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Partisan politics and electoral procedure at the European level:

The implications of the *Spitzenkandidaten* for the development of European parliamentarism[1]

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Abstract

From a constitutional perspective, two objectives were at the origin of the idea to have the Presidential candidates for the European Commission selected by European party leaders. The principal idea was to provide European political parties with an important task and thus to convince citizens that they have a choice on the next European political agenda and that there is more to the EU than summits of heads of state or government. Derived from this it was hoped that turnout in the 2014 elections would benefit from the increased attention given to the electoral campaign.

Decreasing voter participation in European elections has been a recurring theme in European studies and the theory of the EU's political legitimacy, while electoral studies have provided some limited guidance how to make the European elections a "first-order" event. As overall turnout in 2014 barely budged compared to the 2009 elections, the goal to stimulate citizens' interest was attained only in some Member States. The paper will defend the proposition that one crucial factor to change this is a more influential role of European political parties, requiring a solid institutionalisation, notably through the new party statute agreed at the end of the 7th parliamentary term. In this context, some national case law impinging on European electoral procedure is discussed as an important constraint for giving Euro-parties stronger roots in national politics.

On the basis of an assessment of the innovations introduced for the 2014 elections, such as the competitive appointment of candidates for the Commission presidency, the paper will also scrutinise the viability of further efforts to mobilise the European electorate in times of constitutional fatigue, diversity of national traditions and Eurosceptic political entrepreneurs.

1. Introduction

Writing about European Political Parties (EurPPs or Europarties) risks to appear as a Polyannish exercise. Philippe Schmitter and others have seen their essential function for the development of a European democracy from the end of the 1960s onwards, about the same time when the umbrella party associations of Europe's major political currents were created. Since then, much intellect and passion have been invested in developing ideas how these associations, considered insufficient from the point of view of democratic theory and in light of empirical studies of political parties, both national and European, could evolve towards a status where they enable and carry a competitive debate on *European* political cleavages. While an unbiased observer would certainly agree that progress on this front has been painfully slow, it is equally clear that there has been progress nevertheless.

The present paper's intention is to twofold: it aims at putting Europarties' development in a wider constitutional context, thereby providing reasons to explain why they evolved as they did, and scrutinizing some of the arguments usually presented to declare further attempts to strengthen their impact on the political life of the Union as futile. Secondly, the article will give some recent evidence from the latest revision of the Europarty regulation confirming that several important impediments limiting their influence have their origin in the relationship between national party central offices and European party networks. An illustration of this can be found in the manner the so-called *Spitzenkandidaten* procedure for the office of President of the European Commission was contested, conducted and concluded.

The 2014 European election results led to considerable losses for the traditional centre-right parties and the liberals, only small changes for social-democrats, greens and the radical left (except in Greece), and a net increase in weight of the eurosceptic or europhobic right. The latter seems poised to create a political group in the Parliament under the leadership of the French *Front national*. The less europhobic but still very EU-critical ECR group should gain seats by integrating new parties such as the German *Alternative für Deutschland (AfD)*. Of course a country-by-country account would reveal several strong deviations from the Union-wide trend, such as the extraordinary result of the *Partito democratico* in Italy (the strongest result of any Italian party in nation-wide elections since 1958) or the defeat of Geert Wilders' PVV in the Netherlands. Despite such surprising electoral results in several member states a comprehensible reaction to the spectacle which is on display since the votes of the European elections have been counted might be "I have seen all this before". One of the key institutional

innovations introduced by the Lisbon Treaty, the election of the President of the European Commission in view of the results of the EP elections, was held to be widely accepted. After all, the European People's Party (EPP) and four other European parties had organised conferences and online votes to determine the *Spitzenkandidaten* (lead candidates) for the Commission Presidency. Having thus actively made a bid to personalise the elections and to mobilise the electorate party leadership could have been expected to accept the voters' verdict. However, Jean-Claude Juncker, the victorious Europe-wide EPP candidate at this moment faces increasing headwind from his own party. Although most existing parliamentary groups have quickly assembled behind Juncker it was then far from certain that the European Council would abide and follow the path presented to citizens during the entire electoral campaign.

This situation illustrated once more that national political parties are the key players of EU politics, whereas the European political parties struggle to exert some limited influence on selection for office and policy-making. It was some 45 years ago that an American political scientist expressed his conviction that "the most important missing element in the Europolity [was] a distinctively European party system" and that it was necessary "to break out of predominantly national political alliances and form more salient supra-national ones" (Schmitter 1970). Since then, a good part of work in EU studies has analysed the tensions between member state governments and parties and supranational actors in various theoretical frameworks. This paper intends to make an update on the development of a model of EU politics including partisan factors which made its appearance some years ago (Hix 2008). It will briefly analyse the institutional and ideological arguments of the recent (and on-going) power struggle between the Parliament and the Heads of state/government. It will then concentrate on the role given in preparation of and during the electoral campaign to the EurPPs in their present condition. A third part will then scrutinise recent efforts to make the EurPPs more robust and assess the chances for a stabilisation of the new electoral scheme installed by the Lisbon Treaty.

2. Between institutional design and legislative politics: the European Commission as an embryonic EU government?

2.1 Politicisation as a step towards federalism?

According to most analyses the banking and sovereign debt crisis 2008-2013 has brought about a federalisation of EU financial and budgetary regulation, albeit in guise of a net increase of the role of member state governments at the expense of Parliament and the Commission (Scicluna 2014). According to common democratic norms this should also increase democratic accountability and politicisation of EU-wide decision-making (Habermas 2014). Such demands are not limited to theorists of democratic norms, as this standard account of the need for politicisation, given by a scholar of constitutional law, demonstrates:

> [W]e should not be surprised to see that European citizens disagree about the kind of policy measures that are the best response to the financial crisis and other political issues that the EU rightly addresses through legislation. It is a mistake to insist, as national politicians invariably do when they defend the measures taken at late night Council meetings under the current regime of executive dominated intergovernmentalism, that there is no alternative to the decision they have made. For many citizens, that is the reason why they turn their backs on Europe: They do not like the policy choices generated on the European level, and there is no alternative personnel and menu of policy options present to engage with on the European level, so they associate Europe with those policy choices they deem undesirable. If faced with a genuine choice in personnel, programmes and policies, disgruntled citizens would be able to articulate their dissent not by turning away from Europe and seeking refuge in populist recipes. They might instead, as European citizens, vote or mobilize for an alternative Europe, personified in a different President, committed to different policies. Tying the outcome of the European elections to the determination who will be the next Commission President will lead not only to a surge of interest in European parliamentary elections and allow the Commission to more effectively fulfil the functions assigned to it, it is also likely to be the best antidote to the spread of nationalist populism and Euroscepticism. (Kumm 2013, p. 19)

Such constitutional arguments are strengthened by opinion polls which show, even quite recently, that a majority of EU citizens trusts the supranational legislatures more than the national ones (see below). Other polls have repeatedly shown that the ill-fated constitutional treaty had wide support in the general population of many member states (Zürn 2006), underlining the importance of media reporting and elite behaviour in its demise.

The Least Worst Legislature
Popular trust in elected officials

Source: Eurobarometer
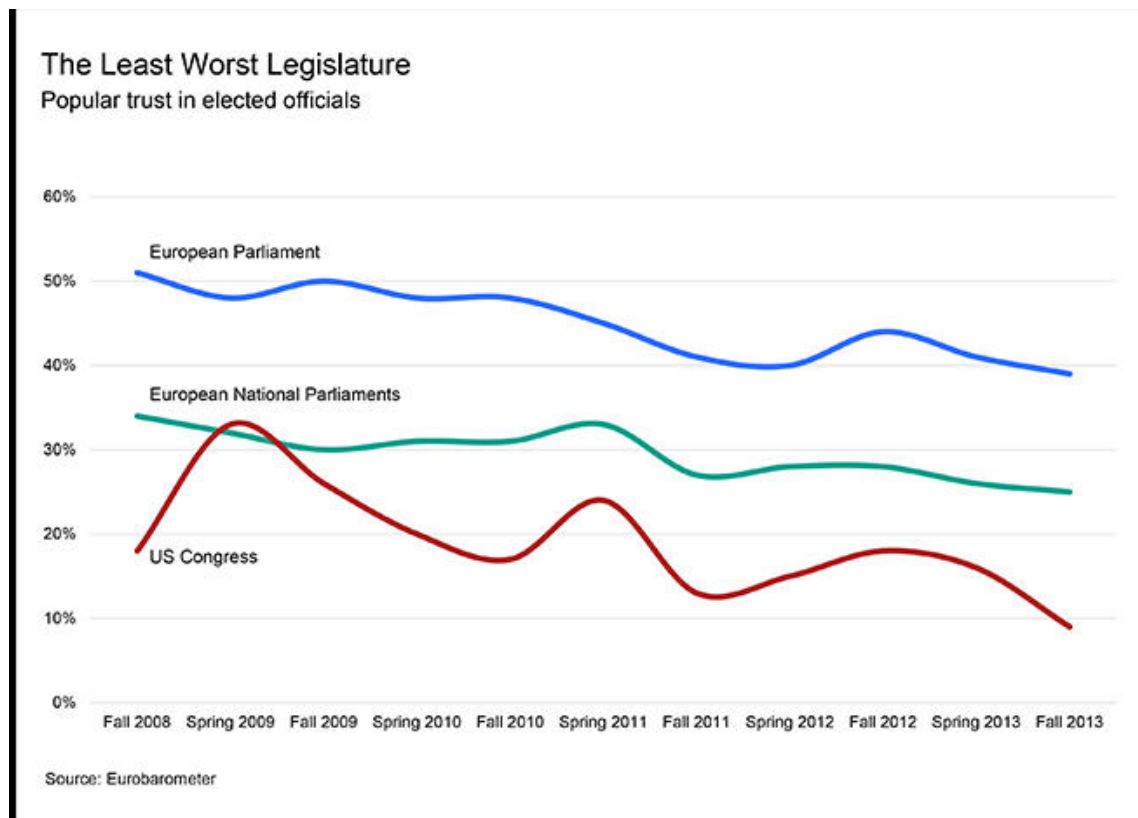
Even a cursory look at the recent debate over the appointment of the Commission President makes clear that policy choices for the EU and institutional power games are as closely intertwined as we have seen many times before. For instance, in an invited article David Cameron advanced several constitutional arguments and remained quite vague on policy choices except for his well-known demands for reform of the EU towards more "openness, flexibility, and growth". He insisted on the fact that the EPP lead candidate had not been not on any electoral list and that the initiative of MEPs and other political leaders to create a quasi-obligation to appoint the candidate proposed by the winning party was taken "behind closed doors" and did not correspond to what the treaties provided for. In his view, this created a major obstacle to find the best qualified candidates, notably heads of state or government. Other important British papers openly call the drive for Jean-Claude Juncker's nomination an illegitimate "power grab" of the European Parliament, in David Cameron's words "breaching the EU's rules by the back door. Rules that have been ratified by our national parliaments and laid down in international law."[2]

Many objections could be raised against these views. Suffice it to say here that since the departure of Jacques Delors many national leaders have not distinguished themselves by

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[2] „Electing Jean-Claude Juncker would be a back-door power grab"; The Guardian, 13 June 2014.

chosing the most competent and dynamic candidates for the Commission Presidency. Politicians such as the late Jean-Luc Dehaene or Guy Verhofstadt were openly resisted by some member states for the principal reason that they seemed to have some intentions to push for more integration. It could also be questioned why some national leaders came out with open resistance against the idea of chosing the Commission president through the Parliament only after the elections. David Cameron can point to the fact that the British Conservatives (and their European counterpart ECR) never shared this idea and did not select a *Spitzenkandidat*. For many other leaders, however, it is doubtful how they could explain their change of position between the election campaign and since the elections. They could have decided not to name a candidate, and defend their reasons to the electorate. The fact that they decided not to do so indicates that they realised that the idea had its democratic merits (or they did not want to face public opinion and make the case for the intergovernmental method of appointing the president). From a legal perspective, Cameron's most convincing argument is that Art. 17(7) TEU, which leaves some room for interpretation, is precisely the result of a compromise obtained during the European Convention in 2002/2003, for the very same differences of view as emerge now.

The idea of popular European democracy, which would modestly manifest itself in the election of the Commission President through voters' verdict, is of course closely related to plans for creating a European government. Although former Commission President Prodi's sporadic hints at transforming the Commission into a European government were not well received in politics and academia, it remains true that if democracy is the preferable mode of choosing and controlling governments, then any political system, at whatever level, should respect its basic tenets and rules. However, beyond the "jealous" defence of national political parties (notably their leadership and rising stars) of the "powers they have to control 'their' agents in the EU institutions" (Hix 2008, p. 1263), European representative democracy finds itself criticised and attacked from other sides, too. First, many scholars and practitioners today consider electoral politics as inefficient for modern public policy-making. They recommend placing market regulation and other public policies under the responsibility of non-majoritarian institutions such as the European Central Bank or regulatory agencies. Second, participatory democracy involving citizens more directly, for instance through referendums, has become a powerful proposition inspiring not only NGOs and other activists but also many political leaders and parties, notably the Greens and some sections of centre-right and centre-left parties. This, however, has to be contrasted with the empirical observation that European

integration, at least so far, has clearly privileged party central offices over party congresses or activists (Carter and Poguntke 2010).

True, both critiques of representative democracy and party rule are directed as much at the national as at the European level (Mair 2008). But European democracy faces a number of specific obstacles we don't find in nation states. The normative terminology necessary to develop an understanding of whether European democracy is satisfactory or inadequate, workable or impractical, desirable or dangerous, are mostly derived from national liberal democracies of the 20th century. This creates a "Catch 22" situation: while most would agree that a simple transfer of the principal trappings of national democratic systems to the next higher level is insufficient or perhaps even plainly wrong, the old conceptual tool box is unavoidable when we attempt to describe and design a democratic system in a non-state context (Schimmelfennig 2010). Despite these limitations, this paper will discuss the competitive character of parallel accountability structures and the existence of fused channels of political representation as unique – and problematic - features of European democracy.

2.2 Participatory democracy, a challenge for party democracy?

A vast body of research has taken note of the fact that since the entry into force of the Maastricht treaty referendums have become a frequent appearance at constitutional moments of the EU's development (Hooghe/Marks 2009). Only a handful of member states has so far resisted the pressure to go for referendums. One paradox of referendums is that they are often initiated by the political or party leadership for reasons having little to do with the question at hand, such as governmental power consolidation or resolution of party-internal divisions. Their results are of course open and sometimes constrain or even defy political leadership for a long period of time (Hobolt 2006).

Referendums are on simple dichotomous Yes/No decisions, risk to raise strong emotions and determine the political climate for years to come. While voters at elections have a choice of different ideologies and platforms, in referendums they are held to take their pick for one of two simple alternatives. Referendums are also known to attract voters who express disagreement more easily than those who support a given policy. Furthermore, negative votes are more likely than positive ones to be caused by a variety of different, sometimes opposite reasons. A last problem with referendums is that some voters may in general be pro-European yet still distance themselves from certain aspects of the multi-faceted integration project and

therefore vote No on an all-encompassing proposition such as the Treaty Establishing a Constitution for Europe.

This analysis would not be complete without mentioning the sociology of European citizenship. According to UN statistics there about 2-3% of the world population migrating to other countries at any given time. This corresponds exactly to the number of citizens living in another EU member state beyond short stays for private or professional reasons. That internal EU mobility is scarcely higher than global migration movements reflects in some way Europeans' cultural, linguistic and professional immobility. Not surprisingly, less than 15% of the EU population identify themselves exclusively or primarily as Europeans, whereas around 40% have an exclusive national identity. European identity is primarily an attribute of the highly educated and well-to-do (Magnette/Papadopoulos 2008, Schmitter 2009). And this situation has not improved since the onset of the public debt crisis: in a traditionally europhile country such as Italy, to name but one example, the net percentage of citizens trusting the EU fell from + 30% to - 22% between 2007 and 2012.[3]

In conclusion, both currently discussed alternatives to party and electoral democracy fail to provide conclusive arguments in favour of replacing or restricting the traditional avenues of democratic legitimation. As far as new governance is concerned there may be an attractive methodological feature: its preparedness to experiment and to develop steps for incremental change and its flexibility to react to yet unknown demands. If we consider European integration as an "experiment in identity formation in the absence of the chief force that has shaped [national] identity in the past"[4] such flexibility might indeed be an important improvement compared to the established conflict lines characterising nation-states' sovereignty issues. However, the willingness to turn to such experimentation would need to emerge among a critical mass of decision-makers. Otherwise it would seem highly unlikely that political leaders ignore the existing accountability structures determining their professional environment.

2.3 It's the elite, stupid: the re-emergence of identity as a legal and political category

Continuing the experiment of European democracy will certainly need the capacity to look for new legal and political instruments. The example of the nation-state is deeply engrained in our

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[3]   Torreblanca et al. 2013
[4]   Hooghe/Marks 2009, p. 23

historical memories and still determines to a large extent current geopolitical strategies. Building a European democracy hence faces strong headwinds, not only from voters and national political elites but also from academia and constitutional courts. Against this it is useful to remember that democracy is about the exercise of public power—and it is beyond doubt that the Union exercises public power (Weiler 2012). Furthermore, it has been shown that the political and legal developments since Maastricht have inched the former "constitution of the market closer to a constitutionalism grounded in comprehensive principles of political legitimacy, however incomplete this process may still be" (Isiksel 2012).

One of the most enduring arguments against European democracy, rehearsed in many different ways over the last 30 years of European Union scholarship and case-law, is the lack of European identity and a European public space. The rather optimistic perspective of neo-functionalism that transnational functional interests would create an unstoppable dynamic of increasing interdependence, which would then make necessary supranational problem-solving of ever growing scope and intensity, accompanied the heady days of the Delors Commission and several treaties extending the European Parliament's powers. However, in parallel at least two other strands of legal and academic commentary painted a less sanguine picture of the future of Europe. Liberal intergovernmentalism insisted that supranational strategies remained under the firm control of member states and were an expression of the economic interests of national elites. On the legal front, a small number of national constitutional courts, under the guidance of the German *Bundesverfassungsgericht* (BvG), questioned the primacy of European law over national constitutional provisions and repeatedly issued reservations defining a core of national sovereignty untouchable by EU legal acts. A considerable amount of legal doctrine, popularized in widely read newspapers, followed in their wake and maintained that European democracy was an oxymoron: no demos, no democracy (recently Grimm 2013, partially supported by Habermas 2014).

This line of reasoning remained relatively innocuous for a long time. But the confluence of the public debt crisis in some member states and the ratification of the Lisbon Treaty (a watered-down but nevertheless substantially similar version of the doomed Treaty Establishing a Constitution for Europe) drove the BvG's arguments into the new territory of "constitutional identity".[5] Democracy as the effective possibility to influence policy decisions and electoral equality had long been central tenets of BvG doctrine with respect to European integration.

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[5]   See Lehmann 2010 for a review of scholarly responses to the judgment.

However, in its Lisbon decision[6] and in a subsequent case on the minimum electoral threshold for the European elections the BvG went further than that and maintained that the German constitution required a core of legislative and political powers which was enumerated in the decision. If these powers were emasculated below a (yet unspecified) level German citizens would lose their constitutionally guaranteed effective influence on national policy decisions. Combined with the so-called eternity clause of the Basic Law this led the Court to the conclusion that the Basic Law could only be changed in this respect by the German people directly.[7]

The court goes to great lengths to expound on the fact that the *Staatenverbund* is an association of sovereign national states and to detail the conditions for a state to remain sovereign. Particular interest has been provoked by the mentioned list of inalienable state rights which can never be transferred to European law-making if the constitutional identity and sovereignty of member states is to be respected. This list is a list of "pure political expediency" – with the Court naming almost all policies where member state control is still exclusive or at least predominant – and not one of principled constitutional interpretation.[8] Other authors agree that the list is a simple compilation and protection of remaining national powers.

There are also long tracts of the judgment speaking about the importance of democracy as a constitutive element for the sovereignty of a member state, notably Germany. It is in these paragraphs that the BvG considers the European Parliament to be structurally unable ever to become a source of direct democratic legitimacy. The main reason for this, according to the court, is the very strong discrepancy between the electoral impacts of citizens from different member states. This is presented as an unacceptable violation of the principle of electoral equality, which is also jeopardized by the attribution of EP seats according to national quota. Finally, the court felt obliged, contrary to the Maastricht decision, to elaborate in great detail that the Basic Law prohibits the accession of the Federal Republic of Germany to an eventual European federal state. Only the constituent power itself - the people - could make such a decision.

The BvG recognised that the Lisbon Treaty changes the Parliament's character so that it will no longer consist of "representatives of the peoples of the States brought together in the

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[6]　　BVerfG, 2 BvE 2/08 of 30.6.2009

[7]　　The Court leaves some room for interpretation whether this could only happen via a revolutionary constitutional moment or some less radical option such as a constitutional convention of the *Herrenchiemsee* type.

[8]　　Schönberger 2009, p. 1209

Community" but of "representatives of the Union's citizens". Yet, it does not give this any importance for its reasoning on democratic legitimacy at European level. In fact, neither the right to stand in European elections nor the right to vote in any given state is based on possession of the nationality of that state. According to Article 22 (2) TFEU, every citizen of the Union residing in any member state "shall have the right to vote and to stand as a candidate in elections to the European Parliament in the member state in which he resides under the same conditions as nationals of that state." It is one of the key features of European citizenship that one qualifies for participation in European and local elections irrespective of nationality, the right depending instead on residence only. For this reason alone, each Member of the European Parliament not only represents the nationals of a given state but all citizens of the Union, not least foreign residents of the member state where (s)he stands for election.

Instead of taking these incremental steps towards transnational democracy seriously the court constructs a constitutional dead end: it describes an idea of egalitarian and majoritarian parliamentary democracy which can only apply in full to centralized states; it is already inappropriate to account for federal States, including Germany, and cannot be made to fit the constitutional system of the European Union. This type of legal reasoning may be a general problem of constitutional law, which seems to think in terms of rights and equality whereas politics involves, at its core, the organization of power. According to an American constitutionalist it may be preferable to leave behind "[u]nderstandings of rights or equality worked out in other domains of constitutional law" because they were simply a bad fit for the regulation of politics (Pildes 2004).

Coming back to the European situation, the BvG ostensibly ignores the European Parliament's efforts to create a European political landscape. Its remarkable silence on the extra-institutional conditions for meaningful democracy at national and European level may insofar hint at substantive indecision within the court. As Wonka has argued, the European Parliament provides an institutional venue which could fulfil the function of creating public awareness of EU decisions, and has done so increasingly.[9] The exaggerated weight given by the BvG to the principle of electoral equality leaves aside the importance to select the appropriate political personnel obtaining the mandate to govern and legislate at a particular level. There is a weak link indeed between EU citizens' formal weight of vote and the resulting political mandate and success of the parliamentarians that represent them in the House. The court has further underlined its doubts about the EP's democratic legitimacy when it abolished the electoral

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[9]   Wonka 2010, p. 58

threshold for the 2014 European elections despite strong criticism of German MEPs and most German MPs, thereby inviting a handful of German eurosceptic or otherwise colourful parties to take their seats in the Parliament, with most of them having just one MEP.[10] The Court may thus merit the honorary title, in an unexpected outlet, of being "the last safeguard of our nation states against [EU] encroachment"[11] but ignore the necessity of finding a compromise "between the international law principle of the equality of states and the democratic principle of 'one man one vote'" (Duff 2014).

Finally, the European Citizens' Initiative introduced by the Lisbon Treaty will significantly enhance citizens' influence on the political agenda of the EU legislator. MEPs consider this new instrument of citizen participation to be of paramount importance for the further evolution of European democracy. It may turn out not only to become a constructive version of participatory democracy at the European level, but also a convincing element of European citizenship.

We can conclude that exploring the prospects and limits of representative European democracy has acquired a new meaning over the past few years. Originally an idealistic political project to prepare "ever closer union" of the citizens of the EU, the construction of an autonomous and legitimate democratic system at the European level now appears to become a necessary rectification of the logic of coupling democracy with the nation state. The European Parliament, in agreement with a prolific body of scholarship, has upheld that the legitimacy of the EU is fed by two streams, one flowing from the democratically elected member state governments, the other from EU citizens enjoying the right to vote for the European Parliament as an important part of European citizenship. If one of these streams is deliberately cut off by national constitutional case law, the question of non-nationally derived legitimacy is back on the table with new urgency. Failing to reinvigorate it may make further democratization of the EU impossible, as well as create a major impediment to effective policy-making, e.g. in creating a credible defence against the public debt crisis.

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[10] 2 BvE 2/13 u.a. of 26 February 2014
[11] Ambrose, Europe's imperial court is a threat to all our democracies; Daily Telegraph of 15 January 2015

3. European parliamentary representation through parties

3.1 The upside-down character of European federalism

In reaction to the failed effort of drawing up a Constitution for Europe and the subsequent case law new theories of integration such as post-functionalism have been put forward. An important element of these theories is the endogenization of national identity and the role of political parties and entrepreneurs (Hooghe/Marks 2009). Post-functionalists believe that identity is particularly influential for the general public, much more so than for functional interest groups. When regional integration extends to the political as well as the economic political parties seeking votes and trying to minimize internal conflict determine whether an issue is politicized or not. Since the inception of the public debt crisis this seems to create "downward pressure on the level and scope of integration".[12] Post-functionalists also include geopolitical factors in their models. For instance, inter-state rivalries are factored in as impacts on elite decision making that are more powerful than economic interdependence.

Taking the reflection on political parties one step further Philippe Schmitter displays elegantly the ambivalent nature of our current situation. While "this is not the time to found a political party or to expect that any party – whatever the level of aggregation – will be able to perform the functions attributed to it in the past", he is on the other hand convinced that the best - in any case the most logical - response to the current "elite–mass gap in expectations and for re-fashioning multiple collective identities according to different levels of political aggregation, the place to go would be the eventual formation of a supra-national European party system."[13]

Ever since Schattschneider's 1942 statement that "modern democracy is unthinkable save in terms of the parties" research has attributed a central role of political representation to political parties. Scholars such as Peter Mair, Bernard Manin and many others have analysed the way parties have changed their appearance and functioning since World War II. The representative functions of parties became particularly vital at a time when distinctions based on property ceased to be necessary qualifications for the right to vote (Schlozman et al. 2012, Mair 2008). Obviously much of this research has dealt with national parties. However, the nascent EurPPs have to face a very similar environment of public opinion. To some extent European parties epitomize evolutions that have been observed in national democracies: a high concentration of power at the top, a lack of party membership and a certain withdrawal from voters' concerns

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[12]   Hooghe/Marks 2009, p. 21
[13]   Schmitter 2009, p. 212

and aspirations. In consequence, they face a double challenge: convincing voters of the utility of representative democracy at the European level and persuading national party leaders that the emergence of a European political landscape might also be in their own interest.

National political parties are deeply entrenched in territorial rule. They faithfully reflect all sorts of administrative, linguistic and cultural boundaries (Lehmann 2011b), which makes it difficult to motivate their leadership politically to go beyond the existing set-up of nation-states. However, there are no strong theoretical or empirical arguments for the belief that the nation state is the final geographical and political destination of democratic legitimacy. And there are no reasons to hope that an EU *demos* or *polis* is "quietly gathering strength and substance, ready to emerge fully-formed at an indeterminate date in the near future".[14] Therefore, since 2004, with the support of the Commission, the European Parliament has promoted and adopted EU regulations to further the development of EurPPs and European political foundations.

3.2   A new regime of party finance and its eveolution towards a party statute

In 2003 Parliament and Council (under qualified majority) decided to adopt Regulation (EC) No 2004/2003 on political parties at European level and the rules regarding their funding.[15] It stipulates that a political party at European level shall satisfy the following conditions:

a) it must have legal personality in the member state in which its seat is located;
b) it must be represented, in at least one quarter of member states, by Members of the European Parliament or in the national Parliaments or regional Parliaments or in the regional assemblies, or it must have received, in at least one quarter of the member states, at least 3% of the votes cast in each of those member states at the most recent European Parliament elections;
c) it must observe, in particular in its programme and in its activities, the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law;
d) it must have participated in elections to the European Parliament, or have expressed the intention to do so.

The Regulation states furthermore that a political party at European level shall publish its revenue and expenditure and a statement of its assets and liabilities annually and declare its sources of funding by providing a list specifying the donors and the donations received from each donor, with the exception of donations not exceeding EUR 500. It shall not accept:

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[14]   Donnelly/Jopp 2009, p. 34
[15]   OJ L 297 of 15 November 2003, p. 1–4

- anonymous donations,
- donations from the budgets of political groups in the European Parliament,
- donations from any undertaking over which the public authorities may exercise directly or indirectly a dominant influence,
- donations exceeding EUR 12000 per year and per donor from any natural or legal person.

Contributions from political parties which are members of a political party at European level shall be admissible but may not exceed 40 % of that party's annual budget. Funding charged to the general budget of the European Union shall not exceed 75 % of the budget of a political party at European level. The burden of proof shall rest with the party. Funds from the general budget of the European Union or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national political parties. It is prohibited to intervene, financially or otherwise, in national referendums.

The last two provisions incarnate the concerns of national political leadership about undue influence from the EU level. The restriction to campaign in referendums is an evident bulwark against the diffusion of Europe-wide political platforms at strategic moments. Parties' influence on the selection of candidates remains for the moment almost negligible (European Parliament 2009). Their financial means for electoral campaigns are feeble and continue to be under the Damocles sword of national regulation. National party leadership is quite nervous about possible minimal influence on the internal decision procedures coming from the European "outsiders" (who, in any case, are dependent upon these national leaders for the further advancement of their career), as is displayed by the cautious wording in the regulation on the cross-financing of national parties. Parliament's Committee on Constitutional Affairs (AFCO) hence continues to explore further steps to make the Euro-parties more important players in EU politics.

In a resolution adopted in 2011, on the practical experiences gained with the regime for party and foundation finance established in 2004/2007[16] the Parliament draws some conclusions with a view to the next initiatives to take. The resolution recalls that the Treaty of Lisbon stresses the role of political parties and their foundations to create a European polis, a political space at EU level, and a European democracy. However, European political parties, as they stand, "are not in a position to play this role to the full" because they are merely umbrella organisations for national parties and have no roots in the electorate in the member states. Political parties should therefore have rights, obligations and responsibilities as legal entities

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[16] P7_TA(2011)0143

and should follow converging general organisational patterns. An authentic legal status for EurPPs and a legal personality of their own, based directly on the law of the European Union, would enable the parties and their political foundations to act as representative agents of the European public interest. In their information campaigns the Euro-parties should interact and compete on matters relating to common European challenges.

The proposals of the subsequent AFCO report adopted in April 2013[17] may appear quite technical at first sight but enhance the European parties' status vis-à-vis their national counterparts: the envisaged regulation defines and implements a legal base for the establishment of a European party in EU law from 2017. Euro-parties are, for the moment, obliged to register their head offices in one of the member states (normally Belgium) under national rules. With respect to the ban to contribute to the financing of referendum campaigns, Parliament has long called for a right of Europarties to participate in referendum campaigns as long as the subject of the referendum has a direct link with issues concerning the European Union.

The 2013 Parliament resolution led to trialogue negotiations with Council and Commission in view of a first reading agreement. The main results, adopted in April 2014, are as follows:[18]

- European political parties and foundations acquire European legal personality by conversion of the national legal personality into a successor European legal personality.
- Registration conditions verify the respect of values on which the EU is founded, including observance of EU values by national member parties.
- An independent authority is created for the purpose of registration/verification/de-registration of parties and foundations. It is advised by a Committee of independent eminent persons.
- The consequences of manifest and serious violations of EU values or failure to fulfil other obligations are defined; the Court of Justice of the European Union may review the legality of the decisions of the Authority.
- Flexibility elements for the funding of foundations are introduced, concerning multi-annual programming and carry-over provisions.
- Europarties obtain the formal right to fund EP election activities. However, they may not nominate EP candidates or finance campaigns in the context of referendums (including those on European issues).

Some member states will need to adopt complementary national laws to ensure an effective application of the Regulation and obtain a sufficient transitional period to that end. The regulation is to enter into force on 1st January 2017; a review will be carried out before the end of 2019.

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[17] Doc. A7-0140/2013, referring to Commission proposal COM(2012)499
[18] See European Parliament legislative resolution of 16 April 2014 (T7-0421/2014)

3.3 The internal decision-making mechanisms of European political parties: a leftover for reform

Bardi et al. (2014) are in general quite reserved about the chances for a satisfactorily operational European party system but they suggest some ideas on how to homogenize ideological platforms, improve inter-party cooperation and streamline internal democratic processes. Such ideas concern issues which have not yet caught the attention of most active MEPs. They also indicate some problems but also some future avenues for reform, some of which have also been presented by the former Secretary General of the Parliament (Priestley 2010). He notably challenges Euro-parties to accept the possibility for individuals to become direct members of such a party. Recruiting individual members and activists who are more visible for public opinion would democratize internal party procedures (e.g., through a system of qualified majority votes on posts and platforms, more influence for party delegates sent to congresses, designation by secret ballot of a candidate for the Commission presidency, possibly in open primaries).

Until recently, the statutes of only one European political party, the EUDemocrats - Alliance for a Europe of Democracies (EUD), allowed for full individual membership of any citizen who might be interested to join. One year ago, the Liberal party (ALDE) created associate membership for individuals who may not be members of a national party. Associate members are able to participate and be a candidate in online elections that will select the delegate(s) representing associate members at the yearly ALDE Party Congress. Membership of the other parties is restricted to national parties or MEPs. But attitudes seem to change in some Euro-parties. At a workshop organised in January 2011, the vice-chairperson of the European Green Party announced that the Greens would soon envisage a change of their statutes in this direction. However, the latest Rule Book of the European Green Party of May 2013 does not provide for this possibility.[19]

The Parliament had long emphasised the need for all EurPPs to conform to the highest standards of internal party democracy (democratic election of party bodies, democratic decision-making processes, including for the selection of candidates). However, strong hesitations to open Euro-parties for individual membership remain. In spite of much talk at the

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[19] See Sozzi 2013a for a detailed overview.

top of new means of participatory democracy parties themselves remain very hierarchical organisations, with strict chains of command at and between the various levels of aggregation. It follows that these command chains are closely watched by party leadership. Any proposal for change is examined for its likely effects on the present party leadership. Most incumbents hesitate to introduce changes which could jeopardize their chances for re-nomination or their control powers of the internal party workings. Under such conditions problems such as starkly varying membership from different countries will certainly be very difficult to resolve. Some system of quotas, vote weights such as super-qualified majorities or other balancing acts will be necessary. One important practical expression of party democracy was the selection of candidates for the Commission presidency before the 2014 elections.

3.4   Tinkering at the margins? Consequences of asymmetric electoral representation

Both channels of democratic legitimation of the EU are predominantly determined by the same principal, national party leadership. This is no new insight. In 1987, Reif and Niedermayer noted that there was a "marked discrepancy" between the function nominally attributed to the European Parliament and its real function, notably a mismatch between high constitutional expectations and the practical design of the vote.[20] Indeed, the 1976 European Electoral Act revised in 2002 only stipulates the general principles of the proportional vote, incompatibility with a national parliamentary mandate and a maximum threshold of 5%. All other necessary provisions on campaign rules, design of the ballot, apportionment of seats and many others remain under the control of national legislation. One result of this is that on campaign posters and in other media the Europarties only exceptionally appear with their own logos and platforms. In addition, national party leadership selects the candidates for the European elections. This reduces the Europarties' influence and visibility to a very low level (EP 2009).

A few scholars have developed ideas to improve this situation. Some of them appear almost utopian, others may be partially realized over the medium-term. Simms (2012) reflects on chances for a "new pan-European party" which would aim to gain a majority in the European Parliament in European elections or, if this turned out to be difficult, to win majorities in the respective national legislatures (or both). This should then lead to the emergence of a pan-European party landscape.

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[20] p. 172. See also Hix 2002.

In a more realistic vein, Schleicher identified conflicts between the goal of making the EP a direct popular check of the Commission and the Council (its institutional purpose) and the way the elections are organized (2011). He underlines that there are practical tools to create electoral incentives that accord an advantage to territorially based parties which are willing to appeal to voters other than those of their own constituency. The question raised by Schleicher is thus whether electoral rule change can provide a tool for realigning institutional purpose and practical implementation. The most radical idea is to require parties to attain a certain threshold of votes in more than one member state. Drawing inspiration from the regulation on Europarties which requires parties to be present or to campaign in at least a quarter of the member states, a party presenting candidates for election to the European Parliament would need to have a minimum electoral success in several member states and appear on the ballot separately from the national parties. This would allow the Euro-party brands to develop identities over time that were separate from those of their domestic partners. It would also limit the ability of candidates to make purely nationalistic appeals that would be unpopular in other countries, as candidates from a Euro-party in one country could be held accountable for things said by their co-partisans in another country.

A less problematic proposal, taken up by other authors (Oelbermann et al. 2011), concerns the design of the ballots used in European elections, which should not carry the acronyms of national parties but those of their European partners. There may be linguistic details to be sorted out but from a rational-choice perspective such a seemingly small change would enable voters to exercise their accountability function in direct relation to the European parties. This would of course take time over several electoral cycles but, as Schleicher puts it, it would allow electors to establish "running tallies" of the political decisions made by European parties, thus clarifying the purpose of the vote. Finally, since in most modern elections the most relevant tool voters have for overcoming their ignorance of politics is the heuristic provided by a political party (cf. also Manin 1997) the repeated practices of voters would contribute to growing an understanding of European politics. Two problems with Schleicher's ideas may occur: (1) On what political issues should EP voters form their "running tallies" if few salient policies are decided at the EU level, and if due to the institutional compromises prevalent in European decision-making no clear impact of separate parties can be singled out? (2) There have already been warnings from MEPs and academic commentators that turnout may fall even further due to new and foreign-sounding party names. This development can of course not be ruled out and may possibly constitute a self-fulfilling prophecy.

The last argument brings us to the European Parliament's proposals for electoral reform because similar objections have been raised against the introduction of a single EU-wide constituency for a small number of additional MEPs (Duff 2010). MEPs have argued, for instance, that such a constituency would create a two-class system of MEPs, that it would intensify the personalization and mediatization of electoral campaigns, and that the presentation of foreign-sounding candidates would alienate voters even more than is the case now. The rapporteur's rejoinder was that "the addition of a transnational list elected from a pan-EU constituency would enhance the popular legitimacy of the European Parliament by widening voter choice. The voter would be able to articulate politically his or her plural citizenship, one national, the other European: two votes are better than one."[21] One could add that, as we have seen above in the analysis of modern representative democracy, personalization and mediatization are not at all limited to European elections and that in view of the lack of interest at present this might be an acceptable price to pay. One problem with a two-votes system is that many voters are not used to it although it would be less of a problem in federal systems such as Germany where the Bundestag is elected more or less the same way (*Erst- und Zweitstimme*).

The proposal for electoral reform was sent back to committee in May 2011 and will only be taken up again during the next term. One reason for this is that some elements of the proposal would require treaty revision. Other proposals in AFCO's report, such as the introduction of semi-open party lists or improving the franchise for citizens living in other member states, will hopefully be part of the renewed reform effort. Perhaps the most radical effect of these changes of the electoral procedure would be to confront the EurPPs with an important political challenge: to select the candidates for the EU-wide constituency and to stage an effective campaign for them. This would in all likelihood transform the posture of Europarties over the years and enable them to acquire a more independent role with respect to national party structures. It would open a host of necessities and possibilities for inter-party communication and cooperation, Europe-wide head-hunting for suitable candidates and new energies for the implementation of interesting proposals to europeanize the European elections: use Euro-party acronyms on ballot papers, require Euro-parties to obtain a certain percentage of votes in more than one member state and other instruments to make regular public appearances of non-national politicians the rule rather than the exception.

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[21] p. 60

One day this might even radiate to the selection of other MEP candidates. It has of course been argued that to elect only 25 MEPs on the new transnational quota is insufficient to interest the Europarties to spend significant resources on the campaign. However, this claim probably underestimates the novelty effect and the media impact of a cross-border campaign. The disproportionate press coverage received by Marine Le Pen and Geert Wilders on their project of uniting several Eurosceptic parties in order to obtain group status in the EP is a case in point. Moreover, the selection duty would have to be combined with clearer party programmes and a more proactive behaviour with respect to the election of the Commission President. There is a certain amount of research showing that parties which display a clear position on European issues do better in the EP elections than others (Lord 2010).

In summary, the EU-wide constituency would bring about most of the advantages of multi-state thresholds without some of their drawbacks. Plural thresholds might well be a further step of reform once an EU-wide constituency is well established. These proposals are certainly not sufficient to create the necessary conditions for a lively political debate at the European level but would need the restructuring of EurPPs outlined above (Bardi et al. 2014).

3.5 Towards a parliamentary system? The presentation of candidates for Commission President

One of the key measures in bringing about the 'Europeanisation' of the parliamentary elections, more lively intra-party democracy, and higher voter participation is the nomination of candidates for President of the European Commission. In this regard, the European Parliament adopted a resolution on 4 July 2013 on improving practical arrangements for the 2014 parliamentary elections[22] calling on the EurPPs to nominate candidates for the Presidency of the European Commission, who should present their political programmes in all member states. This initiative has finally been accepted by national leaders despite some resistance (Hobolt 2014). The five Europarty candidates participated in several television debates, campaigned in most member states and were covered extensively in the press. However, the impact of this on voter turn-out has been regrettably weak. One reason for this is the highly uneven media presence between member states. While the *Spitzenkandidaten* were very visible and much talked about in Germany, Luxembourg, Italy, Poland and Austria their public presence was much weaker in other countries (notably France and the UK). A general

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[22] T7-0323/2013

conclusion of most commentary on the *Spitzenkandidaten* was summarised thus by Sarah Hobolt (2014): *Spitzenkandidaten* did not define the agenda of the 2014 European elections but, in the long term, In the long term, it may even reshape the nature of European elections.[23] Some observers from the sideline indeed speak already of the fact that under Jean-Claude Juncker the Commission is "Parliament's Commission" rather than "Council's Commission".[24]

There are of course advocates of a non-partisan profile of the Commission, David Cameron among them, and authors warning to go down the way towards a parliamentary system. Indeed, the current institutional structure of the EU resembles more a presidential or separated-powers system (Kreppel 2011). Any move towards a more parliamentary system with its dynamics of "government" and opposition parties may bring surprises with respect to the acceptance of the Commission's proposals in Parliament or, vice versa, the reaction of the Commission to parliamentary legislative initiatives. A further institutional aspect are the absolute majorities required for many legislative decision (e.g., at third reading), which make it necessary that the major groups cooperate. Even if the President of the Commission were elected by a clear-cut majority in both EU "chambers" - the governments gathered in the Council being considered as a kind of European *Bundesrat* - he would have to compromise, notably to confront the problem of forging majorities in the EP and of adapting to shifting balances in the Council (Magnette/Papadopoulos 2008).

However, the political dynamics developing in all parties are a true innovation. The quality media's reactions have been very positive and the means at the disposal of the top candidates appeared sufficient. European parties were allowed to support their candidates. In addition, there seems to be strong cohesion on this point among newly elected MEPs and EP groups. The travails the European Council went through to accept the idea of losing power in *this* appointment makes it uncertain that future Commission Presidents will also be chosen among the party candidates. However, for once, path dependency might play in favor of the European Parliament.

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[23] p. 1537 and p. 1529
[24] Michael Bauer, Neue Züricher Zeitung of 3 February 2015

4.   Conclusion

In Renaud Dehousse's words, the EU suffers not primarily from a democratic but from a political deficit. Major decisions concerning the EU are taken in an ambiance of "There is no alternative", with little contestation between right and left. Many MEPs are painfully aware of this when they start to campaign. Being obliged to start out stereotypically by acknowledging that all mainstream parties are pro-European neuters electoral campaigns for the European Parliament and inhibits MEPs to spell out their convictions. One way out of this might be that the mass pro-integration parties in Europe regain lost ground in the battle over European integration by living up to the facts of politicization. The way to do this, at least for some observers, would be to politicize Europe along the left/right cleavage. As a result, European issues ought to be framed in terms of the direction of European policies rather than with regard to European integration (Börzel/Risse 2009). The political refusal, by left and right, to focus on economic distribution and the management of the economy for production and distribution may need to be abandoned for arriving at such a politicization (Mair 2008), which could tackle the widespread view that voters have, before anything else, concern for the nature and status of their nation state. "Often it is not necessarily EU policy that [voters] reject, only the fact that is the EU's" (Simon Jenkins, The Guardian, 30 April 2014).

The seemingly technical improvements discussed by some researchers and by the Parliament should be seen as incremental steps to prepare full-fledged electoral campaigning at the European level. This strategy is not without risks as it may provide a platform for jingoist political entrepreneurs along the *tan* dimension found by Hooghe and Marks (2009). The optimistic bet would be that feelings of territorial and social identity are the result of acquiring legal, cultural and political habits and of sustained interaction between citizens and their political institutions at various levels. On the other hand, the power of incumbents in political office and of existing legal and political accountability structures can hardly be overestimated. Resistance to change can certainly be explained in a framework of rational choice theories, postulating that those who benefit from institutions already in place have strong incentives to use their institutional powers to veto proposals for change (Rose/Bernhagen 2010).

On the other hand, as outlined in the introduction, the need to make EU public policy more transparent (in MEP Elmar Brok's words "Who does what, and why?") persists. Citizens expect such transparency against the background of what they are accustomed to at the national level. Although any simple duplication of national institutional structures would

ignore the specifics of the European political system, declaring the idea of a robust European parliamentarianism as utopian could also be a sign of intellectual apathy or constitutional fatigue. Despite clear resistance from more and more national party leaders and MPs the case against representative democracy in Europe may not be as strong as it seems and the costs of making do without it may indeed be high, not least in terms of efficient policy making at a continental scale (see Kumm 2008). A European parliamentary, but partially separate powers system will certainly be different from any national model (see Bellamy 2010) but in view of growing popular discontent about the EU it still seems to be one of the most promising and logical avenues, one crucial part of which, against all odds, is arguably a further development of a European party system. Under current conditions, the "upside-down nature of the office hierarchy means that if a *[national political]* party faces conflicting incentives in its attempts to capture a comparable office at the EU level [or] the national level […], the policy positions that favour the capture of domestic office will prevail" (Hix 2008, p. 1261). The challenge thus remains to turn the "upside-down" political system the EU represents today into a more efficient and accountable system inspired by federal experiences.

The May 2014 lead candidates experiment and the struggle to appoint the Commission President with respect to the outcome of the elections is perhaps not yet conclusive. The impact of the candidates was extremely variable from member state to member state. The EurPPs remained quite invisible on ballots sheets and campaign posters. As Table 1 shows, this is not a minor technical question but has a clearly detrimental influence on voters' awareness of the European character of the EP elections. There may be a risk that the confrontational tug of war between the European Parliament and the European Council on who determines the Commission leader will might deepen many voters' conviction that the European Union is an ineffective and untrustworthy political construction, and opinion in academia and the media could follow suit.

On the other hand, the improvements introduced by the European Union to grant a more independent standing to the Europarties are beginning to show their effects. The foundations are evolving into a dense network of reflection on their proper role and, in particular, that of their sister parties (Gagatek and Van Hecke 2011). They start to have an impact on expert opinion through scholarly journals and other channels of information. What has been done so far may be a small step for European democracy but an important one for European party government and the politization of European social issues, opening the way to address the much more substantial – and substantive – question whether parties will remain predominantly

"responsible" or be able to add an element of "responsiveness" (Bardi, Bartolini and Trechsel 2014). The European Parliament, for its part, seems inclined to take up the challenge once more and pursue the question of Europarties and, possibly, of electoral reform (hearing of the Constitutional Affairs Committee of 4 December 2014). As Andrew Duff pointed out at the hearing, a OSCE/ODIHR mission on the conduct of the 2009 EP elections found a lack of harmonization of candidacy requirements, including provision for independent candidates, and a lack of provisions on voting rights particularly for EU citizens resident in another state It recommended more latitude in national legislation for the activities of European-level political parties, the unifying of polling days, and measures to ensure independent media monitoring of the campaign (Duff 2014). Almost an agenda in constitutional politics for the new parliament.
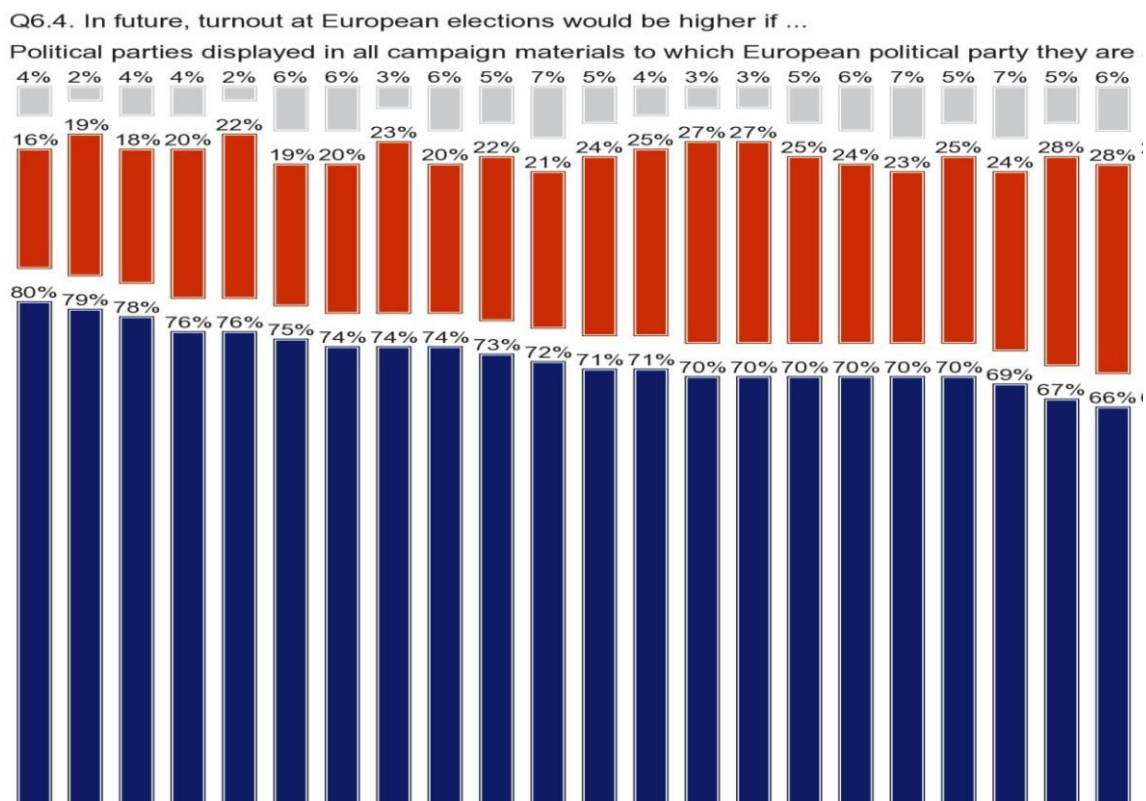
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Table 1:   Effect of EurPPs' visibility on citizens' intentions to vote

Q6.4. In future, turnout at European elections would be higher if …
Political parties displayed in all campaign materials to which European political party they are

Source: Eurobarometer 2013