

# NEW PRESIDENT, NEW "CONSTITUTION"?

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Jean-Claude Juncker's election to the post of president of the Commission has been accompanied by a fair number of political, institutional and thus also "constitutional" ambiguities which it would be useful to dispel. Yves Bertoncini takes a stand.

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Jean-Claude Juncker's election to the post of president of the Commission marks a new stage in the historic process of rebalancing the powers of member states and the European Parliament. Yet it has been accompanied by a fair number of political, institutional and thus also "constitutional" ambiguities which it would be useful to dispel over the coming weeks, and also with a view to the elections in 2019.

## 1. An election which sets a welcome political precedent, but which is not yet an institutional "custom"

Juncker's election is the result of a gradual evolution set in motion by the Treaty of Maastricht, which countenanced the principle of a compulsory vote of approval for the Commission in the European Parliament. The Treaty of Amsterdam subsequently separated the vote of approval for the Commission president from the vote for his team. It was on that basis that Tommaso Padoa-Schioppa and our European Steering Committee proposed, as long ago as in 1998, a [new democratic adjustment](#) consisting in pegging the appointment of the Commission president to the result of the European elections by mobilising the European political parties in that sense and, if possible, amending the treaties to reflect that fact.

The Convention on the future of Europe debated this amendment, but its members refused to peg the Commission president to Parliament quite so solidly, although they did suggest that the European Council should "take the European elections into account" when appointing the president. Revived in the Treaty of Lisbon, this formula for a "constitutional treaty" was sufficiently ambiguous to fuel conflicting interpretations, borne out by the radical opposition evinced by the British authorities; but at the same time it was sufficiently open-ended to allow the main European political parties to use it to create a balance of forces from which the assembly in Strasbourg has recently emerged the winner.

Thus Juncker's election has set a precedent which will inevitably be invoked in 2019 and which is going to prompt all of the political players involved - with the heads of state and government heading the list -- to take the nomination of the "Spitzenkandidaten" very seriously indeed. A precedent of this kind will only become a fully-fledged "custom" once long-term repetition has made it a given that the Commission president is a member of the party with the highest number of parliamentarians in Strasbourg, although this has in fact been [the exception rather than the rule since 1979](#). In the meantime, Juncker's election also confirms a far more constant item of "jurisprudence" whereby the [president systematically belongs to the dominant political tendency in the European Council](#). Thus it remains to be seen what will happen in 2019 or afterwards if the party that wins the European elections is in a clear minority in the European Council...

## 2. An election which clearly, though not exclusively, bolsters the party affiliation aspect of European appointments

Juncker's election bolsters the party affiliation aspect of European appointments, but it also highlights other conflicting interpretations in this connection.

At this juncture, [should all the commissioners' posts be assigned](#) on the basis of the balance of forces established between the parties by the 25 May elections, or should the balance within the European Council also be taken into consideration? And should decisions be based on the overall picture of the balance of party forces when assigning all of the European posts, including the post of president of the European Council?

An exclusively parliamentary approach to the makeup of the Brussels team would entail the post of vice-president and high representative for CFSP going once again to the PES, along with other important portfolios, particularly in the economic sphere: this, because the EPP's lead in terms of seats was down on its previous performance (29%

versus 25% for the S&D, as opposed to 36% versus 25% back in 2009). And a parliamentary approach would also lead to the significant downsizing of the number of commissioners' posts assigned to the Liberal and Democrat group, because it holds only 9% of the seats in Strasbourg.

Factoring in party forces in the European Parliament and Council does not actually change much in those balances: as things stand today they are relatively comparable, with the EPP enjoying a slight lead but followed closely by the S&D, thus working in favour of compromises along "grand coalition" lines. But the situation would change completely if the negotiations were also to cover the post of Herman Van Rompuy's successor (even though the post does not require a vote in the European Parliament). If that were the case, the post would have to go to a candidate from the PES in view of the clear rebalancing of party forces at the national level since 2009, a rebalancing confirmed by the outcome of the 25 May elections.

It is even less easy to predict which of those two approaches is going to prevail when we consider that these planned appointments are part of a **game of "Rubik's cube"** in which non-party aspects also come into play, primarily with regard to the candidates' countries of origin and to their personal profiles (experience, gender and so forth). While these three dimensions (party affiliation, country of origin and personality) are all perfectly legitimate, the lack of clarity surrounding the current negotiations is placing the EU in a kind of impenetrable "fourth dimension" both for the experts and for the citizens. So it would be extremely useful if greater transparency were to be established ahead of the European Council meeting slated for 30 August and ahead of the hearings scheduled in the European Parliament starting 22 September.

### 3. An election which remains a test case that needs to be transformed in democratic terms: what kind of agenda and what kind of primaries?

The circumstances surrounding the Commission president's election would benefit from being governed by more transparent procedures both upstream (with a clear agenda) and downstream (through primary elections).

While it is the very nature of Juncker's election to spawn a **new agenda** for the legislative term of 2014 to 2019, nevertheless a certain vagueness still surrounds it in this sphere.

The European Council has identified "**five overarching priorities**" which it would like the Commission to adopt; in an extension of their election campaigns, the political groups in the European Parliament all put forward their proposals during the hearing for the new Commission president; and Juncker, for his part, has identified "**ten areas**", specifying that he plans to submit a detailed programme only after putting his team together, ahead of Parliament's approval in October. A reading of these documents reveals areas of fairly strong convergence, particularly in connection with a better balance between stringency and growth and a stronger profile for the EU on the international stage. Yet no institutional negotiations are planned to formally produce a fully-fledged "contract for the legislative term", as happens for instance in the budgetary sphere (why should there be an agreement on the EU's means yet not on its objectives?). In light of this, we cannot rule out the prospect of tension arising, which may well blur the exact scope and importance of the link forged between the European elections and the EU's action plan.

Holding the democratic debate further upstream of these events would also make it possible to develop a number of proposals capable of improving the "Spitzenkandidaten" system's efficiency and legitimacy. Thus it would seem preferable for each of the would-be presidents to actually be a candidate in the European elections as well (this was not the case with Juncker); that he or she be nominated as the result of pluralistic party primary elections (Martin Schulz had no challengers); or that he or she be elected as a result of primary elections open not only to national party delegates but to all militants or even sympathisers of the European parties concerned (the Greens are the first group to have made a move in this direction)... That way the political parties could transform the exercise of parliamentary democracy that we have just witnessed into a fully-fledged exercise of citizen's democracy.

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While Juncker's election marks a significant milestone on the road to European construction, its institutional, political and constitutional foundations need to be consolidated in order to bolster the EU's legitimacy, thus placing the Union in a better position to address the internal and external challenges facing it.

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