a limited number of seats, as proposed in the Ruiz Devesa report (28), reserved for those elected on transnational lists, would **serve as an experiment** which could possibly be extended.
- The **geographical balance** proposed in the European Parliament report seems able to allay the concerns of small and medium-sized Member States.

• Appendices from Domènec Ruiz Devesa's report on the reform of the European election electoral law

APPENDIX I. The 27 EU member states arranged in categories according to their population

Category	Member State	Total population
Group A (37.9 million - 83.1 million)	Germany	83,166,711
	France	67,320,216
	Italy	59,641,488
	Spain	47,332,614
	Poland	37,958,138
Group B (6.9 million - 19.3 million)	Romania	19,328,838
	The Netherlands	17,407,585
	Belgium	11,522,440
	Greece	10,718,565
	Czech Republic	10,693,939
	Sweden	10,327,589
	Portugal	10,295,909
	Hungary	9,769,526
	Austria	8,901,064
	Bulgaria	6,951,482
Group C (0.5 million - 5.8 million)	Denmark	5,822,763
	Finland	5,525,292
	Slovakia	5,457,873
	Ireland	4,964,440
	Croatia	4,058,165
	Lithuania	2,794,090
	Slovenia	2,095,861
	Latvia	1,907,675
	Estonia	1,328,976
	Cyprus	888,005
	Luxembourg	626,108
	Malta	514,564

▲ Source: <https://ec.europa.eu/eurostat/databrowser/view/tps00001/default/table>

APPENDIX II. Practical example of a transnational list with 28 seats using the three-category rule.

A1, A2, A3, A4, A5, B1, B2, B3, B4, B5, B7, B8, B9, B10, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12 are examples of candidates from the three categories of Member States calculated according to their population.

Example of a transnational list		
Sections	Seat number	Candidate
Section 1	1	A1
	2	B7
	3	C7
Section 2	4	B10
	5	C5
	6	A3
Section 3	7	A2
	8	C3
	9	B7
Section 4	10	B5
	11	C3
	12	A4
Section 5	13	A5
	14	C12
	15	B9
Section 6	16	A4
	17	A2
	18	B2
Section 7	19	B3
	20	A1
	21	B8
Section 8	22	C1
	23	C2
	24	B4
Section 9	25	A5
	26	C8
	27	B1
Section 10	28	B7

APPENDIX III. Practical example of the application of the D'Hondt method

Practical example: 1,000,000 valid votes expressed in a constituency which elects 5 MEPs.

A (350,000 votes), B (300,000 votes), C (150,000 votes), D (100,000 votes), E (70,000 votes), F (30,000 votes)

Therefore, A wins 2 seats, B 2 seats and C 1 seat.

Divided by	1	2	3	4	5
A	350,000	175,000	116,666	87,500	70,000
B	300,000	150,000	100,000	75,000	60,000
C	150,000	75,000	50,000	37,500	30,000
D	100,000	50,000	33,333	25,000	20,000
E	70,000	35,000	23,333	17,500	14,000
F	30,000	15,000	10,000	7,500	6,000

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