

Empowering EU Voters

The reform of the electoral system for the European Parliament is just a first step towards a European democracy

Andrea De Petris, Anna Meister, Stefano Milia, Patrick Stockebrandt, Victor Warhem



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In May 2024, the people in the European Union will go back to the polls to elect the Members of the EU Parliament (EP). The Reform Proposal adopted by the EP, currently being examined by the Council, aims to modify the arrangements for the EU elections. At present, the EU elections are largely organised according to national rules which sometimes differ widely in the 27 Member States. European elections take place on different days, with European citizens voting for national parties, for national candidates, on the basis of national election programs. In view of the upcoming election campaigns as well as the EU elections in May 2024, the cepNetwork has analysed the latest Reform Proposal and the impact on European parliamentarianism and democracy.

- ▶ The growing impact of European policies, if not backed by equivalent growth in popular support, could reopen the old problem of the EU's 'democratic deficit' in a new way.
- ▶ Proposing, as the European Parliament has, a more common framework of electoral rules, seems to be a necessary path towards a stronger democratic foundation for the EU.
- ▶ A general lowering of the voting age to 16 in EU elections will enable the younger generation to participate and therefore constitutes progress towards stronger European parliamentarianism and democracy. There is a national divide in the EU at the moment with Germany having already lowered the voting age to 16, whereas e.g. French and Italian sixteen-year-olds currently have no chance of participating in the upcoming EU elections.
- ▶ For constituencies consisting of more than 60 seats, i.e. France, Italy and Germany, the Reform Proposal perceives a legal necessity to introduce an Electoral Threshold of between 3.5-5% of the valid votes cast. The aim: to guarantee the decision-making capacity of the EP. However, such thresholds will restrict access to the EU Parliament for smaller political parties in these Member States. This infringes equal opportunities and needs special justification which is not apparent in this case. A uniform approach should be taken regarding Electoral Thresholds.
- ▶ The aim of the Reform Proposal is to make the popular vote more accountable, thanks to a combination of transnational lists/European constituencies/lead candidates, which should hand the choice of the leadership and political orientation of the Commission back to the people and may make the European institutions more democratic.

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1 Introduction

In about a year from now, the European Union will go back to the polls to elect its Parliament; an opportunity to reflect once again on the extent to which the European institutional structure has achieved democratic maturity and how it may potentially be further improved.

Since the 1970s, the concept of a 'democratic deficit' has been used, even by the European institutions themselves or in rulings by national constitutional courts,¹ in relation to the actual functioning of the political and decision-making processes in the then European Economic Community (EEC), later European Union (EU). This expression aimed to highlight the insufficient democratic legitimisation of the organisational structures of the European institutions, which was consequently reflected in the acts and policies promoted.

The expression essentially referred to the lack of representativeness and the limited powers attributed to the parliamentary institution as part of the European institutional structure. As regards the first aspect, the main turning point was undoubtedly the decision to move, as of 1979, from a representative assembly of the various national parliaments to a true European Parliament (EP) elected directly by the citizens.² As for the second aspect, in each of the Treaty reforms carried out to date, the powers of the assembly and the areas in which it has co-decision-making powers have been gradually increased. Today, the European Parliament has become a co-legislator on an equal footing with the Council regarding the majority of policies within the EU's competence, even if it continues to play a less decisive role in some policy areas, particularly where the Council itself does not decide by qualified majority.

Nevertheless, in spite of direct electoral selection, the nine European Parliament legislatures to date have frequently been accompanied by criticism of their representativeness, linked in particular to the electoral rules that determine their composition.

The main anomaly here, compared to the rules most commonly applied at national level, appears to be the number of MEPs per Member State. These choices are laid down, from time to time, in the Treaties and have also been affected by the various accessions and departures that, over time, have increased or decreased the number of EU Member States, also impacting on the total and relative number of MEPs elected in each state. A principle established since 1979, which largely shapes the European electoral system, is that seats are allocated according to a criterion of 'degressively proportional' representation, with a composition currently ranging from a minimum of 6 to a maximum of 96 MEPs per Member State.³ This gives proportionally greater representation to States with smaller populations than to those with larger populations.⁴ In concrete terms, this means that each MEP from a larger Member State will represent a correspondingly larger number of citizens than his or her

¹ For Example BVerfGE (1994) "*Maastricht Urteil*", and BVerfG (2009) 'Judgement of the Second Senate of 30 June 2009, 2 BvE 2/08 - pars. (1-421)'.

² Act concerning the election of the members of the European Parliament by direct universal suffrage ("the Electoral Act") annexed to Council decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

³ Art. 14 Treaty on European Union (TEU).

⁴ This approximately results in a ten-fold distortion based on a comparison of the situation of Malta or Luxembourg with that of Germany or France. There has been much debate on how this situation can, at least partially, be corrected even after the Brexit decision and thus there is the prospect of an eventual distribution of the UK's seats. See for example: Directorate General for Internal Policies of the Union of the European Parliament - IN-DEPTH ANALYSIS for the AFCO Committee "[The Composition of the European Parliament](#)" (2017) or Robert Kalcik and Guntram B. Wolf "[Is Brexit an opportunity to reform the European Parliament?](#)" BRUEGEL - Policy Contribution Issue n°2 (2017)

colleague from a smaller Member State, and that therefore, a voluntary arrangement has been accepted among the Member States which, within the European Parliament, gives greater political weight to the less populous states, even if technically this undoubtedly represents a case of 'malapportionment'.⁵

Another weak point, identified in the past, links conclusions regarding the democratic representativeness of the European Parliament to European electoral rules. This relates to the consequences arising from the different electoral systems used by the Member States to select their MEPs. These consequences mainly involve distortions in the number of MEPs elected within the individual European political 'families', depending on whether a Member State uses a majority or a proportional electoral system. The UK's majoritarian electoral system, in particular, had the effect of substantially influencing the power relations between the different European parliamentary groups.

This problem was addressed by the Council in 2002 and its decision reaffirmed in 2018.⁶ These decisions indicate that each Member of the European Parliament should be elected within the framework of a proportional electoral system, while leaving the Member States free to determine their own specific electoral rules which do not affect the proportional nature of voting overall. However, it was certain innovations introduced by the Lisbon Treaty⁷ which had the effect of reopening the debate on the need to reform electoral rules at the European level. This led to a new series of initiatives on the part of the EP aimed at modifying its own rules to meet a need for greater democratic representativeness of the institution itself and to generally raise the level of European political awareness of citizens as well as to promote electoral campaigns that are increasingly linked to European (supranational) rather than national political objectives and dynamics.

Particularly influential among these initiatives is the fact that the Treaties now provide for the nomination of the President of the European Commission by the Council, taking into account the results of the European elections⁸ and the increasingly recognised and growing need for the development of genuine European political parties.⁹ During the 2009-2014 European legislature, in particular, the Institutional Affairs Commission of the EP, had already prepared and approved two draft legislative resolutions with several new elements aimed at strengthening the popular legitimacy of the EP,¹⁰ neither of which, however, were approved by the EU Assembly.

Moreover, a problem the European institutions have been confronted with for years is the high level of abstentionism in European elections. The historical trend from 1979, shown in Figure 1 below, when direct voting by European citizens for the Euro-parliament was introduced, to the present day shows a steady decline in turnout, with the EU average turnout falling from 61.99% in 1979 to 42.61% in 2014,

⁵ "Malapportionment" is defined as "the discrepancy between the shares of legislative seats and the shares of population held by geographical units" by Michel L. Balinski and H. Peyton Young, *Fair Representation: Meeting the Ideal of One Man, One Vote* (New Haven: Yale University Press, 1982), p.10.

⁶ Council Decision of 25 June and 23 September 2002 (2002/772/EC, Euratom) and Council Decision of 13 July 2018 (2018/994/EU, Euratom)

⁷ Entered into force on 1 January 2009

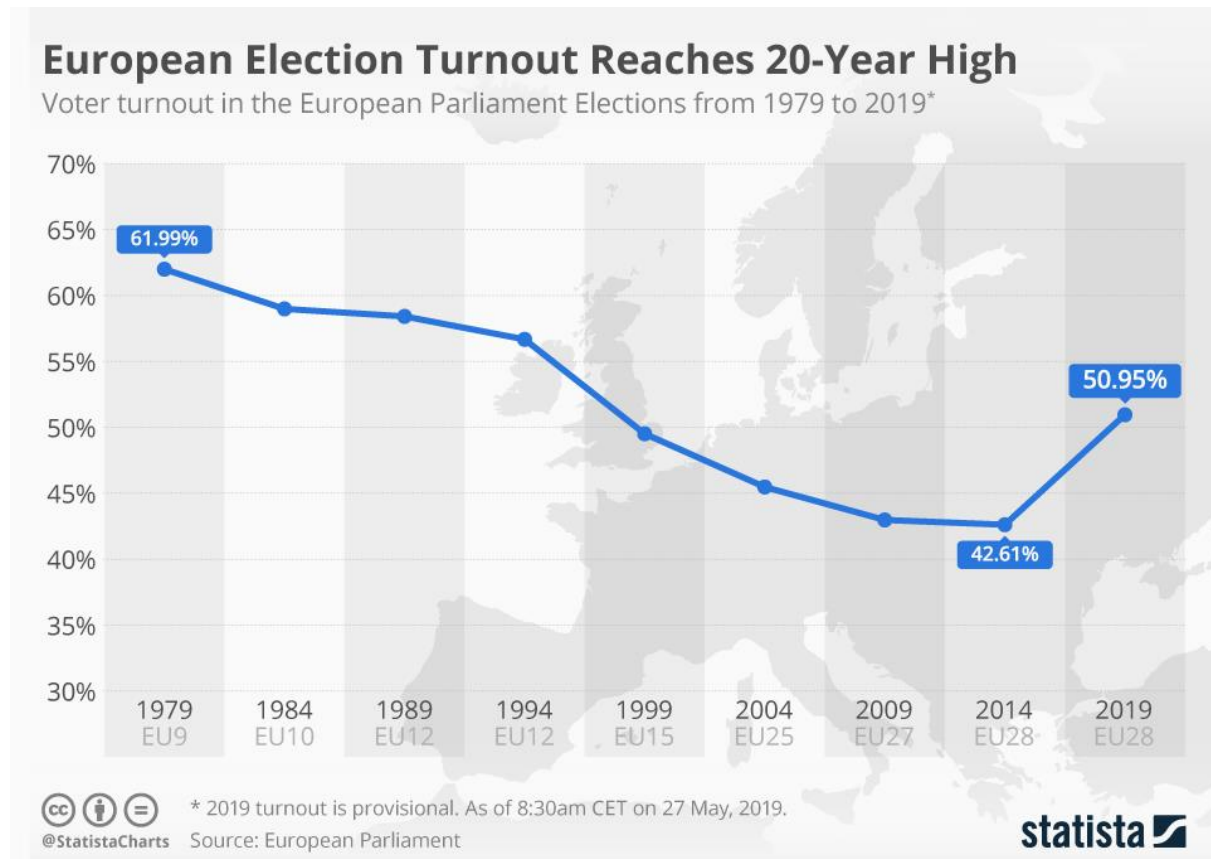
⁸ Art. 17 (7) TEU

⁹ Art. 10 TEU and Art. 224 TFEU together with Regulation 1141/2014 of 22 October 2014 on the statute and financing of European political parties and European political foundations.

¹⁰ See [declarations](#) of the designated Rapporteur: Andrew Duff and text of the [FIRST REPORT](#) of 28 April 2011 and the [SECOND REPORT](#) of 1 February 2012 on a proposal for a modification of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976, (2009/2134(INI)).

and a reversal of the trend only at the last elections in 2019, when 50.95% of Europeans cast their vote.¹¹

Figure 1: European Election Turnout Reaches 20-Year High



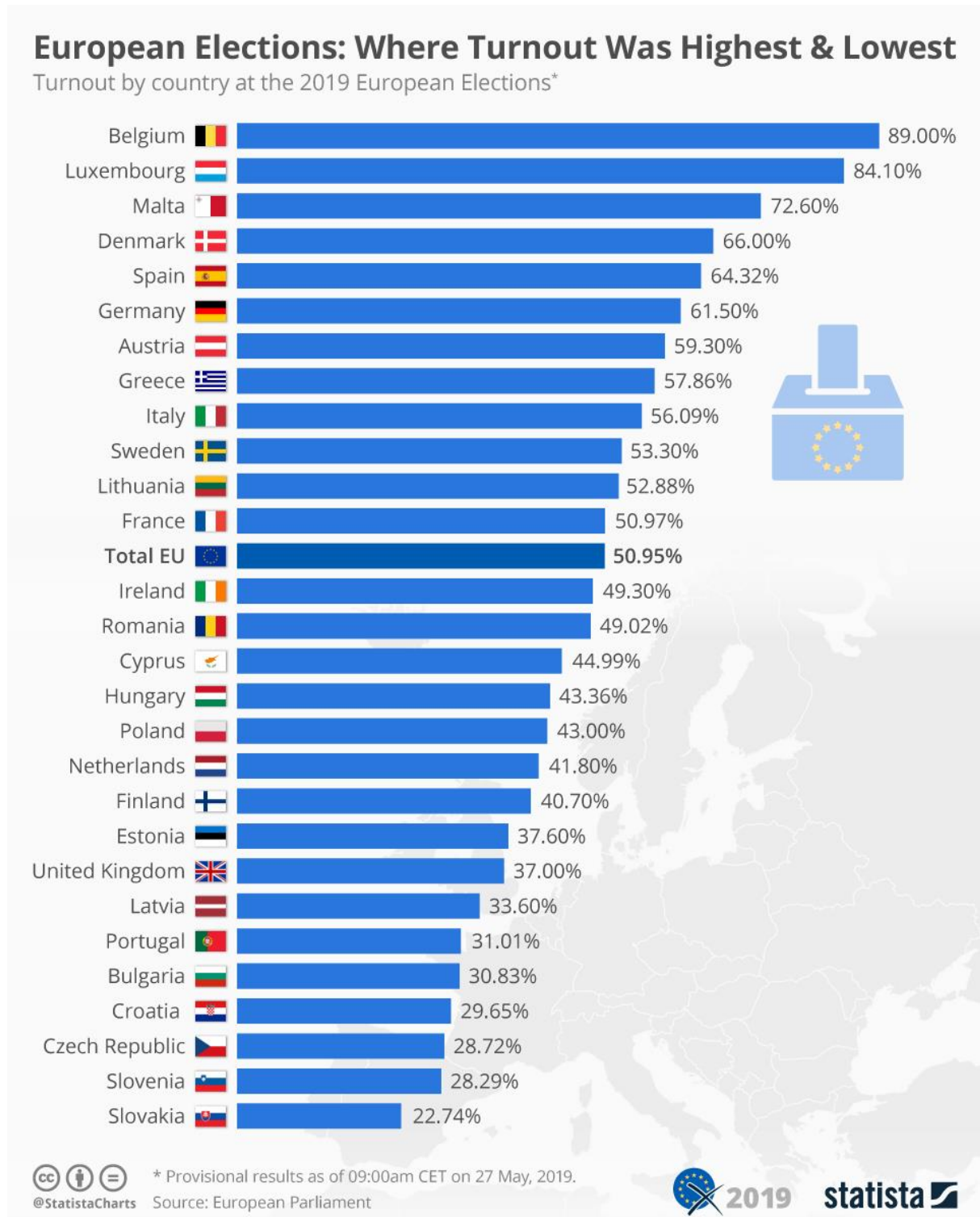
Source: Statista.com

It is also important to note that the abstentionism figure is not evenly distributed among all Member States, but that the number of Europeans who fail to participate in voting in fact varies considerably from one country to another, as shown by the figure for the last European elections in 2019.¹²

¹¹ Niall McCarthy, [European Election Turnout Reaches 20-Year High](#), Statista.com, 27 May 2019.

¹² Niall McCarthy, [European Elections: Where Turnout Was Highest & Lowest](#), Statista.com, 27 May 2019.

Figure 2: European Elections: Where Turnout was Highest & Lowest



Source: Statista.com

As shown in Figure 2 above, abstentionism remains a serious problem for the EU, albeit to varying degrees between Member States. Although this is a well-known phenomenon in other types of elections, low voter turnout at European level, in particular, risks undermining the representativeness of the European institutions, and the degree of acceptance towards measures that are decided in

Brussels but which are intended to have an effect on the everyday lives of the populations of the 27 Member States.

In the 2014-2019 parliamentary term, the Constitutional Affairs Committee of the European Parliament decided to draw up a new legislative initiative report on the "Reform of the electoral law of the EU" (Co-Rapporteurs Danuta Hübner and Jo Leinen),¹³ but this attempt also failed due to lack of approval in the EP plenary.

Several reform elements that emerged in previous legislatures can also be found in the new legislative proposal of the European Parliament, which was approved by the plenary on 3 May 2022¹⁴. It is currently under consideration by the Council and forms the main subject of this publication.

In this context, the aim of encouraging more citizens to participate in European elections also takes on particular relevance. Electoral participation of citizens in European elections remains, in general, far below that of national elections and, moreover, there are great disparities between the Member States. Nevertheless, in the last round of elections, the figures were up slightly for the first time. Any possibility that could possibly induce more European citizens to participate in the vote, including new uniform electoral rules, must therefore be carefully examined.

2. Analysis of the innovative elements of the current European Parliament reform proposal

On 3 May 2022, the European Parliament, with the aim of revising the rules on European elections, adopted a legislative initiative report pursuant to Article 223(1)(2) TFEU regarding the proposal for a Council Regulation on the election of the members of the European Parliament. The draft legislative act was adopted by 323 votes in favour, 262 against and 48 abstentions, while the accompanying political resolution obtained 331 votes in favour, 257 against and 52 abstentions.¹⁵

The Proposal adopted by the European Parliament (hereinafter: Proposal), currently being examined by the Council, aims to modify the current arrangements for the election of members of the European Parliament.¹⁶ The Proposal notes that, at present, elections to the European Parliament are largely organised according to nationally decreed rules and modalities, which differ widely in the 27 Member States. European elections take place on different days, with European citizens voting for national parties and national candidates, on the basis of national election programs. The European Parliament holds the view that the approximation of the different electoral systems in use and the different ways of organising elections by means of a more uniform electoral discipline for all 27 Member States, based on clear common principles and standards, would promote equality and political integration of EU citizens, and would strengthen the overall consolidation of the European public sphere.¹⁷

¹³ Report of 2 October 2015 on the reform of the electoral of the European Union, Procedure file (2015/2035(INL)), Co-Rapporteurs: Danuta Hübner and Jo Leinen. S. also the [European Added Value Assessment accompanying the legislative own-initiative Report](#).

¹⁴ Legislative resolution of the European Parliament approved by the plenary 3 May, 2022 ([P9_TA\(2022\)0129](#))

¹⁵ [European Parliament, Press Release, MEPs begin revising rules on EU elections, calling for pan-European constituency, 3.5.2022.](#)

¹⁶ In particular, the proposal of the European Parliament seeks to repeal Council Decision 76/787/ECSC, EEC, Euratom, and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision, in order to replace it with the proposal examined in this contribution.

¹⁷ [European Parliament, P9_TA\(2022\)0129](#), Proposal for a Council Regulation, Recital (5).

To clarify the effects which the Proposal would have on the system of election of MEPs, its most relevant contents are summarised below.

2.1 Standardisation of the electoral system

Firstly, the proposal lays down the necessary provisions for the election of Members of the European Parliament by direct universal suffrage with a uniform electoral procedure for all 27 Member States, especially with regard to the single EU-wide constituency.¹⁸ The part of the electoral procedure not governed by the Proposal remains within the competence of individual Member States and regulated by national law.¹⁹ National provisions must, in any event, guarantee the proportional character of the European vote and respect for democratic standards in order for a political party to run in the European elections,²⁰ join an association of voters²¹, or table a list of candidates.

2.2 Age limits for the right to vote and to stand as a candidate

The Proposal sets the minimum age at which every citizen of the EU should be entitled to vote in European elections at 16, but takes into account the constitutional provisions of the Member States that provide for a minimum age of 17 or 18. No citizen of the Union may vote more than once - i.e. vote in more than one Member State - in a national constituency or in the European constituency, and States are called upon to take appropriate measures and sanctions to prevent double voting.²² A minimum age of 18 is also set for standing as a candidate in both the European constituency and the national constituencies, and it is not permitted to stand as a candidate on more than one European or national list.²³

2.3 Exercise and accessibility of the right to vote for all European citizens

Member States must ensure that all citizens of the Union are able to exercise their right to vote, including those who reside or work in a third country, those who have no fixed abode or no permanent residence, and those who are serving a prison sentence: for the latter category of citizens, any national provisions restricting their right to vote shall in any event remain in force.²⁴ States must ensure that all European citizens, including those with disabilities, are able to cast their vote independently and secretly, if necessary by ensuring that they are assisted by a person of their choice.²⁵

¹⁸ Art. 1 of the Proposal. For more information on the nature and function of the single electoral constituency, see *infra*, 1.7.

¹⁹ Art. 3 Proposal.

²⁰ By "political party" the Proposal means an association of citizens pursuing political objectives recognised or established in accordance with the legal order of at least one Member State in accordance with Regulation (EU, Euratom) No. 1141/2014 of the European Parliament and of the Council, including those wishing to form or join a European coalition of national political parties and/or national associations of voters for the purpose of submitting a list of candidates and conducting an election campaign for the constituency at Union level, see Art. 2 of the Proposal.

²¹ By "association of electors" the Proposal means an association of citizens which pursues political objectives and which, instead of being constituted as a political party, has registered as an association of citizens, in accordance with the applicable national provisions, including those wishing to form or join a European coalition of national political parties and/or national associations of electors for the purpose of submitting a list of candidates and conducting an electoral campaign for the constituency at Union level, see Art. 2 of the Proposal.

²² Art. 4 Proposal.

²³ Art. 5 Proposal.

²⁴ Art. 6 Proposal.

²⁵ Art. 7 Proposal.

2.4 Postal and Televoting

The Member States must guarantee the exercise of voting for the European Parliament not only in person, but also via forms of remote voting, such as advance voting, proxy voting, postal voting, electronic voting and televoting via the Internet, creating the conditions to make these forms of voting accessible also to citizens residing in a third country and to those with disabilities. In any event, States must ensure that, even remote voting maintains the necessary standards of reliability, integrity and secrecy, ensuring the transparency of the electoral process adopted.²⁶

2.5 National and European lists, selection of candidates, lead candidates

In order to implement the principle of gradual "Europeanisation" of voting, and to avoid double voting in two States, the Member States must complete the lists of citizens eligible to vote no later than 14 weeks before the date of the elections: to this end, the competent national authorities will have to provide the European Electoral Authority²⁷ with the necessary data for this purpose.²⁸ Political parties, associations of voters, electoral coalitions and European electoral entities²⁹ participating in European elections must adopt democratic procedures that ensure transparency and gender equality in the selection of their candidates, guaranteeing that the European Parliament reflects the diversity of the European Union. For this, all Member States must submit candidate lists within 12 weeks from the date of the elections.³⁰

Furthermore, in the Explanatory Memorandum accompanying the Proposal,³¹ the European Parliament points out that the procedure for the 2014 elections set a precedent for the Parliament's role in the choice of the President of the Commission. This, however, has not yet become part of a comprehensive reform of European electoral law leading to an unexpected disapplication of the lead candidate (*Spitzenkandidat*) principle following the 2019 European elections. According to this procedure, the lead candidate whose European political entity has received the highest overall number of seats should be first to try to form a coalition majority in the newly elected European Parliament, and if successful be appointed to the presidency of the Commission. If the lead candidate is unsuccessful in forming a coalition majority, the task should be assigned to the next lead candidate. As part of this procedure, the President of the European Council should consult the leaders of the European political entities and parliamentary groups in order to ascertain precisely which lead candidate has the best chance of forming a majority in the European Parliament and being elected President of the Commission. In this respect, the European Parliament hopes that this procedure, which, although available, has so far never been used, can be formalised by way of a political agreement between the European political entities and an inter-institutional agreement between Parliament and the European Council. The creation of a European constituency would facilitate the adoption of this procedure because it would be in this constituency that each European political party, European association of voters or other European electoral entity would have to present its lead candidate and a common electoral programme. This would allow all European voters to choose their

²⁶ Art. 8 Proposal.

²⁷ On the European Electoral Authority, see in detail below 1.10.

²⁸ Art. 9 Proposal.

²⁹ By European electoral entity the Proposal means a coalition of national political parties and/or national electors' associations, a European political party, a European electors' association, a European electoral coalition or a political alliance, s. Art. 2 Proposal.

³⁰ Art. 9-11 Proposal.

³¹ European Parliament, P9_TA(2022)0129, Proposal for a Council Regulation, Recital (D).

preferred candidate for the office of President of the Commission from among these candidates, who would thus be eligible in all Member States on common lists for the entire EU.³²

2.6 Characteristics of the electoral system

The Proposal envisages a proportional electoral system, with a single basic framework for all Member States, providing direct, equal, free and secret universal suffrage, in which each voter has two votes: one to elect candidates to the European Parliament in national constituencies, and one to elect candidates in the European constituency. The proposal emphasises that MEPs are elected as representatives of the citizens of the European Union, not as citizens of the individual Member States, and that in national constituencies any national system of proportional representation commonly used in the Member States is to be used. In the European constituency, on the other hand, the closed list system is to be used, whereby voters vote for a list but cannot express preferences for individual candidates within it.³³ At national level, a minimum electoral threshold is required for the allocation of seats not exceeding 5 per cent of the valid votes cast, while in national constituencies with more than 60 seats, the minimum threshold is set at 3.5 per cent of the valid votes cast in the individual constituency. Exceptions to the minimum thresholds under national law, for lists representing recognised national or linguistic minorities, are in any event safeguarded.³⁴

2.7 National and European constituencies, transnational lists

Member States may establish individual constituencies, or provide for more than one in accordance with their specific needs, but without prejudice to the proportional character of the electoral system; single-member constituencies may also be established to represent linguistic or ethnic minorities, outermost regions, overseas citizens or territories, in accordance with national law, provided that the proportional character of the electoral system is preserved. The European constituency is established for the entire territory of the EU, and 28 Members of the European Parliament will be elected from it in the first election governed by the Reform Proposal. In subsequent elections, the size of the European constituency will be decided by the European Council. In the European constituency, each European electoral entity³⁵ may submit to the European Electoral Authority only one candidate list, and national political parties³⁶ and national voters' associations³⁷ may only support one candidate list.³⁸

The creation of an EU-wide electoral constituency, in which lists are headed by each political family's candidate for the post of President of the Commission, aims to strengthen European democracy and give greater popular legitimacy to the election of the President of the Commission. These two aims are intended to contribute to the construction of a common European political space, by organising political confrontation in the EU, and ensuring that the elections to the European Parliament are based on European issues, and not on matters that are exclusively of national relevance.³⁹

³² Art. 11-12 Proposal.

³³ Art. 12 Proposal.

³⁴ Art. 13 Proposal.

³⁵ See supra, FN 29.

³⁶ See supra, FN 20.

³⁷ See supra, FN 21.

³⁸ Art. 14-15 Proposal.

³⁹ European Parliament, P9_TA(2022)0129, Proposal for a Council Regulation, Recital (Z).

2.8 Funding and organisation of European election campaigns

Campaign funding for European electoral entities follows the provisions of Regulation 1141/2014, which rules on the funding of European political parties and political foundations.⁴⁰ It is envisaged that the electoral campaign will start no earlier than eight weeks before the election date, and will consist of initiatives aimed at requesting voters to vote in the European elections, using materials that must also be accessible to persons with disabilities. The ballot papers in the national constituencies must be uniform and guarantee equal visibility for the names, acronyms, symbols and logos of the parties and/or candidate associations, while the states must guarantee equal treatment and opportunities during the electoral campaign to all entities, parties and candidate associations, and provide for a period of 48 hours before the vote in which voters may not be asked about their voting intentions.⁴¹

2.9 Single election day and announcement of election results

9 May is identified as the single day for the European elections in all 27 Member States, with voting to be concluded by 9 p.m. local time. The results of the polls may not be made public in any of the Member States before the polls close in the state whose voters are last to vote. States may declare a national holiday on European election day. The results of the vote for national and European constituencies shall be declared by the European Electoral Authority and published in the Official Journal of the European Union.⁴²

2.10 European Electoral Authority

Provision is made for the establishment of a European Electoral Authority, whose main tasks are: to ensure the correct implementation of electoral legislation, to monitor elections in the European electoral constituency, to verify that the European electoral entities comply with the conditions for the submission of lists for the European constituency, to manage the European electoral roll, to announce the results of the elections in the national and European constituencies, and to rule on disputes relating to the application of the new European legislation, with the exception of national provisions, for which the institutions of the Member States are competent.⁴³

3 Tracing the development of the proposal: how did it come about

3.1 Debate on the reform proposal in the Council

Following unsuccessful attempts initiated and approved by the Parliamentary Committees on Constitutional Affairs (AFCO) in the previous two parliamentary terms, the European Parliament this time managed to formalise its legislative resolution according to the procedure laid down in Article 223 TFEU, and a special legislative procedure has now been set in motion. To finalise the process, this

⁴⁰ V. [Regulation \(EU, Euratom\) No. 1141/2014 of the European Parliament and of the Council of 22 October 2014](#), on the statute and funding of European political parties and European political foundations.

⁴¹ Art. 16-17 Proposal.

⁴² Art. 19-20 Proposal.

⁴³ Art. 28 Proposal.

now requires a unanimous decision by the Council, final approval by the European Parliament and subsequent ratification by all the Member States.

While the French Presidency of the Council only managed to bring the dossier to the attention of the General Affairs Council and clarify certain technical aspects, the Czech Presidency was able to get it on the agenda of an orientation debate on 18 October 2022⁴⁴. However, this debate registered varying views among the representatives of the Member States on the subject, although there was general support for the specific objectives of increasing voter turnout and strengthening the democratic legitimacy of the EP. The main political positions that emerged in the debate concerned the issue of transnational lists and their possible link to the choice of President of the Commission, although reservations were also expressed on several suggestions to harmonise electoral processes by some Member States, who considered a flexible system respecting national voting traditions more appropriate.

On the basis of the preliminary debate, further initiatives were launched to investigate the issues, including a request for clarification to the EP's Constitutional Affairs Committee (AFCO).

The current Swedish Presidency of the Council is now proposing a more structured approach to the issue and is in the process of completing a specific questionnaire addressed to the Member States to ascertain the extent of their support for the different parts of the EP proposal. It is undoubtedly appropriate for this procedure to take a long time since it requires the building of a unanimous political will. Furthermore, in a note dated June 2022⁴⁵, the Swedish government made known its rather critical position on several of the proposals made by the European Parliament.

These circumstances could very likely make it impossible in practice to obtain a Council decision in time to reconcile it with the organisational requirements linked to the preparation of the 2024 election. The wish expressed by the European Parliament in this respect could therefore be de facto disregarded.

However, this should not lead to its automatic expiration once the elections for the new EP are over: in fact, despite the fact that there are no specific rules on this in the Treaties, nor any exact precedents, the principle of 'continuity' of the acts approved by the European institutions even after the change from one legislature to the next has prevailed for several years.

For instance, legislative initiatives proposed by a European Commission are not automatically subject to formal resubmission, even after the accession of a new college of Commissioners and the beginning of a new parliamentary term. Although the European Parliament has, in the past, supported the general proposition that acts of the European executive expire with changes of legislature, it has since accepted in practice that they may actually continue to be valid, at least as long as the European Commission itself does not formally declare its intention to drop them. In this particular case, in which the legislative initiative is delegated by the Treaties to the European Parliament itself, it should be possible to argue, by analogy, that its own legislative resolution remains valid, at least as long as the newly elected Parliament does not formally declare its intention to drop it.

⁴⁴ See General Affairs Council, 18 October 2022 - Main results and background note for the debate.

⁴⁵ Swedish Government Offices (Ministry of Justice) - [Factsheet 2021/22:FPM95](#) about the Regulation on the election of Members of the European Parliament by direct universal suffrage 2022-06-01

3.2 Reactions from the Member States' national parliaments

The provision for transmission of the proposed regulation to the national parliaments, together with recital (23) relating to the principles of subsidiarity and proportionality, triggered several national parliaments to take a position on this initiative.

Some national parliaments made use of the option to express their views on the matter with their own 'reasoned opinion', or even through other types of acts within the framework of the political dialogue between national and European institutions.

Under the subsidiarity control procedure, a date of 13 July 2022 was set for the submission of comments. Among the 10 countries that have consequently started a process of analysis, including at national parliamentary level, most express critical positions with regard to the proposal to standardise organisational provisions of the European electoral system at European level, such as: voting methods, single election day (9 May), campaign regulations and access to polls, parties' obligations regarding the formation of lists, thus expressing opposition to the fact that the European level could interfere with the control of the organisation of elections in the Member States. Some also point out that establishing rules that differ from those which citizens are used to and which they trust in their national contexts could also have a dissuasive effect on voting, and thus run counter to one of the main objectives set by the European Parliament itself.

The parliaments of Sweden, Denmark, Ireland, the Czech Republic and the Netherlands in particular argue, with varying emphasis, that the proposal submitted by the EP would not respect the principle of subsidiarity. On the other hand, the German Bundesrat expresses an essentially favourable opinion (with the sole exception of the plan for a single election day on 9 May), and the report issued by the French Senate also emphasises and supports the additional political goals that the EP wants to achieve with this initiative.

It should also be pointed out that there is a clear majority of national parliaments that have not yet indicated whether they have begun discussions on the matter. This is a very important aspect, considering that Article 223 TFEU provides for a path to national ratification by all 27 Member States regarding any agreement reached in the Council.

From the information currently available, it seems to be the less populous states in particular who, despite the system of protection contained in the EP proposal, fear being electorally disadvantaged by the introduction of transnational electoral lists, and therefore prefer not to interfere with the current procedure for selecting the President of the European Commission, which is based on equal negotiation in the European Council.

4 Possible consequences of the reform in the political contexts of France, Germany and Italy

Elections to the EU Parliament have so far been organized largely in accordance with national rules, which have varied considerably from one Member State to another. This in fact leads to different electoral systems. A more uniform approach, as described above, can strengthen democratic legitimacy and create a common European political space.⁴⁶ Yet, national specificities remain.

4.1 Reflections on the approach to the European elections in France and the possible impact of the reform

A current lack of interest in European electoral rules and election debates in the French public media

It should first be emphasized, with regard to France's current approach to the 2024 European election, that there has so far been no real public discussion about its potential reform. The only debate relates to how political parties are going to run.⁴⁷ As is usual in France, the first reflex of the political debate is to approach European elections from a national angle; there has so far been no emphasis on European issues and the proposal of the European Parliament of May 2022⁴⁸ has not been discussed at all, probably because journalists believe it has little chance of being adopted given the reluctance of the Council.⁴⁹ Yet, there is a high probability that French people would be in favour of a European constituency, which would allow European lead candidates ("*Spitzenkandidaten*") to be elected as President of the European Commission after the elections. However, governments, including France's, are not ready to lose their bargaining power in the nomination of the President of the Commission – which played a major role in the last nomination. The democratic deficit and lack of interest in the EU is in fact partly due to governmental reluctance.

No expected change of electoral rules in France for the 2024 election

Furthermore, regarding the right to vote, there is no plan to lower the voting age to 16. It has never been a topic of discussion in France. Regarding the electoral threshold, it is currently 5% of the votes cast at national level in France, and there is no debate regarding a potential change of the rules. Consequently, the way the 79 French euro-MPs are elected will very likely remain the same next year.

Is it possible to regain the high turnout of 2019?

As there is currently no debate regarding European elections or electoral rules in France, it is the role of civil society to encourage political forces to speak louder about the EU and boost interest in these topics. It is especially important because the French population is very Eurosceptic.⁵⁰ Paradoxically, it should not be forgotten that, five years ago, this Euroscepticism, combined with the reintroduction of a single national constituency instead of eight interregional ones (a system introduced in 2004)⁵¹, gave

⁴⁶ S. Bundesrat (2022), [Empfehlungen 253/1/22](#), p. 1 et seq. and S. Laskowski (2022), [Stellungnahme](#), p. 2-4.

⁴⁷ Franceinfo, [Européennes 2024 : Les Républicains craignent de disparaître du paysage politique](#), 12.04.2023.
Le Parisien, [Un an avant les élections européennes, la Nupes part en ordre dispersé](#), 14.04.2023

⁴⁸ European Parliament, [Révision des règles sur les élections et circonscription paneuropéenne](#), 03.05.2022

⁴⁹ Euractiv, [Le Conseil de l'UE s'oppose aux projets de nouvelles règles électorales européennes](#), 08.12.2022.

⁵⁰ Notre Europe, [French people's relationship with the EU: ambivalence and very strong euroscepticism](#), 06.05.2020.

⁵¹ [LOI n° 2003-327 du 11 avril 2003 relative à l'élection des conseillers régionaux et des représentants au Parlement européen ainsi qu'à l'aide publique aux partis politiques.](#)

the debate a national flavour.⁵² This resulted in a turnout, which was higher than for any European elections since 1994 (50.1%⁵³ of turnout vs. 42.2%⁵⁴ in 2014). Could the same thing happen next year? Undoubtedly yes. More than ever, the French government is emphasizing the steady increase in relevance of the EU as a decision-making organisational level. The “*Rassemblement National*” has never been as popular as it is now according to surveys. This should result in a strong polarity in the national debate and a relatively high turnout in May 2024, as in May 2019. Unfortunately, even if there is a high turnout, this could happen at the expense of the EU: at this stage, the likelihood that the largely eurosceptic far-right party “*Rassemblement National*” will send even more MEPs (22) than in 2019 is very high. Mobilizing in favour of Europe may prove less successful than mobilizing against it.

Conclusion: What to expect in the coming months

Unfortunately, therefore, European elections do not occupy any real political space in France at this stage, except from the angle of national politics, which is expected to have a major polarising effect next year. The European Parliament’s proposal was not covered by French media last year, and no reform of the electoral system surrounding the European elections is expected at this stage. However, there will be great public discussion in France, and the turnout could reach a similar level to that of 2019. The debate is expected to take-off slowly in September, with an intensification of the political debate during the winter 2023/2024. It is impossible to know whether European issues are going to be at the centre of discussions. Furthermore, it is impossible to know whether the French will be interested in a potential European public debate – which is unlikely without the lead candidate (*Spitzenkandidat*) system. What is nonetheless certain is that the EU is more important and visible than ever in the lives of the French: the ecological transition and the war effort to support Ukraine – both partly organised by the EU – have been very much in the news in the last few years. The geopolitical consequences of the Ukrainian conflict, with Macron promoting a “third way” for the EU between the US and China, has also captured the attention of French public opinion. It is therefore very likely that the French will continue to approach the next European elections as they always have done: by arguing strongly with each other – maybe at the expense of the EU –, by prioritising the national angle, and by favouring European issues that have most impact on their lives and interests. The Europeanisation of the debate may progress but it is unlikely that the French will participate greatly in a truly European public debate. For what it is worth, because the EU is more important than ever, we can still expect their disputes to be louder than ever.

4.2 Reflections on the approach to the European elections in Germany and the possible impact of the reform

Right to Vote: Voting Age

Insofar as the EU Treaties and EU electoral legislation do not contain regulations, recourse to national law is required.⁵⁵ This is particularly clear as regards the voting age. So far, the corresponding eligibility to vote in EU Parliamentary Elections has varied from one the Member State to another due to diverging national laws. Art. 4 (1) of the Proposal provides for the right to vote for every EU citizen

⁵² TF1 info, « [Je ne peux pas rester spectateur](#) » : Macron justifie son implication dans la campagne LaRem aux élections européennes, 06.05.2019.

⁵³ Ministère de l’intérieur, [Résultats des élections européennes de 2019](#), 26.05.2019.

⁵⁴ Ministère de l’intérieur, [Résultats des élections européennes de 2014](#), 25.05.2014.

⁵⁵ See Huber, in: Streinz, EUV/AEUV, 3rd edition 2018, Art. 223 AEUV, para. 6.

from the age of 16.⁵⁶ In Germany, the voting age is 18 in Federal Parliamentary Elections (*Bundestagswahl*).⁵⁷ This has – until recently – also been the case for the EU Parliamentary Elections as regulated in the European Elections Act.⁵⁸

However, after the last German Federal Parliamentary Election in 2021, the coalition of political parties that emerged to form the German Federal government announced in its coalition agreement that it wanted to lower the voting age for EU Parliamentary Elections to 16.⁵⁹

One of the reasons for this change was the increased interest being shown by young people in politics. This was apparent from political activism like demonstrations, social engagement and initiated constitutional complaints through which the young generation indicated its desire for representation in the political process.⁶⁰ It is argued that the political awareness and knowledge of this age group is the same as that of older age groups.⁶¹ Furthermore, 16 and 17 year-olds possess the necessary education, political maturity and ability to take responsibility, which generally qualifies them to vote.⁶² From a legal perspective, an exclusion from the right to vote interferes with the generality of the vote and can be interpreted as an infringement of fundamental rights if no compelling reasons exist.⁶³

The German political opposition disagrees with the government's reasoning. They question the personal maturity of 16-year-olds.⁶⁴ In terms of legal policy, a lower voting age could be questionable based on the consistency of the legal order.⁶⁵ Furthermore, apart from Germany, the eligible voting age is 18 in most countries, so it can be considered a benchmark.⁶⁶ So far there are only a few exceptions to this in relation to the EU Parliamentary Elections.⁶⁷

The German Federal Parliament (Bundestag) discussed a legislative draft to set the voting age at 16 for EU Parliamentary Elections.⁶⁸ On 22 November 2022, the majority of the Bundestag – the government parties (i.e. SPD, GRÜNE, FDP) and the die LINKE – voted in favour of the amendment whereas parts of the opposition – i.e. the CDU/CSU and AfD – voted against the proposal.⁶⁹ Germany's second legislative body, the Bundesrat, confirmed the amendment to the European Elections Act on the 16 December 2022.⁷⁰ The amendment finally entered into force as of January 2023. Thus, the voting age for the EU Parliament Election is now 16 and therefore already in line with the Proposal.⁷¹

⁵⁶ With exceptions to existing constitutional orders establishing a minimum voting age of 18 or 17 years of age [Art. 4 (1) Proposal].

⁵⁷ Federal Election Law / Bundeswahlgesetz.

⁵⁸ See generally Laskowski, S. (2022), [Stellungnahme](#). The German name of the "European Elections Act" is "Europawahlgesetz".

⁵⁹ See Koalitionsvertrag between SPD, Bündnis 90/Die Grünen und FDP, [MEHR FORTSCHRITT WAGEN](#), p. 12.

⁶⁰ See Bundesrat (2022), [Empfehlungen 253/1/22](#), para. 6 and Laskowski, S. (2022), [Stellungnahme](#), p. 1.

⁶¹ See Faas, T., Leininger, A. (2022), [Stellungnahme](#), p. 2.

⁶² See Heußner, H. (2022), [Stellungnahme](#), p. 12.

⁶³ See Laskowski, S. (2022), [Stellungnahme](#), p. 4.

⁶⁴ See Bundestag, [Wortprotokoll der 18. Sitzung](#), p. 6.

⁶⁵ See Klein, E. (2022), [Stellungnahme](#), p. 2. The idea to set the voting age at 16 should not be examined without considering the possibility that this might give rise to a shift in the boundary between juvenile and adult criminal law. This happened in the past when the voting age of 21 was reduced to 18; see Bundestag, [Wortprotokoll der 18. Sitzung](#), p. 10 et seq.

⁶⁶ See Bundestag, [Wortprotokoll der 18. Sitzung](#), p. 6.

⁶⁷ In Austria and Malta, the eligible voting age is 16, in Greece the eligible voting age is 17.

⁶⁸ See Bundestag (2022), [Drs. 20/3499](#).

⁶⁹ Further reasoning on the parties' decisions can be found here: See Bundestag (2022) [Drs. 20/4362](#), p. 5.

⁷⁰ See Bundesrat (2022) [Drs. 606/22](#).

⁷¹ See [Bundesgesetzblatt](#).

Most interestingly, it remains to be seen if this has a substantial impact on the debate on the national voting age in German Federal Parliamentary Elections, which is still 18. Like the plan to change the voting age for the EU Parliamentary Elections, the coalition forming the German Federal government also stated their intention to lower the voting age to 16 in German Federal Elections.⁷² A year ago, a Commission for the Reform of Electoral Law and the Modernization of Parliamentary Work discussed a harmonised minimum voting age of 16 in national elections.⁷³

However, this would require an amendment to Art. 38 (2) of the German Constitution,⁷⁴ which requires special majorities in the German Federal Parliament (*Bundestag*) as well as in the *Bundesrat*. Given the current (political) composition of *Bundestag* and *Bundesrat* and bearing in mind the clear dissent from the German political opposition – as already seen in the vote on the EU voting age⁷⁵ – this does not currently seem realistic. Therefore, the harmonised voting age of 16 for the EU Parliament is unlikely to change the status quo with regard to German Federal elections.

Electoral Threshold

The purpose of an electoral threshold in proportional representation is to safeguard parliament's decision-making capacity by barring entry to split groups. In other words, an electoral threshold aims to guarantee that the Parliament can properly function.⁷⁶ However, such provisions interfere with the principle of electoral equality and equal opportunities for political parties and must therefore be justified.⁷⁷

Insofar as the EU Treaties and the EU electoral law provisions do not contain regulations, recourse to national law is required. This is particularly clear in the case of electoral thresholds.⁷⁸ The basic EU provisions on EU Parliamentary Elections currently in force are set out in the EU Electoral Act⁷⁹. The rules there provide that Member States “may” set a minimum threshold which must not exceed 5% of the valid votes cast.⁸⁰ It restricts the discretion of the Member States regarding the question of the maximum permissible level of the electoral threshold.⁸¹ In other words: Member States can decide, if they want to introduce an electoral threshold or not. However, the threshold may not exceed 5% of the valid votes cast. The actual provisions are then set out in national law – here in the European Elections Act.⁸²

⁷² See Koalitionsvertrag between SPD, Bündnis 90/Die Grünen und FDP, [MEHR FORTSCHRITT WAGEN](#), p. 12.

⁷³ See Bundestag (2022), Kommission zur Reform des Wahlrechts und zur Modernisierung der Parlamentsarbeit, [Protokoll-Nr. 20/3](#).

⁷⁴ See German Basic Law / Grundgesetz.

⁷⁵ In the proposal of the European Election Act, die LINKE supports lowering the voting age, whereas for the German Federal Parliament (Bundestag) they are, as the other opposition parties CDU/CSU and AfD, against a lower voting age.

⁷⁶ See EU Parliament (2022), [P9_TA\(2022\)0129](#), para. E.

⁷⁷ See Wissenschaftliche Dienste des Deutschen Bundestages (2008), [Zulässigkeit von Sperrklauseln im Kommunalwahlrecht](#), p. 3.

⁷⁸ See Huber, in: Streinz, EUV/AEUV, 3rd edition 2018, Art. 223 AEUV, para. 6 et seq.

⁷⁹ [The Act concerning the election of the members of the European Parliament by direct universal suffrage](#), annexed to [Council Decision 76/787/EEC, Euratom](#), entered in to force on 1 July 1978 and was subsequently amended by [Decision 2002/772/EC, Euratom](#) – see also recital 1 of the Parliament Proposal.

⁸⁰ Art. 3 Electoral Act.

⁸¹ See Huber, in: Streinz, EUV/AEUV, 3rd edition 2018, Art. 223 AEUV, para. 7.

⁸² The German name of the “European Elections Act” is “Europawahlgesetz”.

Prior to the EU Parliament's reform proposal of 2022 analysed here, an earlier reform proposal was submitted in 2018⁸³ which aims to introduce an electoral threshold of between 2-5% for certain constituencies, including Germany.⁸⁴ However, this reform proposal has been pending since 2018.⁸⁵

The Proposal of 2022 generally provides that an electoral threshold cannot exceed 5% of the valid votes cast.⁸⁶ It also includes the requirement to introduce an electoral threshold of no lower than 3.5% of the valid votes cast for constituencies consisting of more than 60 seats.⁸⁷ This means that Member States concerned would have to introduce an electoral threshold between 3.5-5% of the valid votes cast. This only affects France, Italy and Germany.⁸⁸

Electoral thresholds – both in general and specifically regarding EU Parliamentary Elections – have been debated in Germany for a long time. German law has foreseen both a 5% and a 3% electoral threshold for the EU Parliamentary Elections at different times which were set by German federal law.⁸⁹ The German Federal Constitutional Court (*Bundesverfassungsgericht*) had to decide on both. Since only Art. 3 of the Electoral Act was (and still is) in force,⁹⁰ recourse to national law⁹¹ was required and the provisions therein had to be assessed by the Court according to German constitutional law. In both cases, the court overturned the German electoral thresholds, as it could not find any indication that the EU Parliament's functioning would be jeopardised without them.⁹²

As described earlier, the Proposal now requires Germany to introduce a 3.5-5% electoral threshold. Looking at the German voting figures for the 2019 EU Parliament election, a 3.5% electoral threshold would mean that 7 out of 14 political parties would not have been able to send a representative to the EU Parliament from 2019-2024.⁹³ Their 9 seats would have then fallen to the other 7 political parties.⁹⁴ Based on the election results in 2019, a 5% threshold would not change the previous findings but it could be challenged in the case of at least 3 political parties.⁹⁵

⁸³ [Council Decision \(EU; Euratom\) 2018/994 of 13 July 2018](#).

⁸⁴ Constituencies concerned are those which are comprised of more than 35 seats. For these, a threshold between 2-5% of the valid votes cast must be introduced. See Art. 3 (2) [Council Decision \(EU; Euratom\) 2018/994 of 13 July 2018](#). This would concern Germany, France, Italy, Spain and Poland; see Cicchi, L. (2021), [Europeanising the elections of the European Parliament](#), p. 27 et seq.

⁸⁵ See EU Parliament, [P9_TA\(2022\)0129](#), para. J as well as Cicchi, L. (2021), [Europeanising the elections of the European Parliament](#), p. 42 et seq. On the situation in Germany see also Landeszentrale für politische Bildung Baden-Württemberg (n/a), [Sperrklausel bei Europawahlen](#) as well as Legal Tribune Online (2022), [Europawahl bekommt Sperrklausel](#).

⁸⁶ Art. 13 (1) Proposal.

⁸⁷ Art. 13 (2) Proposal.

⁸⁸ S. Cicchi, L. (2021), [Europeanising the elections of the European Parliament](#), p. 27.

⁸⁹ European Elections Act / Europawahlgesetz.

⁹⁰ Meaning, at the time of the court decisions, there was no reform proposal of 2018 [[Council Decision \(EU; Euratom\) 2018/994 of 13 July 2018](#)] yet. And the argument still holds true as the reform proposal of 2018 is still pending.

⁹¹ The 5% and 3% electoral threshold for the EU Parliamentary Elections were both foreseen in the European Elections Act – the German federal law “Europawahlgesetz”.

⁹² The fact that other national constitutional courts may assess this differently does not contradict this, but rather proves the current national fragmentation of European electoral law. See altogether Huber, in: Streinz, EUV/AEUV, 3rd edition 2018, Art. 223 AEUV, para. 7.

⁹³ These are: Volt, Die PARTEI, ÖDP, FAMILIE, Tierschutzpartei, PIRATEN, FREIE WÄHLER; see Bundeswahlleiter (2019), [Europawahl 2019](#). For the sake of completeness, it should be noted that Art. 13 (3) Proposal foresees an exception to the rule with regard to national exemptions for political parties or associations of voters that represent recognized national or linguistic minorities. Also, an exemption is foreseen for political parties or association of voters, registered in a quarter of Member States and obtaining at least one million votes across the EU [Art. 13 (4) Proposal].

⁹⁴ These are: FDP, CSU, AfD, DIE LINKE, GRÜNE, SPD, CDU; see Bundeswahlleiter (2019), [Europawahl 2019](#).

⁹⁵ These are: FDP (5,4%), DIE LINKE (5,5%), AfD (6,3%); see Bundeswahlleiter (2019), [Europawahl 2019](#).

The aim of an electoral threshold in the Parliament's Proposal is to ensure the decision-making capacity of the EU Parliament. This aim is valid and can generally be understood in Germany, as there is, e.g., a 5% electoral threshold in German Federal Parliamentary Elections (*Bundestagswahl*).⁹⁶ Nevertheless, electoral thresholds are a substantial interference with the equal opportunities of the political parties. The EU Parliament's Proposal does not contain any arguments supporting fears that its ability to function properly could be hindered without electoral thresholds in France, Italy and especially Germany.

From a legal policy point of view, it can therefore be argued that it has not been sufficiently explained why such an electoral threshold for the European elections in Germany is imperative in order to guarantee the functioning of the EU Parliament. There is no obvious evidence that the formation of a majority in the EU Parliament is structurally impaired without it. On the other hand, an electoral threshold like that envisaged for Germany would have restricted access to the EU Parliament for half of the political parties successful in Germany in the 2019 EU Elections and thus substantially infringes equal opportunities for political parties. Such an infringement needs special justification which is not discernible in the present case. Legally speaking, once the Proposal is accepted by all Member States and comes into force at EU level, this aspect could no longer be assessed on its merits by the German Federal Constitutional Court (*Bundesverfassungsgericht*).⁹⁷ It would then be up to the European Court of Justice.

4.3 Reflections on the approach to the European elections in Italy and the possible impact of the reform

There are two aspects of the reform of the European electoral system that could see the greatest resistance from the Italian side: that relating to the proposal for a lower the voting age, and the possibility of voting by post or through electronic voting. The rest of the proposal appears on the whole to be in line with the voting system currently already in force in Italy.

Right to vote: Voting age

An intervention on the issue of voting age, albeit a minor one, took place with the constitutional reform of 2021⁹⁸, which eliminated the pre-existing difference between voting for the Chamber of Deputies, allowed at the age of 18, and voting for the Senate of the Republic, the second chamber of the Italian Parliament, possible from the age of 25. The reform eliminated this discrepancy by standardising the voting age for both chambers. The aim of the intervention was to resolve a difference that no longer had any reason to exist, while the question of a possible lowering of the voting age has not so far attracted much interest, either from a media or a political perspective.

The lack of attention is probably also due to the fact that, when they do have the opportunity to vote, young Italians show little interest in doing so: in the last general election of 25/26 September 2022, for example, the first in which, as mentioned above, the age difference for voting for the two chambers

⁹⁶ See generally on the current legal discussion Müller, L. (2023), [Dünnes Eis für die 5%-Sperrklausel](#).

⁹⁷ In the case of such provisions under European law, the German Federal Constitutional Court (Bundesverfassungsgericht) could only examine whether the German constitutional identity had been violated. Yet, as said before, electoral thresholds do apply to both federal and state elections. See also Landeszentrale für politische Bildung Baden-Württemberg (n/a), [Sperrklausel bei Europawahlen](#).

⁹⁸ [Legge Costituzionale 18 ottobre 2021, n. 1](#), Modifica all'articolo 58 della Costituzione, in materia di elettorato per l'elezione del Senato della Repubblica.

no longer applied, young people aged between 18 and 24 recorded an abstention rate of 39.8%, 3.7 percentage points higher than the national average of 36.1%.⁹⁹

Very recently, there have been attempts to at least open up the debate on an issue that is in fact of extreme importance: at a time when many of the measures taken by politicians have a considerable impact not only on today's world, but also - and perhaps above all - on that of tomorrow, is it right that only adults should decide who governs? If energy, economic, social and fiscal policies, to name but a few, also impact on the quality of life of minors, would it not be fair to allow them too, at least from a certain age, to co-decide the composition of the legislative assemblies whose laws will also govern their future?

Thus, some Italian intellectuals would like to extend the right to vote to minors, allowing them to vote directly from a certain age (16, as is already the case in some European¹⁰⁰ and non-European countries¹⁰¹), and allowing minors under the age of 16 to use a proxy to instruct a parent to vote for them, at least from a certain age onwards.¹⁰² The aim of the proposal would be to put the interests of the new and future generations back at the centre of politics by including minors in the electoral body but, as mentioned, for the moment Italian politics has shown little interest in the issue.

In recent years there have been a few isolated initiatives: in 2019, the former Secretary of the *Partito Democratico* Enrico Letta, proposed giving the right to vote to 16 year-olds, echoing Walter Veltroni, who had launched the same proposal in 2007 when he became Secretary of the *Partito Democratico*. In 2015, it was the Lega Nord that presented a proposal for a constitutional law in this regard,¹⁰³ and the same initiative had also been put forward by the Socialists. So far, however, none of these initiatives has had any concrete results. The fact that lowering the right to vote would require a constitutional reform of Art. 48 (1) of the Constitution¹⁰⁴, which as a rule is a very complex procedure because it requires very large majorities in Parliament, does not help those in Italy who would welcome this change.

Therefore, even if the proposal to amend the electoral law for the European Parliament by lowering the minimum age for voting in European constituencies to 16, were to be adopted, it is currently

⁹⁹ Pagella politica, [Come hanno votato i giovani alle elezioni](#), 28 September 2022.

¹⁰⁰ In Europe the vote for 16-year-olds has been allowed in Austria since 2007, while in Germany 16-year-olds in some regions have been able to vote in regional and local elections since 2011, and will also be able to do so in the next European elections in 2024, see above Ch. 3.2.. In Bosnia, Croatia, Serbia and Slovenia you can vote at 16 if you have a job, while in Hungary 16-year-olds can vote if married. In Greece in 2016, the Tsipras government approved the reduction of the voting age limit from 18 to 17. In Malta, since 2014 voting at 16 has been allowed for local elections, but as of 2018 this age limit was adjusted to include national elections as well. Finally, in the United Kingdom, the possibility of voting at 16 is only given to Scottish citizens, but not in all circumstances. Under-18s went to the polls for the referendum on independence from Britain in 2014 and then in 2015 for the Scottish Parliament elections, while 16-year-olds were not allowed to vote in the Brexit referendum, see SkyTG24, [SkyTG24, Voto a 16 anni: ecco i Paesi nei quali è già consentito](#) 30 September 2019

¹⁰¹ In Israel 17-year-olds can only vote in certain local elections, in Indonesia there is no age limit on going to the polls if you are married, while unmarried people can go to the polls at 17. In Argentina the voting age has been 16 since 2012, while in Brazil voting is compulsory from 18 to 70, optional from 16 to 18 and after 70. Similar situation in Ecuador, where 16 and 17 year olds can but are not obliged to vote. In Nicaragua, on the other hand, the minimum voting age was lowered from 21 to 16 in 1984. Even in Cuba 16 year-olds can vote, while in Sudan, North Korea and East Timor the minimum age is 17, SkyTG24, [SkyTG24, Voto a 16 anni: ecco i Paesi nei quali è già consentito](#), cit.

¹⁰² Rizzoli M., [Per rimettere i giovani al centro della politica, i minorenni devono votare](#), Domani.it, 4 August 2022.

¹⁰³ [La proposta di Salvini: "Abbassare a 16 anni il diritto di voto"](#), Adn Kronos, 11 November 2015.

¹⁰⁴ Art. 48 (1) Constitution: "All citizens, male and female, who have attained the age of majority, shall be electors".

difficult to imagine that Italy's rules for the Italian Parliament would be able to accommodate this change.

How to vote: Postal and electronic voting

In Italy, the current rules for voting in the European elections are in line with the contents of the reform proposal under discussion in the Council in several respects: all citizens who have reached the age of 18 may vote, on a single day (Sunday), in person only; Italian voters who are eligible and permanently resident in an EU Member State may go to the appropriate polling station set up by the Italian diplomatic-consular network; citizens of an EU Member State permanently resident in Italy may also vote, provided they have submitted an application to the Mayor of the Italian municipality of residence within three months prior to the vote for inclusion in the appropriate electoral register; candidates appear on lists presented in five electoral constituencies, and may stand for election in more than one constituency; citizens vote based on a proportional system, and may express up to three preferences among the candidates on one of the lists in their constituency, and the lists that exceed the 4% threshold at national level are elected.¹⁰⁵

There is, however, a significant divergence concerning the issue of remote voting, whether by letter or by electronic means, which is prohibited by Italian law. The issue has come back into the limelight in recent years, due to the high abstention rate recorded in Italian elections, not only European but also national, regional and local. According to some, compulsory in-person voting could help to explain the reason for the ever-increasing abstention rate among Italian citizens: having to go to a polling station in person could be considered an excessive burden for a population largely composed of elderly people, who tend to be less mobile, and whose polls show an ever-decreasing trust in the political class.¹⁰⁶ In addition, there is the inconvenience for out-of-town voters, i.e. those who work or study in a municipality other than their municipality of residence, and who currently have to return to their municipality of residence each time if they want to vote: a logistical and economic problem affecting 5 million Italian voters. The proposed remedy for this is to allow out-of-town voters to vote by registering on the electoral roll of the municipality in which they usually live,¹⁰⁷ at least for national and European elections, but so far the proposal has had no concrete results.

Research has recently been undertaken at the behest of the Italian Parliament to verify the feasibility of voting via PC or other portable devices. It was noted, however, that critical issues could arise with respect to the need to ensure the freedom, privacy and secrecy of voting required by the Constitution. In fact, effective safeguards would have to be found to deal with the risk of voters being forced to cast their electronic vote under the control of third parties (such as in areas where organised crime tries to influence the results of elections by steering the vote of many voters, or situations in which a family member claims to control the vote of his or her relatives). In addition, for e-voting via the internet, there could be issues related to the reliability and security of internet systems, which affect both the casting of votes and the collection and counting procedures. In 2019, as part of the financial plan for

¹⁰⁵ [Legge 24 gennaio 1979, n. 18](#), "Elezione dei membri del Parlamento europeo spettanti all'Italia".

¹⁰⁶ In a poll in 2022, the Italian citizens who said they trusted the parliament and the parties were 23% and 14% respectively, s. [Rapporto gli Italiani e lo Stato - 2022 \(25°\). Rapporto annuale sugli atteggiamenti degli italiani nei confronti delle istituzioni e della politica](#).

¹⁰⁷ [The Good Lobby/Voto fuori sede: chiediamo ai parlamentari di superare immediatamente gli ostacoli procedurali che impediscono il voto a distanza](#), 18 April 2023.

2020, the Italian Parliament allocated funds to implement an experiment to enable Italian ex-pats and voters living away from home to participate in e-voting.¹⁰⁸

On 22 December 2021, by a decree of the Minister for Parliamentary Relations, with delegated authority for institutional reforms, a Commission of experts was established with the task of studying and advising, analysing and drawing up proposals, also of a regulatory nature, and developing suitable initiatives to encourage citizens to participate in elections. In the final report on the Commission's work, presented on 14 April 2022, the problems related to guaranteeing the constitutional principles of freedom and secrecy of voting, and protection against the risks of third-party control over the casting of electronic votes, had not yet been resolved.¹⁰⁹ The Commission noted the same problems with respect to voting by letter, preferring for this reason not to make proposals to extend these voting methods to the national level.

For these reasons, with respect to the possibility of voting by post or by Internet in European elections, as envisaged in the European reform proposal, it seems likely that Italy would oppose the adoption of this measure in intergovernmental negotiations.

Finally, according to a recent Eurobarometer survey of January 2023, Italians are among those who currently lack trust in the European institutions and the Parliament in Brussels;¹¹⁰ a fact that could also partly be explained by the so-called Qatargate, which has seen several current and former Italian MEPs accused of having received illicit funds to steer their votes.¹¹¹ A reform of the electoral system that increases the decision-making power of voters could have a positive effect on the relationship between Italian citizens and the EU, helping to bring back to the polls voters who are currently disenchanted and probably have little interest in participating in the European vote.

5 On the way to true European parliamentarianism and democracy

The electoral reform is just one step towards true European parliamentarianism and democracy. According to the broad body of literature on constitutional law and economics, parliamentarianism is both the cause and effect of various factors such as “society”, “citizenship”, “identity”.

It has been widely discussed for many years that the European Union not only lacks democratic legitimacy but also what could be called a European “res publica”, a common space for conducting a multi-perspective and cross-country discourse and forming public opinion which in turn can be considered not only a prerequisite for European parliamentarianism but also a complement thereto.¹¹²

¹⁰⁸ Art. 1 (627) [Legge 27 dicembre 2019, n. 160](#) (legge di bilancio 2020), establishing the Fund for Electronic Voting, in order to introduce, on an experimental basis, digital voting methods for political and European elections and referendums provided for in Articles 75 and 138 of the Constitution.

¹⁰⁹ Presidenza del Consiglio dei Ministri. Dipartimento per le riforme istituzionali, [Per la partecipazione dei cittadini. Come ridurre l'astensionismo e agevolare il voto](#), Aprile 2022, p. 206 ss.

¹¹⁰ Stati, F. (2023), [Eurobarometro: gli italiani si fidano dell'Ue meno degli altri cittadini europei](#), Euractiv.it.

¹¹¹ Mathiesen, K. and Barigazzi, J. (2022), [Inside Fight Impunity, the Brussels NGO at the heart of the Qatar corruption scandal](#), Politico.eu.

¹¹² Particularly indicative on this issue was the debate between Dieter Grimm and Jürgen Habermas in the mid-1990s, s. Grimm, D. (1995). *Braucht Europa eine Verfassung?* München: Carl Friedrich von Siemens Stiftung. Habermas, J. (1996). *Braucht Europa eine Verfassung? Eine Bemerkung zu Dieter Grimm*. In J. Habermas, *Die Einbeziehung des Anderen. Studien zur politischen Theorie* (p. 185-191), Frankfurt a.M., Suhrkamp.

As a consequence, there is an interdependent relationship between the European public, parliamentary legitimacy and the identification of European citizens with their institutions.¹¹³

All three factors and drivers of European citizenship urgently need to be developed given the geopolitical battle of systems and the fragmentation of public discourse, and especially in view of the influence that new forms of communication can have on the self-perception of the political public sphere.¹¹⁴ A possible reaction to this risk could be i) the implementation of some plebiscitary elements, and ii) the strengthening and enhancement of the power and competencies of the European Parliament.

i) Plebiscitary instruments, to be understood as processes of deliberative democracy, could indeed facilitate the development of an open and plural space for public debate in the EU. Bottom-up approaches to debate, e.g. among citizens chosen by lots, or other selective methods, could thus be used to form assemblies with the task of analysing and proposing regulatory interventions that the European institutions would have to transpose and implement by giving them the appropriate formal structure. The method is reminiscent of that used for the Conference on the Future of Europe,¹¹⁵ which did indeed provide relevant material on which to base a formal debate on the reform of the EU's institutional and political set-up. Of course, such an option presupposes an adequate information and training process to be provided to the members of these assembly bodies, as well as a willingness by the European institutions to give due consideration to the proposals emerging from the work of the citizens involved.¹¹⁶

The introduction of a referendum at EU level could also play a role in the enlargement of the European public space with regard to major European policy issues on which it would be desirable to achieve greater popular acceptance than is achieved by measures issued by the traditional institutional circuit of the EU. This would also be a potentially useful instrument, provided it is used with great caution and awareness, and accompanied by an adequate process for informing citizens about the issues submitted to their judgement.¹¹⁷

ii) The European Parliament's power of to take the initiative on the core issues of EU policy is currently still non-existent, and only granted to the Commission. Moreover, in the so-called trilogue legislative procedure involving the Parliament, Commission and Council, it is the latter two bodies that carry the greatest weight with respect to decision-making during the negotiation and approval of European measures, while Parliament, the very body that, according to the treaties, should have the function of directly representing citizens at EU level,¹¹⁸ is relegated to a weak and unobtrusive position.

A realignment aimed at giving greater weight to the European Parliament in decision-making , increasing its power to take the initiative and reinforcing its influence within the legislative procedure - regardless of the deliberative procedure adopted - would clearly increase the democratic legitimacy

¹¹³ Corbett, R. (2012), The Evolving Roles of the European Parliament and of National Parliaments, in: Biondi A., Eeckhout P., Ripley S. (ed.,) EU Law after Lisbon, p. 248-262.

¹¹⁴ Habermas, J. (2022), Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik.

¹¹⁵ See also Milia, S., Thorel, Ju., Stockebrandt, P. (2021), [EU-Zukunftskonferenz: Ein Versuch, mehr Demokratie zu wagen.](#)

¹¹⁶ Białyżyt, W. and Le Quiniou, R (2020), Europe's deliberative instruments: Has the EU delivered?, in: Blockmans, S. and Russack, S. (ed), Deliberative Democracy in the EU. Countering Populism with Participation and Debate, CEPS, Brussels, p. 313-332.

¹¹⁷ Poli, E. (2020), An EU-wide referendum: Potential threat or tool of empowerment?, in: Blockmans, S. and Russack, S. (ed), Deliberative Democracy in the EU. Countering Populism with Participation and Debate, CEPS, Brussels, p. 269-280.

¹¹⁸ Art. 10 (2) TUE.

of the European institutions, fostering greater identification between European citizens and the European Parliament.

6 Conclusions and cep assessment

The current European legislature, which is approaching its final stretch, has been characterised by particularly intense legislative activity, some of the most significant effects of which will become even more evident to citizens in the coming months. Nevertheless, the European Parliament fears that this alone may not be enough to give more legitimacy to the institution and thereby automatically prompt more citizens to cast their votes, especially when several recent national elections have indicated a drastic decline in electoral participation.

The growing impact of European policies, if not backed by equivalent growth in popular support, could reopen the old problem of the EU's 'democratic deficit' in a new way.

A more ordered common framework of electoral rules, able to push parties to prioritise electoral campaigns on transnational issues, and also paving the way for allowing Parliament greater political weight in choices concerning the composition of the European Commission, therefore seems to the European Parliament a necessary path, in order to consolidate the slight increase in electoral participation recorded at the last European elections.

This path could certainly be considered particularly ambitious, in view of the 2024 elections, not only because of the serious delay that the proposal has already accumulated in the Council, but also in view of the fact, that due to the non-completion of ratifications, the last amendment to the Electoral Act dating back to 2018 is still pending. On the other hand, however, this is the third structured attempt by the European Parliament to reaffirm this line, and the fact that reforms of this kind are also considered important by the citizens was also reaffirmed by the recent Conference on the Future of Europe where one of the proposals formulated¹¹⁹ contains precisely the wish for the harmonisation of electoral rules and the creation of transnational lists.

On the basis of the analysis, at least three different types of proposed innovation are apparent. Those of a primarily organisational nature, those with specific political aims and those that could be defined as primarily symbolic.

Proposals of a technical/organisational nature comprise the lowering of the voting age, including under-age citizens in the European electoral body, and the introduction of alternatives to in-person voting, such as voting by letter or electronic voting, throughout the EU. These proposals are driven by the intention to enlarge the size of the electoral body, make the European Parliament and the Commission more representative in order to gain the confidence of MEPs, but also to facilitate the participation in voting of European citizens, whose interest in European elections remains very limited.

¹¹⁹ Final Report, Proposal 38 paragraph 3: "Amending EU electoral law to harmonise electoral conditions (voting age, election date, requirements for electoral districts, candidates, political parties and their financing) for the European Parliament elections, as well as moving towards voting for Union-wide lists, or 'transnational lists', with candidates from multiple Member States, having taken into account the views expressed among citizens across the EU Member States on this issue."

Lowering the voting age appears on the whole to be acceptable, since many of the measures taken in Brussels now also have a far-reaching scope in terms of time, and it would therefore not only be opportune, but also legitimate from a democratic point of view, to involve citizens who, due to their age, will be more affected by the outcome of these measures. It would be in the interest of all Member States to standardise the age of access to the European vote, for two reasons: firstly, to enable their 16/17 year old citizens to participate in the choice of the members of the body representing them at European level; secondly, to guarantee their 16/17 year old citizens equal 'electoral weight' compared to their peers in Member States that already enjoy this opportunity. Furthermore, it cannot be ruled out that giving the younger generations access to the European vote could also diminish the recourse to drastic and questionable forms of protest such as those recently launched by Last Generation activists in various Member States. The push for remote voting is more problematic, as it implies the presence of relative technical and legal standards to ensure that voting is anonymous, personal and secret, which is difficult to guarantee across the EU. Careful consideration should therefore be given as to whether the risk of vote fraud or falsification does not outweigh the benefit the measure would bring in terms of likely increased voter turnout.

Proposals of a purely political nature include the creation of transnational lists that can be voted on by all EU citizens in a common electoral constituency, and the attempted consolidation of the lead candidate (*Spitzenkandidat*) method for the selection of the Commission President. These two measures are linked, as we have seen, since they aim to create a common political/electoral space for the entire EU, in which European electoral lists nominate their respective lead candidates, and voters are called upon to vote on the basis of political affiliation, and a programmatic platform declined in a purely European, and no longer national, sphere¹²⁰ in which an election campaign focusing on supranational issues and proposals should enable EU citizens to act and decide in a truly European political dimension. For this, genuinely European political parties should finally emerge, which are not mere instruments for transposing positions and strategies in Brussels with a purely national perspective. In addition, the measure aims to make the popular vote more accountable than it is at present, thanks to a combination of transnational lists/European constituency/lead candidates, which should put the choice of the leadership and political orientation of the Commission back in the hands of the people, thus boosting the democratic nature of the European institutions. It would therefore be in the interest of strengthening a more properly democratic and transparent European integration process if this part of the proposal were to be accepted. What is more, if they felt that their vote concretely influenced the outcome of European policies more than it does at present, more European citizens would probably be enticed to vote, and the number of abstainers in European elections would decrease.

The proposal with the most symbolic value appears to be that of a single EU-wide election day on 9 May, which could result in the creation of the first common EU-wide public holiday. This measure, too, goes towards fostering a common European political space, as it would lead citizens involved in the European vote to focus their attention on the conduct and outcome of the elections at the same time in all 27 Member States - taking due account of time zone differences.

With regard to the hypothetical consequences at national level, we must assume that the three countries examined in this analysis are among those that seem to be most in support of many parts of the European Parliament's new proposal and that Germany has also already decided autonomously to

¹²⁰ Andreas Frisahn, [Zur Notwendigkeit einer europäischen Öffentlichkeit](#), Vorgänge Nr. 192, 4/2010, p. 35-45

lower the age for access to the European vote. It is more difficult to imagine how these measures could impact the realities of States that have a more complex and at times conflicting relationship with the EU, and that may be resistant to adopting measures aimed at reducing the space for national political interference in the European electoral process.

In any case, this proposal represents a concrete step towards the development of a real European public space: an area in which European citizens can vote with more uniform methods and procedures than at present, on the basis of interests and needs articulated in a European dimension and detached from the purely national context; an area for candidates and parties that do not simply express orientations relating to national political contexts but instead confront each other and seek the consent of voters on the basis of European programmes and proposals.

Of course, to make up for the lack of interest of European citizens in the European parliamentary elections, a Europeanist rationalisation of the electoral system is not enough. At the same time, the role of the European Parliament in the context of the EU decision-making process should be appropriately enhanced, not only with regard to the process of appointing the President of the Commission, but also by giving MEPs more weight in the vote on measures enacted in Brussels. Strengthening the role of the Parliament within European governance compared to the other institutional bodies would in fact give the citizens of the Union a greater awareness that 'their vote counts', not only in designating the political majority in the Parliament, but also throughout the European legislature.¹²¹

Adoption of the reform in time for the European elections of 2024 now seems to have been ruled out. However, the work so far carried out on the proposal is too important to be lost due to the change of legislature. The hope is that the work done so far by the European Parliament will not expire, and that in the next legislature we can build on what has been done in order to proceed to a careful and democratic comparison on a European scale, leading to the adoption of the proposal in time for the next European elections. As we have seen, the political and regulatory conditions for this already exist: it is up to current and future institutional actors not to waste this opportunity. At the same time, it must be clear that the reform is only a first step in a process of further democratisation of the EU that will still require far reaching interventions and measures in the future.

¹²¹ S. Nguyen T. (2021), [The holy trinity of EU elections: Transnational lists, Spitzenkandidaten procedure and a stronger European Parliament](#), Hertie School Jacques Delors Center, p. 14-15. also infra, Ch. 4.

**Authors:**

Andrea De Petris, Scientific Director Centro Politiche Europee | ROMA

depetris@cep.eu

Anna Meister, Student Assistant to the cep

cep@cep.eu

Stefano Milia, Director Centro Politiche Europee | ROMA

milia@cep.eu

Dr. Patrick Stockebrandt, Head of Division Consumer & Health

stockebrandt@cep.eu

Victor Warhem, Policy Analyst Centre de Politique Européenne | PARIS

warhem@cep.eu

Centrum für Europäische Politik FREIBURG | BERLIN

Kaiser-Joseph-Straße 266 | D-79098 Freiburg

Schiffbauerdamm 40 Räume 4205/06 | D-10117 Berlin

Tel. + 49 761 38693-0

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