



Politics, Legitimacy and Institutional Balance: What is the EU and Why is the Commission?

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The 2014 European elections were intended to boost the legitimacy of both the European Parliament and the European Commission. The person nominated by the European Council as the next Commission President was the candidate of the European political party which won most seats, and was thus 'elected' by Parliament. This process may prove to have contributed to multi-level political participation in the long run. However, it has not (yet) halted the trend of an ever lower turnout in European elections, while the results produced a further weakening of the core centrist, and pro-integration groups in Parliament. Jean-Claude Juncker, the incoming President, stressed that his Commission would be political, not technocratic. He has also suggested that the democratic legitimacy of the Commission comes from the European Parliament. The Commission has always been institutionally accountable to the Parliament, but its role in promoting the general interest of the Union also depends upon its being seen as independent and impartial, and not directly linked to short-term party politics. The legitimacy of this role lies largely in the treaty which created the Commission. On the other hand, greater sensitivity to organised political opinion at EU level is a counterweight to politicisation by national influences, and the supranational appointment of the President is a balance to the composition of one member from each Member State, now including several former Prime Ministers. This may prove to be a new institutional hybrid which is actually rather well suited for the uncertain political times ahead.

Introduction

The 2014 elections to the European Parliament, and the new procedure for choosing the President of the European Commission in the light of those elections, have come at testing times for the EU. On the external front, as discussed by Simon Duke in his contribution to this number, developments in the Ukraine and Russia in particular are forcing us to address the issue of what kind of 'power' the EU is turning out to have, or to be. Internally, the EU, like some Member States, is feeling the effects of revived nationalist feelings, even as the logic of integration in its traditional form seems to be taking most of the EU inexorably in the direction of deeper political union.

All this comes at a time when new frontiers for democratic legitimacy have been opened up in the management of economic and monetary union. All Member States must satisfy conditions laid down in the reinforced Stability and Growth Pact, and must prevent either fiscal or macroeconomic imbalances. In addition, Eurozone countries must submit their draft budget plans each autumn to the Commission for comments before they are adopted. The first experience of this was predictably mild in substantive terms. Nonetheless, it is a new step in the politics of European integration that national parliaments – even if they are not in crisis – are formally obliged to receive external approval in one of the most sensitive areas of traditional sovereign competence, namely the power to decide on taxation and public expenditure within their country. It seems to be universally recognised that there is a missing element: namely, appropriate mechanisms to assure democratic legitimacy and accountability. Yet there are no easy answers. At the end of 2012 the 'four Presidents' produced a paper on 'genuine economic and monetary union'. They argued that:

*'One of the guiding principles is that **democratic control and accountability should occur at the level at which the decisions are taken.** The implementation of this guiding principle is key to ensuring the effectiveness of the integrated financial, budgetary and economic policy frameworks. This implies the involvement of the European Parliament as regards accountability for decisions taken at the European level, while maintaining **the pivotal role of national parliaments, as appropriate.**'¹ [emphases added]*

Functional logic of this nature is pulling inexorably, here too, in the direction of stronger powers for the European Parliament (although some argue that an equally just principle would be for control to occur as close as possible to the level at which decisions are **felt**). However it is not obvious, even in the best of circumstances, how to establish roles for national parliaments which will be seen as 'appropriate' by voters. Moreover, the European Parliament itself does not have a direct role in budgetary surveillance, while it remains uncertain whether all citizens would feel that it has the full 'social legitimacy' required to play such a role in the future.

Likewise, the European Commission must be able to play a strong and credible supervisory role. For this it must not only demonstrate technical competence; it must also enjoy acceptance by national parliaments and citizens as a rightful and appropriate actor in this context. This role depends on being seen as objective and impartial, but leaves open the question of political accountability.

This tension was all the greater in the case of the Commission's participation, together with the International Monetary Fund (IMF) and the European Central Bank (ECB), in the 'Troika' which defined the strong conditionality of the 'bail-out' programmes with Greece, Ireland, Portugal and Cyprus, using mechanisms which are outside the normal EU framework. Even within the EU system, however, the Commission has suffered a further relative decline in its institutional weight, as the European Council and the European Parliament have both enjoyed a

'A European Commission under my leadership will be committed to filling the special partnership with the European Parliament, as laid down in the Framework Agreement of 2010, with new life. I want to have a political dialogue with you, not a technocratic one.'

Jean-Claude Juncker, European Parliament, 15 July 2014



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strengthening of their roles. This has not been accompanied by a corresponding change in the apparent bases of the Commission's legitimacy, just when the Commission is being called upon to take the lead in enforcing unpopular policies. Even the most pro-EU media can tell the public that 'The unelected EU executive, the European Commission, now has the power to veto national budgets.'²

What is the remedy? The obvious answer has seemed to lie in making the Commission, or at least its President, be visibly 'elected'. The European elections of 2014 were thus seen as an opportunity to boost the legitimacy of both the European Parliament and the Commission, the President of which would be elected from among the candidates proposed by the European political parties.

This contribution sets out to assess what has happened, and addresses several questions. Has the new process strengthened public support for the European Parliament? Do we seem to be moving towards a multi-level party-political system? Is the kind of politicisation of the Commission which has been taking place likely to affect how that institution is publicly perceived? And what does all this mean for the future of the Commission as an 'independent' institution, charged with promoting the general interest of the Union?

The European Parliament

One of the most troubling facts in Euro-politics has been that, whereas the European Parliament steadily received ever greater formal powers since the 1980s, the average turnout in European elections across the EU decreased every time since the first direct elections were held; the respective percentages for the seven elections held every five years between 1979 and 2009 are 62, 59, 58, 57, 50, 45, 43. Each step to decrease the 'democratic deficit', in the sense of trying to replicate at EU level the institutional structure of democratic politics familiar from national experiences, seems to take place in parallel with an increase in the 'legitimacy gap', in the sense of public perceptions of the rightfulness of the process itself.

One basic challenge has been seen to lie in the widespread public perception that voting in European elections has no visible consequences. No government can be thrown out, and there are no easily identifiable changes in policy outcome as a result. One response to both these challenges seemed to be provided by more openly linking the elections to the European Parliament and the appointment of the European Commission. The Treaty now stipulates that the European Council is to propose a candidate for Commission President, 'taking into account the elections to the European Parliament'. That candidate is then 'elected' (or rejected) by the Parliament. The Parliament adopted a Resolution in November 2012 in which it '[u]rges the European political families to nominate candidates for the Presidency of the Commission and expects those candidates to play a leading role in the parliamentary electoral campaign; 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.'³ The Commission issued a Recommendation in March 2013 insisting that Member States, as well as national political parties, should inform voters of the affiliation between national parties and European political parties, and 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.'*⁴

Many observers had doubts. How distinctive could one really expect EU programmes – of candidates or of European parties – to be, even in terms of intentions? How realistic was it to suggest that a winning candidate would actually be in a position to press through any programme? The President of the Commission is certainly not comparable to a chief executive in the sense of a presidential system at national level; and EU legislation is the result of multiple processes of compromise and consensus-building. And, above all, should the Commission not be, while sensitive to political opinion, institutionally independent of party politics?

Influential political voices, including German Chancellor Angela Merkel and European Council President Herman Van Rompuy, were also heard to say that they did not accept that the appointment of the Commission President should, or would, automatically stem from the preferences of Parliament. However, they saw which way the wind was blowing and, to mix metaphors, went with the flow (unlike British Prime Minister David Cameron who maintained his principled opposition and insisted on being publicly overwhelmed by the political tide in a vote in the European Council).

Candidates (widely referred to by the German term for 'lead candidates'- *Spitzenkandidaten*) were nominated by most of the European political parties, debates took place, and the elections produced a result in which the largest party in the European Parliament, with 30% of the seats, was the European People's Party (Christian Democrats). The European People's Party (EPP) candidate, Jean-Claude Juncker, was formally nominated by the European Council at their meeting on 26-27 June, and then 'elected' by the European Parliament on 15 July. The European Parliament had once more achieved a step change in its institutional powers.

Over the following weeks, Mr Juncker, as President-elect, in 'common accord' with the Council and on the basis of proposals made by the Member States, defined the College that would be proposed for approval by the Parliament and subsequent

appointment by the European Council. The team was presented on 10 September. One member was already known, the High Representative for Foreign Affairs and Security Policy, who would also serve as a Vice-President in the College (hence the abbreviation HR/VP). For this post, the European Council had on 30 August appointed Italian Foreign Minister Federica Mogherini, when also appointing Polish Prime Minister Donald Tusk as next President of the European Council. Mr Juncker proposed a new structure for the Commission, with seven Vice-Presidents (including the HR/VP) who would lead 'project teams'. Hearings with EP Committees took place in October. Although several candidates were assessed unenthusiastically in the Parliament, only one was rejected by the EP and had to be replaced. The final team was approved by the Parliament on 22 October, with 423 voting in favour, 209 against and 67 abstaining.

Has the '*Spitzenkandidaten*' process succeeded in strengthening public support for the European Parliament?

If one measures this support in terms of electoral participation, then the answer is 'no', or at least 'not yet'. In advance of the elections, various actors seemed to have sufficient confidence in the impact of the process that they appeared to stake the legitimacy of EU politics on an increase in the participation rate. Initial results suggested that the average turnout had been 43.09%, very slightly up from the 42.97% registered in 2009. This prompted some actors and observers to conclude, with an element of premature triumphalism, that the elections had indeed been different this time and, at least implicitly, that the *Spitzenkandidaten* had contributed to this apparent success.

Yet two months after the elections, on 25 July, the final figures were discreetly published on the EP website. They showed that the downward trend had in fact continued, with an EU average turnout in 2014 of 42.54%. The rates of participation had gone up in only nine Member States, although the impact of these increases was amplified by the fact that these included France, from 40.63% to 42.43%, and Germany, from 43.27% to 48.10%. On the other hand, a new record low for any country was recorded in Slovakia, where a mere 13.05% of voters participated in the elections.

To this can be added that in many countries there was an increase in participation by citizens who are not supportive of the European Parliament. Indeed the May 2014 elections brought a new level of representation for Europeans who do not favour further (if any) 'supranational' integration, and who do not accept that the EU institutions should enjoy democratic legitimacy as higher-level political authorities rather than as functional necessities for managing cooperation between nation states.

As for the impact of the *Spitzenkandidaten* process, the European Parliament's own post-elections survey indicated that only 5% of voters were motivated by the connection between the election results and the choice of the next Commission President.⁵

It can still be reasonably argued that, even if this time it was actually not so different, this is only the beginning of a new stage; the next time will matter more. In one version, it is expected that citizens will observe the performance of the EU over the coming years, attribute the results delivered at least in part to the efforts of the President of the Commission, and vote in favour of or against that individual and his party next time. This will, so it is argued, be a key contribution to consolidating multi-level party politics, primarily along left-right lines.

A different version holds that all the elements which have been taking place – not only innovations such as the personalisation of EU politics which seem to promise positive change, but phenomena such as the increase in organised criticism of the EU which at first sight appear negative – should be seen as strands in a broader sort of politicisation of European integration. If people do take a position and get involved, even

critically, then, to paraphrase Oscar Wilde, perhaps it doesn't matter what they are saying, so long as they are talking about EU. Out of this new process of debate and contestation may come a new kind of multi-level political construction. This may not fully reflect state-inspired institutional arrangements and traditional left-right cleavages, but it could prove to be more mature and stable in the longer term.

Do we seem to be consolidating a left-right multi-level system?

The left-right dimension of Parliament has in fact been somewhat weakened following the elections in terms of its make-up. One may, in crude terms, see the three main centrist groups, the Christian Democrats (EPP), Social Democrats (Progressive Alliance of Socialists and Democrats in the European Parliament – S&D) and Liberals (Alliance of Liberals and Democrats for Europe – ALDE), as together representing not only the middle ground in left-right terms, but also the pro-integration core. There are differences over particular policy approaches. National interests, and different national understandings, may sometimes cut across group lines. Positions on integration range from committed federalism to more cautious pro-Europeanism, but the great majority of members may be counted upon to support measures which

aim at least to consolidate the Union. The weight of these three groups together has fallen over the last ten years from 76% of total EP seats in 2004 to 63% in 2014. Both the EPP and ALDE have seen a drop of around one-quarter in their respective shares, while the S&D share has remained more or less the same.

Around this core, we have a range of other groups

which are more sceptical about political integration. The biggest winner in percentage terms over the last ten years has been the Group of European Conservatives and Reformists (ECR), now the third largest group in the Parliament, who are self-defined as 'eurorealists' believing in 'a new direction for the EU, which does not destroy the organisation or undermine cooperation.'⁶ The rise in share in 2009 mainly reflected the move of the UK Conservatives away from the EPP.⁷ In 2014, the additional increase was due to the inclusion of some national parties which were not seen by all ECR members to fit into the group's core vision,⁸ and has rather diluted its coherence. The Greens are perhaps the most clearly recognisable multi-level political party in Europe. However, their representatives sit in the European Parliament in a group jointly with the European Free Alliance, whose seven representatives from Scotland, Catalonia, Wales, Valencia and Latvia 'advance the cause of Europe's stateless nations, regions and disadvantaged minorities.'⁹ Their possible Green-ness is largely coincidental.

The further one goes from the core group, the more it becomes clear that coherent positions on policy issues at European level are not always to be expected. The EFDD, which changed its name to Europe of Freedom and Direct Democracy in 2014, states that, out of 'respect for national differences and interests' the EFDD Group 'respects the freedom of its delegations and Members to vote as they see fit'.¹⁰

The Parliament itself has noted that the Commission's 'normal role [...] is to act as an independent principal protecting the EU interest and ensuring the implementation of EU rules within the limits established by the Treaties'.

One way of obtaining an indication of the degree of organisation is to look at the rate of coincidence between membership of EP groups and membership of related pan-European parties. This may loosely be taken as a proxy for the relative degrees of multi-level organisation, even though the degree of political cohesion at the level of European parties should not be exaggerated. The percentages in Figure 1 refer to the share of individual MEPs who sit in a group and who belong to a national party which is affiliated to the corresponding European party. The table shows a very clear pattern which parallels the point made above, namely that the centrist, pro-integration core group shows a very high level, while the level decreases the further one moves away from the centre.

The impact on Parliamentary outcomes of this new situation may thus be less strong than the increase in EU-sceptical numbers may seem to suggest, since the latter groups tend to be less internally coherent when it comes to voting, compared to the more disciplined and experienced core. Yet the fact remains that, just at a time when traditional left-right political assumptions are being cited as a basis for fundamental European institutional choices, that dimension has been weakened, while the axis of 'more-or-less-integration' as a dimension of choice has been strengthened, and the presence has increased of identity politics, single-issue parties and organisations which challenge both orthodox economic recipes and traditional party politics.

The European Commission

On 15 July the new European Parliament elected Jean-Claude Juncker as the next President of the European Commission. Presenting his Political Guidelines for the Next Commission, Mr Juncker promised the Parliament that he would fill with 'new life' the 'special partnership' as laid down in the 2010 Framework Agreement between the Parliament and the Commission. 'I want to have a political dialogue with you', he said, 'not a technocratic one.'

This emphatic denial of technocratic tendencies is shaped strongly by the sensitivities surrounding the Commission's role in the Euro crisis. The Parliament itself had already expressed strong concerns in March 2014, in its resolution on the role of the Troika. The whole system for managing the economic crisis has seemed to many people to be out of control and open to democratic challenge. As one eminent analyst put it:

*'the legitimacy of a technocratic-authoritarian regime that depends exclusively on output-oriented promises, and whose exercise of governing powers interferes massively and visibly with the interests and life chances of millions of citizens, must be considered extremely fragile.'*¹¹

Figure 1: Coincidence of membership of EP political groups with membership of related European political parties (August 2014)

EP Group	EPP	S&D	ECR	ALDE	GUE/ NGL	Greens/ EFA	EFDD	NI
Number of MEPs	212	191	70	67	51	50	48	52
European Party								
European People's Party – Christian Democrats (EPP)	96%							
Party of European Socialists (PES)		94%						
Alliance of European Conservatives and Reformists (AECR)			61%					
European Christian Political Movement (ECPM)			3%					
Alliance of Liberals and Democrats for Europe (ALDE)				63%				
European Democratic Party (EDP)				10%				
Party of the European Left (EL)					57%			
European Green Party (Greens)						72%		
European Free Alliance (EFA)						10%		
Movement for a Europe of Liberties and Democracy (MELD)							4%	
European Alliance for Freedom (EAF)								37 MEPs 6 MS
Alliance of European National Movements (AENM)								7 MEPs 2 MS

Source: own compilation from figures on websites of the EP and the parties, consulted 19-21 August 2014.

Notes:

1. A political group must be composed of at least 25 members (MEPs) from at least 7 Member States (MS). Members who do belong to a group are counted in the Parliament as Non-Attached (NI).
2. In August 2014, one national (in fact regional) party was a member of one European party but sat in an EP group with a different affiliation. This was the Flemish New Flemish Alliance (NVA), which remained a member of the EFA party, but chose to join the ECR (thus making the ECR the third-largest group in the Parliament).
3. Membership of the EP Groups was agreed in some cases over a short period of time in June 2014. Some national parties may become members of the corresponding European political parties in the future.
4. Four of the Non-Attached Members (one member from the German NPD, and three from the Greek Golden Dawn) represent parties which have been loosely coordinated in the far-right European National Front, together with the Spanish Falange, National Rebirth of Poland, the Italian New Force and the Romanian New Right.

Addressing the European Parliament in July, Mr Juncker promised:

'to replace the "troika" with a more democratically legitimate and more accountable structure, based around European institutions with enhanced parliamentary control both at European and at national level [...]

'The measures taken during the crisis can be compared to repairing a burning plane whilst flying. They were successful overall. Yet mistakes were made. There was a lack of social fairness. Democratic legitimacy suffered as many new instruments had to be created outside the legal framework of the European Union.'



Berlaymont Building, Brussels

The idea that economic governance and crisis management should be brought as far as possible into the EU framework receives widespread support in principle, even though important questions are posed with regard to the role that should be played by non-Eurozone countries (and EP members) in EU decisions affecting the Eurozone (which raises interesting parallels with the debate in the UK following the Scottish referendum on independence).

However, Mr Juncker has also seemed to propose a significant shift in the underlying assumptions about the sources of legitimacy of the EU institutions, and of the European Commission in particular.

Political or 'politicised'?

Mr Juncker has emphasised that his is to be a very 'political' Commission. Its members include former Prime Ministers as well as ministers from the Member States who have considerable political experience and who will, as he stressed, be sensitive to public opinion. Yet beyond this, the presentation of the proposed new College was clearly intended also to demonstrate that there would be the same balance of political opinion within the Commission as within the Parliament. Underneath the names of the nominees were the abbreviations of the European political party to which their national party was affiliated (although in one case this was then withdrawn). The balance was roughly the same as that in the European Parliament, at least for the core groups.

It is not a new phenomenon for Commissioners from the respective European political families to meet, nor for the political background of the Commission President, and the team as a whole, to be taken into account when the College is set up. This kind of 'politicisation' has been growing for

some time, together with the 'presidentialisation' of the Commission which has taken place, especially since the Nice Treaty (coming into force in 2003) first provided for the European Parliament to give its approval to the candidate for Commission President. The candidate in 2004, who was in the end José Manuel Barroso, had thus to be politically in line with the EPP/ALDE majority in the Parliament – and between the Member State governments of the day. The Lisbon Treaty provisions have further strengthened the perception that the political groups could and should influence the strategic programme of the President, and the annual work programmes of the Commission. Mr Barroso in 2009 was already required to present and defend Political Guidelines for the Next Commission.

This partial 'parliamentarisation' of the Commission may be seen as a response to the crisis of legitimacy suffered by the Commission at the end of the 1990s (with the resignation of the Santer Commission in 1999). It may also, as discussed below, be a counterbalance to the influence of national interests over (or in) the Commission, and the role of the European Council in the strategic direction of the Union.

Yet, the 'political balance' between the groups in the European Parliament should not be confused with, and certainly not replace, the 'institutional balance' between the Commission and the Parliament (or the Council for that matter).

In the Mission Letter which he sent to all candidates for the new Commission on 10 September 2014, however, Mr Juncker seemed to identify the Parliament as the unique source of legitimacy for the Commission. *'The Commission's relationship with the European Parliament is the source of our democratic legitimacy. This must, therefore, be a political and not a technocratic partnership.'* [emphasis added]

In October outgoing Commission President Barroso himself lent his voice to those who had been expressing concerns that this kind of 'party-politicisation' of the Commission may now be going too far.

"I think the Commission has to be – and my commission was – a political body. But it should not be a politicised or partisan body. [...] I think the Commission should remain a political body, but my advice would be to avoid partisan lines of fracture and polarisation," he adds. "I'm proud that we have avoided to become a mini-parliament, because party politics is for the Parliament, not for the Commission. The day the Commission becomes a mini-parliament it loses its authority." [emphasis added]¹²

Even more relevant is what the Parliament itself has recently said in this respect. In its March 2014 resolution, even while affirming the need for the European Parliament to have stronger powers, the Parliament itself noted that the Commission's 'normal role [...] is to act as an **independent principal** protecting the EU interest and ensuring the implementation of EU rules within the limits established by the Treaties'.¹³ The key word here is 'principal'. In other words, the Commission has, certainly when it comes to those kinds of task, an independent basis of legitimacy in the treaties which created it.

At this point, it is worth recalling what the Treaty on European Union actually says about the nature and role of the Commission.

Article 17

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.
3. The Commission's term of office shall be five years.
The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.
In carrying out its responsibilities, the Commission shall be completely independent. [...] the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity [...].

This is a broad range of tasks to be played by one body, and different kinds of tasks may have different requirements in terms of capacity, and of legitimacy. The European Union is not a polity with a full and simple separation of powers, and the European Commission is an organisation which has to fulfil quite different functions in the system of European governance. Some of these functions continue to rest on the concept, and image, of the Commission as an independent and impartial European actor (Guardian of the Treaties) which can, together with the Court of Justice, be trusted to ensure both fairness in the application of the rules, as well as a long-term strategic approach to the integration process, without being dependent upon the results of short-term electoral political cycles.

The EP as a balance to national interests and the European Council

There may therefore be a limit to how far the Commission should, in the interests of its institutional independence, be seen to subordinate itself to the European Parliament. At the same time, however, this rather strong pursuit of EU-level legitimacy may be understood as an inevitable counterweight in present circumstances to the other form of politicisation which has characterised the Commission in the past, namely the influence of the Member States, and to the role of the European Council.

The fact that the Commission continues to be composed of one representative nominated by each Member State

government represents a serious limitation on options concerning the Commission's independent nature and image.

The Lisbon Treaty states (still) that the College of Commissioners should in 2014 be reduced to a number equivalent to two-thirds of the Member States. This has not been put into effect (taking advantage of a way out which was deliberately left open in the relevant treaty article), mainly in response to the concerns of the Irish population who voted against ratification of the Lisbon Treaty in 2008. It has thus been accepted as a fact that the peoples of the Member States will feel more confident that their interests will be taken into account if they know that there is one of their own 'around the table', and that this presumed perception outweighs other factors in contributing to Commission legitimacy. This has largely been seen to concern smaller countries, who have historically seen in the Commission an ally *vis-à-vis* the larger countries. However, it is also a fact that the legitimacy of a Commission in which one of the largest countries was temporarily not represented could come under strain in the event of a major decision

directed at that country over an infringement procedure or a decision on state aid.

There is some benefit for decision-making in the fact that Commissioners are able to recall in the College the particular realities of the countries they respectively know best. The Collegial table, however, is one at which limited business is done. The idea that the plenary College of Commissioners discusses all major issues is rather distant from reality. Decisions taken in the name of the Commission are prepared on the basis of various organisational practices intended to ensure collegiality and consistency at a lower level. Even assuming that rotation had come into force, this would only have meant that, for a period of five years, one-third of the Member States would not have a representative in the College, the political level of the Commission. This would presumably not have prevented the Commission from conducting consultations with representatives from all national administrations through Commission Expert Groups, or from consulting all national parliaments through the 'political dialogue'. Proposals would then be negotiated in the Council with all Member State governments anyway.

Moreover, the fact that there is one Commissioner from each of the 28 Member States involves numerous challenges. Most obviously, there are just too many Commissioners for the effective distribution of tasks (or for genuine equality). Mr Juncker has grasped this nettle by naming seven Vice-Presidents who are to be responsible for Project Teams and

to coordinate the work of other Commissioners. This is widely seen as both inevitable and promising, although it was not fully clear at the time of writing how far this approach will go, and how these arrangements will work in practice.

Perhaps more important is that the difference between the EU institutions is consequently even less clear to the European public. The Council of Ministers is made up of representatives of each Member State government; so is the College of Commissioners. Not only does the Commission give the appearance of being more intergovernmental in nature, the challenge arises (very publicly) of how to deal with national interests and national preferences. It has been obvious, when recent Commissions have been put together, that Member States have tried to ensure that their respective representatives should be given responsibilities which are of particular national interest. The approach of Mr Juncker, when presenting his team, was to confront the issue head on: that is, to offer portfolios in several cases precisely to countries which face, in those areas, challenges in reconciling national preferences with European approaches. Thus, for example, the UK candidate, Lord Hill, was offered financial services, a sector in which the UK has direct interests on behalf of which it could normally be expected to lobby, even at the expense of the EU 'general interest'; having a UK national as responsible Commissioner could make this harder to get away with. Likewise, the French candidate, Pierre Moscovici, was given the economics portfolio, precisely at a time when France was facing possible criticisms, even sanctions, for breaking EU budgetary rules.



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This is not to say that the Member States could simply impose their own candidates. On the contrary, they faced significant restrictions when proposing names. The insistence of the Parliament on at least one-third of the Commissioners' being female, in particular, led to a much stronger role of the President-elect in selecting candidates.¹⁴

The emphasis on the European Parliament as the source of legitimacy may also have been seen as reinforcing the Commission's strategic role *vis-à-vis* the European Council, and perhaps Mr Juncker's own role *vis-à-vis* its President. Reporting on the summit of 26-27 June 2014, the website of the European Council (with a touch of presumably unintended irony) used as its headline 'EU leaders choose Juncker to lead the future of the Union' and then, as a sub-heading, 'European strategic agenda'.

'EU leaders [had] agreed on a strategic agenda which focuses on 5 main objectives and the means to achieve them: stronger economies with more jobs; societies enabled to empower and protect all citizens; a secure energy and climate future; a trusted area of fundamental freedoms; effective joint action in the world.'

'Leaders repeated their commitment to reforms and fiscal consolidation, but also their will to carry out the investments needed for the future. To balance fiscal discipline with the need to support growth, the EU's existing fiscal framework offers possibilities which should be used.'

'President Van Rompuy said: "We are all committed to the Stability and Growth Pact and that it is a matter of making best use of the flexibility that is built into the existing Stability and Growth Pact rules."'

Neither the Commission nor the Parliament was explicitly mentioned in the seven-page document. Whoever would be in charge in the Commission, they seemed to be saying, policy options were already circumscribed, and further strategic direction would come from the European Council whose role, according to the treaty, is to 'define the general political directions and priorities' of the Union.¹⁵

On 15 July, Mr Juncker presented to the Parliament his **Political Guidelines for the next European Commission**, entitled ***A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change***.¹⁶ The two documents are largely similar in content, although Mr Juncker did include several detailed proposals of specific concern in the Parliament. However, he also seemed to claim the right of initiative at strategic as well as legislative level: his Agenda would serve

as the starting point for the Union's 'annual and multi-annual programming' (which is indeed, under the treaty, explicitly to be 'initiated' by the Commission).¹⁷ For this purpose, he said, the Commission 'will also be able to draw on the "Strategic Agenda for the Union in Times of Change", as adopted by the European Council [...] and on the orientations that will be given by the European Parliament in the months to come'.

Conclusions

Concerns regarding the independence of the Commission are sometimes misrepresented as reflecting a desire to see it as a completely 'neutral' body, responsible only for technically competent drafting of legislation and for impartially supervising the implementation of EU policies. This could indeed reduce the role of the Commission to that of a super-secretariat, and is a distortion of what is at stake.

The Commission has been sliding into 'Euro-party-politicisation' for some time. The bilateral Framework Agreement of 2010 claimed that it would 'increase the legitimacy and the political responsibility of the European Commission'. This formulation presupposes that the Commission should be 'politically responsible' in the sense of being 'responsive' to majority opinion in the Parliament, as compared to 'institutionally accountable' to the Parliament as a whole. The Commission has always been institutionally accountable to the Parliament and this dimension of EU-level political accountability remains a necessary counterweight to the national dimension which continues to shape the composition of the College. However, there is no need to go beyond this and to suggest that the **only** source of democratic legitimacy of the Commission is the European Parliament.

The Commission continues to have its own separate source of 'original' democratic legitimacy, namely its basis in the EU treaties by which it has been established by the Member States to serve as an independent yet accountable body within the 'institutional balance' of the Union. The issue does not concern so much the right of initiative with regard to individual pieces of legislation. It is already the case that the impetus for new acts comes from a variety of sources; the Commission is called upon to play a more technical role in 'managing legislative pressure' in an effective way. The point is more the need for a body which can act in the general interest for the long term, as well as to perform supervisory and quasi-judicial functions for which party-politicisation would be inappropriate.

The Commission should be seen to have its own place, between the Parliament and the Council and a creature of neither. If nothing else, the *Spitzenkandidaten* process has helped prompt debate about the nature of institutional legitimacy in the EU, which is salutary in itself. The discourse surrounding the appointment procedures may be understood partly as reflecting the needs of the moment and should perhaps not be over-interpreted; there may well be a certain rhetorical readjustment in the coming years.

Moreover, the outcome of the 2014 process, as all actors have pursued their interests amid the constraints and opportunities of the post-Lisbon system, may in fact turn out to be the start of a new phase in the institutional arrangements of the peculiar 'partial polity' which is the European Union. With a supranational President elected by the European Parliament, and a more intergovernmentally-based College which is largely populated by senior politicians from the Member States, the result may be a new institutional hybrid which is actually rather well suited to the politically uncertain times ahead.

Notes

- * The author is grateful for comments received from Simon Duke, Sabina Lange and Eviola Prifti. Some parts of this contribution draw on Best, E., *EU Law-Making in Principle and Practice*, EIPA/Routledge, 2014. Some points were previously presented in Best, E. and S. Lange, 'European elections and questions of legitimacy', BEPA (Bureau of European Policy Advisers) Monthly, European Commission, No. 74, May 2014.
- 1 Herman Van Rompuy, President of the European Council, in close collaboration with: José Manuel Barroso, President of the European Commission; Jean-Claude Juncker, President of the Eurogroup; Mario Draghi, President of the European Central Bank. *Towards a Genuine Economic and Monetary Union*, 5 December 2012.
 - 2 'EU finance ministers aim to defuse Paris, Berlin row', *Euronews*, 13 October 2014.
 - 3 European Parliament, Resolution on the elections to the European Parliament in 2014. 2012/2829(RSP), 22 November 2012.
 - 4 Commission Recommendation of 12 March 2013 on enhancing the democratic and efficient conduct of the elections to the European Parliament (2013/142/EU). OJ L79 of 21 March 2013.
 - 5 This means, more precisely, that 'on average, 5% of voters chose this item from among the three answers they could give as a reason for voting.' In three countries, this figure reached or exceeded 10%: in Austria (12%), Germany (10%) and Luxembourg (10%). European Parliament, Directorate-General for Communication, Public Opinion Monitoring Unit/TNS Opinion, '2014 post-election survey. European Elections 2014. Analytical Overview'. Brussels, October 2014, p. 4.

- 6 <http://ecrgroup.eu/about-us/the-ecr-in-the-european-parliament>. Consulted 1 October 2014.
- 7 The ECR replaced the former Union for Europe of the Nations (UEN) group on the Eurosceptical centre-right of the Parliament's groups in 2009.
- 8 These include the seven representatives of the German anti-Euro party, Alternative for Germany (AfD); the four representatives of the Danish People's Party, with its open opposition to the EU; and the two representatives of the Finns Party. On the other hand, the New Flemish Alliance (NVA) is more pro-EU than most members of the ECR.
- 9 <http://efa.greens-efa.eu/267-presentation.html>. Consulted 1 October 2014.
- 10 EFDD Charter, <http://www.efdgroup.eu> consulted 22 August 2014. The European Alliance for Freedom led by Marine Le Pen of the French National Front and Geert Wilders of the Dutch Freedom Party, which failed to constitute a political group, also explicitly denies the necessity of any common political ground between its members: 'Concerned with issues of freedom and democracy in the EU, the EAF does not operate within the Left-Right political paradigm and its members come from across a wide political spectrum. At the national level, therefore, EAF members do not necessarily subscribe to the politics and beliefs of other members of the Alliance.' <http://www.eurallfree.org/?q=node/65> consulted 22 August 2014.
- 11 Fritz W. Scharpf, *Political Legitimacy in a Non-optimal Currency Area*. MPIfG Discussion Paper 13/15, 2013, p. 24.
- 12 *European Voice*, 15 October 2014.
- 13 European Parliament resolution of 13 March 2014 on the enquiry on the role and operations of the Troika (ECB, Commission and IMF) with regard to the euro area programme countries (2013/2277 (INI)), para. 53 [emphasis added].
- 14 I am indebted to Sabina Lange for this point.
- 15 Article 15(1) TEU.
- 16 Ten priorities were identified: A New Boost for Jobs, Growth and Investment; A Connected Digital Single Market; A Resilient Energy Union with a Forward-Looking Climate Change Policy; A Deeper and Fairer Internal Market with a Strengthened Industrial Base; A Deeper and Fairer Economic and Monetary Union; A Reasonable and Balanced Free Trade Agreement with the U.S.; An Area of Justice and Fundamental Rights Based on Mutual Trust; Towards a New Policy on Migration; A Stronger Global Actor; A Union of Democratic Change.
- 17 Article 17(1) TEU.