

Non-Paper

The composition of the European Parliament after Brexit – A window of opportunity for a European Constituency

The UK withdrawal from the EU will dictate, among other things, several modifications of the EU primary law. Inevitably, this will be the case of Article 52 of the TEU that lists the EU member states. Other changes might turn out to be necessary during the recess negotiations.

Several semi-constitutional EU legal acts will also have to be revised, notably on the functioning of the institutions. This is particularly true and self-evident for the legal texts concerning the European Parliament (henceforth, the EP).

According to Article 14(2) TEU, the EP shall be composed of up to 750 members, plus the President, to be elected within the different member states according to the principle of degressive proportionality “*with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.*” The allocation of European Parliament’s seats is determined by a European Council decision, “*adopted by unanimity, on the initiative of the European Parliament and with its consent.*” Currently, the composition of the European Parliament is enshrined in a European Council Decision adopted in June 2013 (henceforth “2013 Decision”).

Following the withdrawal of the UK, the European Council and the European Parliament will have to agree on a new decision on the composition of the European Parliament. This will be tantamount to a major overhaul of the EP, considering that the 2013 Decision assigns 73 seats to the UK, the third largest delegation (after Germany and France, and on a par with Italy) representing almost one tenth of the Hemicycle.

Reshaping the EP will be no easy task. The new seats apportionment will have to be proposed by the Parliament, agreed upon unanimously by the European Council, and eventually approved by the European Parliament. On top of that, legislation will have to be put in place in every single member State to regulate the election of MEPs.

At the end of the process, three different outcomes can be envisaged.

First scenario: redistribution of the 73 seats currently assigned to the UK.

However tempting, this solution might prove to be extremely burdensome and potentially controversial. Experience from past negotiations proves that this types of highly distributive negotiations are extremely complex. Arguably, Member States will have a very hard time in finding a mutually satisfactory apportionment. And unanimity will be a recipe for endless strife. Compounding the case for this scenario, Article 14.2 of the TEU establishes that “*no member States shall be allocated more than ninety-six seats*”. This means in practical terms that either we modify this ceiling or we redistribute the former British seats to all member States other than Germany, further accentuating the degressive proportionality within the EP.

Second scenario: reducing the total number of MEPs.

This scenario would simply consist in eliminating the 73 seats currently assigned to the UK. At first sight, it appears enticing, since it requires only minor changes to the existing legislation. However, it hardly stands up to closer scrutiny.

First, reducing the number of MEPS would still entail a formal modification of the 2013 Decision. Second, it could easily escalate in a difficult distributive negotiation as in scenario 1, since requests for additional seats from several member States could not be ruled out. Third, and most importantly, it would be a missed opportunity for the European Parliament and for the European Union as a whole.

Third scenario: the European Constituency

This paper suggests that the most straightforward and forthcoming option would be assigning the 73 seats formerly allotted to the UK to a single European constituency, allowing the European political families to contend them on a trans-national basis.

No Treaty change would be required. Art. 10 of the TEU stipulates that “*Citizens are directly represented at Union level in the European Parliament*”. Similarly, art. 14 states that “*The European Parliament shall be composed by representatives of the Union’s citizens*”. This clearly implies that, although the seats in the EP are allotted according to national quotas, the Members of Parliament themselves represent the Union as a whole. It is therefore perfectly conceivable, and consistent with the Treaties, that their election be disjointed from national constituencies.

Proposals in this direction have already been presented in the past by the European Parliament. Most recently, the EP proposed to consolidate the Spitzenkandidaten method, stipulating in the electoral law that “*The Council decides by unanimity on a joint constituency in which lists are headed by each political family's candidate for the post of President of the Commission.*”

So far, this proposal has been considered a tall order, among other things because it would have implied the decision to add new seats to an already oversized Assembly. But the current political juncture is completely different. Brexit makes a win-win, zero-costs, convincing operation of what used to be considered an ambitious but hardly realistic one.

Benefits for the EU as a whole would be consistent. First, the creation of a European Constituency would reinforce the role of the European political parties and set the scene for a closer knit European political discourse. Second, it would enrich the very notion of EU citizenship, ultimately strengthening the sense of “togetherness” of our nationals. Third, it would be a strong political response to Brexit. It would demonstrate that the European project is alive and kicking, and is still backed up by institutional inventiveness and political will.

Irrespective of the preferred scenario, Italy deems that the need to revise the 2013 Decision will have to be addressed in the initial stage of the EU-UK negotiations in order to pave the way, both at EU and at national level, for the 2019 EP elections.