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# Transnational electoral lists

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Ways to  
Europeanise  
elections to the  
European  
Parliament

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STUDY

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Author: Maria Diaz Crego  
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# Transnational electoral lists

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## Ways to Europeanise elections to the European Parliament

The creation of a pan-European constituency, comprising the whole territory of the European Union, in which a number of Members of the European Parliament would be elected from transnational electoral lists, figures high among proposals to enhance the European dimension of the elections to the European Parliament. Although the idea to create a European constituency gained momentum with 73 seats in the European Parliament due to become vacant as a consequence of the United Kingdom's withdrawal from the European Union, the proposal is far from new and has been debated in the European institutions and academia since the 1990s. This paper analyses the main proposals to create a European constituency (or constituencies) that have been discussed in the European Parliament, other European institutions and academia, and details the legal changes that would be needed at European and national level to bring the idea to fruition.

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## Executive summary

The creation of a **pan-European constituency**, comprising the whole territory of the European Union (EU), in which a number of Members of the European Parliament would be elected from **transnational electoral lists** is frequently depicted by its proponents as a way to **enhance the European dimension of European elections**. The availability of transnational lists could help to focus the **electoral campaign on European affairs** and **strengthen European political parties**, which would acquire a central role in European elections by proposing truly European candidates. In addition, transnational list advocates argue that they would improve the quality of democratic representation in the EU and help to create a European 'demos'. Conversely, detractors of transnational electoral lists criticise their potential for creating **different levels of legitimisation among Members of the European Parliament**, with those elected in the European constituency/ies claiming 'European' endorsement and those elected in the national constituencies claiming a national one. In addition, transnational lists are criticised for potentially increasing the distance between voters and their representatives, as Members elected through transnational lists **would not have a bond with a constituency**, and for **favouring candidates from large Member States** and for the difficulties surrounding organisation of a European electoral campaign in different languages and a large territory.

Praised by some and criticised by others, concrete proposals to operationalise transnational electoral lists have been discussed in the European Parliament, other institutional settings and academia since the 1990s. **Proposals** to create transnational electoral lists **discussed in the European Parliament** have always shared common features: a **single pan-European constituency**, comprising the territory of all Member States, would be created to elect a relatively small number of Members of the European Parliament (25-46) compared to the total number of Members (currently 705). In addition, a **proportional electoral formula** would be applied (usually the D'Hondt formula), together with **closed electoral lists**. In some cases, proposals have suggested using a system that aims at ensuring gender and geographically balanced representation by imposing certain requirements on lists of candidates presented in the European constituency. In the most recently discussed proposal (Hübner-Leinen Report), the European Parliament also linked the *Spitzenkandidaten* process to the possible creation of transnational electoral lists, by suggesting that those lists should be headed by the lead candidates of each European political family.

However, **other proposals** to create transnational electoral lists have been **put forward in other institutional settings, academia and think tanks**. Aiming to offer voters a wider range of electoral choices than those offered by a closed list system, some actors have proposed to use a system of open lists, or the single transferable vote system, in some cases coupled with the creation of several joint constituencies, comprising the territory of different Member States. Aiming to favour geographically balanced representation, some authors have proposed each list should contain candidates from at least one third or one quarter of the Member States. Others have proposed to reserve seats for candidates from each Member State, or to group Member States according to certain features (e.g. their population), and require each candidate list to include a specific number of candidates coming from each of those groups. Similarly, gender-balanced representation could be achieved through various systems.

Apart from questions relating to the design of the electoral system applicable to the elections in the European constituency/ies, this paper analyses the legal reforms that would be needed at European and national levels in order to create transnational electoral lists. Although the **creation of transnational electoral lists does not seem to require modification of the EU Treaties**, except if it were decided to extend the maximum number of European Parliament seats currently provided for under Article 14(2) TEU (750 plus the President), it would require the modification of several EU secondary acts. In this vein, the **1976 European Electoral Act** (Council Decision 76/787/ECSC, EEC,

Euratom of 20 September 1976), which currently provides for a common set of rules to be applied by all Member States in European elections, **would need to be amended** to create a European constituency/ies and provide for a uniform electoral system and procedure to be applied in the elections in that constituency/ies. The amendment of the 1976 European Electoral Act requires a unanimous decision of the Council, based on a proposal by the European Parliament and with its consent (by a majority of its component Members), as well as the later approval of all Member States in accordance with their respective constitutional requirements (Article 223 (1) TFEU). As the procedure to modify the 1976 European Electoral Act is quite demanding, the possibility to leave determination of the secondary aspects of the electoral procedure to be applied in the elections in the European constituency/ies through the procedure provided for under Article 14 of the European Electoral Act could be explored.

Similarly, **Decision (EU) 2018/937 of 28 June 2018, establishing the current composition of the European Parliament, would also require modification**, to provide for the allocation of a certain number of European Parliament seats to a European constituency/ies. In this case, the amendment would need to be adopted by a unanimous decision of the European Council, on the initiative of the European Parliament and with its consent (Article 14 (2) TEU). Apart from that, some other EU secondary acts may also need amendment, depending on the electoral system and procedure to be applied in the elections in the European constituency/ies.

In addition to the modifications that would be required at the European level, the **procedures to be followed in the Member States to approve the amendments to the 1976 European Electoral Act** should also be taken into account. In this vein, such approval would require a constitutional amendment in Austria, and depending on the exact scope of the modifications introduced in the European Electoral Act, in some other Member States (e.g. Spain, Portugal or Italy). In 15 Member States, the procedure for the ratification of international treaties would need to be applied to approve the changes introduced in the 1976 European Electoral Act (Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden). In 11 Member States, approval would only require the adoption of a law or amendments to the existing laws regulating European elections (Bulgaria, Cyprus, Czechia, Denmark, Estonia, Ireland, Latvia, Lithuania, Luxembourg, Malta and Slovenia). Amendments to the laws applicable to European elections would generally be needed in the Member States, with some national legal orders requiring special qualified majorities or procedures for their adoption (e.g. Austria, Belgium, Czechia, Spain, Estonia, Slovenia or Portugal).

The adoption of these legal modifications would be likely to take some time. Given that the **Venice Commission recommends** that – and some Member States (e.g. Belgium and France) require – **amendments to electoral laws are made at least one year in advance of elections**, to ensure the credibility of the electoral process, European institutions would need to start the procedure to modify EU legislation sufficiently early, if they wished to introduce transnational electoral lists before the 2024 European elections.

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# 1. Introduction

**European elections are frequently depicted as second-order national elections** in which voters show little interest in European affairs, voting mainly on the basis of domestic political considerations, turnout<sup>1</sup> is lower than in national elections and government parties and major parties tend to lose citizens' support.<sup>2</sup> Numerous studies have tried to identify the reasons behind this state of affairs, pointing to several factors. These include: the lack of an uniform electoral system for European elections and the differences in the rules applicable in each Member State, which make European elections appear to be the sum of simultaneous national contests instead of a single electoral process; voters' lack of knowledge in relation to European affairs and European institutions, which seems to encourage a vote based on national political considerations with which they are more familiar; the complexity of the European Union's institutional framework and the absence of a straightforward link between European elections and the 'European executive', making it difficult for voters to understand the relevance of the issues at stake in European elections; and finally, the pre-eminence of national political parties in European elections and the absence of a European political arena that would help to focus the electoral campaign on national political considerations instead of the European dimension of the elections.<sup>3</sup>

Recent research suggests that **European elections may be becoming more salient** and their results more dependent on citizens' choices relating to the European integration process,<sup>4</sup> although the 'second-order elections' label still holds considerable sway among scholars.<sup>5</sup> European Union institutions have proposed or launched several initiatives aiming at enhancing the European dimension of the elections to the European Parliament, including the idea to create a pan-European constituency, and the *Spitzenkandidaten* process, through which European political families elect their candidates for the Commission Presidency ahead of the European elections.

The European Parliament launched the ***Spitzenkandidaten* process** ahead of the 2014 and 2019 European elections, although the results varied between the two. Jean-Claude Juncker, the European People's Party (EPP) lead candidate, was appointed as the President of the Commission in 2014, whilst Ursula von der Leyen was appointed as President of the Commission in 2019, without

<sup>1</sup> Turnout in European elections was in constant decrease from the first European elections in 1979, attaining its minimum rate in the 2014 European elections (42.6 %). However, in the 2019 European elections, this trend' was reversed, with participation increasing to 50.6 %. For further information see: G. Sabatti, [European Parliament: Facts and Figures](#), European Parliamentary Research Service, October 2019, p. 6.

<sup>2</sup> Among many others, see the seminal research paper by K. Reif and H. Schmitt, 'Nine Second-Order National Elections – A Conceptual Framework for the Analysis of European Election Results'. *European Journal of Political Research*, vol. 8, issue 1, 1980, pp. 3-44.

<sup>3</sup> Among the authors analysing this question, see note above and: C. Kelbel, 'Les résultats des élections européennes de Mai 2019 dans les États Membres', *Courrier hebdomadaire du CRISP*, 2019/26, n° 2431-2432, pp. 5-102; D. M. Viola, *Routledge Handbook of European Elections*, Taylor & Francis Group, 2018, pp. 40-43; D. Schleicher, 'What if Europe held an election and no one cared?', *Harvard International Law Journal*, num. 52, 2011, pp. 109-162; F. Ferrara and J. T. Weishaupt, 'Get your Act Together', *European Union Politics*, 2004, vol. 5, issue 3, pp. 283-306 ; M. Marsh, 'Testing the second-order election model after four European elections'. *British Journal of Political Science* vol. 28, issue 4, pp. 591-607; C. van der Eijk, and M. Franklin, *Choosing Europe? The European Electorate and National Politics in the Face of Union*. University of Michigan Press, Ann Arbor, 1996.

<sup>4</sup> Among others, see: S. Kritzinger, C. Plescia, K. Raube, J. Wilhelm, and J. Wouters, *Assessing the 2019 European Parliament Elections*, Taylor & Francis, 2020; D. M. Viola, op. cit., pp. 43-46; S. Hix and M. Marsh, 'Punishment or protest? Understanding European parliament elections'. *The Journal of Politics* vol. 69, issue 2, 2007, pp. 495-510; R. S. Flickinger and D. T. Studlar, 'One Europe, Many Electorates? Models of Turnout in European Parliament Elections after 2004', *Comparative Political Studies*, vol. 40, num. 4, 2007, pp. 383-404; M. Marsh, op. cit.

<sup>5</sup> See authors in footnotes 2, 3 and 4.

endorsement as the lead candidate of a European political family.<sup>6</sup> Conversely, the idea of creating a **pan-European constituency** for the election of some Members of the European Parliament through **transnational electoral lists** has never been put into practice. This idea first emerged in scholarly literature,<sup>7</sup> and as a formal European Parliament proposal,<sup>8</sup> in the 1990s. Subsequently, the European Parliament discussed the proposal on several occasions,<sup>9</sup> including in its formal proposal to modify the 1976 European Electoral Act ahead of the 2019 European elections, in which Parliament established a clear link between transnational electoral lists and the *Spitzenkandidaten* process.<sup>10</sup> However, at the time of writing, all of the proposals to create transnational electoral lists that were formally discussed in Parliament have been rejected – either by Parliament itself or by the Council.

After the 2019 European elections, the idea to create transnational electoral lists has again come to the fore. In her political priorities for the 2019-2024 term, the President of the European Commission expressed her willingness to work together with the European Parliament and the Council to improve the *Spitzenkandidaten* process and address the possible creation of transnational electoral lists for European elections. From the outset, plans were made to debate both issues in an open, inclusive and transparent manner, with the involvement of European Union citizens, in the **Conference on the Future of Europe**.<sup>11</sup> Initially expected to start in May 2020 and run for two years, the Conference was supposed to deliver on these topics by summer 2020.<sup>12</sup> However, the coronavirus pandemic paused preparations for the Conference, delaying the opening ceremony.<sup>13</sup>

In the meantime, the European Parliament has initiated the internal procedure to exercise its **right of initiative** and propose further modifications to the **European Electoral Act**.<sup>14</sup> At the same time, Parliament is calling on the other institutions to organise an ambitious Conference on the future of Europe, open to citizen participation, and in which several institutional questions would be debated, including the possibility to create transnational electoral lists and improve the *Spitzenkandidaten* process.<sup>15</sup>

Against this background, this paper will firstly analyse the main arguments for and against creating a European constituency/ies and transnational electoral lists (Section 2). It will discuss the proposals

<sup>6</sup> On the process, see: P. de Wilde, 'The fall of the Spitzenkandidaten. Political parties and conflict in the 2019 European elections'. In S. Kitzinger, C. Plescia, K. Raube, J. Wilhelm and J. Wouters (eds.), *Assessing the 2019 European Parliament Election*, Routledge, London, 2020, pp. 37-54; L. Tilindyte, [Election of the President of the European Commission. Understanding the Spitzenkandidaten process](#), European Parliamentary Research Service, April 2019.

<sup>7</sup> A. Duff, *Electoral Reform of the European Parliament*, Brussels: Federal Trust for the European Movement, 1996; P. Van Parijs, 'Should the European Union Become More Democratic?', in A. Føllesdal and P. Koslowski (eds), *Democracy and the European Union*, Berlin: Springer, 1998, pp. 208-301.

<sup>8</sup> The first formal proposal put forward by the European Parliament to create transnational electoral lists was included in the Anastassopoulos report: European Parliament Resolution of 15 July 1998, on a draft electoral procedure incorporating common principles for the election of Members of the European Parliament, [A4-0212/98](#).

<sup>9</sup> See section 3.1 in this publication.

<sup>10</sup> European Parliament Resolution of 11 November 2015 on the reform of the electoral law of the European Union (2015/2035(INL)).

<sup>11</sup> Ursula von der Leyen, [A Union that strives for more. My agenda for Europe](#), Political Guidelines for the next European Commission 2019-2024, pp. 19-20.

<sup>12</sup> S. Kotanidis, [Preparing the Conference on the Future of Europe](#), European Parliamentary Research Service, December 2019.

<sup>13</sup> S. Kotanidis, [Conference on the Future of Europe](#), European Parliamentary Research Service, June 2020.

<sup>14</sup> European Parliament, Modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage pursuant to Article 223(1) of the Treaty on the Functioning of the European Union, [2020/2220\(INL\)](#), Rapporteur: Domènec Ruiz Devesa (S&D, Spain).

<sup>15</sup> Among others, see: European Parliament resolution of 26 November 2020 on stocktaking of European elections ([2020/2088\(INI\)](#)).

to establish transnational lists, already discussed in various institutional settings and academia (Section 3). The paper will then focus on the key questions to be answered when designing the electoral system and the procedure to be applied to elections in a potential European constituency/ies (Section 4). Finally, it will also detail the legal changes that would be needed at European and national levels to create European constituency/ies and transnational lists (Section 5).

## 2. Transnational electoral lists: Arguments for and against

**Transnational electoral lists are often considered a controversial issue**, where positions differ not only according to political affiliation, but also within the same political family.<sup>16</sup> As one of the **positive aspects**, advocates of joint constituencies and transnational lists often highlight that they would enhance the European dimension of European elections by giving the **electors the opportunity to vote for European (and not only national) candidates** in a truly European contest.<sup>17</sup> In doing so, it is argued that transnational electoral lists would help to overcome the mismatch between the European Parliament's institutional role as the EU institution that represents EU citizens and the fact that EU citizens are asked to vote for national parties and leaders that have no visible role in European politics.<sup>18</sup> Transnational electoral lists would therefore improve the quality of democratic representation and citizens' participation in EU politics. The transnational dimension of their choices and their potential impact on the EU institutions would be clearer for voters.<sup>19</sup> In this respect, it has been said that the European Parliament would be better able to fulfil its institutional role by providing **clear guidance on the preferences of EU citizens on EU policies**.<sup>20</sup>

Vesting **Members with a clear European mandate** would also help to overcome the mismatch produced by differentiated integration, through which certain EU acts apply only in some Member States, although all Members of the European Parliament vote on them, including those elected in the Member States that have opted-out of that particular policy area. Some authors argue that this raises doubts as regards the EU's democratic legitimacy, as representatives (Members) of citizens who would not be affected by such measures would be involved in making decisions for which they could not be held accountable.<sup>21</sup> In their view, transnational electoral lists would help to counter this criticism, as Members of the European Parliament elected through transnational lists would hold a European mandate and would be accountable to all EU citizens and not only to those from a particular Member State.

As candidates for transnational lists would no longer be decided by national parties, but by European parties, and lists would have to include candidates from different Member States, it has also been said that transnational lists would **strengthen European political parties**, providing incentives for them to seek candidates and voters throughout Europe. This development is seen by some authors as critical for European democracy.<sup>22</sup> By reinforcing European political parties,

<sup>16</sup> See, for example, the detailed account of the positions of Members of the European Parliament in relation to the last proposal debated in Parliament to introduce them: C. Verger, 'Transnational lists: a political opportunity for Europe with obstacles to overcome', Notre Europe, Institute Jacques Delors, Policy Paper No 216, 7 February 2018, pp. 6-9.

<sup>17</sup> M. Bartl, 'Hayek Upside-down: On the Democratic Effects of Transnational Lists', *German Law Journal*, vol. 21 (1), 2020, pp. 57-62; J. Rossetto, 'Elections to the European Parliament', in A. Chommeleux and E. Gibson- Morgan (eds.), *Voting in Contemporary Europe*, Palgrave- MacMillan, 2017, p. 186; F. B. Jacobs, *The EU after Brexit. Institutional and Policy Implications*, Palgrave-MacMillan, 2018, p. 65.

<sup>18</sup> The Electoral Reform of the European Parliament: composition, procedure and legitimacy, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015, p. 19-20.

<sup>19</sup> J. Bright, D. Garzia, J. Lacey and A. H. Trechsel, 'Trans-nationalising Europe's Voting Space', EUI Working Paper RSCAS 2014/02, p. 1-2.

<sup>20</sup> W. Lehmann, 'Electoral representation at the European level and its institutional design: a reappraisal of recent reform plans', EUI Working Papers, RCAS 2011/23, 2011, p. 15.

<sup>21</sup> M. Heermann and D. Leuffen, 'No Representation without Integration! Why Differentiated Integration Challenges the Composition of the European Parliament', *Journal of Common Market Studies*, vol. 58, num. 3, 2020, pp. 1016-1033.

<sup>22</sup> N. Stojanovic and M. Bonotti, 'Political parties in deeply multilingual polities: institutional conditions and lessons for the EU', *Journal of Common Market Studies*, vol. 58, No 3, 2020, pp. 607-608; The Electoral Reform of the European Parliament: composition, procedure and legitimacy, Policy Department for Citizens' Rights and Constitutional Affairs,

transnational lists would favour a **truly European campaign**, focused on the European project and on European leaders, and would help to fight the monopoly of national parties in European elections. In this vein, transnational electoral lists would help to foster a transition in European democracy from national to transnational politics, helping to create a common European discourse and a common European public sphere.<sup>23</sup>

Finally, it has also been pointed out that, as **voters** would probably be required to cast two votes if a European constituency/ies and transnational lists were created (one vote for the national lists of candidates to the European Parliament, a second vote for the candidates on transnational lists of the pan-European constituency), this double-vote possibility would enhance their influence on the election of a higher number of Members of Parliament. It would also give them a **wider range of choices**, as voters could decide to support candidates from European political parties that are not present in the national territory, through their vote for transnational lists.<sup>24</sup> By allowing voters to support candidates from parties not present in their country, transnational electoral lists could also help to **enhance EU citizens' awareness as to the political context in other Member States**. This could increase their understanding of the perspectives and ideas relating to the EU project that prevail in all the Member States and help to build a common European discourse.<sup>25</sup>

On the other hand, those opposed to the creation of a European constituency/ies and transnational lists for European elections point out several **disadvantages** and criticise several aspects. As a preliminary observation, the two-vote system is criticised as possibly creating a **different level of legitimisation among Members of Parliament** – those who could claim 'European' endorsement, and others who could claim 'mere' national endorsement. In this respect, it has been observed that the two-votes system could also lead to an incorrect impression that one vote would be for 'European' and the other for 'national' seats, thereby exacerbating the cleavage between the national and European dimensions of elections.<sup>26</sup>

Another argument against a pan-European constituency is that Members of Parliament elected by the mechanism would be **Members without a real constituency** or without a real link with the territory. In this respect, some politicians observe that creating a pan-European constituency was an idea conceived in the past to give visibility to a Parliament without decisive powers.<sup>27</sup> The proposal has become obsolete, given that Parliament has real legislative powers today, which strengthens the need for a true link with a constituency. In this logic, the idea of a pan-European constituency is criticised for its potential to worsen the problem it is supposed to address, i.e. by creating greater distance between Members and citizens, and for **potentially benefiting populist and nationalist parties'** arguments that rely on that disconnection.<sup>28</sup>

In addition, it is also underlined that transnational lists might **favour candidates from larger Member States** – with a bigger electorate - and disadvantage those from smaller or medium-sized Member States, if their creation is not accompanied by measures providing for an adequate

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European Parliament, 2015, p. 8; C. Stanculescu, 'Les partis politiques européens: Les Grands Absents de la Politique Européenne', *Romanian Journal of European Affairs*, vol. 12, num. 61, 2012, p. 72; W. Lehmann, op. cit., p. 17.

<sup>23</sup> L. Gard, 'La distance entre Bruxelles et ses citoyens. Retour sur le déficit démocratique de l'union européenne', *Revue Québécoise de Droit International*, 2018 (Special Issue), p. 194 ; L. Nieminen, *Transnational Lists. An opportunity for the future?*, Umeå Universitet, 2019, p. 5.

<sup>24</sup> European Political Strategy Centre, European Commission, *Transnational Lists: Can They Deliver on Their Promise?*, February 2017, p. 3.

<sup>25</sup> J. Bright, D. Garzia, J. Lacey and A. H. Trechsel, op. cit., p. 15-16.

<sup>26</sup> P. Jouvenat, 'Transnational lists: a false good idea'. *The Federalist debate*, no. 2, July 2018, p. 53; P. Jouvenat, '[Fédéraliser les partis politiques d'Europe. Note de réflexion. Février 2016](#)'. Union des Fédéralistes européens, 2016, pp. 15-16.

<sup>27</sup> A. Lamassoure, '[Les listes transnationales sont une idée loufoque!](#)', *Euroactiv*, 5 February 2018.

<sup>28</sup> European People's Party group in the European Parliament, '[Why transnational lists are neither European nor democratic](#)', 7 February 2018.

geographical balance.<sup>29</sup> Finally, more **practical difficulties** are linked to the way European political parties would nominate their candidates, or how they would create a Union-wide campaign across all Member States and in all the official languages of the EU (e.g. with translation and interpretation when needed).<sup>30</sup>

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<sup>29</sup> Ibidem; L. Donatelli, 'A Pan-European district for the European elections? The rise and fall of the Duff proposal for the electoral reform of the European Parliament', *Bruges Political Research Paper 44/2015*; P. Jouvenat, op. cit., 2016, pp. 15-16.

<sup>30</sup> F. Pukelsheim, 'Compositional Proportionality among European Political Parties at European Parliament Elections', *Central European Political Studies Review*, vol. XX, 2018, p. 3.

### 3. Institutional and academic proposals to create transnational electoral lists

#### 3.1. Transnational electoral lists through the lens of the European Parliament.

The European Parliament has long debated the possibility to create joint constituencies or a pan-European constituency in which a certain number of Members of Parliament would be elected through transnational electoral lists. The idea formally appeared for the first time in the Anastassopoulos Report (1998), which led to the adoption of Council Decision 2002/772/EC, the first set of relevant amendments to the 1976 European Electoral Act.<sup>31</sup> Since then, **transnational electoral lists have always been present in discussions relating to the rules applicable to European elections**. Each time Parliament has revived the idea of modifying the 1976 European Electoral Act, the possible creation of transnational electoral lists has been one of the topics debated. Within these debates, Parliament has often expressed the view that transnational lists would enhance the European dimension of the debates ahead of European elections and increase the role of European political parties in those elections.<sup>32</sup> However, most of the proposals discussed in Parliament do not seem to have tackled the detailed technical and practical aspects necessary to implement the decision to create transnational electoral lists.

##### 3.1.1. Anastassopoulos Report (1998)

The **Anastassopoulos Report** (Rapporteur: Georgios Anastassopoulos, EPP, Greece) contained the first formal proposal put forward by the European Parliament to introduce transnational electoral lists.<sup>33</sup> Although not particularly detailed, the report proposed to allocate **ten per cent** of the total number of European Parliament seats to a **single constituency comprising the territory of all the Member States**, with effect from the 2009 European elections.<sup>34</sup> The proposal only determined that the corresponding Members of Parliament would be elected 'by means of list-based proportional representation'. All the technicalities concerning the electoral system and procedure to be applied (type of electoral lists, method for casting the vote, method for allocating the seats, etc.) in the elections of those Members of Parliament were to be decided through an implementing decision.

<sup>31</sup> Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to [Council Decision 76/787/ECSC](#), EEC, Euratom of 20 September 1976. The Act was modified several times (for all the amendments, see [Eur-Lex](#)), although major amendments were introduced through [Council Decision](#) of 25 June 2002 and 23 September 2002, amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, and [Council Decision \(EU, Euratom\) 2018/994](#) of 13 July 2018, amending the Act concerning the election of the Members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976. The latest revision of the European Electoral Act is not yet in force.

<sup>32</sup> As well as the reports analysed in the following sections, see European Parliament resolution of 11 October 2007 on the composition of the European Parliament (Procedure: [2007/2169\(INL\)](#)) and the more recent European Parliament resolution of 26 November 2020 on stocktaking of European elections ([2020/2088\(INI\)](#)).

<sup>33</sup> [Report](#) of 2 June 1998 on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament, Rapporteur: Georgios Anastassopoulos. Procedure: 1997/2242(COS).

<sup>34</sup> Article 7 of the Draft Act Pursuant To Article 138(3) Of The Treaty Establishing The European Community (Article 190(4) of the consolidated Treaty with a view to enabling the Members of the European Parliament to be elected by direct universal suffrage in accordance with principles common to all the Member States, as included in the [Anastassopoulos Report](#), said: "Ten per cent of the total number of seats within the European Parliament shall be filled by means of list-based proportional representation relating to a single constituency comprising the territory of the European Union Member States with effect from the European elections to be held in 2009. The implementing provisions shall be adopted by 1 January 2008 on a proposal from the European Parliament by the Council acting unanimously, following receipt of Parliament's assent."



The implementing decision would have to be adopted 'on a proposal from the European Parliament by the Council acting unanimously, following receipt of Parliament's assent'. Parliament did not adopt the proposal as originally proposed by the rapporteur, but instead decided to introduce a modification leaving the number of Members of the European Parliament that would be elected in transnational lists undetermined.<sup>35</sup>

Council adopted Decision 2002/772/EC modifying the 1976 European Electoral Act based on the European Parliament's proposal. However, the **Council did not retain the idea to include transnational electoral lists** for European elections and Parliament decided not to refer to this decision when giving its assent (consent) to the amendment of the European Electoral Act.<sup>36</sup> However, debates on the draft Council decision amending the Act in the Parliament's Constitutional Affairs (AFCO) Committee suggest that Parliament took the view that the lack of transnational electoral lists could be partially offset should European political families focus their campaigns on their candidates for the European Commission Presidency (*Spitzenkandidaten* process), implying that both processes could enhance the European dimension of the elections and help to increase voter interest and turnout.<sup>37</sup>

### 3.1.2. First Duff Report (2011)

After the entry into force of the Treaty of Lisbon (2009), Parliament revived its initiatives on reforming the electoral rules applicable to European elections, with **three successive reports drafted by Andrew Duff** (Liberals and Democrats, United Kingdom). The First Duff Report, drafted between 2009 and 2011, pointed to several elements in need of reform.<sup>38</sup> One of its most interesting innovations was the incorporation of a pan-European constituency comprising the whole territory of the European Union, in which 25 Members of the European Parliament would be elected through transnational lists. The idea was more detailed than that included in the Anastassopoulos Report and included a proposal for the amendment of Article 14 of the Treaty on the European Union (TEU) and the 1976 European Electoral Act.<sup>39</sup>

According to the **First Duff Report**, 751 Members of the European Parliament would be elected in the Member States and, **25 Members would be elected in an additional pan-European constituency** (proposed Article 14 (2b) TEU, Annex II of the First Duff Report). The 25 Members would be elected on electoral lists submitted by European political parties complying with two requirements: i) **candidates resident in at least one third of the Member States would make up the lists**; and ii) **adequate gender representation** would be ensured, although the exact distribution between candidates residing in different Member States and between men and women

<sup>35</sup> See Article 7 of the Draft Act Pursuant To Article 138(3) of the Treaty Establishing the European Community, attached to the European Parliament Resolution of 15 July 1998, on a draft electoral procedure incorporating common principles for the election of Members of the European Parliament, [A4-0212/98](#), in which it was indicated that a "certain percentage of the total number of seats within the European Parliament" would be elected in a pan-European constituency.

<sup>36</sup> European Parliament legislative resolution of 12 June 2002, on the draft Council decision amending the Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 ([8964/2002 - C5-0225/2002 - 2002/0807\(AVC\)](#)).

<sup>37</sup> See paragraphs 7 and 8 of the accompanying recommendation of 30 May 2002, on the draft Council decision amending the Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 ([8964/2002 - C5-0225/2002 - 2002/0807\(AVC\)](#)).

<sup>38</sup> For a detailed analysis of the proposal see: S. Alonso de León, 'Crónica de la reforma electoral europea', *Revista de las Cortes Generales*, nº 106, 2019, pp. 229-267; L. Donatelli, op. cit..

<sup>39</sup> Report of 28 April 2011, on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976. Rapporteur: Andrew Duff. Procedure: [2009/2134\(INL\)](#).



was not detailed (proposed Article 2 b of the European Electoral Act, Annex III of the First Duff Report).

Although the rapporteur initially proposed a semi-open list system,<sup>40</sup> the proposal finally adopted by Parliament's AFCO Committee did not allow for any kind of preference vote (i.e. voters could not express a preference for individual candidates by casting a certain number of preference votes). The proposal was limited to affirming that each voter would be able to cast one vote for the EU- wide electoral list in addition to their vote for the national or regional list (proposed Article 2 b (4) of the European Electoral Act, Annex III of the First Duff Report). The proposal therefore seemed to opt for **closed electoral lists**<sup>41</sup> for the election of the 25 Members of the pan-European constituency, as suggested in paragraph 2 of the motion for a resolution of the European Parliament annexed to the report.<sup>42</sup> It is possible that small and medium-size Member States' fears played a role in the choice of a closed-list system, as it was thought that voters would prefer candidates of their own nationality if they had the opportunity to cast preference votes. This was considered to favour candidates from the most populous Member States, who would potentially receive the votes of a wider electorate.

As far as the method for allocating the seats after the elections was concerned, the proposal opted for the **Sainte-Laguë formula** (proposed Article 2 b (4) of the European Electoral Act, Annex III of the First Duff Report),<sup>43</sup> a proportional electoral method considered more favourable to smaller parties than the D'Hondt method.<sup>44</sup> **No minimum threshold** applied to the allocation of seats in the pan-European constituency, whereas Member States were allowed to set a maximum electoral threshold of 5 % for allocating the seats in the national constituencies (proposed Article 3 of the European Electoral Act, Annex III of the First Duff Report). All other detailed arrangements concerning the elections to the pan-European constituency had to be laid down in an implementing decision to be adopted by the Council, acting by qualified majority, after consulting the Commission, and on a proposal from the European Parliament, acting by a majority of its component Members, and with its consent (proposed Article 14 of the European Electoral Act, Annex III of the First Duff Report).

The proposal also provided for the creation of an **EU-wide electoral roll**, to prevent citizens voting in different Member States (proposed Article 9 of the European Electoral Act, Annex III of the First Duff Report) and for the establishment of a **European electoral authority** that would conduct and verify the electoral process taking place in the pan-European constituency (proposed Article 2b of the European Electoral Act, Annex III of the First Duff Report). However, the proposal neither determined the composition and election of the members of such an authority, nor the exact extent

<sup>40</sup> For a detailed account of the drafting process, see: L. Donatelli, op. cit.

<sup>41</sup> According to the Venice Commission [Report on electoral systems: overview of available solutions](#), 12-13 December 2003, under the closed list system "the elector has to choose a list in its entirety. It is generally used in proportional representation systems; but it can also be used in plurality/majority and hybrid systems. Under proportional representation, candidates on closed lists are elected in the order in which they appear on the list." (p. 11).

<sup>42</sup> It is to be noted that the explanatory statement annexed to the proposal made reference to the election of 25 Members in a pan-European constituency 'according to a preferential list system' (Explanatory statement annexed to the [First Duff Report](#), p. 49). However, these seems to be an error.

<sup>43</sup> Paragraph 2 of the motion for a resolution of the European Parliament annexed to the First Duff Report made reference to the D'Hondt formula as the proposed method to allocate the seats after the European elections. However, Annex III of the report (Article 2 b (4)), containing a detailed proposal to modify the European Electoral Act made reference to the Sainte-Laguë formula.

<sup>44</sup> According to the Venice Commission [Report on electoral systems: overview of available solutions](#), 12-13 December 2003, when the Sainte-Laguë method is used to allocate seats after the elections: "the votes obtained by each electoral list are divided by a sequence of odd numbers: 1, 3, 5, 7... The seats are distributed among the lists which obtain the highest averages. The Sainte-Laguë method is distinctly more favourable to small parties than the D'Hondt method." (p. 20).

of its powers.<sup>45</sup> Those questions were left to be dealt with in the legislative act establishing the European electoral authority, which was to be adopted by the European Parliament and the Council through the ordinary legislative procedure (proposed Article 2b (2) of the European Electoral Act, Annex III of the First Duff Report).

Although the report was approved by the AFCO Committee on 19 April 2011, it was **never submitted to a vote in plenary** and was sent back to the committee responsible, as the rapporteur feared that it would not gather enough support.<sup>46</sup>

### 3.1.3. Second Duff Report (2012)

A **Second Duff Report** was drafted following the decision to return the first report to the AFCO Committee.<sup>47</sup> Although the report did not include a detailed proposal to modify the existing Treaties and the 1976 European Electoral Act, but rather a motion for a resolution of the European Parliament, it nevertheless maintained the proposal to create a **pan-European constituency electing 25 Members of the European Parliament** (as per previous section). Apart from the fact that the proposal was less detailed than the previous version, the only substantive difference was that the second Duff Report proposed to use the **D'Hondt formula** as the method to allocate the seats in the EU-wide constituency.<sup>48</sup> Again, opposition from the biggest political group in Parliament at the time (the European People's Party (EPP)) led to the **withdrawal of the report**<sup>49</sup> and to the drafting of a third Duff Report (2013).<sup>50</sup> This third version completely set aside the creation of a pan-European constituency and transnational lists and focused on practical arrangements for the 2014 European elections.

The **Third Duff Report** included no specific proposal to amend the Treaties or the European Electoral Act, but rather aimed at introducing an important innovation that would ultimately lead to the **Spitzenkandidaten process**.<sup>51</sup> The report called on the European political parties to nominate their candidates for the European Commission Presidency well in advance of the European elections and to do so in a transparent and democratic way. It also called on the European Council to consider nominating the candidate for Commission President put forward by the European political party winning the most seats in the European Parliament. The report clearly assumed that the nomination of those lead candidates and their participation in the political campaign presenting their parties'

<sup>45</sup> Only some references to its powers were included in the proposal. These included in relation to the setting of a ceiling for the campaign expenses of candidates and political parties at the European Union level (proposed Article 4 of the European Electoral Act, Annex III of the [First Duff Report](#)); the official declaration of the results of the elections in the EU-wide constituency (proposed Article 12 of the European Electoral Act, Annex III of the same report); the withdrawal of the mandate of a Member elected in the EU-wide constituency when provided for by EU law (proposed Article 13b of the European Electoral Act, Annex III of the same report); the replacement of any vacancy of Member elected in the EU-wide constituency when provided for by EU law (proposed Article 13b of the European Electoral Act, Annex III of the same report).

<sup>46</sup> European Parliament, [Minutes](#), 7 July 2011.

<sup>47</sup> [Second Report of 2 February 2012, on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976](#), Rapporteur: Andrew Duff, Procedure: (2009/2134(INI)).

<sup>48</sup> Paragraph 2 of the [motion for a European Parliament resolution](#) on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976 (2009/2134(INI)).

<sup>49</sup> See O. Costa, [The history of European electoral reform and the Electoral Act 1976: Issues of democratisation and political legitimacy](#), Historical Archives of the European Parliament, European Union History Series, October 2016, p. 39.

<sup>50</sup> Report on improving the practical arrangements for the holding of the European elections in 2014, Rapporteur: Andrew Duff, Procedure: (2013/2102(INL)).

<sup>51</sup> A similar proposal was already included in the European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014 (2012/2829(RSP)).

political programme to the electorate would enhance the European dimension of the elections and help increase turnout. This time, Members voted to **adopt** the Duff Report in the **plenary**.

### 3.1.4. Hübner-Leinen Report (2015)

Following the lowest ever turnout seen in the 2014 European elections (42.6 %),<sup>52</sup> Parliament again revived the debate on electoral law reform and a new report was drafted in the AFCO Committee. Originally, the **Hübner-Leinen Report** (co-Rapporteurs: Danuta Maria Hübner (EPP, Poland) and Jo Leinen (S&D, Germany)), neither proposed to create a pan-European constituency nor joint constituencies where a certain number of Members of Parliament would be elected through transnational electoral lists.<sup>53</sup> Instead, drawing upon the success of the 2014 *Spitzenkandidaten* process, it proposed to modify the European Electoral Act to include, among other new elements, a provision asking the European political parties to nominate their candidates for the Presidency of the Commission at least 12 weeks in advance of the 2019 elections.<sup>54</sup> The report argued that the procedure would provide a link between votes cast at the national level and the European political arena (appointment of the Commission President), helping citizens to make informed choices and thus boosting their interest in European elections. Again, the desire to Europeanise and further legitimise the integration process was expressed.

However, the Hübner-Leinen Report was significantly modified during the Parliamentary process, including in relation to this particular issue. The European Parliament decided to **link the *Spitzenkandidaten* process to the creation of a European constituency** in which a certain number of Members of the European Parliament would be elected through electoral lists headed by 'each political family's candidate for the post of President of the Commission'. Parliament proposed to include a new article in the 1976 European Electoral Act that would have provided for the creation of that joint constituency through a unanimous decision of the Council.<sup>55</sup> However, no technical arrangements for the creation of that joint constituency accompanied the proposal and a very wide margin seemed to be left to Council to decide on the technicalities.

The controversial character of the proposal was evident from the outset: the vote on the report in plenary was delayed from 28 October 2015 to 11 November 2015 and was then passed (although not by a large majority, at 315 votes for, 234 against and 55 abstentions). The **Council** approved Parliament's initiative after two and a half years, but the final decision **made no reference to the creation of a European constituency or the *Spitzenkandidaten* process**,<sup>56</sup> even though the withdrawal of the United Kingdom from the European Union provided a window of opportunity that would have facilitated the agreement by freeing up 73 seats in the European Parliament that could have been used, at least partially, to create a European constituency/ies. Although the AFCO

<sup>52</sup> See footnote 1.

<sup>53</sup> Report of 2 October 2015 on the reform of the electoral law of the European Union (Hübner-Leinen Report), Co-Rapporteurs: Danuta Maria Hübner and Jo Leinen, Procedure: [\(2015/2035\(INL\)\)](#).

<sup>54</sup> Article 3f of the draft proposal for a Council decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, [Hübner-Leinen Report](#).

<sup>55</sup> Article 2a of the proposal for a Council decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, [Hübner-Leinen Report as approved by plenary on 11 November 2015](#).

<sup>56</sup> [Council Decision \(EU, Euratom\) 2018/994 of 13 July 2018](#) amending the Act concerning the election of the Members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

Committee did suggest this approach in its report on the composition of the European Parliament adopted on 26 January 2018,<sup>57</sup> it was finally rejected in the plenary.<sup>58</sup>

Table 1 – Proposals to create a European constituency/ies and transnational electoral lists discussed in the European Parliament

	<b>Anastassopoulos Report</b>	<b>First Duff Report</b>	<b>Second Duff Report</b>	<b>Hübner-Leinen Report</b>
Number of Members	Non-specified <sup>59</sup>	25	25	Non-specified
Number of European constituencies	1 (EU-wide)	1 (EU-wide)	1 (EU-wide)	1 (EU-wide)
Electoral formula (for allocation of seats)	Proportional (Non-specified)	Saint-Laguë	D'Hondt	Non-specified
Electoral threshold	Non-specified	None	Non-specified	Non-specified
Type of electoral lists	Lists system (Non-specified)	Closed lists	Closed lists	Non-specified
Head of the lists ( <i>Spitzenkandidaten</i> )	Non-specified	Non-specified	Non-specified	Lists headed by <i>Spitzenkandidaten</i>
Geographical balance within the lists	Non-specified	List should be composed of candidates resident in at least 1/3 of Member States	List should be composed of candidates resident in at least 1/3 of Member States	Non-specified
Gender or minority balance within the lists	Non-specified	Adequate gender representation should be ensured	Non-specified	Non-specified
EU electoral administration	Non-specified	European electoral authority competent to conduct and verify the electoral process.	Non-specified	Non-specified

### 3.2. Transnational electoral lists through the lens of other institutional actors

Although the Treaties vest the European Parliament with the right of initiative as regards the rules applicable to European elections (Article 223 of the Treaty on the Functioning of the European Union (TFEU)), the possible creation of a pan-European constituency, or several joint constituencies, in which a certain number of Members of Parliament would be elected through transnational lists has spurred proposals in different institutional settings, attracting special attention recently, due to the window of opportunity offered by the withdrawal of the United Kingdom from the EU. This section presents some of the most recent and relevant proposals.

<sup>57</sup> Article 4 of the proposal for a decision of the European Council establishing the composition of the European Parliament, Report of 26 January 2018, on the composition of the European Parliament, Rapporteurs: Danuta Maria Hübner and Pedro Silva Pereira, Procedure: [2017/2054\(INL\)](#) – [2017/0900\(NLE\)](#).

<sup>58</sup> European Parliament resolution of 7 February 2018 on the composition of the European Parliament ([2017/2054\(INL\)](#) - [2017/0900\(NLE\)](#)).

<sup>59</sup> The rapporteur suggested 10 %, but it was decided in plenary not to make any reference to the percentage.

### 3.2.1. Convention on the Future of Europe: Positions on the creation of a European constituency/ies and transnational electoral lists

The **Convention on the Future of Europe**, charged with the drafting of the failed Treaty establishing a Constitution for Europe, held relevant and intense debates around institutional questions. The Laeken Declaration on the future of the European Union, adopted by the European Council on its 14/15 December 2001 meeting, decided to launch the Convention to discuss key issues for the future development of the European Union and prepare the modification of the Treaties in a transparent and open manner.<sup>60</sup> Among the topics to be addressed by the Convention, the **Laeken Declaration referred to European elections**, raising the question of whether a European electoral constituency should be created, whether constituencies should continue to be determined nationally or whether the two systems should be combined.

Although members of the Convention were supposed to debate the possible creation of a European constituency/ies in-depth, **few proposals** were presented to that aim and all of them **pointed towards the combination of the two systems (national and a European constituencies) for the election of the Members of the European Parliament**. The **European Commission** clearly favoured moving towards a uniform electoral system for European elections and creating a pan-European constituency in which certain Members of the European Parliament would be elected through 'European lists'.<sup>61</sup> Citizens would therefore have two votes, one to be cast in the national constituencies and another to elect candidates in the EU-wide electoral constituency. A second proposal presented by **Andrew Duff** as a member of the European Convention, was slightly more detailed, indicating the number of Members that should be elected from European electoral lists.<sup>62</sup> In this vein, Andrew Duff proposed a European Parliament composed of 700 Members representing all EU citizens, of which 70 Members would be elected in a pan-European constituency and 630 in national constituencies. All Members would be elected by direct universal suffrage through a proportional electoral system.<sup>63</sup>

Nevertheless, the most developed proposal on the matter was that presented by **John Bruton**, former Prime Minister of Ireland and then member of the Convention, who proposed to combine a model in which most Members of the European Parliament would be elected in national constituencies using a proportional representation system, by means of the single transferable vote. A further 30 Members of the European Parliament would be elected on the basis of European or joint constituencies, also using the single transferable vote system.<sup>64</sup> John Bruton emphasised how the single transferable vote system, used in small constituencies electing several Members (he suggested between two and five), achieved a good balance between proportionality and proximity between citizens and their elected representatives. Members would therefore represent their political families in proportion to the support they were able to gather from the electorate, but individual representatives would be identifiable, visible and accountable to citizens.

<sup>60</sup> Laeken Declaration on the future of the European Union, Annex I, [Presidency Conclusions](#), European Council meeting in Laeken, 14–15 December 2001 (see all [documents](#) produced by the Convention).

<sup>61</sup> Communication from the Commission, forwarded by Michel Barnier and António Vitorino, members of the Convention: "[For the European Union Peace, Freedom, Solidarity - Communication from the Commission on the institutional architecture](#)", CONTRIB 165, CONV 448/02, 5 December 2002, p. 16.

<sup>62</sup> Contribution by Andrew Duff, member of the Convention, [A Model Constitution for A Federal Union Of Europe](#), CONTRIB 82, CONV 234/02, 3 September 2002.

<sup>63</sup> See Article 10 – European Parliament, Contribution by Andrew Duff, cited supra.

<sup>64</sup> Contribution by John Bruton, member of the Convention: "[Proposal to adopt the System of the Proportional Representation with a Single Transferable Vote \(PR-STV\) as the uniform electoral system for elections to the European Parliament](#)", CONTRIB 261, CONV 585/03, 27 February 2003.

Considering these elements, the proposal did not envisage the creation of a single European-wide constituency comprising the territory of all Member States (then 15, soon to become 25), as it was understood that such an idea would 'impose unrealistic demands on both the European electorate and on the candidate selection process',<sup>65</sup> taking the specific characteristics of the single transferable vote system into account. As the single transferrable vote system assumes that each voter receives a ballot paper containing the names of all the candidates in his/her constituency and that each voter indicates his/her order of preferences among the candidates, the exercise would be pointless if the constituency is so large and candidates so numerous that electors have no possibility of getting to know them and therefore making an informed and meaningful choice.<sup>66</sup> Similarly, candidates need to develop specific strategies during the electoral campaign to gather enough cross-border electoral support and it might be particularly difficult to do it in very large constituencies. Therefore, John Bruton suggested creating six smaller transnational constituencies electing five seats each. Those constituencies should transcend national boundaries by combining common regional groups of Member States, such as Mediterranean states, Atlantic states, central European states, for example, to help the electoral campaign to truly focus on the European dimension of the elections.

Ultimately, the **Convention did not take any of these proposals on board**. The Draft Treaty establishing a Constitution for Europe (2003)<sup>67</sup> made no explicit reference to the election of a number of Members of the European Parliament in transnational lists, limiting itself to providing that they would be elected by direct universal suffrage, for the main rules to be applied when distributing the seats among the different Member States (Article 19 Draft Treaty), and to indicating the procedure to be followed when adopting the rules applicable to those elections (Article III-232 Draft Treaty).

### 3.2.2. Window of opportunity offered by Brexit: Positions on the creation of a European constituency/ies and transnational electoral lists

The **freeing of 73 European Parliament seats**, as they became **vacant as a consequence of the withdrawal of the United Kingdom from the EU**, **stimulated discussions** around the possible **creation of a European constituency/ies** and transnational electoral lists. Apart from the proposals that originated in the European Parliament itself (see section 3.1.4), Member States and the European Commission also positioned themselves in relation to the possibility of creating a European constituency/ies, in some cases putting forward detailed proposals for implementation.

#### Diverging Member State positions

**Member States assumed substantially different positions** as regards the creation of a European constituency/ies and transnational lists for European elections in the aftermath of the United Kingdom's referendum on its withdrawal from the EU, with some European capitals clearly favouring the idea and some others opposing it vehemently.

**Italy** was the first Member State to **position itself in favour of creating transnational electoral lists**, submitting the proposal at the General Affairs Council meeting held in April 2017.<sup>68</sup> A few months later in September 2017, **French President Emmanuel Macron's speech at the Sorbonne**

<sup>65</sup> Idem supra, p. 9.

<sup>66</sup> For a detailed explanation of the characteristics of the single transferable vote system, see Venice Commission, [Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists \(open/closed lists\)](#), CDL-AD(2015)001-e, 20-21 March 2015, pp. 14-15.

<sup>67</sup> [Draft Treaty establishing a Constitution for Europe](#), adopted by consensus by the European Convention on 13 June and 10 July 2003.

<sup>68</sup> See C. Verger, op. cit., p. 8.



**University clearly favoured the creation of such lists.** The French President suggested electing the 73 seats of the European Parliament that would become vacant after Brexit to joint constituencies and went even further; proposing that half of the Members of the European Parliament should be elected on the same basis in the next European elections. **Southern European countries<sup>69</sup> and Ireland<sup>70</sup> also favoured** the creation of transnational lists. In a statement signed by the Ministers of European Affairs of France, Italy and Spain, it was suggested that a certain number of the vacant seats of the European Parliament after Brexit should be elected in a pan-European constituency, with gender-balanced European lists and candidates from at least seven different Member States.<sup>71</sup>

Although none of the governments supporting transnational lists delved into the details of the proposal, the Committee on European Affairs of the French Assemblée Nationale published a comprehensive report containing a concrete proposal to create transnational electoral lists.<sup>72</sup> The report suggested the possible creation of a pan-European constituency in which 15 seats in the European Parliament would be elected on the basis of transnational electoral lists. At least seven Member States should be represented (one quarter of Member States) in each electoral list, to ensure the true transnational character of the candidacy. To avoid the possible grouping of candidates coming from large, medium-sized or small Member States, the proposal assembled Member States in four different groups, taking their population into account, and suggested that each transnational list should include at least two candidates from the Member States belonging to each of those groups. In addition, to prevent European political parties from having a monopoly in relation to the presentation of candidatures for the European constituency, the proposal suggested also granting that possibility to European political movements.

However, not all Member States have positioned themselves in favour of transnational lists. The **Visegrad group (Czechia, Hungary, Poland and Slovakia) has expressed its opposition to the idea**, favouring a reduction in the number of Members of the European Parliament and the strengthening of the democratic legitimacy of the EU through broader participation of national parliaments.<sup>73</sup> As such, these Member States seem to highlight that effective political representation within the European Union needs to be channelled mainly through national democratic architecture.

### European Commission position

In the middle of the debates on the possible creation of a European constituency/ies and transnational electoral lists, encouraged by the withdrawal of the United Kingdom from the European Union, the **former President of the European Commission**, Jean-Claude Juncker, repeatedly **expressed his support for the Spitzenkandidaten process and the introduction of transnational lists for European elections.**<sup>74</sup> Considered an opportunity to create a European political space for public debate and to reinforce European democracy, both ideas were linked in

<sup>69</sup> See the declaration of 10 January 2018 adopted at the Summit of the Southern European Union Countries (Cyprus, France, Greece, Malta, Portugal and Spain), entitled '[Bringing the EU forward in 2018](#)'.

<sup>70</sup> Speech by Prime Minister Leo Varadkar at the European Parliament, Strasbourg, 17 January 2018.

<sup>71</sup> See the statement on "[Listes transnationales aux élections européennes](#)" by Nathalie Loiseau (Minister for European Affairs, France), Sandro Gozi (Secretary of State for European Affairs, Italy) and Jorge Toledo (Secretary of State for European Affairs, Spain).

<sup>72</sup> [Rapport d'information déposé par la commission des affaires européennes portant observations sur le projet de loi relatif à l'élection des représentants au Parlement européen \(n° 539\)](#), 24 January 2018. Rapporteur: Pieyre-Alexandre Anglade, République en Marche.

<sup>73</sup> See the [Statement on the Future of Europe](#) made by the Visegrad Group countries (Czechia, Hungary, Poland and Slovakia) on 26 January 2018.

<sup>74</sup> See, European Commission President, [State of the Union Address 2017](#), 13 September 2017, and Commission President, [State of the Union Address 2018](#), 12 September 2018.

President Juncker's 2018 State of the Union address.<sup>75</sup> Although the then Commission President did not present his preferences for the possible creation of transnational electoral lists, the European Political Strategy Centre (EPSC), the European Commission's in-house think tank, followed his position with a policy paper analysing the feasibility and main elements to take into account to make the proposal operational.<sup>76</sup>

Based on previous works, the EPSC suggested electing the 46 seats of the European Parliament falling vacant after the United Kingdom's withdrawal through a pan-European constituency comprising the territory of all the Member States. The EPSC proposed to use either semi-open or open lists for the elections. They considered that this option would grant a wider choice to the electorate and probably foster the transnational character of the lists by incentivising European political parties to include candidates from as many Member States as possible, in order to gather more electoral support and increase the probabilities of success. However, the EPSC acknowledged that candidates from Member States with bigger electorates could benefit, as they might gather more voter preferences, with more possibilities of being elected. This scenario would be less likely if closed lists were adopted, as was already observed during the drafting of the First Duff Report (see Section 3.1.2).

To ensure the transnational character of the electoral lists, the EPSC proposed that at least one third of Member States should be represented (without indicating whether the nationality or residence in the concerned Member State should be required). As far as the method for allocating the seats was concerned, the EPSC proposed to use a proportional method, either D'Hondt or Saint-Laguë, with a threshold of 3 %. The EPSC did not address the question of the method to be used to distribute seats within each electoral list, a question that should have to be addressed taking account of the proposal to opt for a system of open or semi-open lists. The EPSC also suggested that a uniform electoral procedure and electoral system should be established for the election of the seats attached to the pan-European constituency and that a European Electoral Authority would need to be created to monitor and control the elections. For that purpose, the European Electoral Act would have to be amended, and a regulation providing for a uniform electoral procedure would have to be adopted. The proposal suggested basing the European Electoral Authority on the existing Authority for European Political Parties and European Political Foundations, which would mean modifying Regulation 1141/2014 on the statute of the European Political Parties. No reform of the Treaties was envisaged in the EPSC proposal.

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<sup>75</sup> Commission President, [State of the Union Address 2018](#), p. 12. A similar link can also be found in the Communication from the Commission, [A Europe that delivers: Institutional options for making the European Union's work more efficient](#), 13 February 2018, COM(2018) 95 final.

<sup>76</sup> European Political Strategy Centre, European Commission, *Transnational lists: can they deliver on their promise?*, February 2017.



Table 2 – Proposals to create a European constituency/ies and transnational electoral lists discussed in other (national or European) institutional settings

	<b>Convention on the Future of Europe (John Bruton)</b>	<b>Assemblée Nationale (France)</b>	<b>European Political Strategy Centre (European Commission)</b>
Number of Members	30	15	46
Number of European constituencies	6, electing 5 Members each	1 (EU-wide)	1 (EU-wide)
Electoral formula (for allocation of seats)	Single transferable vote system	Proportional (Non-specified)	Proportional (D'Hondt or Saint-Laguë)
Electoral threshold	None	Non-specified	3 %
Type of electoral lists	Single Transferable vote system	Non-specified	Semi-open or open lists
Head of the lists ( <i>Spitzenkandidaten</i> )	Non-specified	Non-specified	Non-specified
Geographical balance within the lists	None	List should be composed of candidates from at least one quarter of Member States (Member States would be grouped in four different groups taking their population into account. Each transnational lists should be composed of at least two candidates coming from each of the Member States groups)	List should be composed of candidates from at least one third of Member States
Gender or minority balance within the lists	None	Non-specified	Non-specified
EU electoral administration	Non-specified	Non-specified	European Electoral Authority created based on the existing Authority for European Political Parties and European Political Foundations.

### 3.3. Transnational electoral lists through the lens of academia and think tanks

**Academics**<sup>77</sup> and **think tanks**<sup>78</sup> have long discussed the possible creation of a European constituency/ies and transnational lists for the election of a certain number of Members of the European Parliament, focusing in most cases on whether transnational lists could really deliver on

<sup>77</sup> W. Lehmann, 'Electoral representation at the European level and its institutional design: a reappraisal of recent reform plans', *EUI Working Papers, RCAS 2011/23*; M. Bartl, op. cit; B. Becerril Atienza, 'Tiempos de cambio. análisis de las propuestas planteadas para reformar las instituciones de la Unión Europea en 2019', *ICE, El futuro de la Unión Europea*, nº 903, 2018; L. Grard, 'La Distance Entre Bruxelles et ses Citoyens. Retour sur le Déficit Démocratique de L'Union Européenne', *Revue Québécoise de Droit International*, Special Issue, November 2018, pp. 181-204.

<sup>78</sup> A. Duff, 'The European Union makes a new push for democracy', *European Policy Centre, Discussion Paper*, 28 November 2019; C. Verger, op. cit.

their promise to enhance the European dimension of European elections. Some have positioned themselves in favour of the idea, putting forward concrete proposals on implementation:

a) In line with the proposal presented by John Bruton during the Convention on the Future of Europe (see Section 3.2.1), **Ken Ritchie** of the Electoral Reform Society proposed to create **several joint constituencies comprising the territory of different Member States and electing around five to seven Members of the European Parliament**, in a study commissioned by the AFCO Committee in 2008.<sup>79</sup> Although the author analysed different possibilities, he argued that it would be preferable to use the single transferable vote as the default system for European elections both at the national and the European level. This was because, in Ritchie's opinion, electors would have a wider range of opportunities to elect the candidates they prefer and rank them, thus enhancing the link between the electorate and their representatives. As the use of the **single transferable vote system** requires constituencies to be small enough to have a number of candidates that could be known and therefore ranked by the electorate, the author suggested creating several joint constituencies, electing a small number of Members of the European Parliament each, preferably around five to seven Members. He presented several possible groupings of Member States for the creation of such joint constituencies<sup>80</sup> and indicated that, to maintain the transnational character of the election, European political families should be required to present, in each constituency, candidates from outside the Member States electing them. The author pointed out that using the single transferable vote as the system for European elections could be confusing for voters if they did not use the same system for the elections at national level. In addition, logistics could prove challenging, as such a system would require the existence of an EU electoral administration and would require the national authorities to send all votes cast for transnational lists to that EU administration for allocation of seats after the elections, a process that could be difficult to manage.

b) Professor **Damien Bol** and other academics analysed the proposal to create a **pan-European constituency**, in which a certain number of Members of the European Parliament would be elected on the basis of a proportional representation system.<sup>81</sup> They evaluated the proposal using data obtained through an online experiment in which thousands of Europeans voted on a pan-European ballot they had created during the 2014 European elections. The experiment showed that **electors tend to vote in consideration of the presence (or absence) of national candidates on the electoral list**. Considering the results obtained, Professor Bol and his colleagues proposed to establish a maximum number of candidates from each Member State on the lists in order to emphasise the transnational character of the election and prevent European political parties from including more candidates from larger countries than from smaller countries in their lists with the aim of obtaining more votes. As this tendency had a wider impact on electoral results when the electoral lists were open and the electorate could choose among individual candidates (favouring those from large countries), Bol et al. suggested a system of **closed-lists** for the pan-European constituency, to avoid nationality bias and prevent over-representation of Members from large Member States at the European level of the elections.

c) Professors *Wouter Wolfs* and *Steven Van Hecke* suggested **three different scenarios** for the creation of a pan-European constituency.<sup>82</sup> These scenarios assume that most European Parliament

<sup>79</sup> [Which electoral procedures seem appropriate for a multi-level polity?](#), note by K. Ritchie for a workshop of the Constitutional Affairs Committee, Policy Department for Citizen's Rights and Constitutional Affairs, European Parliament, 2008.

<sup>80</sup> Ibidem, p. 15.

<sup>81</sup> D. Bol, Ph. Harfst, A. Blais, S. N. Golder, J.-F. Laslier, L. B. Stephenson, K. Van der Straeten, 'Addressing Europe's democratic deficit: An experimental evaluation of the pan-European district proposal', *European Union Politics*, Vol. 17(4), 2016, pp. 525-545.

<sup>82</sup> Steven Van Hecke (dir.), 'Reconnecting European Political Parties with European Union Citizens', *International IDEA Discussion Paper* 6/2018.

seats would continue to be elected on a national basis, a proportional representation system would be used and that electors would cast two votes, one for national and another for transnational lists. In the **first scenario**, the **pan-European constituency would be completely separate from national constituencies** and a system of closed electoral lists with geographical quotas would be used to ensure representation from different Member States. In this vein, Member States would be divided into four groups taking account of their population. An equal number of candidates should come from each of those country groups or each of the top four candidates on the list should come from each of the country group. Although the system would not determine how many seats in Parliament would be allocated to each Member State before the elections and would not give voters a wide range of choices (closed list), it would reinforce European political parties and ensure a balanced geographical representation.

In a **second scenario**, Professors Wolfs and Van Hecke suggested **allocating an exact number of seats to each Member State before the elections**. They proposed to couple the distribution of seats in the EU-wide constituency with the distribution of seats at the national level in such a way that if a candidate from a Member State was elected in the EU-wide constituency, this would reduce the number of candidates from that Member State elected in the national constituency/ies. For example, if Germany was granted a total number of 96 seats and 6 German candidates were elected in the EU-wide constituency, only 90 German candidates would be elected in the national constituency. This model would allow Member States to know the number of seats that they would get in the European elections in advance.

In their **final scenario**, both professors proposed to **allocate the seats of the EU-wide constituency to Member States in relation to their population**, thus pre-determining the exact number of seats that each Member State would get in the elections. Voters would vote for candidates and not for party lists and the seats would be allocated to the candidates from a Member State obtaining the most preference votes. For example, if Germany was granted a total of five seats from the EU-wide constituency, the seats would be allocated to the individual candidates from that Member State obtaining the greatest number of preference votes in any of the lists presented by European political parties. As European political parties would not be allowed more candidates from a Member State than seats allocated to that Member State on their lists, candidature lists would be geographically balanced and citizens would have a greater choice, as they would have to choose from candidates of different nationalities.

d) Professor **Pukelsheim** also proposed to create an EU-wide constituency and transnational electoral lists for European elections, through a system referred as '**compositional proportionality**'.<sup>83</sup> This system aims to ensure a **more proportional distribution of seats among different political families** competing in European elections, by allocating the seats attributed to the EU-wide constituency through a method that takes account not only of the votes received by each political family at EU level, but also the current distribution of seats among the different Member States. The proposal suggests creating an **EU-wide constituency** in which **72 Members of the European Parliament would be elected** through EU-wide electoral lists. The magnitude of the constituency is chosen to ensure the adequate performance of the proportional electoral system used for the elections in the EU-wide constituency. The seats allocated to the EU-wide constituency would be garnered from those currently attributed to each Member State, according to their population (e.g. more populous Member States would contribute to the EU-wide constituency with eight seats each, whereas smaller Member States would contribute only one seat each). However, the method used to allocate the seats after the elections ensures that seats are finally returned to

<sup>83</sup> F. Pukelsheim, *Proportional Representation: Apportionment methods and their applications*, Springer International Publishing AG, 2018, pp. 259-273; F. Pukelsheim, 'Compositional Proportionality among European Political Parties at European Parliament Elections', *Central European Political Studies Review*, vol. XX, 2018, pp. 1-15.

each Member State according to its original contribution, thus providing for a geographically balanced representation. In addition, the method could be used with open as well as closed electoral lists. The remaining European Parliament seats would continue to be contested in national constituencies.

e) Professors **Katrien Auel and Guido Tiemann** also analysed concrete proposals to enhance the European dimension of European elections, focusing mainly on the *Spitzenkandidaten* process and the possible creation of transnational electoral lists, in a study commissioned by the AFCO Committee in 2020.<sup>84</sup> They recommended that EU institutions introduce a simpler institutional setup for the EU's political system. As regards the creation of transnational electoral lists, they suggested that a **large number of Members of the European Parliament (at least half) could be elected through transnational electoral lists**, with the rest elected in national constituencies. To justify this option, they raised the question of whether a small pool of transnational candidates could attract voters' to pay attention to European affairs, when available research indicates that voters frequently fail to notice lead candidates and their programmes. In their opinion, only a large pool of transnational candidates would be able to focus the campaign on the European project. In addition, to prevent the national bias already pointed out by Bol and his colleagues, Professors Auel and Tiemann recommended using a system of **closed lists** for the pan-European constituency. Similarly, to prevent European political parties from focusing their campaign on only a few Member States, they proposed a single pan-European constituency, but with different EU sub-districts, in which European political families campaign with different candidatures.<sup>85</sup>

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<sup>84</sup> [Europeanising European Public Spheres](#), study for the AFCO committee undertaken by K. Auel and G. Tiemann, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.

<sup>85</sup> *Ibid.*, p. 114.

Table 3 – Academic and think tank proposals to create a European constituency/ies and transnational electoral lists

	<b>Ritchie</b>	<b>Bol et al.</b>	<b>Wolfs &amp; Van Hecke</b>	<b>Pukelsheim</b>	<b>Auel &amp; Tiemann</b>
Number of Members	10 % of the total number of Members	Non-specified	Non-specified (majority elected in national constituencies)	72	At least, half of the Members
Number of European constituencies	Several joint constituencies comprising the territory of different Member States and electing around 5-7 Members	1 (EU-wide)	1 (EU-wide)	1 (EU-wide)	1 (EU-wide), with different EU sub-districts
Electoral formula (for allocation of seats)	Single transferable vote	Proportional (Non-specified)	Proportional (Non-specified)	Proportional (2 stages: 1) Saint-Laguë for allocation of seats among political families ('party-seats'); 2) Double-proportional divisor method with standard rounding for allocation of party-seats to Member States)	Proportional (Non-specified)
Electoral threshold	Non-specified	Non-specified	Non-specified	Non-specified	Non-specified
Type of electoral lists	Single transferable vote system	Closed electoral lists	1st scenario: closed electoral lists	Closed/open electoral lists	Closed electoral lists
			2nd scenario: open electoral lists		
			3rd scenario: free electoral lists		
Head of the lists ( <i>Spitzenkandidaten</i> )	Non-specified	Non-specified	Non-specified	EU-wide lists could be headed by Spitzenkandidaten	Non-specified
Geo-graphical balance within the lists	In each constituency, the lists should include a pre-determined number of candidates from outside the Member State composing the constituency	Maximum number of candidates from each Member State on the lists	1st scenario: Member State divided in four groups based on their population. Equal number of candidates should come from each Member State	Ensured by the method used for allocating the seats – system of reserved seats for each Member State	Non-specified

			group (or each of the top four candidates of the list should come from one of the Member State groups)		
			2nd scenario: prior attribution of all seats to Member States (the number of Members elected through transnational lists decreases the number of Members elected in the national constituencies)		
			3rd scenario: EU-wide constituency seats are allocated to Member States based on their population – seats assigned to the candidates of a Member State obtaining the most preference votes		
Gender or minority balance within the lists	Non-specified	Non-specified	Non-specified	Non-specified	Non-specified

## 4. Drafting phase: Electoral system design and the creation of transnational electoral lists

**Electoral systems** are frequently defined as the set of rules allowing voters to express their political preferences and translate the votes casted into election results (either executive posts or parliamentary seats).<sup>86</sup> They **are considered the very heart of any democratic system**, as they are set to translate the will of the people in designating their representatives.<sup>87</sup> However, they are **not neutral** and academics highlight their ability to shape the party system of a polity and affect political representation, allowing very different results to be obtained from the same votes.<sup>88</sup>

Not all electoral rules are considered to be part of a country's electoral system, but only those that are able to influence the process of converting votes into seats. These include rules governing the number and magnitude of the constituencies, the ballot structure (type of electoral lists chosen, including the possibility to give preference votes), and the method used for counting the votes and allocating the seats among the different candidatures (including the electoral formula and possible electoral thresholds). As analysed in Section 3, most of the proposals discussed in the European Parliament to create transnational electoral lists have opted for a similar electoral system. A single pan-European constituency, comprising the territory of all Member States, would be created to elect a relatively low number of Members of the European Parliament (compared to the total number of Members) through a proportional electoral system, based on closed electoral lists and in which the D'Hondt method would be used to allocate the seats after the elections. However, electoral engineering offers many other possibilities, summarised below. It is important however to note that the electoral system applied to any European constituency/ies cannot be designed in a vacuum and needs to be chosen after carefully considering the main goals pursued, as well as the electoral system that would be used for the national strands of the elections.

### 4.1. Number and magnitude of the 'European' constituency/ies

The **number of the electoral constituencies or districts** (i.e. territorial units in which representatives are elected), how they are delineated and how many seats they are allocated, is one of the key elements of any electoral system. It **influences not only the representativeness of the elected assembly** (i.e. degree to which the influence of each voter is equal or comparable, directness of the relationship between voters and representatives, scope of the choices available to voters), but also the **overall functioning of the electoral system**. The magnitude of the constituencies has a major impact on the proportionality of an electoral system. Single-member constituencies are used in plurality/majority electoral systems and small multi-members constituencies can be used in proportional systems, but the proportionality of the system may suffer if the constituency is too small and elects very few representatives. In addition, constituency delineation is usually a controversial issue, prone to political manipulation (including,

<sup>86</sup> E. Herron, R. J. Pekkanen, and M. S. Shugart, 'Terminology and Basic Rules of Electoral Systems', In E. Herron, R. J. Pekkanen, and M. S. Shugart (eds.), *The Oxford Handbook of Electoral Systems*, Oxford University Press, 2018, p. 2; D. Nohlen, 'Elections and electoral systems', in D. Nohlen and Ph. Stöver (eds.), *Elections in Europe. A data handbook*, Nomos, Baden-Baden, 2010, p. 22.

<sup>87</sup> Venice Commission, Report on electoral systems. Overview of available solutions and selections criteria, adopted by the Venice Commission at its 57th Plenary Session (Venice, 12-13 December 2003), [CDL-AD\(2004\)003](#), p. 4.

<sup>88</sup> Among many others, see: E. Herron, R. J. Pekkanen, and M. S. Shugart (eds.), *The Oxford Handbook of Electoral Systems*, Oxford University Press, 2018; G. Sartori, *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*, New York University Press, 1997 (second edition); A. Lijphart, *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945–1990*, Oxford: Oxford University Press, 1994; D. Nohlen, *Sistemas electorales y partidos políticos*, Fondo de Cultura Económica, México, 1994; M. Duverger, *Les partis politiques*, Paris, Armand Colin, 1951.



gerrymandering – the deliberate manipulation of the boundaries of a constituency to favour specific interests).<sup>89</sup>

**All proposals discussed in the European Parliament** to date on creating transnational electoral lists have **opted for establishing a single EU-wide constituency**, comprising the territory of all the Member States. Establishing a pan-European constituency would be combined with existing national constituencies (most of them also nationwide, as shown in Figure 1). This solution is similar to some options already available in comparative electoral law, as several countries do in fact combine a nationwide constituency with single-member or multi-member regional constituencies. Examples include Andorra or Lithuania, for the election of the only Chamber of the national Parliament.<sup>90</sup> Some other countries combine single-member constituencies with multi-member regional constituencies (e.g. Germany, for the election of the Bundestag,<sup>91</sup> or Italy, for the election of the both Chambers of the national Parliament<sup>92</sup>).<sup>93</sup>

<sup>89</sup> For a detailed account of these issues, see: Venice Commission, Report on Constituency Delineation and Seat Allocation. Adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017), [CDL-AD\(2017\)034](#).

<sup>90</sup> Andorra elects 14 Members in a nationwide constituency and 2 Members in each of the 7 parishes into which the territory is divided (Office for Democratic Institutions and Human Rights, [Principality of Andorra. Parliamentary Elections 7 April 2019, Mission Report](#), p. 4), whereas Lithuania combines 71 single-member constituencies with a nationwide constituency in which 70 Members are elected to the *Seimas* (Office for Democratic Institutions and Human Rights, [Republic of Lithuania. Parliamentary Elections October 2020, Mission Report](#), p. 4).

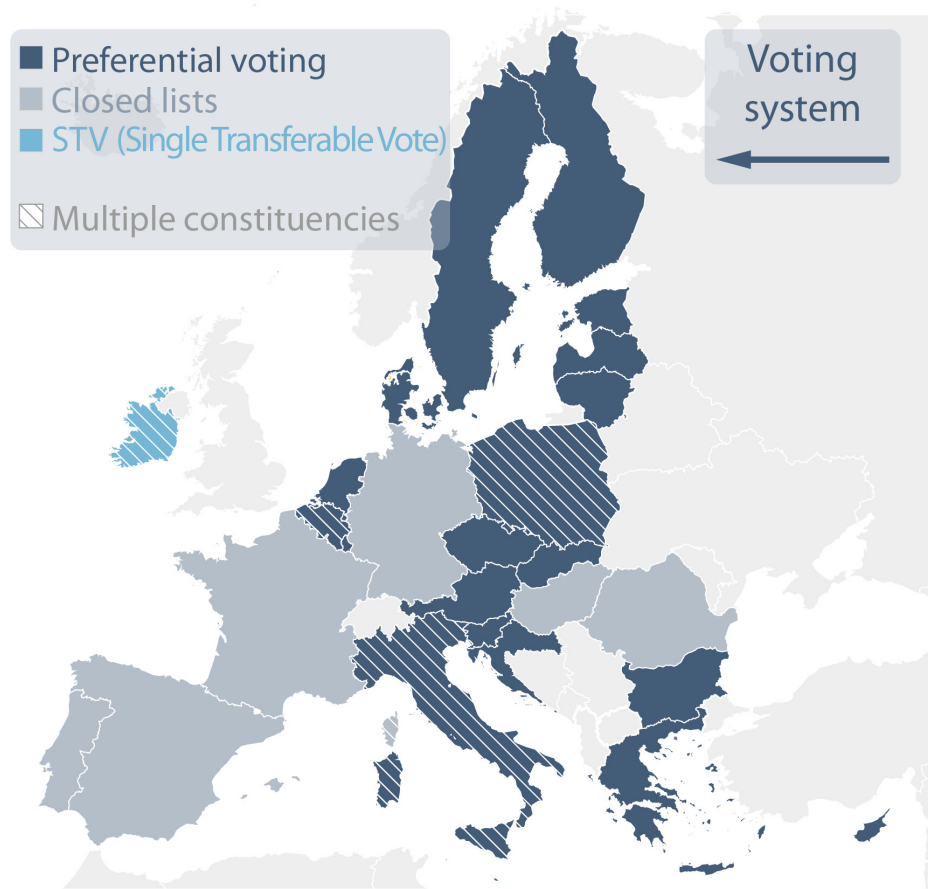
<sup>91</sup> For the *Bundestag* elections, 299 single-member constituencies are combined with 16 multi-member *Länder* constituencies (D. Nohlen, 'La reforma del sistema electoral alemán y el Tribunal Constitucional Federal', *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 139-161).

<sup>92</sup> For the elections to the two Chambers of the Italian Parliament, single-member constituencies are combined with different regional multi-member constituencies (F. Clementi, 'El sistema electoral italiano y su reforma: el desafío de la consolidación', *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 185-206).

<sup>93</sup> For further examples, see: Venice Commission, Report on Constituency Delineation and Seat Allocation, op. cit., pp. 7-10.



Figure 1 – Voting system and single/multiple constituencies in the Member States, 2019 European elections



Source: [European Parliamentary Research Service](#).

The **number of Members of the European Parliament** that could be elected in the European constituency has **changed over the different proposals discussed in the European Parliament**. While the first and second Duff reports proposed to elect 25 Members, other proposals remain quite vague on the numbers (see Table 1). Parliament is currently composed of a total of 705 Members,<sup>94</sup> and the Treaties provide that the European Parliament 'may not exceed 750 seats, plus the President (Article 14 (2) TEU). A maximum of 46 seats of the European Parliament could therefore be contested in a future pan-European constituency without modifying either the Treaties or the current allocation of seats among Member States.

The creation of a single EU-wide constituency and the allocation of around 25 to 46 seats to that single constituency would prevent problems arising relating to the delineation of its boundaries, as the territory of all Member States would be included. However, this may have a negative impact on the relationship between the voters and their representatives, as no direct link would be established between individual Members of parliament and their constituencies, a problem that is common to most of the Member States that have opted for using a nationwide constituency for European elections.

Similarly, the creation of a single EU-wide constituency may prevent EU institutions opting for voting methods that extend the scope of the choices available to voters, as for example, the single

<sup>94</sup> Decision (EU) 2018/937, of 28 June 2018, establishing the composition of the European Parliament.

transferable vote system or a system of open (i.e. system in which the voter may revise the ranking of the candidates in a particular electoral list by expressing preference votes or crossing-out names), or free, electoral lists (i.e. system in which the voter may choose candidates from different electoral lists and completely rearrange them – *panachage* or cross-voting).<sup>95</sup> As this publication has already illustrated (see Section 3), using these systems might not be viable or appropriate if a large number of Members of the European Parliament were to be elected in an EU-wide constituency. Electoral systems offering voters a wide range of choices assume that voters are familiar with the candidates in order to make informed choices, something that might be impracticable if the number of candidates is too high. For example, if 46 seats were to be contested in a single EU-wide constituency using a system of free electoral lists, voters would face the challenge of choosing among 598 candidates if all 13 European political parties were to present a list of 46 candidates. Similarly, those electoral systems also assume that individual candidates are able to campaign and make themselves known to voters, a task that may become titanic if the electoral campaign is to be organised in the territories of all Member States and in the 24 official EU languages. Therefore, if a voting method giving voters a wider choice were adopted, it might be advisable to reduce the size of the European constituency or to divide the EU territory into several constituencies, made up of different groups of Member States.

## 4.2. Ballot structure: A closed-list system for the 'European' constituency/ies?

As already highlighted, the **structure of the ballot is also one of the main elements of an electoral system**, as this **affects the scope of the choices available to voters** and needs careful design that **considers the size of the constituencies**. Ballot structures range from those allowing voters to only express their preference for a candidate (single-member ballot or single non-transferable vote), or a party list (closed-list systems), to those allowing voters to express more sophisticated choices. These include allowing preference votes for certain candidates within an electoral list, choice of candidates from different lists (*panachage* or cross-voting), ranking of preferred candidates, or crossing-out the names of candidates they dislike.<sup>96</sup>

The **initiatives to create transnational electoral lists discussed in the European Parliament have generally proposed a closed-list system** for the elections in a potential pan-European constituency, in some cases requiring each candidature list to respect specific requirements aiming at gender and geographically balanced representation. As shown in Figure 1, **closed-list systems were used in a minority of EU Member States for the 2019 European elections** (France, Germany, Hungary Portugal, Romania and Spain), with the majority of Member States opting for voting methods allowing voters to make more complex choices.<sup>97</sup> Malta and Ireland used the single transferable vote system, allowing voters to indicate their preferences amongst all the candidates presented in their constituencies, ranking them numerically. Voters could indicate their preferences independently of the candidates' political affiliation. Using a proportional list system, Luxembourg also allowed voters to cross party lines, as voters had different options: to give their six votes to an

<sup>95</sup> The terminology used in this publication is based on the Venice Commission's Revised Electoral Glossary, adopted by the Council for Democratic Elections at its 70th meeting (online, 10 December 2020), [CDL-PI\(2020\)021](#).

<sup>96</sup> For an analysis of the voting methods used in EU Member States, see Venice Commission, Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists). Adopted by the Council for Democratic Elections at its 50th meeting (Venice, 19 March 2015) and by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015), [CDL-AD\(2015\)001](#).

<sup>97</sup> For a detailed account of the electoral systems used in the different Member States in European elections, see: K. F. Oelbermann and F. Pukelsheim, [The European elections of May 2019: Electoral systems and outcomes](#), Study, European Parliamentary Research Service, European Parliament, 2020; D. M. Viola, *Routledge Handbook of European Elections*, Taylor & Francis Group, 2018.

electoral list, or distribute them among individual candidates, including candidates from different electoral lists (*panachage*).

Without allowing voters to cross party lines, several Member States also provided for some kind of preference voting in the 2019 European elections. In Latvia, citizens were invited to vote for their preferred electoral list, but could indicate if they wished to endorse (with a plus) or not (by crossing-out) each individual candidate included in the list. In other Member States, voters were not allowed to cross-out candidates within their preferred electoral lists, but had several preference votes that they could use to move individual candidates up the list chosen. In Lithuania, each voter had five preference votes, whereas in Greece they had four; three in Italy; two in Czechia and Slovakia; and one in Austria, Croatia, Slovenia and Sweden. In Belgium, voters could decide either to vote for an electoral list or to vote for one or several individual candidates within a list (no cross-voting), although preference votes for individual candidates were aggregated to votes for their electoral lists for the allocation of seats after the elections. Similarly, in Cyprus a voter could cast one or two votes for individual candidates, but could also decide to vote for an electoral list. In other Member States, voters did not have such choice and were invited to vote for individual candidates, although their vote also went to the electoral list of the candidate for the allocation of seats after the elections (e.g. Estonia, Finland – where candidates were presented on a master list and alphabetically –, the Netherlands and Poland).

**Closed-list systems** offer voters a narrow scope of electoral choices. However, they are easy to understand (as voters only have to opt for their preferred list), are said to strengthen political parties (as party hierarchies control the lists), and may easily ensure a certain degree of geographical or gender balance in representation if political parties are obliged to respect certain requirements (gender, geographical) when establishing the lists.<sup>98</sup>

Conversely, granting a very wide choice to voters through '**strong** preferential systems' is often said to increase voter satisfaction, improve the accountability of individual representatives, and boost internal democracy and competition within political parties, although empirical research does not seem to be conclusive as regards the benefits of these systems.<sup>99</sup> However, it is said that 'strong' preferential systems may make it more difficult to ensure a balanced representation if such is not the wish of the electorate, and might affect political parties' cohesion, as individual candidates may compete for votes even if they have the same political affiliation.<sup>100</sup> In this vein, it has been argued that free ballot structures, combined with large constituencies, may provide strong incentives for candidates to personalise the electoral campaign, sidelining and weakening political parties and the programmes they stand for, whereas that effect might not be felt if the same ballot structure is used in small constituencies, as the personalisation of the campaign would only be felt at the constituency level, but political parties would still have a relevant role in the electoral contest at the national level.<sup>101</sup>

Between closed and free list systems, **different types of open-list systems could be explored**. For example, systems that allow voters to cast preference votes without obliging them to do so; limiting

<sup>98</sup> Venice Commission, Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists), op. cit., [CDL-AD\(2015\)001](#), pp. 7-9.

<sup>99</sup> Among others, see: G. Passarelli, 'Sistema de votacion preferencial. Efectos en la competencia interna de los partidos y en el comportamiento electoral', *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 207-231; L. Karvonen, 'Preferential vote in party list', in J. Colomer (ed.), *Personal representation: the neglected dimension of electoral systems*, ECPRD Press, 2011, pp. 117-132; M. Marsh, 'Ordinal rank', in J. Colomer (ed.), op. cit., pp. 135-153; G. Lutz, 'Open ballot', in J. Colomer (ed.), op. cit., pp. 153-174; E. Chang and M. Golden, 'Electoral systems, district magnitude and corruption', *British Journal of Political Science*, vol. 37, 2007, pp. 115-137.

<sup>100</sup> Ibidem.

<sup>101</sup> S. Hix and S. Hagemann, 'Could changing the electoral rules fix European Parliament elections?', *Politique européenne*, 2009, Vol. 28, pp. 37-53.

the number of preference votes that voters can cast and the scope of their choices (not allowing party lines to be crossed, for example); or systems imposing certain percentages (or other burdens) on individual candidates to move up their candidature list.

Apart from the scope of the choices available to voters, the **requirements to be respected when submitting candidatures for the elections in a potential European constituency/ies** would also need to take some other possible goals into account. These include attaining gender or geographical balance in representation or deciding whether political parties alone, or also other actors, should be entitled to submit their lists of candidates. As regards the question of **who is entitled to submit a candidate lists** for elections in a European constituency/ies, the possibility to grant such an opportunity not only to European political parties, but also to coalitions, or a certain number of individual voters, could be explored, in order to favour small/new political parties and social movements. Coalitions (e.g. Croatia, Finland, Latvia, Poland, Slovenia, Spain)<sup>102</sup> and a certain number of individual voters (e.g. Croatia, Finland, Luxembourg, Poland, Slovenia<sup>103</sup> and Spain) can submit candidate lists for European elections in different Member States, offering models that could be explored for a European constituency/ies.

In relation to the possible introduction of quotas to ensure **gender balanced representation** among the Members of the European Parliament elected in a European constituency/ies, it should be noted that 11 Member States applied legal gender quotas in the 2019 European elections (see Figure 2), whereas voluntary party quotas were applied in other cases, thereby providing different models that could be explored for their possible application to a European constituency/ies.<sup>104</sup> In

<sup>102</sup> In Croatia, a list can be proposed by one political party independently or two or more political parties (a coalition list) (Article 14 of [European Parliamentary Elections Act](#)). In Finland, a list may be proposed not only by individual parties, but also by two or more parties that have decided to form an electoral alliance by mutual agreement (Section 165 of the [Finnish Election Act](#) (714/1998; amendments up to 361/2016 included – official (not legally binding)). In Latvia, an association of political parties can also submit a list if it has no less than 500 members (Article 9 of [Law on the Elections to the European Parliament](#)). In Slovenia, two or more political parties may submit a joint list of candidates if it is supported by the signatures of at least six deputies of the National Assembly or at least 1 500 voters (Article 15 of the [Election of Members of the European Parliament from the Republic of Slovenia Act](#)). In Spain, political parties and federations may form coalitions to submit lists for European elections, although they have to inform the electoral authorities 10 days after elections are announced and have to submit 15 000 voter signatures or 50 signatures from elected representatives (Articles 44 and 220 of [Organic Law 5/1985](#), 19 June 1985). In Poland, a coalition election committee can submit lists for European elections with the support of the signatures of at least 10 000 voters permanently residing in the corresponding constituency (Articles 341 and 343 of [Act of 5 January 2011 – Electoral Code](#) (Dz. U. 2011, Nr 21 poz. 112, Dz. U. z 2020 r. poz. 1319). The signatures are not required if the election committee has already registered candidates for the European elections in at least half of the constituencies in which the Polish territory is divided for those elections (7 out of 13 constituencies – Article 343 in conjunction with Article 210§2 and with Annex III of [Act of 5 January 2011 – Electoral Code](#)).

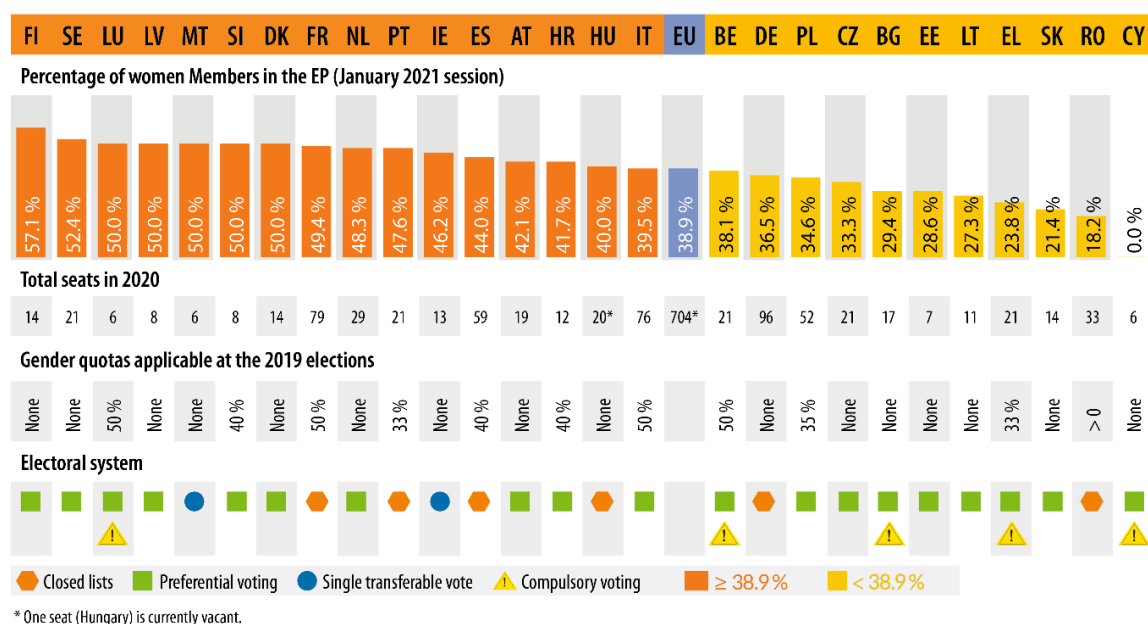
<sup>103</sup> The number voter signatures required differs between Member States. In Luxembourg, 250 signatures are required (Article 291 [Electoral Act of 18 February 2003](#), also allowing candidacies to be submitted with the signature of a Member of the European Parliament elected in Luxembourg or of a Member of the national Parliament), whereas in Slovenia the number is 3 000 (Article 16 of the [Election of Members of the European Parliament from the Republic of Slovenia Act](#)); in Croatia, 5 000 (Article 15 of [European Parliamentary Elections Act](#)); and in Spain, 15 000 (Article 220 of [Organic Law 5/1985](#), 19 June 1985). In Finland, a minimum of 2 000 eligible voters may establish a constituency association entitled to submit lists of candidates for European elections, following the procedure established in Section 169 of the [Finnish Election Act](#). In Poland, voters can establish an election committee and propose lists for European elections with the support of the signatures of at least 10 000 voters permanently residing in the corresponding constituency (Articles 341 and 343 of [Act of 5 January 2011 – Electoral Code](#) (Dz. U. 2011 Nr 21 poz. 112, Dz. U. z 2020 r. poz. 1319). The signatures are not required if the election committee has already registered candidates to the European Parliament in at least half of the constituencies in which the Polish territory is divided for European elections (7 out of 13 constituencies) (Article 343, in conjunction with Article 210 § 2 and with Annex III of [Act of 5 January 2011 – Electoral Code](#)).

<sup>104</sup> Legal gender quotas are mandated in national constitutions or electoral law and are distinguished from voluntary party quotas, which are established by political parties without a binding legal obligation (Venice Commission, Report on the Impact of Electoral Systems on Women's Representation in Politics adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009), and the Venice Commission at its 79th plenary session (Venice,

the 2019 European elections, six Member States opted for legislated gender quotas ranging from 33 % to 40 % (Croatia, Spain, Slovenia, Portugal, Poland and Greece), four of them opted for a 50 % gender quota (France, Italy, Belgium and Luxembourg), and the Romanian legislation established that no all-women or all-men lists were allowed. These electoral quotas were gender neutral, aiming to avoid the under-representation of both women and men, and were candidate quotas (affecting those that stand for election), with no Member State reserving a certain percentage of seats for women.

However, some Member States tried to boost the effectiveness of their gender quota rules by providing for the rejection of those lists that did not meet the requirements imposed by the national legislation (e.g. Spain, Slovenia, Italy) and by imposing rank-ordering rules aiming to ensure that candidates from both sexes were placed in winnable positions on the list (e.g. Belgium, France, Spain, Portugal, Slovenia, Italy). In some Member States, the alternate ordering of men and women on the list ('zippering') was required to increase women's chances of being elected (e.g. France).<sup>105</sup> Although all the systems have their own specificities, Italy applied a very particular system, requiring electoral lists to be composed of 50 % women and 50 % men, with the two first candidates of the list being of a different gender (the requirement did not apply to the rest of the list). Italy also limited voter choices as regards their right to cast preference votes for individual candidates on the basis of the gender of the candidates. Voters had three preference votes, but if they decided to cast more than one preference vote, they had to choose candidates of different genders.<sup>106</sup>

Figure 2 – Female representatives in the European Parliament by Member State and gender quotas, as applied in the 2019 European elections



Source: [European Parliamentary Research Service](#).

12-13 June 2009), [CDL-AD\(2009\)029-e](#), pp. 5 and 15-16). For more details on legal gender quotas applied in the 2019 European elections, see: M. Prpic, G. Sabbati and S. Chahri, [Women in Parliaments](#), European Parliamentary Research Service, February 2020. For more information on both legal and voluntary gender quotas and their application to European elections, see: [Electoral lists ahead of the elections to the European Parliament from a gender perspective](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2014; [Electoral gender quotas and their implementation in Europe update 2013](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2013.

<sup>105</sup> For further details, see: M. Prpic, G. Sabbati and S. Chahri, op. cit, p. 2.

<sup>106</sup> G. Legnante and M. Regalia, 'Gender quotas in the 2019 European elections: insights from the Italian case', *Contemporary Italian Politics*, 2020, vol. 12, num. 3, pp. 350-365.



As Figure 2 shows, the effectiveness of gender quotas is dependent on many elements, including: the type of electoral system (proportional v. majority/plurality systems, constituency size, open or closed lists); the design of the quota itself (percentage, rank-ordering rules, sanctions for non-compliance); as well as the political and social conditions in the country in which they are applied (including political party, voter and candidates behaviour). This makes it difficult to opt for a particular quota design in abstract terms.<sup>107</sup> However, it should be noted that the effectiveness of voluntary quotas is largely dependent on political party commitments and their desire to become bound by the corresponding rules, a pre-requisite that is not applicable to legal quotas, which are binding on all political actors.

Finally, another relevant question regarding the requirements to be respected when submitting a list in a European constituency/ies is whether it is desirable to ensure a **geographically balanced representation** and how this can be achieved. In this vein, it is noteworthy that debates regarding transnational electoral lists have frequently focused on how to ensure the true transnational character of the list and prevent over-representation of Members from large Member States among those elected in the European constituency/ies. Again, different systems could ensure geographical diversity among those elected at the European level of the elections.

If a single pan-European constituency was created, the easiest system to ensure geographical diversity would be to require each list to contain candidates from at least one third or one quarter of the Member States, as suggested, for example in the first two Duff reports (see Sections 3.1.2 and 3.1.3). To maximise the impact of such a rule and avoid that candidates from small Member States are placed in positions on candidature lists where they have few or no chances of being elected, respect for the same geographical diversity should be required in winnable list positions and not only in the list as a whole (for example, by establishing clusters of a certain number of candidates to which the same rule would apply). Similarly, it should be decided whether candidate's nationality or residence would be taken into account to determine compliance with the rule. In any case, such a rule would ensure certain geographical diversity within the electoral lists (candidates coming from at least nine or seven Member States), but would not necessarily prevent electoral lists composed entirely of candidates from large or medium-sized Member States for example. To prevent this, various solutions are available: a system of reserved seats per Member State could be applied to the elections in the European constituency/ies, or Member States could be grouped according to certain features with each list required to include a certain number of candidates from each of those groups, as suggested by the French National Assembly (see Section 3.2.2).

### 4.3. Method for allocating seats in the 'European' constituency/ies and electoral threshold

The **method used for allocating seats** between the different list of candidates after the elections is another **key element of an electoral system**, with an initial distinction being made between methods guided by a majoritarian principle (majority/plurality systems), and those seeking proportional representation. In proportional systems, which has often been proposed for the joint constituency/ies in European Parliament elections, several possibilities exist. Either allocation of seats could take place according to an electoral quota (Hare quota, Droop quota, etc.), and then distribution of remaining seats either using the largest remainder method, the strongest lists method or the highest average method; or we could envisage a divisor method to allocate the seats in one single operation.<sup>108</sup>

<sup>107</sup> Venice Commission, Report on the Impact of Electoral Systems on Women's Representation in Politics, op. cit.

<sup>108</sup> For an analysis of all these methods, see Venice Commission, [Report on electoral systems: overview of available solutions, 12-13 December 2003, op. cit., pp. 18-23.](#)

As shown in Table 4, the **D'Hondt method**, a divisor method thought to favour larger parties, **is used by most Member States for European elections**.<sup>109</sup> However, other methods used by Member States in European elections could also be explored and applied to the allocation of seats in a European constituency/ies, depending on the outcome desired. In this vein, some Member States use the Saint-Laguë method, said to be more favourable for small parties, or the modified Saint-Laguë method (Sweden), which is less proportional than the pure Saint-Laguë, but still more favourable to small parties than the D'Hondt method, and provides a fairer representation of medium-sized parties.<sup>110</sup> Others use the Hagenbach-Bischoff or the Hare-Niemeyer method. The latter is thought to be the closest formula to mathematical proportionality if used together with large constituencies.<sup>111</sup> Malta and Ireland use the single transferable vote method; and other Member States combine Droop or the Hare electoral quotas with the largest remainder method (considered one of the most favourable for small lists).<sup>112</sup>

In addition to analysing these possibilities, **if it were decided to use open or free electoral lists** allowing voters to indicate their preferences for individual candidates, it would also be **necessary to determine a system for allocating the seats among candidates** that account of voters' preferences.<sup>113</sup> Depending on the number of preference votes that voters are allowed to make (single preference or several), and on the scope of the choices available to them (whether cross-voting is allowed, whether candidates can be ranked or deleted), several options could be used to allocate the seats among individual candidates. Of these, the simplest option would be to allocate the seats to the individual candidates obtaining more citizen support (e.g. Luxembourg), or receiving more preference votes within a particular list of candidates (e.g. as is the case in Greece, Italy, Lithuania). This system is applied with certain peculiarities in Latvia, where voters may cross-out the names of individual candidates within their preferred lists and seats are allocated among individual candidates within a list, taking account of the number of endorsements received (pluses) by each individual candidate, minus the number of crossings-out.<sup>114</sup> However, some Member States impose obstacles to the effectiveness of preference voting, in the idea that a small number of voters should not be allowed to determine which individual candidates would obtain a seat. In this logic, for example, in Austria, Bulgaria,

Table 4 – Methods for allocating seats used in the 2019 European elections

Belgium	D'Hondt
Bulgaria	Hare-Niemeyer
Czechia	D'Hondt
Denmark	D'Hondt
Germany	Sainte-Laguë/Schepers
Estonia	D'Hondt
Ireland	Single transferable vote (STV)
Greece	Hare
Spain	D'Hondt
France	D'Hondt
Croatia	D'Hondt
Italy	Hare/Largest remainder
Cyprus	Hare/Largest remainder
Latvia	Sainte-Laguë
Lithuania	Hare/Largest remainder
Luxembourg	Hagenbach-Bischoff
Hungary	D'Hondt
Malta	Single transferable vote (STV)
Netherlands	D'Hondt
Austria	D'Hondt
Poland	D'Hondt/Hare-Niemeyer
Portugal	D'Hondt
Romania	D'Hondt
Slovenia	D'Hondt
Slovakia	Droop/Largest remainder
Finland	D'Hondt
Sweden	Modified Sainte-Laguë

Source: K. F. Oelbermann and F. Pukelsheim, [The European elections of May 2019. Electoral systems and outcomes](#). Study, European Parliamentary Research Service, European Parliament, 2020, p. 8.

<sup>109</sup> Ibid, p. 20.

<sup>110</sup> Ibidem.

<sup>111</sup> P. Stöver and A.M. Wüst, 'Electoral system', in Y. Déloy and M. Bruter, *Encyclopedia of European Elections*. Palgrave Macmillan, 2010, pp. 110-111.

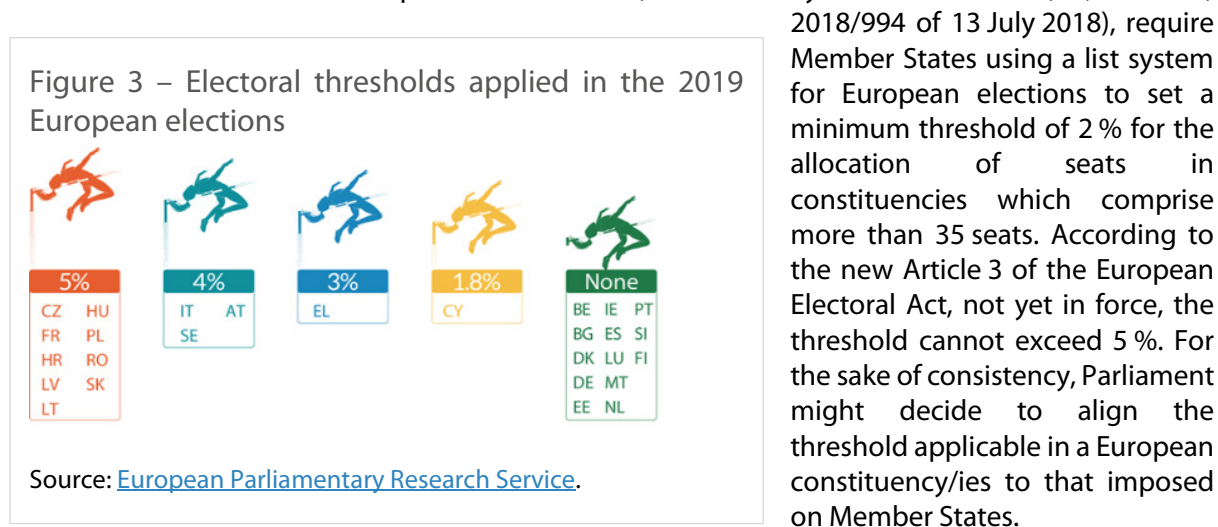
<sup>112</sup> Venice Commission, [Report on electoral systems: overview of available solutions, 12-13 December 2003](#), op. cit., p. 19.

<sup>113</sup> For an analysis of the different possibilities, see: Venice Commission, Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists), CDL-AD(2015)001-e, 2<sup>o</sup>, 21 March 2015.

<sup>114</sup> K. F. Oelbermann and F. Pukelsheim, op. cit., p. 44.

Croatia, Czechia, Slovakia, Slovenia, Sweden, or the Netherlands, individual candidates are required to attain a certain percentage of the preference-votes to move their position up the electoral list.<sup>115</sup> Similarly, in Belgium, ballots where voters indicate no preferences for individual candidates are partially counted as preferences for the candidates as they stand on the electoral lists (devolution votes), thus making it more difficult for individual candidates to move up on the list.<sup>116</sup>

Apart from determining the method to be used to allocate the seats among the different political formations and individual candidates, another relevant element to decide is whether or not to establish an **electoral threshold** (i.e. the minimum percentage of votes needed to qualify for parliamentary representation), **and the applicable percentage**. As shown in Figure 3, **13 Member States did not impose an electoral threshold in the 2019 European elections**, although the remainder imposed thresholds ranging from 1.8 % to 5 %.



2018/994 of 13 July 2018), require Member States using a list system for European elections to set a minimum threshold of 2 % for the allocation of seats in constituencies which comprise more than 35 seats. According to the new Article 3 of the European Electoral Act, not yet in force, the threshold cannot exceed 5 %. For the sake of consistency, Parliament might decide to align the threshold applicable in a European constituency/ies to that imposed on Member States.

#### 4.4. A uniform electoral procedure and a European electoral administration authority

As has already been pointed out by several authors (see Section 3), if a European constituency/ies were created to elect a certain percentage of Members of the European Parliament through transnational electoral lists, a **common electoral procedure** applying to the elections in the joint constituency/ies would be needed. A **European electoral administration authority** competent to conduct those elections should also be created. When deciding upon the application of a common electoral procedure, many questions would need to be addressed and/or aligned. These include: the creation of a common electoral roll to avoid double voting; voting rights for citizens living abroad; possible suspension of the right to stand for election (e.g. in case of criminal conviction); timeline for the elections; conduct of the electoral campaign; campaign finances, including transparency measures and possible limits for funding and expenditure to ensure fair competition between candidates in the electoral process; measures to ensure fair and balanced media coverage

<sup>115</sup> In Slovakia, the preference vote hurdle is 3 % of the votes cast in favour of the electoral list of the individual candidate, whereas in Austria, Czechia and Sweden, it is 5 %, in Croatia, 10 %, and in Bulgaria, 15 % of the electoral list vote total. In Slovenia, the preference vote hurdle is not a fixed percentage of the votes cast in favour of the electoral list of the individual candidate, but is calculated by dividing the number of all votes cast for the electoral list by two times the number of candidates on the list. In the Netherlands, individual candidates can move up on their list if they meet 10 % of the electoral quotient or quota. For further details, see: K. F. Oelbermann and F. Pukelsheim, op. cit.

<sup>116</sup> For further details, see A-E. Bourgoux, T. Gaudin and J-B. Pilet, 'La case de tête et son effet dévolutif', in F. Bouhon and M. Reuchamps (eds), *Les systèmes électoraux de la Belgique*, Bruxelles, Éditions Larcier, 2018, pp. 465-489.



of the campaign and equal access to the media for all candidates; rules on publication of opinion polls; rules on the number of polling stations; requirements for polling station members; voter identification and procedures; ballot paper design; vote counting; announcement of provisional and final results; and election appeals, among other things.

The EPSC suggested creation of a European electoral administration authority on the basis of the existing Authority for European Political Parties and European Political Foundations (see Section 3.2.2).<sup>117</sup> However, when reshaping that authority, or creating a new one, several elements would need to be taken into account. Firstly, the composition and appointment process of the body should ensure impartiality and independence from politically motivated manipulation (i.e., permanent body; participation of several institutions in the nomination process; nomination of some members by non-political institutions; adequate balance between members appointed by the majority and the opposition when Parliament appoints some of the members of the authority; women's participation; incompatibilities of members of the authority; and mandate for a fixed term).<sup>118</sup> Secondly, the authority's mode of operation must be clear (provided for in the legal act creating the authority), transparent and inclusive. Finally, the authority's powers should be clearly set in the legal act creating the authority, to allow it to ensure proper administration of the electoral process, from the pre-election period to the end of processing of the electoral results.

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<sup>117</sup> Article 6 of [Regulation 1141/2014, of the European Parliament and the Council, of 22 October 2014](#), on the statute of the European political parties.

<sup>118</sup> Among others, see: Venice Commission, Code of Good practice in electoral matters. Guidelines and explanatory report, [CDL-AD\(2002\)023rev2-cor](#), pp. 26-30.

## 5. Implementation phase: Legal changes needed to create transnational electoral lists.

After analysing the main questions to be addressed when designing the electoral system to be applied to the elections in a potential European constituency/ies, this final section tries to identify the **EU and national acts that would need to be amended to render the proposal operational**. It also sets out the procedures that would need to be followed to amend those legal provisions, both at European and national level.

### 5.1. Is it necessary to amend the Treaties to create a European constituency/ies and transnational electoral lists?

The first question to address is whether the **EU Treaties** need to be modified to create a European constituency/ies and transnational electoral lists. Before the entering into force of the Treaty of Lisbon, Article 189 of the Treaty establishing the European Community (TEC) defined the Members of the European Parliament as 'representatives of the peoples of the States brought together in the Community' and Article 190 TEC allocated a certain number of seats to each Member State. The characterisation of the Members of the European Parliament as representatives of the different national peoples was often pointed to as a legal impediment to the creation of a joint constituency/ies for European elections.<sup>119</sup> However, the **current definition of the Members of the European Parliament as 'representatives of the Union's citizens'** (Article 14 (2) TEU) seems to dilute those doubts, with some commentators arguing that the creation of transnational lists would even be a logical and necessary response to the amendment introduced by the Treaty.<sup>120</sup>

Apart from these considerations, the second sentence of Article 14 (2) TEU could also be seen as a legal impediment to the creation of transnational electoral lists, as it provides for a maximum number of seats in the European Parliament (750 plus the President), and for a system of allocation of seats to Member States that must respect the principle of digressive proportionality (a minimum allocation of 6 seats and a maximum of 96 seats to every Member State). The **rule indicating the maximum number of seats in Parliament seems impossible to circumvent without Treaty modification**. Therefore, unless the Treaties are modified, that number must be respected in any decision creating a joint constituency/ies for European elections. However, this does not rule out the possible creation of a European constituency/ies, but rather limits the numbers of seats that can be elected thereto. As Parliament is currently composed of 705 Members, a **maximum of 46 seats** could be allocated to a European constituency/ies (representing around only 6 % of all Members), without the need to modify the current allocation of seats among the Member States. If the EU institutions wanted to increase the number of seats allocated to a European constituency/ies, another possibility would be to modify the current allocation of seats among Member States as provided for in Decision (EU) 2018/937 of 28 June 2018, establishing the composition of the European Parliament.

A final question remains to be addressed on the need to modify the Treaties: it could be argued that the creation of a European constituency/ies and transnational electoral lists would necessarily impact the principle of digressive proportionality and the maximum number of seats that can be allocated to a Member State according to Article 14 (2) TEU. In this respect, it could be argued that, by providing for the election of a certain number of Members of the European Parliament in a

<sup>119</sup> K. Auel and G. Tiemann, *op. cit.*, p. 107.

<sup>120</sup> *Ibidem*; and European Political Strategy Centre, European Commission, [Transnational lists: can they deliver on their promise?](#), *op. cit.* p. 2.

European constituency/ies, the proposal would increase the national contingents, potentially contravening the rule providing for a maximum national threshold of 96 seats of the European Parliament per Member State. This could be the case, for example, if several German Members of the European Parliament were elected through transnational lists, thereby increasing the maximum of 96 seats in Parliament currently allocated to Germany.

However, this reasoning does not take into account that the **minimum and maximum national thresholds provided for by Article 14 (2) TEU seem to apply only to Members of the European Parliament elected in the national constituencies**, but not to those potentially elected in a European constituency/ies. Article 14 (2) TEU indeed requires some Members of the European Parliament to be elected on a national basis (i.e. national constituencies), but does not seem to prohibit the election of some Members in other possible constituencies, as long as they can be considered representatives of the Union's citizens. Furthermore, it should be noted that the current allocation of seats among Member States is not necessarily based on nationality, as EU citizens can vote and run for European elections not only in their country of nationality, but in their country of residence.<sup>121</sup> Therefore, they count as part of a national contingent not due to their nationality, but because of the 'national affiliation' of the list from which they are elected.<sup>122</sup> As transnational electoral lists would be considered European rather than national lists, candidates elected from them should not in principle be counted as part of a national contingent.

## 5.2. What changes in EU secondary law would be needed to create a European constituency/ies and transnational electoral lists?

As already indicated, the main EU legal act that would need to be modified to implement a decision to create a European constituency/ies is the **1976 European Electoral Act**, which currently provides for Member States to apply a common set of rules in European elections.<sup>123</sup> The amendment of the Act requires a unanimous decision of the Council, based on a proposal of the European Parliament and with its consent, which shall be given by a majority of its component Members (Article 223 (1) TFEU). The amendments shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements, a question addressed in the following section. The Act **would need to be amended to provide for the election of some Members of the European Parliament in a European constituency/ies** and for a uniform electoral system and procedure to apply in those elections. However, as the procedure to modify the European Electoral Act is quite demanding, the possibility to leave non-essential elements of the electoral procedure to be applied in those elections to be determined by a later EU act adopted following the procedure set out in Article 14 of the 1976 European Electoral Act could be explored.

In addition, **Decision (EU) 2018/937, of 28 June 2018, establishing that the European Parliament is composed of 705 Members and deciding on the allocation of those seats to Member States would also need to be modified** by a unanimous decision adopted by the European Council, on the initiative of the European Parliament and with its consent (Article 14 (2) TEU). In this case, the modification will have to determine the total number of seats in the European Parliament and how many of them would be allocated to the national constituencies and the European constituency/ies. Finally, if it was decided to establish a European electoral administration authority based on the current Authority for European Political Parties and European

<sup>121</sup> Article 4, Council Directive [93/109/EC](#) of 6 December 1993, laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals.

<sup>122</sup> European Political Strategy Centre, European Commission, [Transnational lists: can they deliver on their promise?](#), op. cit. p. 5.

<sup>123</sup> Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

Political Foundations, the modification of Regulation 1141/2014, of the European Parliament and the Council, of 22 October 2014, on the statute of the European political parties, would also be needed. However, in this case, the ordinary legislative procedure applies for any modifications to the Regulation (Article 224 TFEU).

### 5.3. National implementation of the European Electoral Act

As already pointed out, the entry into force of **any amendment to the 1976 European Electoral Act requires Member State approval**, in accordance with their respective constitutional requirements (Article 223 (1) TFEU). It is therefore necessary to understand the requirements that vary between Member States, in order to evaluate the feasibility and the time required to complete the whole procedure.<sup>124</sup> In relation to this question, the Venice Commission recommends,<sup>125</sup> and some Member States require (e.g. Belgium, Article 39 ter, Belgian Constitution; France, Article L567-1 A, Electoral Code), that amendments to electoral law are made sufficiently in advance (at least one year) before elections to ensure the credibility of the electoral process and allow all relevant actors, including voters, the time needed to understand the modifications. The timing of the adoption of the proposal is therefore a relevant issue.

In attempting to describe the national approval procedures, triggered by a possible reform of the 1976 European Electoral Act introducing a European constituency/ies and transnational lists, it must be acknowledged that national approval procedures may depend on the content of the modifications to the electoral rules sought. Therefore, this preliminary analysis of the national constitutional requirements to approve amendments to the European Electoral Act might need further clarification, depending on the content of the proposal finally adopted.

In general, **Member States can be divided into three categories**. The first includes **Member States that would need to modify their constitution** in order to approve the envisaged modification of the Act, in addition to possible modifications of the legal acts regulating European elections and to application of specific procedures designed to approve the ratification of international treaties or EU acts. The second category includes **Member States that would need to follow the same procedure used to approve the ratification of an international treaty**. However, that procedure may also need to be followed by the modification of the legal acts applicable to European elections. Finally, some **Member States would only need to modify or adopt a statute**, in some cases under specific (reinforced) majority voting rules, in the national Parliament to approve amendments introduced in the 1976 European Electoral Act.

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<sup>124</sup> This section has been drafted on the basis of the answers provided by the European Centre for Parliamentary Research and Documentation network to the questionnaire developed by the European Parliamentary Research Service on 'Constitutional requirements envisaged in the EU Member States to approve modifications of the European Electoral Act (Article 224 TFEU)', [request number 4314](#), deadline: 6 March 2020. EPRS country specialists provided information on the following countries: the Netherlands (Ingeborg Odink); Czechia (Marketa Pape); Luxembourg (Marie-Laure Augère-Granier); Malta (Denise Chircop); Hungary (Gabriella Zana-Szabo).

<sup>125</sup> Venice Commission, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002), [CDL-AD\(2002\)023rev2-cor-e](#), p. 10.

Table 5 – National implementation of a potential reform of the European Electoral Act creating a 'European' constituency/ies and transnational electoral lists.

Member States in which the national constitution would need to be amended	Member States where the procedure for the ratification of international treaties or the approval of specific EU acts would apply	Member States where the adoption of a law/amendments to existing laws regulating EU elections would be required	
Austria	Austria, Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden	Ordinary legislative procedure and/or simple majority	Special legislative procedure and/or qualified majorities
		Bulgaria, Cyprus, Denmark, Finland*, France*, Germany, Greece, Hungary*, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Sweden	Austria, Belgium, Croatia, Czechia, Estonia, Spain, Portugal, Romania, Slovenia*

\*See the text below for further details concerning FR, HU, FI, SI.

**a) Member State where the approval of an amendment of the European Electoral Act introducing a European constituency/ies and transnational lists would require constitutional amendments: Austria.**

Depending on the scope of the amendments introduced by a potential reform of the European Electoral Act, some Member States might need to modify their national constitution, as explained below. However, the only Member State in which the modification of the national constitution seems unavoidable if the European Electoral Act aimed to introduce a European constituency/ies and transnational electoral lists is **Austria**. Article 23 a(2) of the Austrian Federal Constitutional Law (*Bundes-Verfassungsgesetz - B-VG*),<sup>126</sup> indicates that the federal territory of Austria shall constitute a single electoral body for the purposes of European elections, making modification of the national Constitution a necessary step for the approval of an EU decision creating a European constituency/ies. Modifications of some other constitutional provisions, namely, Article 23 a(1) and (3) B-VG (voting age and eligibility age for European elections), Article 23 b B-VG (provisions on civil servants running for a seat, incompatibilities), Article 26a B-VG (electoral commissions, including for European elections), Article 141 (1) B-VG (challenges to European Elections in Austria), or of the democratic principle, as laid down in the Federal Constitutional Law, might also be needed depending on the scope of the amendments introduced at EU level.

These constitutional amendments can be passed by the National Council (lower Chamber of the national Parliament), by a majority of two thirds of the votes cast if at least half of its members are present (Article 44 (1) B-VG). In addition, there must be no objection by the Federal Council, the upper Chamber of the national Parliament (Article 42 (1 and 2) B-VG). If the amendments introduced at the EU level alter the democratic principle, as laid down in the Federal Constitution, the amendment would be qualified as a total revision of the Federal Constitution, making the procedure more complex and requiring a referendum (Article 44 (3) B-VG). A referendum may also be called for

<sup>126</sup> See English [translation](#) on the Austrian laws portal.

partial revision of the Constitution if one third of the members of the National Council or the Federal Council so demand (Article 44 (3) B-VG).

Apart from the constitutional amendments, the approval of any modification to the European Electoral Act by Austria requires compliance with the procedure usually followed to ratify amendments to the EU Treaties, that is to say, approval by the National Council and consent of the Federal Council. Adoption in both chambers requires the presence of at least half the members and a majority of two thirds of the votes cast (Articles 23 i (4) and 50 (4) B-VG). In addition, the European Elections Act (*Europawahlordnung*) and the European Electoral Register Act (*Europa-Wählerevidenzgesetz*) would also have to be amended. In this case, adoption by the National Council requires the presence of at least one third of its members and an absolute majority of the votes cast (Article 31 B-VG), and no objection must be raised by the Federal Council (Art. 42 (1 and 2) B-VG).

**b) Member States where the procedure for the ratification of international treaties would be applied: Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden.**

Fifteen Member States would have to follow the procedure to ratify international treaties to approve amendments to the European Electoral Act. In some cases, the specific procedure applicable to ratify EU Treaties would be used (e.g. Germany), whereas in other cases there is either no specific procedure to ratify EU Treaties (e.g. Belgium or Italy), or that procedure would in principle not be applicable to modifications to the European Electoral Act (e.g. Poland, Portugal, Croatia, Finland, Sweden, Romania, Slovakia and Spain) and the general rules to ratify international treaties would apply. In addition, in all these cases, a modification of the national law regulating European elections would also be needed, as well as constitutional amendments in some cases, depending on the scope of the modifications introduced.

In **Belgium**, the European Electoral Act and its modifications require legislative approval by the House of Representatives in the same way as international treaties (Article 167 (2) of the Belgian Constitution).<sup>127</sup> Under the terms of Article 53 of the Belgian Constitution, such a law requires an absolute majority of the votes cast, provided that the majority of the members of the House of Representatives is present. In addition, the creation of a joint constituency/ies and transnational lists may make it necessary to modify the Federal Law of 23 March 1989, concerning the election of the European Parliament, and the Electoral Code, although the approval of the amendments introduced in the European Electoral Act and of the aforementioned laws can be made together in a single legislative instrument, as they need the same majority in Parliament. Finally, according to Article 168 bis, second subparagraph, of the Belgian Constitution, the provisions that establish the special rules to safeguard the legitimate interests of French and Dutch speaking people in the former province of Brabant regarding the European elections may only be modified by a law passed by a special majority. According to Articles 4 and 77 of the Belgian Constitution, this means that the law must be adopted by the House of Representatives and by the Senate and by a majority of the votes cast in each linguistic group in each House, on condition that a majority of the members of each group is present and provided that the total number of votes in favour that are cast in the two linguistic groups is equal to at least two thirds of the votes cast. Therefore, if the amendments introduced in the European Electoral Act affect the special rules safeguarding the legitimate interests of French and Dutch speaking people in the former province of Brabant, this specific procedure would be required.

In **Croatia**, although the Croatian Constitution does not expressly envisage the procedure to approve amendments of the 1976 European Electoral Act, a potential modification creating a European constituency/ies and transnational electoral lists may need to be submitted for ratification

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<sup>127</sup> See English [translation](#).



by the Croatian Parliament in accordance with constitutional provisions pertaining to the ratification of international treaties.<sup>128</sup> According to Article 140 of the Constitution,<sup>129</sup> the Croatian Parliament shall approve the ratification of all international treaties which require the adoption of or amendment to laws, or those of a political nature (among others), and a special majority of two-thirds of all members is necessary if the Treaty grants powers derived from the Constitution to an international organisation. Although this qualified majority may not be needed (if the amendments introduced in the European Electoral Act are not considered to grant additional powers derived from the Constitution to the EU), approval by the Croatian Parliament may be necessary, as the Act on elections of Members from the Republic of Croatia to the European Parliament<sup>130</sup> would probably also need to be amended to include the modifications introduced in the 1976 European Electoral Act.

In a similar vein, the approval of the **Finnish** Parliament is required for treaties and other international obligations that contain provisions of a legislative nature. This is usually the case for amendments introduced in the European Electoral Act, as European elections are governed in Finland by the Finnish Election Act.<sup>131</sup> Parliament decides on the approval of such treaties or international obligations by a majority of the votes cast and the government bill bringing the corresponding international obligations into force would be considered in accordance with the ordinary legislative procedure (Sections 72, 94 and 95 of the Finnish Constitution).<sup>132</sup> However, if the modifications of the European Electoral Act affect the Finnish Constitution, or imply a transfer of competences to the European Union of significance to Finland's sovereignty, the decision in Parliament should be made by at least two thirds of the votes cast in Parliament. In that case, the Act bringing the modifications into force would also require adoption by a decision supported by at least two thirds of the votes cast (Sections 94 and 95 of the Finnish Constitution).

In **France**, previous amendments of the European Electoral Act were considered to require legislative approval by the national Parliament in the same way as other international treaties.<sup>133</sup> Under Article 53 of the French Constitution,<sup>134</sup> such a law is an ordinary one, which does not require any special majority to be adopted by the national Parliament. In addition, an amendment to the European Electoral Act creating a European constituency/ies may require the modification of Act n° 77-729 of 7 July 1977, on the election of Members of the European Parliament,<sup>135</sup> and possibly of the French Electoral Code,<sup>136</sup> partially applicable to European elections.<sup>137</sup> Act n° 77-729 is an ordinary law, modification of which requires no special majority in Parliament. However, the French Electoral Code is partially considered an organic law (e.g. Title II, Chapter III on requirements to stand

<sup>128</sup> In this sense, see the [Position of the Republic of Croatia](#) on the proposal for a Council decision on the adoption of provisions for amending the Act on the Election of Members of the European Parliament by direct general elections 2015/2035 INL.

<sup>129</sup> See English [translation](#).

<sup>130</sup> See English [translation](#).

<sup>131</sup> See English [translation](#).

<sup>132</sup> See English [translation](#).

<sup>133</sup> See the different statutes approving the latest amendments to the 1976 European Electoral Act: [Loi autorisant l'approbation de la décision \(UE, EURATOM\) 2018/994 du Conseil du 13 juillet 2018 modifiant l'acte portant élection des membres du Parlement européen au suffrage universel direct, annexé à la décision 76/787/CECA, CEE, Euratom du Conseil du 20 septembre 1976](#); [Loi autorisant l'approbation de la décision du Conseil modifiant l'acte portant élection des représentants au Parlement européen au suffrage universel direct, annexé à la décision 76/787/CECA, CEE, Euratom du Conseil du 20 septembre 1976](#).

<sup>134</sup> See English [translation](#).

<sup>135</sup> See [original](#) version.

<sup>136</sup> See [original](#) version.

<sup>137</sup> The first part (*Livre Premier*) of the Electoral Code is applicable in European elections, according to Article 2 of Act n° 77-729.



as a candidate or Chapter IV, on incompatibilities), and the modification of its organic parts would require the special legislative procedure provided for in Article 46 of the French Constitution (both Chambers of Parliament need to agree on a common text. If that is not the case, the National Assembly can adopt the text by an absolute majority). Finally, it should be noted that amendments to the European Electoral Act do not in principle require the modification of the French Constitution, as indicated in the Constitutional Council case law.<sup>138</sup> However, should the French Constitutional Council consider that future amendments to the 1976 European Electoral Act are contrary to the French Constitution, modification of the French Constitution would be necessary (Article 54 of the French Constitution). To that effect, the procedure is set out under Article 89 of the French Constitution, requiring both Chambers of the French Parliament to agree on the same text and the final approval of that text by a referendum. If the procedure to modify the Constitution is started by the President, on the basis of a proposal from the Prime Minister, the President can decide not to subject the final text of the amendments to a referendum, but to both Chambers of Parliament acting together (*Congrès*). In this case, a majority of three-fifths of the votes cast is required.

In **Germany**, amendments to the European Electoral Law require approval under the procedure set out in Article 23 (1) of the Basic Law for the Federal Republic of Germany,<sup>139</sup> as provided for in Article 3 (3) of the Act on the Exercise by the *Bundestag* and by the *Bundesrat* of their Responsibility for Integration in Matters concerning the European Union.<sup>140</sup> The application of Article 23 (1) of the Basic Law would in principle require the passing of a law (simple majority in the *Bundestag*) with the consent of the *Bundesrat*. However, depending on the content of the potential reform of the European Electoral Act, the national law approving the changes might actually require a qualified majority, if it is considered to amend or supplement the Basic Law. This would be the case, for example, if the constitutional provision entrenching the right to vote and stand as candidate was affected by the modification (Article 38 of the Basic Law). In that case, approval would require a two-thirds majority in both chambers of the German Parliament, which also applies for amendments to the Constitution (Article 23 (1) third sentence and Article 79 (2) of the Basic Law). Furthermore, Article 79 (3) of the Basic Law establishes that certain fundamental values and structures of the Federal Republic, including those laid down in Articles 1 and 20 of the Basic Law (including the democratic principle), are inadmissible ('*Ewigkeitsklausel*' – eternity clause). In addition to the approval of the amendments to the European Electoral Act following the procedure provided for under Article 23 (1) of the Basic Law, the current national legal provisions applicable to European elections would also need to be amended, including at least the European Elections Act (EuWG)<sup>141</sup> and the Federal Elections Act (BWG).<sup>142</sup>

In **Greece**, previous amendments to the European Electoral Act were considered to require legislative approval by the national Parliament in the same way as international treaties.<sup>143</sup> Article 28 of the Greek Constitution<sup>144</sup> however provides for different majorities to ratify international treaties depending on the content of the treaty. Treaties transferring competences to international organisations may be ratified if a majority of three-fifths of the total number of Members of the

<sup>138</sup> Décision du Conseil Constitutionnel, 76-71 DC, 30 September 1976.

<sup>139</sup> See English [translation](#).

<sup>140</sup> See English [translation](#).

<sup>141</sup> See English [translation](#).

<sup>142</sup> See English [translation](#).

<sup>143</sup> See, e.g., [Act n. 4573/2018](#), on the Ratification of Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act on the Election of Members of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/EEC, Euratom of 20 September 1976, 12 November 2018; or [Act 3216/2003](#), on the Ratification of the Council Decision of 25 June 2002 and 23 September 2002 amending the act of electing representatives to the European Parliament by direct universal suffrage annexed to Decision 76/787/EEC, EURATOM, 31 December 2003.

<sup>144</sup> See the English [translation](#).

national Parliament adopt the law ratifying the treaty (Article 28 (2) Greek Constitution), whereas the absolute majority of the total numbers of Members is required for the adoption of a law ratifying a treaty limiting the exercise of national sovereignty (Articles 28 (3) Greek Constitution), and a simple majority is required for the ratification of other international treaties (Article 28 (1) of the Greek Constitution). The procedure to be followed would therefore be different, depending on the content of the potential reform of the European Electoral Act. In addition, the Act on the Election of Members of the European Parliament<sup>145</sup> may also need to be amended, not requiring any special majority, but only a simple majority of the national Parliament, for its modification.

In **Hungary**, previous amendments to the European Electoral Act required the national Assembly's approval by simple majority,<sup>146</sup> as according to Article 1.2.d) of the Hungarian Fundamental Law, such approval is needed to ratify international treaties.<sup>147</sup> The Hungarian Fundamental Law also provides for a specific procedure to be followed to ratify EU Treaties, requiring the approval by a qualified majority of two-thirds of the Members of the National Assembly (Articles E (2) and (4) of the Fundamental Law). However, according to the Hungarian Constitutional Court case law, that specific procedure has to be followed to approve an international treaty 'aimed at modifying or amending the rights and obligations originating from the founding treaties, provided that the treaty is aimed at jointly exercising further competences originating from the Fundamental Law',<sup>148</sup> which has not been considered to be the case in relation to previous modifications of the European Electoral Act. In addition, Act CXIII of 2003 on the election of the members of the European Parliament and Act XXXVI of 2013 on Electoral Procedure (Chapter XVI – Elections of the Members of the European Parliament), both applicable to European elections, would also need to be amended.<sup>149</sup> The amendment of Chapter XVI of Act XXXVI of 2013 only requires approval by a simple majority of Parliament. However, Act CXIII of 2003 is partially considered a cardinal act,<sup>150</sup> thus requiring for its adoption or amendment the votes of two-thirds of the Members of the National Assembly present (Article T (4) of the Fundamental Law of Hungary).

In **Italy**, the approval of amendments that would ensue from a possible reform of the European Electoral Act would require the Italian Parliament's authorisation by law. According to Article 80 of the Italian Constitution, such authorisation is required for international treaties that have a political nature, require arbitration or a legal settlement, entail change of borders, spending or new legislation.<sup>151</sup> The ordinary procedure would be required for the adoption of such a law, thus requiring the text to be scrutinised in each of the two Chambers of the Italian Parliament, by a Committee and then by the plenary, which shall consider it section by section and then put it to the final vote (Article 72 of the Italian Constitution). A referendum would not be admissible (Article 75 of the Italian Constitution). In addition, the current Act providing for the electoral system to be applied in European elections<sup>152</sup> would also need to be amended to adapt the current provisions to a potential reform of the European Electoral Act. Amendments to the Italian Constitution might be needed if any of its provisions, Article 48 (political rights) for example, was affected by the changes introduced in the European Electoral Act. In that case, the procedure provided for under Article 138 of the national Constitution would apply.

<sup>145</sup> [Act n. 4255/14](#), on the Election of Members of the European Parliament and other provisions, 11 April 2004.

<sup>146</sup> See Act LXXI of 2018 approving Council Decision (EU, Euratom) 2018/994 of 13 July 2018.

<sup>147</sup> See the English [translation](#).

<sup>148</sup> See Hungarian Constitutional Court, [Decision 22/2012 \(V. 11.\) AB](#).

<sup>149</sup> See the English [translation](#) of both acts.

<sup>150</sup> See Article 50/A of the Act CXIII of 2003 on the election of the members of the European Parliament referring back to Article 2/A which indicates that the rules relating to the right to vote and stand as candidate are cardinal.

<sup>151</sup> See English [translation](#).

<sup>152</sup> [Legge 24 gennaio 1979, n° 18, Elezione dei membri del Parlamento europeo spettanti all'Italia](#).

In **the Netherlands**, the last modification of the European Electoral Act was submitted to the Dutch Parliament for tacit approval, in accordance with the provisions of Article 2, first paragraph, and Article 5, first paragraph, of the National Act on the approval and publication of treaties (*Rijkswet goedkeuring en bekendmaking verdragen*),<sup>153</sup> after the Council of State had been heard. In accordance with Article 91 of the Dutch Constitution,<sup>154</sup> the National Act on the approval and publication of treaties provides that, if a treaty contains provisions that conflict, or lead to conflict, with the Constitution, the treaty shall be subject to express approval, following the procedure in Article 91 (3) of the Dutch Constitution (approved by the two Houses of Parliament only if at least two-thirds of the votes cast are in favour). Since the Dutch Constitution contains no provisions regarding the election of Members of the European Parliament, this procedure would not seem to apply to modifications of the European Electoral Act. However, while the Dutch Government would have to submit the text to the national Parliament for approval, the approval can be either express or tacit (Article 3 of the National Act on the approval and publication of treaties). Tacit approval is considered granted if, within 30 days after the treaty has been submitted to the national Parliament, neither House of Parliament, nor one fifth of their members, have expressed the desire that the treaty be subject to express approval (Article 5(1) of the National Act on the approval and publication of treaties). If express approval is requested, the approval shall be granted by an Act of Parliament, in accordance with the regular legislative procedure set forth in the Constitution (Article 4 of the National Act on the approval and publication of treaties). In addition, it may be necessary to modify the Dutch Electoral Act (*Kieswet*),<sup>155</sup> which contains provisions regarding the election of Members of the European Parliament. The nature and scope of the modifications of the Dutch Electoral Act required would depend on the exact amendments introduced by the European Electoral Act.

In **Poland**, the approval of amendments to the European Electoral Act would, in principle, require prior consent granted by a statute, as it is understood that Article 89 of the Constitution of the Republic of Poland would apply.<sup>156</sup> According to this article, ratification of an international agreement by the Republic of Poland shall require prior consent granted by statute, if such agreement concerns: 1) peace, alliances, political or military treaties; 2) citizens' freedoms, rights or obligations, as specified in the Constitution; 3) the Republic of Poland's membership of an international organisation; 4) considerable financial responsibilities imposed on the state; 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute. No special majorities are required to adopt such a statute in the *Sejm* (lower Chamber) or in the Senate. In addition, amendments to the European Electoral Act would require changes to the Polish Electoral Code - Act of 5 January 2011 (Dz. U. 2011 Nr 21 poz. 112, Dz. U. z 2020 r. poz. 1319).<sup>157</sup> Amendment of the Electoral Code is based on general provisions regulating the legislative procedure, and therefore requires no special majority in any of the Chambers of the Polish Parliament (Articles 120-122 of the Polish Constitution).

In **Portugal**, the National Assembly shall approve the ratification of amendments to the European Electoral Act. It is understood that they fall within the scope of application of Article 161 i) of the Constitution of the Portuguese Republic, referring to treaties: 'that concern Portugal's participation in international organisations, friendship, peace, defence, the rectification of borders or military affairs, as well as international agreements that address matters in which the Assembly has exclusive competence, or which the Government deems fit to submit to the Assembly for consideration'.<sup>158</sup> In

<sup>153</sup> See [original](#) version.

<sup>154</sup> See English [translation](#).

<sup>155</sup> See [original](#) version.

<sup>156</sup> See English [translation](#).

<sup>157</sup> See [original](#) version.

<sup>158</sup> See English [translation](#).

addition, amendment of the European Electoral Act introducing a European constituency/ies would require modification of the Electoral Law for the European Parliament, approved by Law no. 14/87 of 29 April 1987.<sup>159</sup> In accordance with Articles 164(l) and 166(2)) of the Constitution, the National Assembly has exclusive competence to legislate on European elections and the act shall take the form of an organic law, requiring passage by an absolute majority of Members of the Assembly (Article 168(5) of the Portuguese Constitution). Depending on the scope of the amendments introduced by the future European Electoral Act, a revision of the Portuguese Constitution might also be required, for example, if Article 49 concerning the right to vote is affected. In such a case, the initiative for constitutional revision rests with the Members of the Assembly (Articles 285(1) and 156(a) of the Constitution) and the amendments would need to be approved by a two-thirds majority of the Members of the Assembly in office (Article 286(1) of the Constitution).

In **Romania**, previous amendments to the European Electoral Act were deemed to require Parliament's approval by a law, under the procedure established in Articles 75 and 76 (2) of the Romanian Constitution.<sup>160</sup> According to Article 75 of the Romanian Constitution: 'The Chamber of Deputies, as a first notified Chamber, shall debate and adopt the bills and legislative proposals for the ratification of treaties or other international agreements and the legislative measures deriving from the implementation of such treaties and agreements ...'.<sup>161</sup> The procedure requires both Chambers of the Romanian Parliament (Chamber of Deputies and Senate) to debate and adopt the legislative proposal, which shall be passed by the majority vote of the members present in each Chamber. The Romanian Constitution provides for a specific procedure to ratify amendments to the EU Treaties, requiring approval by a majority of two thirds of the number of deputies and senators in a joint sitting of both Chambers (Article 148 of the Constitution). However, this procedure was not considered to be applicable to previous amendments to the European Electoral Act.

In **Slovakia**, a modification of the European Electoral Act would follow the general rules applicable to the ratification of international treaties. However, the national legislation provides for different procedures to ratify international treaties depending on whether they are considered presidential, governmental, or ministerial treaties (Article 4 of the Rules for the Conclusion of International Agreements).<sup>162</sup> Presidential treaties require the approval of the national Parliament (*Národná Rada*) before ratification by the President, following the procedures provided for under Articles 7 (2-4) and 84 (3-4) of the Slovak Constitution. In this vein, presidential treaties transferring further competences to the European Union require a majority of three-fifths of all members of the national Parliament, whereas the rest only require an absolute majority (Articles 84 (3-4) of the Slovak Constitution). However, the latest amendment of the European Electoral Act, introduced by Council Decision (EU, Euratom) 2018/994, was considered a governmental rather than presidential treaty,<sup>163</sup> and therefore only required governmental approval,<sup>164</sup> as no modification of the legislation applicable to European elections was required. Therefore, the procedure to be followed in Slovakia to approve a potential reform of the European Electoral Act introducing a European constituency/ies and transnational lists would follow different paths, depending on whether it was considered to be a presidential, governmental or ministerial treaty. In addition, such a modification

<sup>159</sup> See [original](#) version.

<sup>160</sup> For example, the latest amendments to the European Electoral Act were approved by *Legea nr. 113/2019 pentru acceptarea Deciziei Consiliului (UE, Euratom) 2018/994, adoptată la Bruxelles la 13 iulie 2018, de modificare a Actului privind alegerea membrilor Parlamentului European prin vot universal direct, anexat la Decizia*.

<sup>161</sup> See English [translation](#).

<sup>162</sup> See [original](#) version.

<sup>163</sup> See proposal for the adoption of Council Decision 2018/994 of 13 July 2018 amending the Act concerning the election of Members of the European Parliament by direct universal suffrage. Procedure number [LP/2018/853](#).

<sup>164</sup> [Resolution on the proposal for the adoption of Council Decision 2018/994 of 13 July 2018 amending the Act concerning the election of Members of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECS, EEC, Euratom of 20 September 1976](#), 20 February 2019, number 66/2019.

would also require the modification of Act No. 180/2014 Coll., on the Conditions of the Right to Vote and, potentially, of Act No. 181/2014 Coll., on Election Campaigns, both applicable to European elections. As these laws are not considered constitutional, they can be amended by the national Parliament by simple majority, i.e. a majority of members present, provided that more than half are present at the sitting. Finally, if the modifications introduced in the European Electoral Act interfere with the Slovak Constitution (e.g. political rights as recognised under Article 30), amendments to the Constitution would be necessary and would have to be adopted by a qualified majority of three-fifths of all members of Parliament (Article 84 Slovakian Constitution).

In **Spain**, previous modifications to the European Electoral Act were considered to require Parliament's approval following the procedure provided for under Article 94 of the Spanish Constitution.<sup>165</sup> The provision requires the approval of the two Chambers of the national Parliament (*Congreso de los Diputados* and Senate), by a simple majority, for the ratification of treaties of: political or military nature; those affecting the territorial integrity of the State or the fundamental rights and duties established under Title I of the Constitution; those implying financial liabilities for the Public Treasury; and those requiring amendment or repeal of a law, or requiring legislative measures for their execution.<sup>166</sup> Although the Spanish Constitution provides for a specific procedure to ratify treaties that transfer competences vested in the Constitution to an international organisation (Article 93 of the Spanish Constitution, requiring the passing of an organic law), that procedure has never been used to ratify amendments to the European Electoral Act. In addition, the modification of Organic Law 5/1985 of 19 June 1985,<sup>167</sup> providing for the rules applicable to European elections, would also be needed, requiring a qualified majority in the Spanish Congress (absolute majority, as indicated under Article 81 of the Spanish Constitution). Finally, it should be noted that, if the amendments introduced in the European Electoral Act affect any provision of the Spanish Constitution – Article 12 (voting age), or Article 23 (political rights), for example – an amendment of the Constitution would also be needed, following the procedures provided for under Articles 167 or 168 of the Spanish Constitution.

In **Sweden**, amendments to the European Electoral Act would require, in principle, *Riksdag* (national Parliament) approval, in the same way as for international treaties. Although the national government is generally competent to represent Sweden internationally, it needs *Riksdag* approval for the ratification of international treaties in certain cases (Chapter 10 of the Instrument of Government).<sup>168</sup> *Riksdag* approval is generally required for international agreements requiring the amendment, abrogation or adoption of a law, or if the agreement otherwise concerns a matter to be decided by the *Riksdag* (Article 3 of Chapter 10 of the Instrument of Government). However, if the international agreement is considered to entail a transfer of decision-making authority to the EU, the specific procedure provided for under Article 6, Chapter 10 of the Instrument of Government is to be followed. The *Riksdag* may approve the agreement by means of a decision supported by a double majority: three fourths of those voting, representing at least half of the *Riksdag's* members. The *Riksdag's* decision may also be taken in accordance with the procedure prescribed for the enactment of a fundamental law. Fundamental laws are enacted by means of two decisions of identical wording with an election to the *Riksdag* in between. In any case, the agreements approved through this procedure cannot affect the basic principles by which Sweden is governed and assume a protection of fundamental rights that corresponds to that afforded by the Swedish Instrument of

<sup>165</sup> For example, Council Decision of 25 June 2002 and 23 September 2002, amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom, was ratified following the procedure provided for under Article 94 of the Spanish Constitution. It was approved by the Spanish Congress on [25 November 2003](#) and by the Spanish Senate on [9 December 2003](#). Procedure: [110/000272](#).

<sup>166</sup> See English [translation](#).

<sup>167</sup> See [original](#) version.

<sup>168</sup> See English [translation](#).



Government and the European Convention on Human Rights. Therefore, the approval of amendments to the European Electoral Act would follow different procedures in Sweden, depending on whether or not they are deemed to entail a transfer of additional competences to the EU. In addition, amendments to the Elections Act (2005:837), regulating European elections, and to the Act concerning Sweden's Accession to the European Union (1994:1500), would also be required.

**c) Member States where the approval of an amendment to the European Electoral Act introducing a European constituency/ies and transnational lists would only require the adoption of a law/amendment to existing laws: Bulgaria, Cyprus, Czechia, Denmark, Estonia, Ireland, Latvia, Lithuania, Luxembourg, Malta and Slovenia.**

Eleven Member States would need, in principle, only to adopt a new law or amend existing legislation regulating European elections in order to approve an amendment to the European Electoral Act introducing a European constituency/ies and transnational lists (**Bulgaria**,<sup>169</sup> **Czechia**,<sup>170</sup> **Cyprus**,<sup>171</sup> **Denmark**,<sup>172</sup> **Estonia**,<sup>173</sup> **Latvia**,<sup>174</sup> **Lithuania**,<sup>175</sup> **Luxembourg**,<sup>176</sup> **Malta**,<sup>177</sup> **Ireland**<sup>178</sup> and **Slovenia**<sup>179</sup>). In most of these cases, the statutes providing the electoral system and procedure to apply in European elections are considered ordinary laws that do not require special majorities in Parliament (e.g. Bulgaria, Cyprus, Denmark, Ireland, Latvia, Lithuania, Malta).

However, in a few Member States, European elections are regulated by special statutes, requiring qualified majorities or special procedures to be approved by the national Parliament (Czechia, Estonia and partially in Slovenia). In Czechia, amendments to the Act on elections to the European Parliament would have to be adopted by the Czech Parliament following the specific procedure set up in Article 40 of the national Constitution,<sup>180</sup> which requires both Chambers of the national Parliament to approve electoral laws (approval of the text with the same wording by both Chambers). This specific legislative procedure differs from the ordinary one, in which the Chamber of Deputies may outvote the Senate opinion (Article 47 of the Czech Constitution). In Estonia, the European Parliament Election Act is considered a constitutional law and its modification therefore requires approval by an absolute majority of the members of the *Riigikogu* (51 of 101 members, § 104 of the Estonian Constitution).<sup>181</sup> Similarly, in Slovenia, the Act on the Election of Members of the European Parliament is an ordinary law, which requires no special majority for its amendment. However, the National Assembly Elections Act also partially applies to European elections and, if

<sup>169</sup> [Electoral Code](#), SG No. 19/5.03.2014, effective 5 March 2014.

<sup>170</sup> Act No 62/2003 Coll, on elections to the European Parliament ([Zákon č. 62/2003 Sb. o volbách do Evropského parlamentu](#)).

<sup>171</sup> [Law on the Election of Members to the European Parliament of 2004](#) (10(I)/2004).

<sup>172</sup> [Danish Members of the European Parliament Elections Act](#), consolidated Act No. 140 of 7 February 2019.

<sup>173</sup> [European Parliament Election Act](#), adopted on 18 December 2002.

<sup>174</sup> [Law on the Elections to the European Parliament](#), adopted on 29 January 2004.

<sup>175</sup> [Law on elections to the European Parliament of the Republic of Lithuania](#), adopted on 20 November 2003.

<sup>176</sup> [Loi électorale du 18 février 2003, Mém. A - 30 du 21 février 2003](#). For an example, see the procedure followed to adapt the Electoral Law to Council Decision (EU, Euratom) 2018/994 (Chambre des députés, [procédure: 7385](#)).

<sup>177</sup> The European Parliaments Election Act ([Chapter 467 of the Laws of Malta](#)) and possibly the General Elections Act ([Chapter 354 of the Laws of Malta](#)) would need to be amended.

<sup>178</sup> The [European Parliament Elections Act 1997](#) (N° 2 of 1997), and probably the national [Electoral Act 1992](#) (N° 23 of 1992), would need to be amended or replaced.

<sup>179</sup> The [Act on the Election of Members of the European Parliament](#), adopted on 25 October 2002, would need to be amended and, depending on the scope of the modifications introduced, the National Assembly Elections Act, the Voting Rights Register Act and the Electoral and Referendum Campaign Act might also need to be amended.

<sup>180</sup> See English [translation](#).

<sup>181</sup> See English [translation](#).

amendment was required, a qualified majority of two thirds of all members of the National Assembly would be required (Article 80 Slovenian Constitution).<sup>182</sup>

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<sup>182</sup> See English [translation](#).



## 6. Conclusions

After taking stock of the 2019 European elections through a resolution adopted on 26 November 2020,<sup>183</sup> the **European Parliament has launched an internal procedure with a view to proposing amendments to the 1976 European Electoral Act.**<sup>184</sup> The European Parliament's resolution of 26 November 2020 clearly indicates Parliament's will to discuss relevant institutional issues in the **upcoming Conference on the future of Europe**. This debate is likely to touch upon the *Spitzenkandidaten* process, rules on the collective responsibility of the Commission, how to transform the Council into a second legislative chamber of the EU, and possible amendments to the 1976 European Electoral Act, which currently sets the rules applicable to European elections.

As regards the possible modification of the rules applicable to European elections, Parliament's resolution of 26 November 2020 also suggests the direction of possible future proposals to modify the 1976 European Electoral Act. Parliament's resolution unequivocally favours greater harmonisation of national electoral rules. It points to specific aspects for discussion in a future proposal to modify the 1976 European Electoral Act. These include remote voting for citizens in specific circumstances, common election admission rules for candidates and common campaign and funding rules, harmonised standards for voting and standing as a candidate, specific provisions for absences of Members of Parliament, and the establishment of a European electoral authority. Parliament's resolution also underlines the need to enhance the European dimension of the elections, transforming them into a single European contest, instead of a collation of 27 separate national contests. In this respect, Parliament takes the view that proposals placing European political parties and movements at the very heart of European elections, such as the creation of transnational electoral lists or an improved *Spitzenkandidaten* process in which all EU voters would be able to vote for their preferred candidate for the presidency of the European Commission, might serve that goal.

Parliament's calls to enhance the European dimension of European elections through the creation of transnational electoral lists and through the *Spitzenkandidaten* process are, however, not new. The European Parliament launched the *Spitzenkandidaten* process ahead of both the 2014 and 2019 European elections, with the major European political families proposing their candidates for the Commission presidency in advance of the European contests. Parliament has also discussed several formal proposals to create a pan-European constituency in which a number of Members of Parliament would be elected, with the first proposal being put forward in the Anastassopoulos Report (1998) and several others proposed in the first two Duff Reports (2011 and 2012) and the Hübner-Leinen Report (2015). However, none of these proposals have ever been adopted and put into practice.

Current discussions on a potential reform of the 1976 European Electoral Act may again focus, among other topics, on the possible creation of a pan-European constituency and transnational electoral lists. Whereas academic **proposals to create a European constituency/ies** are quite diverse, it should be noted that all those **discussed in the European Parliament have shared common features**: a **single pan-European constituency**, comprising the territory of all Member States, would be created to **elect a relatively small number of Members of the European Parliament** (25-46). In addition, a **proportional electoral formula** is proposed (usually D'Hondt), together with **closed electoral lists**. In some cases, proposals discussed in Parliament have suggested using a system aimed at ensuring gender- and geographically balanced representation through imposing certain requirements on lists of candidates submitted for the European

<sup>183</sup> European Parliament resolution of 26 November 2020 on stocktaking of European elections ([2020/2088\(INI\)](#)).

<sup>184</sup> European Parliament, Modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage pursuant to Article 223(1) of the Treaty on the Functioning of the European Union. Rapporteur: Domènec Ruiz Devesa (S&D, Spain), Procedure: [2020/2220\(INL\)](#).

constituency (first two Duff Reports). In the most recent proposal discussed (Hübner-Leinen Report), the European Parliament also linked the *Spitzenkandidaten* process to the possible creation of transnational electoral lists, by suggesting that those lists should be headed by the lead candidates of each European political family.

However, **these are not the only possibilities to create European constituencies and transnational electoral lists**. Instead of creating a single pan-European constituency, comprising the territory of all Member States, the **EU institutions could opt to create several European constituencies**, comprising the territory of different sets of Member States. This idea could be explored if establishing a clearer bond between the Members elected and their constituencies is desired, and if a ballot structure offering a wide range of choices to voters is planned, such as the single transferable vote system of specific open or free lists systems based on voters' capacity to get to know individual candidates and make informed and meaningful choices regarding them.

Parliament has always preferred the option to use a closed list system for the elections in the European constituency/ies, on the understanding that such a system would guarantee a better geographical balance in representation. In this respect, it is understood that voters would prefer to vote for individual candidates of their own nationality when allowed to cast preference votes, electoral behaviour that would benefit candidates from large Member States. However, if geographically balanced representation is desired, a first decision to be taken is whether the residence or the nationality of the candidates would be taken into account. In addition, **different systems may ensure a certain geographical equilibrium**. For example, each list could be required to contain candidates from at least one third or one quarter of EU Member States, thereby ensuring that candidates would come from at least seven to nine different Member States. Another possibility would be to group Member States according to certain features (e.g. their population) and oblige each list to include a specific number of candidates from each of those groups. Similarly, geographically balanced representation could also be attained by distributing the seats allocated to the European constituency/ies among the different Member States ahead of the elections and then allocating them to the candidates of the Member States receiving more votes. This latter system would allow voters to vote for individual candidates, instead of voting for lists. Similar strategies could also be used to ensure gender-balanced representation in the elections within the European constituency/ies.

As regards the **method for allocating the seats** following the elections, it should be noted that Parliament has usually opted for the D'Hondt method, a proportional method that is said to favour larger parties and one that is used by most Member States for European elections. However, other methods used by Member States in European elections could also be explored and applied for the allocation of seats in the European constituency/ies, depending on the outcomes desired. Apart from the single transferable vote system used in Malta and Ireland, some Member States use the Saint-Laguë method, said to be more favourable to small parties. Alternatively, the modified Saint-Laguë method (Sweden) – less proportional than the pure Saint-Laguë system, but still more favourable to small parties than the D'Hondt method and providing a fairer representation of medium-sized parties – could also be used. Other Member States use the Hagenbach-Bischoff, or the Hare-Niemeyer method – considered to be the closest formula to mathematical proportionality if used together with large constituencies. Other Member States combine the Droop or the Hare electoral quotas, with the largest remainder method (considered one of the most favourable systems for smaller lists).

Similarly, the EU institutions would also need to determine **whether an electoral threshold would be applied for the allocation of seats in the European constituency/ies**. This decision may take into account that the last reform of the 1976 European Electoral Act required Member States using a list system for European elections to set a threshold ranging from 2 % to 5 % for the allocation of seats in constituencies which comprise more than 35 seats. In addition, EU institutions would also

need to define a common electoral procedure to apply to the elections in the European constituency/ies and create a European electoral administration authority competent to conduct those elections.

To implement these changes, **several EU acts would need to be amended**. The creation of a European constituency/ies and transnational electoral lists does not seem to require, at least in principle, a modification of the EU Treaties, except if it were decided to extend the maximum number of seats in the European Parliament currently provided for under Article 14 (2) TEU (750 plus the President). However, the changes would require **at least the modification of the 1976 European Electoral Act**, to provide for a uniform electoral system and procedure to be applied in the elections in the European constituency/ies, and the amendment of **Decision (EU) 2018/937 of 28 June 2018**, establishing the current composition of the European Parliament, which would need to provide for the allocation of a number of European Parliament seats to a European constituency/ies.

As amendments to the **1976 European Electoral Act require the approval of all Member States**, in accordance with their respective constitutional requirements, before entering into force (Article 223 (1) TFEU), national approval procedures should also be taken into account if EU institutions wish to introduce transnational electoral lists in time for the 2024 European elections. In this vein, such approval would require constitutional amendment in Austria, and depending on the exact scope of the modifications introduced in the European Electoral Act, in some other Member States as well (e.g. Spain, Portugal or Italy). In 15 Member States, the procedure for the ratification of international treaties would need to be applied to approve the changes introduced in the 1976 European Electoral Act (Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and Sweden). Approval would only require the adoption of a law or amendments to the existing laws regulating European elections in 11 Member States (Bulgaria, Cyprus, Czechia, Denmark, Estonia, Ireland, Latvia, Lithuania, Luxembourg, Malta and Slovenia). Amendments to the laws applicable to European elections would generally be needed in the Member States, with some national legal orders requiring special qualified majorities or procedures for their adoption (e.g. Austria, Belgium, Czechia, Spain, Estonia, Slovenia or Portugal).

## 7. References

### Policy and legislative documents

#### European Parliament (reports and resolutions):

European Parliament, Modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage pursuant to Article 223(1) of the Treaty on the Functioning of the European Union, Rapporteur: Domènec Ruiz Devesa (S&D, Spain), Procedure: [2020/2220\(INL\)](#).

European Parliament resolution of 26 November 2020 on stocktaking of European elections, Rapporteur: Pascal Durand (Renew, France), Procedure: [2020/2088\(INI\)](#).

European Parliament resolution of 7 February 2018 on the composition of the European Parliament. Based on Report of 26 January 2018, on the composition of the European Parliament, Rapporteurs: Danuta Maria Hübner (EPP, Poland) and Pedro Silva Pereira (S&D, Portugal), Procedure: [2017/2054\(INL\)](#) – [2017/0900\(NLE\)](#).

European Parliament resolution of 11 November 2015 on the reform of the electoral law of the European Union. Based on Report of 2 October 2015 on the reform of the electoral law of the European Union (Hübner-Leinen Report), Co-Rapporteurs: Danuta Maria Hübner (EPP, Poland) and Jo Leinen (S&D, Germany), Procedure: [\(2015/2035\(INL\)\)](#).

European Parliament resolution of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014. Based on Report on improving the practical arrangements for the holding of the European elections in 2014, Rapporteur: Andrew Duff (ALDE, United Kingdom), Procedure: [2013/2102\(INI\)](#).

Second Report of 2 February 2012, on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976, not voted in plenary, Rapporteur: Andrew Duff (ALDE, United Kingdom), Procedure: [\(2009/2134\(INI\)\)](#).

Report of 28 April 2011, on a proposal for a modification of the Act concerning the election of the Members of the European Parliament by direct universal suffrage of 20 September 1976, (not voted in plenary), Rapporteur: Andrew Duff (ALDE, United Kingdom), Procedure: [2009/2134\(INL\)](#).

European Parliament resolution of 11 October 2007 on the composition of the European Parliament, Rapporteurs: Alain Lamassoure (PPE-CD, France) and Adrian Severin (PSE, Romania), Procedure: [2007/2169\(INL\)](#).

European Parliament resolution on a draft electoral procedure incorporating common principles for the election of Members of the European Parliament, A4-0212/98, 15 July 1998. Based on [Report of 2 June 1998](#), on a proposal for an electoral procedure incorporating common principles for the election of Members of the European Parliament, Rapporteur: Georgios Anastassopoulos (PPE, Greece), Procedure: [1997/2242\(COS\)](#).

#### Other EU institutions:

European Council, [Laeken Declaration on the future of the European Union](#), Annex I, Presidency Conclusions, Laeken, 14-15 December 2001.

European Commission, Commission President, [State of the Union Address 2018](#), 12 September 2018.

European Commission, Commission President, [State of the Union Address 2017](#), 13 September 2017.

European Commission, European Political Strategy Centre, [Transnational lists: can they deliver on their promise?](#), February 2017.

European Commission, Communication, '[For the European Union Peace, Freedom, Solidarity - Communication from the Commission on the institutional architecture](#)', forwarded to the members of the Convention on the future of Europe, CONTRIB 165, CONV 448/02, 5 December 2002.

Convention on the future of Europe, Duff A., Member, '[A Model Constitution For A Federal Union Of Europe](#)', CONTRIB 82, CONV 234/02, 3 September 2002.

Convention on the future of Europe, Bruton J., Member, '[Proposal to adopt the System of the Proportional Representation with a Single Transferable Vote \(PR-STV\) as the uniform electoral system for elections to the European Parliament](#)', CONTRIB 261, CONV 585/03, 27 February 2003.

#### National authorities:

Visegrad Group countries (Czechia, Hungary, Poland and Slovakia), [Statement on the Future of Europe](#), 26 January 2018.

Varadkar, Leo, Prime Minister (Ireland), Speech at the European Parliament, Strasbourg, 17 January 2018.

Summit of the Southern European Union Countries (Cyprus, France, Greece, Malta, Portugal and Spain), '[Bringing the EU forward in 2018](#)', declaration of 10 January 2018.

Loiseau N. (Minister for European Affairs, France), Gozi S. (Secretary of State for European Affairs, Italy) and Toledo J. (Secretary of State for European Affairs, Spain), Statement on '[Listes transnationales aux élections européennes](#)', 17 November 2017.

#### Reports and academia:

Alonso de León S., 'Crónica de la reforma electoral europea', *Revista de las Cortes Generales*, nº 106, 2019, pp. 229-267.

Alonso de León S., 'Four decades of the European Electoral Act: a look back and a look ahead to an unfulfilled ambition', *European Law Review*, nº 353, 2017, pp. 1-15.

[Europeanising European Public Spheres](#), study for the AFCO committee by Auel K. and Tiemann G., Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.

Bartl M., 'Hayek Upside-down: On the Democratic Effects of Transnational Lists', *German Law Journal* vol. 21 (1), 2020, pp. 57-62.

Becerril Atienza B., 'Tiempos de cambio. análisis de las propuestas planteadas para reformar las instituciones de la Unión Europea en 2019'. *ICE, El futuro de la Unión Europea*, nº 903, 2018.

Bright J., Garzia D., Lacey J. and Trechsel A. H., 'Trans-nationalising Europe's Voting Space'. EUI Working Paper, RSCAS, 2014/02.

Bol D., Harfst Ph., Blais A., Golder S. N., Laslier J.-F., Stephenson L. B., Van der Straeten K., 'Addressing Europe's democratic deficit: An experimental evaluation of the pan-European district proposal', *European Union Politics*, Vol. 17(4), 2016, pp. 525-545.

Bourgoux A-E., Gaudin T. and Pilet J-B., '*La case de tête et son effet dévolutif*', in Bouhon F. and Reuchamps M. (eds), [Les systèmes électoraux de la Belgique](#), Bruxelles, Éditions Larcier, 2018, pp. 465-489.

Clementi F., '[El sistema electoral italiano y su reforma: el desafío de la consolidación](#)', *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 185-206.

Colomer J. (ed.), *Personal representation: the neglected dimension of electoral systems*, ECPRD Press, 2011.

Costa O., [The history of European electoral reform and the Electoral Act 1976: Issues of democratisation and political legitimacy](#), Historical Archives of the European Parliament, European Union History Series, October 2016.

Déloy Y. and Bruter M., *Encyclopedia of European Elections*, Palgrave, Macmillan, 2010.

Donatelli L., 'A Pan-European district for the European elections? The rise and fall of the Duff proposal for the electoral reform of the European Parliament', *Bruges Political Research Paper* 44/2015.

Duff A., 'The European Union makes a new push for democracy', *European Policy Centre*, Discussion Paper, 28 November 2019.

Duff A., 'The Electoral Reform of the European Parliament: composition, procedure and legitimacy', Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015.

Duff A., *La démocratie post-nationale et la réforme du Parlement européen*, Institut Jacques Delors, 2010.

Duff A., *Electoral Reform of the European Parliament*, Brussels: Federal Trust for the European Movement, 1996.

Duverger M., *Les partis politiques*, Paris, Armand Colin, 1951.



Ferrara F. and Weishaupt J. T., 'Get your Act Together', *European Union Politics*, 2004, vol. 5, issue 3, pp. 283-306.

Flickinger R. S. and Studlar D. T., 'One Europe, Many Electorates? Models of Turnout in European Parliament Elections after 2004', *Comparative Political Studies*, vol. 40, num. 4, 2007, pp. 383-404.

[Electoral lists ahead of the elections to the European Parliament from a gender perspective](#), study for the FEMM committee by Freidenvall L., Stahre H. and Sansonetti S., Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2014.

Grard L., 'La Distance entre Bruxelles et ses citoyens, Retour sur le Déficit Démocratique de L'Union Européenne', *Revue Québécoise de Droit International*, Special Issue, November 2018, pp. 181-204.

Habermas J., 'Democracy in Europe: why the development of the EU into a transnational democracy is necessary and how it is possible', *European Law Journal*, vol. 21, num. 4, 2015, pp. 546--557.

Herron E., Pekkanen R. J., and Shugart M. S. (eds.), [The Oxford Handbook of Electoral Systems](#), Oxford University Press, 2018.

Heermann M. and Leuffen D., 'No Representation without Integration! Why Differentiated Integration Challenges the Composition of the European Parliament', *Journal of Common Market Studies*, volume 58, num. 4, 2020, pp. 1016-1033.

Hix S. and Hagemann S., 'Could changing the electoral rules fix European Parliament elections?', *Politique européenne*, 2009, Vol. 28, pp. 37-53.

Hix S. and Marsh M., 'Punishment or protest? Understanding European parliament elections', *The Journal of Politics*, vol. 69, issue 2, 2007, pp. 495-510.

Hrbek R., 'The Arduous Way Towards a Uniform Electoral System for the European Parliament', in Costa O., *The European Parliament in Times of EU Crisis. Dynamics and Transformations*, Palgrave Macmillan, 2018, pp. 255-274.

Jacobs F. B., *The EU after Brexit : institutional and policy implications*, Palgrave: Macmillan, 2018.

Jouvenat P., 'Transnational Lists: a False Good Idea', *The federalist debate*, n° 2, July 2018.

Jouvenat P., ['Fédéraliser les partis politiques d'Europe. Note de réflexion. Février 2016'](#), Union des Fédéralistes européens, 2016.

Kelbel C., 'Les résultats des élections européennes de Mai 2019 dans les États Membres', *Courrier hebdomadaire du CRISP*, 2019/26, n° 2431-2432, pp. 5-102.

Kritzinger S., Plescia C., Raube K., Wilhelm J., and Wouters J., *Assessing the 2019 European Parliament Elections*, Taylor & Francis, 2020.

Lehmann W., 'Electoral representation at the European level and its institutional design: a reappraisal of recent reform plans', *EUI Working Papers*, RCAS 2011/23.

Legnante G. and Regalia M., 'Gender quotas in the 2019 European elections: insights from the Italian case', *Contemporary Italian Politics*, 2020, vol. 12, num. 3, pp. 350-365.

Lijphart A., *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990*, Oxford: Oxford University Press, 1994.

Marsh M., 'Testing the second-order election model after four European elections', *British Journal of Political Science*, vol. 28, issue 4, pp. 591-607.

Nieminen L., *Transnational Lists. An opportunity for the future?*, Umeå Universitet, 2019.

Nohlen D., ['La reforma del sistema electoral alemán y el Tribunal Constitucional Federal'](#), *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 139-161.

Nohlen D. and Stöver Ph. (eds.), *Elections in Europe. A data handbook*, Nomos, Baden-Baden, 2010.

Nohlen D., *Sistemas electorales y partidos políticos*, Fondo de Cultura Económica, México, 1994.

Oelbermann K. F. and Pukelsheim F., [The European elections of May 2019. Electoral systems and outcomes](#), Study, European Parliamentary Research Service, European Parliament, 2020.

Passarelli G., 'Sistema de votacion preferencial. Efectos en la competencia interna de los partidos y en el comportamiento electoral', *Teoría y Realidad Constitucional*, vol. 45, 2020, pp. 207-231.

- Prpic M., Sabbati G. and Chahri S., [Women in Parliaments](#), European Parliamentary Research Service, February 2020.
- Pukelsheim F., *Proportional Representation: Apportionment methods and their applications*, Springer International Publishing AG, 2018.
- Pukelsheim F., 'Compositional Proportionality among European Political Parties at European Parliament Elections', *Central European Political Studies Review*, vol. XX, 2018, pp. 1-15.
- Reif K. and Schmitt H., 'Nine Second-Order National Elections – A Conceptual Framework for the Analysis of European Election Results', *European Journal of Political Research*, vol. 8, issue 1, 1980, pp. 3-44.
- ['Which electoral procedures seem appropriate for a multi-level polity?'](#), note by Ritchie K. for a workshop of the Constitutional Affairs Committee, Policy Department for Citizen's Rights and Constitutional Affairs, European Parliament, 2008.
- Sartori G., *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*, New York University Press, 1997 (second edition).
- Schleicher D., 'What if Europe held an election and no one cared?', *Harvard International Law Journal*, num. 52, 2011, pp. 109-162.
- Stojanovic N. and Bonotti M., 'Political parties in deeply multilingual polities: institutional conditions and lessons for the EU', *Journal of Common Market Studies*, vol. 58, num. 3, 2020, pp. 599-615.
- van der Eijk C., and Franklin M., *Choosing Europe? The European Electorate and National Politics in the Face of Union*, University of Michigan Press, Ann Arbor, 1996.
- van Hecke St. (dir.), 'Reconnecting European Political Parties with European Union Citizens', *International IDEA Discussion Paper*, 6/2018.
- Van Parijs P., 'Should the European Union Become More Democratic?', in Føllesdal A. and Koslowski P. (eds), *Democracy and the European Union*, Berlin: Springer, 1998, pp. 208-301.
- Verger C., 'Transnational lists: a political opportunity for Europe with obstacles to overcome', *Notre Europe*, *Institute Jacques Delors*, Policy Paper n°. 216, 7 February 2018.
- Viola D. M., *Routledge Handbook of European Elections*, Taylor & Francis Group, 2018.



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Aiming to feed into the forthcoming Conference on the Future of Europe and debate in the European Parliament on possible reforms of the 1976 European Electoral Act, this paper from the European Parliamentary Research Service analyses the main proposals to create a European constituency (or constituencies), in which Members of the European Parliament would be elected from transnational electoral lists. Such proposals have been discussed over the years in the European Parliament itself, as well as in other European and national institutions and academia. Following a review of these proposals, the paper then details the legal changes that would be needed at European and national levels to bring the idea to fruition.

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