

The European Union makes a new push for democracy

Andrew Duff



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LOST MOMENTUM

The European Union is in constitutional trouble. Donald Tusk, the outgoing President of the European Council, admits to having been almost obsessed by the need to shore up unity among the 27 member states left behind by the departing Brits.¹ But the EU finds it easier to keep united than to agree on reform. There is solidarity in stasis. The last five years have been a time of constitutional stagnation. France's President Macron has been alone in arguing for steps to be taken towards federal union.

The EU remains awkwardly suspended between the high federalist ambitions of its founding fathers and the hard reality of intergovernmental diplomacy.

There is ample logic in such reform of a Union which has had not only to manage the secession of a large state but also to discipline two member states for breaches of constitutional law. Decision making in the EU is still opaque and laborious; delivery of policy is half-hearted; corruption is endemic in certain states; the credibility of the EU in international affairs declines; the euro remains very much unfinished business; enlargement has ground to a halt; and the EU's neighbourhood is increasingly unstable. The full potential of the reforms rendered possible by the Treaty of Lisbon (2007) is not being met.

The EU remains awkwardly suspended between the high federalist ambitions of its founding fathers and the hard reality of intergovernmental diplomacy. In this halfway house, the Union has outgrown the technocrats but not welcomed the politicians. Its governance is no longer functionalist but not yet constitutional. Despite some aspirations to the contrary, not least from the European Court of Justice and the European Central Bank, the European Council and Council are stuck in a confederate time-warp. The Commission is larger and weaker than it needs to be, and has ceased to be the engine of integration.

The European Parliament, too, can seem muddled and fractured. Its claim to being an effective supranational legislature rests on shaky national foundations. There are no federal political parties to give direction. Parliament's legitimacy is questioned not only by eurosceptics who oppose the European project but also by friends of the European Union, such as the German Federal Constitutional Court, who worry about the assembly's representative capability.²

Although voter turnout increased for the first time at the recent elections of May 2019, this is no time to be complacent. Indeed, that the electorate appears to have taken notice of the European Parliament puts a spotlight on its internal efficiency and external reputation. The last bout of treaty change, nearly twenty years ago, dodged the question of electoral reform. It must now be addressed.

SALVAGING THE SPITZENKANDIDATEN

National parliaments elect and hold to account national governments. Because the EU enjoys no obvious government, the European Parliament has a less certain hold on the levers of power. Undeterred, Members of the European Parliament (MEPs) have endeavoured to capture the process of appointing the European Commission. They have claimed the right to nominate the new Commission President and subject individual candidates for the college to decisive inquisitorial hearings.

Neither of these procedures appears in the Treaty. In fact, Article 17(7) of the Treaty on European Union (TEU) stipulates precisely the opposite procedure for the Commission presidency – namely, that Parliament should elect the candidate after his or her nomination by the European Council. Moreover, Parliament's role is formally confined to a vote of consent to the whole college “as a body”: it is not entitled under the Treaty to pick off individuals at will.³

Parliament's assertiveness over the appointment of the Commission undoubtedly meets public expectations, and gives the EU more of a parliamentary character. Yet some reform is clearly needed because the present manner of promoting *Spitzenkandidaten* without strong party backing or legal underpinning satisfies neither the Parliament nor the Council, and risks undermining the new Commission. This is recognised not least by Ursula von der Leyen, the new Commission President, whose own election was seen by many MEPs as a step back from Jean-Claude Juncker's relatively smooth elevation to the presidency in 2014. She says:

“The experience of the 2019 European elections clearly shows the need to review the way we appoint and elect the leaders of our institutions. I am ready to lead that work, in close cooperation with the European Parliament and the Member States. To rebuild trust and confidence, I propose to broker the discussions between the European Parliament

and the European Council. I firmly believe we must improve the lead candidate, or *Spitzenkandidaten*, system together”.⁴

Assuming that it will be decided to stick to the Spitzenkandidat experiment, the Treaty will have to be formally adjusted to inverse the procedure so that, in 2024, the European Council elects a candidate who has been nominated by the newly elected Parliament. Such

a Treaty amendment would mean having recourse to the ordinary treaty revision procedure as laid down in Article 48 TEU. One recalls that Parliament has the right on its own initiative to trigger an amendment to the Treaties — as does the Commission. Moreover, Parliament can, and undoubtedly will, insist on summoning a new constitutional Convention to revise the Treaties, similar to that which sat in 2002-03 and which eventually led to the Treaty of Lisbon.

MAKING THE ELECTIONS EUROPEAN

If the constitutive powers of the European Parliament are going to be further increased, reform of its own electoral procedure becomes difficult to deny. The need for greater legitimation would be accentuated if Parliament were to attain, as some suggest, a shared right of legislative initiative.

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At present, forty years after the introduction of direct elections by universal suffrage, Parliament is still elected in separate national elections rather than under the “uniform procedure” that was envisaged in the Treaty of Rome (1957).⁵ The only two elements of uniformity are the requirement that the results of the election should be broadly proportional and that dual mandates are forbidden.⁶ Voting still takes place according to at least 28 different national procedures, and candidates are

selected, financed and deselected by national political parties.

The EU-level political parties – recognised under Article 10(4) TEU – remain weak confederations of national political parties whose function is to minimise divergence between their national components. The European parties do not directly compete with each other at elections for votes and seats – indeed, they are (absurdly) prohibited from doing so under EU law.⁷ Nor are the EU parties allowed to take part in national referendums on EU matters. The link between the party groups in the Parliament and their notional European party is, at best, tenuous. If MEPs are directly accountable to anyone, it is not to their European party but to their national or regional party.

As an emerging federal polity, the EU can afford to learn a lot from more mature federal systems. In particular, we know that horizontal coordination between member states must be supplemented by vertical coordination between different levels of government from the European, national and regional to the local. The EU is adept at linking up executive powers transnationally (notably in the European Council) but weak at connecting with the people (quintessentially through the Parliament).

THE QUEST FOR EUROPEAN POLITICAL PARTIES

Political parties play a key role in connecting the citizen with those who exercise power in any liberal democracy. They exist to articulate cogent alternatives of policy, ideology and personality: pitched into an election campaign, the voter is then faced with plausible partisan choices. Representative democracy cannot function without an effective system of political parties. Academic literature talks of political parties as the essential ‘shock-absorbers’ in the machinery of government.

The lack of political parties is felt more acutely in elections to the European Parliament whose distance from the people is inevitably far off. Proper federal parties are the absent democratic sinew that would make EU government effectively legitimate in the eyes of the

public. It must be, therefore, the key objective of any electoral reform of the European Parliament to induce the birth of authentic, confident federal parties that will enrich the democratic life of the Union⁸

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In federal states, such as Germany, Austria and Canada, we take it for granted that the leader of the largest federal party in parliament has the chance to form a government. Other federal states have presidential systems of direct election. The US president secures his popular mandate by being appointed by an electoral college of the American states following a direct election by universal suffrage.

There are those in the EU who will argue for the direct popular election of the Commission President, but this would seem a problematic concept in a federal union which is not a federal state and where executive authority (and therefore political leadership) is shared between the Commission and European Council. And a directly elected federal president is in any case an impossibility without well-established federal political parties.

TRANSNATIONAL LISTS

For all these reasons, it is now essential to inject some real federal politics into European parliamentary elections. There has been a long debate about the introduction of a pan-EU constituency for which a certain number of MEPs would be elected from transnational party lists. The pan-European lists would be championed by the EU parties and led by their candidates for the Commission presidency and other top jobs, fully validating the Spitzenkandidaten process. Coalition building between the party groups would become both more meaningful and transparent.

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In her Political Guidelines, Von der Leyen makes the link between the Spitzenkandidaten and electoral reform:

“To make [the *Spitzenkandidaten* system] more visible to the wider electorate, we should also address the issue of transnational lists in the European elections, as a complementary tool of European democracy. ... The Commission ... will support the European Parliament in amending the electoral law and in securing its agreement in Council. The new rules should be in place well in time for the European elections of 2024, for greater transparency and democratic legitimacy”.

The most recent worked-up proposal for transnational lists was approved by the Constitutional Affairs Committee (AFCO) of the Parliament, but not the plenary, in 2012.⁹ The rapporteur proposed to create a new right of EU citizenship by affording every voter at the European Parliamentary election two votes – the first for the national or regional MEP and the second for a transnational MEP. He suggested that 25 MEPs would be elected from gender-balanced transnational lists of candidates drawn from at least one third of the states.¹⁰

He was explicit about the need to change the Treaty.

Although ultimately frustrated, the debate up to 2014 seemed to have established a number of premises. These include:

- ▶ Parliament’s electoral procedure must be durable and comprehensible, promote intra-party democracy, and uphold the practice of free, fair and secret elections resulting in overall proportionality of representation;
- ▶ Parliament’s electoral system is of necessity a compromise between the democratic principle of equality (‘one person one vote’) and the international law principle of equality among states;
- ▶ any procedure must ensure the equality of Union citizens while forbidding discrimination on the grounds of nationality;¹¹
- ▶ reform of the electoral procedure must also respect the principles of subsidiarity and proportionality and should not seek to impose uniformity for its own sake;¹²
- ▶ the status of Members of the European Parliament should remain equal regardless of whether they are elected from pan-European, national or regional lists.

Unfortunately, during the 2014-19 term of the Parliament, no further progress on electoral reform proved possible. The Council was divided on the issue, and the Commission absent. For reasons best known to itself, the European People’s Party (EPP) turned against transnational lists – with the unintended consequence that Manfred Weber, its own lead candidate in 2019, stood no chance of attracting the cross-party support necessary for him to succeed Jean-Claude Juncker.¹⁵

EMPOWERING THE EU CITIZEN

It is up to the new Parliament, of course, to decide whether to follow the path prepared in 2012 or to take another direction (or none). If the previous approach is followed, an early decision will be needed about whether to opt for a closed list system where votes are cast for a block of candidates selected by the EU parties, or a more open system, whereby votes for individual candidates can alter the order of the pre-selected party list. A bloc list maximises party control; a preferential list, as practised for example in Belgium, favours the citizen. The latter seems more appropriate for European-wide lists.

A supplementary supranational vote empowering the citizen will help stabilise EU party politics by widening the choice of available parties across the Union.

A less radical proposal would have MEPs selected from a transnational list after aggregating their EU party's total vote across the Union and distributing

seats proportionately while keeping the pre-ordained nationality quota. So if four Germans were topped up from the transnational list, four German candidates elected at the bottom of the national list (of 96) would not be elected. That could be a comfortable solution for insiders but would exclude outsiders. It would not contribute to greater uniformity. It would hardly force the political parties into direct competition. It would not be simple to explain and would lessen the drama of the reform. It would deprive the EU citizen of the tangible civic right of a second vote, which is an especially important prize in countries where European party groups have no national equivalent.

A supplementary supranational vote empowering the citizen will help stabilise EU party politics by widening the choice of available parties across the Union. The British, for example, were deprived of the right to vote for the EPP since the defection of the Conservative party from its ranks in 2009. Citizens who could favour Liberals or Greens for the European Parliament have had no credible political parties to vote for in a number of countries. Genuine social democrat parties have been rare in post-Communist countries.

SEAT APPORTIONMENT BETWEEN STATES

Taking a quota of some parliamentary seats for the single European constituency forces the reapportionment of the remaining seats allotted to member states. Demographic change, churning migration, and the fluctuation in the number of member states also require that an adjustment be made during each parliamentary term. In the past the distribution of seats among states has been the stuff of a political fix, often at the close of an intergovernmental conference when trying to settle a deal on treaty revision. The scrabble has been undignified and unjustifiable.

In 2013, at the time of Croatian accession, the European Council decided to call for a revision of the system to allocate seats in an "objective, fair, durable and transparent way".¹⁴ The right of initiative for this matter rests with the European Parliament.¹⁵ To date, however, Parliament has merely parcelled out some ex-British seats to make an arbitrary if pragmatic deal for the 2019 Parliament. MEPs should not be allowed to continue to dodge their statutory responsibility to regularise the share-out of seats. Agreeing on a sound methodology for adjusting the composition of the House will in any event be vital before the next round of Union enlargement.

Here again, however, it is not necessary to reinvent the wheel. After AFCO instigated an inquiry into mathematical formulae that would allow for the

apportionment of seats on a methodological basis, leading mathematicians preferred what came to be known as the Cambridge Compromise (CamCom, for short).¹⁶ Their recommendations were clear, impartial and transparent. Each country is assigned a base of five seats, and the remaining seats are allocated proportionately to population figures, using the divisor method with upward rounding. This would bring the distribution in line with the stated principle of degressive proportionality, as well as meeting the constraint also found in Article 14(2) TEU that no state shall have fewer than six seats or more than ninety-six.

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The EU should turn again to the expertise of mathematicians before advancing any new legislative proposal. The expert working party should be reconvened jointly by the Parliament, Council and Commission as soon as possible. In Annex III one can contrast the present 'pragmatic solution' with that

of CamCom. It is important to note that variants of CamCom can be used to introduce the change on a modified basis. Moreover, as and when the UK eventually

secedes from the EU there will be a number of seats unaccounted for that could be used to cushion the impact of the transition to the new mechanism.

WHAT NEXT?

If electoral reform is to be in place by the time of the next elections in May 2024, progress must be swift. The package of measures we recommend here requires changes to primary law (both the Treaty and the 1976 Electoral Act) which will need the consent of all member states and ratification by national parliaments.

As examples of what might be done, Annex I suggests a revision to Article 14 TEU. Annex II is the related proposal for the amendment of the Electoral Act.¹⁷

Several pieces of EU secondary law will also be needed to render the new scheme operable by the end of 2023. Notably, these include:

1. Regulation on a **Uniform Electoral Law** (legal basis Article 223(1) TFEU: Parliament initiative/Council unanimity/Parliament consent by absolute majority);
2. Law establishing an **EU Electoral Authority** as an autonomous agency (legal base Article 352 TFEU: Commission initiative/Council unanimity/Parliament consent);
3. Law to adjust the **European Party Statute** to the new situation (legal base Article 224 TFEU: ordinary legislative procedure: Commission initiative/co-decision & QMV);
4. Amendment of **the Directive on the right to vote and stand** as a candidate for elections to the European Parliament in a state other than one's own (legal base Article 22(2) TFEU: ordinary legislative procedure, as above);¹⁸
5. Decision of the European Council on a **formula for seat apportionment** (legal base Article 14(2) TEU: Parliament initiative/Council unanimity/Parliament consent).

Lastly, all member states will need time not only to ratify the changes to EU primary law but also to adjust their national electoral laws to accommodate the new EU system.

The proposals suggested here are purposefully radical. The reform package deal must be substantial if it is to convince member states that opening up the Treaties for amendment for the sake of the Parliament is worth it. Experience suggests that merely tinkering at the edges of the problem of electoral reform will be counterproductive. Federal political parties will not emerge by magic or accident, but by contest and competition. Some national parties will resist the

ending of their monopoly over the conduct of the European elections. Even self-styled 'pro-European' parties will be suspicious of federal upstarts. Only determined leadership by the European Council, and the Commission and Parliament acting together will succeed in bringing such electoral reform to a satisfactory conclusion.

The point needs to be repeated that unless the democratic legitimacy of Parliament is enhanced, it will be difficult to make progress with other improvements to strengthen EU governance. Indeed, electoral reform of the Parliament should prompt a debate about the balance of power within the other institutions.

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For example, shifting the balance of voting weights within the Parliament raises the question of whether to make a commensurate shift in the Council. If CamCom favours the larger and smaller states in the Parliament, which it would, an adjustment to favour the middle-sized states could be envisaged in the Council.¹⁹ The Council, too, is due for a reform of its working methods, including a review of the role of the rotating presidency. As far as the Commission is concerned, reducing its size, as the Treaty envisages, should serve to increase cost efficiency, enhance its executive authority and reinforce the power of its president.²⁰

The link between the introduction of transnational lists and the rescue of the Spitzenkandidaten is obvious. But once the Treaty is opened for revision, other useful reforms will undoubtedly be proposed to modernise and enhance EU governance.²¹ One need look no further than the deployment of the so far unused *passerelle* clauses of the Treaty of Lisbon, which allow the institutions to adopt more flexible and democratic decision-making procedures in a number of important areas. The broader agenda should engage the mooted Conference on the Future of Europe.

THE CONFERENCE ON THE FUTURE OF EUROPE

In March 2019, before the European elections, Emmanuel Macron let rip:

“We cannot sleepwalk through a diminished Europe. We cannot become ensconced in business as usual and wishful thinking. European humanism demands action. And everywhere, the people are standing up to be part of that change. So by the end of the year, let’s set up, with the representatives of the European institutions and the Member States, a Conference for Europe in order to propose all the changes our political project needs, with an open mind, even to amending the treaties. This conference will need to engage with citizens’ panels and hear academics, business and labour representatives, and religious and spiritual leaders. It will define a roadmap for the European Union that translates these key priorities into concrete actions. There will be disagreement, but is it better to have a static Europe or a Europe that advances, sometimes at different paces, and that is open to all?”²²

President von der Leyen wants her Commission to make a “new push for European democracy”. She picks up Macron’s proposal:

“I want citizens to have their say at a Conference on the Future of Europe, to start in 2020 and run for two years. The Conference should bring together citizens, including a significant role for young people, civil society and European institutions as equal partners. The Conference should be well prepared with a clear scope and clear objectives, agreed between the Parliament, the Council and the Commission. I am ready to follow up on what is agreed, including by legislative action if appropriate. I am also open to Treaty change. Should there be a Member of the European Parliament put forward to chair the Conference, I will fully support this idea”.²³

The EU institutions are moving only slowly towards convening the Conference, and there is still much lack of clarity about the nature, purpose and modalities of the Conference, its composition and intended follow-through. The Conference is unlikely to lead to anything very much unless it is gifted (and then embraces) a clear mandate. The obvious task of the Conference would be to publish a final report in 2022 that prepares the way to the next treaty-revising Convention. If so, the Conference should therefore engage representatives of the four official parties to any future Convention – namely, the European Parliament, the European Council, the Commission and national parliaments.

One of the more difficult questions is how to involve the citizen directly and meaningfully in the work of the Conference. A citizens’ chamber working in parallel to

the main Conference should be a useful sounding board and could generate significant interest on social media. The nascent political parties at EU level should play an active part in the exercise. Civil society platforms and non-governmental organisations are already gearing up to do so.

The Conference is unlikely to lead to anything very much unless it is gifted (and then embraces) a clear mandate.

The European Parliament wishes to take the lead in organising the Conference, assuming its presidency and hosting its meetings. Yet MEPs have a difficult balance to strike between promoting their own role in the exercise and encouraging direct participation from citizens’ organisations, political parties and national parliaments.

President von der Leyen has appointed Commissioner Dubravka Šuica to take the lead on the Conference. Commissioner Vera Jourová is put in charge of the dossier on electoral reform. Both women are untried in this area. It was unfortunate that in her set-piece speech to the Parliament on 27 November, Von der Leyen made no direct mention of constitutional reform, transnational lists or the *Spitzenkandidat* crisis.²⁴

The Commission is surely nervous about the Conference. It would be a pity if the Commission and Council were to treat the involvement of citizens as the pretext for not getting to grips with the complex and problematical business of constitutional reform. The truth is that nothing much will be achieved by the Conference unless all three EU institutions collaborate closely in pursuit of the same objectives. The new Commission, especially, should not shrink from taking political initiatives.

A Franco-German ‘non-paper’, released on 25 November, proposes that the Conference mandate can be agreed and formalised between the three institutions in January.²⁵ Somebody needs to get writing. Charles Michel, the new President of the European Council, must make it his business to engage with such preparations. A decision to endorse the Conference should be taken at the European Council on 12-13 December. The leaders should also agree that urgent priority must be given to the reform of the European Parliament and the system for appointing the Commission. Those changes in themselves will be enough to open the next chapter in the EU’s long constitutional adventure.

Annex 1: Proposed revision – Article 14 Treaty on European Union

- (1) The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.
- (2) The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President.
- (3) ***A certain number of Members of the European Parliament shall be elected in national or regional constituencies within the Member States. Seats will be apportioned between Member States according to a method which ensures degressive proportionality***, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.
- (4) ***In addition, a certain number of Members of the European Parliament shall be elected in a single constituency comprising the whole territory of the Union.***
- (5) ***Before the end of the fourth calendar year of each parliamentary term, the European Council shall adopt, acting in accordance with Article 238(2) TFEU, on the initiative of the European Parliament and with its consent, a decision establishing the quota of seats to be elected within the Member States and the quota of seats to be elected in the single constituency which shall apply at the subsequent election.***
- (6) The Members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free, ***fair*** and secret ballot.
- (7) The European Parliament shall elect its President and its officers from among its Members.

Annex 2: Proposed revision – Electoral Act of the European Parliament²⁶

ARTICLE 1 (EX-ARTICLE 1 ACT)

Members of the European Parliament shall be elected as representatives of the citizens of the Union on the basis of proportional representation, using the list system or the single transferable vote.

ARTICLE 2 (EX-ARTICLE 2 ACT)

Each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner, without generally affecting the proportional nature of the voting system.

ARTICLE 3

- (1) For the purpose of the apportionment of seats among the Member States in accordance with the principle of degressive proportionality pursuant to Article 14(3) TEU, the ratio between the population and the number of seats of each state before rounding to whole numbers shall vary in relation to their respective populations in such a way that each Member elected in a more populous state represents more citizens than each Member elected in a less populous state and, therefore, that no less populous state has more seats than a more populous state.
- (2) The European Parliament and the Council shall adopt a regulation to establish a fair, durable and transparent formula for the apportionment of seats between the Member States. The system will ensure respect for the principle of degressive proportionality.
- (3) Where a state accedes to the Union during a parliamentary term, it shall be allocated seats which will be added to the number of seats provided for in Article 14(2) TEU on a transitional basis for the remainder of that parliamentary term.

ARTICLE 4

- (1) Pursuant to Article 14(3) TEU, there shall be one additional constituency formed of the entire territory of the Union for which shall be elected a certain number of Members of Parliament. The number of such Members to be elected from the single European constituency at the next election shall be determined before the end of the fourth calendar year of the parliamentary term according to the procedure laid down in Article 14(4) TEU.
- (2) There shall be a uniform electoral procedure for the election of Members of Parliament in the single European constituency. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the provisions necessary for the holding of elections in the single European constituency.
- (3) A European Union electoral authority shall be established to conduct and verify the electoral process in the single European constituency, and to undertake any such tasks as may be conferred upon it. The electoral authority will supervise the conduct of the election in coordination with national electoral authorities.
- (4) Transnational lists of candidates for election in the single European constituency shall be registered with the Union electoral authority by the European political parties. The lists shall be admissible only if composed of candidates resident in at least [one half] of the Member States.
- (5) Each elector shall have two votes, one that may be cast for the election of Members of Parliament in his or her national or regional constituency, and one supplementary vote that may be cast for the European Union-wide list.

Seats shall be allocated by the Union electoral authority for the single European constituency from the transnational lists in accordance with the Sainte-Laguë method.

ARTICLE 5 (EX-ARTICLE 8 ACT)

Subject to the provisions of this Act, the electoral procedure for the election of Members of Parliament in the Member States shall be governed in each Member State by its own provisions. These provisions shall not affect the essentially proportional nature of the voting system.

ARTICLE 6 (EX-ARTICLE 9 & 9B ACT)

Without prejudice to Article 4(5), no one may vote more than once in any election of Members of the European Parliament.

Member States shall take measures necessary to ensure that double voting is subject to effective, proportionate and dissuasive penalties.

Each Member State shall designate a contact authority responsible for exchanging data on voters and candidates with its counterparts in other Member States.

ARTICLE 7 (EX-ARTICLE 9A ACT)

In accordance with their national electoral procedures, Member States may take the measures necessary to allow those of their citizens residing in third countries to vote in elections to the European Parliament.

ARTICLE 8 (EX-ARTICLE 3 ACT)

Member States may set a minimum threshold for the allocation of seats elected within their national territory. This threshold may not exceed 5 per cent of eligible votes cast.

There shall be no threshold for the allocation of seats in the single European constituency.

ARTICLE 9 (EX-ARTICLE 4 ACT)

The limitation of campaign expenses of candidates and political parties shall be laid down in a delegated act. The Union electoral authority will be responsible for the oversight of campaign expenditure.

The Union electoral authority will lay down guidelines for the European political parties with regard to the method of selection of candidates for election to the Parliament.

ARTICLE 10 (EX-ARTICLE 4A ACT)

Member States may provide for the possibilities of advance voting, postal voting, proxy voting, and electronic and internet voting, in elections to the European Parliament. Where they do so, they shall adopt measures sufficient to ensure in particular the reliability of the result, the secrecy of the vote, and the protection of personal data in accordance with applicable Union law.

ARTICLE 11 (EX-ARTICLES 5, 10 & 11 ACT)

- (1) Elections to the European Parliament shall be held in May. Polling shall take place within the same period starting on a Saturday morning and ending on the Sunday.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall determine the date of the polling days of the next election before the end of the fourth calendar year of the parliamentary term.

- (2) States may not officially make public the results of their count until after the close of polling in the Member State whose electors are the last to vote within the polling period.

- (3) The five-year term for which Members of the European Parliament are elected shall begin at the opening of the first session following each election. The Parliament shall meet, without requiring to be convened, on the first Tuesday after expiry of an interval of one month from the end of the polling period. The powers of the Parliament shall cease upon the opening of the first sitting of the new Parliament.

ARTICLE 12 (EX-ARTICLE 6 ACT)

- (1) Members of the European Parliament shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.
- (2) Members of the European Parliament shall have the rights and obligations laid down in the Members' Statute and the Protocol on the privileges and immunities of the European Union.

ARTICLE 13 (EX-ARTICLE 7 ACT)

- (1) The office of Member of the European Parliament shall be incompatible with that of:
- member of a State or of a regional parliament or assembly with legislative powers,
 - member of the government of a State,
 - member of the European Commission,
 - Judge, Advocate-General or Registrar of the European Court of Justice,
 - member of the Board of Directors of the European Central Bank,
 - member of the Court of Auditors,
 - Ombudsman,
 - member of the Economic and Social Committee,
 - member of the Committee of the Regions,
 - active official or servant of an institution, agency or body of the European Union.
- (2) Members of the European Parliament to whom paragraph 1 becomes applicable in the course of the five-year period referred to in Article 8 shall be replaced in accordance with Article 14.

ARTICLE 14 (EX-ARTICLE 12 ACT)

The European Parliament shall verify the credentials of the Members of Parliament on the basis of the results declared officially by the Union electoral authority in respect of the single European constituency and by the Member States in respect of the national and regional constituencies. It shall rule on any disputes which may arise, after having received the opinion of the Union electoral authority.

ARTICLE 15 (EX-ARTICLE 13(1) ACT)

A seat shall fall vacant when the mandate of a Member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate.

ARTICLE 16 (EX-ARTICLE 13(2-4) ACT)

- (1) In the case of the Members elected in the Member States, and subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article 8(3) for the remainder of that period.
- (2) Where the law of a Member State provides for a temporary replacement of a member of its national parliament on maternity or paternity leave, that State may decide that such provisions are to apply *mutatis mutandis* to the Members of the European Parliament elected in that State.
- (3) Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected in that State, that mandate shall end pursuant to those legal provisions. Such legal provisions shall not be adopted with retroactive effect. The competent State authorities shall inform the European Parliament thereof.

- (4) Where a seat of a Member elected in the States falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the competent authorities of the State concerned thereof.
- (5) In the case of the Members elected for the single European constituency, and subject to the other provisions of this Act, appropriate procedures for the filling of any vacancy for the remainder of the five-year term of office referred to in Article 8(3) shall be laid down in a delegated act.
- (6) Where the law of the Union makes explicit provision for the withdrawal of the mandate of a Member of the European Parliament elected in the single European constituency, that mandate shall end pursuant to those legal provisions. The electoral authority shall inform the European Parliament thereof.
- (7) Where a seat of a Member elected for the single European constituency falls vacant as a result of resignation or death, the President of the European Parliament shall immediately inform the European Union electoral authority thereof.

Annex 3: Seat apportionment in the European Parliament

Row	Member State	Population	2014	2019	2024 (CamCom)
1	Germany	82.064.489	96	96	96
2	France	66.661.621	74	79	91
	United Kingdom	65.341.183	73	-	-
3	Italy	61.302.519	73	76	84
4	Spain	46.438.422	54	59	65
5	Poland	37.967.209	51	52	54
6	Romania	19.759.968	32	33	31
7	Netherlands	17.235.349	26	29	28
8	Belgium	11.289.853	21	21	20
9	Greece	10.793.526	21	21	19
10	Czech Republic	10.445.783	21	21	19
11	Portugal	10.341.330	21	21	19
12	Sweden	9.998.000	20	21	18
13	Hungary	9.830.485	21	21	18
14	Austria	8.711.500	18	19	17
15	Bulgaria	7.153.784	17	17	15
16	Denmark	5.700.917	13	14	13
17	Finland	5.465.408	13	14	13
18	Slovakia	5.407.910	13	14	12
19	Ireland	4.664.156	11	13	11
20	Croatia	4.190.669	11	12	11
21	Lithuania	2.888.558	11	11	9
22	Slovenia	2.064.188	8	8	8
23	Latvia	1.968.957	8	8	8
24	Estonia	1.315.944	6	7	7
25	Cyprus	848.319	6	6	7
26	Luxembourg	576.249	6	6	6
27	Malta	434.403	6	6	6
	TOTAL	510.860.699	751	705	705
	Transnational lists				25
	Total seats EP		751	705	730

1. The figures for total resident population are those authorised by Eurostat for 2018.
2. The 2019 column shows the composition as agreed post-Brexit.

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- ¹ Tusk, Donald, "[Keynote speech at the opening ceremony of the 2019/2020 academic year at the College of Europe](#)", Bruges, 13 November 2019.
 - ² Bundesverfassungsgericht, Judgment on the Lisbon Treaty, 30 June 2009.
 - ³ Likewise should Parliament seek to censure the Commission (Article 17(8) TEU).
 - ⁴ von der Leyen, Ursula, [Political Guidelines for the next European Commission 2019-2024](#), 16 July 2019.
 - ⁵ Now Article 223(1) Treaty on the Functioning of the European Union (TFEU).
 - ⁶ Council Decision 2002/772/EC, Euratom.
 - ⁷ European Party Statute, Regulation (EU, Euratom) 1141/2014; most recently amended by Regulation 2019/493.
 - ⁸ Or as Article 10(4) TEU says, "contribute to forming European political awareness and to expressing the will of citizens of the Union".
 - ⁹ [Second 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](#) (Rapporteur Andrew Duff).
 - ¹⁰ The size of the transnational list must be practicable for the electorate and electoral authorities alike. The former rapporteur notes that, for the purposes of explanation, the size of the transnational list should always be made to differ from the number of member states.
 - ¹¹ Articles 9 & 10 TEU and Article 18 TFEU.
 - ¹² Article 5 TEU.
 - ¹³ Curiously, just as the EPP group turned against transnational lists, Angela Merkel turned in favour. See her joint [Meseberg Declaration](#) with President Macron of 19 June 2018. The disjunction tells us a lot about the fragility of the present EU party system.
 - ¹⁴ European Council Decision 2013/312/EU, 28 June 2013.
 - ¹⁵ Article 14(2) TEU.
 - ¹⁶ Laslier, Jean-François (ed.) (2012), "Around the Cambridge Compromise: Apportionment in Theory and Practice", *Mathematical Social Sciences*, Special Issue, vol. 63, Issue 2, pp. 65-192. Variants to CamCom are also discussed.
 - ¹⁷ The Act introducing direct elections by universal suffrage appears in OJ L 278, 08-10-1976. It was first amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ L 283, 21-10-2002), and again by Council Decision (EU, Euratom) 2018/994 of 13 July 2018 (OJ L 178, 16-07-2018).
 - ¹⁸ Council Directive 93/109/EC of 6 December 1993 (OJ L 329, 30-12-1993) as amended by Directive 2013/1/EU of 20 December 2012 (OJ L 26, 26-01-2013).
 - ¹⁹ Article 238 TFEU.
 - ²⁰ Article 17(5) TEU & Article 244 TFEU.
 - ²¹ For a comprehensive catalogue of institutional reforms, see the Spinelli Group's [Manifesto for the Future of Europe: A Shared Destiny](#), September 2018.
 - ²² Macron, Emmanuel, "[For European renewal](#)", 4 March 2019.
 - ²³ Political Guidelines, *op cit*.
 - ²⁴ Neither did Manfred Weber, replying to her speech on behalf of the EPP. By contrast, both Iratxe Garcia Pérez for the Socialists and Dacian Cioloş for the Liberals spoke in favour of the Conference.
 - ²⁵ "[Conference on the future of Europe. Franco-German non-paper on key questions and guidelines](#)", 25 November 2019.
 - ²⁶ Formerly the Act concerning the election of the representatives of the Assembly by direct universal suffrage annexed to the Council decision of 20 September 1976 (and of subsequent amendments thereto).

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