

Zentrum für Europäische Integrationsforschung
Center for European Integration Studies
Rheinische Friedrich-Wilhelms-Universität Bonn



Frank Decker/Jared Sonnicksen

**The Direct Election of
the Commission President**
A Presidential Approach
to Democratising the
European Union

Discussion Paper

C192
2009

Frank Decker, born 1964, is a Professor in Comparative Government and Politics at the Institute for Political Science and Sociology of the University of Bonn, where he has been teaching and researching since November 2001. He studied Political Science, Economics, Journalism and Public Law at the Universities of Mainz and Hamburg. After gaining his doctorate in 1993 on the failure of government in environmental protection (*Umweltschutz und Staatsversagen*), he completed his habilitation in 1999 with the subsequent publication of a monograph on right-wing populism in Western democracies (*Parteien unter Druck*). Both were completed at the Helmut Schmidt University of Hamburg, where he was a research assistant from 1989 to 2001 at the Institute for Political Science. He has published numerous articles, chapters and several books on parties and party systems, institutional reforms, federalism and democracy in the European Union.

Jared Sonnicksen, born 1978, is a Research and Teaching Assistant at the Institute for Political Science and Sociology of the University of Bonn. After completing his Bachelor of Arts in Political Science and German at Wabash College (Indiana, USA), he attended the University of Bonn as a Fulbright Scholar and completed his M.A. in Political Science there in 2003. He has been teaching at the University of Bonn since 2004 and is working on his doctoral thesis on EU reform and the limits and possibilities of democratization.

Frank Decker/Jared Sonnicksen

The Direct Election of the Commission President

A Presidential Approach to Democratising the European Union

1. Introduction

It has become common knowledge by now that the European Union does not have it particularly easy when it comes to democracy. A commensurately difficult task for political science is to analyse the EU in conventional democratic-theoretical categories or to produce generally valid conclusions on the condition and necessity of democracy at the European level. This situation stems from four interlinking factors: (1) the functional and structural ambivalence of this *sui generis* political body, (2) the subsequent uncertainty with regard to the criteria to be used for evaluating the democratic quality of European governance, (3) the resultant differences in opinion as to which model is the most appropriate for democratising the EU, and (4) the continuing dissent on whether the EU – because of its peculiar nature – can or should be democratised at all. It is precisely this unprecedented character in turn that renders the analysis and assessment of democratic legitimacy in the European Union a difficult, if not hopeless endeavour.¹

1 Lord, Christopher (2001): Assessing Democracy in a Contested Polity, in: Journal of Common Market Studies 39 (4), p. 641-661.

On the one hand, the EU represents substantially more than a conventional international organisation given the scope of the competences and areas of responsibility transferred to it; on the other hand, it encompasses only a fraction of those features that normally characterise a democratic-constitutional state. Nonetheless, it would seem evident that *politics* take place in the European Communities, that the European Union can be considered a *political system* and thus a suitable case for study in comparative political science.² Despite this unique political system's frequent classification as *sui generis*, there is good reason to defy the taboo against subjecting it to comparative analysis. Granted, the EU may be a "one-of-a-kind kind of polity", but then again, all political systems – not unlike people – are in sum unique. Furthermore, even if the EU is not itself a state, it can still be compared with other political systems constituted as states, if for no other reason than the common or unique (*sui generis* as it were) aspects of the EU's institutional structure and functioning can only be captured by comparing it with other polities. Assuming that, we attempt in the following analysis to provide answers to two fundamental questions: we will examine which model of government most closely coincides with the European Union. Building upon that assessment of the development path taken by the institutions of the Community, we explore the opportunities and feasibility of realising such model as a step toward more democracy in European governance.

2. The Preference for the Parliamentary Democratisation Approach

2.1. The Parliamentary Reform Model and its Merits

The supporters of a parliamentary democratisation approach are in the overwhelming majority among academic critics of the EU democracy deficit, or at least those who argue for an *institutional* path to reforming the

2 Knélangen, Wilhelm (2005): Regierungssystem sui Generis? Die institutionelle Ordnung der EU in vergleichender Sicht, in: Zeitschrift für Staats- und Europawissenschaften 3 (1), p. 7-33.

The Direct Election of the Commission President

EU.³ That the constitutional framers and scores of European political actors likewise gear their reform preferences toward the parliamentary model should come of no surprise, being already familiar with the parliamentary system of government in their home countries. With the exception of Cyprus, and Switzerland (the latter of course not belonging to the EU), all European countries have some form of parliamentary system.

In accordance with the parliamentary approach, democratising the EU is synonymous with upgrading the European Parliament (EP). The coherence of this approach lies in the fact that the EP is the only institution in the European Union that can claim for itself direct democratic legitimacy. Advancing the position of the EP would involve two main areas. First, the EP's powers and competences in the legislative process would be extended, placing it on par with the Council. Secondly, it should take over the appointment of the Commission president. The latter would be the decisive step toward a parliamentary system, characterised by a government that "emanates" from parliament and depends on its confidence.

Adopting a parliamentary system in the EU would have the advantage of creating an arrangement akin to the political traditions of the member states. The EU would become easier for citizens to comprehend and identify with. At the same time, the EU would be able to take advantage of the virtues inherent to the parliamentary model.⁴ They lie above all in the fusion between executive and legislative, which generates a large degree of flexibility: When the government loses support in parliament, the instruments of the vote of no confidence or the dissolution of parliament ensure that a new governing majority can be formed either within parliament itself

3 E. g. Bogdanor, Vernon (2007): *Legitimacy, Accountability and Democracy in the European Union*. A Federal Trust Report, London. Mittag, Jürgen (2006): *Wegmarke für die Parlamentarisierung der Europäischen Union: Die finanziellen Neuregelungen des europäischen Abgeordnetenstatuts*, in: *Zeitschrift für Parlamentsfragen* 37 (4), S. 713-728. Holzinger, Katharina / Christoph Knill (2001): *Institutionelle Entwicklungspfade im Europäischen Integrationsprozess: Eine konstruktive Kritik an Joschka Fischers Reformvorschlägen*, in: *Zeitschrift für Politikwissenschaft* 11 (3), p. 987-1010.

4 Cf. e.g. Linz, Juan (1990): *The Perils of Presidentialism*, in: *Journal of Democracy* 1 (1), p. 51-69.

or through early elections. These mechanisms in turn provide the government with substantial room for manoeuvre. In executing its programme, the government can rely on the support of “its” majority, which is reflected in the correspondingly high degree of party voting discipline. At the same time the opposition and the parliament as a whole check and scrutinise the government in order to take care that it does not diverge all too far from the will of the parliament and the people. Consequently, the parliamentary system traditionally exhibits considerable policy-making efficiency and effective party-programmatic implementation.⁵

The advantages of the parliamentary approach to democratising the EU as postulated by its supporters can thus be summarised as follows. (1) The model meets the need for stronger democratic legitimacy in the European system of government, (2) it coincides with the national traditions of the EU member states and (3) it increases the governability of the EU.

2.2. The Drawbacks to the Parliamentarization Strategy

A number of authors view the proposal to parliamentarize the EU rather sceptically. The main argument against this reform strategy is that the parliamentary model does not ‘fit’ the hybrid structure of the EU, which is characterised by a complex link between supranational and intergovernmental principles. The position of the Commission in the EU system of government, for instance, fundamentally depends on its national and partisan neutrality, which would be compromised by having the Commission tied to a parliamentary majority.⁶ In a similar vein, the EP owes its current political weight to its independent institutional position, which would diminish if it became responsible for holding a European government in office. Hence, the notion that the political system of the EU already “leans” toward a parliamentary system, essentially waiting to be further developed,

5 Katznelson, Ira (1994): British Parliamentary Democracy: Discussion, in: Political Science Quarterly 109 (3), p. 498-512.

6 Majone, Giandomenico (1994): Independence versus Accountability? Non-Majoritarian Institutions and Democratic Government in Europe, in: Joachim Jens Hesse / Theo Toonen (eds.): The European Yearbook of Comparative Government and Public Administration, Vol. I, Baden-Baden, p. 117-140.

The Direct Election of the Commission President

seems fairly questionable. For instance, the degree of control over the Commission that the EP has on account of its motion of censure is often overrated.⁷ This competence, as will be elaborated further on, is far from equivalent to the conventional vote of no confidence in parliamentary systems.

Other critics doubt even more that the EU could even fulfil the structural conditions required in order to implement a parliamentary system. For one reason, parliamentary governments rely on highly developed parties capable of organising stable majorities that support a government. The deficient consolidation of the party system at EU level, especially compared to national party systems, poses from their critical viewpoint an insurmountable hurdle for this democratisation approach. Although European political parties have organised along the left-right dimension, their pattern of interaction scarcely resembles the dynamic à la government vs. opposition typical for parliamentary systems.⁸

The structural insufficiency for parliamentarization is illustrated not least by the elections to the European Parliament. Because there is neither a uniform electoral system, nor truly pan-European parties, these elections are organised at member state level and tend to be dominated by national politics. This situation is expressed concisely by the term “second-order elections”, which refers to two fundamental aspects of European elections. First of all, the EP elections are, at best, secondary in importance compared to national parliamentary elections, which continue to be the most significant for the electorate. Secondly – and even more disconcerting from a democratic standpoint – they are carried out by the national parties with predominantly national-oriented campaigns, and are quite frequently treated as

7 Lenaerts, Koen / Amaryllis Verhoeven (2002): Institutional Balance as a Guarantee for Democracy in EU Governance, in: Christian Joerges / Renaud Dehousse (eds.): Good Governance in Europe's Integrated Market, Oxford, p. 89-108.

8 Tsebelis, George / Geoffrey Garrett (2001): The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union, in: International Organization 55 (2), p. 357-390.

“mid-term elections”.⁹ One may only wonder how, under these conditions, these elections should generate a clear “mandate to govern”. Aside from the electoral dimension, the principle of degressive proportionality used for distributing seats in the EP infringes upon the democratic principle of equality and is not compatible with the conception of the EP as a “people’s chamber”.¹⁰

Upon closer inspection, it is equally questionable that the parliamentarization of the EU is presaged by the domestic traditions of the member states.¹¹ Whether the EU possesses an affinity for the parliamentary model – as supporters of this reform model claim – can not be determined based on the reform preferences of the European political actors, even less so if their perception of how the EU works turns out to be inaccurate. That this can occur is shown incidentally by studies regarding the political systems of the member states.¹² Even assuming that the EU’s path of institutional development more or less followed the traditions of its member states up to now, it certainly does not follow that a divergence from this path must be unacceptable:

Firstly, there are ‘presidential’ elements already existent in the parliamentary systems to varying degrees.¹³ Some countries’ head of state are popularly elected and endowed with more or less considerable powers. Other countries are familiar with the presidential system at lower levels of gov-

9 Blondel, Jean / Richard Sinnott / Palle Svensson (1998): *People and Parliament in the European Union: Participation, Democracy, and Legitimacy*, Oxford.

10 Steffani, Winfried (1995): *Das Demokratie-Dilemma der Europäischen Union. Die Rolle der Parlamente nach dem Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993*, in: Steffani, Winfried / Uwe Thaysen (eds.): *Demokratie in Europa*. Op-laden, p. 33-49.

11 Gaupmann, Gloria (2008): *Präsidentalismus als Leitmotiv für Europa? Eine neue Perspektive für die institutionelle Weiterentwicklung der Europäischen Union*, Marburg, p. 289ff.

12 In the case of Germany for instance, Werner Patzelt (1998) observed that the majority of citizens there fail to grasp how the parliamentary system of government works; a significant minority (18 percent) even believed their political system to be a presidential system, while a third said they would prefer that system.

13 Poguntke, Thomas / Paul Webb, Hg. (2007): *The Presidentialization of Politics. A Comparative Study of Modern Democracies*, Oxford.

The Direct Election of the Commission President

ernment such as the direct election of mayors, as is the case in Germany in nearly all municipalities. If national parliamentary traditions were indeed so indelible, the citizens would be hopelessly puzzled by the introduction of a “foreign” element like the direct election of their municipal leaders – of course, the opposite appears to be the case.

Secondly, the political systems of the member states encompass, within the framework of the parliamentary form of government, a wide spectrum of institutional arrangements, some of which more closely resemble, some of which significantly diverge from the EU polity. To assume that member state nationals will prefer a model of the EU system of government based on their “home” systems, though intuitively logical, would in fact be absurd. Their majoritarian-democratic parliamentary system – or more precisely, their socialisation therein – does not hinder British politicians from pursuing a diametrically opposite type of system at the European level: a highly consociational, complex power-sharing arrangement, in which consent among national governments remains the decisive foundation for legitimacy.¹⁴ Vice versa, the countries rooted in consensus democracy such as the Netherlands or Belgium have traditionally been the ones calling for more elements of majoritarian representative democracy in the European decision-making system. Accordingly, institutional inclinations seem to be fed primarily by broader visions of integration and the EU’s *telos* as opposed to native political traditions.

3. The Affinity toward Presidentialism

3.1. The Typology of Parliamentary vs. Presidential Systems of Government

As the previous remarks illustrate, there is reason to doubt that the EU represents an incipient parliamentary system of government. This will

14 Decker, Frank (2000): Demokratie und Demokratisierung jenseits des Nationalstaates: Das Beispiel der Europäischen Union, p. 611f., in: Zeitschrift für Politikwissenschaft 10 (2), p. 585-629.

hardly change under the provisions of the Treaty of Lisbon.¹⁵ However, the question remains as to which system of government the European Union has developed or more closely resembles. Based on the dichotomous classification of types of government as parliamentary or presidential, first developed by the British scholar on parliamentarianism, Walter Bagehot (1867), all political systems can be categorised as one or the other form – including the EU. The core of this typology lies in the relationship between the executive and legislative, that is, the branches that constitute the democratic substance of a governmental system.

Nonetheless, debate abounds on the existence of hybrid forms in addition to the “pure” forms. The extent to which one can identify mixed forms depends on the criteria used. Following the scheme put forth by Winfried Steffani, who narrows the typology down to a decisive (single) differentiating factor, namely the removability or non-removability of the head of government (the prime minister) for political reasons, the possibility of hybrid systems can be dismissed.¹⁶ Basing the typology on several criteria of equal significance on the other hand, as proposed by numerous English-speaking political scientists, it becomes possible to identify other types of government in addition to the purely parliamentary and presidential forms.¹⁷

The intense discussion on possible hybrids was initially triggered by the “semi-presidential” system coined by Maurice Duverger.¹⁸ This model refers to a system with a parliamentary institutional framework, in which there is government headed by a prime minister responsible to parliament, but also a – usually popularly elected – president with governmental powers in addition to the role as head of state. While Steffani sees no reason to

15 Höreth, Marcus / Jared Sonnicksen (2008), *Making and Breaking Promises. The European Union under the Treaty of Lisbon*, Bonn (ZEI Discussion Paper, C 181).

16 Steffani, Winfried (1992): *Parlamentarisches und präsidentielles Regierungssystem*, in: Manfred G. Schmidt (ed.): *Die westlichen Länder*, München (Lexikon der Politik. Vol. 3, hg. von Dieter Nohlen), p. 288-295.

17 Shugart, Matthew Soberg / John M. Carey (1992): *Presidents and Assemblies. Constitutional Design and Electoral Dynamics*, New York.

18 Duverger, Maurice (1980): *A New Political System Model: Semi-Presidential Government*, in: *European Journal of Political Research* 8 (2), p. 165-188.

The Direct Election of the Commission President

remove this type of government system from the dualistic typology, a large number of authors argue that it is removed far enough from the parliamentary form to warrant consideration as its own type of system.¹⁹

Even if one disagrees with the latter view, one must still establish whether it is sufficient to reduce the criteria to the differentiating factor of removability / non-removability in order to preclude the possibility of mixed forms. Steffani argues that the negative criterion of removability / non-removability essentially implies a certain type of procedure for appointing the government, rendering this criterion (appointment of government) secondary in significance as a differentiating factor for his typology. In doing so however, he overlooks three issues: *Firstly*, a presidential system can only fulfil democratic standards if the president enters office via democratic means. Thus, the “negative” factor, non-removability of the head of government for political reasons, must be supplemented by a “positive” factor concerning how the president is “appointed” or selected in order to be classified as a presidential system. Or put differently, an absolutist, hereditary monarchy can hardly be deemed a presidential system of government. *Secondly*, appointment and removability do not necessarily need to coincide with each other institutionally. Just as it is possible for a non-removable government to be appointed by parliament (Switzerland), it is equally conceivable to have a system where a directly-elected head of government remains dependent on the confidence of parliament (Israel 1996-2001). And *thirdly*, the criterion of removability vs. non-removability of government for political reasons is indeed much more ambiguous than is often assumed.

All three issues are exemplified in the case of the European Union. Thus, the following seeks to examine how the appointment and removal of the “European government” are addressed and regulated in the treaties and have occurred in practice. In order to be able to classify the EU system of government, the secondary criteria of the parliamentary-presidential typol-

19 E.g. Kailitz, Steffen (2006): Parlamentarische, semipräsidentielle und präsidentielle Demokratie – idealtypische und reale Unterschiede der politischen Strukturen und Prozesse, in: Uwe Backes / Eckhard Jesse (eds.): Jahrbuch Extremismus & Demokratie (E&D), 18. Vol., Baden-Baden, p. 34-56.

ogy will be consulted. In a further step, the executive structure will be analysed to determine whether the features of the semi-presidential system of government are fulfilled.

3.2. *Appointing a European “Government”*

The European Commission exercises the most important executive powers in the Community and will be – for the purpose of analogy – referred to as the European government. Its appointment involves a complicated procedure. In most systems, political leadership is selected and legitimated, directly or indirectly, as a result of electoral competition. The administrative part of the executive branch, in contrast, is usually removed from electoral majority control so that the bureaucracy and agencies can serve the “common good” instead of pursuing particularistic majority interests.²⁰ The European Commission represents a distinctive combination of both aspects of the executive. In the role of administrative agency, the Commission possesses a much greater scope of authority than administrations in national political systems, which raises serious legitimacy concerns. On the other hand, its political competences do not extend nearly as far as those of national governments – thus, the Commission’s limited power coincides in turn with its deficient democratic legitimacy.²¹

Until 1994, the Commission President was appointed “by common accord” of the governments of the member states, assembled as the European Council. Since then, this procedure has undergone five changes, all of them geared toward increasing the democratic legitimacy of this office. Firstly, the investiture vote was introduced by the Maastricht Treaty (1992), on account of which the nomination of the European Council required the approval of the European Parliament. At the same time, an additional provision of the treaty adjusted the term of office of the Commission Presi-

20 Majone, Giandomenico (1994): Independence versus Accountability? Non-Majoritarian Institutions and Democratic Government in Europe, p. 117ff., in: Joachim Jens Hesse / Theo Toonen (eds.): The European Yearbook of Comparative Government and Public Administration, Vol. I, Baden-Baden, p. 117-140.

21 Sbragia, Alberta (2002): The Dilemma of Governance with Government, Cambridge (Harvard University / Jean Monnet Working Paper 3/02), p. 2ff.

The Direct Election of the Commission President

dent, which until then lasted four years, to match the five-year legislative period of the EP. Thirdly, the Treaty of Nice (2001) set forth that the European Council was to nominate a Commission President, no longer by common accord (i.e. unanimity), but rather by qualified majority. This rule was applied for the first time with the installation of the Barroso Commission in 2004. Under the Treaty of Lisbon, when nominating the Commission President, the European Council is to “take into account” the results of the EP elections, while the investiture vote has been advanced to a formal “election” of the Commission President by the Parliament (Art. 17 (7) TEU).²²

The provisions of the Lisbon Treaty have not, however, changed the fundamental character of the appointment process. Because the candidate for Commission President is nominated by the qualified majority of the European Council, the candidate has a more highly legitimate position than previously, making it more difficult for the EP to reject the proposed candidate. Taking a closer look, it becomes clear that the EP does not have the power to “elect” the Commission, as the procedure is nominally and misleadingly referred to in the treaty, but rather a power to confirm. The actual power to nominate remains with the heads of state and government of the EU member states.²³ The previous voting results in the EP, normally a broad, cross-party majority for the Commission President, illustrate the confirmatory character of the EP’s role in the appointment procedure.

Of course, the European Council is well advised to consult the European Parliament early on in the nomination process in order to ensure that the EP confirms its candidate. But the influence of the Strasbourg assembly remains far from that of a positive appointment power. For instance, the rejection of France’s and Germany’s preferred candidate for Commission President, the liberal Belgian Prime Minister Guy Verhofstadt, in favour of

22 The Treaty of Lisbon consists of the “Treaty on European Union” and the “Treaty on the Functioning of the European Union”, which replace the “Treaty establishing the European Community” (TEC).

23 Höreth, Marcus (2004): Kontinuität oder Pfadsprung? Das institutionelle Dreieck in Europa nach dem Verfassungsvertrag, p. 1269, in: Zeitschrift für Politikwissenschaft 14 (4), p. 1257-1296.

the conservative Portuguese candidate José Manuel Barroso in 2004, reflected to a greater extent the changed political party and majority constellation in the European Council (i.e. the parties in power in the member states) as opposed to the results of the EP elections. To pre-empt the Council, the larger European political party groups in the EP could have campaigned with top candidates for the office of Commission president, which, perhaps wisely, none of them have attempted in the past. Thus, prerequisite for true *parliamentarization* of the appointment procedure would be *Europeanization* of the EP elections, meaning that the elections revolve around European issues and candidates. Were that the case, the Council and the Parliament could swap their current roles in the appointment procedure; the treaty text would not even have to be amended.

But the appointment process does not end with the enthronement of the Commission President. After the president assembles the team of commissioners in concurrence with the member state governments, the Commission must be approved as a whole by vote of the Parliament before it can assume office (Art. 17 (7) TEU). A comparison with other constitutions reveals that a power to confirm the government is reserved to parliaments in several parliamentary systems (e.g. in Finland, Ireland, Sweden and Spain, as well as in Germany at the State or *Länder* level), although it is more the exception than the rule.²⁴ In presidential systems, confirmatory powers belong on the other hand to the usual “checks and balances” that serve to prevent a concentration of executive power. In the case of the United States, the requirement of the Senate’s “advice and consent” (Article II, Section 2, Clause 2, US Constitution) applies to individual appointments by the President. This reflects a compromise in granting partial, but not unreserved legislative control over the executive, since a vote of disapproval against the president’s entire cabinet would, in effect, amount to a rejection of the president. In the EU on the other hand, the parliamentarians’ vote of consent vis-à-vis the Commission as a whole apparently compensates the EP for its lack of a positive power of appointment. Yet, the

24 Ismayr, Wolfgang (2006): Die politischen Systeme Westeuropas im Vergleich, p. 18f., in: Ismayr, Wolfgang (ed.), Die politischen Systeme Westeuropas, 3. Auf., Wiesbaden, p. 9-52.

The Direct Election of the Commission President

failed first attempt at confirming the Barroso Commission clearly showed how awkward this rule is, particularly in light of the Commission President's position in the cabinet-building process. It would only be practicable if the Commission President had genuine latitude in selecting the members for the Commission, as provided for in the draft constitution proposed by the Convention.²⁵ In that case, the Commission President could consult the Parliament beforehand, take its preferences into consideration and thus be able to ensure EP support for the Commission. Under the current arrangement, the president's hands are tied by the individual member states. Consequently, the first rejection of a Commission by the EP (October 2004) may have been ostensibly directed at the allegedly unsuitable Commission nominees; the real object of disapproval were the heads of state and government and *their* disregard of the EP's preferences.

3.3. *The Vote of Censure against the Commission*

Justifiably, the EP's rebellion has been interpreted as a "sign of more parliamentarianism in Europe". That this comment stems from Hans-Gert Pötering, at that time chair of the EPP group in the parliament, appears remarkably schizophrenic since it was the Christian Democrats and Conservatives who promised to support Barroso in the first place. Thus, more parliamentarianism in the EU cannot be equated with a transition to a parliamentary-style system of government. The institutional position of the European Parliament can be viewed more aptly as hermaphroditic, combining features of parliamentary and presidential systems, though the relations between the parliament and the Commission tend to demonstrate a greater affinity toward the separation of powers intrinsic to presidentialism. The latter is reflected in the rules on the censure vote (Art. 234 TFEU), which are closely linked with the appointment procedure.

According to the Lisbon Treaty, the Commission, "as a body, shall be responsible" to the European parliament (Art. 17 (8) TEU), signifying at a first glance a parliamentary system. But one should reject viewing this pro-

25 It was planned to allow the Commission President to choose for each Commission position one from three nominees proposed by the member states. This arrangement was later dropped by the Heads of State and Government (Höreth 2004: 1267).

vision as equivalent to the normal parliamentary power of removability for two reasons: *firstly*, for the EP vote of censure to be successful, it must be carried by a two-thirds majority, whereas the absolute majority suffices for the investiture of the Commission. Such a disparity between appointment and removability of government is unparalleled among parliamentary democracies. *Secondly* – and linked to the first – the removability of the Commission is not contingent upon “political” reasons, but rather serves as a sanction against the Commission or Commissioners for legal or ethical misconduct, as demonstrated by the (failed) motion of censure against the Santer Commission in January 1999.²⁶ Moreover, the Parliament has tried in vain to extend its power of censure from the Commission as a whole to individual Commissioners. This likewise attests, if only indirectly, to how “unparliamentary” the EP’s censure vote is. If this power were based on the political principle of removability, the EP would be capable of effecting individual resignations merely by threatening a “vote of no confidence”.²⁷ In the European Union, the rule depicts a legal principle (disguised as a political procedure) that resembles the American *impeachment* much more than the motion of censure²⁸ in the parliamentary governmental sense. Like the power to approve appointments, this rule constitutes a typical feature of presidential systems.

Applying the further (secondary) criteria of the parliamentary vs. presidential typology, we get an even more complete picture. For instance, neither the Commission, nor the Council (Council of Ministers or European Council) have the power to dissolve the European Parliament, which is normally

26 Lautz, Andreas (1999): Das erste Misstrauensvotum des Europäischen Parlaments gegen die Europäische Kommission, in: Zeitschrift für Politikwissenschaft 9 (2), p. 439-459.

27 Precisely for this reason, the principle of ministerial responsibility has become widely obsolete in the political practice of parliamentary systems. The political vote of no confidence endows the parliament with sufficient pressuring capability to bring about the dismissal of individual ministers.

28 The English treaty text uses “motion of censure”; the term is synonymous with vote of no confidence in a number of EU countries (e.g. France motion de censure, Spain moción de censura, Dutch Motie van Afkeuring) and is used as such in the respective versions of the treaty. The same applies to the German version Misstrauensantrag or Swedish Misstroendevotum, literally “vote of no confidence”.

The Direct Election of the Commission President

the counterpart to the political removability of the government by parliament in parliamentary systems. In 2001, the former French Prime Minister Lionel Jospin proposed introducing a power to dissolve the EP,²⁹ but his idea was not taken up by the Constitutional Convention. An additional “fit” with the presidential system is the (de facto) incompatibility between executive office (in the Council and Commission) and seat in Parliament, though it is not explicitly prohibited. Naturally, this does not constitute a necessary differentiating factor as a number of parliamentary systems also abide by the principle of incompatibility.

With regard to legislative powers, the EU becomes more difficult to categorise.³⁰ On the one hand, the Commission has the power of legislative initiative – even a monopoly of initiative in the “first pillar” – typical of parliamentary governments. On the other hand, the Commission possesses a quasi-veto reminiscent of presidential or semi-presidential systems as it can withdraw or amend its proposals at any time in the legislative process. Under the Treaty of Lisbon (Art. 293 (2) TFEU), the Commission will maintain this right, which is supposed to help ensure that the legislative institutions, Council of Ministers and European Parliament, cannot depart from Commission proposals arbitrarily. Certainly the EP would prefer to have this power removed or at least limited to the initial stage of the legislative process in order to strengthen its own lawmaking influence.

All the same, the Commission’s right of withdrawal is linked to the EU provision that all regulations, directives and decisions made by the Council and Parliament must originate from a proposal by the Commission (Art. 289 (1) TFEU). The Commission monopoly of initiative is a rather unparliamentary idiosyncrasy of the EU that arises out of the institutional linkage between supranational and intergovernmental forms of integration. As a result, the Council cannot make decisions, even by unanimity, independent

29 Jospin, Lionel (2001): Europa schaffen, ohne Frankreich abzuschaffen. Rede zur Zukunft des erweiterten Europas vom 28. Mai 2001, abgedruckt in: Blätter für deutsche und internationale Politik 46 (7), S. 889-896.

30 Gaupmann, Gloria (2008): Präsidialismus als Leitmotiv für Europa? Eine neue Perspektive für die institutionelle Weiterentwicklung der Europäischen Union, Marburg, p. 245f.

of the Commission. This serves to prevent future governments from being able to downgrade the achieved level of integration via the normal legislative procedure. One may doubt that the EP could pose a similar threat. Granting it the right of initiative, however, would pose the question as to how the Commission should be adequately involved in the legislative procedure when the EP initiates.³¹ This question would be superfluous in a parliamentary system. The lack of legislative initiative will most likely remain one of the deficits that characterise the Strasbourg assembly and distinguish it from “normal”, democratic parliaments – from the violation of the principle of equality regarding the distribution of seats, the non-uniform electoral procedure to its lower position as a legislative body vis-à-vis the Council.

3.4. *Bicameralism*

The latter involves another secondary feature which can be considered for categorising parliamentary and presidential systems. Characteristic of the parliamentary system of government is the “fusion of powers” between the executive and legislative in the form of governing majority pitted against the parliamentary minority or opposition. A situation in which the government must share legislative power with a second parliamentary chamber could prove frustrating for the rivalry between (governing) majority and (opposing) minority, most of all to the former if the latter has a majority in the second chamber. Thus, unsurprisingly, second chambers with equal or nearly equal powers (as in Germany or Australia) represent an exception among parliamentary systems.³²

31 An alternative option for upgrading the EP would be an extension of the already-existing right to request legislative proposals from the Commission (Art. 225 TFEU). For example, these requests from the EP for legislative proposals could be made binding for the Commission.

32 A further example would seem to be the Italian Senate. Its on-par footing with the first chamber (Chamber of Deputies) is also reflected in the fact that it shares equal power with the Chamber of Deputies in appointing and, if applicable, removing the government – a considerable divergence from other parliamentary systems. Because the elections to the Senate occur simultaneously with elections to the Chamber and according to similar rules, the party-political composition of both houses tends not to differ much. This on the one hand precludes the possibility of divided govern-

The Direct Election of the Commission President

On the contrary, they fit quite well into the power-separating logic of presidential systems with their lack of institutionalised governing majority vs. opposition. In order to countervail their feared dominance of the legislative branch, the U.S. founding fathers consciously opted for a fully bicameral legislature, in which the Senate and House of Representatives would check and balance one another. This should by no means suggest that presidentialism relies on this type of balance-of-power structure in its legislative branches. Indeed, nearly half of all presidential systems (almost exclusively in Latin America) operate with unicameral legislatures.³³ Where second chambers do exist in presidential systems, they are almost always endowed with powers equal to the first chamber, whereas in parliamentary systems the democratically constituted “popular chamber” is nearly always the more powerful one. This difference is also reflected in the fact that the terms “first” and “second” or “upper” and “lower” chamber are not commonly used in the context of presidential systems.

In the EU, the bicameral logic is even magnified by the slight predominance of one “chamber” in the legislative process – precisely that chamber that is *not* organised according to the principle of democratic equality. Here, any legal act must be passed by the Council, but not necessarily by the European Parliament. Even if there were a fusion of powers between the Commission and the Parliament, the former hence being appointed and held in office by a majority in the latter, the Council as an independent institution could and would still play such a strong role in the legislative process that nothing could be passed against its will. In this respect as well, the institutional system of the EU diverges significantly from the power-fusing design of the parliamentary system of government.³⁴

ment for the most part. But it raises the question as to why it is necessary at all to have a second chamber of parliament that is nearly identical in structure and function to the first chamber.

- 33 Kailitz, Steffen (2008): Zwei Seiten der gleichen Medaille? Zum theoretischen und empirischen Zusammenhang zwischen der Regierungsform und der Ausgestaltung von Zweikammersystemen, in: Zeitschrift für Parlamentsfragen 39 (2), p. 387-414.
- 34 Bogdanor, Vernon (1986): The Future of the European Community: Two Models of Democracy, p. 174, in: Government and Opposition 21 (2), p. 161-176.

3.5. *The Divided European Executive as Semi-presidential Arrangement*

Up to now, we have assumed that the governing function in the EU is primarily carried out by the Commission and the legislative function by the various Council formations and the Parliament. To be sure, this only provides a limited picture of the complex reality of European governance. Just as the Commission participates in the legislative process, so does the Council serve as an executive institution, both functionally and structurally. That the Lisbon Treaty will extend its executive powers corresponds with the interdependency between supranational and intergovernmental institution-building characteristic of the EU.³⁵ The numerous institutional innovations in the Lisbon Treaty include, *firstly*, the formal incorporation of the European Council as an institution of the EU, now charged explicitly with the function of providing the impetus for future development and defining “the general political direction and priorities” of the Community (Art. 15 (1) TEU). *Secondly*, the office of a President (of the European Council) was established, who will be elected by the heads of state and government by qualified majority for two-and-a-half years, renewable once (Art. 15 (5) TEU). In contrast to the current Council presidency, the future president may not hold a national office during her or his tenure. The candidate can only be recruited outside of the circle of acting heads of government or state – or, if applicable, must at least resign from that office upon appointment. *Thirdly*, the office of the High Representative for Foreign Affairs and Security Policy has been upgraded institutionally, even though nominally it is a step down from the title of “Foreign Minister” as originally envisioned by the Constitutional Treaty. According to the “double hat” arrangement, the High Representative will serve as a member of the Commission (as its Vice-President), but also as chair of the Foreign Affairs Council (Art. 18 TEU), deviating from the principle of the rotating Council presidency.

35 Decker, Frank (2002): Institutionelle Entwicklungspfade im europäischen Integrationsprozess. Eine Antwort auf Katharina Holzinger und Christoph Knill, p. 614f., in: Zeitschrift für Politikwissenschaft 12 (2), p. 611-636.

The Direct Election of the Commission President

In general, the double or dual executive represents a typical feature of the parliamentary form of government.³⁶ While the functions of head of state and head of government are merged into one office in presidential systems, they remain institutionally separate in parliamentary ones. But the parliamentary systems of South Africa or Botswana – or at the *Länder* level in Germany – show that exceptions are possible. Conversely, a dual executive in a presidential system is theoretically imaginable. The difference of dual vs. unified executive is thus not born out of a functional necessity for parliamentary and presidential systems respectively, but is rather explainable in historical terms – that is based on the historical development of both types of system.

Among the systems with a dual executive, the question posed for political scientists is how power is divided between the two institutions. In most parliamentary systems, the head of government tends to be the more powerful, if not *de jure*, then *de facto*, while the president (or monarch) is relegated to the symbolic, ceremonial tasks of head of state. In other cases, the president has significant political powers that make this office a potential part of the government. Determining who the real “chief executive” is becomes difficult. This can depend on the constitutional provisions and their interpretation in practice, but also on the party-political situation, i.e., who is in the majority and where. Exemplary for this semi-presidential type of system is the French Fifth Republic.

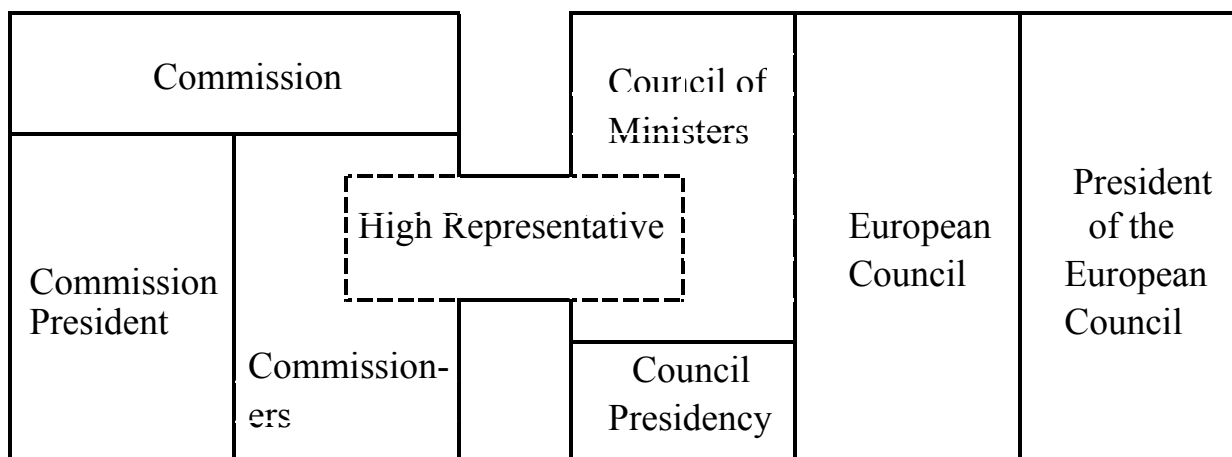
The parallels to the EU polity are fairly obvious. In the area of the executive, the responsibility for governing falls both on the Commission and the Council. Aside from the office of the High Representative and how it is structured under Lisbon, the heads of both executive branches are institutionally separated. Within this framework there is a series of functional overlaps that are foreign to the national political systems with dual executives. For example, the Commission has a strong leadership instrument through its monopoly of legislative initiative, cutting into the role of the European Council as provider of “general political direction and priorities”,

36 Steffani, Winfried (1992): Parlamentarisches und präsidentielles Regierungssystem, in: Manfred G. Schmidt (Hg.): Die westlichen Länder, München (Lexikon der Politik. Band 3, hg. von Dieter Nohlen), S. 288-295.

and is by no means reduced to the classic executive functions of monitoring and implementing policy.

Within the Council, the heads of state and government in turn share leadership with the semi-annually rotating Council presidency. The latter has evolved into an increasingly important agenda-setter, whose working programme can make the difference between stagnation and progress in European politics.³⁷ And, as if the complexity were not high enough yet, the Treaty of Lisbon will bestow executive tasks upon the newly-established President of the European Council, rendering the “executive branch” of the EU even more diffuse. The President is supposed to promote the cohesion and continuity of the European Council and provide impulses for the Council, but also ensure the representation of the EU in external affairs – “without prejudice to the powers of the High Representative” (Art. 15 (6) TEU). At the same time, this suggests that the President of the European Council is to grow into the role of a representative “head” of the European Union that, until now, has been mainly exercised by the Commission President.³⁸

Fig. 1: Structure of the EU-Executive



37 Schout, Adriaan / Louise van Schaik (2008): Reforming the EU Presidency?, in: Zeitschrift für Staats- und Europawissenschaften 6 (1), S. 36-56.

38 Staeglich, Simone (2007): Der Kommissionspräsident als Oberhaupt der Europäischen Union. Vom primus inter pares zur europäischen Leitfigur, Berlin.

The Direct Election of the Commission President

Because the EU – as shown above – lacks the central features of a parliamentary system, the analogy should not be overstretched.³⁹ This applies all the more considering that the EU fails to fulfil another essential element for classification as a semi-presidential system according to Duverger, namely, the popular election of the president. The comparability is thus reduced to the distribution of power(s) with the executive, where the Commission and Council or the Commission President and the President of the European Council “rival” one another. It remains to be seen whether this diffuse structure perpetuated and even intensified by the Treaty of Lisbon will entail additional potential for gridlock and impairment of the EU institutional performance and efficiency.⁴⁰ If such risks are impending, they would most likely to be posed by the Council as a whole and less by the newly created offices of the President and High Representative. This would be one reason why a popular election of the President of the European Council⁴¹ would not bring the EU much further, either politically or democratically. To prevent a further shift of power toward intergovernmentalism, efforts to democratise the EU system of government need to be directed at the supranational institutions, Parliament and Commission. In the following section, we discuss whether the direct election of the Commission President offers a suitable approach. Before doing so, we provide below an overview of the parliamentary and presidential features of the European system of government.

39 Knelangen, Wilhelm (2005): Regierungssystem sui Generis? Die institutionelle Ordnung der EU in vergleichender Sicht, in: Zeitschrift für Staats- und Europawissenschaften 3 (1), S. 7-33.

40 Kurpas, Sebastian et. al. (2007): The Treaty of Lisbon: Implementing the Institutional Innovations, Brüssel (Egmont / European Policy Centre / Centre for European Policy Studies).

41 Such a proposal was made recently by the German Minister of Interior, Wolfgang Schäuble.

Fig. 2: Parliamentary and presidential features of the EU system of government

		Parliamentary	Quasi-presidential	Presidential
Primary features	Appointment		X	
	Removal		X	
Secondary features	Dissolvability			X
	Compatibility / Incompatibility			X
	Power of legislative initiative	X		
	Veto power		X	
	Bicameralism			X
	Unified / dual executive	X		

4. The Direct Election of the Commission President as a Democratisation Approach

4.1. Direct Election and Presidential Functional Logic

Given the affinity of the European institutional system to presidentialism, it is astounding how few supporters there have been for a presidential democratisation approach in the EU reform discussion. In a number of academic overviews concerning the democracy deficit and reform options, the possi-

The Direct Election of the Commission President

bility of introducing the direct election of the Commission President is not even mentioned,⁴² despite the fact that the presidentialism hypothesis is actually not all that new. Originally postulated by British political scientist and legal scholar, Vernon Bogdanor,⁴³ on the occasion of the Single European Act, the first major reform of the institutions of the European Community, the notion was further developed by Simon Hix and continues to be put forward in the reform discussion.⁴⁴ In the context of the debate on a constitution for Europe, the introduction of a directly elected Commission President was furthermore proposed by then German Foreign Minister Joschka Fischer and later by former Irish Prime Minister John Bruton.⁴⁵

In the course of the Convention however, Fischer for example distanced himself from his famous speech at the Humboldt University and sided with the supporters of the parliamentary reform model. Even more remarkable though is the about-face by the originator of the EU presidentialism concept, Bogdanor. Not only does he unequivocally recommend the parliamentary system as the suitable form of government and democratisation approach, he also bases his concept on the British model, which as a strict majoritarian system could be difficult to impose upon the heavily consensus-oriented structure of the European decision-making system. Nonetheless, Bogdanor seeks to reconcile the two, the EU political system with Westminster democracy. Consequently, his proposal extends further than

42 E.g. Kohler-Koch, Beate / Berthold Rittberger, Hg. (2007): *Debating the Democratic Legitimacy of the European Union*, Plymouth.

43 Bogdanor, Vernon (1986): *The Future of the European Community: Two Models of Democracy*, in: *Government and Opposition* 21 (2), p. 161-176.

44 Hix, Simon (1998): *Elections, Parties, and Institutional Design. A Comparative Perspective on European Union Democracy*, in: *West European Politics* 21 (3), S. 19-52. Cf. Decker, Frank (2000): *Demokratie und Demokratisierung jenseits des Nationalstaates: Das Beispiel der Europäischen Union*, in: *Zeitschrift für Politikwissenschaft* 10 (2), S. 585-629.

45 Fischer, Joschka (2000): *Vom Staatenbund zur Föderation*. Speech delivered at 12 Mai 2000 at the Humboldt-University in Berlin, 12 Mai 2000, printed in: Christian Joerges / Yves Mény / Joseph H.H. Weiler (eds.): *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*, San Domenico, p. 5-17. Bruton, John (2003): *A Proposal for the Appointment of the President of the Commission as Provided for in Article 18.bis of the Draft Constitutional Treaty*. Contri-

the mainstream approach for parliamentarizing the EU by suggesting – beyond linking the appointment of the Commission to the European Parliament elections – that the partisan composition of the entire Commission reflect the majority party or parties in the EP that “elect” it. According to Bogdanor, because the EP is already in a position to push through a more party-political election of the Commission, democratising the EU along the parliamentary developmental path would not even require changes to the existing treaties. This constitutes the main advantage of this model over the presidential direct-election concept.

Even taking the last argument⁴⁶ at face value, the question remains as to why the Parliament and the parties represented there should bring themselves to adopt such a strategy, which they could have done at any time in the past. Since they have not up to now, for whatever reason, the institutional and political framework would need to have changed in such a manner that now provides the necessary incentives for the EP members to assert themselves in the Commission appointment; this does not seem to be the case. Perhaps even more important than the formal pre-requisites are the substantive conditions regarding system compatibility or “fit”. A key factor here is the party system. Holzinger and Knill point out appropriately that the suitability of a concept for democratisation will ultimately depend on the demands it places upon the political parties and their Europeanization.⁴⁷ A comparison between the parliamentary and presidential models and their respective functional logics reveals that the level of coherency and consolidation necessary for a parliamentary system to work is significantly higher than in the presidential model. The political linkage or “common destiny” between government and parliamentary majority, upon

bution from John Bruton T.D., Member on the Convention on the Future of Europe, for Consideration by the Convention, January 6th, 2003 (CONV 476/03).

46 The argument might be put forth for introducing a constitutional provision for allowing for the dissolution of parliament (non-existent in the EU system) and calling of early elections, which is in place in all parliamentary systems except Norway. Bogdanor however does not address this point.

47 Holzinger, Katharina / Christoph Knill (2001): Institutionelle Entwicklungspfade im Europäischen Integrationsprozess: Eine konstruktive Kritik an Joschka Fischers Reformvorschlägen, p. 1006f., in: Zeitschrift für Politikwissenschaft 11 (3), p. 987-1010.

The Direct Election of the Commission President

which the parliamentary system rests, can only be sustained if the political parties have developed a high degree of programmatic and organisational cohesion. The current European party system on the other hand is, at best, only partially consolidated, the most progress having been achieved on the organisational side. A presidential system however can manage without well-organised, advanced party structures. For one, the head of government possesses legitimacy independent of parliament on account of the popular election of the president and can remain in office regardless of the legislature's support or "confidence". The parliament as an institution as well as the individual members for their part are in a comparatively comfortable position to compete with or confront the executive, as there is no need for (party) political unity between the two governing institutions that obliges MPs to adhere to party discipline.

To assume that this renders the parliament weak – because it lacks power to appoint the government – would be severely erroneous. Though counterintuitive, the example of the United States Congress illustrates that particularly those parliaments are powerful that are primarily limited to lawmaking tasks.⁴⁸ This helps to explain the relatively strong position, compared to national parliaments, of the European Parliament. While not on an equal footing with the Council in all policy areas, when it can co-decide, the EP wields considerably more influence than its counterparts at national level, where parliaments over time have fallen behind their respective governments who have come to dominate the legislative process. Because members of the parliamentary majority are not "allowed" to govern, while members of the parliamentary minority are not "able" to govern, the parliamentary system of government can prove rather frustrating at times for the members of parliament. Were they to become responsible for forming a European government, the representatives in Strasbourg would likely

48 Thus, the terms "parliamentary" and "presidential" alone say nothing about the actual distribution of power between the branches of government. The notion that in the former the parliament and in the latter the president constitute the more influential institutions in the respective systems – which would seem logical to conclude based on their names – overlooks the fact that legislatures, especially in parliamentary systems of government have had to forfeit a great deal of their discrete decision-making power.

find themselves in a similarly dissatisfying situation. This begs the question of why then they should be interested in parliamentarizing the EP, fusing it with the Commission and thus possibly ending up on the losing end of the bargain.

That the European legislature already “behaves” like a presidential system can be seen in the MPs’ voting patterns. As studies by Simon Hix, among others, have shown, disciplined party-voting is much lower in the EP than in national parliamentary systems.⁴⁹ Cross-party voting coalitions are not uncommon for particular issues such as agriculture or regional policy. At the same time, unified party-voting is fairly higher than in the U.S. Congress, which may reflect the European political party traditions and would at least not preclude further development toward a parliamentary system. When it comes to coalition building however, the EP fully follows the presidential functional logic, where coalitions are formed ad hoc, on a vote-to-vote basis and with shifting majorities. Furthermore, the voting patterns vary from policy issue to policy issue and according to voting modus. In the third legislative period (1989-1994), over 70 percent of the recorded decisions were taken in consensus between the two largest party groups (PES and EPP), but a more antagonistic pattern of voting has been developing along the ideological left-right division. In addition to long-established, but now diminishing cooperation between the two largest parties, voting in the EP has been increasingly characterised by shifting centre-left and centre-right alliances usually facilitated by the liberals in the EP (ELDR), who are open for voting together with either the social-democrat (PES) or the conservative (EPP) party groups.

Both the underpinning and driving force behind the flexible pattern of voting in the EP are provided by the multi-party structure, which has consisted of no less than eight party groups since the last election in 2004. The multi-party system also offsets the growing individual party cohesiveness that would otherwise be detrimental to the presidential functional logic. Thus, from an institutional standpoint, cohesive party voting and flexible, ad-hoc

49 Hix, Simon / Abdul Noury / Gérard Roland (2005): Power to the Parties: Cohesion and Competition in the European Parliament, 1979-2001, in: *British Journal of Political Science* 35 (2), S. 209-234.

The Direct Election of the Commission President

coalition-building (as opposed to stable “bloc voting”) represent two sides of the same coin. Interestingly, the EU parliamentary practice would remain unaffected by the direct election of the Commission President. The EP could continue to democratise further as the EU popular chamber (e.g. through a more uniform electoral law with greater respect to the principle of equal representation), expand its legislative competences relative to the Council of Ministers and still maintain its powers of executive control over the Commission (including the power to confirm nominated Commissioners before appointment). The Commission would in fact become more politicised, but its institutional integrity and independence, upon which, among others, the Community Method is ultimately based, would not even be compromised. That independence is a valuable asset, not only in the Commission’s relationship to the member states, but also with the Parliament since the Commission needs to consciously refrain from taking a party-political bias if it hopes to reach broad approval for its proposals.⁵⁰ Hence, the Commission President is well advised to maintain the necessary balance when building the Commission team.

While the parliamentary model could be pursued within the constitutional provisions of the EU, it would clearly necessitate realignment in the relations between the Parliament and Commission. The introduction of a direct election of the Commission President on the other hand could be integrated into the existing institutional system without having to alter the constitutional practice developed so far. The only formal amendment would entail incorporating a necessary provision in the treaties; no other formal changes would need to be made to the institutional structure. Admittedly, this would give rise to the question on the sense of keeping the newly established President of the European Council since a popularly elected Commission President would no doubt take on representative tasks along with the regular executive powers. And, the overall loss to the EU from rescinding this additional executive office would probably be negligible, if indeed a “loss” at all.

50 Höreth, Marcus (1999): Die Europäische Union im Legitimationstrilemma. Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Baden-Baden, p. 206f.

With regard to the electoral procedure, two basic versions would be possible. One would be determined by simple majority or plurality, the other, in Romance tradition, by absolute majority. Elections held under the latter form of electoral system often require a run-off election, in which the two candidates with the highest amount of votes compete against each other. Most presidential and semi-presidential systems favour this – and, from a democratic standpoint, superior – type of system. Given the high fragmentation of the European party system, the absolute majority rule seems more appropriate for the EU as well. In that case, it would be necessary to clarify which round of elections takes place concurrently with the EP elections. Alternatively, the presidential and parliamentary elections could be held completely separately from one another, granted that this would entail the possibility of European citizens having to go to the ballot box three times within a five-year period. Moreover, this option would increase the probability of “divided government” or diverging majorities in the executive and legislative institutions of Commission and Parliament. As a result, it could prove even more difficult for the Commission to find the necessary voting majorities in the EP, which is one of the biggest challenges (and potential drawbacks) of the presidential system of government. Here again, it is worth noting however that divergent majorities in the separation-of-powers system must not lead to gridlock, but rather the pattern of flexible, ad hoc coalition-building likewise characteristic of presidential systems in turn enables governing under such circumstances.

4.2. Critique of the Direct-Election Proposal and Possible Counter-Arguments

Opponents of this approach to democratising the EU argue that the direct election would unduly strain the legitimacy basis of European politics, which is grounded in consensus-oriented decision-making among the member states. One of the main concerns in this context is the structural majority, or in other terms, that the fear of the smaller member states of being “overruled” would become even more possible as a consequence of

The Direct Election of the Commission President

the direct election of the EU executive.⁵¹ Certainly the direct election would introduce an additional majoritarian element into the consociational system of the EU and thus shift it somewhat toward majoritarian democracy. But precisely this sort of shift can hardly be avoided if the EU system of government is to become more democratic on the whole. Reflecting on these (and similar) critiques, it would seem that Lijphart's⁵² dichotomous typology of majoritarian ("Westminster") vs. consensus democracy may have inadvertently nourished a gross misunderstanding, namely, that one form of democracy excludes the other, i.e. that a political system can be classified as either one or the other. But a generally majoritarian-style democracy without a minimum of consensus-promoting structures or practices would in practice prove just as ineffectual as a purely consensus democracy without any majoritarian elements. This is reflected for example in the procedures for appointing and, in parliamentary systems, removing the government as well as for the passage of laws, where decisions are taken by simple or absolute majority. This applies without exception to national consensus democracies like Switzerland, Austria, and the Benelux and Nordic countries. In the supranational European Union on the other hand, the majority principle applies as of now only to the investiture of the Commission and the regular voting procedure in the European Parliament. In order to carry a motion of censure against the Commission, a two-thirds majority vote is needed in the EP, while the nomination of the Commission President in the European Council and legal acts in the Council of Ministers require a qualified majority, in many cases even unanimity.

Consequently, the direct election of the Commission President would not change the overall consensual quality of the European *polity*. The risk posed by a Commission President voted into office by a majority who then only governs in the interests of those voters is tremendously low, not least because the Commission depends on the broad support of both the Council of Ministers, who can safeguard member state interests, and the European

51 Höreth, Marcus (1999): Die Europäische Union im Legitimationstrilemma. Zur Rechtfertigung des Regierens jenseits der Staatlichkeit, Baden-Baden, p. 272f.

52 Lijphart, Arend (1999): Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries, New Haven / London.

Parliament in pushing through legislative proposals. Especially in the process of negotiating on legal acts, the European Parliament would continue to benefit from its institutionally independent position. Also, the claim that direct election would lead to a marginalisation of the smaller states is (plausible, but) unfounded judging by European political practice. Simon Hix for example raises the concern that candidates for the presidency would resort to the vote-maximising strategy of focussing on the larger, highly populous member states in their campaigns.⁵³ Yet the extraordinary linguistic diversity of Europe alone would make an election campaign impossible without the help of the national party organisations to present candidates to their respective publics. To be sure, European elections and campaigns will maintain their decentralized character, guaranteeing for all member states, big and small, a say in the electoral matter.

Moreover, what applies to the election applies to the nomination of candidates by the European parties. Their primary goal would naturally be to present candidates who are well known and respected across Europe and thus capable of uniting a majority in the European electorate. It would be anything but safe to assume that such candidates from larger member states would automatically have a better chance at electoral success. Obviously smaller states can generate renowned candidates, as demonstrated in politicians such as Guy Verhofstadt, Wolfgang Schäuble or Jean-Claude Juncker, all of whom have been repeatedly sought after as candidates for the highest European offices. Not even the nominating procedure would necessarily put the bigger member states at an advantage. Quite the opposite could just as easily be the case when party organisations from larger states, in insisting on their “own” candidates, mutually block one another, leaving room for a *tertius gaudens* from one of the smaller states to win out in the internal party nomination process.

Aside from whether one prescribes to the often feared drawbacks of the presidential concept or tries to dispel them, one thing can be deemed certain. The same issues related to the challenges for nominating and electing

53 Hix, Simon (2002): Why the EU Should have a Single President, and How She Should Be Elected, London (Paper for the Working Group on Democracy in the EU for the UK Cabinet Office), p. 7.

The Direct Election of the Commission President

candidates in a very diverse Europe would be posed just as much by the parliamentary model as the presidential one. In this respect, there is no significant difference between establishing a direct election or making the EP election an indirect vote for a “prime-minister” type of Commission President, both forms of government appointment being majoritarian in character. However, the differences between the two models become rather salient when considering the aspect of governing, which at the European level, as much as at the national level, takes place primarily through law-making. And in this respect, a Commission President voted by and responsible to the European Parliament would coincide with the rule of majoritarian democracy to a much greater extent than a separate and popularly elected president. A parliamentarized president of the Commission and the parliamentary majority would need to enter into a long-term voting coalition, which takes a polarising effect on account of the functional logic inherent to the fused relationship between executive and legislative and could even provoke conflict with the Council of Ministers. By contrast, the structural, power-separating design of presidentialism necessitates consensualism. Instead of a lasting coalition between the government and its majority, short-term voting majorities are formed, changed and reformed, not only between various parties and on a cross-party basis, but also between institutions. The lack of a solid majority in parliament certainly makes “governing” more difficult for the Commission. But for the triangular relationship between Commission, Council and Parliament, the presidential structures provide the advantage of requiring compromise, which is exceptionally vital for decision-making in the intergovernmental and supranational polity of the EU. As opposed to the power-fusing design of a parliamentary system, the presidential structure along with the corresponding functional logic conforms to the heterogeneity of European politics.

The advantages of the presidentialization approach to democratising the EU also stem from the majoritarian-democratic dimension. For one, a popularly legitimated Commission would find itself in a stronger position to assert its initiatives. Accordingly, it could work to counteract potential gridlock in the decision-making process, one of the common critiques of presidential-

ism.⁵⁴ At the same time, a substantial increase in legitimacy of European politics would emanate from the presidential democratisation. By granting citizens the opportunity to vote for a person and a political direction at the same time, the popular election of the Commission president would essentially resolve the institutional dimension of the democratic deficit that has long afflicted the Community.

As it currently stands, the institutional system of the EU is only partially capable of bringing forth broader policy alternatives within the governing process. From the citizen perspective, it seems much more like an arena for intergovernmental conflict. And here lies the crux of a democratic election: *something* has to be at stake in the election in order for it to be worth the voters' while, meaning that their decision has to have observable consequences.⁵⁵ The direct election would be able to offer precisely that. An EU head of government voted popularly into office would bear the prerogative and burden of political initiative, and thus could not (easily) shirk or deflect responsibility to the bureaucracy or the Council of Ministers. But the president's position as an institutional embodiment of European unity and a representative of the Community both at home and abroad would also be duly enhanced. What is more, the direct election would put a stop to the previous "second order" quality of European elections. Not only would the election take place as a truly European-wide procedure, which is still not the case with EP elections, the competition for votes would itself have a Euro-

54 Linz, Juan (1990): The Perils of Presidentialism, in: Journal of Democracy 1 (1), p. 51-69.

55 Of course, the democratic effects described above could also result from linking the Commission appointment to the EP elections, as proposed in the parliamentary approach. But one may doubt whether this approach would have those effects to the same degree as the presidential approach in the EU. First of all, in order to make EP elections just as much an election about a choice between political alternatives in the "government", the smaller European parties would need to rally behind one of the candidates of the larger parties, thus necessitating pre-election coalitions. In all likelihood, only the social democrat and conservative/Christian-democrat party groups would be capable of garnering majority support. The fragmentation of the European party system however raises substantial doubts on the probability of that happening. And by consequence, the link between EP elections and appointing the government would hardly be strong enough so as to give citizens the impression of having determined the political direction of the EU with their vote.

The Direct Election of the Commission President

peanizing effect as well: parties would be compelled, after uniting behind a single candidate and a single programme, to lead a cross-border joint campaign. Possible candidates for example could be incumbent or former heads of government, statespersons or other political figures well known beyond the boundaries of their home countries. As a result, a “face” could finally be attached to European politics, while the position of Commission President itself would require a campaign held on European issues, and not under the umbrella of national politics. The consequence would be an increased pressure for European political mobilisation, that in turn could strengthen the sense of community among citizens of the Union, promote the development of a European-wide party system and, last but not least, have a “spill-over” effect on the elections to the European Parliament.

5. Conclusion

Despite its advantages and institutional fit, little attention was paid in the constitutional debate to the direct election as an alternative proposal to democratising the EU. As to why it was disregarded, one possible explanation lies in the parliamentary traditions of the member states, which are mostly unfamiliar with the presidential model. Another factor is the general suspicion that a popular election of the Commission President would place a heavier burden on the consensual structure of the EU than an election by the parliament. Although both objections can be refuted upon closer inspection, they have proven to have the most influence on the political and academic debate. Given that, the direct election concept barely stood a chance in getting adopted, even if notable politicians such as Fischer, Bruton or Verhofstadt sympathised with it at one point or another.

But the *finalité* of Europe is by no means a “done deal”, nor does the further development of the EU system of government along the presidential path have to be deemed an impossibility. After the signing of the Lisbon Treaty, the EU missed another opportunity to truly democratise its decision-making system. In concrete terms, democracy in Europe boils down to a European government that is responsible and accountable before the European voters, which can not be said of the Commission or the Council.

With regard to the Council, the population of a member state will be considered more proportionally on account of the Lisbon Treaty, which constitutes a step forward, but this does not change the fact that its members are, and will continue to be, only indirectly legitimated. As for the Commission, its appointment will remain problematic, in the sense that it can hardly be conceived of as a democratic act of election, even if the Treaty refers to it as such.

The time where Europe could focus on output-legitimacy and rely on “permissive consensus” has passed. The European leaders were reminded of this recently when the people of Ireland rejected the Lisbon Treaty in a referendum, making all too clear that the small amount of more democracy they promised will not close the legitimacy gap. From the historical perspective on democratisation, elites in most cases have only been prepared to take reforms when under pressure. Why then should that be any different in the European Union? The main problem the Community faces is an elite-centred structure that plays, from the European citizen perspective, a supporting role at best. The unfinished state of European democracy thus requires us to contemplate and deliberate further on how to democratise the institutions of the EU. When the window of reform opportunity opens again, political science can contribute by providing an appropriate blueprint, one that addresses, among other things, the question of “parliamentary or presidential?”.

Das **Zentrum für Europäische Integrationsforschung (ZEI)** ist ein interdisziplinäres Forschungs- und Weiterbildungsinstitut der Universität Bonn. *ZEI – DISCUSSION PAPER* richten sich mit ihren von Wissenschaftlern und politischen Akteuren verfassten Beiträgen an Wissenschaft, Politik und Publizistik. Sie geben die persönliche Meinung der Autoren wieder. Die Beiträge fassen häufig Ergebnisse aus laufenden Forschungsprojekten des ZEI zusammen.

The **Center for European Integration Studies (ZEI)** is an interdisciplinary research and further education institute at the University of Bonn. *ZEI – DISCUSSION PAPER* are intended to stimulate discussion among researchers, practitioners and policy makers on current and emerging issues of European integration and Europe's global role. They express the personal opinion of the authors. The papers often reflect on-going research projects at ZEI.

Die neuesten ZEI Discussion Paper / Most recent ZEI Discussion Paper:

- C 179 (2008) Martin Seidel
Optionen für die Europäische Integration
- C 180 (2008) Jeffrey Herf
"The Jewish Enemy" Rethinking Anti-Semitism in the Era of Nazism and in Recent Times
- C 181 (2008) Marcus Höreth / Jared Sonnicksen
Making and Breaking Promises. The European Union under the Treaty of Lisbon
- C 182 (2008) Anna Niemann / Sonja Ana Luise Schröder / Meredith Catherine Tunick (eds.)
Recovering from the Constitutional Failure. An Analysis of the EU Reflection Period
- C 183 (2008) Yannis Tsantoulis
Subregionalism in the Black Sea and the EU's Role. Incentives, Obstacles and a 'New Synergy'
- C 184 (2008) Ludger Kühnhardt
African Regional Integration and the Role of the European Union
- C 185 (2008) Hans-Gert Pöttering
European Union – New Impulses for the Decade Ahead
- C 186 (2008) Jürgen Nielsen-Sikora
Europa der Bürger. Darstellung und Interviews (mit Peter Altmaier, Barbara Gessler, Ruth Hieronymi und Hans-Gert Pöttering)
- C 187 (2008) Ján Figel'
Reflecting on the European Year of Intercultural Dialogue
- C 188 (2008) Lazaros Miliopoulos
Begriff und Idee „atlantischer Zivilisation“ in Zeiten transatlantischer Zerreißproben
- C 189 (2008) Carl Christian von Weizsäcker
Regionalisierung der Regulierung im Bitstromzugangs-Markt?
- C 190 (2008) Sonja Schröder
The 2007-2013 European Cohesion Policy. A New Strategic Approach by the Commission?
- C 191 (2009) Meredith Tunick
Promoting Innovation in the European Union. On the Development of Sound Competition and Industrial Policies
- C 192 (2009) Frank Decker/Jared Sonnicksen
The Election of the Commission President. A Presidential Approach to Democratising the European Union

Die vollständige Liste seit 1998 und alle Discussion Paper zum Download finden Sie auf unserer Homepage: <http://www.zei.de>.

For a complete list since 1998 and all Discussion Paper for download, see the center's homepage: <http://www.zei.de>.

ISSN 1435-3288

ISBN 978-3-936183-92-4

Zentrum für Europäische Integrationsforschung
Center for European Integration Studies
Rheinische Friedrich-Wilhelms-Universität Bonn

Walter-Flex-Straße 3
D-53113 Bonn
Germany

Tel.: +49-228-73-4960
Fax: +49-228-73-4984
<http://www.zei.de>