

THE COMMISSION REFORM: BETWEEN EFFICIENCY AND LEGITIMACY

Yves Bertoncini | *director of Notre Europe - Jacques Delors Institute*

António Vitorino | *president of Notre Europe - Jacques Delors Institute, member of the European Commission (1999-2004)*

SUMMARY

1. The key political issues underlying any successful reform of the Commission

- As the Commission members are not directly elected, the legitimacy of the Commission is necessarily twofold: it comes from the European Council (one commissioner per member state) as well as from the European Parliament (the MEP's elect the president of the Commission and express a vote of consent on the college).
- An effective use of the collegiality principle is needed so as to promote a broad political vision: the size of the college can make it more difficult, but it's the president's role to work for it. The fact to have one commissioner per member state may transform the college in a kind of "Coreper 3", but the political profile of the commissioners is also of key importance for the dynamism of the college.
- The European Parliament's powers have been reinforced by the successive treaties, and the European Council has been seen as more legitimate in times of "crisis management". In more "normal" times, the Commission should be more influential if well managed, especially with a new college benefiting from a new and reinforced legitimacy.

2. Some functional evolutions mainly based on the political game

- The legitimacy and efficiency of the Commission first rely on the profiles of its members, whose selection is in member states hands, under the control of the European Parliament: it's up to both of them to put the right commissioners in the right place.
- The more vertical internal organisation to be established within the college should not only rely on the president's power to structure and allocate responsibilities among its members, but also on a new use of the status of the 6 vice-presidents, chosen according to their political weight, and not to compensate the narrowness of their portfolio.
- The president and vice-presidents of the Commission will coordinate the other commissioners, whose portfolio will be connected to their seven respective spheres of competence, on the basis of a "cluster system".
- The format and name of the 7 clusters to be created can vary (*see proposal Appendix 1*), but the key issue is to have clusters gathering commissioners acting along the same functional lines and towards the same overarching political objectives.
- The collegiality principle will be fully applied and used (open political discussion versus formal endorsement of technical decisions) if votes are regularly organised during the Commission's meetings.

3. Some legal consolidation of these functional developments

- The Commission's "internal rules of procedure" should be revised to facilitate the implementation of the cluster system, for example by giving some specific powers to the vice-presidents and by supporting a new use of "empowerment procedures" and "delegation procedures"
 - After having been given the power to fire the members of the college, the president of the Commission should be able to appoint the commissioners. This slight modification of the Treaty would reinforce the likelihood of having good commissioners in the right place, while giving more vertical powers to the president of the Commission.
-

TABLE OF CONTENTS

INTRODUCTION	3
1. The key political issues underlying any successful reform of the Commission	4
1.1. The legitimacy of the Commission is necessarily twofold	4
1.1.1. Diplomatic issues: one commissioner per member state	4
1.1.2. Civic issues: a substantial input from the European parliament	5
1.2. The efficiency of the Commission rests on collective and personal elements	6
1.2.1. The collegiality issue (so as to integrate a broad political vision)	6
1.2.2. The dynamism issue	6
1.3. The Commission's legitimacy and efficiency are also linked to the inter-institutional context	7
1.3.1. The Commission lost in the "institutional Bermuda triangle"	7
1.3.2. The primacy of the political context	7
2. Some functional but substantial developments mainly based on the political game	7
2.1. Human aspects: a well-composed Commission	7
2.1.1. Elements of <i>status quo</i> : the euro area as the core of the political union	8
2.1.2. Elements of change: the right commissioner in the right place	8
2.2. Organisational aspects: a more functional college based on clusters	8
2.2.1. Elements of <i>status quo</i> : member states on an equal footing	9
2.2.2. Elements of change (1): 6 real vice-presidents within a real college	9
2.2.3. Elements of change (2): one president, six vice-presidents, thus 7 clusters	10
3. Some legal consolidation of these functional developments	11
3.1. Elements of <i>status quo</i> : the dual representative nature of the Commission	11
3.2. Elements of change: more powerful president and vice-presidents of the Commission	11
3.2.1. New "internal rules of procedure" at the Commission to organise the cluster system	11
3.2.2. A slight but decisive treaty change on the appointment of commissioners	11
CONCLUSION	12
APPENDIX 1 – ONE PRESIDENT, SIX VICE-PRESIDENTS, 21 OTHER COMMISSIONERS, THUS 7 CLUSTERS	13
ON THE SAME THEMES...	14

INTRODUCTION

The European Union (EU) is facing economic, social, identity and geopolitical challenges of a major scale, that first call for accurate and efficient political responses based on appropriate policies, which deserve to catch the attention and energy of decision-makers and stakeholders. It's nevertheless important to focus on the European institutions in charge of delivering such political answers, and among them the European Commission, whose missions and functioning lie at the core of the EU and are decisive for its impact and image.

Now that the choice of the next president of the Commission is under way, there is a need to deal with more internal and apparently more technical issues, which are in reality of the utmost importance, and then to see how the Commission could be reformed so as to be both more efficient and legitimate in the near future. In reference to the recent period and to other analyses and recommendations on such reform¹, it appears clearly that the main objective should be to promote a more political and transversal vision within the Commission, as opposed to the technical and sector-based vision which tends to prevail, and which prevents the Commission from playing its key role vis-à-vis the member states and public opinion. In a nutshell, there is a need for a more “united but diverse” Commission, i.e. mainly a more united Commission given the fact that its internal diversity is already guaranteed by the presence and action of 28 commissioners and more than 30 directorates general.

In such context, it's important to recall that a previous reform of the Commission was discussed and adopted at the beginning of the last decade: its aim was to reduce the number of commissioners and then the size of the college, on the basis of an “equal rotation” principle (*see Box 1 below*). But this reform was never actually implemented, following the 2008 “Irish no” and in the light of the implicit resistance of some other member states.

This failure confirms that any successful reform of the European Commission needs to take into account underlying political issues (especially legitimacy), instead of only technical ones, such as the size of the college (*see Part 1*). Both substantial and acceptable political developments should then be promoted in order to have a more collegial and cluster-based functioning of the Commission in subsequent years (*see Part 2*). These political changes' impact could be reinforced if some slight legal changes were introduced in the medium term (*see Part 3*).

1. See for example Fabian Zuleeg, “A more effective structure for the Commission”, European Policy Center, March 2014; “Proposal by the Friends of the European Commission for a new organisation”, 2014; Jean-Dominique Giuliani, “What should Brussels change? How can the functioning of the European institutions be improved rapidly?”, *European Issue No. 317*, Robert Schuman Foundation, 16.06.2014.

1. The key political issues underlying any successful reform of the Commission

The issues to be taken into account as regards the legitimacy and efficiency of the Commission are very diverse (geopolitical, legal, technical as well as human) and can be handled and modified more or less easily². It is essential to identify them properly in order to define the scope of possible and tangible Commission reforms.

1.1. The legitimacy of the Commission is necessarily twofold

“THE LEGITIMACY OF THE COMMISSION IS NECESSARILY TWOFOLD AND COMES FROM THE EUROPEAN COUNCIL AND FROM THE EUROPEAN PARLIAMENT”

As the Commission members are not directly elected, the legitimacy of the Commission comes from the member states as well as from the European Parliament; this twofold legitimacy reflects the dual nature of the EU, a Union of citizens and a Union of states or a “Federation of nation states” according to Jacques Delors. It raises diplomatic and civic issues.

1.1.1. Diplomatic issues: one commissioner per member state

All the member states want to be present in the Commission, given the powers of this institution (in particular monopoly of legislative initiative and control over EU law enforcement): this gives the Commission a twofold representative nature, from the member states as well as from the European Parliament majority approving the appointment of the president and college.

The idea of a non-permanent presence of all member states was inserted by the Treaty of Nice (*see Box 1*), which introduced a “system of strictly equal rotation between the member states, reflecting the demographic and geographical range of all the member states”: this system was paradoxical because it reaffirmed the members states’ need for to be present, but not at the same time. Following the “Irish no” of 2008, the European Council decided to use the flexibility provided by the Article 17.5 of the Treaty (*see Box 1*) not to implement the reform, thus maintaining the principle “one member state - one commissioner”.

The choice of this *status quo ante* didn’t solve the problems of efficiency which had led to this reform proposal, and which was subsequently to be addressed otherwise (*see Part 2*). It also underlines the importance of legitimacy issues, which can also be mentioned on at least two other counts:

- the bigger member states feel that being on an equal footing (1 commissioner each) does not reflect the respective power of the countries (there were two commissioners from the bigger member states instead of one until the Treaty of Nice).
- the euro area member states feel uneasy with decisions taken by a Commission in which 10 members out of 28 (more than 1/3) come from non-euro area countries.

² For further information, see Yves Bertoncini and Valentin Kreitinger, with contributions from José Manuel Barroso, Jacques Delors and António Vitorino, “Seminar on the Community Method, Elements of Synthesis”, *Synthesis*, Notre Europe, February 2012.

BOX 1 ➤ **EU treaties provisions on the member states' representation on the Commission**

Article 17.5. of the Treaty on European Union

As from 1 November 2014, the Commission shall consist of a number of members, including its president and the high representative of the Union for foreign affairs and security policy, corresponding to **two thirds of the number of member states, unless the European Council, acting unanimously, decides to alter this number.**

The members of the Commission shall be chosen from among the nationals of the member states on the basis of a **system of strictly equal rotation between the member states, reflecting the demographic and geographical range of all the member states.** This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the functioning of the European Union.

Article 244 of the Treaty on the functioning of the European Union

In accordance with Article 17(5) of the Treaty on European Union, the members of the Commission shall be chosen on the basis of a **system of rotation** established unanimously by the European Council and on the basis of the following principles:

- (a) **Member states shall be treated on a strictly equal footing** as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of member states may never be more than one;
- (b) Subject to point (a), each successive Commission shall be so composed as to reflect **satisfactorily the demographic and geographical range of all the member states.**

1.1.2. Civic issues: a substantial input from the European parliament

The representativeness of the Commission also derives from its link with the European Parliament elections: its members must be endorsed by the European Parliament (Article 17.7 of the TEU and declaration n°11) and the college can be censured by the European Parliament.

The reform introduced by the Lisbon Treaty leads to a more formal link between the designation of the president of the Commission and the results of the European elections, even if he/she will still be appointed by the European Council (*see Box 2*).

5 political parties used the new provision of the Lisbon Treaty to create a more direct link between peoples' vote and the new president, thus trying to have a more direct influence on the choice of the European Council; this context could have generated a conflict between the European Parliament political groups and the European Council, but a deal was finally made in order to support the candidate of the party which came first in the May 2014 European elections (namely Jean-Claude Juncker)³.

The other members of the Commission are chosen by "the Council, by common accord with the president-elect", and the college is "subject as a body to a vote of consent by the European Parliament" (*see Box 2, Article 17.5*). The European Parliament's input is thus very limited, but the hearings organised by the parliamentary committees can have an impact on the result of the appointment process: either by rejecting some of the proposed commissioners, as has happened in the recent past; or by having an influence on the distribution of the portfolios, on the basis of the personal profile of the commissioners, but also of their political affiliation – two key elements for the efficiency and legitimacy of the commissioners and the college at large.

3. If Jean-Claude Juncker was appointed, it will be only the second time since 1979 that a new president of the Commission's party affiliation reflects that one of the most numerous group of the European Parliament (the other example being José Manuel Barroso in 2004) – for further information on this issue, see Yves Bertoncini and Thierry Chopin, "Who will be the next president of the Commission be? A multiple choice question", *Policy paper No. 113*, Notre Europe – Jacques Delors Institute / Robert Schuman Foundation, June 2014.

BOX 2 > EU treaties provisions on the appointment of the members of the Commission

Article 17.3. of the Treaty on European Union

The Commission's term of office shall be **five years**.

The members of the Commission shall be chosen on the ground of their **general competence** and **European commitment** from persons whose **independence** is beyond doubt.

In carrying out its responsibilities, **the Commission shall be completely independent**. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

Article 17.7. of the Treaty on European Union

Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for president of the Commission. **This candidate shall be elected by the European Parliament by a majority of its component members**. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the president-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by member states, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The president, the high representative of the Union for foreign affairs and security policy and the other members of the Commission shall be **subject as a body to a vote of consent by the European Parliament**. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

1.2. The efficiency of the Commission rests on collective and personal elements

1.2.1. The collegiality issue (so as to integrate a broad political vision)

The size of the college (28 members) is frequently presented as an obstacle for the functioning of true collegiality within the Commission.

The profile and style of the president is also mentioned as a key element as regards the way a true collegiality may function (the systematic choice of former prime ministers since the Delors era seems to have led to a less collegial functioning of the Commission).

“AN EFFECTIVE USE OF THE COLLEGIALITY PRINCIPLE IS NEEDED SO AS TO PROMOTE A BROAD POLITICAL VISION”

There is a difficulty to see commissioners and DG interacting properly so as to adopt and promote a collective political vision based on some key priorities; the technical impact of the Secretariat general and of the inter-services consultations has thus fed the debate on the creation of “clusters” bringing together commissioners and DG acting in the same field and working for the same political objective (*see Part 2*).

1.2.2. The dynamism issue

The one-commissioner-per-member-state principle may transform the college into a kind of “Coreper 3”, less able to adopt pan-European initiatives based on the EU general interest.

The size of the Commission may generate too many portfolios, with each commissioner eager to propose new initiatives (i.e. too many?), whereas the Commission should focus more on effective priorities and therefore the number of such initiatives.

The profile of the commissioners chosen by the Council (in connection with the president of the Commission) is often considered as a key factor for the dynamism of the college – there is a need for real political actors.

1.3. The Commission's legitimacy and efficiency are also linked to the inter-institutional context

1.3.1. The Commission lost in the “institutional Bermuda triangle”

The European Parliament's powers have been continuously reinforced by the successive treaties, including its powers of monitoring and control vis-à-vis the Commission.

The European Council is now an EU institution whose permanent president can be seen as competing with the president of the Commission, at least for the definition of the EU main guidelines.

1.3.2. The primacy of the political context

“ IN MORE ‘NORMAL’ TIMES, THE COMMISSION SHOULD BE MORE INFLUENT IF WELL MANAGED ”

In times of “crisis management” (recent period), the European Council can be seen as more legitimate as a “firefighter” that the Commission (the same applies to the ECB); the European Council can also be seen as very legitimate as an “architect” to build solutions based on EU or non-EU treaties, on the condition that they give a key role to the European institutions, including the Commission; the Commission plays a key role as “mason” (drafting of the new legislation in particular)⁴.

In more “normal” times, Commission would become more influential if well-managed, especially with a new college benefiting from a new and reinforced legitimacy.

2. Some functional but substantial developments mainly based on the political game

A good grasp of the elements of analysis mentioned above leads us to recommend the proposals presented below to reinforce the Commission's legitimacy and efficiency in future years. It should continue to depend on the double confidence of both the European Council and the European Parliament, but its functioning and impact could be improved on the basis of three ranges of changes, whose common grounding is that they rest on the rationale of the daily European political game more than on a sweeping revision of the Treaty (profiles of the commissioners, role of the vice-presidents and powers of the president).

2.1. Human aspects: a well-composed Commission

“ IT'S UP TO THE COUNCIL AND THE EUROPEAN PARLIAMENT TO PUT THE RIGHT COMMISSIONERS IN THE RIGHT PLACE ”

It could seem a sign of naivety and wishful thinking to recall that the legitimacy and efficiency of the Commission rely on the profiles of its members, whose selection is in member states' hands, under the control of the European Parliament: they can't complain that they have an inefficient Commission if they don't select the right commissioners in the right place, on the basis of the following political principles.

⁴. For further information, see Yves Bertoncini, “Eurozone and democrac(y)ies : a misleading debate”, *Policy Paper No. 94*, Notre Europe – Jacques Delors Institute, July 2013.

2.1.1. Elements of *status quo*: the euro area as the core of the political union

A non-written rule has been applied since the launch of the Economic and Monetary Union and the creation of the so-called “Schengen area”: all the presidents of the Commission appointed since then on come from member states which belong to these two major milestones of the European construction process⁵, which lie at the very heart of the political union.

Given the intensity of the political debates generated around these two areas, especially during the so-called “euro area crisis”, it seems highly desirable to go on applying such rule. The same is true for the position of “Ecofin” commissioner, who should continue to hail from a euro area country.

2.1.2. Elements of change: the right commissioner in the right place

The president of the Commission should be appointed on the basis of his/her proactive profile and willingness to serve the European Council and the European Parliament; he/she should not necessarily be a former member of the European Council⁶ but should combine three decisive elements, i.e. relying on his/her collegial political input, using all the powers of the Commission (especially its right of initiative) and, last but not least, promoting a clear and overarching vision of the EU’s policies and future.

The commissioners proposed by the member states should also be chosen on the basis of their potential contribution to the general European interest rather than for reasons of domestic politics (in line with the provisions of the Article 17.3 of the TEU – *see Box 1*).

The president of the Commission should choose the candidate he/she wants to appoint among those proposed by the member states, as he/she is the best placed to assess the profiles of potential commissioners in line with the concrete needs of the institution and its internal organisation.

The Commission vice-presidents’ “general competence”, “European commitment” and “independence” should be particularly “beyond doubt” (*see Box 2, Article 17.3*) so that they can be able to play to the full their coordinating role within a cluster-based system (*see § 2.2*).

The president of the Commission can play a reinforced political role vis-à-vis the other Commission members, not only as a member of the European Council, but also if he/she is chosen among the candidates participating in the electoral campaign: this reinforced role could also give him/her more powers to compose a more efficient college, on vertical and functional bases.

The legitimacy and efficiency of the college of commissioners will be all the greater, the more its composition is defined in accordance with the internal political balance of powers in the European Council and in the European parliament⁷.

2.2. Organisational aspects: a more functional college based on clusters

The political efficiency of the Commission is closely connected with the effective functioning of the principle of collegiality. The reduction of the size of the Commission not having been implemented by the European Council, there is a need to rely on a more vertical internal organisation, by giving a key role to the 6 existing vice-presidents (there is then no need to create a new category of “Junior commissioners”, which would be perceived negatively).

5. On this point, see Yves Bertoncini and Thierry Chopin, “Who will the next president of the Commission be? A multiple choice question”, *op. cit.*

6. Jacques Delors has not been Prime Minister, yet a very good president of the Commission.

7. Around one third of the members of the “Barroso 2” Commission members are affiliated to the “ALDE” group, which represented only 12% of the MEP’s during the 2009-2014 period, and even of a smaller proportion of the head of states or government.

2.2.1. Elements of *status quo*: member states on an equal footing

Commissioners should still be able to participate in the vote of the college on an equal footing (no different voting rights: the Commission is not the Coreper 3), on the basis of the majority rule (Article 249 TFEU): this simple majority rule is indeed a functional advantage for the Commission, whose decisions can be made much more easily than in the Council (qualified majority or unanimity) and even more easily than in the European Parliament (where a majority of its component members or a 2/3 majority are sometimes required⁸).

The number of commissioners' portfolios would remain the same (28) even if the number of Directorates general could be reduced.

BOX 3 ► EU treaties provisions on the internal organisation of the Commission

Article 17.6. of the Treaty on European Union

The president of the Commission shall:

- (a) lay down **guidelines** within which the Commission is to work;
- (b) decide on the **internal organisation** of the Commission, ensuring that it acts consistently, efficiently and as a **collegiate body**;
- (c) **appoint vice-presidents**, other than the high representative of the Union for foreign affairs and security policy, from among the members of the Commission.

A member of the Commission shall resign if the president so requests. The high representative of the Union for foreign affairs and security policy shall resign, in accordance with the procedure set out in Article 18(1), if the president so requests.

Article 18 of the Treaty on European Union

1. The European Council, acting by a qualified majority, with the agreement of the president of the Commission, shall appoint the high representative of the Union for foreign affairs and security policy. The European Council may end his term of office by the same procedure.
2. The high representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The high representative shall preside over the Foreign Affairs Council.
4. The high representative shall be **one of the vice-presidents of the Commission**. He shall ensure the consistency of the Union's external action. He shall be **responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects** of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the high representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article 248 of the Treaty on the functioning of the European Union

Without prejudice to Article 18(4) of the Treaty on European Union, the **responsibilities incumbent upon the Commission shall be structured and allocated among its members by its president**, in accordance with Article 17(6) of that Treaty. The president may reshuffle the allocation of those responsibilities during the Commission's term of office. The members of the Commission shall **carry out the duties devolved upon them by the president under his authority**.

2.2.2. Elements of change (1): 6 real vice-presidents within a real college

“A NEW USE OF THE STATUS OF THE 6 VICE-PRESIDENTS, CHOSEN ACCORDING TO THEIR POLITICAL WEIGHT”

The internal hierarchy to be put in place within the college should not only rely on the president's power to structure and allocate responsibilities among its members (*see Box 3*), but also on a new use of the status of the 6 “vice-presidents of the Commission”: on the basis of the Article 248 TFEU, the president should choose these 6 vice-presidents according to their political weight, and not to compensate the narrowness of their portfolio.

The president and vice-presidents of the Commission should work in coordination with the other commissioners, whose portfolio should be connected to their seven respective spheres of competence, on the basis of a “cluster system” (*see the proposals made in Appendix 1*).

8. On this point, see Yves Bertoncini and Thierry Chopin, “Faces on divides – The May 2014 European elections”, *Studies & Reports No. 104*, Notre Europe – Jacques Delors Institute / Robert Schuman Foundation, April 2014

“ THE PRESIDENT AND VICE-PRESIDENTS WILL COORDINATE THE OTHER COMMISSIONERS, ON THE BASIS OF A ‘CLUSTER SYSTEM’ ”

The president or vice-presidents of the Commission should meet on a regular basis with the commissioners acting within their respective sphere of competence (sector-based collegiality within cluster meetings); the president of the Commission and his/her 6 vice-presidents should meet on a periodic basis so as to promote a better political coordination of the institution; all these meetings will take place with the support of the Secretariat general of the Commission.

The overall collegiality of the Commission will be reinforced by weekly meetings based on the input from the cluster meetings and coordination meetings mentioned above; it will also be reinforced by more open discussions of the college, concluded by more systematic votes.

Last but not least, the collegiality principle will indeed be fully applied and used (open political discussion versus formal endorsement of technical ones) if votes are regularly organised during the Commission’s meetings, based on the principle that its president is a “first among others”, but not a prime minister.

2.2.3. Elements of change (2): one president, six vice-presidents, thus 7 clusters

A new organisation of the college should be promoted in a functional and vertical perspective, on the basis of 7 complementary thematic clusters (*see Appendix 1*).

The format of some of these clusters seems to be quite obvious and consistent – for example the “presidential” cluster, gathering transversal political missions and the “External relations” cluster, already partly in place (*see Box 3, Article 18.4*).

Some other clusters reflect clear European missions, such as the “Internal market, cohesion and networks” cluster or the “European citizenship” cluster. Some others reflect functions which are often pulled together on the same basis at the national level (for example the “Ecofin” or “Social affairs” clusters).

“ CREATING CLUSTERS PULLING TOGETHER COMMISSIONERS ACTING TOWARDS THE SAME OVERARCHING POLITICAL OBJECTIVES ”

The 7 clusters to be created could naturally be formed on slightly different bases: for example, employment and social affairs could merge with the economic ones, so as to promote a more integrated vision of economic and social development⁹. A cluster dedicated to investment could also be built, with the objective of gathering all the commissioners and DG in charge of the main European expenditures (except external and home affairs). Commissioners not formally member of a cluster could be invited to take part in its meetings on an ad hoc basis (for example commissioner dealing with migration issues joining the External relations cluster).

The clusters could also be named on the basis or more political objectives, such as the names used in the “multi-annual financial framework” (Competitiveness, Cohesion, etc.).

The key element is to establish clusters gathering commissioners and DG acting along the same functional lines, while the need to reach the overall political objectives of the Commission and the EU – which should in any case be guaranteed by the college itself and, last but not least, its president.

⁹. A cluster dedicated to “networks” would then be created to stick to 1+6 clusters.

3. Some legal consolidation of these functional developments

The Commission's dual legitimacy will still have a key diplomatic and civic dimension. Its efficiency will certainly be reinforced if the political changes proposed above are completed on the medium term by some legal changes, including a slight but decisive amendment of the Treaty providing a shift from the Council to the president of the Commission with regard to the appointment of the commissioners.

3.1. Elements of *status quo*: the dual representative nature of the Commission

There will still be one commissioner per member state, so as to preserve the diplomatic legitimacy of the Commission (no change) – this is a non-starter for many member states¹⁰. It should in no way block the Commission's decision-making process, given the simple majority rule applied in the event of a vote.

The appointment of the president of the Commission is still made by the European Council, on the basis of the results of the European elections (no change in Article 17.7 of the TEU): its twofold diplomatic and civic legitimacy is thus confirmed.

There should be no change either as regards the dual status of the high representative for foreign affairs and security policy, who is at the same time one of the vice-presidents of the Commission (*see Box 3, Article 18 of the TEU*). He/she will keep on ensuring “the consistency of the Union's external action” and being “responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action”.

3.2. Elements of change: more powerful president and vice-presidents of the Commission

3.2.1. New “internal rules of procedure” at the Commission to organise the cluster system

The Commission's “internal rules of procedure” should be revised to facilitate the implementation of the cluster system, for example by giving some specific rights to the vice-presidents such as setting the agenda of the cluster meeting and of the commissioners acting in their respective field of competence. A new use of “empowerment procedures” and “delegation procedures” should also be promoted.

This rewriting of the rules of procedure should be made on the basis of the provisions of the Article 18 of the TEU dealing with the vice-president/high representative for foreign affairs and security policy (*see Box 3, Article 18.4*), drawing lessons (political, human, functional, etc.) from the way they were implemented (or otherwise).

3.2.2. A slight but decisive treaty change on the appointment of commissioners

“THE PRESIDENT OF THE COMMISSION SHOULD BE ABLE NOT ONLY TO FIRE THE COMMISSIONERS, BUT TO APPOINT THEM”

After having been given the power to fire the members of the college (*see Box 3, Article 17.6 TEU*), the president of the Commission should be able to appoint the commissioners in a personal capacity, instead of the Council acting on the basis of a common agreement with him/her (*see Box 1, Article 17.7 TEU to be amended*); this slight modification would reinforce the likelihood to have good commissioners in the right place, but would also give real vertical powers to the president of the Commission.

10. Articles 17.5 TEU and 244 TFEU could then be redrafted.

The president of the Commission would naturally appoint the commissioners in close conjunction with the national governments (see for example what happens for the composition of the commissioners' cabinets).

Within this new legal framework, the president of the Commission could more easily appoint vice-presidents and commissioners, as in any national government¹¹; the president should choose the vice-presidents while respecting the political balances of the EU (big-smaller member states and North-South-East-West especially); the member states could accept this kind of *de facto* political internal hierarchy, whereas they are reluctant to accept a *de jure* hierarchy.

CONCLUSION

All these human, organisational and legal changes could be completed by others, especially as regards the nature and number of the inter-institutional agreements concluded by the Commission and the other institutions: the negotiation and adoption of such an inter-institutional agreement on the political programme of the Commission for the duration of its mandate (2014-2019) is emblematic.

In any event, the balance of powers between the institutions, and then the legitimacy and efficiency of the Commission, will also continue to depend on the evolution of the political context (crisis period or not). But even if they are not revolutionary as regards the nature of the EU treaties and political game, the functional proposals presented above seem to be among the only feasible and effective options available to give the Commission all the strength it needs to contributing to address the challenges Europe is facing¹².

11. If the Ecofin commissioner were to hold the post of permanent president of the Eurogroup (see high representative status), its designation would be made jointly by the European Council and the president of the Commission (see Article 18 TEU).

12. The analyses and recommendations developed above could also be implemented at a larger scale, for example by inspiring the reform of the Council organisation, with the creation of the 6 to 7 equivalent sector-based meetings (instead of the 9 existing today).

APPENDIX 1 ➤ ONE PRESIDENT, SIX VICE-PRESIDENTS, 21 OTHER COMMISSIONERS, THUS 7 CLUSTERS

On the basis of the present scope of the commissioners' portfolio, a new organisation of the college should be promoted in a functional and vertical perspective. The distribution and coordination of tasks between the president, the six vice-presidents and the 21 other commissioners could then be defined following the examples given below.

President of the Commission	Commissioner in charge of Inter-Institutional relations, Relations with national parliaments, Information and Communication	Commissioner in charge of Financial Programming and Budget, Administration, Statistics, Audit and Anti-Fraud			
Vice-president in charge of the "Internal market, cohesion and networks"	Commissioner in charge of Energy	Commissioner in charge of Financial Services	Commissioner in charge of Transports	Commissioner in charge of Regional Policy	
Vice-president in charge of "Economy and Finance"	Commissioner in charge of Competition	Commissioner in charge of Industry and Digital Economy	Commissioner in charge of Taxation and Consumer policy		
Vice-president in charge of "Social Affairs"	Commissioner in charge of Employment	Commissioner in charge of Health			
Vice-president in charge of "Natural resources"	Commissioner in charge of Agriculture and Rural Development	Commissioner in charge of Maritime Affairs and Fisheries	Commissioner in charge of Environment and Climate action		
Vice-president in charge of "European Citizenship"	Commissioner in charge of Justice and Fundamental Rights	Commissioner in charge of Home Affairs	Commissioner in charge of Education, Training and Youth	Commissioner in charge of Culture and Multilingualism	
Vice-president in charge of "External relations", High representative for CFSP	Commissioner in charge of Trade (and Customs)	Commissioner in charge of Enlargement & Neighbourhood	Commissioner in charge of Development and Humanitarian aid		

On the same themes...

POST-ELECTION EU: ASK FOR THE PROGRAMME!

Jacques Delors and António Vitorino, *Tribune - Viewpoint*, Notre Europe - Jacques Delors Institute, June 2014

WHO WILL THE COMMISSION'S NEXT PRESIDENT BE? A MULTIPLE-CHOICE QUESTION

Yves Bertoncini and Thierry Chopin, *Policy Paper No. 113*, Notre Europe - Jacques Delors Institute, June 2014

EUROPEAN COMMISSION AND PARLIAMENT: WHAT RELATIONS?

António Vitorino, *Tribune*, Notre Europe - Jacques Delors Institute, January 2014

EUROZONE AND DEMOCRACY(IES) : A MISLEADING DEBATE

Yves Bertoncini, *Policy Paper No. 94*, Notre Europe - Jacques Delors Institute, July 2013

TRIGGERING EUROPEAN POLITICS TO REINFORCE THE COMMUNITY METHOD

Miguel Maduro, *Tribune*, Notre Europe, October 2012

SEMINAR ON THE COMMUNITY METHOD. ELEMENTS OF SYNTHESIS

Yves Bertoncini and Valentin Kreiling, with contribution from José Manuel Barroso, Jacques Delors and António Vitorino, *Synthesis*, Notre Europe, May 2012

THE POWER OF INITIATIVE OF THE EUROPEAN COMMISSION: A PROGRESSIVE EROSION?

Daniela Corona, Costanza Hermanin and Paolo Ponzano, Foreword by António Vitorino, *Studies & Research No. 89*, Notre Europe, February 2012

DECISION-MAKING IN THE EUROPEAN UNION

Philippe De Schoutheete, *Policy Brief No. 24*, Notre Europe, March 2011

Managing Editor: Yves Bertoncini • The document may be reproduced in part or in full on the dual condition that its meaning is not distorted and that the source is mentioned • The views expressed are those of the author(s) and do not necessarily reflect those of the publisher • *Notre Europe - Jacques Delors Institute* cannot be held responsible for the use which any third party may make of the document • Original version • © *Notre Europe - Jacques Delors Institute*

