



ORIGINAL PAPER

Pan-European Constituency and Transnational Lists: The Third Wave of the EU Politics of Electoral Reform?

Jakub Charvát*

Abstract

Brexit raised a question of reapportionment of the 73 British seats in the European Parliament in the 2019 elections. This re-opened the possibility of introducing a single pan-European constituency with transnational lists as a second tier of the European Parliament electoral system. The idea of transnational (pan-European) lists has not been new at all as it was firstly suggested by the Anastassopoulos report in 1998 as a tool how to make the European elections more European. Since then, this issue has been regularly appearing in discussions on the European Parliament electoral reform. Although the transnational lists were finally rejected in the most recent bargains about the European Parliament electoral design they seem to be a relevant issue for the future reform deliberation. Thus, the paper discusses the historical background and the political context of the most recent debates taking place in the context of the EU politics of electoral reform, whereby the essence is a proposal to introduce transnational lists within a pan-European constituency for the election of part of MEPs.

Keywords: *European Parliament; re-apportionment; politics of electoral reform; Brexit; pan-European constituency; transnational lists.*

* Assistant Professor, Ph.D., Metropolitan University Prague, Department of Political Science and Humanities, Email: jakub.charvat@mup.cz.

Introduction

Although the term European Parliament emerged only in March 1962, this institution celebrated its 60th anniversary in spring 2018. Following the adoption of the Rome Treaty, a common representative body was established in 1958 for all three European communities, the European Coal and Steel Community, the European Atomic Energy Community (hereinafter Euratom) and the European Economic Community (hereinafter EEC), which was named the European Parliamentary Assembly, but it was renamed the European Parliament four years later. The inaugural European Parliamentary Assembly meeting took place in Strasbourg on March 19th, 1958; less than a month after the European Coal and Steel Community Common Assembly,¹ which preceded the European Parliament's establishment, met for the last time.² It happened almost exactly ten years after the idea of a directly elected European Parliamentary Forum emerged at the Hague Congress in April 1948 (Smith, 1999: 27-34; Viola, 2016: 4).

In many ways the European Parliament (hereinafter EP) is a specific institution within the institutional structure of the European Union (hereinafter EU). It is clearly an institution that underwent the most dynamic development of all Union institutions in terms of composition, definition of competences and status within the EU political system in the last sixty years. While at the beginning of its existence the EP was 'only' conceived as a consultative assembly whereby its members were not elected in the elections but delegated by national governments, it gradually strengthened its position within the institutional structure of European Communities and later the EU up to the present form of a 'directly elected, fully-fledged parliamentary forum' (Viola, 2016: 3), with significant legislative, control and budgetary powers at EU level, which led many authors to state that the EP is a remarkably successful institution in this sense (Rittberger, 2005; Farrell & Scully, 2007). Furthermore, apart from being the only directly elected institution in the current EU political system, the EP is now one of the most important institutional elements based on the of the EU Member States representation.

The gradual transformation of the position of the EP within the EU structures cannot be separated from the issue of how the assembly being established. These are two communication vessels; strengthening the EP status in one of these issues allows to consolidate positions in the second area, and *vice versa*. The adoption of the 1976 Act introducing general and direct elections of MEPs, or the first direct elections in 1979, seems to be a turning point in this sense. From this moment onwards, MEPs could begin to justify their demands to strengthen the EP role by being the voice of the European people to finally use this argument effectively to gradually expand their powers (Farrell & Scully, 2007: 7).

Thus, the EP politics of electoral reform is an integral and permanent part of the European integration process. Even today, almost forty years after the first direct EP elections being held, (never-ending) discussions on the electoral system for MEPs is still

¹ The last Common Assembly meeting took place on February 28th, 1958.

² For the sake of simplicity, the text will continue to work with the term 'European Parliament' also for the two representative bodies which directly preceded the establishment of the European Parliament, that is, the European Coal and Steel Community's Common Assembly (1952–1958) and the European Parliamentary Assembly (1958–1962); the term 'European elections' will be used as a synonym for European Parliament elections.

a very lively and relevant topic. The recent discussion following the United Kingdom's EU membership referendum of June 2016 may be an evidence. The so-called Brexit brought several questions regarding the further direction of European integration process, including its (future) institutional framework. One of the major and relatively sensitive issues is the issue of the EP composition, as 73 out of 751 seats will become vacant. A new round of debates began on how the EP will be formed after Brexit, with a proposal to introduce a second (higher) tier of the electoral system for European elections where the seats would be distributed through transnational lists in a pan-European constituency.

Objectives, methods and data

Taking the above mentioned into account, the paper will focus on the historical background and the political context of the most recent debates taking place in the context of the EU politics of electoral reform, whereby the essence is a proposal to introduce transnational lists within a pan-European constituency for the election of part of MEPs. Thus, the politics of electoral reform perspective will be the initial analytical framework. Above all, the aim of this approach is to explain the processes of establishing and adopting new electoral rules and explaining the causes for their change, as the reform process cannot be understood without prior analysis of mechanisms through which a wide variety of factors (historical, cultural, institutional, contextual or personal), which subsequently form concrete results and interact against the background. Election rules are viewed as a dependent variable, because they're often the subject of political decisions made by selfish political actors who tend to make decisions in their own interest. Qualitative approaches focusing on detailed (comparative) process tracing and a small number of cases appear to be more beneficial for this approach (see Renwick, 2010; Charvát, 2016).

The present text does not have any deeper theoretical ambitions; it is neither aimed at defending or criticising the current state from the point of view of various paradigms and/or theoretical concepts but following path dependence approach, it is rather seeking to evaluate and explain the current state, *inter alia* by introducing its genesis. Therefore, the paper is conceived as an idiographic case study.

The primary data and information sources were EU treaties, the relevant legal acts dealing with the issue of EP electoral legislation and reports of *ad hoc* working groups on EP electoral reform. Data from these documents were further supplemented and extended by the findings of expert studies and analyses dealing with the EP elections legislation and its changes over time.

Two waves of the EU politics of electoral reform

As mentioned above, the EP politics of electoral reform is an integral and permanent part of the European integration process. The relevant passages of the Paris Treaty of April 1951 contributed towards it significantly, as the Treaty envisaged establishing the Common Assembly and mentioning two possible ways for its establishment; either seats could be taken by national parliaments, or the Members of Assembly could be chosen directly by the citizens of the Member States in general elections (see Article 21(1)). All Member States eventually decided to go with the first option (delegation by national parliaments), yet the explicitly mentioned general election option opened the door for discussion on whether the Assembly should be directly elected by the citizens; and, if so, whether the elections should be conducted according

Pan-European Constituency and Transnational Lists...

to uniform procedure. Moreover, the issue of electoral reform had been an important issue since the first Common Assembly meeting as this was one of the first questions debated; and discussions on this issue have continued over in the years (Costa, 2016: 13).

However, it will be the Rome Treaty establishing Euratom and the EEC, which explicitly mentions the presumption of future direct elections of MEPs.³ If the Paris Treaty mentioned the option for Member States to hold direct elections, the Rome Treaty included a commitment for the introduction of general elections through uniform procedure in all Member States (see Article 138(3) of the Treaty establishing the European Economic Community; Article 108(3) of the Treaty establishing the European Atomic Energy Community). Therefore, the Rome Treaty set the next direction of the politics of electoral reform for EP elections (direct elections according to uniform electoral procedure), but, at the same time, also its significant limits; if the Assembly was responsible for the preparation of the draft, the Council had to unanimously approve it. While the Assembly began to address this issue very seriously, the Council's unanimous consent proved to be an insoluble problem at that time. The main obstacle was France's opposition (led by President Charles de Gaulle), which rejected direct elections in order not to strengthen the transnational character of the European integration process (Reif, 1984: 233). However, part of the German MEPs refused to introduce direct elections as well, saying that this step would mean a confirmation and legitimation of the division of Germany; a change in this approach occurred with the onset of *Ostpolitik*.

Although the establishment of direct European elections in the 1960s did not take place, the so-called Dehousse Report (Dehousse, 1960) is an important milestone for further development of the EU politics of electoral reform. The report stated that the term 'uniform' does not mean 'identical'. Thus, the Assembly 'only' had to set out a few basic common principles, without necessarily having a strict consistency of election procedures in all Member States. At the same time, the report sought to reflect the current situation in which the possibility of early direct elections under uniform electoral procedure appeared highly unlikely. Therefore, the report proposed splitting the original assignment into two phases: first to ensure that EP general elections are held while setting the electoral rules remains in the competence of Member States, and only then introduce uniform procedure binding for all Member States.

As the proposed phases indeed become the basic strategy used by the EP to approach the gradual fulfilment of the direct elections requirement according to uniform procedure, we can distinguish two waves of the EU politics of electoral reform. While the issue of introducing a uniform electoral system was side-lined for the time being, the main emphasis in the negotiations was put on the introduction of direct elections. The first wave corresponds to the efforts to introduce general elections to the EP and culminates in adopting the 1976 Act concerning the election of Assembly members by direct universal suffrage and in holding the first direct elections in 1979. The second wave immediately follows, and its ambition was to meet requirements to introduce common principles for European elections. The adoption of the 2002 Council Decision

³ An obvious inspiration for the formulation of the relevant passages of the Rome Treaty was the proposal submitted by the Italian delegation at the intergovernmental conferences in Brussels at the turn of January and February 1957 (for details, see van den Berghe, 1981: 8-10).

amending the above-mentioned 1976 Act can be considered the culmination of this wave though it did not actually introduce a uniform procedure for European elections.

Transnational lists as a new issue of the politics of electoral reform

However, the 2002 Council Decision did not exhaust the issue of the EU politics of electoral reform. Conversely, any change in the number of the Member States and/or a gradual strengthening of the EP powers, particularly in the context of the adoption of the Lisbon Treaty, although the rules of European elections were not the subject of discussing this Treaty, has been the stimulus for other proposals to reform the existing electoral procedure.

Perhaps somewhat paradoxically, the criticism that arise is like that one in the debates in favour of introducing direct elections for MEPs. Especially the lack of supra-nationality in the EP elections and its second-order nature are criticised. In this perspective, EP elections tend to be based on the national political and social specifics of each Member States, but without clearly showing their assumed European dimension. Not only the voting rules are set by national electoral legislations (for details, see, e. g., Outly, 2007), but the electoral process itself includes several national elements. For example, transnational political groups in the European Parliament do not nominate individual candidates for the European elections and do not interfere with the process of their nomination, but they are candidates sent to European elections by national political parties at their own discretion. Political campaigns that precede the European elections often lack the European dimension, when they focus on national rather than European issues. And last but not least, the EP election results reflect national rather than European politics (Hix & Marsh, 2007).

The way how to remedy this unsatisfactory situation, at least in this perspective, is a reform of the EP election rules, which would strengthen links between the citizens of EU Member States and MEPs and contribute to European elections having a truly European dimension. However, as soon as it turned out that the provisions on the harmonisation of the EP election rules of 2002, consisting in the introduction of the proportional representation electoral system as a crucial common principle, did not contribute to the achievement of this objective, the attention of the EU electoral procedure reformers has recently shifted elsewhere, when the proposal for the introduction of transnational lists became a new topic of the EU politics of electoral reform.

According to this proposal, the current electoral system for the EP elections should be transformed as follows. While seats are currently being allocated at national level, the transnational seat allocation level in the EP should be added if the intended change is implemented. However, the actual number of seats, which should be allocated at the possible higher electoral system tier, has changed over time. A specific feature of the pan-European constituency would be that the lists would no longer be submitted by national political parties, but by transnational political groups represented in the EP, and the lists would have to include candidates from several EU Member States. In this case, voters would have two votes in the European elections; one vote for a party list or a national candidate as is the case today, and the other for a preferred transnational list in the common constituency.

The idea of a pan-European constituency and transnational lists first appeared in the 1998 Anastassopoulos Report. Anastassopoulos proposed to allocate 10% of the total number of EP seats through EU-wide lists, starting with the 2009 European elections

Pan-European Constituency and Transnational Lists...

(see Article 5 of the Anastassopoulos Report). Anastassopoulos justified the need to transnational lists with their mechanism contributing towards the creation of European political awareness and the establishment of real European political parties. The establishment of a common constituency and transnational lists should also contribute to making EP elections more reflective of the truly European dimension of this political competition, instead of national political issues favoured up to then. In addition, this mechanism made it easier for the European elections nominated candidates to approach voters and thereby further enhancing the European elections representativeness (Anastassopoulos, 1998). Although this element was not introduced into EU legislation, the argumentation for its introduction laid the basis for further political discussions.

Duff Reports and post-national democracy

Reports by Andrew Duff followed in Anastassopoulos' conclusions more than ten years later. The introduction of a higher electoral system tier with transnational lists for European elections was to become the next step towards establishing a post-national democracy, the historical experiment of which the EP is (Duff, 2012; 2017). In such a model of democracy, political competition takes place at European level rather than national level and the European political groups and their system play a key role. According to Duff, the proposed electoral reform should, in addition to the ambition to reduce differences in electoral procedures across the Member States, strengthen the European dimension of the EP elections. It would be possible to strengthen the legitimacy of decisions taken at European level and to make the EP more responsible to the citizens it represents. As a result, the proposed electoral reform was to increase the EP popularity among the citizens of all EU Member States.

According to Duff, a total of 25 seats would be allocated at the EP electoral system's higher tier, corresponding to the number of EU Member States at the time of his first draft report (September 2008). The number of seats remained unchanged in later drafts and reports, although the number of EU Member States increased. However, the question of whether these 25 seats should be occupied within the existing number of seats or whether they should be additional seats was widely discussed as being a controversial issue. The first draft worked with the idea that they would be additional seats added to the current 751 MEPs. However, this solution was criticised, particularly by the representatives of the small and medium-sized EU Member States, as a means of hidden increase in the size of the representation of large Member States at the expense of other Member States (for details on representation size in the 2014 EP elections, see Charvát, 2015). Therefore, the second Duff report of February 2012 assumed that the representative seats from the transnational constituency would be part of the fixed number of MEPs.

The candidates nominated for the transnational lists may come from at least one third of the Union Member States, the lists may be gender-balanced and allow better representation of ethnic minority candidates at both European and national levels. Candidates could be nominated on transnational, national or regional lists simultaneously. To make concessions to the small and medium-sized Member States, the transnational lists should be conceived as closed lists (i.e., voters cannot change the order of candidates on the list) so that the composition of elected candidates from transnational lists would not be primarily determined by voters from large Member States.

As it became clear that the draft cannot succeed in the Plenary of the EP the Committee decided to withdraw this proposal from the agenda in March 2012. This proposal was never discussed in the European Parliament's Plenary. The third Duff Report of July 2013 was focused on organizational issues of the upcoming elections while all controversial passages in the previous reports, including a proposal for transnational lists, were deleted (Costa, 2016: 39). Therefore, the main innovation for the 2014 European elections became the introduction of the so-called *Spitzenkandidat* system, whereby the winning political group's candidate through these elections became the President of the European Commission. It was expected that this mechanism would make elections more attractive to both voters and media and would increase the interest in European elections as such.

Transnational lists and Brexit

However, it did not take long, and the issue of transnational lists returned to the EP agenda in 2015. The EP adopted a resolution on reforming the EU electoral procedure aimed at strengthening the democratic and transnational dimension of European elections and therefore the democratic legitimacy of the EU decision-making process in November of the same year, that is, before British citizens voted in the Brexit referendum. According to the annex to this resolution, the Council would unanimously decide on a pan-European constituency and transnational lists led by candidates of various political groups in the EP running for Commission President, without the issue being worked out in detail. The debate on electoral reform gained momentum in the context of the Brexit negotiations, which opened the question of how 73 British seats in the EP would be handled after the Brexit. One mentioned option was the proposal that 27 of these 73 seats would be used to establish the transnational constituency.

An important suggestion to revive the debate on the possibility of transnational lists was the Italian proposal presented in Bratislava in April 2017 (Verger, 2018: 8). The EP issued another resolution that recalled the earlier commitment to reform the European elections current rules in the sense of introducing transnational lists in April 2017. Subsequently, transnational lists gained significant political backing as it was supported by French President Emmanuel Macron, or the representatives of South European countries (Cyprus, France, Greece, Italy, Malta, Portugal and Spain). It was also supported by the President of the European Commission Jean-Claude Juncker, according to whom the transnational lists could bring democracy and clarity to Europe, or Irish Prime Minister Leo Varadkar (Verger, 2018). The major potential benefit of transnational lists was once again considered to be their potential to bring truly European issues to European elections. In addition, there was a new argument of the possible strengthened role of the voter in the electoral process. Thanks to the possibility of giving two votes, one for national or regional lists and one for transnational lists, each voter will have the chance to influence the election for a higher number of MEPs than has been the case so far, assuming the establishment of the pan-European constituency.

It was assumed that the transnational lists would include candidates from at least one third of the Union's Member States, with a proportion of candidates from one Member State within a transnational list not exceeding 25% and the first seven candidates having to come from seven different Member States. The transnational lists should be conceived as closed and could be submitted not only by existing political groups represented in the EP but also by other candidate political groups. However, a 3% electoral threshold was to apply to seat allocations among the submitted lists within

Pan-European Constituency and Transnational Lists...

the pan-European constituency (Verger, 2018: 8). Despite the proclaimed political support and recommendations from the Committee on Constitutional Affairs, the transnational lists have not yet been introduced, especially due to opposition from the European People's Party, which was supported in this position by the Eurosceptic and nationalist MPs.

Conclusion and discussion

Introduction of direct elections to the EP through the uniform electoral procedure did not fulfil the original expectations; the real European *demos* was not created, the link between voters and MEPs was not strengthened significantly and the EP elections often lack a European dimension. To overcome these shortcomings, a proposal was made at the end of the 1990s to introduce a higher tier of European electoral system whereby various political groups represented in the EP would present transnational lists within a pan-European multi-member district (see the Anastassopoulos Report). Despite several unsuccessful attempts to establish the transnational lists (see, e.g., the Duff Reports), this issue remains an important part of the EU agenda. In the light of previous development, we can see that we are witnessing a third wave of the EU politics of electoral reform aimed at introducing a pan-European constituency with transnational lists.

However, this change significantly interferes with the balance of power between the EU institutions. At the same time, it necessarily affects the wider debate on territorial representation in the EP, which traditionally represents a very sensitive topic at inter-governmental conferences. The question of fragile power balance, both between the EU institutions and Member States, as well as the threat of its fundamental disruption when implementing the intended electoral reform, is one of the major obstacles preventing the approval of this change. Moreover, the recent (and for now) final round of political talks on the possibility of transnational lists has confirmed that the EU Member States are still unable to agree on the possible contribution of this change to the European integration process, and it is currently a crucial obstacle in adopting this reform if the Council's unanimous consent is required. It has also turned out that MEPs themselves are not ready for such reform. Despite the Lisbon Treaty's wording, several of them still think and act as if they were Member States representatives. In addition, some critics of transnational lists are concerned about the pan-European constituency further deepening the gap between the citizens and MEPs or it leading to increased support for populist and nationalist groups in the European elections and strengthening their influence (not only) in the EP.

Perhaps somewhat paradoxically, it seems that even the supporters of such electoral reform are not yet prepared for the introduction of transnational lists and have not yet been able to convincingly defend the potential benefits of this change. In addition, some defenders of the new electoral mechanism shrank into the argument that this proposal was a response to the opportunity of reforming the current situation brought by the Brexit. However, it is not enough with respect to the ambition of pushing through a fundamental change in the EU electoral procedure. Finally, the question of transnationality of transnational lists must be mentioned; their conceptualisation should not be based on national logic (as was the case in the existing proposals) if the pan-European lists are to have unquestionable transnational character. Instead, they should support a rather qualitative transformation of the nature of parliamentary seats allocated in the pan-European constituency towards a truly transnational European idea.

Acknowledgment

The paper was written as a part of a research project „Representing European Citizens? Geography of European elections, degressive proportionality and member states representation“ (no. 18-09161S) funded by the Czech Science Foundation.

References:

- Anastassopoulos, G. (1998). Report on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament, doc. A4-0212/98, 2 July 1998. Retrieved from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A4-1998-0212+0+DOC+XML+V0//EN>.
- Charvát, J. (2015). Apportionment amongst Member States and the Value of a Vote in the 2014 European Parliament Elections. *Revista de Stiinte Politice. Revue des Sciences Politiques*, (48), 179-190.
- Charvát, J. (2016). Temptation of the “Powerful”: The politics of electoral reform in Central Europe in post-transitional period. *Slovak Journal of Political Sciences*, 16 (4), 353-368.
- Costa, O. (2016). *The history of European electoral reform and the Electoral Act 1976: Issues of democratisation and political legitimacy*. Luxembourg: European Parliamentary Research Service. Retrieved from: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/563516/EPRS_STU\(2016\)563516_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/563516/EPRS_STU(2016)563516_EN.pdf).
- Dehousse, F. (1960). Convention on the direct Election of the European Parliamentary Assembly by universal suffrage, the Rapporteurs being Mr Battista, Mr Dehousse, Mr Faure, Mr Schuijt and Mr Metzger. *Official Journal of European Communities*, 37, 2 June 1960.
- Duff, A. (2012). Finding the balance of power in a post-national democracy. *Mathematical Social Sciences*, 63 (2), 74-77.
- Duff, A. (2017). *The rise of post-national democracy: Macron, Brexit and the electoral of the European Parliament. Discussion Paper*. Brussel: European Policy Centre.
- Farrell, D. M. & Scully, R. (2007). *Representing Europe’s Citizens? Electoral Institutions and the Failure of Parliamentary Representation*. Oxford: Oxford University Press.
- Hix, S. & Marsh, M. (2007). Punishment or Protest? Understanding European Parliament Elections. *The Journal of Politics*, 69 (2), 495-510.
- Outly, J. (2007). The Electoral System for Elections to the European Parliament: A Comparison of the Original and the Newly Admitted Countries, *Contemporary European Studies*, 2 (2), 5-20.
- Reif, K. (1984). Transnational problems of a uniform procedure for European elections. In Grofman, B. & Lijphart, A. (editors), *Choosing an electoral system: Issues and alternatives*. New York: Praeger, 231-245.
- Renwick, A. (2010). *The Politics of Electoral Reform: Changing the Rules of Democracy*. Cambridge: Cambridge University Press.
- Rittberger, B. (2005). *Building Europe’s Parliament: Democratic Representation Beyond the Nation State*. Oxford: Oxford University Press.
- Smith, J. (1999). *Europe’s Elected Parliament*. Sheffield: Sheffield Academic Press.
- van den Berghe, G. (1981). What is a “Uniform Procedure”? In Sasse, C. et al. *The European Parliament: Towards a Uniform Procedure for Direct Elections*. Florence: European University Institute, 7-19.

Pan-European Constituency and Transnational Lists...

- Verger, C. (2018). Transnational lists: A political opportunity for Europe with obstacles to overcome. Policy Paper 216, 7 February 2018. Paris: Jacques Delors Institute.
- Viola, D. M. (2016). The genesis of the European Parliament: From appointed Consultative Assembly to directly elected legislative body. In Viola, D. M. (editor), *Routledge Handbook of European Elections*. London & New York: Routledge, 3-16.

Article Info

Received: February 03, 2019

Accepted: April 10 2019
