

# Berlin Perspectives

Analysing German European Policy

## Reforming the EU's electoral law: Germany must get off the side lines and seize this democratic opportunity

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Germany's attitude to reforming the European Union's electoral law has long been ambivalent and shaped by short-term interests of its political parties. The EU-wide electoral lists proposed by the European Parliament could be a breakthrough for supranational democracy. It is time for Germany to get its priorities right and invest political capital to back this proposal.

In May 2022, the European Parliament (EP) adopted a proposal for a comprehensive revision of the Direct Elections Act, the European Union's common legal basis for the EP elections. This was a long-awaited reform step forward. If it were up to the EP, the changes would come into force before the next election in 2024, but the way to go is still long. In the next step, the Council of the EU will discuss and can amend the EP's proposal. The final version will then have to be unanimously agreed by member states in the Council, approved by the EP and ratified by all national parliaments. Thus, in the coming months, the member states – not least Germany – will have to take a stance on the electoral reform.

### EU-wide lists and electoral threshold: The core elements of the reform

The EP's reform proposals are manifold and call for harmonizing many areas that have not been regulated at the EU level previously. For example, the EP proposes an EU-wide minimum age of 16 years for the right to vote in EP elections, and one of 18 years for the right to stand for election. Moreover, it wants to oblige member states to make postal voting possible and to support people with disabilities in casting their votes. Another proposal is to

replace the four-day window in which every member state can hold its polls with a single election day on 9 May. The EP also proposes gender quotas for electoral lists, common regulations on the duration of the election campaign, a somewhat harmonized design for ballot papers, a common electoral roll, and the establishment of a new European Electoral Authority.

Two components of the reform are politically most salient: the introduction of EU-wide candidate lists and the establishment of a minimum vote threshold for parties to win seats in large member states.

EU-wide (or "transnational") lists have been under discussion for decades. Until now, EP elections have been strictly fragmented among member states. Only national parties can run for the seats allocated to each country. Under the reform proposal, there would be an additional pan-EU constituency with 28 seats. Each voter would thus have two votes – one for a national and one for a European list. The European political parties as well as other transnational 'political alliances' would have the right to draw up lists for the EU-wide constituency. Quota rules would ensure that each list would have a balance of candidates from large, medium, and small member states.

A minimum threshold clause stipulates that member states with a national quota of more than 60 seats in the EP must introduce an electoral threshold of at least 3.5 per cent. In practice, this would only apply to the three biggest member states: Germany, France, and Italy. Of these, Germany is the only one that does not have a threshold for EP elections.

The threshold clause builds on an attempted reform of European electoral law adopted by the Council and the EP in 2018 but not ratified by all member states. The EP proposed a far-reaching harmonization then too, but the Council watered it down almost entirely. All that remained was a minimum threshold of 2 per cent for member states with more than 35 EP seats, which would have affected Germany and Spain only as all other states with at least this number of seats already had higher thresholds. In the end, it was precisely the failure of these two countries (and Cyprus) to ratify the reform that prevented it from coming into force.

As noted above, the EP's new proposal increases the threshold but is designed in a way that it would not affect Spain anymore. Another new feature is a transnational exemption clause. Under it, parties that run under the same name in at least seven member states and win more than 1 million votes across the EU would be exempt from the national threshold rule. This provision could possibly apply to the small transnational party Volt and to the European Pirate Party. However, both fell well short of the 1 million vote mark in the last EP election in 2019.

### **Overcoming ambivalence: The German position**

In the German public sphere, the debate has so far focused heavily on the threshold issue. Behind this is a long history of disputes before the Federal Constitutional Court, which in 2011 annulled the 5 per cent threshold in the national EP election law. When the Bundestag (federal parliament) introduced a 3 per cent threshold instead, the court annulled this too in 2014. Finally, the two governing parties at the time, the Christian Democrats (CDU-CSU/EPP) and Social Democrats (SPD/PES), tried to restore the national threshold by introducing a corresponding obligation at EU level. The government was therefore one of the most eager supporters of the 2018 reform of the Direct Elections Act.

However, an expert opinion by the Bundestag Research Service warned in 2018 that ratification of the reform would require a two-thirds majority in the Bundestag and in the Bundesrat (Federal Council) in order to be safe from a new challenge in the Constitutional Court. Since the CDU-CSU and SPD did not have a sufficient majority, the Greens (EGP) and Free Democrats (FDP/ALDE) could block ratification. When a new 'traffic light' government of the SPD, the Greens and the FDP was formed in 2021, the SPD succeeded in adding a clause to the coalition agreement stating that 'If there is no new Direct Elections Act by the summer of 2022, Germany will approve the Direct Elections Act of 2018 on the basis of a government draft.'

On EU-wide lists, Germany's position has long been even more ambivalent. The CDU-CSU in particular was sceptical about the idea and, through the EPP, contributed to keeping the EP from proposing it already in 2018. Although the government agreed to 'put in place transnational lists for European elections as of 2024' in the Franco-German Meseberg Declaration of 2018, this had no

practical consequences. Unlike France, Italy, and Spain, which all advocated EU-wide lists, Germany remained largely absent from the debate.

However, this too changed with the formation of the traffic light government in 2021. All three current governing parties have long been in favour of EU-wide lists, and they have included this goal in the coalition agreement. Moreover, the CDU-CSU also relaxed its stance and ultimately accepted the compromise reached in the EP.

### **Setting the right priorities: Policy recommendations**

The fate of the 2018 reform is a warning of what to expect during the coming months. While a few member-state governments are actively interested in a more harmonized and transnational EU electoral law, several right-wing Eurosceptic governments as well as some governments of smaller member states will probably outright reject it in the Council. In this context, it is important that Germany sets its priorities right.

While the debate on a minimum threshold is a reliable source of excitement for the German media, from a systemic perspective it is only a side issue. In practice, introducing a threshold of 3.5 per cent in Germany will affect less than ten EP seats. Moreover, most small German parties currently represented in the EP belong to a parliamentary group, where they cooperate closely with larger parties of similar ideology. As a consequence, both the positive and negative effects of a minimum threshold will be limited. It will neither significantly improve the EP's cohesion and capability to act nor lead to a drastic distortion of the will of the voters. The parties in the Bundestag should therefore avoid reopening any domestic battles over this issue.

Far more important than the minimum threshold is the question of an EU-wide constituency, which was also among the reforms recommended by the Conference on the Future of Europe to boost European democracy. Indeed, transnational lists have the potential to increase the political relevance and public visibility of pan-European parties, to promote transnational opinion formation and a European public sphere, and to improve transnational electoral equality. Although the number of transnational seats (28) proposed by the EP is rather low, few measures could have a similar effect for the construction of a supranational parliamentary system.

Germany's government can therefore no longer stand on the sidelines in this debate. Together with other pro-EU governments, it should be ready to invest significant political capital to achieve a meaningful European electoral reform. The harmonization of aspects like the voting day or the voting age have a high symbolic value and should not be easily abandoned like in 2018. But the main focus should be on the introduction of EU-wide lists. In view of a potential breakthrough for more European democracy, Germany can and must make its contribution to achieve this aim.

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