Spitzen-kandidaten or the lead candidate process

Ways to Europeanise elections to the European Parliament

STUDY

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Spitzenkandidaten, or the lead candidate process

Ways to Europeanise elections to the European Parliament

With the intention of informing discussion in the approach to the 2024 European elections, this study examines the historical, factual and legal aspects surrounding the Spitzenkandidaten, or lead candidate process, which establishes a political link between the nomination of the President of the European Commission and the political composition of the European Parliament. This study retraces the evolution of Parliament's role in the investiture of the President of the Commission, explains the reasons why such an innovation was deemed necessary as early as the early 1990s and assesses the results of this innovative process in the last two elections. The lead candidate process achieved its purposes with the election of Jean Claude Juncker as President of the European Commission in 2014, while this was not the case in 2019, Ursula von der Leyen not having been a candidate. There is therefore some uncertainty over the future of the lead candidate process and whether there is appetite for a repetition in 2024. This paper takes stock of the reasons for the failure in 2019 and assesses the aspects that performed well, and those that did not, in the past. The analysis concludes with proposals for the future, with a view to healing the fractures that emerged during the last appointment process, seeking to explore how the lead candidate process may become part of the European Union's institutional set-up.

This publication is the second in a series of publications on 'Ways to Europeanise elections to the European Parliament'. The first in this series was an EPRS study on transnational electoral lists, issued in February 2021.

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Executive summary

The investiture of the President of the European Commission is a process that has evolved since the beginning of European integration. From the Treaty of Rome to the beginning of the 1980s, the role of the European Parliament was almost inexistent. With the 1983 Stuttgart Declaration, Parliament acquired an embryonic consultative role whereby the non-binding opinion of the Enlarged Bureau (Parliament's Bureau plus leaders of the political groups) was sought prior to the appointment of the President. In 1992, the Treaty of Maastricht formalised the consultation of the European Parliament, but its role remained non-binding. The 1997 Treaty of Amsterdam introduced Parliament's approval to the investiture procedure when it entered into force in 1999, and this was retained with the Treaty of Nice in 2001. Finally, in 2009 the Treaty of Lisbon introduced the procedure applicable today, establishing a political link between the vote on the President of the European Commission. According to Article 17(7) of the Treaty on European Union (TEU), the Commission President is today elected by Parliament by a majority of the component Members in a process in which the European Council, acting by qualified majority and taking into account the elections to the European Parliament, proposes a candidate to the European Parliament.

The lead candidate process is a **political process**, based on the European political parties nominating the (lead) candidate they would support as President of the Commission, ahead of the European elections. The lead candidate then fronts the electoral campaign across the EU and presents the political programme of the party of reference. The lead candidate, or *Spitzenkandidaten* process, was run for the first time in 2014, and a second time in 2019, with contrasting results. However, the idea had been floated in European circles and academia since the 1990s. Supporters consider that the lead candidate process could make the process of selection of the leader of the 'EU executive' more **transparent** and shelter the choice from intergovernmental influence and the 'horse trading' dynamics often present in the European Council. A further purpose was to provide greater **democratic legitimacy** to the office of head of the European Union's executive by giving voters the chance to influence the choice of the Commission President. This would have brought EU political processes closer to their national versions, making the EU method of appointing EU leaders more **comprehensible to the public**. A further purpose was to inject some dynamism into EU elections by personalising the electoral campaign and associating a specific candidate with a political programme, which should motivate citizens to **turn out** to vote. Finally, the lead candidate process was thought to be a step towards the creation of a **European demos**, i.e. a place where candidates campaigning across the EU discuss EU-wide issues, addressing EU voters.

The lead candidate process was run for the first time in 2014 with Jean-Claude Juncker, the European People's Party (EPP) lead candidate, elected President of the Commission. However, in 2019, the process was not as successful, as Ursula von der Leyen was appointed by the European Council as President of the Commission without having been a *Spitzenkandidat*. Research on the impact of the lead candidate process has highlighted that the 2014 *Spitzenkandidaten* process gained a certain visibility in media debates, giving prominence to EU-related topics. This increased visibility was also linked to the contingent financial and sovereign debt crises and to the polarisation introduced to the debate between pro-European and Eurosceptic movements. Turnout however remained **stagnant in 2014** (with a slight fall of 0.36 percentage points compared to 2009) and the visibility of the lead candidates remained low (19 % of the respondents to a 2014 post-election survey recognised Jean-Claude Juncker, while 17 % recognised Martin Schulz, lead candidate of the Party of European Socialists, PES), with higher peaks in the lead candidates' home countries. However, a higher percentage of respondents (41 %) recognised that a vote for a lead candidate and for a specific European party was a vote for the future President of the European Commission.

The link between the lead candidates and the national political parties, a connection that boosts lead candidates' visibility during electoral campaigns, was not strong. This is also recognised in a European Commission report on the 2014 European elections and by some commentators (e.g. Peñalver and Priestley). Notwithstanding these flaws, the 2014 lead candidate process can be considered a positive experience, as it **helped end the decline in voter turnout**, added **transparency** to the selection of candidates for the President of the Commission and instilled self-confidence in the Commission, which could now claim to be more political thanks to enhanced popular legitimacy.

In 2019, the repetition of the experiment had to take account of European Council President Donald Tusk's declaration, ahead of the elections, that renewed adoption of the lead candidate process was not automatic and that the European Council claimed full ownership of the right to propose a candidate to Parliament. With more preparation by the European political parties, the lead candidate process was run by almost all European political parties, including some that had not participated in the process in the 2014 elections. Among the main reasons for the failure of the lead candidate process in 2019, commentators highlight the lack of a candidate with the requisite experience required by the European Council (e.g. Jim Cloos). De Wilde also mentions the unsuccessful 2018 electoral reform, which would have introduced a Union-wide constituency, as a factor in the lack of support for the lead candidate process; the lack of a truly European electoral debate; and the fragmented opinion of European political parties regarding some lead candidates. Notwithstanding these weaknesses, **turnout increased in 2019** (+8.05 percentage points), the highest turnout in European elections since 1994.

After the 2019 set-back, the question is whether the lead candidate process has a future, considering that – in addition to the commendable aim to improve transparency, legitimacy and personalisation – it, in principle, brings the EU closer to citizens by emulating national processes of selection of the premier. This study explores several avenues that could keep the lead candidate process alive.

A first avenue consists of **improving the status quo** by working on the interinstitutional dimension, intra-parliamentary cohesion, and improving practical arrangements to facilitate the process. This option presupposes that a certain degree of maturity is reached in relations between the two participating institutions and that the European Parliament and European Council work in synergy. European political parties should therefore carefully select their lead candidates with a view to incorporating the requirements that the European Council considers indispensable, at an early stage. For the European Council, this would mean going beyond the wording of the Treaty provision and recognising the development of European societies that demand greater transparency in politics and more involvement for citizens in political life. If the right equilibrium is reached, the repetition of the lead candidate process over time could lead to the establishment of a constitutional convention or practice.

A second avenue could be the recognition of the lead candidate process in an **interinstitutional agreement**, a legal instrument provided for under Article 295 of the Treaty on the Functioning of the European Union (TFEU), which however does not include the European Council as one of the possible contracting institutions, casting some doubt on the legal feasibility of this option. This was proposed in the pending reform of the European Electoral Act (legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the Members of the European Parliament by direct universal suffrage (2020/2220(INL) – 2022/0902(APP)).

A third option would be to incorporate the lead candidate process in a **reform of the European Electoral Act**. The 2015 Hübner-Leinen report made an attempt in this direction, to which the introduction of a Union-wide constituency was later added. However, this reform was not adopted by the Council.

A fourth option would be to refer to the **lead candidate in the Treaties**. This option would require an ordinary Treaty revision, which is a legally burdensome procedure, due to the 'double unanimity' required, as well as presenting political difficulties. Treaty provisions incorporating the lead candidate process could provide, for example, that in the framework of the necessary consultations the European Council hears the lead candidates before formalising the proposal for a Commission President candidate; that the European Council must vote on the first- or second-ranking lead candidate before resorting to a different candidate; that the European Council considers as a candidate for the Commission President, the lead candidate able to garner a parliamentary majority; that the European Council is required to consider the lead candidate with the most votes (or second-most), or finally to invert the role of the institutions by making Parliament the institution that proposes the candidate for President of the Commission to the European Council, which must then vote on that proposal.

The *Spitzenkandidaten* process is one of the measures proposed by the Conference on the Future of Europe. Proposal 38(4) states that 'European citizens should have a greater say on who is elected as President of the Commission. This could be achieved either by the direct election of the Commission President or a lead candidate system'. This desire of citizens to be able to influence EU decisions and the choice of EU leadership should not be overlooked in following up on the Conference's results. In this respect, the lead candidate process can play a considerable role.

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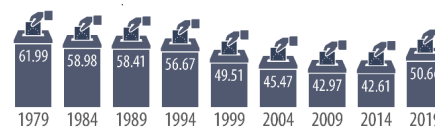## Table of figures

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1. Introduction

European elections should be one of the most important and visible occasions in the EU's democratic life, a single moment that calls on EU citizens to vote on their representatives to the European Parliament. As Article 10 TEU testifies, the importance of European elections is rooted in the fact that representative democracy is a pillar of the functioning of the EU and that the European Parliament is the institution that directly represents citizens in the Union.

A recent survey[1] has shown that, for 55 % of the respondents, the best way for citizens' voices to be heard is to vote in European elections. An earlier Eurobarometer showed that 7 out of 10 citizens are in favour of the lead candidate process for the choice of the President of the Commission.[2]

However, the European elections are not generally perceived in that way if the steadily decreasing electoral turnout since 1979 is considered. The 2019 elections were the only exception to this trend. European elections are often said to remain 'second order elections',[3] where national issues come to the fore in electoral campaigns, while European issues often remain in the background, if not completely absent. This attitude, coupled with the perception that 'Brussels' is far from citizens' lives, is not positive for the EU integration process – if not even dangerous for European democracy. The quality of democratic representation could be affected where EU citizens vote based on national programmes and arguments, while they should vote based on preferences concerning EU policies, whose adoption are at the core of Parliament's institutional role. Parliament has been trying to remedy this erosion in turnout in several ways – on the one hand improving the regulatory framework of the European elections, and shoring up the political framework on the other hand.

Figure 1 – Turnout in European elections in the EU (%) since 1979

| 61.99 | 58.98 | 58.41 | 56.67 | 49.51 | 45.47 | 42.97 | 42.61 | 50.66 |
| 1979 | 1984 | 1989 | 1994 | 1999 | 2004 | 2009 | 2014 | 2019 |

Source: EPRS

Proposals for a Union-wide constituency that would allow election of a number of Members of Parliament in a uniform manner to represent Union citizens have been made. Other attempts involved the harmonisation or gradual approximation of electoral rules. A retracing of the history of amendments to the European Electoral Act shows that the 2002 reform brought some approximation of electoral rules, while the last reform (contained in Council Decision 2018/994) remains to become applicable, due to a lack of ratification by all Member States.[4] A further, more far-reaching reform proposed by Parliament is currently being discussed within Council, with a seemingly difficult path to adoption. Yet, reforming the electoral rules to 'Europeanise' European elections remains one side of the coin – the other being making European elections more visible, attractive and able to strengthen the democratic link with the EU's executive.

The *Spitzenkandidaten* process, or lead candidate process, was designed to serve this, more political, purpose (among other things). The *Spitzenkandidaten*, or lead candidate process is a political

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[1] See European Commission [press release](#) of 25 January 2022 on the 'Future of Europe: Europeans see climate change as top challenge for the EU'.

[2] See [Special Eurobarometer 500](#), October-November 2020, p. 73.

[3] J. Bright, D. Garzia, J. Lacey, A. Trechsel, [Europe's voting space and the problem of second-order elections](#): A transnational proposal, European Union Politics (17), no 1, March 2016, p. 184-198. See also: P. Ehin, L. Talving, Still second-order? European elections in the era of populism, extremism, and Euroscepticism, Politics, 2021, 41(4), pp. 467-485.

[4] S. Kotanidis, [European Union electoral law](#) – Current situation and historical background, EPRS, European Parliament, October 2019, p. 6.

process requiring that, before the European elections, the European political parties designate the personality they would propose as President of the Commission or who could marshal a parliamentary majority. This personality would campaign in the Member States, presenting the political programme of their own political party. The lead candidate process aims at establishing a political link between Parliament and the executive and, as the subsequent sections of this study will show, at acknowledging that, as it stands today, the EU is the product of a deep integration process that needs a higher degree of democratic legitimation for its institutions and a more understandable system for its citizens.

The *Spitzenkandidaten* process relies on the ambiguous wording of the Treaty provision (Article 17(7) TEU) applicable to the appointment of the President of the Commission, which neither explicitly provides for nor excludes such a process. The process is based on a reading of the provision that draws inspiration from the innovations introduced by the Lisbon Treaty, whereby the overall results of European elections should be politically reflected in the choice of the head of the executive. It is, however, a process that should be understood and evaluated as part of a broader discussion that touches upon the issue of democratisation and legitimation of the EU leadership and thereby, EU policies. As has been observed, it is ultimately part of two differing visions of democracy in the European Union. One vision considers EU policymakers receive a democratic mandate making them accountable to voters in European Parliament elections (federalist vision), the other considers governments and national parliaments as the source of legitimacy in the EU (intergovernmentalist vision).[5]

Implemented twice after concertation among European political parties, the *Spitzenkandidaten* process was sufficiently successful in 2014 as to be compared to a 'revolution' within the EU system. The lack of success in the 2019 European elections has been referred to as a 'counter-revolution'.[6] The extent and reasons for such contrasting results will be examined in the following paragraphs. The current analysis and others on the topic of the lead candidate process will hopefully contribute to the discussion on the future of the *Spitzenkandidaten*, particularly at a time when European political parties and the European Parliament are preparing for the next elections in 2024. While past setbacks to the lead candidate process could suggest that this innovation has become obsolete, some commentators[7] envisage a different destiny for the lead candidate process, particularly if the incumbent President of the Commission should run as *Spitzenkandidat*.[8]

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[5]   S. B. Hobolt, A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections, Journal of European Public Policy, 2014, (21) no 10, p. 1538.

[6]   P. de Wilde, The fall of the Spitzenkandidaten: Political Parties and Conflict in the 2019 European Elections, in S. Kritzinger, C. Plescia, K. Raube, J. Wilhelm, J. Wouters, Assessing the 2019 European Parliament Elections, Abingdon: Routledge, 2020, p. 37.

[7]   M. Müller, Two years to go – What to expect from the 2024 European Parliament elections, Policy Brief, Hertie School, 30 May 2022, p. 3. On the rules of the coalition agreement between the German governing parties that would not hinder Ursula von der Leyen's own party re-presenting her as a candidate, see p. 4.

[8]   *Politico*, 19 April 2013.

2. *Spitzenkandidaten* or the lead candidate process

2.1 European Parliament and the investiture of the President of the European Commission

From Rome to Lisbon

As a method of appointing the President of the European Commission, the *Spitzenkandidaten* process is inextricably linked to the evolution of Parliament's role in the EU institutional architecture. This role depends not only on the powers and rights endowed to Parliament by the various Treaty reforms, but also on the leverage and political influence that Parliament has acquired over time. The historical evolution of the process of appointing the President of the Commission to the present day, is part of a bigger picture that captures the incremental political and institutional clout acquired by Parliament throughout its history.

At the beginning of the European project, the European Commission was formed by Members proposed by national governments by common accord for a four-year term, with the President of the Commission being appointed from among its Members for a renewable two-year term (Article 161, Treaty on the European Economic Community ('TEEC'), 1957). The appointment of the President of the Commission was agreed between the Member States for two years (half the duration of the Commission's mandate at the time), and confirmed thereafter for the second half of the term. With the Treaty of Rome, Parliament was not involved in the approval or nomination of the Commission, nor in the choice of the President of the Commission.[9] Parliament (at the time, the 'Assembly')[10] had only the power to adopt a motion of censure against the Commission, once it came in office (Article 144 TEEC, 1957). The appointment of Commission Presidents followed this schema, with the Hallstein Commission (1958-1967) and the Rey Commission (1967-1970) presenting their programme to the parliamentary Assembly and seeking its support.

In this scheme, the political protagonists recognised the importance of the Assembly. The words of the first President of the Commission, Walter Hallstein,[11] expressed the appropriateness of catering to parliamentary support, even if such support was not mandated by the treaties: '*je vous demanderai de nous accorder la confiance, sans laquelle aucun succès n'est possible'*. Under the Malfatti (1970-1972) and Manshold (1972-1973) Commissions, the Presidents also gave their traditional statements before Parliament, as well as under the Ortoli (1973-1977) and Jenkins (1977-1981) Commissions. This practice seemed to heed Parliament's various demands for deeper involvement in the process of the newly designated Commission, for example with the 'Fauré report',[12] or the resolutions on the forthcoming summit meetings of the Heads of State or Government of the Member States.

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[9]   R. Corbett, F. Jacobs, D. Neville, *The European Parliament*, John Harper Publishing, 2016, p. 340.

[10]   See J. P. Jacqué, Droit institutionnel de l'Union européenne, Dalloz, 2018, p. 277. The European Parliament was originally referred to as the Assembly. At the session of 20 March 1958, it decided to adopt the name 'Assemblée parlementaire Européenne' (OJ 20 April 1958), in 1962 it decided to harmonise the name across the four official languages (OJ P 31, 26 April 1962). This denomination was used at the European Council of Stuttgart in 1982 and formally inserted in the treaties with the Single European Act in 1986.

[11]   W. Lehmann; C. Salm, Walter Hallstein First President of the Commission and visionary of European integration, Historical Archives, European Parliament, November 2019.

[12]   For a detailed account of the various reports of Parliament and of the historical evolution of Parliament's role up to 1995, see A. Devantier, Appointment of the Commission: Parliament's role before 1995, EPRS Historical Archives, European Parliament, September 2014.

Two European Parliament resolutions, adopted in 1975 and 1980, formalised a similar call. In the first, Parliament expressed the need to participate in the appointment of the Members of the Commission to emphasise the democratic legitimacy of this institution.[13] In the second, Parliament fostered a vote of confidence in the President of the Commission by expressing that it '*3. Feels that it should be consulted when the mandate of the President of the Commission is renewed and that it should hold a public debate in his presence ending with a vote of confidence ratifying his appointment; it is essential, therefore, for Parliament to encourage the Commission to give priority to the political aspects of its activities* (...)'.[14] This statement of principle became relevant after the first direct election of Parliament in 1979. In the 1981 investiture of the Gaston Thorn Commission (1981-1985), there was a higher degree of Parliamentary involvement, with the presentation of policies and priorities before the Political Affairs Committee, and thereafter a debate on a motion for a resolution, in which the innovative role for Parliament was highlighted and the appointment of the Commission approved.[15]

This practice of a vote of confidence, unilaterally introduced by Parliament – although with a different impact compared to votes of confidence in the parliamentary systems in the majority of Member States – was recognised by the Member States and formalised in 1983, in the Solemn **Declaration of Stuttgart** on 17-19 June 1983. With the Stuttgart Declaration (see Table 1),[16] a first formalisation of the embryonic role of Parliament was accomplished, although devoid of any binding implications. This formalisation began a process of consultation of the Enlarged Bureau, a Parliament body which includes the leaders of political groups. The involvement of such a political body as the Enlarged Bureau represented a first step towards formal consultation of Parliament. This form of consultation introduced the practice of a debate and a vote – not on the Commission as a collegiate body – but on its programme.

The Stuttgart Declaration stated:

> '*2.3.5 Before the appointment of the President of the Commission, the President of the Representatives of the Governments of the Member States seeks the Opinion of the enlarged Bureau of the European Parliament. After the appointment of the members of the Commission by the Governments of the Member States, the Commission presents its programme to the European Parliament to debate and to vote on that programme.*'

In 1984, one year later, in view of the appointment of the new Commission, a Parliament resolution underlined the need to be consulted 'in good time' before the designation of the President of the Commission.[17] This was also the course of action that followed, with the (then) President of the European Council Garret FitzGerald entering into consultation with the Enlarged Bureau to discuss the nomination of Jacques Delors. The latter, after meeting the Enlarged Bureau before the appointment of the new Commission, received a vote of confidence in January 1985.[18] In recognition of this practice, Parliament also discussed changes to its Rules of Procedure in 1988, when it was established that a first opinion of the Enlarged Bureau was needed on the appointment of the President of the Commission and a vote of confidence (majority of votes cast) on the new

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[13] Resolution of the European Union, OJ C 179, 6.8.1975, p. 28.

[14] Resolution of the European Parliament on the relations between the European Parliament and the Commission of the Community with a view to the forthcoming appointment of the new Commission, OJ C 117, 12.5.1980, p. 53.

[15] For an overview of Commissioners' mandates see the European Commission's archived website.

[16] Stuttgart Declaration 19 June 1983.

[17] Resolution of 29 March 1984 on the implementation by the Council of the undertaking vis-à-vis the European Parliament contained in the Solemn Declaration adopted in Stuttgart on 19 June 1983, OJ C 117, 30.4.1984, p. 108.

[18] Resolution on the investiture of the new Commission, OJ C 46, 18.2.1985, p. 19.

Commission.[19] The Stuttgart Declaration was the basis on which the appointments of the President of the Commission was carried out in 1985, 1989 and 1993, whereby the President of the European Council attended meetings of the Enlarged Bureau in 1985 and 1992. In 1988, the consultation was carried out by the President of Parliament, who attended the relevant part of the European Council meeting and in consultation with the Enlarged Bureau.[20]

A first, institutional and formal change to the procedure to appoint the President of the Commission was introduced with the **Treaty of Maastricht** (see Table 1), which subjected the nomination of the Commission's President to a consultation with Parliament and the nomination of the Commission as a collegiate body to Parliament's (consultative) vote. The Treaty of Maastricht introduced a substantial difference with respect to the Stuttgart Declaration. First, Parliament's role was formalised in a treaty provision (Article 158(2), Treaty Establishing the European Community – TEC). Second, the Maastricht Treaty aligned the duration of the Commission mandate (previously four years) with that of Parliament (Article 158(1) TEC), thereby reinforcing the political link between the two institutions and establishing the basis for stronger parliamentary scrutiny. Third, the consultation no longer concerned the Enlarged Bureau alone, i.e. the Bureau plus the leaders of the political groups, but the whole Parliament as an institution – which was called upon to vote on the Commission President by an absolute majority of the votes cast (Article 141 TEC). Although without binding effect – the role of Parliament being merely consultative – vote on the President designate[21] would take place in Parliament, in public. Fourth, the Maastricht Treaty formalised the vote of confidence in the Commission as a whole, which meant that both the nominees for Commission President and the Commissioners needed to secure Parliament's approval before the formal appointment by the common accord of Member State governments. The appointment of the Commission then followed a three-step procedure: first, the Commission President, then the members of the Commission were nominated, and last, they were both subject to a vote of approval in Parliament and formal appointment by the governments of Member States.

The first Commission to be subject to the Maastricht Treaty rules was the Santer Commission (1995-1999), whose activity prior to the appointment (statement before Parliament and meeting with the major political groups) showed the intention to cater for a true parliamentary majority around Jacques Santer's candidature. In the meantime, leveraging the newly acquired confidence vote introduced by the Maastricht Treaty, Parliament introduced in its Rules of Procedure that such a vote should take place only after the nominated Commissioners have appeared in hearings before parliamentary committees. President-elect Santer complied with this unforeseen innovation. In fact, although Parliament's vote on Santer's nomination was at the time merely consultative, he was persuaded to unilaterally commit to withdraw his candidature failing a positive parliamentary vote. This was an indication of the increasingly influential role that Parliament was acquiring in the investiture process of the President of the Commission.

The **Amsterdam Treaty (1997)** brought a further innovation, providing that Parliament's vote on the President designate is no longer of a consultative nature (which national governments may disregard), but under Article 214(2) TEC (see Table 1), Parliament's vote becomes binding, as the person nominated by the governments of the Member States must be approved by a vote in Parliament. An important innovation of the Amsterdam Treaty is that a common accord is also

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[19] Report of C. M. Bru Purón on behalf of the Committee on the Rules of Procedure, the Verification of credentials and Immunities on the amendment of rule 29 of the Rules of Procedure on the European Parliament, Historical Archives PE2 AP RP/REGL. 1984 A2-0060/88 0010.

[20] R. Corbett, F. Jacobs, D. Neville, *op. cit.*, p. 342.

[21] R. Corbett, F. Jacobs, D. Neville, *op. cit.*, ibid.

necessary between governments and the nominee for President of the Commission for the choice of commissioners and the attribution of portfolios. This was a further step in the direction of the 'Europeanisation' of the Commission investiture and of the 'presidentialisation' of the Commission Presidency. With the Amsterdam Treaty reform, a further step was achieved: Parliament's binding vote of approval of the presidential nominee, by an absolute majority of the votes cast (Article 198 TEC – whilst the vote of confidence in the Commission as a body existed since the Maastricht Treaty). The candidate for the post of Commission President is therefore confirmed twice by Parliament – once individually, and again as part of the Commission as a whole (Article 198(2)(3) TEC, now 17(7)1, 3 TEU).

The **Nice Treaty (2001)** brought small changes to the procedure affecting the Council's role, rather than that of Parliament (see Table 1). The Council, in the configuration of Heads of State and Government, acts by qualified majority regarding the nomination of the President of the Commission (not by common accord as mandated by the Amsterdam Treaty and before that by the Maastricht Treaty). Likewise, a qualified majority is needed within the Council, and common accord with the nominee for President of the Commission for the adoption of the list of Commissioners. Parliament's role remains however unchanged with respect to the previous regime established with the Amsterdam reform. Therefore, Parliament approves (i.e. votes by majority of the votes cast) the candidate nominated as President of the Commission and, after the other members of the Commission have been nominated, the Commission as a whole.

Finally, the current rules were introduced with the **Lisbon Treaty** (2007) which, concerning Parliament's role in the investiture process (Article 17(7) TEU), inserted an important, yet ambiguous, expression: 'taking into account the elections to the European Parliament'. This formally added a political connotation to the investiture process for the President of the Commission. Following the Lisbon Treaty, the European Council, once the appropriate consultations have been held, designates the candidate for the Presidency of the Commission to propose to the Parliament by qualified majority voting. The Parliament elects the candidate by a majority of the component Members (currently 353 of 705), and no longer by a majority of votes cast, as was the case prior to the Lisbon reform. The political and institutional link with Parliament becomes more evident by virtue of Article 17(7) TEU, which provides that if the candidate does not receive the required majority in Parliament (majority of component Members), the European Council, acting by qualified majority, shall within one month propose a new candidate, who shall be elected following the same procedure. Article 17(7) TEU therefore establishes a stable and clear link between a parliamentary majority and the appointment of the head of the EU executive.

Further to Article 17(7) TEU, two declarations complement the set of rules on the investiture of the President of the Commission. **Declaration no 6** on Articles 15(5) and 15(6), Article 17(6) and 17(7), and 18 TEU, states that in choosing the persons called upon to take up the office of President of the Commission,[22] due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States. **Declaration no 11** clarifies that the selection of the candidate is the result of consultations between European Council and Parliament: ' (...) *in accordance with the provisions of the Treaties, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for*

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[22] Declaration no 6 extends this statement to other high posts, such as president of the European Council and High Representative of the Union for Foreign Affairs and Security Policy.

President of the Commission, taking account of the elections to the European Parliament, in accordance with the first subparagraph of Article 17(7). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.'

In conclusion, in the evolution of Parliament's role in the **appointment of the President** of the Commission the following phases can be identified:

➢ An almost **inexistent or weak role** in the treaties, with a nascent practice of a confidence vote on the Commission as a body together with Parliament's demands for a deeper involvement in the process (Treaty of Rome 1957-1983, Stuttgart Declaration);
➢ An **informal consultative role** (Stuttgart Declaration 1983, Treaty of Maastricht 1992);
➢ A **formal consultative role** (Treaty of Maastricht 1992, Treaty of Amsterdam 1997);
➢ A **legally binding role**: power to approve the President (Treaty of Amsterdam 1997, Treaty of Lisbon 2007);
➢ A **legally binding and political role:** power to elect the President ('*taking into account the European elections*' – Since the Treaty of Lisbon 2007).

Table 1 – Evolution of Parliament's role in the investiture of the President of the Commission

Act introducing modifications or innovations	Text of the provision/declaration	Highlights of Parliament's role in the appointment of the President of the Commission and the Commission
Stuttgart Declaration (1983	**Section 2.3.5** Before the appointment of the President of the Commission, the President of the Representatives of the Governments of the Member States seeks the opinion of the enlarged Bureau of the European Parliament. After the appointment of the members of the Commission by the Governments of the Member States, the Commission presents its programme to the European Parliament for a debate and vote	President: non-binding opinion of the Enlarged Bureau (Bureau + leaders of political groups)
		Commission as collegiate body: 'political' vote of confidence
Treaty of Maastricht (1992	**Article 158(2) TEC**[23] The governments of the Member States shall nominate, by common accord, after consulting the European Parliament, the person they intend to appoint as President of the Commission. The governments of the Member States shall, in consultation with the nominee for President, nominate the other persons whom they intend to appoint as members of the Commission. The President and the other members of the Commission thus nominated shall be subject, as a body, to a vote of approval from the European Parliament. After approval by the European Parliament, the President and the other members of the Commission shall be appointed by common accord of the governments of the Member States.	President: consultation of the whole Parliament
		Commission as collegiate body: vote of approval
	Article 214(2) TEC	President: vote of approval

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[23] Article 158(3) TEC makes the new rule applicable to the President and those members of the Commission whose term of office began on 7 January 1995.

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Treaty of Amsterdam (1997)	The governments of the Member States shall nominate, by common accord, the person they intend to appoint as President of the Commission; the nomination shall be approved by the European Parliament. The governments of the Member States shall, by common accord with the nominee for President, nominate the other persons whom they intend to appoint as Members of the Commission. The President and the other Members of the Commission thus nominated shall be subject, as a body, to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by common accord of the governments of the Member States.	Commission as a collegiate body: vote of approval
Treaty of Nice (2001)	Article 214(2) TEC The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament. The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State. The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority	President: vote of approval Commission as a collegiate body: vote of approval
Treaty of Lisbon (2007)	Article 17(7)TEU **Taking into account the elections to the European Parliament** and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be **elected by the European Parliament by a majority of its component members.** If the candidate does not obtain the required majority, the European Council, acting by a qualified majority, **shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.** The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph of Article 17(7) TEU. The President, the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent, the Commission shall be appointed by the European Council, acting by a qualified majority.	President: election (majority component members) Commission as a collegiate body (and HR/VP): vote of consent

The enhancement of Parliament's role in the nomination process for the President of the Commission has to be seen in the broader context of a progressive 'presidentialisation' of this position[24] and in Parliament's heightened role in the appointment of a new Commission as a collegiate body.

With respect to the role of Parliament in the **appointment of the Commission** as a collegiate body, the evolution can be summarised as follows:

> ➢ An **unofficial dialogue** between the President of the Commission and Parliament, where the former presented the programme and the members of the incoming Commission to the latter (1958-1981);
> ➢ A practice of an **informal 'vote of confidence'** (solicited by Parliament) on the incoming Commission as a collegiate body, cast for the first time in 1981, thereafter crystallised in the 1983 Stuttgart Declaration;[25]
> ➢ A **formal vote of approval** of Parliament on the new Commission introduced with the Maastricht Treaty (1992), which has remained in place until the present (since the Lisbon Treaty, formally a 'vote of consent' on the new Commission).

With the introduction of the vote of approval in the Maastricht Treaty, Parliament also modified its Rules of Procedure to provide that nominated Commissioners appear before the relevant parliamentary committees. In this way **'confirmatory hearings'**[26] were established, which are also in current use.

2.1.2 European Commission investiture in the 2002 European Convention on the future of Europe

The current wording of Article 17(7) TEU is the fruit of the reform process that started with the Laeken Declaration, evolved with the 2002 Convention on the Future of Europe's issue of a draft treaty establishing a Constitution for Europe (2003), continued with the Intergovernmental Conference that elaborated the final Treaty establishing a Constitution for Europe (2004), and suffered setbacks following the French and Dutch referendums (2005) and ultimately produced the Treaty of Lisbon (2007).

The Laeken Declaration,[27] which intended to trigger a constitutional reform of the EU to tackle those aspects left unfinished by the Nice Treaty on one hand, and on the other intending to reform the EU in view of the approaching enlargement from 15 to 25 Member States (2004), covered some constitutional issues. In that framework the appointment of the Commission was also dealt with, although without much emphasis:

> *'How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens?'*

A Constitutional Convention was established in 2002 to discuss the key issues contained in the Laeken Declaration, such as the division of competences between the Union and its Member States,

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[24] S. Kotanidis, Role and election of the President of the European Commission, EPRS, European Parliament, July 2019, p. 2.

[25] For an overview of the votes of confidence on the incoming Commission and of the powers of appointment over the European Commission, see R. Corbett, F. Jacobs, D. Neville, *op. cit.* p. 341.

[26] M. Diaz Crego, Parliamentary hearings of the Commissioners-designate - A decisive step in the investiture process, EPRS, European Parliament, September 2019; in Members' Research Service, Compendium of Briefings: Parliamentary hearings of the Commissioners designate, EPRS, European Parliament, November 2019, p. 2.

[27] European Council Declaration, 15 December 2001.

the simplification of the Union's legislative instruments, the maintenance of interinstitutional balance and improvement in the efficiency of the decision-making procedure, and the constitutionalisation of the Treaties.

In that Constitutional Convention, a leading role on institutional matters was taken by individual political personalities, such as Elmar Brok, Andrew Duff and Giuliano Amato. The discussion within European political parties was particularly significant. For example, the EPP congress in Estoril (October 2002) offered the opportunity to present a new wording for the provision dealing with the appointment of the Commission, whereby the outcome of the elections was to be taken into account in the proposal of the candidate:[28]

> '47. A candidate for the President of the European Commission should be proposed to the European Parliament by the European Council **in light of the outcome of European elections**, and by qualified majority vote. The European Parliament should give or withhold its approval by majority vote. This would give European political parties the opportunity to present their own candidates in the framework of the campaign for European elections. It would ensure a more personalised election campaign and increase democratic control and support of the European Commission.' [emphasis added]

It has been pointed out[29] that this EPP idea builds on its 1999 position, when it advanced the view that the President of the Commission should come from the party that won the majority of seats in the European elections. In addition the same author observed that this idea pointed to a stronger parliamentarisation of the position of the President of the Commission, to which EPP members representing the 'governmental' component of the EPP Congress in Estoril, including a certain number of prime ministers (7), were not opposed.

Within the Constitutional Convention, the topic of the appointment/designation of the Commission President was discussed at the plenary sessions in January 2003,[30] where a wide range of positions became evident. The majority of speakers recognised the need for the European Commission to have a strong democratic legitimacy, as well as the need for Heads of State and Parliament to be equally involved in the appointment process. Some speakers put forward the possibility that the outcome of the elections is taken into account to increase the European Parliament's authority. Others even proposed to reverse the procedure, in the sense that Parliament would cast a first vote on the candidate for President of the Commission, with Council confirming this designation thereafter. Other members of the Constitutional Convention focused on the majority necessary in Parliament, suggesting a higher bar (three-fifths or two-thirds), while others proposed an absolute majority, arguing that a higher bar would represent a difficulty for Parliament. The range of positions included those who were against reinforcing the link between European elections and the selection of the President of the Commission, fearing that the Commission might lose its neutral, independent role. It is also reported[31] that some Member States (e.g. the United Kingdom) and, apparently, the President of the Convention himself, Giscard D'Estaing, would have preferred to retain the status quo. The Commission,[32] in an apparent change from its original position,[33] stressed the need for the

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[28]   EPP Congress Document, A Constitution for a Strong Europe, Estoril, 18 October 2002, point 47.

[29]   G. N. Peñalver, J. Priestley, A modest proposal, in *The Making of a European President*, Palgrave Macmillan UK, 2015, p. 50.

[30]   Summary report on the plenary session, Brussels, 20 and 21 January 2003, CONV 508/03, points 12-16.

[31]   G. N. Peñalver, J. Priestley, *op. cit.*

[32]   Communication of the European Commission on the institutional architecture, for the European Union, Peace, Freedom, Solidarity, COM(2002)728, 11.12.2002.

[33]   P. Craig, G. De Búrca, EU Law, text, cases, and materials, OUP, 2015, p. 31.

Commission to derive legitimacy from both the European Council and the European Parliament, and suggested that the President of the Commission is elected by the European Parliament, with the European Council confirming the appointment. The Commission also proposed that the European Parliament put any candidacy for President of the Commission to the vote, by secret ballot requiring endorsement by a two-thirds majority of Members.

In any case, views of a 'parliamentarist' character emerged, such as those of some Member States or delegates (Germany, Italy, Benelux, Spain and Members of the European Parliament), who would have favoured the election of the President of the Commission by Parliament, by a simple majority. In contrast, views of a 'presidentialist' character were also put forward, i.e. views favouring the direct election of the President of the Commission. In this latter respect, John Bruton (EPP)[34] proposed to remedy the (at the time) lack of democratic legitimacy and accountability of the President of the Commission (as opposed to that of Parliament and Council who are directly accountable to their electorate), by opting for a direct election of the President of the Commission. **Bruton's** proposal was quite detailed, suggesting a simultaneous election of the President of the Commission, as the EU's executive, and of the European Parliament, with no attribution of additional powers to the former, in a two-round system. In his view, direct election of the Commission President would give people a direct sense of involvement in the European political process, in addition to making the President accountable to citizens. Bruton opposed the 'parliamentarian' view which proposed the election of the President of the Commission by Parliament, because it would make the Commission dependent on a particular parliamentary majority, creating unhealthy democratic tension.

In this wide range of views and positions, **Elmar Brok** (EPP) put forward a significant compromise proposal (essentially the notion expressed at the Estoril Congress in 2002), whereby a candidate for the President would be proposed by Council based on the results of European elections ('Frascati proposal'). However, no reference is made to the 'result' of the European elections in the first draft of Article 18 *bis* of the draft Constitution,[35] issued by the Praesidium of the Convention. According to this new text,[36] the proposer of the candidate is the European Council, and not the Council. Once agreed, the text became the final text of the provision in the draft Constitution for Europe. The Intergovernmental Conference that then deliberated upon the proposed treaty establishing the Constitution for Europe, adopted the final text without major changes, except for a small addition, that the President of the Commission would be elected by Parliament by a majority of its 'component' Members, maintaining the provision requiring prior consultation between the European Council and Parliament and that the candidate is proposed by the European Council, taking the elections to the European Parliament into account.

During the ratification process, the proposed treaty establishing a Constitution for Europe was rejected by voters in referendums in France (by 54.7 %) and the Netherlands (by 61.6 %) in 2005, thus preventing the Constitutional Treaty from entering into force. The Lisbon Treaty was adopted in 2007, and entered into force on 1 December 2009. The current text of Article 17(7) TEU is that agreed at the Intergovernmental Conference, which was retained and carried forward from the unsuccessful Constitutional Treaty. The Lisbon Treaty also incorporates Declaration no 11, clarifying the notion of preliminary consultation between the European Council and European Parliament –

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[34] Contribution by John Bruton, member of the Convention; ''A proposal for the appointment of the President of the Commission as provided for in Article 18.bis of the Draft Constitutional Treaty'', Conv 476/03, 9 January 2003.

[35] Summary sheet of proposals for amendments relating to: the Union's Institutions, draft Articles for Part One, Title IV of the Constitution (Articles 14, 15, 16, 16a, 17, 17a, 17b, 18, 18a, 19, 20, 21, 22, 23 and 41); The democratic life of the Union (Part One, Title VI, Article X), Conv 709/03, 9 May 2003, p. 25.

[36] For an overview of the different texts of the relevant provisions, see Factsheet, the story of the ' *Spitzenkandidaten*', June 2014.

consultations originally mentioned in the concerned provisions (Article 26 of the Draft Constitution) as adopted by the Convention.

2.2 The *Spitzenkandidaten* or lead candidate process, an idea that comes from afar ...

The *Spitzenkandidaten* process is not a new idea in EU circles. The proposal that political parties indicate their candidate for the Presidency of the Commission in advance of European elections started circulating among EU thinkers as early as the beginning of the 1990s, particularly in conjunction with events connected with the entry into force of the Maastricht Treaty in 1992[37] (see below). What was new, was the innovative political will to implement the idea during the 2014 European elections.

Suggestions for a more thorough involvement of Parliament in the appointment of the whole Commission College were already part of the discussion in the 1980s, as is demonstrated in the Stuttgart Declaration – or even earlier with the Vedel report (1972), where the opinion was expressed that Parliament should be given greater power of decision in the appointment of the Commission. The issue highlighted by some Members (e.g. Ed van Thijn in 1975), was the Commission's politically weak position, while others stressed Parliament's lack of institutional weight, in as much as on the one hand Parliament could censure the Commission, but on the other hand had no official say on its composition. These discussions in EU circles were heightened by the Maastricht Treaty, a reform that enlarged the competences of the EU and brought issues related to the EU's democratic decision-making and accountability to the fore. Additionally, the 'narrow escape' of the second Danish referendum[38] on ratification of the Maastricht Treaty[39] forced a more serious rethink of the issue. It had become clear that the EU could not disregard the importance of popular support and should seek to gain a more thorough involvement of citizens in the EU politics[40] from that moment onwards. In this vein, although European elections are primarily about electing the Members of the European Parliament, establishing a link between Parliament's composition and the President of the European Commission was considered as adding a sense of purpose to the elections, attracting citizens' interest and engagement, as their vote could serve to decide on one of the EU's top posts. In addition, a personalisation of electoral campaigns helps to inject more dynamism to campaigns, attracting greater citizen attention and helping increase turnout.

Although it is said[41] that the idea of nominating candidates for the highest executive dates back to Jacques Delors, the first explicit contributions[42] came from think tanks and academia. In 1994,

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[37]   S. Van Hecke, W. Wolfs, V. De Groof, *25 Years of Spitzenkandidaten – What does the Future hold?*, Wilfried Martens Centre for European Studies, November 2018.

[38]   Denmark held a first referendum on 2 June 1992, with citizens voting 'No' by 50.7 %. After negotiating a special statute with the EU providing an opt-out from the single currency, defence, citizenship and Community powers in the areas of justice and policing, which was approved by the European Council of Edinburgh on 11-12 December 1992, Denmark held a second referendum on 8 May 1993, with citizens voting 'Yes' by 56.8 %.

[39]   For an overview of referendums rejecting EU reforms see: M. Hillebrandt, Rejection by Referendum: a New Expression of Discontent in the EU, University of Warwick, IATL, *Reinvention: a Journal of Undergraduate Research*, Vol. 1, Issue 2, 2008.

[40]   H. Reiding, F. Meijer, 'This time is different' - the European lead candidate procedure of 2014 and its historical background; *Parliaments, Estates & Representation*, Routledge Taylor & Francis Group, 2 May 2018.

[41]   G. Bonvicini, towards a new procedure for appointing the President of the European Commission, Tepsa policy papers, January 2014.

[42]   For a more detailed overview of the post-Maastricht contributions by academia and think tanks on this topic, see G. N. Peñalver, J. Priestley, A modest proposal, in *The Making of a European President*, Palgrave Macmillan UK, 2015.

Vernon Bogdanor highlighted the inevitable destiny of European elections to remain 'second order' elections, for as long as there is no real link between parliamentary majorities and the selection of the top political leadership. **Renaud Dehousse** spoke about a gap between public opinion and the EU institutions, which he considered could be filled in by shifting the attention to the choice of the EU's executive, through the mechanism of European political parties nominating their candidates for the top EU jobs.[43] In 1998, he again made the same proposal, adding that a personalisation of the campaign could provoke an EU-wide debate on EU issues. He notably added that, although national governments would ultimately be responsible for proposing a candidate to Parliament, without being bound by the election results, they could not entirely disregard them. In 1998, the steering committee of **Notre Europe** advocated that European political families present candidates for the post of President of the European Commission, and that these candidates engage in debate with his or her opponents, adding a component of political contest and dynamism to the European elections.[44] The 1999 contribution by **Tommaso Padoa- Schioppa**, former President of Notre Europe, is noteworthy in this respect. In a paper co-signed by 22 leading political personalities, Padoa-Schioppa expressed the view (in words that today might sound prophetic), anticipating a course of action that was set in motion almost 15 years later:[45]

'5. Imagine the following scenario for 1998 and 1999. The political groups of the European Parliament choose a candidate for President and declare that if they win the election, i.e. form the largest group in the new Parliament, they will give their vote of confidence to a Commission whose President is their candidate.

[...]

11. A candidate for President campaigning on television in all countries of the Union along with local candidates running for the European Parliament, would radically transform the psychological attitudes of voters and the media towards Europe. It would suddenly become clear that the Union already exists, with a solid democratic foundation; that there is not only a single currency but also a single ballot-box.'

In hindsight, Padoa-Schioppa's paper shines a spotlight on a number of problems that seem to trouble the EU, from the end of the 1990s to today: the deepening of European integration through the single currency, in parallel with a distancing from, or lack of participation for public opinion, political parties and national parliaments, in EU affairs. The risk existed that taking no action to fill the gap could be detrimental to the healthy development of the European project, and could translate into resentment towards the EU. The paper concluded by proposing that political parties choose their candidate for the 1999 European elections, thereby injecting some political drama to the procedure. As the story goes, this proposal was not put into practice, instead a number of other reforms took place in the Amsterdam and Lisbon Treaties.

Meanwhile, the turnout[46] in European elections continued to fall: 49.51 % in 1999, 45.47 % in 2004 and 42.97 % in 2009 – making a reality of both the prophecy and the risk of real estrangement from public opinion and a loss of democratic legitimation for Parliament. After the entry into force of the

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[43]   R. Dehousse, Constitutional reform in the European community: Are there alternatives to the Majoritarian avenue?, *West European Politics*, 1995, 18:3, 118-136, Routledge Taylor & Francis Group, December 2007.

[44]   See Conclusions of Notre Europe Steering Committee of 7-8 November 2008, 'In the face of crisis, there is a need for Europe', Notre Europe.

[45]   T. Padoa Schioppa, From a single currency to a single Election, Notre Europe, 1999.

[46]   For an indication of the turnout since 1979, see the European Parliament's dedicated website: In the past, European election results.

Lisbon Treaty in December 2009, the EU entered a series of economic and financial crises that put enormous strain on EU institutions and tainted citizens' trust in the European project. This needed to be redressed to avoid unrepairable damage. It was in this context that the *Spitzenkandidaten* idea, on hold for a decade, was to be revamped.

Although the 2014 European elections will be remembered as the first in which the *Spitzenkandidaten* process was rolled out in full, a timid attempt was already made at the previous elections in 2009,[47] when the incumbent president of the Commission José Manuel Barroso was appointed (by acclamation) as the EPP candidate for the post of President of the Commission at the EPP Warsaw Congress on 29-30 April 2009.[48] Fortified by electoral results that made the EPP the largest political group in 1999, after years of Party of European Socialists (PES) hegemony, and prior to the 2004 elections, the EPP encouraged its Members of the European Parliament to support a candidate from the political family that won the election. The party did not however appoint a contender for the post. The 2009 appointment of Barroso as lead candidate cannot therefore be said to have been made on the basis of the Lisbon reform, as the Lisbon Treaty only entered into force on 1 December 2009,[49] but was most likely influenced by the Lisbon perspective. The 2009 EPP initiative remained an isolated endeavour, as no other political party appointed a lead candidate. The experiment could not therefore take place on an EU-wide scale involving all political parties.[50]

The situation was different in 2014, when the initiative received more support. Between the 2009 and 2014 elections, some additional official endorsement came from both the incumbent President of the Commission, José Manuel Barroso and the European Parliament.

In **Commission President Barroso's**[51] 2012 State of the Union address, he called to strengthen the political Union by underpinning EU democracy. He stressed that this meant a stronger role for European political parties, while ensuring they are also present in a political debate that too often remains at a purely national level. An important step to strengthen EU democracy indicated by Barroso consisted in 'the presentation by European political parties of their candidate for the post of Commission President at the European Parliament elections already in 2014'. This was a clear endorsement of the *Spitzenkandidaten* process, and was repeated by the European Parliament in a resolution of 22 November 2012,[52] in which it urged:

> *'... the European political parties to nominate candidates for the Presidency of the Commission and expects those candidates to play a leading role in the parliamentary electoral campaign, in particular by personally presenting their programme in all Member States of the Union; stresses the importance of reinforcing the political legitimacy of both Parliament and the Commission by connecting their respective elections more directly to the choice of the voters'.*

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[47]   See: Building on the Spitzenkandidaten model, European Political Strategy Centre, February 2017.

[48]   See: Overview of EPP Congresses since 1978.

[49]   While European elections in 2009 took place between 4 and 7 June.

[50]   For a detailed account of the 2004 and 2009 failed *Spitzenkandidaten* attempts, see; 'The idea enters the political arena', in N. Peñalver García, J. Priestley, A modest proposal, in *The Making of a European President*, Palgrave Macmillan UK, 2015, p. 63.

[51]   Speech delivered at the Plenary session of the European Parliament in Strasbourg, 12 September 2012, Speech/12/596.

[52]   European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014 (2012/2829(RSP)).

One year before the 2014 elections, the Commission maintained its support for the lead candidate process through a recommendation of 12 March 2013,[53] in which it addressed a specific recommendation concerning support for a candidate for President of the European Commission under the heading 'democratic conduct of the elections', i.e. that:

> *'European and national political parties should make known, ahead of the elections to the European Parliament, the candidate for the function of the President of the European Commission they support and the candidate's programme. National political parties should ensure that their political broadcasts in view of the European Parliament elections are also used to inform citizens about the candidate for the function of President of the European Commission they support and about the candidate's programme.'*

This concept was further articulated in a Commission communication issued on the same date, where the *Spitzenkandidaten* process was referred to as follows:[54]

> *'If European political parties and national political parties make known their nominations for the function of President of the Commission and the candidate's programme in the context of the European elections, this will make concrete and visible the link between the individual vote of the EU citizens for a candidate for membership of the European Parliament and the candidate for President of the Commission supported by the party of the candidate MEP.'*

The time was clearly ripe for a first fully fledged trial of the *Spitzenkandidaten* process. To mark this moment and Parliament's political readiness to embrace this new process, in its resolution of 4 July 2013,[55] Parliament '**asks the European political parties to nominate their candidates for the Commission Presidency** sufficiently well in advance of the election for them to be able to mount a significant, European-wide campaign that concentrates on European issues that are based on the party platform and on the programme of their candidate for the Commission presidency' (emphasis added). At this point, the wording of the resolution reveals not only a certain self-confidence in the roll out of the process but also some reliance on the outcome as Parliament '*15. Expects that, in this process, the candidate for Commission President put forward by the European political party that wins the most seats in the Parliament will be the first to be considered, with a view to ascertaining his or her ability to secure the support of the necessary absolute majority in Parliament'.*

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[53] Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament (2013/142/EU).

[54] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct, Strasbourg, 12.3.2013 COM(2013) 126 final.

[55] Parliament resolution of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014 (2013/2102(INI)).

2.3 Why a *Spitzenkandidaten* or lead candidate process?

For its supporters, the *Spitzenkandidaten* process should serve several purposes.

The first is that the *Spitzenkandidaten* would give greater **democratic legitimacy** to the Commission President's position, considering that the political parties represented in the European Parliament would have chosen their candidate and indicated them to the electorate. In casting their vote for a European political party, citizens would therefore have a chance to directly influence the choice of occupant of one of the highest leadership positions in the EU, the President of the Commission.

The issue of a lack of democratic legitimacy in EU governance has been often referred to as a distortion in the development of the EU system. A 2009[56] paper identified some weaknesses, including a sort of 'deepening fatigue' – a weakness in the constituent reasons for integration, or even a lack of 'political responsibility' in the EU system itself. The situation in the run up to the 2014 elections was rather different. The Lisbon Treaty had modified the institutional and decision-making architecture, although some of the EU's 'political' challenges had not completely disappeared. The decade prior to the 2014 elections had seen the EU engaged in, particularly financial, crises, which involved the EU making decisions that had a major impact on citizens' lives and whose democratic legitimacy was sometimes wanting. The financial crisis therefore revealed the limits of 'policies without politics',[57] and put the democratic legitimacy of the EU at the centre of the discussion. In this sense, the possibility to vote for parties that championed a candidate for the Commission President, was a way to remedy that gap.

A second purpose would have been to emancipate the nomination process of the President of the Commission elected by Parliament, from any 'behind closed-door' deals. In other words, to ensure a **transparent process, visible to citizens** and stakeholders. Indeed, over the years, the European Council had enjoyed a 'monopoly' of the choice of the candidate for that post, although the 'monopoly' was mitigated, first by Parliament's informal vote of confidence, and later by the true vote of approval introduced by the Amsterdam Treaty. The *Spitzenkandidaten* process would have meant the 'Parliament candidate' for the post of Commission President would have been known earlier, depending on which political party won the election or had garnered the most seats.

Although research demonstrates[58] falling turnout is by no means an unknown phenomenon in national elections, a third important purpose for introducing the *Spitzenkandidaten* process was to deal with the worrying issue of falling **turnout** in European elections specifically, by slowing-down, or even inverting the trend. Voter turnout had been on the wane since the first elections in 1979, and were continuing to fall in the face of deepening integration, the expansion of competences transferred to the EU and increased European Parliament powers.[59] The *Spitzenkandidaten*, according to this approach, would have injected some political debate into the European elections, making it visible for the layman that they are not only about electing representatives to the

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[56] G. Bonvicini, Democracy in the EU and the Role of the European Parliament, Istituto Affari Internazionali, March 2009, no 14.

[57] V. A. Schmidt, *Democracy in Europe*, OUP, 2006, p. 157.

[58] See for example, F. Briatte, C. Kelbel, J. Navarro, G. Sandri, F. von Nostitz, Working Paper on Citizens' Participation and Electoral Linkages, *Reconnect*, April 2020. This study draws a distinction between 'old democracies', 'southern democracies' and 'central and eastern European democracies' and highlights that in old democracies the fall in turnout started at the beginning of the 1980s, while it had previously been around 85 %. In southern countries, the decline was less regular with less than 3 percentage points less than the level of older democracies in recent years, while central and eastern countries whose turnout is measured from the 1990s started at a lower level and declined very fast, reaching around 52 % between 2005 and 2014.

[59] G. Bonvicini, *op. cit.*, p. 61.

European Parliament, but also influence the choice of the holder of one of the highest offices in the EU, often referred to as the 'EU's executive'. Creating an electoral contest would have personalised the elections, created drama, allowed candidates to detail their political programmes, explain their position and future plans. In other words, it would have added all those ingredients with which EU citizens are extremely familiar in the context of domestic elections. Not least, it would have made the EU machinery easier for citizens to understand. Adoption of the *Spitzenkandidaten* process would also have meant that the EU system, often referred to as complicated and difficult to understand, would have developed features similar to national political systems. This **personalisation**, it was hoped, would bring greater engagement in EU politics and policies, demonstrating that the election to the European Parliament has a concrete, institutional effect, aimed at 'making the difference' in 'who runs Brussels'. Ultimately, the process could have helped to overcome the problem of 'second order elections' which have long affected EU elections.

A further spill over effect of a (hopefully) revamped turnout brought about by adopting the *Spitzenkandidaten* process was thought to be the creation of an **European demos**. This would mean EU-wide issues could be debated and streamlined during the European elections, which, although remaining mainly national in terms of electoral rules, could begin 'europeanising' as regards campaign content and topics of discussion as well as the outcome (i.e. an indication of the future Commission President).

Finally, the *Spitzenkandidaten* proposal also sought, in the vein of a steady evolution of EU governance, to affirm a **more pronounced role for the European Parliament**, who could count on the 'ambiguity' of the wording of Article 17(7) TEU to create a stronger role in the investiture of one of the EU's highest offices.

3. 3. Testing the *Spitzenkandidaten* or lead candidate process

3.1 European elections of 2014

The *Spitzenkandidaten* process was put into practice for the first time during the 2014 elections, the result of an evolution[60] that saw the major political parties progressively participating in this innovative process.[61] The decision to take part in this historical experiment was inspired by several considerations, not least a political calculation, or the fear of negative consequences for not participating.

As in the years preceding the 2014 elections, discussions on the *Spitzenkandidaten* process intensified among top political leaders, particularly in the EPP and PES parties. The EPP President, Wilfried Martens called a meeting of the main European political parties as early as December 2011, inviting them to present a lead candidate, as a form of political response to the crisis of the time.[62] With Parliament adopting a resolution in the same vein in July 2013, the lead candidate process could be rolled out in full confidence.

3.1.1 Selection of lead candidates by European political parties

Whist the EPP had long been a proactive supporter of the *Spitzenkandidaten* process, as it had spent time and thought on the process since 2009 it was the **Party of European Socialists (PES)** instead that came very early to the fore with political decisions that influenced the participation of other political parties in the lead candidate process. The PES Congress in Prague in December 2009[63] decided that a 'democratic and transparent process for designating the PES candidate for the European Commission Presidency' should be put in place. This announcement was followed by a phase during which the rules for the selection of candidates were decided. A working group was created for this purpose and party rules were modified. The new rules established by the PES provided that nominees would need the support of 15 % of full member parties and organisations, including their own party. Considered a high threshold,[64] this procedure revealed Martin Schultz, incumbent President of the European Parliament, as the strongest candidate. The PES Electoral Congress ratified the nomination, with an overwhelming vote in favour of Schultz (368 in favour, 2 against, 34 abstentions) and adopted a manifesto for a pan-EU campaign. With such an overwhelming endorsement, Martin Schultz became the first *Spitzenkandidat* to be nominated as early as November 2013.[65] This first nomination set in motion other political forces that at that time had not yet matured a conclusive position on the process.

The **Alliance of Liberals and Democrats for Europe (ALDE)**, whose position had been sceptical, not least due to fear that the contention would remain – due to the size of the respective political groups – one internal to the EPP and PES, and fearing obstruction by the European Council, ALDE

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[60] For an analysis of various trends leading to the 2014 lead candidate process, see M. Westlake, Chronicle of an Election Foretold: The Longer-Term Trends leading to the *Spitzenkandidaten* Procedure and the Elections of Jean-Claude Juncker as European Commission President, LEQS Paper No 102, January 2016.

[61] For a detailed account of the process in the political parties that nominated a candidate, see N. Peñalver García, J. Priestley, 'Hopefuls and Runners: about the Candidates', in *The Making of a European President*, Palgrave Macmillan UK, 2015, p. 75.

[62] See N. Peñalver García, J. Priestley, *op. cit.*, p. 67.

[63] See: Summary of the decisions of the 8th PES Conference, 7-8 December 2009.

[64] G.-J. Put, S. Van Hecke, C. Cunningham, W. Wolfs, the choice of *Spitzenkandidaten*: a Comparative Analysis of the Europarties', Selection Procedures, Politics and Governance, 2016, (4), 1, p. 9-22.

[65] See Eurobserver, 6 November 2013.

joined the initiative, modifying its internal regulations at its Congress in Pula (Croatia) on 10-11 May 2013, to include rules on the selection of a common candidate for the European elections. The rules provided that nominations would require the votes, including online, of at least two member parties from more than one Member State, or of 20 % of voting delegates to the ALDE Congress, without the need for support from their own party. The race within ALDE saw Olli Rehn, supported by Nordic countries, and Guy Verhofstadt, supported by Benelux liberal parties, emerge as the major contenders. Following mediation between the two components of the ALDE party (Liberals and Democrats), an agreement was reached that placed Guy Verhofstadt as the candidate for Commission President of the party and Olli Rehn as a holder of one of the other senior positions in economic or foreign affairs.[66] This meant, effectively that it was not necessary to organise a contest and that the ALDE Electoral Congress could either approve or reject the candidate. The agreement was adopted on 1 February 2014[67] by the ALDE Electoral Congress in favour of Guy Verhofstadt, with 245 votes in favour, 44 against and 20 abstentions.

The **European Green Party (EGP)** subscribed to the initiative, giving it an innovative twist by deciding in July 2013 to hold online primaries open to all citizens over 16 years and above. The internal rules applicable to the selection of nominations provided that EGP candidates should be nominated by their national parties and supported by at least 4, to a maximum of 8 of the 33 EGP member parties. Four contenders emerged from the nomination process, which was followed by a trans-European online primary vote that took place between November 2013 and January 2014, aiming at having two names as lead candidates, following the EGP principle that power should not be concentrated in the hands of a single leader, but should be shared including between the genders. As a result of this inclusive and innovative selection process, Ska Keller gained 11 791 votes and José Bové 11 726 votes, beating Monica Frassoni and Rebecca Harms, and becoming the lead candidates for the EGP.[68]

The **Party of the European Left (EL)**, a much smaller party than the parties mentioned above, seized the occasion to present its candidate and political vision to a wider public (although not without some discussion), by participating in the lead candidate process. The EL had few members with a representation in national parliaments, with the exception of *Die Linke* in Germany and the *Syriza* in Greece. At its Madrid Conference in October 2013, the chairs of the EL decided to present Alexis Tsipras as lead candidate.[69] As the sole candidate, he was first confirmed by the party council, then approved by delegates to the Congress of the European Left in Madrid in December 2013, with an overwhelming majority voting in favour (84 %), few against (7.32 %) and similarly few abstentions (8.54 %).[70]

As much as the **EPP** had driven the promotion of the lead candidate process, the parties' participation in the process during the 2014 elections was not as straightforward as expected. The EPP was the last party to select its own lead candidate. Preparation began early, with a resolution, proposed by Elmar Brok at the EPP Congress in Bucharest on 17-18 October 2012, exhorting an agreement on the procedure and to start an internal nomination process for the candidates. Nevertheless, EPP leaders' views were complex, as some (e.g. Herman van Rompuy, Angela Merkel,[71]

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[66] See Euractiv, 'Rehn clears way for Verhofstadt to lead Liberal's election campaign', 21 January 2014.

[67] ALDE Party, Liberal Bulletin 01 2014.

[68] See European Green Party press release (undated).

[69] Party of the European Left, press release, 'European elections: concerning the submission of an EL candidacy for the presidency of the European Commission', 21 October 2013.

[70] See programmatic manifesto, Alexis Tsipras, My Candidacy – A Mandate for Hope and Change, 6 May 2014.

[71] Euractiv, Merkel makes U-turn, backs Juncker for Commission job, 3 February 2014.

Frederik Reinfeld), were initially opposed to the *Spitzenkandidaten* process, considering that it could impinge on the prerogatives of the European Council. In the meantime, Martin Schultz's early decision to run as PES lead candidate put some pressure on the EPP, in the sense that abstention from the process would leave the scene open to the opposing political party, with uncertain electoral consequences. In the end, considerations in favour of the lead candidate process prevailed and at the EPP Congress in Meise in December 2013,[72] a timetable and rules for the lead candidate election procedure were set out. These provided that a candidate must be affiliated to and supported by a national member party, plus must receive the endorsement of two member parties from two EU countries other than the country of origin of the candidate. This meant that candidates needed support from three parties from three different countries. At the closure of the submission process, three candidates emerged: former prime minister of Luxembourg, Jean-Claude Juncker, French European Commissioner, Michel Barnier, and the Prime Minister of Latvia, Valdis Dombrovskis (who later withdrew, endorsing Jean-Claude Juncker). Candidates needed to be endorsed by the EPP Electoral Congress, which took place in Dublin on 6 and 7 March 2014, at which the candidacy went to Juncker,[73] by 382 votes to 245 against.

The selection of the lead candidates by five (out of seven) political parties was thus concluded, with some parties having decided not to participate in this exercise – the European Conservatives and Reformists[74] and the European Alliance for Freedom[75] – for practical reasons or due to disagreement regarding the *Spitzenkandidaten* process.

Table 2 – Lead candidates and selection method ahead of the 2014 European elections

Party	Lead candidate	Competitors and procedure
EPP	Jean-Claude Juncker	Second contender: Michel Barnier. Vote on nominee candidates at the party's Electoral Congress)
PES	Martin Schulz	Vote by the party's Electoral Congress
ALDE	Guy Verhofstadt	Second contender: Olli Rehn. Mediation reached agreement whereby Guy Verhofstadt would be ALDE's lead candidate and Olli Rehn the candidate for other senior positions in economic or foreign affairs. Guy Verhofstadt was approved in a vote by the party Electoral Congress.
EGP	Ska Keller, José Bové	Four contenders: Ska Keller, José Bové, Monica Frassoni and Rebecca Harms. Online open primary won by the first two.
EL	Alexis Tsipras	Approval by the European Left Congress in Madrid as sole candidate upon proposal by the Chairpersons

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[72] A. Aixalà i Blanch, A President for Europe? The elections of 2014 in response to European democratic crisis, 08/14 Fundació Catalunya Europa.

[73] *Politico*, Juncker chosen as EPP candidate, 12 March 2014.

[74] Euractiv, EU Conservatives call single candidate election campaigns a '1950-style vision', 24 February 2014.

[75] Euractiv, Far-right parties join Tories in rejecting common EU candidate, 13 March 2014.

3.1.2 Electing Jean-Claude Juncker as President of the 2014-2019 European Commission

Under the motto 'this time it's different'[76] the five lead candidates selected by the EPP, PES, ALDE, EGP and EL engaged in short pan-European campaigns, to connect with the public and present their programme prior to the European elections of 22-25 May 2014.

The European Commission reports[77] that the lead candidates visited 246 cities across the EU and that some lead candidates visited almost all Member States (PES) or more than half (EEP, ALDE, EGP) of the (at the time) 28 Member States. Overall presence on media outlets was also significant, with televised debates between *Spitzenkandidaten* held between 9 April and 20 May 2014,[78] in several languages (French, English, German) and broadcast on Euronews and other television channels.[79] The final debate between the lead candidates on 15 May was broadcast live in 28 countries, aired by at least 152 media outlets (including 55 television channels and 88 websites), and generated high volumes of social media traffic.[80] A post-election survey revealed that 15 % of EU citizens saw at least one televised debate. This percentage was comprehensibly higher in lead candidates' countries of origin (e.g. 36 % in Luxembourg and 26 % in Greece for, respectively, Juncker and Tsipras).

The 2014 European elections resulted in the largest number of seats in the European Parliament going to the EPP (221 of 751 seats at the time).[81] Although this would not have automatically meant that the EPP lead candidate would be the preferred candidate for President of the Commission, the result meant, in the words of Parliament's 4 July 2013 resolution, that the candidate proposed by the largest party in the Parliament '*will be the first to be considered, with a view to ascertaining his or her ability to secure the support of the necessary absolute majority in Parliament*', in other words the lead candidate of the winning party was best positioned to secure a parliamentary majority.

Indeed, the process that ultimately led to Parliament's election of Jean-Claude Juncker was less straightforward than expected. While the electoral campaign was rolling out, and even after the elections were concluded, resistance to the *Spitzenkandidaten* method emerged from members of the European Council, such as United Kingdom prime minister David Cameron,[82] who was able to coalesce the opinion of a number of other national leaders against Juncker's candidacy.[83] The European Council, including its President, Herman Van Rompuy,[84] had been rather sceptical regarding what they saw as an attempt to invert the exercise of power by the institutions involved in the election of the President of the Commission, with the European Council losing the power to

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[76] European Parliament press release, The 2014 European elections: this time it's different, 11 February 2014.

[77] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 8.5.2015, (COM(2015) 206 final), p. 7.

[78] Euractiv, Officials seek greater EU election turnout with televised 'presidential debate', 26 February 2014.

[79] H. Schmitt, S. Hobolt, S. A. Popa, Does personalization increase turnout? *Spitzenkandidaten* in the 2014 European Parliament elections, European Union Politics, 2015 (16) 3, p. 347-368.

[80] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 8.5.2015, p. 14.

[81] In addition, the Progressive Alliance of Socialists and Democrats (S&D) obtained 191 seats, Greens/EFA 70 seats, ECR 70 seats, ALDE 67 seats, The Left in the European Parliament – GUE/NGL52 seats, Europe of Freedom and Direct Democracy (EFDD) 52 seats, while a further 52 Members joined the Non-inscrits (NI), see 2014 elections., European Parliament.

[82] Euractiv, Cameron: Juncker wasn't in the ballot papers, 13 June 2014.

[83] Euractiv, Merkel meets the anti-Juncker front in Stockholm, 9 June 2014.

[84] Euractiv, Next Commission chief could be 'an outsider', Van Rompuy says, 19 May 2014.

propose the candidate and having one imposed by Parliament. In the opinion of some experts,[85] the European Council seemed to have counted upon Parliament needing a long period to form a majority coalition in support of a candidate proposed by the European Council after the elections. However, this was not the case. The European Parliament, having long worked on this option, and strengthened by a process that injected political debate into the European elections, early on backed Juncker's candidacy.[86] A further decisive fact was that German Chancellor Angela Merkel overcame her initial reticence, or even resistance, in view of public pressure that inferred a possible breach of 'electoral promises'.[87]

Once these uncertainties were overcome, the European Council meeting of 26-27 June 2014[88] reached a qualified majority on Juncker's nomination (required under Article 17(7) TEU) as the proposed candidate for the position of Commission President, with the UK and Hungary voting against.[89] Incidentally, a vote took place on Juncker's candidacy, requested by Cameron – an unusual circumstance, as the European Council usually decides by consensus.[90] This step allowed for Juncker to address Parliament and take part in a debate with Members at the plenary session of 15 July 2014.[91] This was followed by a vote (422 votes in favour, 250 against, and 47 abstentions – 10 of which were invalid – thereby awarding Jean-Claude Juncker with the approval of more than the majority of Parliament's component Members, as mandated in Article 17(7) TEU, and confirming him as President of the Commission.

3.2 2019 European elections

Looking at the effects of the *Spitzenkandidaten* process on the 2014 European elections[92] in terms of turnout (42.61 %) and visibility of the lead candidate process, it could be argued that the effects on citizens' participation were beneficial.[93] However, the period after the 2014 European elections demonstrated the differences in approach of the two main institutions concerned by the *Spitzenkandidaten* innovation. On the one hand, stood a Parliament positively impressed by the achievements of the *Spitzenkandidaten* process in 2014, and by the relatively smooth outcome of the election of Jean-Claude Juncker. On the other hand, a European Council that was reluctantly and temporarily conceding to the outcome triggered by the *Spitzenkandidaten* process, without being willing to concede that the lead candidate process could be institutionalised or consolidated.[94]

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[85] T. Christiansen, After the *Spitzenkandidaten:* fundamental change in the EU's political system?, West European Politics, 2016, (39) n. 5, p. 1001.

[86] S. Anghel, R. Drachenberg, The European Council under the Lisbon Treaty, EPRS, European Parliament, December 2019, p. 37.

[87] Financial Times, Merkel swaps back to supporting Juncker, 30 May 2014.

[88] European Council, press release, 26-27 June 2014.

[89] BBC, EU backs Juncker to head Commission in blow to UK, 27 June 2014.

[90] See D. Dinan, Governance and Institutions: The Year of the *Spitzenkandidaten*, Journal of Common Market Studies, 2015, (53), p. 97; J. Müller Gómez and W. Wessels, The *Spitzenkandidaten* procedure: Reflecting on the Future of an Electoral Experiment, Istituto Affari Internazionali, March 2016, p. 5.

[91] European Parliament press release, 15 July 2014, Parliament elects Jean-Claude Juncker as Commission President.

[92] See 2014 post-election survey – European Elections 2014, Public Opinion Monitoring Unit, Directorate-General for Communication, European Parliament.

[93] See Turnout in European Parliament Elections 1979-2014, EPRS, European Parliament – where it is shown that the fall in turnout was between 1 and 4 percentage points since 1979, while between 2009 and 2014 it remained almost stable decreasing by only 0.36 %.

[94] The minutes of the European Council meeting on 26-27 June 2014 expressed this approach in a discreet, tactful way by saying 'Once the new European Commission is effectively in place, the European Council will consider the process for the appointment of the President of the European Commission for the future, respecting the European Treaties'.

3.2.1 Two different points of view

Parliament started working on ways to cement the experience of the 2014 lead candidate process in practice. The first opportunity arose with Parliament's proposal to reform EU electoral law. In November 2015, the Committee on Constitutional Affairs (AFCO) report on the reform of the EU electoral law[95] (Rapporteurs: Danuta Hübner (EPP, Poland), Jo Leinen (S&D, Germany)), contained specific references to the lead candidate process. The process was appreciated for the increased level of citizen participation in the elections and the link that it allowed between the vote cast at national level and the election to one of the EU's highest offices. The AFCO report, containing modifications to the European electoral law, made clear Parliament's intention to establish the lead candidate process as an integral part of the European electoral process, and proposed to set a common deadline for the nomination of lead candidates by European political parties of 12 weeks before the European elections, to allow political parties to present their electoral programme and hold EU-wide debates prior to the elections. This innovation was evaluated positively in a Parliament added value assessment,[96] where the main asset of this mechanism was identified in the creation of an EU political sphere and in the political link that it would create between elections and the Commission Presidency.

Parliament's collective cohesive stance on the lead candidate process is witnessed by the adoption of the Hübner-Leinen Report at the plenary session of 11 November 2015, with the provision on the lead candidate process intact.[97] However, Council's subsequent intervention on the text,[98] showed a somewhat different commitment to the *Spitzenkandidaten* process. The Council[99] removed the lead candidate process from the text proposed by Parliament, together with the reference to transnational lists, another innovation proposed in the same report.[100] The final text of the amendments to the European electoral law[101] would therefore not 'introduce' the *Spitzenkandidaten* process into the EU electoral system.

Parliament's attempts to somehow 'institutionalise' the *Spitzenkandidaten* process is also evident from the text of Parliament's decision of 7 February 2018,[102] approving the amendments[103] to the 2010 Interinstitutional Agreement between the European Commission and European Parliament. Although the modifications to the Interinstitutional Agreement mainly touched upon broader issues surrounding the participation of Commission College members in the European elections (including as lead candidates) and the ensuing obligations, Parliament in the above decision took the opportunity to return to the 2014 *Spitzenkandidaten* experience, which it considered a success,

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[95] Report on the reform of the electoral law of the European Union (2015/2035(INL)), Committee on Constitutional Affairs, European Parliament.

[96] M. Nogaj, E.-M. Poptcheva, The Reform of the Electoral Law of the European Union, EPRS, European Parliament, September 2015, p. 22.

[97] See European Parliament resolution of 11 November 2015 on the reform of the electoral law of the European Union (P8_TA(2015)0395), adopted in Brussels on 11 November 2015.

[98] According to Article 223 TFEU, Parliament's proposal amending electoral rules must be adopted by Council acting unanimously, after consent of Parliament.

[99] See text agreed by the Permanent Representatives Committee of Council on 12 April 2018, 7597/18.

[100] See S. Kotanidis, European Union electoral law, EPRS, European Parliament, October 2019.

[101] Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976.

[102] European Parliament decision of 7 February 2018 on the revision of the Framework Agreement on relations between the European Parliament and the European Commission.

[103] Agreement between the European Parliament and the European Commission amending point 4 of the Framework Agreement on relations between the European Parliament and the European Commission, OJ, 17.2.2018, L 45/46.

intending to cement it permanently at the 2019 elections. Parliament expressed the view that the lead candidate process reflected the interinstitutional balance between the Parliament and European Council, making a further and irreversible advance in the Union's parliamentary dimension. Parliament's conviction went as far as stressing that, by not adhering to the *Spitzenkandidaten* process, the European Council would risk submitting a candidate without sufficient parliamentary approval, and even affirmed that Parliament would be ready to turn down a candidate that did not emerge from the lead candidate process.[104]

The European Council's reaction was quite different to that of Parliament. Donald Tusk, speaking after the informal summit on 23 February 2018, stated that:

> *'There is no automaticity in this process. The Treaty is very clear that it is the autonomous competence of the European Council to nominate the candidate, while taking into account the European elections, and having held appropriate consultations.'*[105]

This assertion was further clarified by the follow-up questions after the summit,[106] in which Tusk insisted on the dual democratic legitimacy of the Commission President's election, which derived from the democratically elected (at national level) members of the European Council and the democratically elected Members of Parliament. Cutting away one of the two sources of legitimacy would make the process less and not more democratic. In conclusion, Tusk without *a priori* excluding the lead candidate process for the future, reiterated its non-automaticity.

3.2.2 Selection of lead candidates by European political parties ahead of the 2019 elections

Notwithstanding the European Council's reservations, Parliament proceeded to repeat the lead candidate process. In its decision of February 2018,[107] Parliament called on European parties to nominate their lead candidates through an open, transparent and democratic competition.[108]

For most of the European political parties the lead candidate for the 2019 elections was not a first, in the sense that they could rely on established internal procedures used during the previous elections, sometimes modified as circumstances required. However, research shows[109] that, with respect to previous elections, modifications of internal rules for selecting the party's lead candidate were not generally significant and did not necessarily tend towards a further democratisation of internal party dynamics.

This second roll-out of the lead candidate process gave the majority of European parties an opportunity to improve or democratise the selection procedure with respect to the 2014 process, which was based on existing procedures for the selection of party leaders. However, research[110] has also highlighted that party procedures for the selection of the lead candidate did not substantially

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[104] See point 3 and 4 of the European Parliament decision of 7 February 2018.

[105] See European Council website, 23 February 2018. See also: R. Drachenberg, Outcome of the informal meeting of the 27 Heads of State or Government of 23 February 2018, EPRS, p. 3.

[106] See Transcript of the questions and answers session **on the** website of the European Council, 23 February 2018.

[107] European Parliament decision of 7 February 2018 on the revision of the Framework Agreement on relations between the European Parliament and the European Commission, point 1.

[108] See also L. Tilindyte, Election of the President of the European Commission - Understanding the *Spitzenkandidaten* process, EPRS, European Parliament, November 2018.

[109] W. Wolfs, G.-J. Put, S. Van Hecke, Explaining the reform of the Europarties' selection procedures for *Spitzenkandidaten*, Journal of European Integration, Taylor & Francis (Routledge), February 2021.

[110] W. Wolfs, G.-J. Put, S. Van Hecke, *op. cit.* p. 895.

improve the level of democratisation. None of the European political parties held primaries (neither internal to the party nor external involving the public) to select the lead candidate. Instead, the selection procedures (which in many cases did not change substantially), showed a higher degree of elitism or exclusion against previously adopted procedures, with selection made within party's governing bodies or councils. In some cases, this was due to intra-party opposition of government leaders or other leaders, for example in the EPP, where Angela Merkel and Herman van Rompuy were opposed to the process. In other cases, such as the PES, the intention was to avoid intra-party conflict that's the reason why the support threshold was increased from 15 % of PES members to 25 %. For ALDE, the choice of a team (Team Europe) instead of a single candidate allowed for a compromise among the different political components of the party and to avoid open conflict with *La République en Marche,* whose leader Emmanuel Macron had expressed disapproval of the procedure.

The **EPP** did not substantially change the internal rules for the lead candidate selection with respect to those applied in 2014, with the exception of the timing of the procedure. Contrary to the 2014 elections when the EPP was the last party to present a lead candidate, the party anticipated a selection procedure ahead of the 2019 elections. Therefore, a longer period was left between opening for candidacies and the vote on the electoral congress responsible for the EPP nomination by a majority vote. It was argued,[111] that this seems to have been so arranged to allow time to convince the dissenting voices of some heads of government within the party. This early roll out allowed the electoral congress to vote in November 2018, i.e. six months prior to the 2019 elections, much earlier than the two months left before the elections in 2014. Two contenders, Alexander Stubb and Manfred Weber, campaigned, with Manfred Weber confirmed at the Helsinki Congress on 8 November 2018 by 492 of 619 votes in favour.[112]

The **PES** also relied on an internal selection procedure similar to that of 2014, with the difference that the threshold of the member parties vote was raised from 15 % to 25 % to ensure solid candidacies and avoid inter-party conflict. It also provided the possibility to hold primaries, under pressure from southern delegates, but without the support of other delegations sceptical of using primaries on an EU-wide scale.[113] However, the opportunity to hold primaries became pointless as, of the two candidates that emerged, Frans Timmermans and Maroš Šefčovič – the latter withdrew in support of Timmermans.

Among European parties that adhered to the *Spitzenkandidaten* process, the **ALDE** party seems to have made the greatest changes to its approach compared to the same process in 2014. At the Madrid Congress in November 2018, the ALDE party decided to run the campaign with a group of candidates, 'Team Europe',[114] offering a balance in terms of gender, geography, seniority and ideological background. 'Team Europe', endorsed by acclamation at the ALDE Council in March 2019, was composed[115] of Nicola Beer (Freie Demokraten (FDP), Germany), Emma Bonino (Piu' Europa, Italy), Violeta Bulc (Stranka Modernega Centra, Slovenia) Katalin Cseh (Momentum, Hungary), Luis Garicano (Ciudadanos, Spain) Guy Verhofstadt (Open VLD, Belgium) and Margrethe Vestager (Radikale Venstre, Denmark). It is argued[116] that the ALDE party chose this

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[111] W. Wolfs, G.-J. Put, S. Van Hecke, *op. cit.* p. 11.

[112] See EPP press release of 9 November 2018, Manfred Weber elected as EPP candidate for the President of the European Commission.

[113] W. Wolfs, G.-J. Put, S. Van Hecke, *op. cit.* p. 12.

[114] Press release ALDE party, 21 March 2019.

[115] *Politico,* 19 March 2019.

[116] W. Wolfs, G.-J. Put, S. Van Hecke, *op. cit.* p. 12.

unusual format as a single candidate could represent a disadvantage with respect to the two biggest parties. Additionally, this choice allowed for possible collaboration with Emmanuel Macron's newly founded, *La République en Marche*, who was not keen to embrace the lead candidate process without the creation of a Union-wide constituency and transnational lists.[117]

From the open inclusive procedure adopted in 2014, the **EGP** turned to a significantly more 'traditional' procedure for the 2019 elections, whereby a candidate in a first stage would have to be nominated by a member party and in a second stage to gain endorsement from five additional member parties.[118] Four candidates were nominated in the first round: Petra de Sutter (Groen, Belgium), Bas Eickhout (GroenLinks, Netherlands), Ska Keller (Bündnis 90/Die Grünen, Germany) and Atanas Schmidt (Zelena Partija, Bulgaria – failed to receive sufficient support in the second stage). At the party's Council meeting in Berlin in November 2018,[119] and in conformity with EGP tradition, two lead candidates were elected by absolute majority. Ska Keller secured more than 50 % of the votes in the second round, while Bas Eickhout won with 62 % of the votes against Petra de Sutter.[120]

The **EL** party, contrary to the procedure followed ahead of the 2014 elections, put a special procedure in place for the nomination of the lead candidate. This party also took a rather late decision to participate in the lead candidate exercise. Contrary to 2014, the choice of a candidate was also not initially smooth, as Alexis Tsipras could not (for political reasons) be proposed and other political personalities refused. Finally, the party selected Violeta Tomić (Slovenia) and Nico Cué (Belgium) who were approved by the party's executive board, a body that brings together the member parties, on 26-27 January 2019.

For the **European Free Alliance (EFA)** and **Alliance of Conservatives and Reformists in Europe (previously ACRE, now European Conservatives and Reformists – ECR)**,[121] participation in the *Spitzenkandidaten* process in 2019 was a first, in which their participation was animated more by a desire not to miss out on the visibility brought by the process, than due to trust in the initiative.

The procedure followed in ACRE relied on decisions taken largely within the ECR political group, with the aim to have a candidate supported by the components of the political group and non-ACRE affiliated members. Candidates had to be nominated by ACRE, the European Christian political movements, or by at least two ECR group Members of the European Parliament, in addition to their own political party. The candidate should have been selected based on a vote by secret ballot. Jan Zahradil was the only candidate formally designated as lead candidate.[122]

Nominations within **EFA** followed a similar procedure. Beyond participating in a relatively successful exercise, for this European party, there was the intention to bring visibility to the Scottish and Catalan causes. The EFA therefore decided to take part in the lead candidate process for the first time, adopting an internal procedure whereby the candidate needed endorsement by the candidate's own party in addition to at least five other EFA members. The EFA Bureau could either validate or refuse candidacies not considered suitable by an absolute majority of the votes. The EFA

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[117] See J. Cloos, *Spitzenkandidaten*: A debate about power and about the future development of the EU, Egmont European Policy Brief n. 56, September 2019, p. 4.

[118] W. Wolfs, G.-J. Put, S. Van Hecke, *op. cit.* p. 13.

[119] Press release European Greens elect leading duo (undated).

[120] *Politico*, 24 November 2018.

[121] See Articles of association adopted by the council on 27th June 2019.

[122] Conservatives endorse Czech MEP for Commission top job, *Politico*, 13 November 2018.

Bureau ultimately selected Oriol Junqueras as lead candidate, approved by the general Assembly in March 2019.

The Movement for a Europe of Nations and Freedom (later Identity and Democracy), did not propose a candidate.[123]

Table 3 – Lead candidates and selection method ahead of the 2019 European elections

Party	Lead candidate	Competitors and procedure
EPP	Manfred Weber	Second contender: Alexander Stubb. Lead candidate voted by absolute majority of the party's electoral congress
PES	Frans Timmermans	Second contender: Maroš Šefčovič, who withdrew his candidature and supported Timmermans. No primaries were held
ALDE	'Team Europe' composed of Nicola Beer, Emma Bonino, Violeta Bulc, Katalin Cseh, Luis Garicano, Guy Verhofstadt and Margrethe Vestager	'Team Europe', endorsed by acclamation at the ALDE Council in March 2019
European Green Party	Ska Keller, Bas Eickhout	Four contenders: Petra de Sutter, Bas Eickhout, Ska Keller and Atanas Schmidt. Election of candidates who received sufficient support from party members by absolute majority at party's Council meeting
European Left	Violeta Tomić and Nico Cué	Approved on 26-27 January 2019 by the party's executive board
European Free Alliance	Oriol Junqueras	Selected by EFA's Bureau as a lead candidate and validated by vote of the general Assembly in March 2019
Alliance of Conservatives and Reformists in Europe	Jan Zahradil	Designated by the party as a sole candidate

3.3 Evaluation of previous *Spitzenkandidaten* processes

3.3.1 Lessons learned from the 2014 European elections

The 2014 European elections represent a first in the history of the EU institutions. The successful roll out of the *Spitzenkandidaten* process culminated in Jean-Claude Juncker, the EPP lead candidate, being nominated - and afterwards elected in - to one of the EU's highest offices. This marked an undeniable 'victory', in institutional terms, for the European Parliament, to the extent that the major parliamentary political forces lined up with the process, although obviously presenting a lead candidate of their own.

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[123]   Europe's big election mess, *Politico*, 4 April 2019.

The lead candidates shone a spotlight on the entire process, beyond the candidates taking part in it, and gave an EU dimension to the European elections. The entire process gained greater **visibility**[124] with a number of television debates (9) between 9 and 20 May 2014, almost half of which (4) were of a bilateral nature, between Juncker and Schulz, on high-profile national channels (ARD, ÖRF, ZDF, France 24, etc.). A first televised debate took place in Maastricht, where four of the lead candidates outlined their programmes on Euronews on 28 April 2014. Juncker and Schulz participated in a debate on television in Italy,[125] while on 15 May 2014, the first debate to be held in all EU official languages with five lead candidates participating, took place at the European Broadcasting Union in the European Parliament.[126] In addition, Juncker and Schulz visited almost all Member States.[127]

Academics[128] noted that a certain prominence of EU-related topics during the 2014 electoral campaign was mainly driven by the turmoil caused by the financial and debt crises affecting Europe since 2009. This also resulted in a higher profile for EU-related topics in national media (e.g. Greek and Irish rescue programmes). Some commentators note a stronger 'European dimension' in the 2014 elections, which however was unable to translate into greater visibility of the 'European perspective' of the issues debated, since national parties and national political issues mostly dominated the debates. A certain degree of visibility also resulted from the polarisation encouraged by anti-establishment and anti-immigration movements, or parties that posed electoral questions in divisive terms: pro- or anti-EU integration. It is argued that[129] this partial visibility of EU topics, i.e. that filtered mainly through a national political viewpoint, was worsened by the lack of an European public sphere, such as a pan-European media or a common language to discuss common topics. This made the salience of EU issues dependent on the extent to which national party leaders and national media were willing to involve the *Spitzenkandidaten* in national campaigns.

Notwithstanding the lead candidates' efforts to campaign in person, and although adaptation was necessary for a campaign that was different to that of previous years, the **brevity of the 2014 electoral campaign** was highlighted[130] as having a negative impact on the effectiveness of the lead candidate process. To this was added the **linguistic difficulty** of carrying out an electoral campaign at a pan-European level, with advantages for multilingual candidates and the need to consider translation and interpretation arrangements as a necessary part of the campaign. Hastily organised debates had a detrimental effect on translation and interpretation arrangements,[131] which seems to be one of the reasons why European media paid little attention to the electoral campaign under the lead candidate process.

As far as **turnout** is concerned, this did not increase in 2014. However, while voter turnout in the 2014 elections reached its lowest-ever level (42.61 %),[132] it was noted[133] that turnout fell less than

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124 [Building on the *Spitzenkandidaten* Model](#), *op. cit.*, p. 4.

125 [Commission presidency contest moves on to Germany and Italy](#), *Politico* 7 May 2014.

126 [Eurovision debate](#), 15 May 2014, #tellEurope.

127 For an overview of European party initiatives and events during the 2014 European elections, see also: [Study](#) on the Conduct of the 2014 Elections to the European Parliament, 10 March 2015, Centre for Strategy & Evaluation Services (CSES), p. 32-34.

128 S. B. Hobolt, A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections, Journal of European Public Policy, 2014, (21) n. 10, p. 1534.

129 S. B. Hobolt, *op. cit.* 1535.

130 Building on the *Spitzenkandidaten* Model, *op. cit.* p. 5.

131 Building on the *Spitzenkandidaten* Model, *op. cit.* p. 6.

132 See Parliament's turnout since 1979 on European Parliament's [dedicated page](#) on its website.

133 Building on the *Spitzenkandidaten* Model, *op. cit.*

had been observed in previous elections (e.g. a drop in turnout of 'only' 0.36 percentage points in 2014 compared to 2009, and of 2.5 percentage points in 2009 compared to 2004). Although this can hardly be considered an achievement,[134] this slight decrease in the reluctance to vote may have set a new upwards trend. Considering the increased turnout for the 2019 elections (+8.05 percentage points), the lead candidate process could be one factor (among others) that may have increased the visibility of the European elections, bringing the previous declining trend to a halt, then revitalising the turnout.

As innovative as it may be, however, taking stock of the lead candidate process is not a straightforward exercise.

Focusing on the slight, but not dramatic, general improvement in turnout in 2014, however, masks the results in regions where the opposite trend, i.e. that of increased turnout, was observed in 10 countries.[135]. While it is not contested[136] that a personalisation of elections is likely to increase voter turnout through the relation of a political agenda with an identifiable person, academics note[137] that the lead candidates remained largely unknown to the electorate in 2014.[138] In terms of a 'European dimension', which seemed to be stronger in the 2014 elections than in previous years, this was primarily ascribed to the anti-establishment, anti-immigration Eurosceptic parties that had performed rather well in previous national elections.[139] Instead, citizen satisfaction and their level of trust in EU institutions increased (from 37 % in 2014, to 50 % in 2018 for the European Parliament and from 32 % in 2014 to 46 % in 2018 for the European Commission).[140] Some commentators consider this phenomenon a possible positive effect of the lead candidate process.[141]

As to the **visibility** of the lead candidates, only 19 % of the respondents[142] to an EU-wide comparative study were able to recognise Juncker and 17 % Schulz.[143] Another study, carried out in 15 Member States,[144] showed that awareness of a candidate was higher in their country of origin. This study also demonstrated that the European political party endorsement played a role in the level of voter awareness; in other words, 41 % of voters interviewed recognised that, where such endorsement was made, a vote for that European party also indirectly meant a vote for the future President of the Commission. This awareness however varied greatly among EU Member States, being lower in Eurosceptic countries. Researchers[145] found a direct link between awareness of the *Spitzenkandidaten* and increased turnout in some countries (France, Germany, Greece), whilst the increase in turnout was also attributed to the polarising effects of anti-EU parties, which mobilised

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[134]   S. Russack, The problem with the *Spitzenkandidaten* system, CEPS, February 2018.

[135]   Estonia Finland, France Germany, Greece, Lithuania, Netherlands, Romania, Sweden, UK, see results of the 2014 elections on European parliament website.

[136]   H. Schmitt, S. Hobolt, S. A. Popa, Does personalization increase turnout? *Spitzenkandidaten* in the 2014 European Parliament elections, European Union Politics, 2015 (16) 3, p 347–368.

[137]   S. Hobolt A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections, Journal of European Public Policy, 2014, (21) n. 10; H. Schmitt, S. Hobolt, S. A. Popa, *op. cit.*, p. 360.

[138]   S. Fotopoulos, What sort of changes did the *Spitzenkandidat* process bring to the quality of the EU's democracy? European View, 2019, 18(2), p. 196.

[139]   S. B. Hobolt, A vote for the President? *op. cit.* p. 1 536.

[140]   See Standard Eurobarometer 89 Spring 2018, p. 90.

[141]   See J. Navarro, G. Sandri, F. von Nostitz, The Spitzenkandidaten System: Democratic Innovation or Window Dressing?, Reconnect, December 2018.

[142]   H. Schmitt, S. A. Popa, Turnout in the EP Elections 2014, Swedish Institute of European Policy Studies, 2016: 8.

[143]   H. Schmitt, S. Hobolt, *op. cit*. page 37.

[144]   See S. B. Hobolt, A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections, Journal of European Public Policy, 2014 (21), n. 10, p. 1534 and 1535.

[145]   S. B. Hobolt, A vote for the President?, *op. cit.* p. 1536.

the electorate. Researchers also concluded that the *Spitzenkandidaten* process generally had an embryonic effect on turnout, affecting candidate recognition and hence the likelihood to turn out to vote, even though voters were not always able to identify the party of the lead candidates.[146]

It was expected that **Member States and national parties** would play an important role in boosting the visibility of the lead candidates. For this reason, the European Commission recommendations issued on 13 March 2013[147] invite Member States to encourage and facilitate the provision of electoral information and to clarify the affiliation between national and Europarties, including by allowing their logos to be indicated on the ballot paper. On the other hand, the European Commission invited national political parties to make their affiliation to European parties known ahead of the elections and to ensure this was properly displayed on campaign material, communications and in political broadcasts.

The final report on the conduct of the 2014 European elections[148] states that over half of the Member States adopted non-legislative initiatives to inform the electorate about the affiliation between national parties and European political parties by, e.g. informing national parties of the need to do so; around a third of Member States adopted legislative initiatives for that purpose, while a small number took no action.[149] Regarding the recommendation to national political parties, the report reveals that only a small number of national political parties took comprehensive action to promote awareness of their affiliation with European political parties,[150] while a larger number of political parties took limited action[151] to publicise their affiliation and a small number of national parties took no action for that purpose.[152] This problematic aspect is also underlined by research that concludes that national parties' focus on the *Spitzenkandidaten* process was very low and unevenly distributed. Most national parties devoted little or no attention to the *Spitzenkandidaten*, while a few parties (the Social Democratic Party of Germany or the French Communist Party) focused on them strongly, indicating that the effect of the lead candidate process on the visibility of candidates proposed by national parties is not automatic.[153]

A strong point is made by Peñalver and Priestley[154] on **defective aspects of the *Spitzenkandidaten* experiment in 2014**, particularly with respect to the structural components of the campaign. The authors identified a number of factors that influenced the lead candidate process in a negative way, namely: i) the weak role of European political parties; and ii) the low financing for European political parties and campaigns. On the one hand, they point out that the structure of European political parties as it currently stands, does not fully foster a sense of belonging – from a national party

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[146] H. Schmitt, S. Hobolt, S. A. Popa, *op. cit*, p. 363 and 364.

[147] Recommendation 2013/142/EU on enhancing the democratic and efficient conduct of the elections to the European Parliament of 12 March 2013 (OJ 79, 21.3.2013, p. 29).

[148] Study on the Conduct of the 2014 Elections to the European Parliament, 10 March 2015, Centre for Strategy & Evaluation Services (CSES), p. 23-39. For a shorter version, see Report on the 2014 European Parliament elections, European Commission, DG Justice and Consumers, p. 8.

[149] For an overview of the countries in question, see CSES, *op. cit.* p. 24.

[150] This includes that affiliation was fully visible in all their electoral material, political broadcasts, etc.

[151] This means that national parties made their affiliation visible in some electoral material or political broadcasts, which in most cases excludes billboard campaigns.

[152] For an overview of the countries in question, see CSES, *op. cit.* p. 28-31.

[153] D. Braun, T. Schwarzbözl, Put in the spotlight or largely ignored? Emphasis on the *Spitzenkandidaten* by political parties in their online campaigns for European elections, Journal of European Public Policy, (26) no 3 428-445, March 2018. The authors found, for example, that the emergence of lead candidates on posts performed by national parties on, inter alia, Facebook, was rather low (2.9 %).

[154] G. N. Peñalver, J. Priestley, European political parties: learning from 2014, preparing for 2019, Notre Europe, Jacques Delors Institute, p. 10-12, May 2015.

member to a wider European political movement – with limited possibility to influence decisions at the European political level. This is mainly due to the way in which party representatives in European political party decision-making bodies are chosen (by national party leaders or party executives with the exclusion of ordinary (national) party members). The way in which leadership bodies are thus organised at European level makes European political parties closer to confederal than to federal bodies. This organisational aspect pushes the level of political positions to the 'lowest common denominator', which is unlikely to stir the public's interest. Also, the fact that few European political parties allow supporters to join them directly, without being a member of a national party of the family, creates a distance between citizens and EU politics. Nor did competition with national political leaderships help the roll-out of the lead candidate process. In this respect, greater cohesiveness would be needed between national and European parties. Notwithstanding the existence of the concept of a European campaign between European political party members, the practical implementation of such a campaign could vary, depending on national characteristics. The lack of a uniform electoral law to regulate the electoral campaign created a further hurdle in terms of the coherence of candidates' visibility.

On content, the policies contained in European political party manifestos were observed to have raised little interest during the campaign, due to their lack of political commitments, at least for the three 'traditional' EU parties. Overarching complications were further identified in the lack of financing for European political parties,[155] which was insufficient to run a pan-European campaign in addition to everyday party activities. Peñalver and Priestley further highlight that European political party funding appears particularly lacking when compared with the funding received by political groups – the main political groups receive some five times the spending of their equivalent political parties and are staffed by five times as many people, according to a conservative estimate.[156] Peñalver and Priestley also offer a number of suggestions that could improve the lead candidate process, including better internal European political party democracy;[157] developing a campaign that involves national parties in a strategy for future European elections; professionalising the European campaign by recruiting key campaigners early; negotiating with key national broadcasters; and widening the franchise of the selectorate of the lead candidates by introducing primaries which have the effect of mobilising the electorate and igniting public interest.

Claims have been made that the lead candidate process has added transparency to the democratic process of election of the President of the Commission,[158] moving away from the 'closed-door' practice of previous appointment cycles. Although not unfamiliar in national political dynamics, the innovation introduced by the process to the EU institutional and political scenario, stimulated reflections on whether it also changed institutional dynamics. The link between the election of the President of the Commission and the popular vote has made the Commission's conduct more political,[159] altering the relation with the European Council.[160] Jean-Claude Juncker's claim to be a

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[155] Figures for 2014 on the European Parliament's website report that the EPP received €9 450 000, the PES €6 376 000, ALDE €2 182 000, EGP €1 917 000, and the ELP €1 219 000. In 2018, the same European political parties received the following amounts: EPP €9 653 986, PES €6 238 135, ALDE €2 958 493, EGP €2 281 485, and the ELP €1 693 202. In 2019, they received the following contributions: EPP €15 663 000, PES €11 389 064, ALDE €4 564 976, EGP €3 518 721, and ELP €2 225 893.

[156] The estimate concerning staffing covers staff members paid directly by the EU budget as members of the EU civil service.

[157] G. N. Peñalver, J. Priestley, *op. cit.* p. 1.

[158] See Fotopoulos, *op. cit.* p. 196.

[159] J. Müller, W. Wessels, *op. cit.* p. 9.

[160] Fotopoulos *op. cit.* p. 196.

'more political president'[161] is indicative in this respect. As a consequence of this more democratic method of electing its president, greater self-confidence emanates from the Commission in detailing its programme. The relationship between the Commission and the European Parliament has benefited from greater cooperation, not least through the 'G5' meetings.[162] Although some feared[163] that intensified cooperation might have turned to acquiescence, Parliament's support for Commission proposals remains something the Commission must seek on a case-by-case basis.[164] Commentators also noted how the self-confidence of an executive with enhanced legitimation acquired through the *Spitzenkandidaten* could enact a broader reorganisation[165] and attract top-quality candidates for membership of the College of Commissioners.

Other commentators however argue that the *Spitzenkandidaten* process did not substantially alter party politics and that rather than fostering political competition it has instead consolidated broader coalition politics or 'grand coalition' dynamics (centre-right – EPP and centre-left – S&D).[166] According to this position, increased politicisation of the European Commission Presidency and therefore of the whole Commission did not increase Commission accountability vis-à-vis the public, because EU decision making processes are based on consensual dynamics and large coalitions, making it less evident which political or institutional actor is responsible for policy decisions.[167]

As the following paragraphs illustrate, the successful result of the *Spitzenkandidaten* process in 2014, measured by the election of the EPP lead candidate to Commission President, did not mean (as has been pointed out),[168] that the system 'worked'.

3.3.2 Lessons learned from the 2019 European elections

As much as the European elections in 2014 were hailed a 'revolutionary' moment in European Union institutional history, the 2019 European elections had all the appearance of a 'counter revolution'.[169]

The perceived victory of Parliament in the aftermath of the 2014 elections was soon toned down by a statement by the President of the European Council, Donald Tusk,[170] ahead of the 2019 elections warning that no automaticity was to be derived from the 2014 *Spitzenkandidaten* process. Ultimately, Ursula von der Leyen – a candidate not put forward during the lead candidate process – was voted into office by a tiny majority of 383 votes in favour, i.e. just 9 votes more than the 374 needed to reach the majority required.[171] This result, charged with a certain degree of

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[161] See State of the Union address, European Commission, 9 September 2015.

[162] See Fotopoulos *op. cit.* p. 196; Christiansen, *op. cit.* p. 1003.

[163] D. Dinan, Governance and Institutions: The Year of the *Spitzenkandidaten*, Journal of Common Market Studies, 2015, (53), p. 97.

[164] Building on the *Spitzenkandidaten* Model, *op. cit.* p. 7; Christiansen, *op. cit.* p. 1003.

[165] J. Müller, W. Wessels, *op. cit.* p. 9.

[166] T. Christiansen, After the *Spitzenkandidaten:* fundamental change in the EU's political system? West European Politics, 2016, (39) no 5, p. 1 006.

[167] J. Müller, W. Wessels, *op. cit.* p. 13.

[168] K. Armstrong, Has the Spitzenkandidaten System failed and Should we care?, Verfassungsblog.de, July 2019.

[169] P. de Wilde, The fall of the *Spitzenkandidaten*: Political Parties and Conflict in the 2019 European Elections, in S. Kritzinger, C. Plescia, K. Raube, J. Wilhelm, J. Wouters, *Assessing the 2019 European Parliament Elections*, Abingdon: Routledge, 2020, p. 37-53.

[170] Statement by Donald Tusk, 23 February 2018.

[171] According to Article 17(7) TEU, the majority of Parliament's component Members. There were also 22 abstentions during the election of Ursula von der Leyen.

consociation – that may be detrimental to the EU – bears witness to the difficulty encountered in replicating similar results to the 2014 lead candidate process.[172]

The effect of the lead candidate process on election turnout is not yet clear,[173] including in terms of candidate recognition.[174] Research points to an overall low level of recognition of lead candidates in 2019, where a significant percentage of voters (between 69 % and 78 %), could not provide an answer on their background or political party of affiliation, while a percentage (between around 13 % and 16 %) gave a wrong answer.[175]

However, the reasons why the *Spitzenkandidaten* failed to produce the same results in 2019 as in 2014, call for explanations that relate more to the political level than to the performance of the process.

In an analysis of the results of the *Spitzenkandidaten* process, Jim Cloos[176] identified a number of those political arguments. First, the European Council's reluctance to replicate the lead candidate experience, as made explicit in the aftermath of the 2014 elections.[177] This 'early warning' would have required institutional stamina from Parliament to preserve the lead candidate process. Second, the lack of a candidate with attributes convincingly matching European Council leaders' expectations.[178] Third, the lack of ALDE group (renamed Renew Europe) support for the lead candidate process after the 2019 elections. This position was rooted in the underlying objection, coming from President Macron, to the *Spitzenkandidaten* process, as long as transnational lists were not in place. Fourth, the lack of political cohesion within Parliament in support of any of the lead candidates, which allowed the European Council to impose its candidate.

Pieter de Wilde[179] takes some of these arguments a step further and gives a more complex reading of the 2019 results. De Wilde attributes the failure of the 2019 *Spitzenkandidaten* process to three main factors.

First, the unsuccessful attempt to create transnational lists in 2018, when Parliament adopted the AFCO report on the composition of Parliament[180] (necessitated by the need to re-define the composition of Parliament following the UK withdrawal from the EU)[181] in February 2018 without the inclusion of transnational lists.[182] Apart from the specific failure of the proposal, which was not supported by a majority of the EPP, de Wilde argues that the debate on transnational lists[183] had the undesired effect of reducing support for the *Spitzenkandidaten* process among the Social

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[172] M. Dawson, The lost Spitzenkandidaten and the Future of European democracy, Maastricht Journal of European and Comparative Law, 2019, (26(6)), p. 731–735.

[173] P. de Wilde, *op. cit.*

[174] K. Gatterman, C. de Vreese, Awareness of *Spitzenkandidaten* in the 2019 European elections: The effects of news exposure in domestic campaign contexts, Research & Politics, April-June 2020, p. 1-8.

[175] See Europeanising European Public Spheres, Policy Department for Citizen's rights and Constitutional Affairs, European Parliament, June 2020, p. 99 and 100.

[176] J. Cloos, *op. cit.*

[177] See European Council conclusions, Brussels, 26-27 June 2014, par. 27.

[178] Namely having exercised an executive governmental office.

[179] P. de Wilde, *op. cit*.

[180] Legislative initiative report: 2017/2054(INL); Rapporteurs: Danuta Maria Hübner (EPP, Poland); Pedro Silva Pereira (S&D, Portugal).

[181] See for proposals on the composition of Parliament and electoral law, S. Kotanidis, European Union electoral law: Current situation and historical background, EPRS, European Parliament, October 2019.

[182] See European Parliament resolution of 7 February 2018 on the composition of the European Parliament.

[183] For an exhaustive analysis of the transnational lists, see M. Diaz Crego, Transnational Electoral Lists: Ways to Europeanise elections to the European Parliament, EPRS, European Parliament, February 2021.

Democratic and Liberal political forces in the European Parliament. This affected their backing for the EPP lead candidate, Manfred Weber, and hence the cohesion of Parliament behind the lead candidate process.

Second, the failure of European elections to become first-order elections, with national debates lacking coverage of truly European topics. Although the turnout of the 2019 elections was the highest (50.62 %) since the 1979 elections, this is thought to have been driven by national polarisation was the result of the polarisation and sense of urgency instilled by clashes of national leaders (e.g. Macron v Salvini debate), rather than the fruit of elections acquiring a true EU dimension. De Wilde argues this lack of a 'European dimension' in the electoral campaign inevitably also weakened the lead candidate process.

Third, a certain role was played by political dynamics, whereby EPP lead candidate Manfred Weber, failed to garner enough support from other political forces (such as the S&D and Renew), due to his ambiguous stance on the rule of law in Hungary, and his lack of government experience, which had traditionally been a characteristic of previous Commission Presidents. Moreover, Weber, for reasons already explained, could not attract enough support in the European Council, particularly from President Macron. While the 'first' lead candidate (Manfred Weber) failed to gain support, the lead candidate of the second biggest political party within Parliament, Frans Timmermans, with executive experience and extensive language skills, also failed, due to the dynamics within the European Council including strong opposition from the 'Visegrad four'[184] (V4) States, due to Timmermans engagement in fostering the rule of law in Poland and Hungary. Other candidates, such as Margrethe Vestager, were not considered lead candidates *stricto sensu*, as participating in a team of candidates. This led to a lack of visibility, culminating in a late self-presentation as candidate for Commission President only after the elections.

These concurrent fractures add to other reasons for von der Leyen's election as Commission President, highlighted by commentators.[185] An EPP member, with prior executive experience as a minister with considerable language skills, von der Leyen is the first woman ever to occupy the post. Particular attention[186] was also devoted to the political fragmentation produced by the 2019 electoral results, meaning that a 'grand coalition' (EPP and S&D) was no longer possible on 'sharing' the top position. This fragmentation was indicated as one of the main causes of the fading political cohesion on the lead candidate process in Parliament as a collective institution. Moreover, President Macron's aversion to a lead candidate process severed from transnational lists, and the simultaneous opposition of the V4 countries, derailed the lead candidate innovation comprehensively. It was questioned[187] whether a less hasty procedure leading to the vote of the President of the Commission would give more time to reach agreed solutions, however it is far from certain that more time would make it easier to square the political geometry.

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[184] The Visegrad Group (V4) is a form of non-institutionalised cooperation established between Poland, Czechia, Slovakia and Hungary, aimed at cooperating on a number of fields of common interest within European integration. According to the official V4 website, this form of cooperation was not created as an alternative to European Union integration, nor does it try to compete with existing structures.

[185] Who killed the Spitzenkandidat? *Politico*, 5 July 2019.

[186] K. Raube, From dawn to doom, the institutionalisation of the *Spitzenkandidaten* process during European elections and its final negation, in S. Kritzinger, C. Plescia, K. Raube, J. Wilhelm, J. Wouters, *Assessing the 2019 European Parliament Elections*, Abingdon: Routledge, 2020, p. 19-36; P. Schmidt, The future of the EU's lead-candidate procedure, Österreichische Gesellschaft für Europapolitik, Policy Brief 04a', 2021.

[187] C. Pütz, E. van de Rakt, The European elections 2019: Learning from mistakes made, Heinrich-Böll Stiftung on eu.boell.org, August 2019.

The experience of the 2019 elections indeed shows that the future of the *Spitzenkandidaten* process was neither assured by the successful results of 2014, nor by European Council adherence. The question as to why and to what extent the two electoral experiences in 2014 and 2019 contradict each other. Indeed, in terms of success of the lead candidate procedure, the 2014 election of the Commission President did not reflect an equally noticeable increase in turnout, whilst the 'unsuccessful' election (in terms of the lead candidate process) of the Commission's President in 2019 was accompanied by a substantial increase in turnout.

There may be a number of reasons for these contradictory results: the *Spitzenkandidaten* process may have been intended to serve several purposes, some of which still need to be worked upon; the process needs to be re-thought, improved or fine-tuned; the lead candidate process cannot satisfy all the political goals with which it had been tasked.

4. What future for the *Spitzenkandidaten* or lead candidate process?

The failure to implement the lead candidate process in 2019 came as an unexpected 'reality check' to the enthusiasm of 2014. Indeed, although there were signals that the European Council was not eager to renounce its role, they remained unheeded, or were even opposed by Parliament[188] and the Commission's[189] agenda to repeat the lead candidate process. As much as Parliament's view of the process was cohesive in 2014, this was not the case in 2019. The above analysis of the reasons for the process's success in 2014, and lack of it in 2019, shows that the process has not yet reached maturity – not only as an institutional mechanism, but more importantly as a political one.

The *Spitzenkandidaten* process was conceived with the commendable aim of instilling transparency in the process of nominating the President of the European Commission, to move closer to a model of parliamentary democracy, and to enhance citizens' awareness that they can contribute to the choice of the President of the Commission from candidates endorsed by political parties, reinforcing the role of the Commission President.

However, the *Spitzenkandidaten* process remains of a political and not a legal nature. This aspect is crucial in explaining the contrasting results of 2014 and 2019. Nevertheless, the higher purpose the lead candidate process aims to achieve deserves further reflection on reviving the process, before settling on abandoning it. After all, the *Spitzenkandidaten* process emulates the political process that takes place in many Member States, whereby political parties are at the centre of the electoral campaign, draft the electoral programme, and indicate the leader to whom they would entrust the premiership. 'Importing' such a mechanism into the EU political/institutional cycle could make EU dynamics both more democratic and more comprehensible to citizens.

The Conference on the Future of Europe[190] also offered an ideal setting to confront the different institutional visions, healing the political and institutional fractures after the 2019 experience and inviting to look to the future. After all, President von der Leyen, herself not the product of the *Spitzenkandidaten* process, declared an openness in her political guidelines[191] to broker the discussion between Parliament and the European Council and expressed the opinion that the lead candidate process should be improved upon.

This chapter analyses the question of how the *Spitzenkandidaten* process could continue, or become a permanent part of EU institutional life. The different options are given in rising order of their impact on the current legal and institutional framework. Ideas that do require a change in behaviour or practice are therefore listed before those that require introduction of a legal measure or Treaty change. The issue of cementing the lead candidate as a permanent mechanism cannot disregard the twofold nature of the issue. A first aspect concerns the relation between European political parties, who may or may not decide to select their lead candidate to participate in the lead candidate process. A second concerns the lead candidate process as an institutional mechanism to be applied

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[188] European Parliament decision of 7 February 2018 on the revision of the Framework Agreement on relations between the European Parliament and the European Commission, points 1-6.

[189] See Commission Recommendation (EU) 2018/234 of 14 February 2018 on enhancing the European nature and efficient conduct of the 2019 elections to the European Parliament.

[190] See website of the Conference on the future of Europe.

[191] A Union that strives for more, my agenda for Europe, political guidelines for the next European commission 2019-2024, p. 20.

between the two institutions who have the power under the Treaties to select and thereafter elect the President of the Commission.

4.1 Improving the status quo

Each of the 2014 and 2019 elections highlighted specific, yet key, flaws in how the lead candidate process was put into practice: a practical one in 2014, a political one in 2019. These two aspects result in some conclusions regarding possible improvements.

A first issue is the need to reflect upon and master the interinstitutional dimension; a second concerns fine-tuning the intra-parliamentary dimension; and a third issue involves improving the practical electoral campaign arrangements, including the role of national parties.

Awareness of the political interinstitutional dimension

It has been said[192] that the European Council does not intend, and may not wish to, renounce its role in proposing suitable candidate for Commission President for vote in Parliament. On the other hand, it is not contested that the candidate for Commission President should reflect the European elections and Parliament's political configuration. While the European Council is not willing to 'rubber stamp' a Parliament proposal; a reading of Article 17(7) TEU that requires Parliament to 'rubber stamp' a European Council decision does not capture the innovation introduced by the Lisbon reform either. How can the European Union turn the page on this impasse? Arguably, the Latin saying '*in medio stat virtus*'[193] could appropriately describe a future approach to the *Spitzenkandidaten* process that accounts for the lessons learned from the previous experiences.

A balance should be found somewhere in the middle ground. Both institutions are aware that the investiture of the President of the Commission is in many respects a joint endeavour, whereby the European Council proposes and Parliament votes on the candidate. So far, it would seem that there is no space for the lead candidate, which *de facto* reverses the role of the institution that makes the proposal. Instead, the *Spitzenkandidaten* process may still find a place, but only if it is seen not as a unilateral process imposed by one of the two institutions, but as one that integrates their priorities.

In this vision, the *Spitzenkandidaten* process is a **political** rather than a legal process, which also requires active dialogue between both institutional actors – even though, strictly speaking, the process focuses on Parliament and originates from the European political parties. The lead candidate process should therefore produce in European political parties such outcomes that they could not be 'easily ignored' by the European Council. In other words, the offer of potential candidates for the post of Commission President coming from European political parties should be such that the European Council cannot refuse on grounds such as those advanced in 2019.

At first sight this task would seem impossible to fulfil. However, a number of elements are already known, not least as a lesson from the 2019 elections. Beyond candidates' political affiliation, the type of political responsibilities they have covered, leadership profile, geographical origin combined with the geographical origin of previous presidents, and finally gender balance, are all important. Some believe that sensitivity to national interests is also among the qualities that a candidate should possess.[194] Depending on the historic or political contingency, those qualities may also change with time, for example it is possible to imagine that characteristics of a Commission President in 2014 could be different than those wished for in a Commission President in 2024. With respect to the

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[192]   J. Cloos, *op. cit.*

[193]   Informal translation from Latin: 'virtue stands in the middle'.

[194]   J. Müller Gomez, W. Wessels, *op. cit.* p. 12.

dialogue between the two institutions, prior negotiations with the European Council are of paramount importance. Indeed, negotiations already took place, along with contacts between the two institutions, before the entry into force of the Lisbon reform, as Parliament holds the power to approve the President of the Commission since the 1997 Amsterdam Treaty. However, the contacts needed for the procedure enshrined in the text of Article 17(7) TEU resulting from the Lisbon reform are certainly deeper than simple contacts and to a certain need to take place before the elections to ensure that lead candidates can be considered realistic candidates by the European Council. Declaration 11[195] mentions consultations to be held between the two institutions. Interinstitutional negotiations between Parliament and the European Council should provide for a perimeter of feasible options, wishes and red lines, in advance. Such preliminary negotiation should also permeate the presentation of candidates selected as parties' lead candidates. It is crucial that the selection of candidates at European political party level should be carried out with these negotiations with the European Council in mind. Failing that, the risk is that no convergence will be found on the European political party lead candidates and the European Council proposals.

On the one hand, this course of action could be very delicate, as it could have an impact on the freedom of European political parties to select their lead candidate, if (European Council) political parameters must be satisfied. This could be interpreted as 'tying the hands' of European political parties in their choice of a lead candidate. On the other hand, a prudential choice could stand a better chance of resulting in a positive outcome. This aspect of deepening interinstitutional relations presupposes that political forces participating in the European elections, at least the biggest ones, understand the complexity of the process and are aware of the compelling complementarity of the roles of the two institutions, at least under the current wording of Article 17(7) TEU. Indeed, this does not mean that Parliament should implement a system based on a list of names or of options proposed by the European Council, because Parliament holds the power to vote against the candidate proposed by the European Council and should show willingness to use this 'weapon' if need be. This eventuality almost came to pass in 2019, with President von der Leyen gaining office by only nine votes.

The European Council could also improve its awareness of its role in the process. In that respect, those members of European political parties who are also members of the European Council could play a crucial role, as it would be reasonable to expect that their position on the lead candidate process advocated by their own European political party, proposing its own *Spitzenkandidat,* is at least coherent with that maintained as Head of State or Government and member of the European Council.

In terms of the transparency engendered by the lead candidate process, it cannot be denied that the *Spitzenkandidaten* process makes substantial advances. As much as the European Council would like to have a free hand in selecting the candidate to propose behind closed doors, it cannot ignore the general trend that demands greater transparency in politics and greater citizen involvement in political life. Notwithstanding the disagreeable loss of a (unilateral) prerogative to direct the process, embracing a move towards a more transparent and inclusive process, far from traditional secretive practices, could be an act of political maturity for the European Council as an institution, that would greatly enhance the institutional set-up. This would also underline public perception of the EU's

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[195] Declaration 11 states that: '... Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with the first subparagraph of Article 17(7). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.'

legitimacy and lend a more substantive dual legitimacy to the EU's executive. As much as the dual democratic legitimacy of the EU – the EU of states and the EU of citizens – is reflected in the actors in the Commission President's investiture, *Spitzenkandidaten*-like processes are not unknown in national politics and should be easier for citizens to understand.

Indeed, should the EU institutions undergo a process such as that described above, a more mature interinstitutional set-up could provide the conditions for repeating the *Spitzenkandidaten* experiment. It is indeed likely that such a reiteration is perceived as necessary or 'due', thus paving the way for the emergence of a constitutional convention (see section 4.2).

Strengthening the intra-parliamentary dimension

Parliament's internal cohesion during the negotiation phase and in running the process is key, as the 2019 elections particularly demonstrated. Adherence to the process should come from at least the political forces that are able to numerically secure a majority of Parliament's component Members – which is the majority necessary to elect the President of the Commission. Cohesion within Parliament is also necessary, particularly when obstacles to the process inevitably materialise. Cohesion would mean proposing a candidate that represents a coalition of political forces as a second choice. The wording of Article 17(7) TEU does not specifically mention the 'outcome' of European elections (a wording proposed but ultimately not retained in the draft constitution for Europe – see section 2.1.2.), but a link with European elections: 'taking into account the elections to the European Parliament' is noted.[196] This could be considered as opening the door to coalition building, including in view of the selection of the lead candidate among parties. Parliamentary political families' allegiance to the process would also mean both willingness and awareness that a candidate should also gather support among other European political parties in a coalition-like logic.

Practical arrangements and role of national parties

The 2014 European elections, and marginally those of 2019, have shown the importance of practical arrangements in the *Spitzenkandidaten* process. Visibility of the lead candidates is also paramount, boosting their recognition. However visibility can only be ensured through a synergy of factors.

In general, it can be said that the harmonisation of electoral campaigns across the EU (e.g. same electoral period) would add value to the process of Europeanisation of European elections.

The role of European political parties and their connection with national parties also plays a crucial role. Even though it has been noted[197] that national parties lack a sufficiently strong incentive to Europeanise electoral campaigns (because European elections somehow serve them as mid-term elections), this connection should be strengthened. National parties may wish to either use electoral results to weaken the government, if they are opposition parties, or to reinforce the government, if they are governing parties or support the executive. In this respect, the reform brought by Council

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[196] It appears however, that the Spanish and German versions of Article 17(7) TEU contain a reference to the **result of the elections**, while other language versions of the same provision do not. In reiteration of consolidated case law, the Court stated in case C-229/21 (*Port de Bruxelles*) that different language versions of EU law are equally authentic therefore none prevails over another, to ensure uniform application of EU law (see *Consorzio Italian Management* and *Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraphs 42 and 43 and the case-law cited). For this reason, in case of divergence between different language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, to that effect, judgment of 28 April 2022, *Yieh United Steel* v *Commission*, C-79/20 P, EU:C:2022:305, paragraph 99 and the case-law cited). See on this point, M. Westlake, *op. cit.*, p. 39.

[197] J. Müller Gomez, W. Wessels, *op. cit.* p. 12.

Decision 2018/994[198] (not yet in force) could reinforce the link between European and national parties, however such link is left to the option of Member States. As delicate as this aspect may be, because it touches upon national electoral laws, a mandatory visual connection between the logo of European parties and affiliated national parties on the ballot would underpin the logic of the lead candidate process.[199]

As has been highlighted,[200] European political parties should be given the financial means and appropriate staff endowment to sustain electoral campaign efforts, as through the *Spitzenkandidaten* process they become protagonists in the European elections. This is a crucial aspect, as the currently applicable rules on European political party financing (Regulation 1141/2014) contain an express prohibition on indirect funding of (in addition to national political parties), national candidates who may run as lead candidate in the context of European elections.[201] This meant for example that, in 2014, European political parties were able to pay for the expenses of their lead candidates in every Member State except in that in which the lead candidate featured on the national electoral list.[202]

As Parliament has highlighted,[203] a lack of sufficient knowledge of the lead candidate process has affected the success of the *Spitzenkandidaten* process. An early decision from the main, ideally all, European political forces represented in the European Parliament to run the *Spitzenkandidaten* process would contribute to the dissemination of information on how it works, its limits, and how it contributes to a more democratic selection of the highest-ranking post in the EU executive.

However, an early start may not be sufficient, as the 2019 elections show. A commitment is needed from national parties which are members of European parties, to spread the word about the *Spitzenkandidaten* process, by referring to it during campaign debates and perhaps even committing to actively advertise it in their respective statutes.

The extent to which the *Spitzenkandidaten* process is known at national level also depends on the extent to which national parties refer to it during electoral campaigns. The paramount importance

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[198] Council Decision (EU, Euratom) [2018/994](#) of 13 July 2018, amending the Act concerning the election of the Members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976. New Article 3 b) states that 'Member States may allow for the display, on ballot papers, of the name or logo of the European political party to which the national political party or individual candidate is affiliated'. Council decision 218/994 has not been ratified by parliaments of all Member States and therefore has not yet entered into force. See also on this point [Europeanising the elections of the European Parliament](#), Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, June 2021.

[199] See also: L. Bardi, L. Cicchi, [Electoral rules and electoral participation in the European elections: the ballot format and structure](#), DG IPOL, European Parliament, September 2015.

[200] N. Peñalver Garcia and Priestley, *op. cit.*, p. 5.

[201] Article 21 of the currently applicable Regulation [1141/2014](#) on the statute and funding of European political parties and European political foundations allows European political parties to finance campaigns in the context of elections to the European Parliament, however, its Article 22 prohibits any direct or indirect funding of other political parties or of national parties or candidates. This is difficult to reconcile with the fact that candidates to European elections are national. The Court of Justice, in conjunction with the Authority for European political parties and foundations, has developed a set of five criteria for campaigning activities the satisfaction of which would give entitlement to EU funding: i) a European dimension of the scope of the campaign; ii) topics must affect EU citizens at large; iii) European political parties must demonstrate that campaigns were carried out in the context of European elections; iv) EU citizens must be able to associate the campaign with European political parties and v) campaigns must be compatible with national law. Further on this topic, see [Towards a revision of the Regulation on the statute and funding of European political parties](#), Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, March 2022.

[202] W. Wolfs, *European Political Parties and Party Finance Reform*, Palgrave Macmillan, 2022, p. 266.

[203] European Parliament [resolution](#) of 26 November 2020 on stocktaking of European elections, point 13.

of political parties was highlighted in an article by Padoa-Schioppa,[204] which although written 15 years ago, now sounds very timely:

'10. Political parties, in all democratic systems, are the indispensable agent of political life. They connect voters with politicians, select candidates, provide the 'fighting machine' for political contests, shape programmes and ideas, serve as a school of politics, and organize the life of parliaments. Selecting and supporting a candidate for President would radically transform the attitudes of political parties. It would considerably encourage the emergence of EU-wide political groupings, going beyond the present practice of mere consultation. It would also encourage marginal political forces (parties that exist in only one country and hardly fit into one of the two or three key European political groupings) to seek international connections and to converge towards a more European platform. This would also have a stabilizing influence on national politics. As long as it remains a negligible aspect of otherwise overwhelmingly national party activities, Europe will not become 'political', no matter what the Treaties say. Even the election of the European Parliament will remain little more than a virtual exercise in national politics.'

Reports[205] have shown however, that a large portion of national political parties took limited action to publicise their affiliation to the European political parties; a small proportion took no action. Fostering a more collaborative future relationship between the European and national parties and by supporting European political parties' autonomous use of mass media channels could contribute to the creation of an European public sphere. This would imply a 'Europeanisation' of national media, in the sense of a more salient presence of electoral campaign narratives in national media, and reliance on a solid formation of EU transnational media that can be consumed at a mass level,[206] neither development being conceivable in the near future.

Peñalver and Priestley too highlight[207] that the connection between a *Spitzenkandidat* and a national party is a crucial aspect of the success of the lead candidate process. More concrete policy proposals in manifestos and campaigns run on the basis of those policy proposals would constitute a positive ground on which to build support for a lead candidate. Peñalver and Priestley propose to lift the obstacles that currently hamper full European political party participation in European elections,[208] such as the possibility for financial support for national member parties publicising the lead candidate process; to purchase advertising time on mass media to publicise the lead candidate process and to organise events at national level. Enhancing the role of European political parties in fulfilling their mission as intermediaries between EU institutions and citizens would imply, on the one hand, that they further evolve not only as a confederation of national party members, and on the other hand, that they enhance their link with national member parties.[209]

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[204] T. Padoa-Schioppa, *op. cit.* p. 4.

[205] See Study on the Conduct of the 2014 Elections to the European Parliament, *cit.* p.28-31. See also study on Towards a revision of the Regulation on the statute and funding of European political parties, *op. cit.* p. 35.

[206] Europeanising European Public Spheres, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, European Parliament, June 2020, p. 40.

[207] Peñalver G. N., Priestley J., European political parties: learning from 2014, preparing for 2019, Notre Europe, May 2015, p. 10.

[208] Peñalver G. N., Priestley J., European political parties: learning from 2014, preparing for 2019, Notre Europe, May 2015, p. 16.

[209] On the role of European political parties see R. Drachenberg, European political parties and the European Council, EPRS, European Parliament, April 2022.

4.2 Can the *Spitzenkandidaten* process become a constitutional convention?

If the *Spitzenkandidaten* process is based on a reading of Article 17(7) TEU that emphasises the role of Parliament, can this interpretation be consolidated in that provision and become a rule – albeit unwritten? The issue is whether the lead candidate process can become a practice akin to a rule of a constitutional rank. To answer this question, we may need to explore when an unwritten rule, or standard of behaviour, can reach such a level of relevance as to become a rule.

4.2.1 What are constitutional conventions?

4.2.1.1 Nature of constitutional conventions

Jellinek[210] explored the nature and strength of rules derived from the practice that regulate the exercise of public powers. In referring to the English tradition that distinguishes constitutional conventions from the laws of the Constitution, constitutional conventions are the expression of a political ethic whose precepts are followed and must be strictly respected.

Practices that become part of constitutional conventions have the merit of being able to adapt to political change and allow a certain degree of flexibility, enabling the exercise of public power. Their nature, different from the normative, means their violation differs from a violation of law. Jellinek calls this set of conventional rules 'flexible law'. Jellinek also envisaged the possibility that in judicial systems governed by a rigid constitution,[211] alongside the constitution, or even against it (*contra*), exists 'a non-written constitutional law: so that in those countries, next to the formal constitution a set of constitutional rules of a material nature emerge'.[212] Tushnet[213] qualifies constitutional convention as 'fundamental statutes' and borrows the expression 'Constitution outside the constitution' from Young to identify those fundamental statutes.[214]

The **Venice Commission** recognises the legitimate and common role of constitutional customs and conventions.[215] Their effect as sources of constitutional change is found not only in the UK, a country without a written constitution, but also in other countries (whether of common or civil law). A constitutional convention therefore consists of unwritten rules, not formalised in any official document, but which can be recognised by the courts although without a comparable impact to hard law. Constitutional conventions allow constitutions to adapt to changing times without formally going through the complex and sometimes burdensome process of constitutional change. They may either supplement or integrate constitutional provisions or even interpret them in ways that differ from their original wording. They may lead to desuetude, i.e. to the non-application of specific rules. Constitutional conventions are seen as an integral part of the constitutional order, although the Venice Commission encourages an approach whereby substantive constitutional changes are sought through formalised procedures.

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[210] G. Jellinek, *Révision et mutation constitutionnelles*, Dalloz, 2017, p. 57-62.

[211] I.e. one that, as opposed to flexible constitution, requires a formalised and complex mechanism for its reform.

[212] Informal translation. See G. Jellinek, *l'État moderne et son droit*, second part Théorie juridique de l'État, Panthéon-Assas, 2005, p. 214.

[213] M. Tushnet, Constitution, in *The Oxford Handbook of Comparative Constitutional law*, M. Rosenfeld and A. Sajó, OUP, 2012, p. 225.

[214] E. Young, The Constitution outside the Constitution, Yale Law Journal, 2007, (117), n. 3, p. 408.

[215] Report on Constitutional amendments, Venice Commission, 19 January 2010.

The UK legal system offers umpteen reflections on the force and nature of constitutional conventions. Constitutional conventions are those meant to guide the action of constitutional actors, as opposed to private law convention. **Jennings** proposed to verify the existence of a constitutional convention through **three steps**,[216] accordingly the questions would be: i) whether there are precedents; ii) whether the actors believed that they were bound by the rule; and iii) whether there is any reason for the rule. Constitutional conventions are therefore social rules that set a standard of behaviour that requires adherence.[217] The term 'constitutional convention' also identifies a number of rules that have consolidated over the years and that affect the behaviour of constitutional actors and which have for that reason a constitutional, not merely political, significance.

An important aspect of constitutional conventions defended by classic British constitutional theorists is that they are not enforceable in courts. **Dicey**[218] affirmed that constitutional conventions are neither 'enforced nor recognised by courts'. It has been argued, however, that courts may either indirectly or even directly enforce conventions or that constitutional conventions may nevertheless be used as an interpretative aid by the judiciary.[219]

Academics therefore find two main elements in conventions: **behavioural (the practice), and attitudinal** (either the belief that the behavioural rule is binding – Jennings – or the acceptance of the standard of behaviour set by the convention in question – Hart).

The crystallisation of conventions into law, a process recognised by some academics,[220] has been described as the process that transforms the nature of conventions into a 'law-like' one until they mature into legal rules. This process is, for instance, claimed[221] to have occurred in the formalisation of the conventions of ministerial responsibility in the UK. Before 1945, these conventions were not written. They were assembled in 1945 by Labour Prime Minister Clement Attlee,[222] in a document entitled 'Questions of Procedure for Ministers', meant to illustrate the role of members of the cabinet, and set rules on accountability and responsibility. In 1997, this document became the Ministerial Code.[223] Since its publication, the Code acquired political weight and was accepted as a source of constitutional obligation, which Barber considers indicative of the possible emergence of a new convention – that of a duty to follow the rules of the Code or risk political censure or ejection from office. Although the most common way in which academics identify the emergence of constitutional conventions is a 'bottom-up' stream, the possibility that constitutional conventions are created 'top-down' is not excluded, and even supported by some.[224] As constitutional conventions are created, it is also accepted that they can likewise change over time.

4.2.1.2 Constitutional conventions in some Member States

Constitutional conventions are also not unknown in civil law legal systems, albeit with different effect. **France** traditionally considered constitutional conventions inexistent during the Third

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[216] I. Jennings, the Law and the Constitution, London, 1959, p. 136.

[217] J. Jaconelli, Do constitutional conventions bind? The Cambridge Law Journal (64, n. 1), 2005), pp. 149-176.

[218] A. V. Dicey, *Introduction to the Law of the Constitution* (1962), p. 417.

[219] N. W. Barber, Laws and Constitutional Conventions, (2009) 125 Law Quarterly Review 294.

[220] N. W. Barber, *op. cit.* p. 5.

[221] N. W. Barber, *op. cit.* p. 5

[222] Library of the House of Commons, Research Paper 96/53, 1996.

[223] See UK Ministerial Code, 1997 as amended and in force.

[224] A. Parry, A. Tucker, Top-Down constitutional Conventions, The Modern Law Review, 2018, (81), 5, 765-789.

(1870-1940)[225] and Fourth Republic (1946-1958),[226] according to the idea that a rigid constitution is superior to non-written rules and that the constitution cannot be modified without a special procedure. This objective approach to law was thereafter contested by academics who claimed that non-written law could also have constitutional relevance (Capitant). Therefore, if a written rule is replaced by a non-written one, it is necessary to take stock of that replacement. Moreover, if a written rule is no longer applied and another non-written replaces it, this latter can become applicable law (*droit positif*), provided that this process finds its origin in the sovereignty of the nation.[227] These views pleading for the existence and effectiveness of constitutional conventions were briefly rehabilitated at the beginning of the Fifth French Republic (1958 to the present day),[228] but were again dismissed in the 1970s. The idea behind this position being that, although there were undeniable political practices (*'usages constitutionnels'*), they do not acquire a constitutional dignity and due to their non-enforceability, they belong to the political sphere, not to law.

Although influenced by the French system, in **Belgium**, doctrinal debate, adopts a more pragmatic approach, whereby the majority of academics do not necessarily dwell on the theoretical justification of the existence of constitutional conventions, but admit their existence, which can nevertheless not trespass upon the Constitution itself. In other words, the existence of integrative constitutional conventions (*'règles supplétives'*) is accepted where a constitution or written law is lacking. However, this cannot stretch to establishing a course of action that does not comply with the Constitution (*contra constitutionem*).

A similar approach is followed in **Italy**, where constitutional conventions, consisting of the consistently repeated action over time of constitutional bodies or institutions, have also been used as parameter for the Italian Constitutional Court to adjudicate in cases concerning the attribution of competence to state institutions.[229] In a 1996 judgment, the Court affirmed the possibility that a certain course of action may have integrated constitutional norms and aided in defining institutional roles as non-written constitutional principles, consolidated through uniform and constant behaviour over time to become a constitutional convention. As in the Belgian experience, however, the Italian approach only considers constitutional conventions that are in harmony with the constitutional system, therefore rejecting constitutional conventions that contradict a formal law (*contra legem*).

4.2.2 The European Parliament and emerging constitutional practices

In the life of European institutions a number of practices or institutional behaviours may be said to have consolidated over time into practices comparable to constitutional conventions – ultimately being incorporated in EU law. Those mentioned below are merely some examples of practices that may have crystallised into constitutional conventions. Possibly, the informal trilogues between Parliament, the Council and the Commission can be said to have become a constitutional convention even before their formalisation in Parliament's Rules of Procedure. The President of Parliament's address to the European Council prior to Council meetings also became a constitutional convention before its formalisation in the European Council's Rules of Procedure.[230]

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[225] See 'La Troisième République (1870-1940)', website of the Assemblée Générale.

[226] See 'Histoire de l'Assemblée Nationale', website of the Assemblée Générale.

[227] R. Capitant, *Coutume constitutionnelle*, Revue de droit publique, 1929, p. 968.

[228] See 'La Constitution de la Cinquième République', website of the Assemblée Générale.

[229] See Judgment of the Constitutional Court of 13 May 1981, no 129 and Judgment of the Constitutional Court of 18 January 1996, no 7.

[230] A similar path towards the establishment of a constitutional practice can be observed with respect to the hearings of Commissioners-designate before their formal vote of approval by Parliament. These hearings signified the increasing

However, the same cannot be said for the application of the d'Hondt system which, although used for the allocation of Parliament's Committee and Delegation leadership positions, can be (and has been) overturned in particular circumstances.

4.2.2.1 President of Parliament address to the European Council

The first address by a President of Parliament to a meeting of the European Council (which prior to the Lisbon Treaty was referred to as a meeting of the Heads of State or Government), can be dated back to 1987,[231] with Lord Henry Plumb being the first President to address the summit of Heads of State or Government and present Parliament's programme. Since then, the practice gained a first 'soft' recognition in the European Council conclusions of the summit in Seville in June 2002,[232] where it was decided that European Council proceedings should be preceded by an exchange of views with the President of the European Parliament, to take place on the second day of the meeting.[233] The possibility to invite the President of the European Parliament was then formalised in the European Council's Rules of Procedure issued after the entry into force of the Lisbon Treaty, according to which 'the President of the European Parliament may be invited to be heard by the European Council' and 'such exchanges of views shall be held at the start of the meeting unless the European Council unanimously decides otherwise'.[234] This wording stands in today's European Council Rules of Procedure.[235] In turn, this wording reproduces Article 235(2) TFEU, introduced with the Treaty of Lisbon, establishing that the President of the European Parliament may be invited to be heard by the European Council. Over time, the practice has developed into an important element of interinstitutional relations. The political guidance of the European Council relies on political support from the European Parliament, and vice-versa, issues that are a priority for Parliament need to be taken on-board by the European Council. As has been pointed out,[236] the European Council needs the Parliament's support as co-legislator, on whose dynamics it has littl e leverage. Likewise, the Parliament is able to express its own point of view in this forum.

4.2.2.2 Trilogues

Another practice not yet formalised in Treaty provisions is 'trilogues'.[237] This negotiation configuration involves the two co-legislators and the Commission. With the enlargement of Parliament's role as co-legislator with the Council, the need to hold formal or informal interactions between the two institutions became more evident. As the ordinary legislative procedure (OLP) enshrined in Article 294 TFEU had become the applicable legislative procedure in most cases with the Treaty of Lisbon, these tripartite negotiations involving the Council, Parliament and the Commission provided more efficient interaction. While trilogues seem to have been in use in the 1970s budgetary procedure, today's trilogue practice began as early as 1994, under the German

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role of Parliament in the investiture process of the Commission. The first Commission to be subject to such hearings was the Santer Commission in 1995. Currently, although the Treaties do not provide for these hearings, they feature in Parliament's Rules of Procedure (Rule 125 and Annex VII). For more information on the development of Parliament's hearings see M. Diaz Crego, Parliamentary hearings of the Commissioners-designate, EPRS, European Parliamentary Research Service, September 2019. See also EPRS website dedicated to Commissioner-designates hearings.

[231] See R. Corbett, *op. cit.*, p. 152. On the relations between European Council and European Parliament, see D. Dinan, Relations between the European Council and the European Parliament, EPRS, European Parliament, November 2018, p. 18. On Lord Plumb, the first President of Parliament to address the European Council on 29 June 1987, see F. O'Beara, Lord Henry Plumb, EPRS, European Parliament, November 2022.

[232] D. Dinan, *op. cit.*, p. 18.

[233] See also Presidency Conclusions, Seville European Council 21 and 22 June 2002, European Commission website.

[234] D. Dinan, *op. cit.*, p. 19.

[235] Rules of Procedure of the European Council, March 2016, p. 79.

[236] D. Dinan, *op. cit.*, p. 19.

[237] M. Del Monte, Understanding trilogue, EPRS, European Parliament, May 2021.

Presidency, where negotiations in the Conciliation Committee were prepared in trilogue.[238] Later, these interactions developed into a more robust practice, with the Spanish Presidency in 1995. Trilogues were later formalised in a code of conduct adopted by the Bureau in September 2008, then in the (at the time) Rule 70 and Annex XXI of Parliament's Rules of Procedure. Following a Parliament Conference of Presidents request to make trilogues more transparent, inclusive and efficient, further changes to the Parliament's Rules of Procedure were introduced.[239] Trilogues evolved progressively from a practice aimed at preparing the Conciliation Committee, to a method of negotiation of more sensitive files, and finally to the current widespread practice involving a large number of legislative files to be adopted by co-legislators under the OLP. In particular, after the Amsterdam Treaty introduced the possibility to pass legislation at Parliament's first reading (rather than the second), the recourse to trilogues increased, as they proved an efficient tool in accelerating the legislative process.

Trilogues and the possibility to reach agreement ahead of Parliament's first reading were explicitly fostered in the joint declaration on co-decision.[240] Interinstitutional negotiations are now explicitly regulated (Rules 70-74 of Parliament's Rules of Procedure). In 2017, authorisation to enter into negotiations[241] was introduced, and the Code of Conduct for negotiating in the context of the ordinary legislative procedure also applies. The 2016 Interinstitutional Agreement on better Law-Making[242] also refers to trilogues when it states that 'the three institutions will ensure the transparency of legislative procedures, on the basis of relevant legislation and case-law, including an appropriate handling of trilateral negotiations' (Paragraph 38).

During the 8th legislative term (2014-2019) 1 185 trilogues took place at different stages of the legislative procedure (first, early second and second reading), on 346 legislative proposals. A large majority (almost 65 %) of these took place during the second half of the term; and over 15 % took place in the first three months of 2019.

4.2.2.3 Use of the d'Hondt method to allocate leadership positions in Parliament

In the European Parliament leadership positions are allocated according to the principle established in Rule 209(2) whereby 'the composition of the committees shall, as far as possible, reflect the composition of Parliament'. Moreover, according to the same rule, seats should be distributed proportionally among political groups. Posts as Committee Chair and Vice-Chairs are distributed according to the principle enshrined in Rule 15(2), whereby a fair representation of political views should be ensured in the election of President, Vice-Presidents and Quaestors. By virtue of Rule 213(3), this principle applies *mutatis mutandis* to the election of Committee Chairs.

Political groups in Parliament allocate Committee and Delegation Chair and Vice-Chair positions following the d'Hondt method.[243] The d'Hondt formula is a well-known and widely applied method in proportional electoral systems. However, its application does not follow from the application of

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[238] See Activity Report 1 November 1992-30 April 1999 from the entry into force of the treaty of Maastricht to entry into force of the treaty of Amsterdam, European Parliament, May 1999.

[239] R. Corbett, F. Jacobs, D. Neville, *The European Parliament*, John Harper, 2016, p. 287.

[240] Joint declaration on practical arrangements for the codecision procedure (article 251 of the EC Treaty), OJ C 145, 30.6.2007, p. 5–9.

[241] S. Kotanidis, General revision of the European Parliament's Rules of Procedure, EPRS, European Parliament, 2018, p. 5.

[242] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making OJ L 123, 12.5.2016, p. 1–14.

[243] S. Kotanidis, Understanding the d'Hondt method: Allocation of parliamentary seats and leadership positions, EPRS, European Parliament, June 2019.

formal rules, but it derives from an agreement among political parties to apply this method. This also means that, once the allocation of the positions in question is reached according to the d'Hondt method, it needs to be formally confirmed by a vote in the constituent meeting in committees or delegations (Rule 213).

The particularity of the d'Hondt method lies in the fact that it allows not only a proportional allocation of seats or positions among political parties, but also determines the order of allocation. In turn, it allows the different political groups to choose their desired committee position.

The d'Hondt method has regularly been applied in the European Parliament. Although it has been respected in the majority of cases, in some instances, e.g. the allocation of a Committee's Vice-Chairs, this has not been the case.[244] It therefore remains a solid guideline subject to confirmation by a vote and subject to political negotiation among the political groups.

4.2.2.4 *Spitzenkandidaten* becoming a constitutional convention

Account taken of the comparative and historical evolution of constitutional conventions, also in the EU legal system, as described above, the *Spitzenkandidaten* could become a constitutional convention. For this to happen, Parliament and the European Council, the two institutions mainly involved in the President of the Commission's investiture, need to see a certain advantage in it for the EU democratic fabric, not limiting the evaluation to the respective institutional power. The two institutions need to see the advantages in terms of the broader picture and hence the overall benefits of the *Spitzenkandidaten* becoming an 'unwritten constitutional rule'. In other words, they need to see a reason for the *Spitzenkandidaten* to be put in place. This should bring the incentive to repeat the experiment which, with time, will establish a certain regularity. This, in turn should produce expectations of its repetition. In this framework, deviations from a constitutional convention or practice cannot be occasionally excluded. However, the deviation from the practice should not point immediately to the constitutional convention having become obsolete, but rather to the fact that a departure from it occurred under exceptional circumstances.

4.3 Formalisation in an interinstitutional agreement

An interinstitutional agreement sets a form of self-organisation between institutions officially codified in the TFEU. While institutions' power to conclude interinstitutional agreements was previously founded on the principle of sincere cooperation, the Treaty of Lisbon spelled out a clear legal basis.[245] Article 295 TFEU expressly gives the **power to Parliament, Council and the Commission** to consult each other and to make arrangements for their **cooperation by common agreement**. They may then conclude interinstitutional agreements in compliance with the Treaties, which may be of a binding nature.

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[244] R. Corbett, F. Jacobs, D. Neville, *op. cit.* p. 172.

[245] Under the Treaty establishing the European Community (TEC) the possibility for the institutions to strike interinstitutional agreements was derived from Article 10 TEC, read in conjunction with Declaration No 3 adopted at the Conference of Nice, which made the principle of sincere cooperation also applicable in relations between institutions, further to those between European Community institutions and Member States. Declaration No 3 also stated that the European Parliament, the Council and the Commission may conclude interinstitutional agreements if, within the framework of this duty of sincere cooperation, it proves necessary to facilitate the application of the provisions of the Treaty establishing the European Community. Such agreements may not amend or supplement the provisions of the Treaty and may be concluded only with the consent of these three institutions.

4.3.1 Interinstitutional agreements: some general aspects

As experts have pointed out,[246] interinstitutional agreements are characterised by four main aspects: i) they have a minimum degree of formality; ii) they concern the three main institutions (Parliament, Council and Commission); iii) the participating institutions must have given their approval; and iv) the interinstitutional agreement may only address themselves, to the exclusion of third parties. Contrary to legislative acts, there is no procedural requirement as to which institution has the right of initiative, so any of the three institutions may propose interinstitutional agreements. The final adoption of an interinstitutional agreement however requires the approval and adoption of the agreement in the internal rules of the three institutions. Interinstitutional agreements may not be limited to the field of legislative activity, but may extend to other areas of institutional cooperation, however they are limited by compliance with the Treaties, and for this reason may not impact or modify institutional competences. Article 295 TFEU does not prescribe the form of interinstitutional agreement explicitly, and since they are not considered to be legal acts under the meaning of Article 288 TFEU,[247] they do not necessitate a statement of the reasons (Article 296 TFEU), or publication in the Official Journal (Article 298 TFEU). Interinstitutional agreements are **legally binding**, but only with respect to the **contracting institutions**, with no effect on third parties. They may be subject to judicial review by a non-participating institution, or by Member States. No procedure is predetermined by the Treaty as to how interinstitutional agreements should be negotiated and concluded, but they should be approved by each institution according to their own internal rules of procedure.

Rule 148 of Parliament's Rules of Procedure provides Parliament with the ability to enter into agreements with other institutions in the context of the application of the Treaties, or to improve or clarify procedures. Those agreements may take the form of joint declarations, exchanges of letters, codes of conduct or other instruments. The same provision establishes that the Committee on Constitutional Affairs (AFCO) is competent to carry out the examination, Parliament to approve and the Parliament's President to sign. If such agreements require changes to procedural rights or obligations, if they establish new procedural rights or obligations for Members or bodies of Parliament, or necessitate interpretation of the Rules of Procedure, the matter should be referred to the committee responsible.

4.3.2 Census of the currently applicable interinstitutional agreements

A number of interinstitutional agreements of either bilateral or trilateral nature exist today, in diverse areas.

The following interinstitutional agreements are of a **trilateral nature** between Parliament, the Commission and the Council:

- ➢ 2021 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register;
- ➢ 2020 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on

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[246] F. von Alemann, Interinstitutional Agreements : a Legal Instrument of EU Constitutional Law, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Vol. 182.

[247] Krajewski/Rösslein, in Grabitz/Hilf/Nettesheim/Krajewski/Rösslein, Das Recht der Europäischen Union, EL September 2022, AEUV. Art. 295, mn 18-20. 77.

new own resources, including a roadmap towards the introduction of new own resources;

➢ 2019 Interinstitutional Agreement on non-binding criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union;

➢ 2016 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making;

➢ 2001 Interinstitutional Agreement on a more structured use of the recasting technique for legal acts;

➢ 1998 Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation;

➢ 1994 Interinstitutional Agreement on an accelerated working method for official codification of legislative texts.

The following agreements of a **bilateral nature** have been concluded by Parliament with either the Commission, the Council, or other institutions:

➢ 2014 Interinstitutional Agreement between the European Parliament and the Council concerning the forwarding to and handling by the European Parliament of classified information held by the Council on matters other than those in the area of the common foreign and security policy;

➢ 2013 Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism;

➢ 2010 Framework Agreement on relations between the European Parliament and the European Commission;[248]

➢ 2008 Interinstitutional Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC;

➢ 2002 Interinstitutional Agreement between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy.

4.3.3 Legal aspects of interinstitutional agreements and the lead candidate process

In terms of legal effects, the inclusion of the *Spitzenkandidaten* process in an interinstitutional agreement would likely have the effect of regulating the relations between the two institutions at the stage when the **results** of the lead candidate process are translated into institutional action. As an agreement between two institutions, interinstitutional agreements would not affect European political parties, who are the protagonists of the lead candidate process. As such, therefore, European political party participation in the lead candidate process would not be addressed by an interinstitutional agreement.

Considering that the *Spitzenkandidaten* process involves the European Council (i.e. the institution which according to Article 17(7) TEU is responsible for proposing the candidate for President of the Commission to Parliament by qualified majority) on the one hand, and Parliament (i.e. the institution whose political parties nominate the lead candidates for Commission President and ultimately elect

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[248] The scope of the interinstitutional agreement is expressed at the very outset of the agreement as intended to establish 'measures to strengthen the political responsibility and legitimacy of the Commission, extend constructive dialogue, improve the flow of information between the two Institutions and improve cooperation on procedures and planning.'

the President) on the other, any such interinstitutional agreement would likely need to be concluded between these two institutions. This poses the question whether Article 295 TFEU, which allows Parliament, Council and the Commission to conclude agreements among themselves, may be interpreted to potentially include the European Council as one of the contracting parties to an interinstitutional agreement.

4.3.4 Interinstitutional agreements and pending electoral reform

The **Devesa report**,[249] adopted by Parliament on 3 May 2022,[250]contains a regulation proposing modifications to the Electoral Act. The proposal, adopted by Parliament's plenary,[251] and currently awaiting Council's unanimous adoption (Article 223 TFEU), provides that 28 Members of Parliament would be elected in a Union-wide constituency through transnational electoral lists (Article 15). This innovation is part of a broader set of proposed modifications to the current European electoral rules, which would represent a major step towards the Europeanisation of European elections.[252] The reform discussed seeks to address the current fragmentation of the electoral system into 27 different electoral systems in two ways: i) by making electoral rules more uniform within the EU (e.g. uniform minimum common voting age, right to vote in third countries, 9 May as fixed election day); and ii) by introducing a Union-wide constituency in which to elect 28 Members of Parliament through transnational lists, with geographical balance ensured between small, medium and large countries, composed of a set alternation of candidates coming from these three groups. The transnational lists would be led by lead candidates for the Union-wide constituency.

However, the reference to the lead candidate process cannot be found in the reform proposed by Parliament. Instead, clear references and reliance on the lead candidate process can be found in the recitals of the proposed regulation and in the accompanying legislative resolution on the proposal. The electoral reform proposed by Parliament therefore attempts to introduce the lead candidate process through a political agreement between European political entities and in an **interinstitutional agreement between Parliament and European Council**.

Recital 8 of the pending proposal suggests that European public spheres should be developed to allow European voters to express their preference for a candidate for Commission President. This should be done through the mechanisms that allow European political parties and European associations of voters or other European electoral entities to nominate lead candidates able to stand for a common electoral programme in all Member States, with a view to securing a majority in Parliament and ultimately the nomination of a candidate for Commission President. Recital 9 specifies that transnational lists should be created in the Union-wide constituency, in addition to the national constituency, to enhance the democratic and pan-European dimension of European elections.

The accompanying resolution (paragraphs 12, 13 and 16) contains a repetition of the same endorsements as those contained in the recitals concerning the introduction of the lead candidate process.

The link between transnational lists (i.e. Union-wide constituency) and the lead candidates would offer further added value in that, while the lead candidate proposed by European political parties

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[249] See European Parliament, A9-0083/2022, and M. Diaz Crego, Towards new rules for European elections?, EPRS, European Parliament, September 2022.

[250] See European Parliament press release of 3 May 2022.

[251] See P9_TA(2022)0129, Election of the Members of the European Parliament by direct universal suffrage.

[252] M. Diaz Crego, Towards new rules for European elections?, *op. cit.*

could be elected only in their country of origin in the past; if they were candidates in the national electoral lists, lead candidates for the position of President of the Commission placed at the top of a transnational list would be electable Union-wide.[253] In terms of electoral support, the candidate for President of the European Commission could be seen both symbolically and factually, as the fruit of a truly democratic process.

While the pending proposal seeks to introduce the lead candidate process as well as the Union-wide constituency, it is reasonable to believe that being a lead candidate for Commission President to the one or the other electoral entity, submitting transnational lists for the Union-wide constituency would also affect dynamics in national constituencies. This could mean a spill-over effect from the lead candidate process to the European election as a whole. Parliament adopted the legislative proposal aiming at repealing and replacing the current Electoral Act of 1976 on 3 May 2022, by 323 votes in favour, 262 against, and 48 abstentions. The accompanying resolution obtained 331 votes in favour, 257 against, with 52 abstentions.[254] The proposal awaits unanimous adoption in Council.

4.4 Combination with electoral reform

A further more concrete possibility for the lead candidate process to become a permanent part of the EU institutional mechanism would be to incorporate it in the European electoral act, amending the Electoral Act of 1976. This course of action would require the activation of a (special) legislative procedure, without engaging the more demanding Treaty revision procedures (see section 4.5).

Electoral rules are the result of a special legislative procedure whereby Parliament submits a proposal and Council adopts the rules by unanimity, after obtaining Parliament's consent, acting by a majority of its component Members (Article 223 TFEU). The modifications to the Electoral Act must be further approved by Member States, in accordance with their respective constitutional requirements, which in other words means a form of ratification. As a piece of secondary law, the Electoral Act therefore follows an enhanced formalised procedure, however not as burdensome as that which applies to amendments of primary law (i.e. the EU Treaties).

Proposals to modify the electoral rules since the first elections of the European Parliament by direct universal suffrage in 1979 have been numerous.[255] All of them attempted, in different ways, to create a more uniform electoral process that was not the sum of the different electoral processes of Member States. In most cases, the ambition of the proposal was curtailed, either by Parliament itself as a whole or by the Council. With respect to the introduction of the *Spitzenkandidaten* process, of the various reports issued since the late 1990s (Anastassoppoulos report – 1998), the three Duff reports – 2011, 2012 and 2013) and the Hübner-Leinen report – 2015), only the Hübner-Leinen report[256] introduced the lead candidate process, i.e. an obligation[257] on European political parties to nominate their candidates for the position of Commission President at least 12 weeks before the

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[253] See Paul Schmidt, *op. cit.* p. 7.

[254] See European Parliament press release of 3 May 2022.

[255] S. Kotanidis, European Union electoral law, *op. cit.* See also O. Costa, The history of European electoral reform and the Electoral Act 1976, EPRS, European Parliament, October 2016. For a compendium of archival material see 40th Anniversary of the 1976 Act on Direct Elections to the European Parliament, EPRS, European Parliament, October 2015.

[256] M. Diaz Crego, Transnational Electoral Lists: Ways to Europeanise elections to the European Parliament, EPRS, European Parliament, February 2021.

[257] Article 3(f) of the Hübner-Leinen report states that 'European political parties shall nominate their candidates for the position of President of the Commission at least 12 weeks before the start of the electoral period referred to in Article 10(1).'

start of the electoral period. When the Hübner-Leinen report reached debate in plenary, a provision was added for the establishment of a Union-wide constituency,[258] in which lists were headed by each political family's candidate for the post of President of the Commission. The text of the electoral reform issued by Parliament contained provisions on the *Spitzenkandidaten* process, as well as provisions for the creation of a joint constituency (although not further defined). This 2015 attempt by Parliament failed, as neither the *Spitzenkandidaten* process nor the creation of a joint constituency appeared in the text ultimately adopted by Council, after much delay, in 2018.[259]

A further attempt to tie the election of the President of the Commission to the electoral process, with European political parties as catalysts of electoral support for the candidate for Commission President, regained momentum in the current legislature with the Devesa report (S&D; Spain). However, as explained in section 4.3.4 above, this reform does not include the lead candidate process as part of the electoral reform, but leaves it to agreement between political parties and an interinstitutional agreement between the involved institutions.

Taking the approach of a legal obligation introducing the lead candidate would be more complete if it was combined with the introduction of a Union-wide constituency. However, in principle it is possible to envisage European elections taking place with lead candidates without a Union-wide constituency (see 2014 elections), in which case failure by any of the European parties to appoint a lead candidate would mean those European parties would risk exclusion from the selection of the Commission President. In any case, instituting the lead candidate process alone, without any further adjustment of the powers of the institutions involved in the selection of the Commission President (not even with a 'soft law' or an interinstitutional agreement), would risk producing the same polarising institutional dynamics as in the aftermath of the 2019 elections.

4.5 Introduction of Treaty change

The most 'labour intensive' way to incorporate the lead candidate process in a permanent way in the EU institutional mechanisms would be to modify the EU Treaties. This procedure would be more demanding, not only from a procedural perspective, as the Treaty revision procedure described below is one that requires what is often called as a 'double unanimity', i.e. unanimity in the adoption of the modifications and ratification by all Member States, as well as from a political perspective, as modifications of those parts of the Treaty dealing with the institutional setting are politically sensitive and difficult, although not impossible, to achieve.

4.5.1 The *Spitzenkandidaten* in primary law

A first question that arises is whether the incorporation in the Treaties of a provision to the effect that the party gaining the (even relative) majority of votes in European elections has the prerogative to propose the candidate for President of the Commission does not exceed the level of detail that would be expected from a **provision on the formation of the EU executive**. The level of detail currently provided by the constitutions of Member States could be considered a benchmark on this question.

A second issue would be whether such a provision does not make conditions too stringent, reducing the flexibility of the EU institutions' action. In any case, this type of modification would require that the issue of the competence between European Council and European Parliament would have already been resolved upstream. In other words, this paragraph considers that, in a potential phase

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[258] Article 2(a) of the Text adopted in plenary of 11 November 2015.

[259] Council decision 2018/994 of 13 July 2018 not yet in force.

of EU reform, the institutions have agreed to modify certain aspects of the process that leads to the election of the president of the Commission and to modify the powers of the institutions concerned accordingly.

A look at how **Member States** regulate the process of **nomination of their prime minister** (or head of government), shows that although constitutions of Member States might differ, there is a trend not to regulate this phase of government formation. In other words, the phase preceding the election by national parliaments of the person designated as prime minister or head of the executive is left loosely regulated by the constitution or not regulated at all in the majority of EU countries. In very few cases, does the constitution of a Member State detail this phase. A very frequent aspect, however is that the appointment of a candidate as head of the executive is most often made by the President of the Republic (or Monarch), except in the few situations where the national parliament has the initiative in a second ballot to propose and elect a candidate should the person nominated in the first place fail to obtain the majority of votes required.[260]

In general, it is possible to distinguish three patterns.

In a **first pattern**, national constitutions are silent on the procedure to follow and on the criteria to follow for the choice that leads to the designation of the prime minister. In other words, the national constitution does not mention, let alone regulate, the process of consultation and the criteria that steer the choice of the candidate who will seek the vote of confidence in parliament. This however does not mean that this phase that precedes the vote of confidence is left to the full discretion of constitutional actors. To the contrary, in the majority of cases this phase is regulated by unwritten rules, constitutional 'etiquette', or a number of more or less flexible constitutional practices that have developed over the years and which the various institutional actors are expected to follow.

This is the case in the majority of the EU Member States who are parliamentary democracies, whereby the wording of the applicable provision in the constitution is very general on the process to follow for the nomination of the head of the executive. Most often national constitutions falling under this pattern provide that the president of the republic (or federal president or the monarch), for example, appoints the head of the executive,[261] without further specification.

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[260] For example in Poland under Article 154(3) of the constitution if the Council of Ministers formed by the Prime Minister appointed by the President fails to obtain the vote of confidence by absolute majority of votes with a quorum of half of the statutory members of deputies, the Sejm shall elect the Prime Minister as well as the Ministers by absolute majority of votes cast in a second ballot, with a quorum of half the statutory number of Deputies. However, if the second ballot also fails, the initiative to appoint the Prime Minister returns to the President, with a lower threshold necessary for the vote of confidence in parliament. In the third ballot, under Article 155(1) of the Constitution, the Sejm needs only a simple majority to grant a vote of confidence to the Council of Ministers formed by the Prime Minister appointed by the President. If this fails, the President is obliged to dissolve the Houses of parliament, as provided for in Article 155(2) of the Constitution.

In Germany, if the nominee of the Federal President fails to reach the 'chancellor majority', i.e. the absolute majority provided under Article 121 of the German Constitution, the initiative for nominations passes to the Bundestag (Article 63(3) of the German Constitution), which is also responsible for electing the self-appointed candidate by an absolute majority of the component members of the Bundestag. If an absolute majority is not reached also in the second ballot, then a relative majority will suffice in the third ballot. However, if in the third ballot a candidate is voted by an absolute majority the Federal President must appoint the chosen chancellor within seven days, if not in the case of a relative majority, the Federal President has seven days to either appoint the elected chancellor (which would have a minority government) or to dissolve the Bundestag. If (s)he does not dissolve the Bundestag within the seven days, (s)he is obliged to appoint the chancellor.

[261] For example Austria, Belgium, Czechia, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia.

The Benelux countries deserve a special mention, having rather similar systems, whereby the work of exploring the possibility to form a government, and thereafter the task to form one, is traditionally governed by long-standing constitutional practices. In **Belgium**, for example, a complex procedure takes place whereby the Monarch consults the presidents of the two Chambers, the presidents of political parties and other personalities active in the economic or social field; appoints an '*informateur*' or personality tasked with exploring the possibilities to form a government; appoints thereafter one, or more, '*formateur(s)*'. Subsequently, the various political parties, under the aegis of the '*formateur(s)*', negotiate the programme and allocation of ministries; the nomination of the prime minister, ministries and secretaries of State, takes place via Royal decree, followed by their swearing an oath and a vote of confidence in Parliament.[262] A similar procedure is followed in the **Netherlands**, where the power to appoint an 'informer' lies with the House of Representatives and not with the Monarch. The 'informer' explores the willingness of various political forces to form a government and negotiates the content of the policies with the parties that will form the government, but is not allowed to form one. The 'informer' phase can however be omitted, in which case a '*formator*', also appointed by the House of Representatives, forms the government and usually becomes the Prime Minister. In **Italy** too (although Article 92 of the Constitution is silent on the matter),[263] the process that leads to the appointment of the President of the Council follows a three-fold procedure of a customary nature whereby: i) first the President of the Republic consults political actors that are considered prominent (leaders of political groups, leaders of coalitions), together with the Presidents of the two Chambers of Parliament; ii) the President of the Republic then gives the mandate to form the government, based upon an indication of the political groups who obtained the majority of votes in Parliament. This phase is the product of a practice developed over the years whereby the mandate is given orally, announced publically, and accepted with reservation by the personality chosen, who then runs a second round of consultation before definitely accepting the mandate; iii) finally, the appointment of the Prime Minister and individual Ministries takes place via Presidential Decree, followed by the oath and the vote of confidence of the two Chambers of Parliament.

In a **second pattern,** the constitution of some Member States spells out some of the activities left to constitutional practices in the first pattern described above. In this group of Member States,[264] the constitution is not prescriptive, although not silent, and indicates institutional or political actors that must be consulted, making their participation in the process of government formation more explicit and mandatory. In other situations, the wording of the constitution is less detailed and more generally refers to the outcome of the electoral result (see Portugal).

This second pattern can be observed, for example in **Finland**, where the Finnish Constitution (Article 61) provides that the Parliament elects the Prime Minister who is appointed by the President of the Republic. However, before the election of the Prime Minister, Article 61 states that the political groups negotiate the political programme and the composition of government. On the basis of the outcome and having heard the Speaker of Parliament and parliamentary groups, the President informs the Parliament of the nominee as Prime Minister. In **Romania**, Article 103 of the Constitution attributes the power to appoint the candidate for the office of Prime Minister to the President after consultation with the party that obtains the absolute majority in parliament or, in the absence of that, the parties that are represented in parliament. In **Spain**, section 99 of the Constitution mandates the King to nominate the candidate as President of the Government, after having held

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[262]   Y. Lejeune, Droit constitutionnel belge, Larcier, 2022, p. 806.

[263]   See website of the Italian government.

[264]   Finland, Portugal, Romania, Slovenia Spain, and Sweden.

consultations with the representatives appointed by the political groups of the Spanish Congress. In **Sweden**, Article 4 of Chapter 6 of the Instruments of Government states that when a Prime Minister must be appointed, the Speaker of Parliament (the Riksdag) summons representatives of each party group for consultation. The Speaker confers with the Deputy Speaker before presenting a proposal to parliament, which shall vote within four days.

As an example of a more general wording, the **Portuguese Constitution** contains a provision in Article 187 that (reminiscent of Article 17(7) TEU), provides that the President of the Republic appoints the Prime Minister after consulting the parties with seats in the Assembly of the Republic and in the light of the electoral results.

In a **third pattern**, the constitution of some Member States[265] seems to indicate – to a lesser or higher level of precision – whom to appoint as Prime Minister. In the **Croatian Constitution**, Article 98(3) establishes that the President of the Republic shall entrust the mandate to form the government to a person who, based on the distribution of seats in parliament and after having completed the consultation, enjoys the confidence of a majority of all deputies. Article 80 of the **Maltese Constitution** establishes that the President shall appoint as Prime Minister the member of the House of Representatives who they judge is best able to command the support of a majority of members of the House.

The most prescriptive wording however can be found in the constitutions of Greece and Bulgaria. In **Greece**, Article 37 of the Constitution mandates the appointment of the Prime Minister ('shall be appointed') to the leader of the party having gained the absolute majority. Failing that, the mandate to ascertain the possibility to form a government shall be given, according to Article 37, to the leader of the party who obtained the relative majority. Likewise, Article 99 of the **Bulgarian Constitution** establishes that, after consultation with the parliamentary groups, the President appoints the Prime-Minister designate nominated by the party with the highest number of seats in the National Assembly to form the government.

An overview of how the phase of selection and appointment of the head of the executive takes place in individual Member States shows that, in the great majority of cases, primary law does not regulate this aspect of government formation. It is largely left, from a procedural and substantive perspective, to negotiations and procedures of a customary nature. Nonetheless, from a substantive perspective, the formalised or non-formalised constraint of the nominee being able to gather a parliamentary majority naturally applies in all cases.

4.5.2 What type of procedure?

Should it be decided to introduce the lead candidate process in primary law, a modification of the Treaty[266] would require a series of political and institutional steps.

Article 48 TEU enshrines two ways in which Treaty revision may be carried out. On the one hand, Article 48 TEU contains the ordinary Treaty revision method (Article 48(1)-(5) TEU), which can be further detailed as:

     i) an ordinary Treaty revision method with a convention (Article 48(1)-(5) TEU); and

     ii) the ordinary Treaty revision method without a convention (Article 48(3)-(2) TEU).

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[265] Bulgaria, Croatia, Greece, and Malta.

[266] S. Kotanidis, How the EU Treaties are modified, EPRS, European Parliament, August 2022.

Conversely, Article 48 TEU contains the simplified Treaty revision method (Article 48(6) TEU). For the sake of completeness, it must be added that Article 48 also contains, in its seventh paragraph, two mechanisms that technically belong to the broader category of Treaty revision (*passerelle* clauses). However, *passerelle* clauses only modify Council decision-making, allowing either to shift from unanimity to qualified majority voting or to switch from the special legislative procedure to the ordinary legislative procedure. They do not provide rules on how to produce permanent substantive changes to the Treaties.

The current version of Article 48 TEU is based on the previous version of the same article of the Treaty on European Union, with fundamental innovations introduced by the Lisbon Treaty. As before the adoption of the Lisbon Treaty, the Intergovernmental Conference (IGC) is the main body that decides and adopts changes to the Treaty. However, the Lisbon reform also allowed Parliament to submit proposals to Council to amend the Treaties, in addition to the governments of Member States and the European Commission.

The **ordinary Treaty revision procedure** may be triggered by the government of any Member State, Parliament or the Commission, who may submit a proposal to amend the Treaties to the Council. In this respect, the Council acts as an almost preparatory body, since it is this latter – under Article 48(2) and (3) TEU – that submits the request for amendments to the European Council, the institution that ultimately decides whether to examine such amendments by simple majority (i.e. at least 14 Member States), having consulted Parliament and the Commission. National parliaments are also notified of the proposals to modify the Treaties. If the European Council is in favour, the President thereof convenes a convention. The composition of this convention includes representatives of national parliaments, heads of states or government of Member States, Parliament and the Commission. The convention adopts a recommendation to a conference of representatives of the Member State's governments (the IGC) under Article 48(3) TEU.

If the European Council does not deem it necessary to convene a convention, after taking account of the nature and extent of the proposed amendments, it may decide, by simple majority, not to convene a convention. In this case, Parliament's consent is necessary (Article 48(3) TEU). If a convention is convened, however, the European Council defines the terms of reference for a conference of representatives of the governments of Member States. Article 48(4) TEU establishes that the IGC must be convened by the President of the Council (not of the European Council), to determine the amendments to the Treaties by common accord[267], and which must be ratified by all Member States in accordance with their constitutional requirements.

The ordinary revision procedure is, as the above description shows, highly regulated and very demanding. In addition to some institutional complexities (the convention is convened by the President of the European Council, while the IGC by the President of the Council), it remains a **complex process institutionally, legally and politically**. Although the right of initiative to request Treaty change is now also in the hands of the European Parliament – adding a democratic element to the process – it requires: first, a simple majority of the European Council to decide whether to proceed with the revision process; second, a common accord among Member States to modify the Treaties; third, a process of Member State ratification of the modifications according to their constitutional provisions. The Member States' governments remain undoubtedly in the 'driver's

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[267] When the IGC examines the draft modifications issued by the convention, it is believed that the text produced by the convention, being the fruit of a democratic process, can be modified but not fundamentally distorted see F. X. Priollaud, D. Siritzky, Le traité de Lisbonne, la documentation française, 2008, p. 139.

seat' as regards the content of the Treaty reform, as the requirement to decide by common accord within the IGC shows.

Although the possibility of a Treaty revision without a convention taking place (Article 48(3)-(2) TEU), requires Parliament's consent, once adopted, this procedure totally excludes Parliament from any further deliberation and decision. Instead, the European Council, in the absence of a draft from the convention, defines the terms of reference of the IGC as the sole body ultimately deciding on the content of Treaty modifications.

The second method that allows the Treaties to be modified is the **simplified treaty revision** contained in Article 48(6) TEU. This article provides that the same institutions and actors that have the power to initiate the ordinary revision procedure (national governments, Parliament and Commission) may do so by submitting proposals for revisions affecting Part Three of the TFEU to the European Council. The amendments are adopted after consulting the European Parliament and the Commission, by unanimous decision of the European Council. Amendments need thereafter to be approved by the Member States, in accordance with their constitutional law.

As Article 48(6) TEU expressly states, the simplified revision procedure may not increase the competences conferred on the Union by the Treaties. This method is of limited application to 'all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to internal policies and actions of the Union'. However, Part Three of the TFEU includes a substantial part of EU law and policies. It includes core Union policies, such as the internal market, the four fundamental freedoms, the area of freedom security and justice, agriculture and fisheries, transport, competition, economic and monetary policy, etc. Consequently, the simplified revision procedure does not allow modification to the provisions of the TFEU on the principle of non-discrimination and the citizenship of the union (Part Two), on the Union's external action (Part Five), or on the institutional and financial provisions (Part Six). Naturally, provisions of the TEU are also out of scope of the simplified treaty revision.

As seen above, although the simplified revision procedure is less burdensome than an ordinary revision, at least in terms of the several steps and actors involved and due to the absence of a convention or an IGC,[268] two aspects remain **equally demanding**: the unanimity required by the European Council (common accord in the ordinary revision procedure), and the need for Member States to incorporate the Treaty changes, after the unanimous decision of the European Council, according to their constitutional requirements. In practice, it has been argued,[269] Member State adoption differs little from the process of ratification required by the ordinary revision procedure, making this an equal hurdle.

As a method affecting the designation and thereafter the election of the President of the Commission, the *Spitzenkandidaten* process, whose relevant provisions are contained in Article 17(7) TEU, would likely fall out of the scope of the simplified revision procedure (Article 48(6) TEU), where the scope is confined to Part Three of the TFEU, with the exclusion of the TEU. The only way therefore to permanently include the lead candidate process in the Treaty (should such a course of action be desired), would be to trigger the ordinary revision procedure, with or without a convention (Article 48(1)-(5) TEU).

Finally, it is not possible to activate a European Citizens' initiative (Article 11(4) TEU) to modify the Treaties. The mechanism allows at least one million citizens who are nationals of a significant

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[268] J.-C. Piris, The Lisbon treaty, *Cambridge studies in European Law and Policy*, 2011, p. 105.

[269] S. Peers in R. Schütze and T. Tridimas, *Oxford Principles of European Union Law*, Vol. I, OUP, 2018, p. 434.

number of Member States to invite the Commission to submit proposals on matters where citizens consider that a legal action of the Union is required. However, the initiative is limited to cases where the legal action of the Union is required for the purpose of implementing the Treaties. Modification of the Treaties is excluded.[270]

4.5.3 What type of modification?

Modifications of Treaty provisions to include the lead candidate process or to make sure that the lead candidate process influences the selection of the President of the Commission could take various forms.

Starting from the proposal with the least impact, to that which most impacts the powers of the two institutions involved in the appointment of the President of the Commission, the range of options could be as follows.

A first option could be to modify Article 17(7) TEU only to the extent necessary to include the lead candidate as part of the consultations that this rule provides for before the European Council formalises the proposal of the candidate. In this way, lead candidates – where European political parties have nominated one – would be heard directly by the European Council and could have a chance to set out their vision and programme. In this way European political parties would also become more visible in the investiture procedure through their lead candidate. This option is somehow reminiscent of the national procedure in some Member States, whereby the Head of State hears the leaders of political parties before charging one of them with the (explorative task of the) formation of the government.

A second possibility could be to provide in Article 17(7) TEU that the European Council must first put to a vote the lead candidates with the most and the second most votes, before turning to other candidates outside the range of lead candidates put forward. This would allow a certain degree of freedom to the European Council, but on the other hand would oblige the European Council to first endeavour to agree on a suitable candidate among the first two lead candidates. This approach would not exclude the possibility for the European Council to depart from such a method by selecting the President-designate among other political personalities once the two votes were not successful, but departing from lead candidates would be a last resort.

A third possibility would be that Article 17(7) TEU makes express reference to the obligation of the European Council to take into consideration as a candidate for President of the Commission, after consultation with European political parties, the one lead candidate who is able to gather a parliamentary majority without further requirement as to the electoral result. The ability to assemble a parliamentary majority would be then the sole requisite, together with that of being a lead candidate.

A fourth possibility, stricter than the previous ones, would be that Article 17(7) TEU requires the European Council to propose as candidate for Commission President the lead candidate of the European party that won the most seats in the elections or failing that, the second most successful lead candidate, as President of the Commission.

With the exception of the second option, all the above proposals assume that the candidate proposed for President of the Commission is a lead candidate, and therefore an elected Member of Parliament.

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[270]   F.-X. Priollaud, D. Siritzky, *op. cit.* p. 138.

A selection of the candidate for President of the Commission by the European Council that is based uniquely on the lead candidate (with the first or second-most votes) would assume that the political configuration of Parliament is mirrored in the European Council (or vice-versa), which might not necessarily be the case.[271] In addition, the reference to a lead candidate in the third and fourth option above, whether to the European party with the most or second-most votes, or simply to a lead candidate, would exclude the possibility that a candidate is found from among political personalities that have not campaigned as lead candidates, but that could be Members of Parliament. This could risk creating an institutional impasse if no other solution is offered in the Treaty provision.

Finally, a more radical solution could be to modify Article 17(7) TEU to invert the role of the two institutions. Accordingly the European Parliament would propose a candidate to the European Council, while this latter would vote to approve Parliament's candidate. The Parliament's candidate could be either the lead candidate who is able to gather the highest parliamentary majority, or the lead candidate of the European political party gaining the most or second-most votes. This would not be a new proposal, at least concerning inverting the role of the two institutions, as it was proposed by Andrew Duff, Lamberto Dini, Lord Maclennan and Adrian Severin during the 2002 Convention on the Future of Europe.[272] More recently, it has been advanced by Paulo Rangel (EPP, Portugal), and is mentioned in the final report containing the proposals issued by the Conference on Future of Europe.[273] Naturally, this proposal would require a great deal of political convergence between Parliament and European Council to be adopted. However, it mirrors *mutatis mutandis*[274] the national procedures leading to the appointment of the head of the executive.

4.6 The *Spitzenkandidaten* process and the Conference on the Future of Europe

A possible take-up of the *Spitzenkandidaten* process could come from the follow-up to the Conference on the Future of Europe (CoFoEU), which debated the future of the EU and possible reforms between 2021 and 2022 (following an initiative of President von der Leyen). The Conference considered many aspects where the EU would need to improve, deliver or change. The CoFoEU was enriched by an innovative mechanism of participatory democracy,[275] i.e. four transnational panels of 200 randomly-chosen EU citizens issuing autonomous recommendations.[276] At the same time,

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[271] On the political configuration of the European Council see R. Drachenberg, European political parties and the European Council, European Parliamentary Research Service, European Parliament, April 2022.

[272] See Suggestions for Amendment of Part I, Title IV, Article 18a as mentioned in L. Thorlakson, The Draft constitution of the European Union: the end of the Community method? CONVEU 30 Conference Paper, p. 5.

[273] See footnote XI, under proposal 38, page 81, of the Report on the final Outcome of the Conference on the Future of Europe.

[274] That means that if it is assumed that the role of appointing and nominating the Head of the Executive at national level in parliamentary democracies is usually carried out by the Head of State, at EU level it would be taken up by the European Council.

[275] S. Kotanidis, Citizens' engagement and expectations of the Conference on the Future of Europe, Briefing, European Parliamentary research Service, European Parliament, September 2021.

[276] For an overview of analysis of the recommendations of the citizens' panels, see the four studies performed by Parliament's services. European democracy/Values and rights, rule of law, security – Citizens' recommendations and the EU context: Panel 2 of the Conference on the Future of Europe, EPRS with DGs IPOL and EXPO, European Parliament, February 2022; Climate change, environment and health – Citizens' recommendations and the EU context: Panel 3 of the Conference on the Future of Europe, EPRS with DGs IPOL and EXPO, European Parliament, February 2022; EU in the world/Migration – Citizens' recommendations and the EU context: Panel 4 of the Conference on the Future of Europe, EPRS with DGs EXPO and IPOL, European Parliament, March 2022; Stronger economy, social

the CoFoEU debated issues and elaborated proposals within nine Working Groups,[277] which included representatives of the citizens' panels, institutions, civil society, national parliaments, local and regional elected representatives, representatives of the European Economic and Social Committee (EESC) and European Committee of the Regions (CoR).[278] The CoFoEU final report contained 49 proposals, consisting of around 326 implementing measures,[279] submitted to the tripartite Presidency of the Conference for the EU institutions for follow up.

The areas of discussion within the Conference were extremely broad, covering a large part of EU policies, grouped under nine macro areas featured on a multilingual digital platform. This latter tool was used not only to gather ideas and contributions to improve the EU from anyone interested in the Conference, but also to collect all documents related to the Conference (guidelines, rules of procedure, minutes, reports, recommendations of citizens' panels, etc.).

As the report on the final outcome of the Conference shows, the topic of European democracy raised the most interest, with the highest number of aggregate contributions (i.e. ideas, comments and events)[280] on the multilingual digital platform. Within that policy cluster, the multilingual digital platform also hosted discussion on the reform of EU electoral rules and EU governance. Citizens proposed ideas to reform the institutional set-up, including the investiture process for the President of the Commission. The idea of stronger citizen participation in the investiture, either through the *Spitzenkandidaten* process or the direct election of the Commission President featured on the platform. While the *Spitzenkandidaten* process is absent from the recommendations elaborated by the citizens' panels,[281] it does appear amongst the measures proposed by the Conference, in Proposal 38(4),[282] which states that:

> *'European citizens should have a greater say on who is elected as President of the Commission. This could be achieved either by the direct election of the Commission President or a lead candidate system'.*

The task to translate the Conference's proposals into concrete measures will remain a true challenge for EU decision makers. At the time of writing, the three institutions have not yet adopted a common strategy on the follow-up to give to the Conference. Instead, each institution has elaborated its own assessment of the measures necessary to implement the Conference's proposals.

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justice, jobs, education, culture, sport, digital transformation – Citizens' recommendations and the EU context: Panel 1 of the Conference on the Future of Europe, DG IPOL, European Parliament, March 2022.

[277] See Working Groups on the website of the Conference with Working Groups.

[278] S. Kotanidis and G. Sabbati, At a Glance, the Conference on the Future of Europe, EPRS, European Parliament, January 2022.

[279] See report on the final outcome, May 2022, on the website of the Conference on the Future of Europe.

[280] See February 2022 Report of the Multilingual Digital Platform of the Conference on the Future of Europe, p. 19.

[281] Recommendation 16 of citizens' panel 2 contains instead a reference to harmonisation of EU electoral law and to a concept very similar to transnational lists, without naming them explicitly: '*We recommend adopting an election law for the European Parliament that harmonises electoral conditions (voting age, election date, requirements for electoral districts, candidates, political parties and their financing). European citizens should have the right to vote for different European Union level parties that each consist of candidates from multiple Member States. During a sufficient transition period, citizens could still vote for both national and transnational parties.*' See also European democracy/Values and rights, rule of law, security – Citizens' recommendations and the EU context: Panel 2 of the Conference on the Future of Europe, EPRS with DGs IPOL and EXPO, European Parliament, February 2022.

[282] Recommendation 39(4) on 'democracy and elections', Report on the final outcome of the Conference on the Future of Europe, p. 81.

This reflection process started immediately after the conclusion of the Conference, with the Council issuing a first preliminary technical assessment of the final recommendations on 10 June 2022.[283] On 17 June 2022, the **Commission** issued a communication on the follow up to the Conference.[284] Parliament adopted a resolution on 4 May 2022 on the follow-up to the Conference, praising the innovative participation of citizens in the Conference, and calling for a convention to activate the procedure for the revision of the Treaties provided in Article 48 TEU.[285]

Parliament adopted a second **resolution on 9 June 2022**, proposing a more concrete number of Treaty changes (Article 48 TEU):[286]

➢ qualified majority voting for Council decisions instead of unanimity in relevant areas (sanctions, *passerelle* clauses, and emergency situations);

➢ adaptation of Union competences in the areas of health and cross-border health threats, in the completion of the energy union based on energy efficiency and renewable energies, in defence, and in social and economic policies;

➢ implementation of the European Pillar of Social Rights and incorporation of social progress in Article 9 TFEU linked to a Social Progress Protocol into the Treaties;

➢ support strengthening the competitiveness and resilience of the EU economy, with special attention paid to small and medium-sized enterprises and competitiveness checks and to promote future-oriented investments focused on the just, green and digital transitions;

➢ provide Parliament with full co-decision rights on the EU budget, and with the right to initiate, amend or repeal legislation;

➢ strengthen the protection of EU values and clarify the determination and consequences of breaches of fundamental values (Article 7 TEU and the Charter of Fundamental Rights of the European Union).

European Commission President von der Leyen provided an interesting turn to the follow up to the conference, in her State of the Union address of 14 September 2022, when she clearly endorsed the possibility to engage in a deeper reform process, declaring that 'the moment has arrived for a European Convention'. In the same speech, she announced that the citizens' panels that were central to the CoFoEU would become a regular feature of EU democratic life.[287] In her letter of intent to European Parliament President Roberta Metsola and to Petr Fiala, Prime Minister of Czechia (which held the Council presidency at the time), further specified that the Commission will include citizens' panels in the Commission policy-making toolbox, so that they can make recommendations prior to certain key policy proposals, starting with the work on food waste.

Parliament's assessment shows that, in substantial agreement with the conclusions reached by the other two institutions, the great majority of the conference proposals (92 %) could be

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[283] Preliminary technical assessment of the Council of 10 June 2022 with detailed table (DOCs AG 63 INST 223 and AG 63 INST 223 - 10033/22 ADD 1 en) and updated preliminary assessment of 30 November 2022 (DOC 10033/1/22 REV 1).

[284] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Conference on the Future of Europe, Brussels, 17.6.2022, COM(2022) 404 final.

[285] European Parliament resolution of 4 May 2022 on the follow-up to the conclusions of the Conference on the Future of Europe.

[286] European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties.

[287] From mid-December 2022 to the end of April 2023, three citizens' panels took place on food waste, virtual worlds and learning mobility. The citizens' panels currently run are inspired by those created in the framework of the Conference on the Future of Europe and are intended to debate key policy initiatives of the Commission included in its 2023 work programme. They consist of around 150 randomly-chosen citizens and are rolled out in three sessions devoted to i) idea generation; ii) review and refinement of initial ideas; iii) drafting and submission of recommendations.

implemented within the current Treaty framework.[288] Nevertheless, of the 24 measures that have been identified as requiring Treaty change, across all policy areas, nine belong to the European democracy policy cluster alone. These are also crucial proposals of a constitutional nature that, if implemented, would bring substantial reforms, as they concern either the powers of the EU institutions, rules on the decision-making process, the institutional set-up, or the introduction of a mechanism for participatory democracy. Parliament's Committee on Constitutional Affairs (AFCO) is working on a report that should detail Parliament's proposals for Treaty changes.[289]

In parallel with the Council's own technical assessment,[290] including one involving an independent action[291] to follow up on the Conference, political discussions took place within the **Council** in the General Affairs Council (GAC) on whether Member States would be in favour of engaging in modifications of the Treaties. However, the issue has stalled, with Council waiting for Parliament to finalise the AFCO report before transmitting Parliament's proposals to modify the Treaties to the European Council.[292] According to Article 48(2) TEU, proposals for Treaty change formulated by governments, Parliament or the Commission must be submitted to the Council, which should in turn submit them to the European Council and notify national parliaments.

The lead candidate process – as we have seen, a measure that does not necessarily need Treaty modification – is therefore to be ascribed to the broader quest for greater citizen influence in EU decision making and more transparency, including how leadership positions such as that of President of the Commission, are awarded. A sign of this trend is clearly visible in CoFoEU proposals, such as Proposal 36(1) suggesting improvements to existing participatory mechanisms or creating new ones; or other proposals to create platforms to interact with EU institutions online and off-line (Proposal 36(2)); or to hold assemblies of randomly-chosen citizens similar to the CoFoEU (Proposal 36(7)). Although the lead candidate process is of a different nature to these examples, and although it has been already experimented with contradicting results in the last two elections, it will nevertheless be part of the discussion on the follow up to the Conference as a way to bring the EU institutions closer to citizens.

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[288] S. Kotanidis, Conference on the Future of Europe: Overview of the final proposals, Briefing and Annex, European Parliamentary Research Service, European Parliament, November 2022.

[289] Proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).

[290] See Council Preliminary technical assessment, 10 June 2022 and technical assessment of 30 November 2022. See also European Council conclusions of 23 and 24 June 2022, recalling the importance of an appropriate provision of information to citizens on the follow-up given by the institutions to the Conference's proposals.

[291] See also Council's assessment of areas where it could act on its own, 13 September 2022 (Doc 12279/22 and 12279/22 ADD 1).

[292] Council press release of 2 December 2022.

5. Conclusions

An attentive look at the nature and purpose of the lead candidate process underlines that the *Spitzenkandidaten* process is a political mechanism that serves different purposes. The main aim is to bring the choice of the head of the EU's executive closer to citizens. Voting for a European party whose lead candidate is known in advance and who campaigns on that ticket, offers citizens the possibility to consciously influence the choice of the holder of this top EU position. The lead candidate process also adds **democratic legitimacy** to the European Commission, which can claim a certain connection with the citizens' vote. Open societies like those of EU Member States are less and less tolerant of processes that are conducted in a secretive or non-transparent manner. The lead candidate process removes the blemish of secrecy, opacity, and often opportunism, associated with a process aimed at choosing the candidate Commission President that has normally taken place behind closed doors within the European Council. In spite of the uptick in voting in 2019, in the minds of its supporters, an important aim of the *Spitzenkandidaten* process is to **personalise the electoral campaign**, to inject a sense of urgency, hoping to reverse declining electoral turnout since 1979. The lead candidate process would also serve to make the EU institutional set-up **more understandable** to citizens, who are used to voting at national level for parties that propose their own candidate as head of the executive. This of course in those countries, i.e. the majority of Member States, which are parliamentary and not presidential democracies.

The *Spitzenkandidaten* process however has a basic flaw – it is not explicitly provided for in the EU Treaties – although neither is it forbidden by Article 17(7) TEU. The process is the result of a reading of the EU provisions regulating the investiture of the President of the Commission that takes account of the increased role of EU integration in citizens' lives and the cultural and political development of EU societies into more inclusive, participatory and transparent societies, particularly as far as the exercise of public power is concerned. It is therefore legitimate for the Parliament and European Council to reflect on (and improve) the process of such a mechanism without prejudice or fear.

Certainly, a process of choosing the head of the EU executive, that applies the words of Article 17(7) TEU to the letter, could mean the European Council deciding alone and submitting its chosen candidate to Parliament after some consultation. This would comply with the letter of the law, but would not seem to follow the development of EU politics and society, as evidenced by the **Conference on the Future of Europe**. The quest for greater citizen involvement at all levels is very present. The CoFoEU demonstrated that citizens want an EU that is closer to them; they want to have the possibility to influence EU decisions; and want to better understand how the EU institutions and EU integration works. In the light of these legitimate needs, the lead candidate process should take a place as part of the response.

This study shows that the desire to make the selection of the head of the EU executive more democratic dates back to the early 1990s, when a risk was perceived that deepening EU integration without a corresponding increase in the democratic legitimacy of its leaders would run the risk of citizen disaffection with the EU institutions and the EU project.

Since the 2014 European elections, Parliament has been a steady advocate of the lead candidate process. Paradoxically, the *Spitzenkandidaten* process run somewhat hastily in 2014, with less preparation than in 2019, achieved the result of appointing the president of the Commission. Although there was more preparation in 2019, the same result was not achieved. This raises the question whether the lead candidate process will survive this set-back, or whether it has come to the end of its cycle.

This study has considered several different avenues to make the process **part of the EU political dynamics or institutional mechanisms** – from the least invasive in the current regulatory and constitutional set-up to the most invasive. Each of the options described has advantages and risks. If the lead candidate is part of the political process that governs the formation of the EU government, it could be inspired by the way in which Member States carry out this same process. An analysis of the constitutions of Member States that are parliamentary democracies shows that the great majority do not explicitly regulate the process of choosing the head of the executive, but that constitutional practices most often apply. This observation should inspire the desire to leave the Treaties or EU legislation untouched and try to improve those aspects that did not work in the past. This would mean privileging the option that consists of improving the status quo, which would imply an effort from both institutions involved, Parliament and European Council. Improving the status quo would also require better awareness of the interinstitutional dimension and the confines of the respective powers and roles. At the same time, this option presupposes a greater understanding that EU citizens' expectations have changed together with the deepening of EU integration. The solution of improving the status quo would not require the two institutions to abdicate their role, but to make them work in synergy. This course of action would also bestow a certain degree of responsibility upon European political parties, from which an appropriate lead candidate will need to be selected.

Other solutions rely on a **formal introduction** of the lead candidate process, either in an **interinstitutional agreement**, or in **electoral law** or even in a **Treaty provision**. These solutions should however consider that the implementation of the lead candidate process is a twofold process, one aspect of which concerns the European political parties and their intention to (not necessarily collectively) embrace the process. Another concerns the possibility that the institutions involved are bound by the process. In this respect, all options described, except that based on the improvement of the status quo, tackle only this second aspect with an increasing degree of intensity and impact on the current Treaty framework (interinstitutional agreement, electoral law, Treaty provision).

The option that would rely on the introduction of a lead candidate-like process in the Treaty also offers a number of different possibilities. As the history of EU integration shows however, agreement on reform in the EU is an extremely delicate matter, which is difficult to achieve due to the **double unanimity** requirement that applies not only for ordinary Treaty revision, but also for any modification to the EU Electoral Act.

It is then, with a view not only to the feasibility of any reform, but also to the constitutional practice of Member States that a rethinking, fine-tuning, improvement of the status quo could be considered to make sure that the system remains flexible and able to adapt where necessary, to a changing Europe.

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With the intention of informing discussion in the approach to the 2024 European elections, this study examines the historical, factual and legal aspects surrounding the *Spitzenkandidaten*, or lead candidate process, which establishes a political link between the nomination of the President of the European Commission and the political composition of the European Parliament.

This study retraces the evolution of Parliament's role in the investiture of the President of the Commission, explains the reasons why such an innovation was deemed necessary as early as the early 1990s and assesses the results of this innovative process in the last two elections. The lead candidate process achieved its purposes with the election of Jean Claude Juncker as President of the European Commission in 2014, while this was not the case in 2019, Ursula von der Leyen not having been a candidate. There is therefore some uncertainty over the future of the lead candidate process and whether there is appetite for a repetition in 2024.

This paper takes stock of the reasons for the failure in 2019 and assesses the aspects that performed well, and those that did not, in the past. The analysis concludes with proposals for the future, with a view to healing the fractures that emerged during the last appointment process, seeking to explore how the lead candidate process may become part of the European Union's institutional set-up.