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A MORE DEMOCRATIC EUROPEAN UNION. PROPOSITIONS AND SCOPE FOR POLITICAL ACTION

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In the debate on the future of the EU, it is the first time since the signing of the Treaty of Lisbon that fundamental institutional issues – the sources of legitimacy of the EU institutions and the European integration process – are under discussion. Commission President Jean-Claude Juncker, the French President Emmanuel Macron and the President of the European Council, Donald Tusk, are the main players in this debate. In recent months, they have held **speeches**, drawn up **discussion papers** and developed **roadmaps**.

This Policy Paper provides an overview of the debate, places it within the context of the proposals made over recent months, and considers the legal requirements, along with the political scope for action for their possible implementation.

Since the beginning of 2017, in the process of reflection on the future of the EU, there have been a range of contributions to the debate (part 1):
- On 1 March 2017, the European Commission published a **White Paper on the Future of the EU**.
- On 25 March 2017, the 27 Heads of State or Government and the Presidents of the EU institutions signed the **Rome Declaration**, at the celebrations to mark the 60th anniversary of the Treaty of Rome.
- In September 2017, Jean-Claude Juncker and Emmanuel Macron gave ground-breaking **speeches on the future of the EU**.
- And in October 2017, the 27 Heads of State or Government pledged support for Donald Tusk's roadmap for the period up to 2019, known as the **Leaders' Agenda.**

These activities have to be considered against the background of the individual actors' sources of legitimacy and the trust that citizens have in national and European institutions (part 2):
- Trust in EU Institutions is slightly higher than that in national institutions.
- The level of trust in individual national governments, the European Commission, the national parliaments and the European Parliament varies widely across the 28 Member States.

At present, a **range of proposals** on ways to make the EU more democratic are being discussed. Four limited institutional reforms could contribute to **strengthening the sources of legitimacy** of the European integration project (part 3):
- **Merging** the roles of the Presidents of the Council and the Commission
- Nominating **lead candidates** ("Spitzenkandidaten") for election to the role of EU President
- **Transnational lists** for the European Parliament elections
- An increased role for **national parliaments** in the EU

A closer legal and political analysis shows that it would be **politically very ambitious** to attempt to implement these four limited institutional reforms by the European elections in 2019. For this reason, when considering reform, the EU institutions often only set their sights on the year 2025. However, by that time, the **current momentum in the debate** on the future of the EU may have evaporated.

INTRODUCTION

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Even if in these Eurosceptic times, approval of the EU lies only just above 50 per cent, a debate has begun over the future of the EU in which **institutional issues are not taboo**. After the UK referendum on leaving the EU, this is a bold decision, **since institutional issues could sow discord among the EU27**. Against this backdrop, European decision-makers are emphasising that political results and doing "less more effectively" are at least as important.

This Policy Paper provides an overview of the various contributions which have been made in the debate on the future of the EU, analyses the EU institutions and the sources of their legitimacy in the multi-level system of the EU, places the proposals made in context and considers both the legal requirements and the political scope for action for implementing specific, individual institutional changes. Whether – and if so, when – the roles of President of the Commission and President of the European Council are merged, lead candidates are nominated for the role of President of the EU, transnational lists are introduced for European Parliament elections and the role of national parliaments is increased, are **political decisions, which are to be made by the EU's 27 Member States**.

1 . THE DEBATE ON THE FUTURE OF THE EU

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Although there was some delay, the result of the British referendum on 23 June 2016 concerning EU membership gave rise to a **fundamental process of reflection on the future of the EU**. In this process, the supra-national EU institutions – the European Parliament (1.1.) and the European Commission (1.2) – articulated their preferences; the Heads of State or Government discussed the future and further development of the EU at summits in Bratislava, Valletta, Rome and Tallinn, and pledged their support in October 2017 to the Leaders' Agenda proposed by Donald Tusk, as a roadmap for the period up until 2019 (1.3). However, apart from the new French President Emmanuel Macron, the Member States have held back from contributing to the debate (1.4). That said, fundamentally, it can be observed that institutional issues are back on the European agenda (1.5).

1.1 . The agenda-setting role played by the European Parliament

In February 2017, the European Parliament had adopted three resolutions on the future of the EU, based on three reports drawn up by MEPs Elmar Brok, Mercedes Bresso, Guy Verhofstadt, Pervenche Berès and Reimar Böge. In these resolutions, the Parliament made proposals on how the potential of the Lisbon Treaty could be fully realised[1], how the EU Treaties could be reformed[2] and how the Eurozone could be strengthened[3]. These three resolutions also include proposals on how the EU could be made more democratic (see 3.2.1 and 3.2.4).

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[1]. European Parliament, Resolution of the European Parliament of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), P8_TA(2017)0049.
[2]. European Parliament, Resolution of the European Parliament of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), P8_TA(2017)0048.
[3]. European Parliament, Resolution of the European Parliament of 16 February 2017 on budgetary capacity for the euro area (2015/2344(INI)), P8_TA(2017)0050.

1.2 . From European Commission White Paper to the "State of the Union" address

The Five Presidents' Report on the Future of Economic and Monetary Union announced that the European Commission would publish a White Paper in 2017. Given the reticence of the Euro area members on specific steps to strengthen the Euro's architecture, the **European Commission** broadened the theme of the white paper (Future of the EU), **refrained from drawing up a roadmap and, instead of detailed initiatives** (like in earlier White Papers) there were **five scenarios**.

These individual scenarios cover very different political visions of the future development of the EU. "Carrying on" is the guiding principle for Scenario 1, which maintains the EU's current course, whereby the results that can be achieved do not always live up to expectations. The title of Scenario 2 is "Nothing but the single market" and describes reducing the EU's joint action to economic issues only. Scenario 3 describes building coalitions of the willing among the Member States, which then work more closely together (multi-speed Europe). Under scenario 4, there would be less but more effective action at the European level. Scenario 5 describes an expansion of European integration in many policy areas.[4]

When presenting the White Paper to the European Parliament on 1 March 2017, Jean-Claude Juncker said that he would not reveal at this stage which scenario he preferred as it was not his place to make the decision.[5]

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CONCLUSIONS FROM THE WHITE PAPER PROCESS

In his **State of the Union address** to the European Parliament on 13 September 2017, Jean-Claude Juncker drew conclusions from the White Paper process. In the meantime, reflection or discussion papers had been published on the social dimension of Europe, on "globalisation as an opportunity", and on the future of Economic and Monetary union, European defence and European finances.[6] Under Scenario 6, a best-of scenario, Commission President Jean-Claude Juncker presented a further scenario, which would be implemented in the form of a roadmap, without treaty change. This approach also guides the letter of intent to the President of the European Parliament Antonio Tajani and the Estonian Prime Minister Jüri Ratas[7], and the European Commission's Work Programme for 2018. In that programme, the European Commission proposes actions and initiatives "*to be presented and/or completed over the next sixteen months, in line with scenario 1 of the White Paper and the Bratislava Agenda*"[8] and further actions and initiatives "*which are more ambitious, more forward-looking and that will shape our Union until 2025; this combines scenarios 3, 4 and/or 5 of the White Paper, making full use of the untapped potential of the Lisbon Treaty.*"[9]

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4. Henrik Enderlein and Valentin Kreilinger, Alle Wege führen nach Rom – und dann?, Jacques Delors Institut – Berlin, Blog post, 23 March 2017.

5 . European Commission, *Quo vadis Europa at 27? Avenues for a united future at 27*, Speech by President Juncker at the plenary of the European Parliament on the occasion of the presentation of the European Commission's White Paper on the Future of Europe, 1 March 2017.

6. European Commission, White paper on the future of Europe and the way forward. Reflections and scenarios for the EU27, 2017.

7. European Commission, State of the Union 2017. Letter of Intent to President Antonio Tajani and Prime Minister Jüri Ratas, 13 September 2017.

8. Ibid., p. 3.

9. Ibid., p. 3.

According to Jean-Claude Juncker, this is not the time for treaty change; a great deal of progress can be made on the basis of the existing treaty framework, for example, by way of passerelle clauses, so as to reach decisions with a qualified majority instead of unanimously in certain areas.

1.3 . The European Council and the Leaders' Agenda

" SIGNAL OF UNITY AND DETERMINATION

The first discussions on the future of the EU after the UK referendum were held when the Heads of State or Government of the EU-27 met in Bratislava in September 2016. This was followed by a summit in Valletta in February and the Jubilee Summit in Rome in March 2017. In particular, the **Rome Declaration on the occasion of the 60th anniversary of the signing of the Treaty of Rome** on 25 March 2017 sent out a signal of unity and determination.

Ten years earlier, the statement "*We… have united for the better*"[10] featured in the Berlin Declaration, had been the core message on the occasion of the 50th anniversary of the signing of the Treaty of Rome. For 27 Member States, this continues to apply. As it is now, the future of European integration was at stake back then in 2007: Just two years before, the Constitutional Treaty had been defeated in referendums in France and the Netherlands. Apart from the fact that in the present situation, there is no tightly bound reform package like the Constitutional Treaty, which was drawn up by the European Convention and adopted by an intergovernmental conference, the answer in 2017 is not fundamentally different from that in 2007: In the context of Britain leaving the EU, the point is to have an orderly process, which should serve the purpose of finding shared solutions. In both cases, a **gentle wake-up call** needed to be given. However, while the Berlin Declaration was signed only by the Presidents of the EU institutions, the 2017 Rome Declaration was signed by all 27 Heads of State or Government as well.

The **Leaders' Agenda**[11], presented by the President of the European Council, provides an overview of the most important issues Donald Tusk wishes to place upon the European Council's agenda between October 2017 and June 2019. For this purpose, there will be a total of 13 summits with the heads of state or government in a 21-month period[12] (formal European Council meetings and informal meetings with 27 or 28 participants) in order to break deadlock and find common solutions for pressing issues.

1.4 . Individual Member States' considerations and preferences

After being elected French President, Emmanuel Macron addressed the specifics of his EU policy plans and presented them in a number of speeches. In his speech at the Sorbonne on 26 September 2017, he called for "*rebuilding a sovereign, united and democratic Europe*".[13] He declared the EU to be "*too slow, too weak and too inefficient*".[14] **Emmanuel Macron** wishes to **deepen the EU and reform a range of policy areas.** Among other things, he called for a eurozone budget and a Europe of defence, as well as a common asylum policy. It would be a question of reacting to challenges

10. European Union, Erklärung anlässlich des 50. Jahrestages der Unterzeichnung der Römischen Verträge, Berlin, 25 March 2007.

11. European Council, Leaders' Agenda, October 2017.

12. Author's own calculation, based on the Leaders' Agenda.

13. Présidence de la République, Service de presse, Initiative for Europe, Speech by M. Emmanuel Macron, Paris, 26 September 2017, p. 4.

14. Ibid.

in the fields of security, migration, climate change and the digital revolution, and making Europe strong in a globalised world. Treaty change is not an end in itself, but should it be necessary, Emmanuel Macron would be willing.

Most governments and national parliaments have yet to take a position in the debate on the future of the EU. However, a report prepared for the bi-annual conference of EU affairs committees indicates that **resolutions on the Rome Declaration have been adopted by some national parliaments**[15]:

- Both the French **Assemblée nationale** and the Italian **Senato della Repubblica** have affirmed the necessity of deeper EU integration, as well as a better functioning migration policy in harmony with freedom of movement;
- Resolutions from the Finnish **Eduskunta** and the Irish **Houses of the Oireachtas** emphasised the importance of EU unity and solidarity;
- The Latvian **Saeima** highlighted security and prosperity and;
- The French **Sénat** indicated that given the fact that the UK was leaving the EU, it was necessary to begin breathing new life into the European project.

In addition, eight national parliaments/chambers passed a **resolution on the European Commission's White Paper** and a future eight national parliaments/chambers intend to do so.[16] In some cases, national parliaments/chambers have also debated individual discussion papers. The Luxembourg **Chambre des Députés** indicated that it is legitimate to consider how the potential of the Lisbon Treaty can be fully realised, but that there was little to be gained from concentrating on institutional issues and one should therefore focus on political issues. By contrast, the French **Sénat** called for a far-reaching reorganisation of the EU's institutional structure and greater involvement of national parliaments.

The divergent preferences of the national parliament with regard to the EU's future are demonstrated by their responses to the question of whether they support EU treaty change. Only three national parliaments support the idea (the Belgian **Chambre des Représentants**, the French **Assemblée nationale** and the Romanian **Camera Deputaţilor**); ten national parliaments/chambers declared that they do not support treaty change; all the other national parliaments/chambers did not express a position.[17]

1.5 ∎ The return of institutional issues to the European agenda

It should be noted that despite different priorities in the contributions from the European Parliament, the President of the European Commission, the President of the European Council and the French President, **institutional issues are back on the political agenda**. Emmanuel Macron said, "*In order to work better, this European Union cannot escape the issue of its institutions*"[18].

The 27 Member States regularly address the future of the EU in the European Council; however, they have mostly exercised reticence over public statements on the subject. Most national parliaments take the same approach (cf. 1.4).

15. Cf. COSAC, 28th Bi-annual Report, October 2017, p. 11.
16. Ibid., p. 12-13.
17. Ibid., p. 17-18.
18. Présidence de la République, Service de presse, Initiative for Europe, Speech by M. Emmanuel Macron, Paris, 26 September 2017, p. 22.

> **THE DEBATE ON INSTITUTIONAL ISSUES WILL PICK UP SPEED IN FEBRUARY 2018**

As the next step, the Leaders' Agenda of European Council President Donald Tusk foresees an **informal meeting of the European Council on 23 February 2018**, in order for the Heads of State or Government to discuss the issues of "*European Parliament composition/transnational lists, appointments including Spitzenkandidaten*".[19] This means that the debate on institutional issues will pick up speed in February 2018 at the latest.

Both Jean-Claude Juncker and Emmanuel Macron spoke in favour of transnational lists in September 2017. Jean-Claude Juncker also proposed merging the roles of the Presidents of the Council and the Commission. At the same time, the issue of a greater role for national parliaments has once more made its way onto the agenda. After an analysis of the sources of legitimacy in the EU's multi-level system in part two (below), the individual reform proposals will be discussed in the third and final part of this Policy Paper.

2 . SOURCES OF LEGITIMACY IN THE EU MULTI-LEVEL SYSTEM

In the debate on the future of the EU, the sources of legitimacy in the EU multi-level system are sometimes taken as given and not differentiated. However, within the triangle of the EU institutions – **Commission, Council and Parliament** – it is necessary to differentiate between direct and indirect legitimacy (2.1). At the same time, citizens do not trust all institutions at the national level and the EU level in the same way and there are also considerable differences between the Member States (2.2). In view of the debate over the future of the EU and the 2019 European elections – according to the conclusions drawn from the existing analysis – **mistrust of political institutions must be considered a long-term phenomenon**, with structural differences between groups of Member States (2.3).

2.1 . Direct and indirect legitimacy of EU institutions

The EU rests upon two sources of democratic representation and legitimacy, which are anchored in Art. 10 TEU, by way of a dual channel structure. The citizens are represented in their national parliaments, which exercise control over their governments in the Council of the European Union and the European Council, and citizens are also represented directly in the European Parliament.[20]

BOX 1 . Article 10 TEU

(1) The functioning of the Union shall be founded on representative democracy.
(2) Citizens are directly represented at European level in the European Parliament.
Member States are represented in the European Council by their Heads of State or Government and in the Council of the European Union by their governments, themselves democratically accountable either to their national parliaments, or to their citizens.

19. Cf. European Council, Leaders' Agenda, October 2017, p. 2.
20. Ben Crum and John E. Fossum, The Multilevel Parliamentary Field: a framework for theorizing representative democracy in the EU, in: *European Political Science Review*, 1/2009, pp. 249-71, here: pp. 249-250.

Therefore, the sources of (input) legitimacy are the European Parliament, the national governments in the Council through their national parliaments, as well as, in the view of some observers (to a very limited extent), inter-parliamentary bodies. The European Commission draws its legitimacy from the **election of the President of the Commission** by the European Parliament, which is done on the basis of the nomination from the European Council, taking into account the results of the European Parliament elections (cf. 3.2.1). The EU Commissioners are nominated by the national governments and the entire Commission is confirmed by a vote in the European Parliament.

2.2 . Trust in political institutions in the EU multi-level system

Against this background, the question arises of how much citizens trust the individual sources of legitimacy. The **Eurobarometer surveys** published twice a year include a complete picture of the level of trust in political institutions in the EU multi-level system. They survey citizens' trust in the EU, in national institutions and in EU institutions.[21] This Policy Paper considers the survey's results for the European Commission and national governments (2.2.1) as well as for the European Parliament and national parliaments (2.2.2).

2.2.1 . Executive: national governments and the European Commission

Across Europe, citizens' trust in the European Commission is at 41%, slightly higher than trust in individual national governments at 37% (see Table 1).

TABLE 1 . Trust in the European Commission and national governments

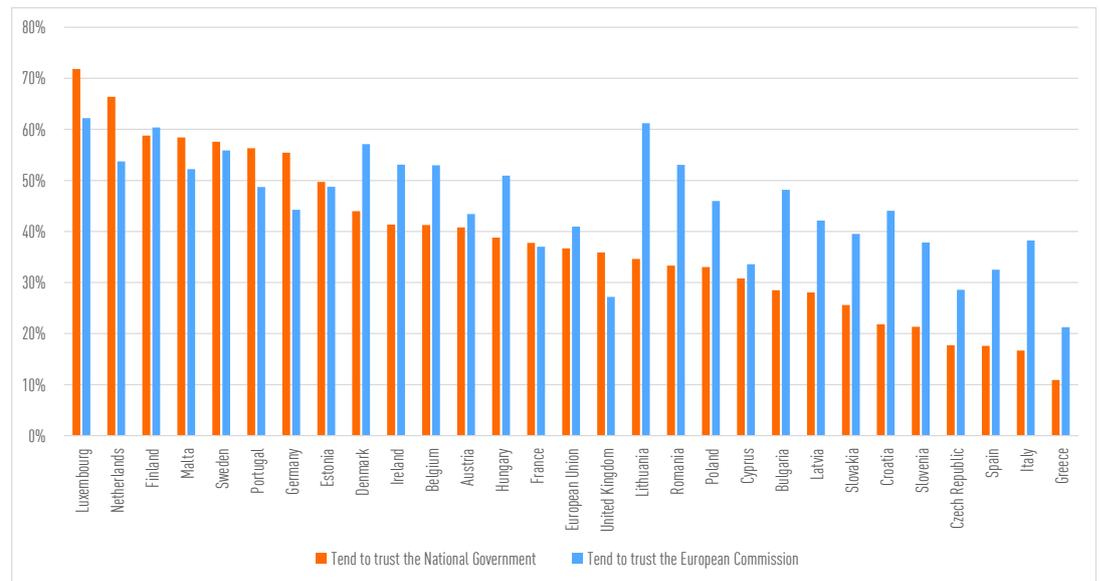|	TEND TO TRUST		TEND NOT TO TRUST		DO NOT KNOW
	Spring 2017	*Difference to autumn 2016*	*Spring 2017*	*Difference to autumn 2016*	
European Commission (%)	41	+3	41	-4	18
(NATIONAL) government (%)	37	+6	57	-7	6

Source: Standard Eurobarometer 87, QA14.2/ QA8.7: *I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it.*

Since 2016, citizens' mistrust in their national governments has fallen to 57% (-7 compared to autumn 2016) and trust has risen to 37%.[22] At the same time, the level of trust in the European Commission has risen slightly to 41% (+3), while mistrust in the European Commission has fallen – and now also stands at 41% (-4). **In 19 of 28 EU Member States, citizens' trust in the European Commission is greater** than the trust in their own national government (see Figure 1).

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21. The question is: "I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it."
22. European Commission, Public opinion in the European Union. First results, Standard-Eurobarometer 87, Spring 2017, p. 16.

FIGURE 1 ▪ Trust in the European Commission and national governments

Source: Author's own figure. Data: Annex to Standard Eurobarometer 87, QA14.2/ QA8.7.

2.2.2 ▪ Legislature: National parliaments and the European Parliament

Some 44% of citizens tend to trust the European Parliament and 41% tend not to. Trust in their national parliaments is 5 percentage points lower, at 36% (see Table 2).

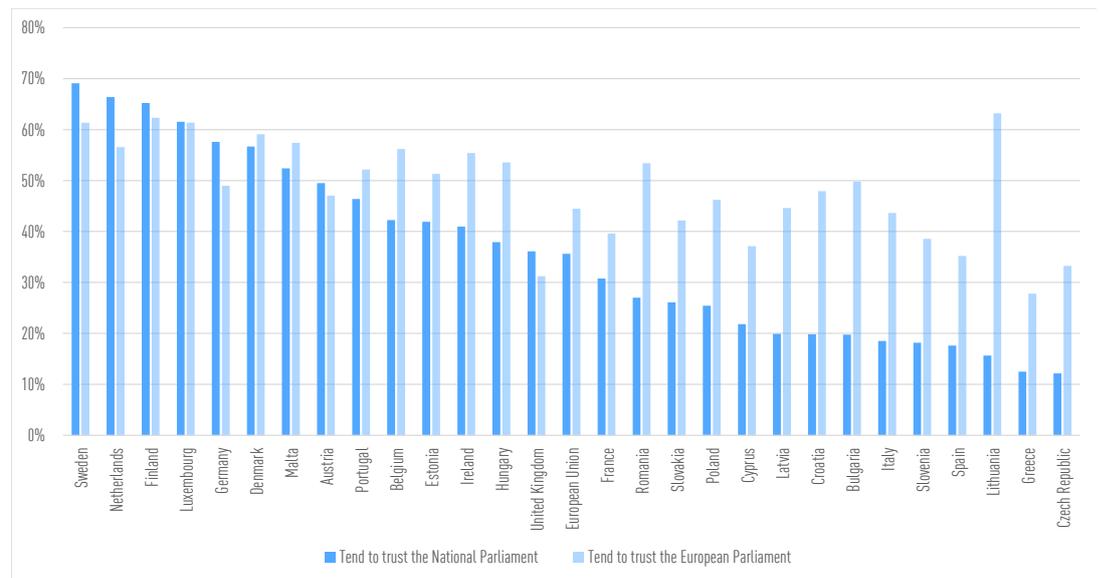**TABLE 2 ▪ Trust in the European Parliament and national parliaments**

	TEND TO TRUST		TEND NOT TO TRUST		DO NOT KNOW
	Spring 2017	*Difference to autumn 2016*	*Spring 2017*	*Difference to autumn 2016*	
European Parliament (%)	45	+3	41	-4	14
(NATIONAL) parliament (%)	36	+4	57	-5	7

Source: Standard Eurobarometer 87, QA14.1/ QA8.8: *I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or tend not to trust it.*

In comparison with autumn 2016, trust in the European Parliament has increased by three percentage points and mistrust (41% "tend not to trust") has decreased (-4). Trust in the national parliaments has also risen, by four percentage points, and mistrust (57% tend not to trust) has decreased (-5).[23] **In 21 of 28 EU Member States, citizens' trust in the European Parliament is greater than trust in their own national parliament;** in Sweden, the Netherlands, Finland, Luxembourg, Germany, Austria and the United Kingdom, trust in the national parliament is higher than trust in the European Parliament (see Figure 2).

23. European Commission, Public opinion in the European Union. First results, Standard-Eurobarometer 87, Spring 2017, p. 16.

FIGURE 2 ▪ **Trust in the European Parliament and national parliaments**

Source: Author's own figure. Data: Annex to Standard Eurobarometer 87, QA14.1/ QA8.8.

2.3 ▪ Patterns of trust in the EU's multi-level system
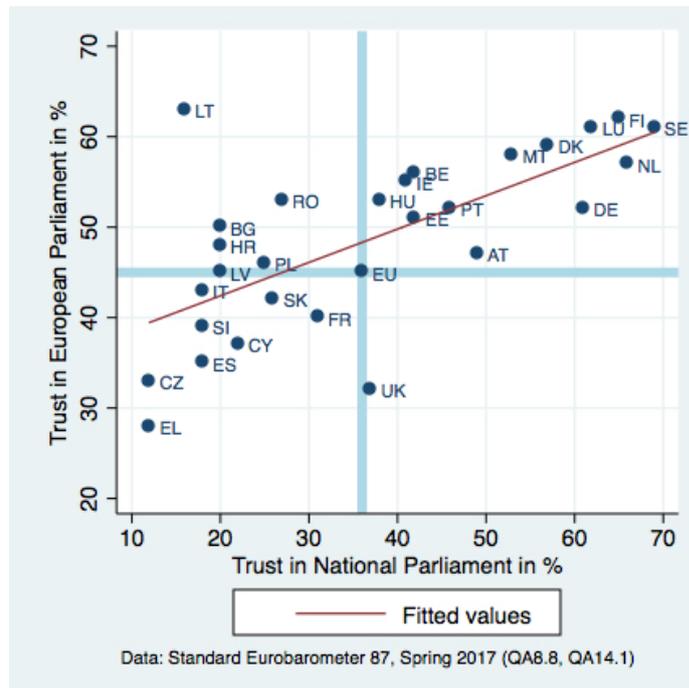
Trust in the national parliaments and government is at its highest level since spring 2007.[24] Trust in the European Parliament and the European Commission was last higher in 2010/2011. In most Member States, citizens' trust in the EU institutions is higher than that in their own national parliament and government.

With regard to the trust in the national parliament and European parliament among the population, there are **three patterns of political trust** in legislative institutions to be observed in the 28 Member States (see Figure 3).

- The population trusts their national parliament and the European Parliament less than is the case for the EU as a whole (8 Member States: CY, CZ, EL, ES, FR, IT, SI, SK);

- The population trusts the European Parliament more and the national Parliament less than is the case for the EU as a whole (6 Member States: BG, HR, LT, LV, PL, RO);

- The population trusts both the national parliament and the European Parliament more than is the case for the EU as a whole (13 Member States: AT, BE, DE, DK, EE, FI, IE, HU, LU, MT, NL, PT, SE).

[24.] European Commission, Public opinion in the European Union. First results, Standard-Eurobarometer 87, Spring 2017, p. 43.

FIGURE 3 ■ Trust in the European Parliament and in the National Parliaments

Source: Author's own figure. Data: Annex to Standard Eurobarometer 87, QA14.1/ QA8.8.

One of the issues at hand is therefore to increase trust in legislative and executive institutions at both levels. Many European decision-makers are focused on this kind of approach, the objectives of which are to achieve policy outcomes that make a difference to people, and to do "less, but more effectively". At the same time, institutional reforms can also contribute to making the **political system of the EU easier to understand, the influence of citizens more direct and the opportunities for scrutiny stronger** – for example those of the **national parliaments**, whose representatives have the closest link to citizens.

3 ■ SCOPE FOR ACTION IN ORDER TO ACHIEVE INSTITUTIONAL CHANGES

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MAKE THE EU MORE DEMOCRATIC

In the current debate, a range of proposals on ways to make the EU more democratic are being discussed. Four **limited institutional reforms** could make a **contribution to strengthening the legitimacy of the European integration project**; these will be discussed below: merging the offices of President of the European Council and President of the European Commission (3.1); repeating or expanding the lead candidates ("Spitzenkandidaten") experiment from 2014 at the next European Parliament elections in 2019 (3.2); transnational lists for the European elections 3.3; and an increased role for national parliaments (3.4). The legal basis and the political position for each of these four issues will be explained below.

For example, the President of the European Commission, Jean-Claude Juncker, declared in his state of the Union address on 13 September 2017 that he wanted a situation where "*eventually a single President leads the work of the Commission and the European Council, having been elected after a democratic Europe-wide election campaign*".[25] One possible interpretation of the proposal is that the European political families would again nominate lead candidates for the European Parliament elections and, in the election of the President of the Commission which follows, the candidate who is able garner support from a majority of MEPs in the European Parliament will then also be elected by the European Council as its President.

3.1 . Merging of the functions of President of the European Council and President of the Commission?

Jean-Claude Juncker proposed that the functions of the President of the European Council and the President of the European Commission should be merged. In his opinion, Europe would be "*easier to understand if one captain was steering the ship*".[26] The idea of merging these two functions is not new and had already been discussed in the European Convention. **The terms of the treaty do not rule out having both functions filled by one person.** However, there are unanswered institutional questions, especially with regard to accountability and a possible censure of an "EU President" who holds both offices.[27]

3.1.1 . Legal basis

The President of the Commission is elected in accordance with Art. 17 para 7 TEU (see 3.2.1).

The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once (Art. 15 para 5 TEU). The President of the European Council shall not hold a national office (Art. 15 para 6 TEU). However, he is not prohibited from holding another office at EU level, for example, that of the President of the European Commission.

3.1.2 . Political positions

The **European Parliament** indicated in its resolution on improving the functioning of the European Union, by building on the potential of the Lisbon Treaty, that "*although not in the interest of the European Parliament,*"[28] it was possible to merge the two functions.

President **Emmanuel Macron** did not address the issue of such a merger of functions in his speech at the Sorbonne; he called for a reduction in the number of Commissioners[29] to 15 and announced that France was prepared to forego its place in the European Commission, and that other large EU founding members should also be prepared to do so. Among the national parliaments, only the Italian **Senato della Repubblica** supports the idea of merging the functions of the Presidents of the Commission and the Council; the Austrian Nationalrat and Bundesrat are in favour of reducing the

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25. European Commission, State of the Union address 2017.
26. European Commission, State of the Union address 2017.
27. Dauvergne Alain, Un chapeau pour deux têtes : une simplification compliquée, Jacques Delors Institute, September 2017.
28. European Parliament, European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty (2014/2249(INI)), P8_TA(2017)0049, Para. 26.
29. A European Council decision in response to the no vote in the Irish referendum of May 2008 lays down that every Member State shall continue to nominate a Commissioner.

number of commissioners. It should be noted, however, that more than three quarters of the natio-
nal parliaments/chambers have not taken a position on institutional issues.[30]

3.2 . "Spitzenkandidaten" for the office of President of the Commission?

Since the Maastricht Treaty, which gave the European Parliament the right to be "consulted" on the
election of the President of the Commission, **the European Parliament has been able to** steadily
expand its influence. It has interpreted this right as a right of veto[31], and Jacques Santer would
have stepped down in 1994 had he not been able to garner a majority of support in the European
Parliament. At that time, 260 MEPs voted in his favour and 238 against. The right of veto was laid
down in the Amsterdam Treaty. The of Nice Treaty replaced the previously existing requirement
for unanimity in the European Council with that for a qualified majority. For example, in 2004 José
Manuel Barroso was only accepted by Germany and France once it had become clear that he had
garnered the support of a qualified majority in the European Council.[32] **Through the Lisbon Treaty,
the role of the European Parliament was further strengthened** and in 2014, the various political
groupings campaigned with lead candidates: Jean-Claude Juncker, the successful candidate, was
nominated by the European Council for the role of President of the European Commission and
elected by the European Parliament.

3.2.1 . Legal basis

In accordance with Art. 17 para 7 TEU, *"taking into account the elections to the European Parliament
and after having held the appropriate consultations, the European Council, acting by a qualified
majority, shall propose to the European Parliament a candidate for President of the Commission."*
Before the proposal is made by the European Council, representatives of the European Parliament
and the European Council carry out consultations within the framework of *"that is considered the
most appropriate".*[33] **This candidate is then elected by the European Parliament by a majority of its
members** (376 of 751); voting shall be by secret ballot in accordance with the Rules of Procedure
of the European Parliament.[34] After hearings with all Commissioners, the entire Commission shall
be approved or refused by a majority of the votes cast in the European Parliament; this vote shall
be taken by roll call.[35]

If the candidate nominated by the European Council does not command an absolute majority
in the European Parliament, *"the European Council, acting by a qualified majority, shall within one
month propose a new candidate who shall be elected by the European Parliament following the
same procedure."*[36]

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30. COSAC, 28th Bi-annual Report, October 2017, p. 17.

31. Hix Simon, Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amster-
dam, *British Journal of Political Science* 2/2002, pp. 259-280.

32. Hix Simon, Noury Abdul, Roland Gerard, *Democratic Politics in the European Parliament*, Cambridge: Cambridge University Press, P.
13-17.

33. Declaration No. 11 on the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, on Art. 17 (6) and 7
TEU.

34. Article 17(7) TEU and Article 106 of the Rules of Procedure of the European Parliament.

35. Article 106 of the Rules of Procedure of the European Parliament.

36. Article 17 (7) TEU. After the election of the President of the Commission, the appointment of the commissioners and the portfolios
assigned to them as well as the internal organisation of the European Commission provide further potential for conflict.

In 2014, the European Commission was appointed under full application of the Lisbon Treaty, which came into force on 1 December 2009, for the first time.[37] In the election procedure applied in 2014, two Europe-wide lead candidates from the different political families put themselves forward for election (and Jean-Claude Juncker, as the lead candidate for the political group with the most MEPs, was nominated – despite resistance from the European Council – and elected as President of the European Commission by the European Parliament).

3.2.2 ▪ Political positions

> **"**
> NOT ALL EU MEMBER STATES ARE OF THE OPINION THAT THE LEAD CANDIDATE MODEL HAS PROVED ITS WORTH.

Not all EU Member States are of the opinion that the lead candidate model has proved its worth, since it has reduced their role in making appointments to top EU positions. One of the institutional issues on the agenda to be discussed at the **informal meeting of the European Council on 23 February 2018** is the item "appointments, including lead candidates".[38]

According to Declaration No. 11 on Art. 17 para 6 and 7 of the Treaty on the European Union, it is *"the European Parliament and European Council in accordance with the treaties who are jointly responsible for the smooth running of the process of electing the President of the European Commission."*[39] Therefore, **divergent interpretations with regard to how the election results are to be "taken into account"** by the European Parliament and the European Council cannot be ruled out. There are time-related risks associated with the lead candidate model, if the two institutions are unable to reach agreement.

In July 2013, the European Parliament passed a resolution *"on improving the practical arrangements for the holding of the European elections in 2014". In this resolution, the expectation was expressed that "...the candidate for Commission President put forward by the European political party that wins the most seats in the Parliament will be the first to be considered, with a view to ascertaining his or her ability to secure the support of the necessary absolute majority in Parliament".*[40] However, German Chancellor Angela Merkel has stated, for example at her press conference on the European Council of 24 and 25 October 2013, that in her eyes there was *"no automatic connection between being a lead candidate and occupying office".*[41] **In the run-up to the 2019 European elections, all political party families discuss the lead candidate model.** The Party of European Socialists, who campaigned in 2014 with Martin Schulz, drew up a resolution on 3 December 2017 that they would again campaign with a lead candidate in 2019, and the European People's Party

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[37.] The President of the European Commission was elected in September 2009.

[38.] European Council, Leaders' Agenda, October 2017, p. 2

[39.] Declaration No. 11 on Article 17 (6) and (7) TEU.

[40.] European Parliament: European Parliament resolution of 4 July 2013 on improving the practical arrangements for the holding of the European elections in 2014 (2013/2102(INI)), P7_TA-PROV(2013)0323. In its Resolution on improving the functioning on the European Union building on the potential of the Lisbon Treaty on 16 February 2017, the European Parliament is *"determined to strengthen the role of Parliament in the election of the Commission President by reinforcing the formal consultations of its political groups with the European Council President, as foreseen in Declaration 11 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, in order to ensure that the European Council takes full account of the election results when presenting a candidate for Parliament to elect, as was the case in the 2014 European elections."* (para. 36).

[41.] Presse- und Informationsamt der Bundesregierung: Pressekonferenz mit Bundeskanzlerin Merkel zum Europäischen Rat am 24. und 25.10.2013, Mitschrift Pressekonferenz, 25.10.2013.

followed on 4 December with the decision that the party congress in November 2018 should present the lead candidate.[42]

France's President Emmanuel Macron does not consider lead candidates as sufficient and, in his speech on Europe on 26 September 2017, he set himself apart from the European political groupings by saying: *"And to all the major European parties which have explained to us that it would be tremendous to have a 'Spitzenkandidat' for the European Commission, making the elections more European, I say: 'Take that reasoning to its conclusion. Don't be afraid. Have genuine European elections. Don't make finely-weighed calculations for your erstwhile interests. Let's do it!' […]I will not leave those major European parties a monopoly on the debate about Europe and the European elections!"*[43] Emmanuel Macron's statement seems consistent with his political action given that his movement "En Marche" has not aligned itself with any European political party family.

3.3 . Transnational lists for European Parliament elections?

> THERE WILL BE
> 73 VACANT SEATS
> IN THE EUROPEAN
> PARLIAMENT.

The issue of the composition of the European Parliament and cross-border lists is also on the Leaders' Agenda, as an issue to be discussed at the **informal meeting of the European Council on 23 February 2018**.[44] After the United Kingdom leaves the European Union, there will be 73 vacant seats in the European Parliament. Therefore, in any event, the distribution of the 751 seats among the individual Member States has to be rearranged. If the United Kingdom's membership of the EU is coming to an end on 30 March 2019, then these seats will have to be redistributed before the European elections in May 2019.

3.3.1 . Legal basis

The exact **composition of the European Parliament** is decided by the European Council, in accordance with Art. 14 para 2 TEU. According to Art. 223 para 1 TFEU, the Council shall lay down *"the necessary provisions (for European Parliament elections) acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament […]. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements."* This procedure would also permit the introduction of transnational lists. However, the election of a greater number of members to the European Parliament on the basis of transnational lists could be in contravention of Art. 14 para 2 TEU and require treaty change.[45]

3.3.2 . Political positions

The President of the European Commission considers transnational lists to be a *"good idea"* and has stated his intention of convincing Manfred Weber, the President of the EPP parliamentary group, to

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42. Contexte Pouvoirs Briefing 5 December 2017.

43. Présidence de la République, Service de presse, Initiative for Europe, Speech by M. Emmanuel Macron, Paris, 26 September 2017, p. 20.

44. European Council, Leaders' Agenda, October 2017, p. 2.

45. European Political Strategy Centre, Two Visions, One Direction: Plans for the Future of Europe as laid out in President Juncker's State of the Union speech and President Macron's address Initiative for Europe. Brussels: European Commission, 2017, p. 10.

follow him in this ambition.[46] The **European Parliament has not taken a common position** on this issue thus far. In its resolution of 16 February 2017 (on possible evolutions of and adjustments to the current institutional set-up of the European Union), the European Parliament only supported the decision of the European Council of 28 June 2013 to have a "*system which will make it possible, before each election to the European Parliament, to reallocate the seats among Member States in an objective, fair, durable and transparent way, respecting the principle of degressive proportionality, while taking account of any change in the number of Member States and demographic trends*".[47] The European Parliament is contemplating a **reduction in the number of MEPs** after the United Kingdom leaves the European Union, so that there is "*sufficient room for manoeuvre to accommodate potential future enlargements of the EU and members elected in a joint constituency*".[48] A joint constituency with cross-border lists was included in the Draft Report on the Composition of the European Parliament as being considered for 2024, since due to legal uncertainties, it would not be realistic to introduce it for 2019.[49]

Among the Member States, it was the French President in his Sorbonne speech who supported transnational lists for the 2019 European elections, in order to fill the 73 British MEPs' seats in the European Parliament.[50] In addition to this, he wishes to see half of the European Parliament elected through transnational lists at the following election in 2024.[51]

3.4 . Strengthening the role of national parliaments?

Since the entry-into-force of the Lisbon Treaty, the parliaments of the EU Member States have developed and differentiated their EU-related activities in diverse ways. In this respect, for the national parliaments there continue to be both the issue of the effective **use of existing opportunities to influence decisions at a EU level**, and that of the possible further development of such opportunities. Against this background, the notification by the United Kingdom in March 2017 of its intention to leave the EU is a blow to the national parliaments of the remaining 27 Member States, since a major initiator of the debate on new mechanisms to involve national parliaments at the EU level is leaving the Union. At the same time, in Eurosceptic times, the national parliaments have to ask themselves more than ever what role(s) they would like to play in exercising control over their governments, in the Early Warning Mechanism, in dialogue with the European Commission and in interparliamentary cooperation.[52]

3.4.1 . Legal basis

In individual articles of the Lisbon Treaty and in two protocols to the Treaty, which are an integral part of it (the Protocol on the Role of National Parliaments in the European Union (Protocol

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46. European Commission, State of the Union address 2017.

47. European Parliament, Resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), P8_TA(2017)0048, para. 51.

48. European Parliament, Committee on Constitutional Affairs, Draft report of the composition of the European Parliament (Danuta Maria Hübner, Pedro Silva Pereira) of 7 September 2017, PE 608.038v01-00, para. 7.

49. Ibid., para. 8.

50. Présidence de la République, Service de presse, Initiative for Europe, Speech by M. Emmanuel Macron, Paris, 26 September 2017, pp. 20-21.

51. Ibid., p. 18.

52. See Kreilinger Valentin, Nationale Parlamente, in: Weidenfeld Werner and Wessels Wolfgang (ed.), *Jahrbuch der Europäischen Integration 2017*, Baden-Baden: Nomos, 2017, pp. 175-178.

No 1) and the Protocol on the Application of the Fundamental Principles of Subsidiarity and Proportionality (Protocol No 2)), there are numerous **references to national parliaments.**[53]
The most important instrument allowing national parliaments a direct influence over the EU legislative process is what is called the **Early Warning Mechanism**. This gives national parliaments which have subsidiarity concerns regarding a legislative proposal from the European Commission the option of issuing a "reasoned opinion". If more than a third of the national parliaments voice such concerns, then the threshold for a **yellow card** is reached and the Commission has to re-examine its proposal.

3.4.2 ▪ Political positions

> THE IDEA OF A GREEN CARD HAS MET BROAD SUPPORT.

Most recently, in May 2016, ten national parliaments from Central and Eastern European Member States, along with the Danish parliament, triggered a yellow card against the revision of the Posting of Workers Directive.[54] As yet, calls for a **red card** which national parliaments could use to completely block European Commission legislative initiatives have only been made occasionally. By contrast, constructive cooperation among national parliaments in the legislative process is generally welcomed and the **idea of a green card** has met broad support, even though the exact form this mechanism would take has still not been clarified after more than two years.[55]

The European Parliament's resolution of 16 February 2017 on possible evolutions and adjustments to the current institutional set-up of the European Union proposes "*complementing and enhancing the powers of national parliaments by introducing a 'green card' procedure whereby national parliaments could submit legislative proposals to the Council for its consideration*".[56] Additionally, the European Parliament is currently drawing up a report under the coordination of MEP Paulo Rangel, on the implementation of the provisions of the Lisbon Treaty concerning the national parliaments; this report is due to be approved in March 2018 together with a resolution of the European Parliament.[57]

For its part, the European Commission has set up a **Subsidiarity Task Force**, under the leadership of First Vice President Frans Timmermans, which is to draw up recommendations by summer 2018. This task force is made up of three representatives each, from the European Parliament, the national parliaments and the Committee of the Regions.[58] Commission President Jean-Claude Juncker announced in his State of the Union address that this **Subsidiarity and Proportionality Task Force** should contribute to ensuring that the EU focuses on the really important issues and identifies cases where it may make sense to return competencies to the Member States.

53. See in detail: Rozenberg Olivier, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, Brussels: European Parliament, 2017, pp. 13-16.
54. Fromage Diane and Kreilinger Valentin, National Parliaments' Third Yellow Card and the Struggle over the Revision of the Posted Workers Directive, *European Journal of Legal Studies*, 1/2017, pp. 125-160.
55. Rozenberg Olivier, The Role of the National Parliaments after Lisbon: Potentialities and Challenges, Brussels: European Parliament, 2017, pp. 35-38.
56. European Parliament 2017, Resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), P8_TA(2017)0048, para. 60.
57. European Parliament Legislative Observatory, Implementation of the Treaty provisions concerning national parliaments (Own-initiative procedure 2016/2149(INI)).
58. European Commission, Decision of the President of the European Commission on the establishment of a Task Force on Subsidiarity, Proportionality and "Doing Less More Effectively", C(2017) 7810, 14. November 2017.

The current deliberations are therefore not intended to set up new interparliamentary institutions, but rather to reinforce existing mechanisms, especially in the area of subsidiarity monitoring. At the same time, **cooperation between national parliaments and the European Parliament** continues to intensify, as for example shown by the new Joint Parliamentary Monitoring Committee for Europol, which met for its inaugural session in October 2017.[59]

CONCLUSION

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In Brussels and in many national capitals, there is hope that **Brexit could turn out to be a catalyst for a fundamental reorientation and further development of the EU**. As a result, the debate on the future of the EU gained momentum in 2017.

In this respect, limited institutional reforms[60] could, without doubt, contribute to reinforcing the sources of legitimacy for the European integration project. Current deliberations on the future of the EU27 include groundbreaking ideas; however, they have **by no means met unanimous agreement** across Europe. In the case of all these proposals, it is necessary that the **opportunities and risks of institutional change** be weighed against each other:

- Merging the functions of the President of the European Council and the President of the Commission (3.1) would create a single "President of the EU", but it could lead to uncertainties between the supranational and intergovernmental decision-making bodies;
- A repeating or expansion of the experiment with lead candidates in the European Parliament elections in 2019 (3.2) would increase political competition, but it would also cement the augmented power of the European Parliament;
- Transnational lists for the European elections (3.3) could really Europeanise the campaign, but would create two classes of MEP;
- And a greater role for national parliaments (3.4) would develop this channel of legitimacy, but may squeeze out the European Parliament.

These arguments demonstrate that in the lead-up to the 2019 European elections, it is often **the European Parliament** that is **at the centre of controversy**: its supporters wish to strengthen it; its opponents to reduce its influence.

> **LEGAL REQUIREMENTS, POLITICAL PREFERENCES AND THE TIME FRAME VARY CONSIDERABLY**

Legal requirements, political preferences and the time frame necessary to implement the four limited institutional reforms vary considerably in each case. This means that the scope for action also varies:

- **Merging the functions** of the President of the European Council and the President of the Commission (3.1) could, if desired, be achieved in the short term by the nomination and election of the same person to both roles. Only two qualified majorities in the European Council and an absolute majority in the European Parliament would be necessary to achieve this.

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59. Kreilinger Valentin, A Watchdog for Europe's Policemen: The Joint Parliamentary Scrutiny Group for Europol, Jacques Delors Institute - Berlin, Policy Paper N°197, June 2017
60. Other proposals for making the EU more democratic, which cannot be covered in detail in this policy paper, are being discussed in the current debate: for example, the use of passerelle clauses in the treaties in order to switch from unanimous decisions to decisions by majority, reducing the size of the European Commission or setting up democratic conventions (*conventions démocratiques*).

- Repeating or expanding the experiment with **lead candidates** in the 2019 European Parliament elections (3.2) would require a time frame of several months and depends mostly on the willingness of the Party of the European Socialists and the European People's Party to field such candidates once more. That said, both have already indicated that they plan to do so in autumn 2018. However, whether the lead candidate of the strongest fraction in the European Parliament would then be proposed by the European Council for the office of President of the Commission and elected by the European Parliament, remains an open question.

- **Transnational lists** for the European elections (3.3) require a unanimous decision from the European Council and changes to voting rights for the European elections in all Member States. Reform of this nature would therefore require a **longer time frame** of several years.

- **An increased role for the national parliaments** (3.4) could be implemented with or without EU treaty change, depending on the specifics of how it is designed. However, it requires not only agreement among the national parliaments but willingness on the part of the European Parliament and the European Commission to share information with the national parliaments, for example, and to take their input on board.

Basically, it would be **highly ambitious** to endeavour to **implement** these four limited institutional reforms **by the 2019 European elections**. The EU institutions' time frame – the year 2025 – is far more realistic. In the view of the pro-reformers, the 2019 European Parliament election would then represent the necessary political mandate for such reforms. However, the current rise in citizens' trust in national and EU institutions will not last forever, and it seems equally unlikely that momentum in the debate on the future of the EU will be maintained for long. Therefore, the institutional issues should be taken in hand.

Necessary and **desirable** limited institutional **reforms** could be discussed at the informal European Council on 23 February 2018 and then be prepared for a decision in the near future. The topic area of *"European Parliament composition/transnational lists, appointments, including Spitzenkandidaten"*[61] cannot endure any long delay before the next European Parliament elections, which are scheduled to take place in May 2019. But which of the proposals for reform, made in the debate on the future of the EU, will actually be implemented in the end, remains a purely **political decision for the EU27**.

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ON THE SAME THEMES

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