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## ► To cite this version:

Olivier Costa. Can the Conference on the Future of Europe unlock the EU elections reform? Reflections on transnational lists and the lead-candidate system. *European Law Journal*, 2021, 10.1111/eulj.12411. halshs-03498328

**HAL Id: halshs-03498328**

**<https://shs.hal.science/halshs-03498328v1>**

Submitted on 21 Dec 2021

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# **Can the Conference on the Future of Europe unlock the reform EU elections? Reflexions on transnational lists and the lead-candidate system**

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*European Law Journal* (Wiley), 2021, p. 1-12

doi:10.1111/eulj.12411

## **ABSTRACT**

Despite the constant “parliamentarization” of the European Union, the supranational dimension of European elections remains limited. Forty five years after its first election, the European Parliament (EP) still suffers from two main problems: (i) its democratic representativeness is impaired by the diversity of national electoral rules and by the predominantly national dimension of electoral campaigns; (ii) the impact of European elections on the appointment of the Commission remains uncertain, as the so-called lead-candidates (*Spitzenkandidaten*) procedure is only informal. Today, MEPs are promoting a double strategy to fix these issues. They have decided to relaunch the reform process of the 1976 Act, notably regarding the creation of transnational lists and the formalisation of the lead-candidate procedure, and they encourage the Conference on the Future of Europe to consider these issues. In sum, as they expect their new proposals to be once again challenged in the EP and the Council, MEPs count on the Conference to create a political momentum around these topics with a view to fostering an ambitious reform.

## **1. INTRODUCTION**

The progressive transformation of the European Union (EU) in a political system, grounded on a logic of ‘democratic representation’ (Article 10 TEU), is to a large extent the result of the decision, taken in 1976, to directly elect the European Parliament (EP). This has triggered a process of politicisation and parliamentarization that has constantly developed, thanks to the many treaty changes, the constant initiatives of the members of the EP (MEPs), and the growing

importance devoted to European issues at national level. However, the supranational dimension of European elections remains limited and their impact uncertain – especially regarding the choice of the President of the Commission. Thus, the rules relating to EU elections remain a topic of discussion and potential reform for the EP – which enjoys the right of initiative in this matter – and for all the actors who are interested in EU constitutional issues. It will certainly be addressed as well by the Conference on the Future of Europe (CoFoE).

The reflections on this topic need to take into account the very long history of the EP's accession to direct elections for the first time in 1979, as well as the constant efforts deployed since then by MEPs in order to improve their organisation and maximise their impact. The direct election of a supranational assembly remains a uniquely European political feature – since the project of electing directly the Parliament of the Mercosur did not really succeed.<sup>1</sup> It is not only a matter of procedure: at medium term, the 1976 Act contributed massively to the deepening of European integration, the politicisation of the EU policy-making, the transformation of the EU regime in general and the acknowledgment of a European citizenship. European elections are still today the most visible event in EU political life, and constitute a central and growing means of legitimation not only for the EP, but also for the Commission, since MEPs now “elect” its President and then approve the College.

However, forty five years later, the EP still suffers from two main issues linked to the modalities of its election. First, its democratic representativeness is impaired by the diversity of national electoral rules and by the predominantly national dimension of electoral campaigns. Second, the impact of European elections on the appointment of the Commission, and especially the choice of its President, remains uncertain, as the so-called *Spitzenkandidaten* (lead-candidates) procedure is only informal. Solutions exist and have been discussed for years in the EP. For instance, the Hübner and Leinen report adopted in November 2015 suggested a full list of reforms that would have given a stronger European dimension to the direct elections and further institutionalised the *Spitzenkandidaten* approach.<sup>2</sup> The election of some MEPs on

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<sup>1</sup> C. Dri, *La construction du parlement du Mercosur: Régionalisme et démocratie en Amérique du Sud*, (Primento, 2014).

<sup>2</sup> D. Hübner and J. Leinen, *Draft report on a proposal for amendment of the Act of 20 September 1976 concerning the election of the Members of the European Parliament by direct universal suffrage*, 2015/2035. See also the ‘In-depth analysis’ provided by the European Added Value Unit, European Parliamentary Research Service, September 2015 – PE 558.775.

transnational lists would be an even stronger improvement. However, these ideas are opposed by some in the EP as well as in the Council.

Today, MEPs are promoting a double strategy. On the one hand, they have decided to relaunch the reform process of the 1976 Act, without waiting for the entry into force of the previous one, adopted by the Council in 2018 but still not ratified by three Member States. Second, they encourage the CoFoE to consider the issue of transnational lists and lead-candidate, and to propose an ambitious and coherent reform on this respect. In sum: as they expect their new proposals to be once again challenged in the Council, they count on the Conference to support them and create a political momentum.

The key players within the parliamentary committee on constitutional affairs (AFCO) propose a federal approach to the reform. They thus expect the CoFoE to address the reform of EU elections as part of a global reflection on the nature of the EU political system, rather than as a mere set of independent technical and legal adaptations. Considering the very central role the EU plays today in citizens' lives, the existing ambitions to develop a EU strategy of "power" at global level, they consider that the EU deserves a reform of that kind. One that would give European elections a clear role in the functioning of the EU and clarify the nature of the relations between EU institutions.

In this article, we will first assess the constant efforts made by the EP since 1979 in order to harmonise electoral rules for European elections and fight against their nationalisation. This will allow us to better understand the pivotal importance of the CoFoE and the main issues to be addressed in this framework.

## **2. THE LONG ROAD TO IMPROVE EUROPEAN ELECTIONS**

The CoFoE is just but one more step in the EP's quest to foster European integration through politics and strengthen the EU's democratic credentials. As such, to understand the role and stakes of the CoFoE regarding the reform of the European electoral system requires first and foremost to adopt a longitudinal perspective on the EP's strategy in this regard. Three main waves of attempted reforms can be identified, intertwining EP reports and treaty changes.

## ***2.1. From the first direct elections to the mainstreaming of proportional representation***

The members of the Parliamentary assembly of the EEC have started to work on the prospect of direct elections as soon as 1960. Their efforts have led to the adoption of the Act on European elections in 1976,<sup>3</sup> and to the organisation of the first elections in 1979.<sup>4</sup> After that first major step, MEPs have followed two objectives. On the one hand, they have tried to increase their influence on EC policy-making and obtained a formal modification of the treaties regarding the status and competences of their assembly. On the other hand, they have developed initiatives to deepen European integration. For these purposes, they have used a double strategy of “small steps”, in day-to-day interinstitutional relations (through the development of informal practices and the negotiation of interinstitutional agreements), and of constitutional change (calling for the adoption of a new treaty or for major reforms). Those two objectives and two strategies have encountered interferences, and rendered EP positions somewhat ambiguous. Nevertheless, MEPs have succeeded in imposing practical and legal changes, so as to increase their own competences and support the deepening of European integration.

Following the strategy announced by the Dehousse (1953), Vedel (1972) and Patjin (1975) reports,<sup>5</sup> MEPs considered that direct election was the priority, and that the introduction of a uniform electoral procedure could be a second step. The electoral rules were mostly left to national law, and there were few incentives for Member States to work on a common approach. After 1979, the promoters of the mainstreaming of the electoral system have mainly focused on the issue of proportionality but, for a long period of time, British authorities vetoed the reform.

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<sup>3</sup> Annexed to Council decision 76/787/EEC, Euratom, *Official Journal of the European Communities*, vol. 19, n. L 278, 8 October 1976, pp. 1-11.

<sup>4</sup> O. Costa, ‘The history of European electoral reform and the Electoral Act 1976: Issues of democratization and political legitimacy’, Study, European Parliamentary Research Service, European Parliament History Series (PE 563.516), Luxembourg, October 2016

[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU%282016%29563516](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU%282016%29563516).

<sup>5</sup> Ad hoc Assembly, Constitutional Committee, ‘Report on the working programme of the Constitutional Committee’, Rapporteur: Fernand Dehousse, Historical Archives of the European Parliament (HAEP) archives (AH AA RH/CCON.1952 AH-X002/52 0080) ; ‘Report of the Working Party on the Enlargement of the Powers of the European Parliament’ (Vedel Report), *European Communities Bulletin*, Supplement 4/72, March 1972; Parlement européen, Commission politique, ‘Rapport fait au nom de la commission politique relatif à l'adoption d'un projet de convention instituant l'élection des membres du Parlement européen au suffrage universel direct’, Rapporteur: S. Patijn, 13.1.1975, HAEP (PE0 AP RP/POLI.1961 A0-0368/74 0010).

In 1992, the Maastricht Treaty granted the EP the right to give assent to Council decisions pertaining to uniform electoral procedure. It also institutionalised the concept of European citizenship and, as part of it, gave citizens the right to be candidate and to vote anywhere within the EU for European and local elections. The new treaty also increased substantially the competences of the EP, and thus the relevance of EU elections.

Taking advantage of the easier approach of “common principles” proposed by the Amsterdam Treaty, the EP adopted in 1998 the Anastassopoulos Report<sup>6</sup> proposing common principles for European elections. It also suggested for the first time the idea of electing 10% of the MEPs on transnational lists, in order to increase the political salience of the event, to support the emergence of European political parties and to fight against the focalisation of electoral campaigns on national issues. Citizens would get two ballots to cast: one linked to their national or regional constituency, and the other to the European one.

This report led to a first reform of the 1976 Act in June 2002.<sup>7</sup> The Council rejected the idea of transnational lists, but agreed on the generalisation of proportional representation, abolished the “dual” mandate – i.e. the possibility for MEPs to be at the same time members of a national parliament – and agreed on various other aspects. In parallel, the multiple treaty reforms have strongly reinforced the EP’s competences and the impact of European elections. These changes – especially the ones provided by the Treaty of Lisbon – have given a new dimension to the principle of parliamentary representation at EU level.

## ***2.2. The post-Lisbon initiatives***

MEPs have tried to take advantage of the Lisbon Treaty to reactivate the idea of a reform of electoral rules. On the 21st of July 2009, the EP Committee on Constitutional Affairs (AFCO) tasked MEP Andrew Duff with drafting a new report.<sup>8</sup> In his work, he called again on Member States for a treaty revision in order to create a pan-European constituency to elect part of the MEPs. Duff’s objective was to favour a truly European campaign, to fight the monopoly of

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<sup>6</sup> Adopted on 15 July 1998, OJ C 292, 21.9.1998

<sup>7</sup> Council decision 2002/772/EC.

<sup>8</sup> A. Duff, ‘Report 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,’ 28 April 2011 (2009/2134(INI))

national parties over European elections, and to give a greater role to their European counterparts.<sup>9</sup>

Resistance came from the inside, and the EP was unable to find a common ground on the issue. The AFCO Committee thus withdrew the report, that appeared too federalist for some MEPs. This showed that, even in the 2010s (and 2020s, as we will see), the reform of electoral rules remained a very sensitive issue, connected to fundamental questions, such as the existence, or not, of a European people, the true nature of the EU political system, and the definition of its regime. For MEPs who consider the EU as a kind of “super-international organisation”, to be ruled by intergovernmental bodies, there is no need for a pan-European constituency; it is even nonsensical. They also consider that the EP does not need to be more representative or more political, and that it should remain an institution focusing on scrutiny and control.

A third version of the Duff Report was finally adopted by a large majority of MEPs on 4 July 2013.<sup>10</sup> However, it no longer included the idea of a pan-European constituency, and mainly addressed the practical details of the upcoming European elections (May 2014). The main innovation of the report was an encouragement to European parties to nominate their candidate for the presidency of the Commission, which finally led to the *Spitzenkandidaten* (lead-candidates) procedure in 2014 and, to some extent, in 2019.

After the May 2014 elections, Danuta Hübner and Jo Leinen authored a draft report<sup>11</sup> proposing various ideas to stimulate citizen participation and underline the transnational dimension of the vote. The resolution included no less than 26 proposals, requesting various kinds of action (regulatory, legislative, constitutional, informal...) from different actors (Member States, EU institutions, European and national political parties, media...) and with several time horizons. Since it did not include the most controversial proposal, i.e. the creation of a transnational constituency, it was voted by the plenary in November 2015.<sup>12</sup> In parallel, the

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<sup>9</sup> See also: A. Duff, F. Pukelsheim, K.F. Oelbermann, ‘The Electoral Reform of the European Parliament: composition, procedure and legitimacy’, Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs.

<sup>10</sup> Resolution of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014, P7\_TA(2013)0323.

<sup>11</sup> D. Hübner and J. Leinen, *op. cit.*

<sup>12</sup> European Parliament, ‘Resolution on the reform of the electoral law of the European Union’, 11 November 2015 (2015/2035(INL), P8\_TA-PROV(2015)0395.

EP took an initiative to allocate the seats that were to be freed with Brexit.<sup>13</sup> The report was approved by the plenary on 7 February 2018,<sup>14</sup> but the AFCO proposal on transnational lists, that was discussed the same day, was voted down by 368 to 274 voices, mainly because the EPP Group (European People's Party), opposed the idea for both political and strategic reasons. The Council finally adopted the proposal regarding the reform of the 1976 Act and the one concerning the composition of the assembly after Brexit in April and June 2018.<sup>15</sup> However, the ratification of the first text proved more difficult than expected, and by the beginning of 2019, a couple of Member States had failed to do so. The campaign and the EU elections were therefore conducted in the same way as in 2014.

The European elections of 2019, despite the absence of change, have been quite successful. The participation rate increased by 8% overall (EU28), at 50.66%, compared to 42.61% in 2014. Also, contrary to what was feared or expected by some, the Eurosceptics did not amplified substantially their representation within the EP.<sup>16</sup>

### ***2.3. The post-2019 elections initiatives***

Immediately after the 2019 elections, MEPs started again to brainstorm on possible adaptations of the 1976 Act. The AFCO Committee prepared a report to make an assessment of the recent elections and discussed again the opportunity of transnational lists. However, this idea was, once more, rejected by the plenary session on the 24th November 2020 – because of the persistent opposition of the EPP. The EP has nevertheless adopted a resolution on the 26th November 2020 by a very large majority to comment on the 2019 elections and called for new adaptations.<sup>17</sup> In this text, the EP highlights the persistent disparities among Member States in the way elections are organised, the failure of the *Spitzenkandidaten* process, the underrepresentation of minorities, and the difficult access of some citizens to the elections.

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13 D. Hübner and P. Silva Pereira, 'Recommandation sur le projet de décision du Conseil européen fixant la composition du Parlement européen', A8-0207/2018, 11 June 2018.

14 Resolution of 7 February 2018 on the composition of the European Parliament, OJ C 463, 21.12.2018, p. 83.

15 Decision of the Council about the composition of the EP, 2017/0900 (NLE) and 2013/0900 (NLE), 19 June 2018.

16 N. Brack et O. Costa, 'Les élections européennes de mai 2019 : résultats et perspectives', *Revue du droit de l'Union européenne*, n° 637, avril 2020, p. 211-219.

17 Resolution of 26 November 2020 on stocktaking of European elections, P9\_TA(2020)0327.



In this resolution, MEPs call once more for an enhancement of the European dimension of the elections, and insist that all voters should be allowed to vote for their preferred candidate for Commission President. They consider that several reforms should be adopted in view of the 2024 elections, such as remote voting in specific circumstances, the lowering of the minimum voting age to 16, campaigning and funding rules, and the establishment of a European Electoral Authority. They believe that the CoFoE could examine these topics, as well as the possibility of transnational lists, the establishment of collective responsibility for the Commission, and the transformation of the Council into a second EU legislative chamber.

To some extent, with this resolution, the EP seems to share the strategy of the European Council in 2001 and again in 2020, that tried to overcome its own blockages by deferring the brainstorming on the institutional reform to the Convention on the Future of Europe and to the CoFoE. However, the EP strategy has evolved. Since the CoFoE was delayed because of the COVID-19 crisis (it was to begin its work on 9<sup>th</sup> May 2020, and did so only one year later) and since it was called to wrap-up its deliberations in less than a year, the AFCO Committee has decided to take new initiatives. The EP's priority is indeed to reform the Electoral Act before the 2024 elections, an objective that was backed by the President of the Commission Ursula von der Leyen in her first speech in front of the EP. Moreover, within the AFCO Committee, there is a majority advocating for an ambitious reform.

By the beginning of 2021, two new reports were launched, one addressing the status of European Political parties (co-rapporteurs: Charles Goerens and Rainer Wieland) and the other tackling the reform of the electoral Act (rapporteur: Domenec Ruiz Devesa). The objective is, in both cases, to propose major reforms, including the most sensitive issues – like transnational lists and lead-candidates. Although the first report is due to be adopted by the European Parliament during the plenary session of 10-11 November 2021, as for the second report, the AFCO Committee postponed the decision on the deadline for tabling amendments not only to allow the shadow rapporteurs to study the proposal in detail but also to permit the inclusion of the relevant recommendations adopted by the Conference on the future of Europe.

The Ruiz Devesa draft report, published in July 2021<sup>18</sup> is grounded on a truly federal vision of the European political system. It openly aims at ‘shaping in a concrete way a European public sphere’ (draft resolution, Article 1). Overall, its objectives are fully in line with the previous EP reports on the topic: to reinforce the “European” dimension of the elections, to give a more central role to European parties, to harmonise further electoral rules, and to promote gender equality. It also addresses extensively the question of the selection of candidates, and calls European and national political parties and movements to adopt ‘democratic, informed and transparent procedures’ for that purpose, in order to ensure the involvement of citizens in the process.

The report addresses a very large set of aspects of the EU elections, as well as specific issues such as accessibility, postal voting, the electoral roll, election day, the selection of candidates by parties, gender parity, the role of European parties, and the creation of a European Electoral Authority. The report also devotes much attention to the most controversial issues: the formalisation of the “lead-candidate procedure” and the creation of a pan-European constituency to elect part of the MEPs.

On the first point, the draft resolution considers that EU voters should be allowed to indicate their preferred candidate for the President of the Commission at the occasion of European elections. Moreover, leading candidates should be able to stand in all Member States. The report also calls for binding democratic procedures and transparency in the selection of the lead-candidates. The resolution is very precise about the way European political parties and parliamentary groups should agree on a common indication about the President of the Commission to the European Council, and calls for an Inter-Institutional Agreement between the EP and the European Council on the procedure. Moreover, the resolution requests the conclusion of a formal ‘legislature agreement’ in order to secure a majority within the EP ahead of the appointment of the Commission.

The Union-wide constituency is also described in detail (24 paragraphs). According to the proposal, 46 MEPs would be elected at EU level, on lists presented by ‘European electoral entities’ – that could be a European political party, a European political movement, a European

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<sup>18</sup> Draft Report by D. Ruiz Devesa (AFCO Committee) on the reform of the electoral law of the European Union (2020/2220(INL)), 1.07.2021.

electoral coalition, or a European coalition of national parties and/or national political movements. The presentation of a list would be submitted to precise and restrictive conditions. The draft also proposes complex rules to guarantee national diversity among the first candidates of each list, including a system of five groups of Member States, and provisions regarding the order of candidates, depending on their nationality, as well as gender parity. The draft regulation foresees that the electoral campaign for the Union-wide constituency would be exclusively financed from the general budget of the EU. An amount of 0,50 € would be allocated to the lists for each vote obtained by the Union-wide constituency in the previous election to the EP, for electoral entities that have obtained at least one seat in the election – which would give a substantial advantage to the existing political families on any ‘electoral entity’ trying to create a new list. A new European Electoral Authority would supervise the many aspects of EU elections and, more specifically, conduct and monitor the electoral process of the Union-wide constituency. It would be an independent body, composed of Academics appointed by the member States.

The Ruiz Devesa report goes far beyond the previous EP reports on the topic of electoral reform. It is quite unsure that it will be voted by the EP; indeed, the EPP group has always been reluctant to the idea of transnational lists and the Liberals (Renew group) to the lead-candidate system. It also seems unlikely that the Council would be able to approve it, as in the past it has systematically rejected the idea of transnational lists.

However, the objective of the report is probably less to obtain immediately a legal change on these topics than to foster a larger political debate around them, especially in the context of the CoFoE. The EP has, indeed, always been very good at setting the scene for the European debate on institutional issues.<sup>19</sup> Even on topics for which it had no right of initiative or decision, such as the overall EU institutional design, the EP has taken many initiatives to nourish the discussions. This process started with the draft Treaty on European Union, adopted in February 1984 (Spinelli report). It continued with all the reports voted through the years on constitutional issues, especially when a treaty negotiation was going on. The logic is always the same: the EP launches ideas in the EU public space – or at least in the Brussels’ microcosm – and constrains other actors (the Commission, the Member States, the European Council, civil

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<sup>19</sup> R. Corbett, *The European Parliament's role in closer EU integration* (Springer, 1998).

society organisations, academics...) to comment on them. Even if these ideas are criticised or rejected, they are part of any potential discussion on European institutional / constitutional issues. It is very difficult to establish empirically the impact of EP's proposals and ideas on the final outcome of intergovernmental negotiations, but it appears that nearly all the proposals contained in the Spinelli report have been integrated in the treaties over the years.

Historically, the EP has developed two different strategies to promote its vision regarding the EU political system. The first one is to propose reasonable reforms, that can find a large consensus within the Assembly, and that can convince the Council. This was the case in 2015, with the Leinen and Hübner report, that proposed only a set of limited adaptations. The second one is to propose massive reforms, that have little chance to be adopted by the MEPs and by the Council, but that can fuel the debate on the EU as a political system. With the Ruiz Devesa report, the EP is trying to repeat the strategy developed in the frame of the Convention on the Future of Europe (2002-2003), by defining the main focus points of the debate, launching multiple proposals on every important topic, and saturating the public space with its concepts and ideas.<sup>20</sup> In the context of the CoFoE, such an approach sounds meaningful, as it will be virtually impossible for the actors of the Conference (contributors to the online platform, citizens of the panels, members of the plenary) to avoid the topics of the Union-wide lists and lead-candidates if they intend to address the question of democratic representation at EU level.

### **3. THE CoFoE: A CORNERSTONE IN STRENGTHENING EUROPEAN DEMOCRACY?**

The alignment between the EP's and CoFoE's objective to strengthen European democracy and legitimacy makes the latter the perfect agora to give a new impetus to key reforms of the European electoral system. In this regard, two central underlying issues stand out: participation and readability, and two pivotal reforms ought to be debated: transnational lists and lead-candidate system.

#### ***3.1. Participation and readability: two central issues for the CoFoE***

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<sup>20</sup> O. Costa, 'La contribution de la composante 'Parlement européen' à la Convention européenne', 2004 (13) *Politique européenne*, 21-41.

Since its last major success in 2002, the EP is stuck on the reform of the 1976 Act. It is still unclear if the Ruiz Devesa report will find a majority in plenary; until now, the main political groups have had strategic views on the issue and were driven by an endless process of retaliation for decisions that happened decades ago. And even when they manage to find an agreement, which is the lowest common denominator and excludes the most ambitious proposals, they are confronted to the internal divisions of the Council or the inability of some Member States to ratify an agreement.

But, as previously mentioned, even if the Ruiz Devesa report is quite unlikely to convince the Council, its main purpose is to foster a public debate on key topics, especially within the CoFoE. This seems to be a good strategy, as the question of the electoral reform, and its connections with the institutional system, is a very complex one. The capacity of the CoFoE to address efficiently those issues will depend much on the way it will be steered, the technical support it will enjoy and the content of the contributions to the web platform. MEPs count on the CoFoE to support their new initiatives and to create a large public debate around them. This seems necessary to overcome the resistances, both within the EP and the Council.

Concretely speaking, several issues should be examined by the CoFoE. The first one is participation. As said, it was over 50% in 2019, which is pretty good if we consider the relatively low media coverage of the campaign, the limited involvement of most national parties, and citizens' low level of awareness of the EP. As post-functionalists have theorised it,<sup>21</sup> EU affairs have become a central topic in national politics, one that is restructuring the classic partisan cleavages. This situation pushes political leaders to pay attention to European issues and to take more seriously their involvement in EU negotiations within the Council and European Council. This evolution has increased the relevance of EU elections. Moreover, with the lead-candidates procedure, European elections have a more obvious impact on the functioning of the EU, and even possibly on the choice of the President of the Commission and on his or her programme. We should also remind that participation in legislative elections is constantly declining in most Member States since the end of the 1990s. By way of comparison, EU elections are doing well in several countries. In 2019, they have attracted more participation than the last legislative elections in Romania (+13,4%), France, Belgium, Lithuania, and

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<sup>21</sup> L. Hooghe and G. Marks. 'A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus' (2009) 39(1) *British journal of political science*, 1.

Greece. However, the difference remains in favour of national elections in most other Member States, especially in the Netherlands (40%), Slovakia and the Czech Republic.

It is thus still possible to improve participation in EU elections. As mentioned by the Durand report, several categories of the population are not involved enough. The EP is also not sufficiently representative if we consider gender and visible minorities. There are two more specific issues. First, citizens are not really aware of the challenges EU elections face: only 8% of them have declared that their vote was determined by the lead-candidate issue (Durand report). Second, nearly 30 years after the institutionalisation of European citizenship, it remains difficult for the 17 millions Europeans who are living in a member state other than their own to participate in European elections.

A second major challenge is the readability of European elections and of their role in the functioning of the EU political regime. At first, they were a mainly symbolic event, and citizens got mobilised as a matter of curiosity. After the EP was granted with some legislative competences (Single European Act, 1987), European elections became more substantial. The Treaty of Maastricht (1993) changed their logic again, by establishing a link between European elections and the appointment of the Commission: since 1994, the new college of Commissioners is appointed just after each European election, for 5 years like the EP, and the EP has to approve formally its composition. The treaty of Nice has increased that role, by instituting a two-step process of approval (President and then College), and by expanding the capacity of the EP to control the Commission. This evolution has been confirmed by the Treaty of Lisbon: it states that the European Council should take into account the results of EU elections to choose the President, and that the EP should “elect” that person, before voting on the whole College. It also affirms that the EU political system is based on the principle of ‘democratic representation’ (Article 10 TEU). This has led to the development, in the margin of the treaties and based on audacious interpretations of the treaty, of the *Spitzenkandidaten* procedure in 2014 and, to some extent, in 2019.

In sum: any reform of the 1976 electoral act would need to consider more generally the EU political regime. It should especially clarify the status and nature of the Commission and of its relationship to the EP, and bring clear answers to the following questions: is the Commission a government? Should it be politically linked to the EP? In such a case, how to conciliate that

link with its relationship with the European Council? Do we need a clear coalition in the EP, as suggested by the Ruiz Devesa report? If the EU moves towards a parliamentary regime, should it include provisions for a potential dissolution of the EP and anticipated elections, as a mean to overcome a political crisis? Should the Council be considered as a high chamber, and work like a real legislative organ – which is not the case currently?

Thus, the CoFoE should not only address the issue of the readability of the EU elections, but of the whole EU political system – as proposed by the Ruiz Devesa report. Overall, the ambition is to organise European elections as a competition led by European parties, each of them proposing a clear programme, promoted by their candidates in the Member States and at transnational level, and by their runner for the Presidency of the Commission. The election would be followed by the negotiation of a clear coalition agreement, to support a candidate to the Presidency of the Commission and to give him or her the necessary majority to conduct reforms.

Things have already evolved in that direction in 2014 and 2019. European issues have been given greater prominence in the campaigns, particularly in the debates between the lead-candidates of the main European parties. Also, for the first time in 2019, a candidate from a genuinely European party (Volt) proposing the same programme across the EU was elected.<sup>22</sup> The EP has the legal and political capacity to initiate a certain number of minor reforms in order to render European elections more readable for citizens. However, the support of the CoFoE would be needed in order to convince the European Council and the Council to accept more ambitious reforms, such as the creation of transnational lists and the formalisation of the lead-candidate system.<sup>23</sup>

### ***3.2. Transnational lists and lead-candidate system: two essential reforms***

#### ***3.2.1. Transnational lists***

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<sup>22</sup> M. Banks, 'Pan-EU party Volt Europa launches European election campaign', *The Parliament Magazine*, 8 May 2019.

<sup>23</sup> See: O. Costa, A. Alemanno, G. Clarotti and Ch. Leclercq, 'EU representatives and voters without borders', *Euractiv*, 21 September 2020, [https://www.euractiv.com/section/future-eu/opinion/eu-representatives-and-voters-without-borders/1505972/?fbclid=IwAR3sKLPA2WXhJcr7gX-LmU9Oj2NyQyq8c51LhJEW4ern\\_EfmOQGRY4Z4dDk](https://www.euractiv.com/section/future-eu/opinion/eu-representatives-and-voters-without-borders/1505972/?fbclid=IwAR3sKLPA2WXhJcr7gX-LmU9Oj2NyQyq8c51LhJEW4ern_EfmOQGRY4Z4dDk).

The creation of transnational lists has been discussed in the EP since 1998. Extensive work has been done by generations of MEPs, and many experts have expressed their views and discussed the legal, technical, and political feasibility of such a reform. The idea is to ask all citizens to vote both for a list of candidates within their national or regional constituency, and for a list presented within a single European constituency. This dual voting system would reinforce the European dimension of electoral campaigns and favour the creation and success of truly European political parties. Transnational lists would involve only a limited number of MEPs (the Ruiz Devesa report proposes 46, i.e. 6,5% of the seats), but those could be presented only by “pan-European political structures” and would promote a truly European electoral programme and platform. Each list would also include, as a leader, the candidate of the “structure” presenting it for the Presidency of the Commission. National parties should also be asked to express their affiliation to a group or a European political party.

Several objections are usually be made to transnational lists.<sup>24</sup> The first one is that no federal State organises legislative elections within a single constituency: MPs are always elected at the level of the states, or in regional or local constituencies. In sum, the single lists system would be more supranational than the electoral systems in use in federations. However, EU transnational lists do not intend to replicate the organisation of a federal State, but to create a major political change. It is clearly a policy of identity or identification, aiming at the emergence of an EU demos. The objective is to make EU citizens part of a human group taking its decision together, for matters of general interest.

Some also point the risk of rejection of the principle of transnational lists by member states’ constitutional courts, because of the constitutional definition of sovereignty or the people. However, the ratification of most European treaties has already required the modification of some constitutions.

Creating transnational lists also implies the emergence of two categories of MEPs, elected at national/regional level and EU level. But the case of Germany shows that it is not

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<sup>24</sup> The French Senate has recently published a report about transnational lists and the *Spitzenkandidaten* which is very critical of both ideas. Sénat, ‘Rapport d’information de J.-F. Rapin et L. Harribey sur les listes transnationales et les candidats tête de liste aux élections au Parlement européen’, 1 July 2021, n° 735, 2020-2021.



necessarily a problem. The country has, since WWII, a system of “1 head 2 votes” for legislative elections: part of MPs are elected at local level and the others at the scale of *Länder*. But studies have shown that there is not much difference in the profile or behavior of the two categories of MPs.<sup>25</sup> We may expect MEPs elected on transnational lists to have a higher political profile, but this is not necessarily an issue. In every parliamentary assembly there are various kinds of MPs: leaders who chair the groups and committees, and who speak on behalf of their peers; experts who work on files and amendments; media people; party-persons; MPs involved on the ground; specialists of the procedures and internal rules... All are contributing in their own way to parliamentary work. The EP is no different.

Another argument is the risk of disconnection of “transnational” MEPs with the ground. However, the involvement of MEPs at local level is in any case limited, for matters of numbers (1 MEP represents on average more than 600.000 citizens), distance between some constituencies and the working places of the EP, and the functions ensured by MEPs. The role of an MEP cannot be to advocate for a given territory, to do pork-barrel politics<sup>26</sup> or to act as a social worker or policy entrepreneur at local level – like national MPs often do. This is not part of their mandate and most MEPs do not enjoy the resources to do so.

Some also fear that transnational lists would favour populist parties, as their leaders often do not hold important mandates at national level and would be free to run as lead-candidates. They would thus attract more attention than less known candidates from mainstream parties – like Manfred Weber (EPP) or Franz Timmermans (PES) in 2019. This is likely, but the formalisation of the lead-candidate system would be an incentive for non-populist European parties to appoint candidates with a high political and media profile.

Finally, some are concerned by the geographical balance within the transnational lists. The share of seats between countries may create conflicts and dissatisfaction, and there is even a risk of re-nationalization of the election, if citizens give a priority to a list because it includes a larger number of candidates from their country. However, as proved by the Ruiz Devesa

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<sup>25</sup> O. Gabriel, E. Kerrouche and S. Schüttemeyer (Eds.), *Political representation in France and Germany: attitudes and activities of citizens and MPs* (Springer, 2018).

<sup>26</sup> Evans, D. (2011, May). Pork barrel politics. In *The Oxford Handbook of the American Congress*.

report, those problems could be avoided by adopting precise rules regarding the composition of lists and ranking of candidates.

### ***3.2.2. The lead-candidate system***

The lead-candidate system is the second issue on which the CoFoE should work, even if the EP is capable to adopt the Ruiz Devesa report. Currently it depends much on the capacity of European parties to agree on rules, to find a majority within the EP and to support a single candidate, and on the state of play within the European Council. As seen in 2014 and 2019, the EP can impose the procedure only under certain conditions: there is no guarantee, as the procedure is not based on clear and constraining rules but on a given interpretation of the treaties, on a balance of power between institutions and on the threat of a parliamentary veto<sup>27</sup>.

The *Spitzenkandidaten* procedure has nevertheless proven its capacity to mobilize citizens towards EU elections and politics. The personalisation of the election helps to “dramatise” the poll and to involve the media. It also gives citizens the feeling that EU elections can lead to a political change, and that they are not about reproducing every five years the same political landscape within the EP. The lead-candidate system also encourages the Europeanisation of national parties and increases the role of European parties in the campaign and in the governance of the EU. Moreover, it reinforces the legitimation of the Commission towards citizens, and gives its President more weight in his or her contacts with the other EU institutions. The President is also enjoying more authority on the college of Commissioners, as he or she is has been selected by EU citizens, “elected” by the EP and is accountable for the successes and failures of the Commission; the lead-candidate procedure would make him or her the true leader of the Commission, very far from the *primus inter pares* of the beginnings.

The *Spitzenkandidaten* procedure has been much discussed, by experts, practitioners and politicians, and there are many arguments against it or against its formalisation. Initially, some were opposing the idea of a politicization of the Commission, considering that this evolution was devoiding the organ. However, the politicization process is going on since the

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<sup>27</sup> Martin Westlake, “They are no different, they are much the same? Post-2019 inter-institutional dynamics in the European Union”, in O. Costa & S. Van Hecke (ed.), *Is Europe back in the driver’s seat? The Union at a turning point in time*, Palgrave, forth.

treaty of Maastricht (1993), that granted the EP with an active role in its appointment. This role has been reinforced by every treaty since, and there is no way back: the Commission is not anymore a neutral organ or an agency. What should be discussed now is the degree or the kind of politicization that is desirable, and the type of relations that should exist between the Commission, on the one hand, and the EP and the European Council, on the other.

Some also consider that the elected President of the Commission would lack legitimacy, as he or she would be supported by only around 30% of the voters; thus, it would be problematic for that person to ground the Commission's programme on the manifesto of his or her party. However, for the Commission to be "political" does not mean to be controlled by a single party, but to enjoy the support of a coalition in the EP. It is indeed likely that no winning *Spitzenkandidat* will ever have a majority of the EU electorate. But the essence of a parliamentary regime based on proportional representation in a compound polity is to be grounded on a large coalition – like the one we had for a while in the EP. As the Ruiz Devesa report suggests, it would be useful to have a formal coalition agreement, in order for the President of the Commission to enjoy a solid majority in the EP.

Some also consider that the *Spitzenkandidaten* procedure may create difficulties, as not every candidate is suitable for the position. As shown in 2019 with the side-lining of Manfred Weber, the lead-candidate of the EPP, several factors need to be taken into account for the appointment of the Commission's President – such as political experience, nationality, gender, political views, language skills or age. Creating an obligation for the European Council to appoint the lead-candidate chosen by EU citizens may create tricky situations. A solution to this issue would be to proceed like the Liberal party: in 2019, it appointed a team of 7 potential candidates, allowing for some flexibility in the choice of the President. Also, the institutionalisation of the lead-candidate system should involve a system of primaries within in each European party; it would give more legitimacy to the lead-candidate, and certainly favor the contenders who have the right profile and resources for the position.

Finally, some reject the very idea of a formalization of the lead-candidates procedure, as they consider that it would imply an alteration of the whole institutional balance. Such a change is indeed quite likely to happen, but it is not necessarily problematic. It may be beneficial to the legitimation of the EU political system by clarifying its principles of

functioning. It would reduce the power of the Council and European Council in favour of the EP, and change the nature of the Commission, which would be more connected to European parties. An institutionalisation of the lead-candidate system would increase the role European parties in EU politics, but also in national politics. This would be a major change, as they are currently forbidden to play such a role; for instance, they were not allowed to participate in the Brexit referendum campaign. In sum, institutionalizing the lead-candidate procedure is obviously not a formality. It would have a deep and durable impact on the nature and dynamics of EU politics – like the first direct election of the EP did in 1979.

There are two different strategies to promote the reforms of the transnational lists and lead-candidates. The first one is to consider that the two issues should be kept separate, in order to ease the reform; this “step by step” strategy has often been favoured by the EP. The reforms would thus be organized via the adoption of several legislative texts (including a reform of the status of European parties) and interinstitutional agreements. The other approach is to consider that these reforms should be addressed together, because transnational lists would only make sense to citizens if they would lead to the choice of the Commission’s President and if European parties would play a central role in the campaign.

There are valid arguments on both sides. The dissociation strategy would make the reforms more likely to happen, by limiting potential conflicts and vetoes within the EP and the Council, and difficulties at the stage of ratification by Member States. After 20 years of aborted initiatives, pragmatism commands to consider that even if only one of the reforms is made before 2024, it would increase the very European dimension of the elections and their overall impact on the EU political regime. The global strategy would allow to better clarify the nature of the EU system, to develop a new narrative about it, and to give to citizens a clear sense of the various reforms involved. Taken separately, they may on the contrary create the impression that the EU keeps adopting institutional reforms in a random way, that add complexity better than clarity to the European political system.

#### **4. CONCLUSION**

Initially, MEPs expected the CoFoE to be able to overcome the difficulties, conflicts and vetoes it has faced in the last decades when trying to reform the 1976 Act. Some now doubt that this

will happen, as no one seems to expect anymore the CoFoE to propose a significant reform of the treaties, and as it has to conduct its deliberations following a very tight schedule. In consequence, the EP has taken in early 2021 the initiative of two new reports, in view of reforming the statuses regarding EU elections and European parties before the 2024 elections. However, the story of European integration tells us to avoid premature defeatism. The CoFoE may escape its creators, as the Convention on the Future of the Union did, and will perhaps set itself ambitious objectives, despite the reluctance of the European Council and the Commission. Concretely, there are three potential levels of discussion within the CoFoE regarding EU elections. The first one would be about minor technical adaptations of electoral rules; however, the EP is in charge of that, and has already taken initiatives. A second potential level of discussion would be about substantial reforms, like the creation of transnational lists or the institutionalization of the system of lead-candidates. For those, there is no guarantee that the EP will be able to find a consensus between the main political groups; and even if such a consensus exists, the EP would certainly face new oppositions within the Council. The CoFoE could be make a difference here, by giving a momentum to the reform and fighting the inertia that has immobilized discussions on EU electoral rules for three decades. The third level of discussion and reflection would be the one of a global redefinition of the EU regime. Designed together in an articulated way, the creation of transnational lists, the formalisation of the *Spitzenkandidaten* system and the reform of European parties status would deeply impact the balance of power between EU institutions, change the nature of EU politics, and boost the involvement of citizens.

A major reform would make sense, as the EU functions with institutions and electoral rules that were mainly designed nearly 50 years ago, at a time when the requirements of legitimation were very different. The EU needs to adapt to citizens' expectancies for more participation and involvement, and to design EU politics according to their views.

Having a vast and open deliberation on the nature and outlines of the EU political system is the only way to fix the democratic deficit which limits its capacity for action, and to favour the emergence of a EU Demos<sup>28</sup>. The EU now considers the development of policies of "identity" or identification. This is already the case in the field external relations, with the idea

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<sup>28</sup> M. Jolly, 'A demos for the European Union?' (2005) 25(1) *Politics*, 12; R. Queiroz. 'Habermas on people-building in the European Union' (2021) 16 *European Journal of Social Theory*, 221.

of a “geopolitical Commission”, that aims at singularizing the EU as a global player. A similar approach could be applied to the EU political system, in order to boost the feeling of citizens to pertain to a supranational structure<sup>29</sup>. We should remind that a Demos does not always pre-exists a political system: in most cases it is the result of public action, of policies that aim at stimulating the feeling by citizens that they belong to a polity and that this polity makes sense to them<sup>30</sup>.

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<sup>29</sup> M. Sassatelli, *Becoming Europeans: cultural identity and cultural policies* (Springer, 2009).

<sup>30</sup> E. A. Whitley and G. Hosein, *Global challenges for identity policies* (Palgrave Macmillan, 2010).