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Reforming the European Parliament

Brexit Creates Opportunity for More than Just Seat Redistribution – But Plans Are Modest (for Now)

Nicolai von Ondarza and Felix Schenuit

Reform of the European Parliament is on the agenda in the run-up to the 2019 European elections. Two impulses coincide here: First of all, Brexit requires a decision on whether to redistribute the 73 British seats, and if so how. Secondly, the European Parliament is sitting on a backlog of long-overdue reforms relating to its composition; this latter aspect is unlikely to be resolved before the 2019 elections. The Italian and French governments suggest creating a single EU constituency fought on the basis of transnational lists, to strengthen the European plane of party-political competition. But the European Parliament's rejection of the proposal underlines the lack of majority support for federal initiatives in the EU's year of reforms. Yet the single constituency discussion does offer potential: Leveraging it to reduce the existing discrepancies in required votes per seat would represent a major contribution to strengthening the Union's democratic legitimacy.

The European Parliament (EP) plays a paradoxical role in the debate over the EU's democratic deficits. On the one hand it serves as the EU's sole directly elected organ and as such as a vehicle for further democratisation. Every treaty amendment to date has therefore expanded the EP's powers. The share of EU legislation adopted with the Parliament's full participation has now reached almost 50 percent. One sign of Parliament's growing assertiveness is its decision to use its new powers to elect the Commission President in 2014 (the so-called "Spitzenkandidaten" principle).

But on the other hand the EP itself is also implicated in the EU's democratic deficits.

Almost 40 years after the first direct elections, the European Parliament is still selected via a set of parallel national ballots whose European legitimacy remains scant: voters choose among their respective national parties. While the parties do then join to form pan-European political groups in the EP, these lack any autonomous relationship to the public. Despite the introduction of the Spitzenkandidaten principle, turnout at European elections has continued to fall – to just 42.6 percent in 2014. The question of reform of the European Parliament is therefore a persistent feature of the EU's institutional reform debate.

Impulses for EP Reform

A political window of opportunity for such reforms opens up in 2018. On the one hand, Brexit will leave the 73 British seats available for redistribution. On the other, there is growing pressure to break the logjam and institute comprehensive reforms, after years of provisional arrangements.

73 Empty Seats

First and foremost, Brexit will force a decision on the distribution of seats in the EP. After triggering Article 50 TEU on 29 March 2017 the United Kingdom is expected to leave the European Union exactly two years later. So barring unforeseen surprises, the British will quit the Union's political institutions roughly one month before the next European elections in May 2019 (see [SWP Comment 54/2017](#)). Until that point the British MEPs remain full members of the EP; when the UK leaves their seats fall vacant. Three different scenarios are under discussion for dealing with the 73 empty seats within the scope of the existing treaties.

Firstly, the seats could simply be removed, reducing the size of the Parliament from 751 MEPs to 678. One of the arguments put forward by advocates of this approach is that the EP, whose size is capped at 751 by the Lisbon Treaty, is already one of Europe's largest parliaments; Brexit offers the EU an opportunity to make visible economies. By way of comparison, the EP is almost twice the size of the Spanish Congress of Deputies, but the same order of magnitude as the current German Bundestag, which has 709 seats. Notably, the 794-member British House of Lords is larger than the European Parliament. This route would also obviate the politically delicate process of renegotiating the allocation of seats to countries.

The second option would be to use some or all of the 73 seats to reduce the existing inequalities of representation between the 27 member states. The current seat distribution is based not on a mathematical formula, but was politically negotiated – most

recently in 2013 after the accession of Croatia. The principle of degressive proportionality seeks to reconcile two objectives: fair representation of citizens and minimum representation of smaller member states. Under this arrangement each member state has at least six MEPs (with the minimum applying to Cyprus, Estonia, Malta and Luxembourg). The number of MEPs grows with the country's population, but not entirely proportionally; while a Luxembourg MEP represents about 80,000 inhabitants, their German counterpart is responsible for more than 800,000.

This principle is anchored in the treaties and – despite misgivings over the inequalities it produces – is not up for discussion. Within the system, however, there are also specific issues that affect particular states. For example Italy is more populous than Spain but has fewer voters per MEP. The 73 empty seats could potentially be used to iron out such discrepancies. Germany's representation cannot be increased without a treaty amendment, as its 96 MEPs represent the ceiling stipulated in the Lisbon Treaty.

The third and most radical proposal goes further than simply redistributing seats to member states: The creation of a separate single European constituency to elect MEPs on transnational lists would enable the European parties to compete directly for seats in the European Parliament. And Brexit offers the opportunity to create such a European single constituency without any member state having to “relinquish” seats. In recent discussions the Italian government, French President Emmanuel Macron and Commission President Jean-Claude Juncker have argued for such transnational lists.

Parliament's Backlog of Reforms

A second set of impulses for reform emerge from the EP's internal dynamics. The composition of the EP and the procedures for its elections are laid out in the 1976 Act Concerning the Election of the Members of the European Parliament by Direct Universal Suffrage, which was last amended in 2002.

Demands to overhaul the EP's composition have been growing for some time. In 2009, with its position strengthened by the Treaty of Lisbon, the EP sought to apply that momentum to initiate a reform of the electoral system. The Constitutional Affairs Committee appointed Andrew Duff (ALDE) as rapporteur, but it took the parliament until 2013 to agree on reform proposals. Earlier versions of the report contained far-reaching ideas, including the introduction of a twenty-five-member single EU constituency, but failed to find a majority in the EP.

The 2014 European elections forced Parliament's hand, and a provisional arrangement was cobbled together. In the discussion the EP threw its support behind the Spitzenkandidaten principle, which was later codified at its instigation. But the proposal no longer mentioned the idea of a single EU constituency. At the same time the EP's report committed it to finding a "permanent and transparent" solution for 2019 and propose it to the Council (whose approval is required).

The resulting proposal was adopted in plenary session on 11 November 2015, by a comparatively narrow majority of 52 percent. It calls for the European character of EP elections to be strengthened through measures including naming the European parties on the ballot papers and harmonising national election rules. The European Parliament also called for the creation of a single EU constituency to be fought by the lead candidates.

Since then the EP's proposal been stuck in Council, without any decision being taken to date. The British, Dutch, French, Luxembourgish and Swedish parliaments, for example, criticised the proposal's violation of the subsidiarity principle, objecting in particular to the requirement for voting to be run to a particular timeframe. Now, after the Council's failure to approve its proposal, the European Parliament again finds itself seeking a provisional solution to ensure that orderly elections can be held in 2019 – and in particular an arrangement for the 73 vacant British seats. Fundamen-

tal reform and a permanent solution have been pushed back to the subsequent election in 2024.

In February 2018 the Parliament adopted a proposal for a temporary solution that combines the aforementioned versions 2 and 3: for 2019 the EP will be reduced provisionally to 705 members, using 27 of the British seats to balance out discrepancies (see graphic, p. 4). The other 46 seats would be kept free for possible enlargements or for a single EU constituency in future elections.

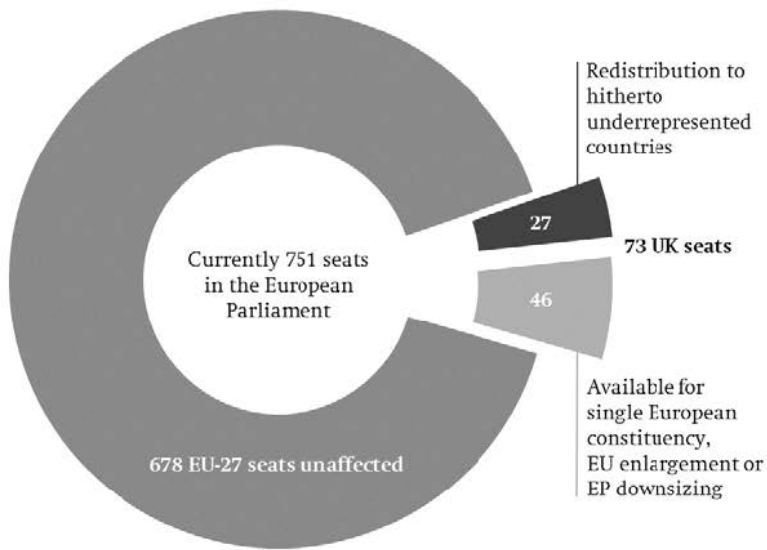
Is a Single EU Constituency the Answer?

An explicit call to introduce a single European constituency for the 2019 election failed to find a majority in the EP's plenary session in February 2018. But even if Parliament had approved the idea, it is more than questionable whether the single constituency would actually have been realised for 2019 – given that the fundamental decision about what is done with the British seats and the introduction of transnational lists must be taken unanimously in the European Council, where opinions are similarly divided. Recently the EuroMed 7 states and Ireland expressed their support for France and Italy's transnational lists proposal, while the Visegrád states (Czech Republic, Hungary, Poland, Slovakia) for instance voiced public opposition.

Upon closer examination, moreover, it becomes apparent how many questions remain unresolved and how much political will would be required to realise the European single constituency – especially in time for the 2019 elections. In general terms, four aspects need to be considered when assessing the initiative: the underlying objectives of the reforms, their concrete shape and form, the associated legislative requirements, and the political obstacles that need to be overcome.

The declared goal of the supporters of a single EU constituency is to enhance the democratic legitimacy of the Union by strengthening the pan-European character

February 2018 EP proposal for seat redistribution after Brexit



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Reallocation of 27 seats		
Country	Current seats	Additional seats
France	74	+5
Spain	54	+5
Italy	73	+3
Netherlands	26	+3
Ireland	11	+2
Poland	51	+1
Romania	32	+1
Sweden	20	+1
Austria	18	+1
Finland	13	+1
Slovakia	13	+1
Denmark	13	+1
Croatia	11	+1
Estonia	6	+1

of its elections. If European parties with transnational lists compete directly for seats, the argument runs, they would significantly improve their electoral visibility – even if the number of seats involved remained small. It would also force the European parties to select their own candidates for the first time and in the process agree at least on the fundamental thrust of their respective campaigns. In combination with the – still controversial – Spitzenkandidaten principle, it is argued, this would rescue the European elections from their current “second class” status.

Critics of the single EU constituency respond that such a reform could in fact actually weaken the EU’s democratic legitimacy. On the one hand, they fear that it could produce two classes of MEP, on the other that the connection between MEPs and their constituents could become even weaker than is already the case, especially in the larger member states. On those points the advocates of reform reply that all MEPs would continue to enjoy the same rights and obligations, and that each of them would represent all EU citizens. The pro-reform side also rejects concerns that the

existence of two parallel arrangements could generate tensions within Parliament, pointing out that national elections in Germany and Hungary for example also use mixed-member proportional representation.

Requirements for a Single EU Constituency with Transnational Lists

A range of different models have been put forward for the concrete shape of such a single constituency. The first question is its size, often discussed in terms of the proposal for a transnational list with 25 MEPs repeatedly put forward by Andrew Duff since 2011. A second – rather unlikely – option would be for all 73 vacated British seats to be filled by way of a transnational list. The most far-reaching proposal to date comes from French President Emmanuel Macron: to have about half of MEPs elected via the single EU constituency as of the 2024 elections. But that would call into question the entire system by which EP seats are distributed. The option with the best medium-term political prospects of realisation would be for a portion of the

vacated British seats – say 30 to 50 – to be used for a single EU constituency.

Next, it would be necessary to clarify the voting system. The introduction of a single EU constituency presupposes that each European party would create its own list and compete for party list votes across all the member states. France has also proposed a rule – analogous to the rules for forming a group in the EP – that the first seven places on the list must include candidates from seven different countries. This would prevent a situation arising where a handful of large member states dominate the supposedly “transnational” lists.

Even the supporters of a single EU constituency disagree among themselves whether the reform should be formally tied to the Spitzenkandidaten principle. Some are clear that the respective lead candidates should also head their party’s transnational list to ensure that they are directly elected – unlike for example Jean-Claude Juncker in 2014. Independently of this, the European parties would have to create internal mechanisms for nominating the candidates for their transnational lists – which would considerably expand their influence over the EP’s membership as this is presently the prerogative of the national parties. Immediately after the EP’s rejection of the single EU constituency, leading MEPs emphasised that the decision in no way affected the Spitzenkandidaten process introduced in 2014, which the EP was determined to retain.

A Means to Improve Representation

While a single EU constituency could contribute to bringing forth real party-political competition at the European level, this would do little to resolve the issues of unequal representation. But the introduction of a second list vote for the European elections could also be used to correct some of the distortions created by the system of degressive proportionality. In political terms these are not insignificant. In the 2014 election the parties of the social democratic

S&D group (with 26.74 percent) came in fractionally ahead of the conservative EPP (26.67 percent) but the EPP was stronger in the smaller member states – and thus received more MEPs relative to vote share. The upshot of the fragmented voting system was that the EPP received 28.8 percent of the seats, the S&D only 25.3 percent (see Table, p. 6).

This discrepancy had far-reaching consequences, because the Spitzenkandidaten principle requires the Commission President to be chosen in light of the outcome of the European elections. As the largest group, the EPP claimed the post for its lead candidate Jean-Claude Juncker – even though the formulation in the EU Treaty is vague enough that the S&D could also have insisted on their candidate Martin Schulz on the basis of winning the largest share of the absolute vote. But with the EP at the time wanting most of all to defend the Spitzenkandidaten principle against the national governments in the European Council, the mainstream groups quickly united behind Juncker and the EPP. The transnational lists could be used to allocate adjustment seats in line with the Europe-wide distribution of list votes and thus even out discrepancies created by degressive proportionality. This would do a great deal to boost fairness of representation in the European Parliament and thus the democratic legitimacy of the EU. After the EP’s rejection of the single EU constituency this could be an argument for keeping the idea alive until 2024.

The Need for Further Harmonisation of European Election Voting Rules

One decisive obstacle to the creation of a single EU constituency is that the legislation for European elections would have to be harmonised across the member states. In technical terms European Parliament elections are still a collection of national ballots where certain important aspects are stipulated (for example dates, proportional representation), but significant details differ. For example there is neither a uniform

Table
European election 2014:
Vote share and seats gained

<i>Group</i>	<i>Vote share</i>	<i>Seats (ideal)</i>	<i>Seats (actual)</i>	<i>Difference (actual-ideal)</i>
GUE/NGL	8.26%	62	52	-10
G/EFA	7.67%	58	50	-8
S&D	26.74%	201	191	-10
ALDE	8.83%	66	67	1
EPP	26.67%	200	221	21
ECR	7.89%	59	70	11
EFDD	7.29%	55	48	-7
Non-attached	6.63%	50	52	2

Source: <http://www.foederalist.eu/2014/10/warum-die-sozialdemokraten-bei-der.html>.

voting age nor a shared deadline for voter registration. Nor are national parties or their candidates required to identify with a European party. Misgivings over excessive harmonisation have often led to rejection of EP reforms, which is good reason to devote greater attention to this factor.

The EP's report of 2015 already called for a far-reaching harmonisation of national legislation for European elections. But a string of its demands collide with national voting traditions, leading the member states to reject the proposals in the Council. In view of this blockade it is necessary in particular to clarify which aspects of electoral law must absolutely be harmonised for an EU-wide constituency to be created, and which can be left alone in deference to national preferences. For example, although it would be helpful in terms of generating political enthusiasm to hold the European elections on a single day across the Union, member states have different traditional voting days that are unwilling to concede.

There are three aspects where realisation of a single EU constituency leaves no alternative to harmonisation of the rules for European elections. Firstly, the introduction of transnational lists presupposes stronger involvement of the European par-

ties in European elections. The situation at present is that national parties standing in European elections may join together in and beyond the EP, but their European political affiliations play little or no role in the campaign. Because the transnational lists would represent the European parties, there would need to be some kind of link to show which national parties they are associated with. Clarity over the connection between second list vote and European party would be especially relevant if the transnational lists – as proposed above – were used for adjustment seats.

Secondly there is currently no uniform deadline by which candidates for European elections need to be registered. The national deadlines range from three months (Sweden) to less than three weeks (Greece, Spain). For transnational lists to function, there would need to be a single deadline for candidate registration.

Thirdly – especially from the German perspective – the question of a uniform threshold for the European elections arises. As the German Federal Constitutional Court ruled in 2014, Germany's 3 percent threshold is unconstitutional in European elections unless it applies across all member states. Since then the German government has been pressing for an obligatory minimum threshold of 3 percent for all EU states, to be introduced for the next European elections. But this is hardly a pressing question for most other states, as they either have their own national threshold or the number of MEPs they elect is so small that it would be impossible for one to be elected with less than 3 percent of the vote anyway. In fact, such a clause would be relevant only for Spain and Germany. The introduction of a transnational list would require a decision on whether a Europe-wide threshold is required, and if so at what level it should be set.

Legal and Political Challenges

In theory the introduction of a single European constituency would be possible with-

out risking the vagaries of an EU treaty amendment, because the EU Treaty defines the minimum and maximum size of national constituencies but does not tie these explicitly to the nationality of the candidates. Proponents of a single European constituency therefore argue that the candidates on the transnational lists would stand not as citizens of a member state but as EU citizens. Already a German can for example win a seat in France without this affecting the upper limit of 96 “German” MEPs.

Nevertheless, four central and closely interconnected hurdles remain. Firstly a reform of the EP involves many veto players – even for the EU – who could block the project or demand concessions. For example Article 223 TFEU grants the European Parliament the right to propose arrangements for elections to select its members. How closely contested the majorities can be was seen in the February 2018 vote on the single EU constituency, where the outcome remained unclear until the vote was held. And then the Parliament’s proposal must not only be adopted unanimously by the Council but also ratified by the member states in accord with their respective constitutions. In Germany for example the Bundestag must approve. And the respective national election laws would need to be amended.

Secondly there is the time factor. In order to conduct orderly European elections, the European and national prerequisites need to be clarified no later than the beginning of 2019, for reasons including deadlines for candidate registration. Thirdly, fundamental differences between member states and between political currents over the question of where the EU should be heading also affect the question of EP reform. This is because creating a single EU constituency, the associated strengthening of the European electoral dimension, and the at least implicit linkage of the reform to the Spitzenkandidaten principle all represent a brand of federalism that is rejected by certain member states, such as Hungary and Poland.

The processes within the European parties represent a fourth challenge. Transnational lists would expose the differences between the national constituent parties a great deal more starkly than already occurred in the process of selecting lead candidates for the 2014 election. For example the German CDU and Hungary’s FIDESZ would have to agree on a transnational list with at least a rudimentary joint manifesto.

Outlook

The current impulses for reforming the European Parliament open up a new perspective in the complex debate about the EU’s democratic deficits. As the analysis shows, a single European constituency could contribute to making European elections more European and creating party-political competition at the European level. But it would not be a panacea. In particular the discrepancies in representation in the EP can only be reduced if the transnational lists are used to allocate adjustment seats – which would require a complex and finely tuned system.

The biggest challenge for reform of the EP is the combination of time pressure, legal complexity and political conflict. A treaty amendment might not be needed, but such a reform would still require unanimity in the Council, approval by the EP and amendment of electoral legislation in all 27 member states.

After the Council blocked the EP’s 2015 proposal and Parliament in February 2018 again resorted to a provisional solution, it is clear that there is currently no majority for federal proposals in the European institutions. Trumpeted as the year of reform, 2018 in fact begins with agreement on the lowest common denominator. Significant innovations in the EP are unlikely, with a proper breakthrough on parliamentary reforms put back until 2024.

The minimum goal for the coming negotiations between the EU institutions over redistribution of the British seats should therefore be to ensure that leeway remains

to introduce a single EU constituency at a later stage. The provisional solution adopted for 2019 should avoid creating further new path-dependencies.

Especially Germany, which is especially affected by inequality of representation, must possess an interest in pressing ahead with longer-term reforms. After the European Parliament blocked the path to introducing a single EU constituency for the 2019 elections, the ball is now in the member states' court. What is needed most of all is an understanding about how the 2019 European elections can be organised in such a way as to strengthen the democratic legitimacy of the EU. That means abiding by the Spitzenkandidaten principle.

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