



TEPSA POLICY PAPER

'TOWARDS A NEW PROCEDURE FOR APPOINTING THE PRESIDENT OF THE EUROPEAN COMMISSION'

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It appears practically certain that there will be a novelty at the next elections to the European Parliament in May 2014: right from the start the campaign will have candidates for the position of President of the European Commission. In other words, each major European political family will put forth the name of the person, who, in the event of that group's victory, will occupy the Commission's highest rank. The European socialists are coming together around the name of the current President of the European Parliament, Martin Schulz; the liberals are inclined to choose Guy Verhofstadt. As for the center-right European People's Party, they have not yet made a decision, nor have other political forces. Still the principle has been decided, as two official documents made clear. The first, dated March of 2013, is a Communication from the Commission on strengthening democracy and efficiency in view of the forthcoming elections.² The second, dating back to July 4 of last year, is a European Parliament resolution on improving the practical arrangements for the European elections.³ An entire paragraph in the Commission's Communication is dedicated to the issue of a more forceful link between the ballots of the citizens of the EU and the election of President of the Commission itself, while the parliamentary resolution lays out the guidelines on how to handle the nominations for President of the Commission for the European parties, by attaching the names to their common programs and to the running of the election campaign.

One wonders why the European parties and the Commission have decided to go down this road. One of the reasons put forward is that with the entry into force of the Treaty of Lisbon, the way has been paved for potential candidates to run directly for President of the Commission. This explanation is not entirely true. The proposal to nominate candidates for the highest executive office of the EU dates back to Jacques Delors, who a few years before the European elections of 2004 was the first to prompt such an – at the time – outlandish idea. His proposal was taken up again by former Irish Prime Minister John Bruton under the Convention on the Future of Europe that was to draft the Constitutional Treaty.⁴

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² "Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct" COM(2013) 126 final, Strasbourg, 12.3.2013
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0126:FIN:EN:PDF>

³ European Parliament resolution of July 4, 2013, on the improvement of practicalities for the holding the European elections in 2014, P7_TA-PROV(2013)0323, Strasbourg, 2013.
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-323>

⁴ J. Bruton, "A proposal for the appointment of the President of the Commission in art. 18 bis of the Draft Constitutional Treaty", (Conv 476/03), European Convention Secretariat, Brussels, 2003

Then, on the eve of the 2009 election, the proposal was again revived by Tommaso Padoa-Schioppa, who together with the IAI and four other European institutions contributed to a study and to the launch of an appeal, signed by a number of European leaders.⁵ The goal was for European political parties to nominate candidates to the presidency of the Commission. However this time as well, aside from the Greens led by Daniel Cohn-Bendit, most European political parties did not feel they were ready to join the proposal.

1. THE TREATY OF LISBON

Picking up on the Convention's proposals, the Lisbon Treaty can certainly provide a legal basis for the adoption of such a practice. In reality, Articles 10 and 17 of the Treaty on European Union are couched in terms that provide a certain degree of ambiguity with respect to the appointment of the President of the Commission.

Article 10 defines the specific nature of representative democracy in the Union: paragraph 2 explains that the European Parliament on one hand directly represents the citizens of Europe, while the European Council, on the other, expresses the interests of the member governments, which in turn are democratically responsible to their national parliaments and to their citizens. Thus the issue is raised but hardly clarified, about the relationship between the European and national citizenship, with the obvious difficulties of making explicit, in institutional terms, the weight and role of the double legitimacy upon which the complex framework of European powers rests.⁶ Paragraphs 3 and 4 of the same article underline the responsibilities and the role that political parties should have in contributing to the shaping of a European 'political consciousness' and to draw Europe's citizens closer to the European decision-making system.

The issue of the Commission's presidency is tackled in Article 17, paragraph 7, that states: "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 is the legal foothold to which the above-mentioned official documents refer.

Nevertheless a few obstacles must be pointed out. The first is that the consultation procedure between the European Parliament and the European Council, expounded in Declaration n° 11 annexed to the Treaty, has not yet been fine-tuned and one hopes that it will be, possibly before the next elections rather than after; the second stumbling block concerns precisely the interpretation of the norms that do not appear to constrain much the behaviour of the European Council, which in effect continues to remain the 'deus ex machina' of the nomination procedure, particularly in those cases in which the outcome of the election is not particularly clear or in which a qualified majority of the European Council fails to coalesce around the name of a proposed candidate. There is no automatic gearbox that translates the electoral results into a decision by the Council.

⁵ G. Bonvicini (ed.), "Democracy in the EU and the role of the EP", a joint study of IAI (Rome), CSF (Turin), IEP (Berlin), Notre Europe (Paris), The Federal Trust (London), Quaderni IAI, n. 14, English Version, Rome, March 2009.

⁶ On the issue of European citizenship and EU government, see L. Moccia, "Il diritto dei cittadini dell'Unione di avere un governo", in *La cittadinanza europea* Franco Angeli, Anno X, n. 1/2013., pp. 5-19.



Aside from these caveats on the nomination procedures, it must be said that both the Commission and the European Parliament have endorsed the idea of the triple link between the voters, the candidates to the presidency and the appointment of the President of the Commission by the European Council so as to respond to the peculiar character of dual legitimacy, Council/Parliament, of the representative democracy of the Union, as mentioned earlier.

2. FOR A TIGHTER LINKAGE BETWEEN CITIZENS AND INSTITUTIONS OF THE UNION

More specifically, in its resolution the European Parliament sought to make clear the characteristics of this new system of appointment:

- the future President of the Commission shall be an elected Member of Parliament (even if he or she will have to resign afterwards), thus creating a direct linkage between the two institutions;
- the European and national parties should commit to appoint the presidential candidate at least six weeks before the vote;
- the affiliated national political parties undertake to adopt the common symbol of their European party affiliation;
- the presidential candidates will be tied to the campaign programs of the European parties that support them;
- public debates between the presidential candidates are a requisite;
- the candidate of the European party who wins the election will be the first to be considered but in addition to a qualified majority in the Council, he or she will need to obtain at least half plus one votes, i.e. an absolute majority of the European Parliament. This means that in case of a tight vote, the candidate will have to be supported by a coalition of groups in the European Parliament.

Even in the Commission's communication the overriding concern is to clarify the relationship between citizens and the EU institutions. It is argued that "if the 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."⁷

Aside from the obscure bureaucratic language, the main goal is to bring back the Europeans to the polls, politicizing and personalizing the elections. In fact the steady decline in voter turnout (from the first direct elections of 1979 to the latest 2009 it has dropped from 66% to 43%) is a scary glimpse into a worrisome popular estrangement with the European Parliament and, more generally, with the institutions of the European Union, including the Commission.

3. TOWARDS A REBALANCING OF POWERS WITHIN THE UNION?

But if this is a clearly present concern to the European Parliament and the Commission, the issue of a new procedure for electing the President of the Commission has a much

⁷ "Preparing for the 2014 European elections: further enhancing their democratic and efficient conduct" COM(2013) 126 final, Strasbourg, 12.3.2013 page 6.



more important political significance. It affects the whole of the EU decision-making system.

In recent years, in fact especially during the long monetary and financial crisis, the institutional balance has clearly shifted to the European Council, as the supreme political decision-making body. This is at the expense of the General Affairs Council, which is limited to preparing proposals to the European Council and then turn them into Community law. This is even more so with regard to the Commission, which has almost completely delegated to the European Council its own unique power of initiative that 'politicized' its role.⁸ It is true, as argued by many, that during the crisis period the Commission has gained further and important powers in the economic field, but this has occurred only in the function of monitoring and control of the policy decisions that are taken elsewhere, at the intergovernmental level. A decision to shift the balance in this direction has also been brought about by the Lisbon Treaty, which has given a full institutional role to the European Council and introduced the figure of a 'permanent' President, which aims to provide continuity and substance to its new status as the highest decision-making body. Some scholars have therefore concluded that the European Council is the only legitimate power of government and not the Commission which, according to the 'neo-functionalist' thinking, should have progressively evolved towards that role.

The problem that arises, however, is not so much in the competition between the European Council and the Commission, as in the function of legitimacy and democratic control that the European Parliament should play: if you de-politicize the Commission, you weaken the European Parliament even more and the effect cascades upon the European political parties and the nascent European political space. It is obvious that the European Parliament cannot boast any kind of leverage nor exercise democratic control over the European Council.

Based on this risk, by appointing the candidates for the office of President of the Commission, one seeks to rebalance a system of 'government', which today is dragging the EU towards a traditional model of intergovernmental cooperation. If, therefore, the question of the electorate's estrangement may be an acceptable reason to push for a change in the management mode of the upcoming European elections, it must be clear to everyone that the real challenge goes to the heart of the Union's design for European integration, which is embodied in the balance between the supranational bodies and the representatives of the national interests. And in this balance, the relationship between the European Parliament and the Commission plays an essential role.

4. THE PROS AND CONS OF THE NEW SYSTEM OF APPOINTMENT OF THE PRESIDENT OF THE COMMISSION

From this point of view the proposal to designate the candidates for the position of President of the Commission would have cascading effects: it would legitimize the role of European political parties; it would strengthen the bonds between them and the national political partners; it would give backbone and credibility to the political platforms; it would focus the election campaign on a single individual; it would make

⁸ Concerning the growing intergovernmentalism of the Union, see S. Fabbrini, "Intergovernmentalism and its limits: The implications of the Eurocrisis on the EU", in *Comparative Political Studies*, Sage London, September 2013, vol 46, 9, pp. 1003-1029.



the elections more European, rather than mostly national; and finally it would make the function of President of the Commission more political.

More than that, the indication of the figure of the President of the Commission, which will emerge from the election, might also influence the choice of the European Council for the other two key positions at the top of the EU institutions: The President of the European Council and the High Representative. In other words, the EP will be starting the whole political game of nominations, making its role towards the European Council much more relevant than in the past.

But making the President of the Commission a 'more' political figure has raised criticisms and fears on the part of some European analysts.⁹ One of the arguments that critics put forward is that a 'partisan' figure as President of the Commission would ultimately undermine its independence and its role as 'guardian' of the Treaties. Aside from the fact that the Commission is independent with respect to the governments not the political parties, the guardianship role is carried out by the entire body, which votes by qualified majority, not just by the President. More generally the fairness, or lack of such, of the President, who even today in the absence of a 'direct' election, nevertheless must still embody one or another political orientation, should be seen in light of the exercise of the powers attributed to him and of the political control that the European Parliament will exercise. The Parliament may decide to vote a no-confidence motion, with greater leeway and better knowledge of the facts than is the case today when there is a weak political link between the two bodies and the President of the Commission has waived his own right of initiative and is politically feeble.

The other objection that he would no longer be a former prime minister, a respected member of the club of prime ministers, is simply laughable. A candidate who succeeds in managing an election campaign at the European level and is able to establish himself in the vote, will certainly not be less authoritative than an 'ex' prime minister.

If anything, the serious thing to ask is whether the mere artifice of resorting to the nomination of a candidate for President of the Commission in the course of the next election would really set in motion a virtuous cycle within the EU. The question is more than legitimate in the light of the growing economic difficulties of a large part of the population of the Union, of resurgent nationalism, and the raging growth of anti-community forces, not only in weak countries but also in the strong central and northern European nations. Austerity and anti-Europeanism are an explosive mix. Confronting them with the idea that the European Parliamentary elections, even with the novelties that we have mentioned, are the appropriate answer would be very naive. But to continue to ignore the negligible role played by the European Parliament and by an increasingly technical Commission can do nothing but worsen the prospects for the future. You need to start somewhere. While waiting for the European Council to give some signs of adjustment with respect to the austerity policies conducted to date, it is worth playing the card of the election of a candidate for the presidency of the Commission who will counterbalance its power together with a European Parliament that should be more conscious of its political responsibilities.

⁹ H. Grabbe and S. Lehne, "The 2014 European elections. Why a partisan Commission president would be bad for the EU", Centre for European Reform, London, October 2013, http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/esy_commissionpres_11oct13-7937.pdf

